

**CONDOMINIUM DECLARATION
FOR
UTE TRAIL TOWNHOMES AND BILLINGS PLACE CONDOMINIUMS**

THIS DECLARATION is made this 22nd day of December, 1994, by James H. Pugh, Jr.

I. DEFINITIONS.

1.1 **Act.** "Act" means the Colorado Common Interest Ownership Act, Article 33.3 of Title 38, Colorado Revised Statutes, as amended.

1.2 **Association.** "Association" means, when preceded by the words "Ute Trail Townhomes," the Ute Trail Townhomes Condominium Association, a Colorado non-profit corporation, its successors and assigns and, when preceded by the words "Billings Place" means the Billings Place Condominium Association, Inc., a Colorado nonprofit corporation, its successors and assigns. The Ute Trail Condominium Association shall have, enjoy and exercise exclusive jurisdiction and control over the affairs of the Ute Trail Townhomes component of the Project and the Billings Place Condominium Association shall have, enjoy and exercise exclusive jurisdiction and control over the Billings Place component of the Project.

1.3 **Billings Place.** Billings Place means the two (2) southernmost Buildings on the Real Property containing the seven (7) affordable housing units (so restricted in terms of their ownership, use and occupancy as provision is therefor made in paragraph 7.12, below) and the Limited Common Elements appurtenant thereto as shown on the Map.

1.4 **Board of Managers.** "Board of Managers" means, as the context may require, either the board of managers of the Ute Trail Townhomes Condominium Association or the Board of Managers of the Billings Place Condominium Association and in each case shall be the body referred to as "Executive Board" in Section 38-33.3-103(16), Colorado Revised Statutes.

1.5 **Buildings.** "Buildings" means the buildings now or hereafter constructed on the Real Property.

1.6 **Common Elements.** "Common Elements" means all of the Project, except the portions thereof which constitute Units, and also means all parts of the Building(s) or any facilities and fixtures which may be within a Unit which are or may be necessary or convenient to the support, existence, use, occupancy, operation, maintenance, repair or safety of the

Building or any part thereof or any other Unit therein. The Common Elements shall be owned as tenants-in-common by the Owners of the separate Units, each Owner having an undivided interest in such Common Elements as hereinafter provided.

1.7 **Common Expense.** "Common Expenses" means and includes:

- A. Expenses of administration, operation and management, repair or replacement of the Common Elements of the Project;
- B. Expenses declared Common Expenses by the provisions of this Declaration or the By-Laws of the Association;
- C. All sums lawfully assessed against the Common Elements of the Project by the Board of Managers of the Association;
- D. Expenses agreed upon as Common Expenses by the Association; and
- E. Expenses as are provided in any Management Agreement.

1.8 **Condominium Unit.** "Condominium Unit" means a Unit, together with the undivided interest in the Common Elements appurtenant to that Unit, as set forth in Exhibit "A" attached hereto.

1.9 **Declarant.** "Declarant" means James H. Pugh, Jr., and any party designated as a successor or assign of the Declarant by written instrument duly recorded in the Records, hereinafter defined.

1.10 **Declaration.** "Declaration" shall mean this Condominium Declaration, together with any supplements or amendments thereto, which have been recorded in the Records. "Declaration" shall also include the "Map," below defined.

1.11 **General Common Elements.** "General Common Elements" means all Common Elements except Limited Common Elements.

1.12 **Limited Common Elements.** "Limited Common Elements" mean those parts of the Common Elements that are either limited to and reserved for the exclusive use of an Owner of a Condominium Unit or are limited to and reserved for the common use of more than one, but fewer than all, of the Condominium Unit Owners, which Limited Common Elements are deemed to be inseparable appurtenances to such Condominium Unit or Units, and shall include, but shall not be limited to, pipes, ducts, electrical wiring, conduits, flues, and built-in fireplaces (if any) located entirely within a Unit or adjoining Units and serving only such Unit or Units, the heating systems serving exclusively any Unit or Units, such portions of the perimeter walls, floors and ceilings, doors, windows and all associate fixtures and structures intended to be physically located within the Unit, as may lie outside the Unit boundaries and any other features of the Project identified on the Map with the legend "L.C.E." and a designation of the Unit to which such Limited Common Element is appurtenant. Additionally, Limited Common Elements shall mean and include any balcony, porch, storage room, patio or parking area that is accessible from, associated with and/or which adjoins a Unit, as may be designated, located or shown on the Condominium Map by legend, symbol or word, and shall, without further reference thereto, be used in connection with such Unit to the exclusion of the use thereof by the other owners of Condominium Units except by invitation.

1.13 **Map.** "Map" means the Condominium Map for the Ute Trail Townhomes and Billings Place, a Condominium, filed or to be filed in the Records and shall include any supplements and amendments thereto.

1.14 **Mortgage and First Mortgage.** A "Mortgage" shall mean a mortgage or a deed of trust or any other form of security interest as defined in the Act encumbering a Condominium Unit. A "First Mortgage" means a Mortgage in a position of first priority on the Condominium Unit it encumbers.

1.15 **Mortgagee and First Mortgagee.** "Mortgagee" means any person or persons, or entity or entities, who is a mortgagee under a mortgage or a beneficiary under a deed of trust or the secured party under any other form of security interest as defined in the Act encumbering a Condominium Unit. "First Mortgagee" shall mean a Mortgagee whose Mortgage is in a position of first priority on the Condominium Unit it encumbers.

1.16 **Owner.** "Owner" means the person or persons, or entity or entities, including Declarant, who owns fee simple title to a Condominium Unit. The term "Owner" shall not include the owner or owners of any lesser estate or interest.

1.17 **Project.** "Project" means the Real Property, the Buildings and all other improvements on the Real Property.

1.18 **Project Division Line.** "Project Division Line" means the line shown as such on the Map which defines the areas of management and control for each of the two Associations. That portion of the Real Property lying to the South of the Project Division Line shall be under the management and control of the Billings Place Condominium Association, and that portion of the Real Property lying to the North of the Project Division Line shall be under the management and control of the Ute Trail Townhomes Condominium Association.

1.19 **Real Property.** "Real Property" means the real property located in the City of Aspen, Pitkin County, Colorado, described as follows:

LOTS 14 AND 15, UTE ADDITION TO ASPEN, Except Mineral interests; and a tract of land being part of Lots 33 and 38, Section 18, Township 10 South, Range 84 West of the 6th P.M. lying Northeasterly of an existing roadway which roadway abuts the Southwesterly boundary of said tract which is more particularly described as follows:

Beginning at the most Southerly corner of Lot 14, Ute Addition to Aspen; thence S 45°42'00" W 81.71 feet;
thence N 27°09'00" W 34.27 feet;
thence N 13°51'00" W 47.51 feet;
thence N 28°34'00" E 57.60 feet;
thence Southeasterly along line 1-9 of the former boundary of the City of Aspen to the point of beginning.

Also described as the UTE TRAIL TOWNHOUSES AND THE BILLINGS PLACE SUBDIVISION AND P.U.D., according to the Plat recorded in Plat Book 26 at Page 32 and Subdivision Agreement recorded in Book 646 at Page 16, Pitkin County records.

COUNTY OF PITKIN, STATE OF COLORADO.

together with all rights and interests appurtenant thereto.

1.20 **Records.** "Records" means the real property records maintained or real property documents recorded in the office of the Clerk and Recorder of Pitkin County, Colorado.

1.21 **Related Party.** "Related Party" means any guest, invitee, tenant, customer, agent or employee of an Owner, any member of the family of an Owner, or other person who uses the Unit of an Owner, and any person or entity, not an Owner, who has acquired any title or interest in a Condominium Unit by, through or under an Owner, including a lessee, licensee or mortgagee, and any guest, invitee, sub-tenant, customer, agent or employee of such a person or entity.

1.22 **Unit.** "Unit" means an individual air space which is contained within the windows, doors and finished perimeter walls, floors (or lowermost floors, if it is an individual air space Unit containing more than one level) and ceilings (or the uppermost ceilings, if it is an individual air space Unit containing more than one level) of each Unit as shown on the Condominium Map filed or to be filed for record, together with all fixtures and improvements therein contained, but not including any of the Common Elements, if any, located within the Unit. The term "finished perimeter walls, floors and ceilings", as used herein, shall not include any paint, carpeting, wallpaper, paneling or other wall, floor or ceiling decorator treatment; rather, those items shall be considered to be inside the finished perimeter walls within the Unit. Each Condominium Unit is designated on Exhibit "A" attached hereto.

1.23 **Ute Trail Townhomes.** "Ute Trail Townhomes" means the northernmost Building on the Real Property containing the three (3) free market units and the Limited Common Elements appurtenant thereto as shown on the Map.

II. DECLARATION AND EFFECT THEREOF

2.1 **Declaration.** Declarant, for himself, his successors and assigns, as owner of the Project, hereby declares that the Project shall at all times be owned and held in condominium ownership under the Common Interest Ownership Act of the State of Colorado and shall at all times be owned, held, sold, conveyed, used and occupied subject to the provisions of this Declaration.

2.2 **Division into Condominium Units/Time Sharing Prohibited.** The Project is hereby divided into ten (10) townhome Condominium Units, each consisting of a separate fee simple estate in a particular Unit and an appurtenant undivided fee simple interest in the Common Elements. As shown on the Map, and as above-defined, the three (3) units contained within the Building located to the North of the Project Division Line and designated either Unit A, Unit B or Unit C are to be known and referred to as the *Ute Trail Townhomes* and the seven (7) units contained within the two buildings located to the South of the Project Division Line and designated alphabetically as Units D-J are to be known and referred to as *Billings Place*. No Unit may be time-shared or broken into any similar form of interval estate. The Declarant reserves no right to create anymore Units on the Property.

2.3 Undivided Interests in Common Elements. The undivided interest in Common Elements appurtenant to a particular Unit is set forth on Exhibit "A" attached hereto. Each Owner shall own his appurtenant undivided interest in the Common Elements as a tenant-in-common with all other Owners.

2.4 Description of a Unit. Any instrument affecting a Condominium Unit may legally describe it by the identifying Condominium Unit letter shown on the Map covering the Condominium Unit followed by the designation Ute Trail Townhomes or Billings Place, as applicable. This identifying letter or number for a Condominium Unit in the Project is the letter or number on the Map identifying the Condominium Unit. Thus, a legal description of a Condominium Unit in the Project may be in the following form:

Condominium Unit __, Ute Trail Townhomes, a Condominium, as shown on the Map thereof recorded in Book ____ at Pages ____, *et seq.*, Pitkin County, Colorado,

or, as applicable:

Condominium Unit ____, Billings Place, a Condominium, as shown on the Map thereof recorded in Book ____ at Pages ____, *et seq.*, Pitkin County, Colorado

and any conveyance or other instrument affecting title to a Condominium Unit or any part thereof describing the Condominium Unit in the Project in substantially the foregoing form or otherwise describing the Condominium Unit shall be deemed to include and describe the entire Condominium Unit, including the appurtenant and undivided interest in Common Elements, and all of the rights, easements, obligations, limitations, encumbrances, covenants, conditions and restrictions benefitting or burdening the Condominium Unit under the terms of this Declaration.

2.5 Duration of Condominium Ownership. The condominium ownership of the Project created under this Declaration shall continue until this Declaration is terminated or revoked, as hereinafter provided.

2.6 Inseparability of Condominium Unit. The interest of an Owner in a Unit and the appurtenant undivided interest in Common Elements which constitute a Condominium Unit shall be inseparable for the period of condominium ownership hereinabove described.

2.7 Partition of Common Elements Not Permitted. The Common Elements shall be owned in common by all Owners of Condominium Units, and no Owner may bring any action for partition thereof. Except as set forth herein, no Owner shall partition or subdivide any Condominium Unit so as to encumber or convey an interest in less than an entire Condominium Unit without the prior written consent of the Declarant, as defined in this Declaration. This Section is not intended, however, to prohibit joint or common ownership of a Condominium Unit by two or more persons or entities.

2.8 Combination of Units. An Owner of multiple (more than one) abutting Condominium Units within the Ute Trail Townhomes only may combine the same for purpose of utilization and shall be entitled to the exclusive use of such areas of the General Common Elements for the purpose of such combination, without charge, as shall be approved in writing by the Declarant, and after all of the Condominium Units in the Project shall have been conveyed by the Declarant, by the applicable Board of Managers (of the Ute Trail Townhomes Condominium Association) upon such reasonable terms and conditions as shall not be inconsistent with the provisions of the Act and as shall be required by the Declarant or the applicable Board of Managers, as the case may be. The foregoing provision recognizes that the Common Elements of the Project are owned by all of the Owners as tenants-in-common. Each Owner hereby irrevocably constitutes and appoints the Declarant and both Boards of Managers as attorneys-in-fact to deal with applicable common elements for purposes of this paragraph. Notwithstanding any such combination, the applicable Board of Managers shall have the right to assess the combined Unit as separate Condominium Units. Units within Billings Place may not be combined under any circumstance.

2.9 Ad valorem Taxation. All taxes, assessments and other charges of the State of Colorado or of any political subdivision or of any special improvement district or of any other taxing or assessing authority shall be assessed against and collected on each Condominium Unit separately and not on the Buildings or Project as a whole, and each Condominium Unit shall be carried on the tax books as a separate and distinct parcel. For the purpose of valuation for assessment, the valuation of the Common Elements shall be apportioned among the Units in proportion to the fractional undivided interests in Common Elements appurtenant to and part of the Condominium Units. The Association shall deliver to the County Assessor of Pitkin County, Colorado, a written notice as required by the Condominium Ownership Act of Colorado, setting forth descriptions of the Condominium Units and shall furnish all necessary information with respect to such apportionment of valuation of Common Elements for assessment. The lien for taxes assessed to any Condominium Unit shall be confined to that Condominium Unit. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

2.10 Mechanic's Liens. No labor performed or materials furnished for use in connection with any Condominium Unit with the consent of, or at the request of, the Owner

thereof or his agent, contractor or subcontractor shall create any right to file a statement of mechanic's lien against the Condominium Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Elements except the undivided interest therein appurtenant to the Condominium Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against the Condominium Unit, or any part thereof, of any other Owner for labor performed or for materials furnished, in work on the first Owner's Condominium Unit. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Condominium Unit on which the labor was performed or materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, including attorneys' fees. If not promptly paid, the Association may collect the same in the manner provided herein for collection of assessments.

III. VARIOUS RIGHTS AND EASEMENTS.

3.1 **Owner's Rights in General Common Elements.** Subject to the other provisions of the Declaration, each Owner, and any Related Party of such Owner, shall have a nonexclusive right to use and enjoy the General Common Elements, provided there is no hindrance or encroachment upon the rights of use and enjoyment of other Owners as provided hereunder.

3.2 **Owner's Rights in Limited Common Elements.** Subject to the other provisions of the Declaration, each Owner, and any Related Party of such Owner, shall have an exclusive right to use and enjoy the Limited Common Elements appurtenant to the Condominium Unit owned by such Owner.

3.3 **Owner's Rights in Unit.** Subject to the other provisions of this Declaration, each Owner shall have full and complete dominion and ownership of the Unit which is part of the Condominium Unit owned by such Owner and shall have the exclusive right to use and enjoy the same. Each Owner shall have the right (subject, however, to the provisions of Section 4.3), to paint, repaint, tile, paper and otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors and doors (the exterior of exterior doors which are General Common Elements excluded) which are the boundaries of his Unit and the walls, ceilings, floors and doors within the boundaries of his Unit.

3.4 **Association Rights.** Each Association shall have a non-exclusive right and easement to make such use of General Common Elements, Limited Common Elements (including, as may be necessary, on either side of the Project Division Line) and Units as may

be necessary or appropriate for it to perform the duties and functions which it is obligated or permitted to perform under this Declaration; provided, however, that any entry into a Unit shall be made with as little damage to the Unit entered as possible. Any damage caused to a Unit shall be repaired by, and at the expense of, the Association involved.

3.5 **Owners; Easements for Access, Support and Utilities.** Each Owner shall have a non-exclusive easement for access between the Unit which is part of the Condominium Unit of such Owner and public roads and streets, the entrances, exits, halls, stairs, landings, fire escapes, land, walks, exterior access and other easements which may be part of the General Common Elements. Each Owner shall have a non-exclusive easement in and over the Common Elements, including Common Elements within the Unit of another Owner, for horizontal and lateral support of his Unit which is part of his Condominium Unit and for utility service to that Unit, including water, sewer, gas, electricity, telephone and television service.

3.6 **Easements for Encroachments.** If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance thereof shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for such encroachment and for the maintenance of the same. Such encroachments shall not be considered to be encumbrances either on the Common Elements or a Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof. Encroachments herein referred to shall not include intentional encroachments.

3.7 **Easements in Unit for Repair, Maintenance and Emergencies.** Some of the Common Elements are or may be located within a Unit or may be conveniently accessible only through a Unit. Each Owner shall have an easement, which may be exercised by the Association as his agent, and the Association shall have an easement for access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any Unit or the Common Elements located therein or accessible therefrom.

3.8 **Garage Access Easement.** Each owner of a Unit in Billings Place shall have an easement across that portion of the Real Property lying to the North of the Project Division Line as may be necessary for motorized vehicular access to and egress from such Owner's designated parking garage to Aspen Mountain Road. Similarly, each Owner of a Unit in the Ute Trail Townhomes shall have an easement across that portion of the Real Property lying to the South of the Project Division Line as may be necessary for motorized vehicular access to and egress from such Owner's designated parking garage to Aspen Mountain Road.

3.9 **Easements Deemed Appurtenant.** The easements 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 and rights as are provided for herein, even though no specific reference to such easements appears in any such conveyance.

IV. CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATIONS.

4.1 **Areas of Responsibility and Authority - Generally.** The Ute Trail Townhomes Condominium Association shall have management responsibility and authority for the Ute Trail Townhomes, the Owners of Units therewithin, the general and limited common elements appurtenant thereto and, in general, for that portion of the Real Property lying to the North of the Project Division Line and the Billings Place Condominium Association shall have management responsibility and authority for the Billings Place Condominiums, the Owners of Units therewithin, the general and limited common elements appurtenant thereto and, in general, for the portion of the Real Property lying to the South of the Project Division Line as fully for all practical intents and purposes as though the Project Division Line was a boundary line defining discrete, separately conveyable parcels of property. Only the Owners of Units in Billings Place shall be members of the Billings Place Condominium Association and only the Owners of Units in the Ute Trail Townhomes shall be members of the Ute Trail Townhomes Condominium Association. In exercising the rights and discharging the obligations set forth below, each Association shall be deemed to have those rights and be bound to discharge those obligations only in respect of that component of the Project for which it is deemed to have management responsibility and authority as above set forth, and wherever in the Declaration the term "Association" is utilized without further modification the term shall be construed to mean either the Ute Trail Townhomes Condominium Association or the Billings Place Condominium Association as the context, or application in a given case, shall require, it being the intention of Declarant that, unless expressly otherwise provided, the Billings Place Condominium Association shall have and enjoy no management authority or other responsibility or rights in respect of that portion of the Real Property lying to the North of the Project Division Line in general or the Ute Trail Townhomes or the individual Owners thereof in particular and, similarly, unless expressly otherwise provided, the Ute Trail Townhomes Condominium Association shall have and enjoy no management authority or other responsibility or rights in respect of that portion of the Real Property lying to the South of the Project Division Line in general or Billings Place or the individual Owners thereof in particular.

4.2 **Association as Attorney-in-Fact for Owners.** Each Association is hereby irrevocably appointed by Declarant as attorney-in-fact for Declarant and for all successors and assigns of Declarant as Owners of Condominium Units and as attorney-in-fact for each of them to manage, control and deal with the interest of such Owner in the 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 institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project; to deal with the Project upon its destruction or obsolescence as hereinafter provided; and to deal with and handle insurance and insurance proceeds and condemnation and condemnation awards as hereinafter provided. The acceptance by any person or entity of any interest in any Condominium Unit shall constitute an appointment by that person or entity of the Association as attorney-in-fact, as above provided.

4.3 **Units, Common Elements and Utilities.** Each Association shall be obligated to and shall provide for the care, operation, management, maintenance, improvement, repair and replacement of the General Common Elements, and for utility service to the Common Elements. Without limiting the generality of the foregoing, such obligation shall include keeping the General Common Elements in good, clean, attractive and sanitary condition, order and repair, and removing snow and any other materials from the General Common Elements to permit access to the Project, the Units and the Limited Common Elements of any Condominium Unit; keeping the entire Project safe and attractive; and paying utility charges, except any separately metered utilities, which shall be paid by the Owner or user of the space served thereby. No prior approval of Owners shall be required for such work.

4.4 **Other Association Functions.** Each Association may undertake or contract for any activity, function or service for the benefit or to further the interests of all, some or any Owners of Condominium Units on a self-supporting, special assessment or common assessment basis. Such activities, functions or services may include, but are not limited to, the providing of police or similar security services, front desk services, recreation facilities, the providing of garbage and trash collection services and the providing of firewood.

4.5 **Accounting and Legal Services.** Each Association, or an independent contractor retained by the Association, shall maintain such records, keep such accounts and do such billing and collecting as is needed in connection with the Association's activities under this Declaration. Each Association, from time to time, may contract for the services of lawyers and certified public accountants as the needs of the Association shall demand. Each Association shall obtain an annual, independent audit of the accounting books and records pertaining to the Association and shall furnish copies thereof to the Owners. Any Owner may, at his own expense, cause an audit or inspection to be made of the books and records of the Association. Any such owner-initiated audit may only be undertaken following written request therefor and only at such reasonable times as will minimize to the maximum extent feasible any disruption of the Association's operations.

4.6 **Labor and Services.** Each Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems

advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. Each Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. Each Association may arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services to each Unit within the Project.

4.7 **Real and Personal Property of Association.** Each Association may acquire and hold interests in real property and in tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to any rules and regulations of the Association, each Owner and Related Parties of an Owner may use such property. Upon termination of condominium ownership of the Project and dissolution of the Association, the beneficial interest in any such property shall be deemed to be owned by the then Owners, as tenants-in-common, in the same proportion as their respective interests in the Common Elements.

4.8 **Association Right to Lease, License, Dispose and Encumber Common Elements.** Each Association shall have the right to lease or license, or permit the use of any portion of the General Common Elements or any Condominium Unit owned by the Association, on either a short or long term basis and with or without any charge by the Association therefor.

4.9 **Rules and Regulations.** In addition to the use and other restrictions on the Project set forth in Article VII below, each Association may make and enforce reasonable and uniformly applied rules and regulations governing the use of Units and of Common Elements. Such rules and regulations may, without limitation: (a) regulate use of Common Elements, including, but not limited to, any parking areas upon the Real Property, to assure equitable use and enjoyment by all persons entitled thereto; (b) require that draperies, shades or other window coverings shall present a uniform and attractive appearance from the exterior of the Building; (c) assign particular portions of ski racks or storage areas within the General Common Elements for exclusive use by occupants of particular Condominium Units, and (d) restrict or limit rights of Owners and Related Parties to use portions of the General Common Elements which may be licensed or leased by the Association for a particular use, purpose or event. Each Association shall make reasonable efforts to furnish each Owner with a written copy of each rule or regulation adopted pursuant to this Section. Each Association may suspend any Owner's voting rights in the Association or the right of such Owner and Related Parties of such Owner to use any part of the General Common Elements for any period or periods during which such Owner or a Related Party of such Owner fails to comply with such rules and regulations or with any other obligations of such Owner or Related Party under this Declaration. Each Association may also take judicial action against any Owner or Related Party to enforce

compliance with such rules, regulations or other obligations or to obtain damages for non-compliance.

4.10 Maintenance and Upkeep. Each Association, through whatever means it deems appropriate, including through the adoption and enforcement of rules and regulations the imposition of fines, judicial action or otherwise, shall be responsible for maintaining and shall maintain that portion of the Real Property for which it is given management authority and responsibility in absolutely a clean, safe and attractive condition, shall regularly treat all exterior surfaces of building improvements with paint, stain or oil, as applicable, shall keep and maintain all infrastructure systems (utilities and equipment) in good operating condition and repair, shall maintain all landscaping in a healthy and flourishing state, and shall maintain all walks and common areas, snow, ice and debris free and in a clear, safe and attractive condition. Neither Association shall permit nor suffer to be permitted the storage of a Unit Owner's personal belongings other than in designated storage areas or where they cannot be seen by other Unit Owners. Neither Association shall have the right to change the exterior appearance or finish materials of any of the buildings comprising the Project without the prior consent and approval of the other Association and, in all events, any replacement of finish or other work on the buildings shall be done with materials of similar type, kind and quality. Certain maintenance and upkeep responsibilities and other responsibilities of the Association elsewhere provided for in this Declaration (*i.e.* in respect of insurance, *etc.*) inevitably must be shared by the Associations in which event the costs thereof shall, as well, be shared on such basis as the respective Associations determine will most fairly allocate the burden of such costs among the Unit Owners in the light of which Unit Owners must directly benefit from the work, are most responsible (in terms of consumptive usage and the like) for the need for such work, and other relevant factors. In the event the two Associations cannot agree upon the need for shared maintenance or the manner of allocating the cost thereof, or in the event one Association feels that the other is not properly discharging its obligation of repair and maintenance, they shall each designate an individual engaged in the business of real property management in the Aspen area who shall in turn select a third individual so engaged. The decision of such third individual on the matter in dispute shall be final and binding and the Associations shall proceed in accordance therewith. In the event of any dispute or disagreement among the Associations where the resolution thereof may require a level of expertise beyond that of a property manager, the dispute shall be settled and resolved by binding arbitration in accordance with the rules, regulations and procedures of the American Arbitration Association. With respect to any decision rendered by such third individual or arbitrator, either Association shall have the right judicially to compel implementation and enforcement of such decision and to recover its costs and reasonable attorneys' fees incurred in connection therewith.

4.11 Implied Rights. Each Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by the Act or otherwise, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

V. THE ASSOCIATIONS.

5.1 **General Purposes and Powers.** The business and affairs of the Project shall be governed and managed by the two Associations acting within their respective areas of responsibility and authority, as above set forth, through their respective Boards of Managers. The Associations shall perform functions and hold and manage property as provided in this Declaration and to further the interests of Owners of Condominium Units in the Project. They shall have all powers necessary or desirable to effectuate these purposes, including those set forth in the Act and as it may from time to time be amended.

5.2 **Governing Documents.** The administration of the Project shall be governed by this Declaration, the Articles of Incorporation and the By-Laws of each Association, and all duly adopted amendments thereto or supplements thereof.

5.3 **Board of Managers.** The affairs of each Association shall be managed by a board of managers which may, however, by resolution, delegate any portion of its authority to a committee appointed by the Board of Managers. The Board of Managers of each Association shall consist of the number of members specified in the Association's By-Laws; provided, that all members shall be Unit Owners.

5.4 **Professional Management.** Each Association may obtain and pay for services of a professional managing agent to manage its affairs, whether such services are in lieu of or supplemental to the service to be provided by the Association.

5.5 **Voting of Owners.** The Owners of Units in Billings Place shall be entitled to vote only in the affairs and in respect of the Billings Place Condominium Association; the Owners of Units in the Ute Trail Townhomes shall be entitled to vote only in the affairs and in respect of the Ute Trail Townhomes Condominium Association. Each Unit shall be given one vote, to be exercised through its Owner(s), on all matters on which the Owner(s) are entitled to vote. In the event a Unit is owned by more than one person or entity, the Owners thereof shall designate one of their number to cast one vote for the Condominium Unit so held in multiple ownership. Unless otherwise provided in the Articles of Incorporation or By-Laws of the Association, voting by proxy shall be permitted and cumulative voting shall not be permitted.

5.6 **Notices.** Each Owner shall be entitled to notice of any meeting at which such Owner has the right to vote. Notices of meetings shall be in writing and shall state the date, time and place of the meeting and shall indicate each matter to be voted on at the meeting

which is known to the Association at the time notice of the meeting is given. Such notice shall be delivered as provided in the By-Laws of the Association. Any notice for any purpose given under this Declaration shall be deemed given and any information or material supplied in conjunction therewith shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in the mail or at a telegraph office, or recognized courier service with national distribution, postage or charges prepaid, addressed to the party, and in any event, when such party actually received such notice, information or material. Any notice, information or material shall be deemed properly addressed to an Owner if it is addressed to the name and address shown on the most recent written notice of name and address, if any, furnished to the Association by such Owner, or, if a name and address is not so furnished, if it is addressed "To the Owner" at the address of the Condominium Unit of such Owner.

5.7 **Record Date.** The Board of Managers of the Association shall have the power to fix in advance a date as a record date for the purpose of determining Owners entitled to notice of or to vote at any meeting or to be furnished with any information or material, or in order to make a determination of Owners for any purpose. The Owners existing on any such record date shall be deemed the Owners for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for any adjournment of the same meeting. A record date shall be as provided in the By-Laws of the Association. If no record date is established for a meeting, the date on which notice of such meeting is first given to any Owner shall be deemed the record date for the meeting.

5.8 **Quorums.** A quorum shall be as defined in the By-Laws of the Association. Except as a greater percentage of votes is required under a specific provision of this Declaration, a majority of the votes cast on the matter or, in the case of elections in which there are more than two candidates, a plurality of votes cast, shall decide the matter.

5.9 **Articles of Incorporation and By-Laws.** The purposes and powers of the Association and the rights and obligations with respect to Owners or Membership set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and By-laws of the Association, including any reasonable provisions with respect to corporate matters, but no such provisions may be, at any time, inconsistent with any provision of this Declaration.

VI. ASSESSMENTS.

6.1 **Assessments - Generally.** Each Owner shall be obligated to pay and shall pay to such Owner's Association the estimated assessments imposed by the Association to meet

the Common Expenses of maintenance, operation and management of the Project, which amounts are herein called Assessments.

Subject to the provisions hereof, the Board of Managers of the Association shall have the power and authority to determine all matters in connection with Assessments, including power and authority to determine where, when and how Assessments shall be paid to the Association, and each Owner shall be required to comply with any such determinations.

6.2 Determination of Amount of Regular Assessments. The total amount to be raised by regular assessments shall be determined for each fiscal period of the Association by the Board of Managers of the Association. The amount to be raised by regular assessments for any fiscal period shall be that amount necessary to cover the costs and expenses of fulfilling the functions and obligations of the Association in that fiscal period plus an amount to provide a reasonable carry-over reserve for the next fiscal period. Services provided by the Association which are paid out of the regular assessments are listed in Article IV of this Declaration. The amount to be raised by regular assessments shall include amounts necessary to cover obligations made in connection with, or contemplated under, any previous budget. There shall be no division of assessment charges between General and Limited Common Elements.

To determine the total amount required to be raised by regular assessments, the Board of Managers shall cause a budget to be prepared for the fiscal period showing, in reasonable detail, the estimated costs and expenses which will be payable in that fiscal period and for a reasonable carry-over reserve and the estimated income and other funds which will be available in that fiscal period. The method to be used by the Board of Managers in estimating the amount of the budget shall be to review historical costs, to assess inflation and other external factors, to establish the repairs and maintenance desirable during the budget period, and to consider such other facts as the Board of Managers shall deem relevant. Within thirty (30) days of the adoption of any proposed budget, the Board of Managers shall mail or otherwise deliver a summary of the budget to each Owner and shall set a date for a meeting of Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or delivery of the summary. Unless at that meeting sixty-six and two-thirds percent (66 2/3%) of the voting interests (as defined in paragraph 5.5, above) in the Association (not just those attending the meeting) reject the budget, the budget is ratified, whether or not a quorum is present at the meeting. In the event a proposed budget is rejected by the Owners, as above provided, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Managers.

Regular assessments shall be collected by the Association initially on a monthly basis, but may be collected on a different timetable in the discretion of the Board of Managers. Except as emergencies may require, the Association shall make no commitment or expenditures in excess of the funds reasonably expected to be available to the Association.

6.3 **Capital Assessments.** In addition to regular assessments, the Association may levy capital assessments, payable over such period as the Association may determine, for the purpose of defraying, in whole or in part, to the extent the amounts in any capital reserve fund are insufficient therefor, the cost of any construction or reconstruction, repair or replacement of the Project or any part thereof for working capital reserves, or for any other expense incurred or to be incurred as provided in this Declaration.

6.4 **Supplementary Assessments.** In the event the amount received by the Association on account of regular or capital assessments is less than the amount required by the Association, whether as a result of defaults by some Owners in making payments or as a result of mistaken estimates in budgeting or otherwise, the Board of Managers may, at any time, levy supplementary assessments to cover the deficiency.

6.5 **Commencement of Assessments.** An Owner's obligation to pay Assessments shall commence on the first day of the month after the recording of this Declaration by Declarant in the Pitkin County Records. The first monthly payment for regular assessments for each Condominium Unit may include an additional assessment in order to establish an initial working capital fund for the Association (the "Working Capital Contribution"). The Working Capital Contribution shall be retained by the Association and shall not be refundable to an Owner, whether upon the sale of such Owner's Condominium Unit or otherwise.

6.6 **Apportionment of Assessments.** Assessments shall be apportioned among the Owners in the manner set forth on Exhibit "A" attached hereto. The Board of Managers shall, however, have the right to assess fewer than all of the Units in the case of a Common Expense or portion thereof benefitting fewer than all the Units and in the case of a Common Expense in respect of a Limited Common Element the Board of Managers shall have the right to assess exclusively those Units to which such Limited Common Element has been assigned. The Board of Managers shall have the right to assess *exclusively* the Units of Owners whose misconduct gave rise to the expense involved.

6.7 **Time for Payments.** The amount of any Assessment, charge, fine, penalty or other amount payable with respect to any Owner, Related Party of an Owner or Condominium Unit shall become due and payable as provided in the By-Laws of the Association, and any such amount shall bear interest at a rate as the Board of Managers may, from time to time, by resolution fix, from the date due and payable until paid.

6.8 **Lien for Assessments and Other Amounts.** The Association shall have a lien against each Condominium Unit to secure payment of any assessment, charge, fine, penalty or other amount due and owing to the Association with respect to the Condominium Unit

by the Owner of that Condominium Unit or a Related Party of such Owner plus interest from the date due and payable, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in the manner provided for judicial foreclosure of mortgages in the State of Colorado. Suit for a money judgment may also be prosecuted without waiving the lien. The lien shall have the priority and shall, in addition to those sums above provided for, secure such other amounts as provided for in Section 38-33.3-316 of the Act.

6.9 Liability of Owners, Purchasers and Encumbrancers. The amount of any assessment, charge, fine or penalty payable with respect to any Condominium Unit by the Owner, or a Related Party of such Owner, shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, personal representatives, successors and assigns. A party acquiring fee simple title to a Condominium Unit shall be jointly and severally liable with the former Owner for all such amounts which had accrued and were payable at the time of the acquisition of fee simple title to the Condominium Unit by such party without prejudice to such party's right to recover from the former Owner any of such amounts paid. Each such amount, together with interest thereon, may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same. Notwithstanding the foregoing, a First Mortgagee of a Condominium Unit shall not be liable for any such assessment, charge, fine or penalty. In addition, the lien for any such assessments, charges, fines or penalties shall be junior to the lien of a First Mortgage on a Condominium Unit taken in good faith for value if such First Mortgage is perfected by recording in the office of the County Clerk and Recorder of Pitkin County, Colorado, prior to the time a notice of lien for failure to pay any such amount is recorded in such office by the Association.

6.10 Estoppel Certificate. Upon payment of a reasonable fee, as determined from time to time by the Association, and upon written request of any Owner or any person with any right, title or interest in a Condominium Unit or intending to acquire any right, title or interest in a Condominium Unit, the Association shall furnish a written statement of account setting forth the amount of any Assessments, charges, fines or penalties, if any, due or accrued, and then unpaid, with respect to a Condominium Unit, the Owner of the Condominium Unit and a Related Party of such Owner. Such statement shall also set forth the amount of the Assessments for the current fiscal period of the Association payable with respect to the Condominium Unit. Such statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties for all purposes, that no greater or other amounts were then due or accrued and unpaid.

VII. USE AND OTHER RESTRICTIONS

7.1 Common Elements Use - Conversion of Limited Common Elements.

Except as specifically provided otherwise herein, the Board of Managers may permit or authorize use of any of the General Common Elements (over which such Board is given management responsibility and authority as provided for in Paragraph 4.1, above) in the Project as the Association deems best and may, at the request of the Owner of a Condominium Unit, convert any Limited Common Element appurtenant to the Condominium Unit to a General Common Element or authorize other use of such Limited Common Element by the Owner of the Condominium Unit to which it is appurtenant.

7.2 Common Elements Restrictions.

All use and occupancy of Common Elements shall be subject to and governed by the terms, conditions and provisions of this Declaration and by any rules and regulations adopted by the applicable Association. No Owner, no Related Party of an Owner and no tenant of the Association or other occupant of Common Elements shall obstruct, damage or commit waste to any of the Common Elements. No Owner and no Related Party of an Owner shall change, alter or repair, or store anything in or on any of the Common Elements without the prior written consent of the Board of Managers.

7.3 No Imperiling of Insurance.

No Owner, no Related Party of an Owner and no occupant of Common Elements shall do anything or cause anything to be kept in or on the Project which might result in an increase in the premiums of insurance obtained for the Project or which might cause cancellation of such insurance without the prior written consent of the Board of Managers.

7.4 No Violation of Law.

No Owner, no Related Party of an Owner and no occupant of Common Elements shall do anything or keep anything in or on the Project which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

7.5 Maintenance of Units and Limited Common Elements.

Each Unit and all other improvements, fixtures and furniture and equipment therein and any Limited Common Elements appurtenant to a Condominium Unit shall be kept and maintained by the Owner in a clean, safe, attractive and sightly condition and in good repair. No structural alterations within any Unit or with respect to any Limited Common Elements shall be made and no electrical, plumbing or similar work within any Unit shall be done without the prior written consent of the Board of Managers.

7.6 No Violation of Rules.

No Owner, no Related Party of an Owner and no occupant of Common Elements shall violate the rules and regulations adopted from time to time

by the Board of Managers, whether relating to the use of Condominium Units, the use of Common Elements, or otherwise.

7.7 **Owner Caused Damage.** If, due to the act or neglect of an Owner or a Related Party of an Owner, loss or damage shall be caused to any person or property, including the Project or any Unit therein, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner as a special assessment against such Owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the Condominium Unit of such Owner as provided elsewhere in this Declaration for assessments or other charges.

7.8 **No Impairment of Structural Integrity.** Nothing shall be done, without the written consent of the Board of Managers, in, on or to any Unit or the Common Elements, or any portion thereof, which might impair the structural integrity of the Building or which would structurally change the Building.

7.9 **Animal Restrictions.** Household pets (*e.g.*, dogs, cats, caged birds, *etc.*) shall be permitted to be kept by Owners in and about the Property subject, however, to such rules and regulations as may from time to time be promulgated by the Board of Managers, and provided that in all events, such pets shall at all times, be kept under suitable (*e.g.*, leash, voice, *etc.*) control and shall not constitute a nuisance or annoyance to other Owners. An Owner shall be absolutely liable to the Association and to all other Owners and their families and guests for any unreasonable noise or damage to any person or property caused by any animal brought or kept on the Property by such Owner or by members of his family or his guests. Either Association shall have the right to revoke the permission to any owner to keep any such household pet in the event the Association determines that such pet has become a nuisance or annoyance to other owners or that the owner is not keeping the pet responsibly.

7.10 **Authority of Board of Managers.** The ownership of the Common Elements in tenancy-in-common notwithstanding, each Owner irrevocably constitutes the Board of Managers of such Owner's respective Association as attorney-in-fact for him for the purpose of Article VII of this Declaration.

The Association shall have the right to bring suit for a money judgment against any Owner delinquent in the payment of the Owner's obligation to the Association, without foreclosing or waiving the lien securing payment of such obligation. In all proceedings or action to enforce collection of any delinquent assessments or other sum owing to the

Association by an Owner, the Association shall be entitled to all of its costs and attorney's fees incurred in such proceedings or action, and whether or not suit be brought.

7.11 **Garages.** The seven (7) enclosed garages shown on the Map are reserved for the exclusive use of the Owners of the Billings Place Units. With respect to the garages (a) under no circumstance shall any of the garage spaces be utilized for residential or living purposes but shall, instead, be utilized solely for automobile parking and enclosed storage, and for no other purpose whatsoever, (b) the roofs of the garages shall not be utilized for sunbathing or any other purpose and shall be kept entirely free and clear of any personal effects whatsoever, and (c) in the event of any violation of any of the foregoing use restrictions concerning the garages, the Owner of the Unit for whose exclusive use and benefit the offending garage space is designated on the Map shall pay a fine to each Association of \$50.00 for each day that such violation occurs and, until such fine is fully paid, the obligation to pay shall be secured by a lien in favor of the Associations with all the attributes thereto pertaining of the Associations' general assessment lien as provided in Section VI, above.

7.12 **Planned Unit Development and Subdivision Agreement.** In all respects the ownership and use of the Units shall conform and be subject to the terms, conditions and provisions of (a) the Planned Unit Development and Subdivision Agreement for Ute Trail Townhouses and Billings Place recorded in Book 646 at Page 16, (the "PUD Agreement"), including without limitation those provisions by which the Billings Place component of the Project has been declared to be and is restricted as Affordable Housing as defined and described in the Aspen/Pitkin County Housing Authority's Occupancy and Deed Restriction and Covenant attached to the PUD Agreement as Exhibit A, and those providing that all Units are restricted to six month minimum lease terms with no more than two shorter tenancies per year, (b) Ordinance 20 Series of 1994 of the Aspen City Council recorded in Book 715 at Page 191 ("Ordinance 20"), and (c) in the case of Billings Place to a Master Deed Restriction confirming the ownership, use and occupancy restrictions applicable thereto, which may be placed of record subsequent to the recordation of this Declaration. By virtue of the acquisition of any interest in any Unit, each acquiring party agrees to abide by and conform the ownership use and occupancy of each Unit in which such acquiring party may acquire an interest to the PUD Agreement and Ordinance 20.

VIII. INSURANCE

8.1 **Insurance Requirements Generally.** The Associations shall collectively obtain and maintain in full force and effect at all times certain property, liability and other insurance as hereinafter provided. All such insurance shall be obtained from responsible

companies duly authorized and licensed to carry on the insurance business in the State of Colorado. All such insurance, to the extent possible, shall name as the insureds the Associations in their individual capacity and also either as attorneys-in-fact or trustee for all Owners and each Owner to the extent of such Owner's interest in the Common Elements. To the extent reasonably possible without unreasonable cost, insurance: (a) shall provide for a waiver of subrogation by the insurer as to claims against the Associations, their managers, officers, employees and agents and against each Owner and each Owner's employees, agents and Related Parties; (b) shall provide that the insurance cannot be canceled, invalidated or suspended on account of the conduct (commission or omission) of the Associations, their officers, managers, employees and agents or of any Owner or such Owner's Related Parties; (c) shall provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or Mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or Mortgagee; (d) shall contain a standard mortgage clause endorsement in favor of the Mortgagee of any Condominium Unit except a Mortgagee of a Condominium Unit who is covered by other similar insurance; (e) shall provide that the policy of insurance shall not be terminated, canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Owner and to each Mortgagee covered by any standard mortgage clause endorsement; and (f) shall provide that the insurer shall not have the option to restore the premises if condominium ownership of the Project is to be terminated or the Project is to be sold in its entirety in accordance with the destruction, condemnation and obsolescence provisions of this Declaration. To the extent possible, public liability and property damage insurance shall provide for coverage of any cross-liability claims of Owners against the Associations or other Owners and of the Associations against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Associations deem consistent with good business practices.

All policies shall be written by a company, or companies, falling into a financial category as designated in Best's Key Rating Guide, of Class A or better.

Certificates of insurance coverage or copies of insurance policies shall be issued to each Owner and each Mortgagee who makes written request to the Associations for any such certificate or copy of an insurance policy.

The cost and expense of all insurance obtained by the Associations, except insurance covering additions, alterations or improvements made to a Condominium Unit by an Owner or the contents therein or other insurance obtained at the request of and specifically benefitting any particular Owner, shall be a common expense to be covered by assessments as elsewhere provided in this Declaration. The costs of such insurance shall be allocated between the two Associations in the manner which best allocates between them the risk being insured against. In the event the two Associations are unable to agree upon the allocation, they shall each designate an independent insurance agent in the Aspen area who shall, in turn, designate a third party so engaged and the decision of such third party shall be binding.

8.2 **Property Insurance.** The Associations shall collectively obtain and maintain property insurance insuring the Project, and each Condominium Unit, and may, but shall not be required to, obtain and maintain property insurance insuring the furnishings and personal property belonging to Owners, against loss or damage by fires and such other hazards as are covered under standard extended coverage policies, vandalism and malicious mischief and, if available and if deemed appropriate by the Associations, war risk, for the full replacement cost of the Project, including each Condominium Unit, or such furnishings and personal property, as the case may be. At the option of the Associations, such insurance may also cover additions, alterations or improvements to a Condominium Unit made by an Owner if the Owner reimburses the Associations for any additional premiums attributable to such coverage. The Board of Managers shall from time to time be required to redetermine the full replacement cost of the Project, each Condominium Unit, and such furnishings and personal property in accordance with the requirements of the insurance company providing such property insurance. The Associations shall not be obligated to apply insurance proceeds to restore a Condominium Unit to a condition better than the condition existing prior to the making of additions, alterations or improvements by an Owner in the absence of insurance covering such additions, alterations or improvements as aforesaid.

8.3 **Public Liability and Property Damage Insurance.** The Associations shall collectively obtain and maintain comprehensive public liability and property damage insurance covering personal liability, property damage liability and automobile personal and property damage liability of the Associations, their officers, managers, employees and agents and of each Owner and each Owner's Related Parties, arising in connection with ownership, operation, maintenance, occupancy or use of the Project or of any Condominium Unit in the Project with single limit of not less than \$1,000,000 for each occurrence involving bodily injury liability and/or property damage liability, together with an umbrella policy in the amount of \$1,000,000.00.

8.4 **Workmen's Compensation and Employer's Liability Insurance.** The Associations shall collectively obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

8.5 **Insurance by Owners.** Except to the extent coverage therefor may be obtained by the Associations and be satisfactory to an Owner, each Owner shall be responsible for obtaining insurance such Owner deems desirable, including insurance covering furnishings and personal property belonging to that Owner and covering personal liability of that Owner and that Owner's Related Parties. Any insurance policy obtained by an Owner shall be such that it will not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the Associations and shall, to the extent possible, contain a waiver of the right of subrogation by the insurer as to any claim against the Associations, their officers, managers, agents and employees and against other Owners and their Related Parties and, in all

events the insurance coverage obtained by the Associations shall be primary. A copy of any insurance policy obtained by any Owner shall be furnished to the Associations upon request of the Associations, or either of them.

8.6 **Receipt and Application of Proceeds.** Except as some particular person has a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries shall be paid to and received by the Associations. All insurance proceeds or recoveries received by the Associations shall be applied by the Associations: first, as expressly provided elsewhere in this Declaration; second, to the Owners or persons who the Associations may determine are legally or equitably entitled thereto; and third, the balance, if any, to Owners in proportion to their respective interests in Common Elements.

8.7 **Other Insurance by Association.** Each Association shall also have the power or authority to obtain and maintain other and additional insurance coverage, including casualty insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, managers, employees and agents of the Association.

IX. DESTRUCTION, CONDEMNATION, OBSOLESCENCE AND RESTORATION OR SALE OF PROJECT.

9.1 **Certain Definitions.** The following terms shall have the following definitions:

"Substantial Destruction" shall mean any casualty, damage or destruction to the Project or any part thereof if the Estimated Costs of Restoration less Available Funds are fifty percent (50%) or more of the estimated Restored Value of the Project. "Partial Destruction" shall mean any other casualty, damage or destruction of the Project or any part thereof.

"Substantial Condemnation" shall mean the complete taking of the Project or a taking of part of the Project under eminent domain or by grant or conveyance in lieu of condemnation if the Estimated Costs of Restoration less Available Funds are fifty percent (50%) or more of the estimated Restored Value of the Project. "Partial Condemnation" shall mean any other such taking by eminent domain or by grant or conveyance in lieu of eminent domain.

"Substantial Obsolescence" shall exist whenever sixty-six and two thirds percent (66-2/3%) in interest of the Owners of the Billings Place Units and sixty-six and two-third percent (66-2/3%) in interest of the Owners of the Ute Trail Townhome Units determine, by vote, that Substantial Obsolescence exists or whenever the Project or any part thereof has

reached such a state of obsolescence or disrepair that the Estimated Costs of Restoration less Available Funds are fifty percent (50%) or more of the Estimated Restored Value of the Project. "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

"Restoration", in the case of any casualty, damage or destruction, shall mean restoration of the Project to the same or substantially the same condition in which it existed prior to the casualty, damage or destruction; in the case of condemnation, shall mean restoration of the remaining portion of the Project to as attractive, sound and desirable condition as possible; and, in the case of obsolescence, shall mean restoration of the Project to a condition as attractive, sound and desirable as possible.

"Restored Value" shall mean the value of the Project after Restoration as estimated by the Associations.

"Estimated Costs of Restoration" shall mean the costs of restoration as estimated by the Association.

"Available Funds" shall mean any proceeds of insurance or condemnation awards or payments in lieu of condemnation and any uncommitted income or funds of the Association other than the income or funds derived through capital assessments. Available Funds shall not include that portion of insurance proceeds legally required to be paid to another party, including a Mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner of a Condominium Unit for the condemnation or taking of that Owner's Condominium Unit.

9.2 Restoration of the Project. Restoration of the Project shall be undertaken by the applicable Association without a vote of Owners in the event of Partial Destruction, Partial Condemnation or Partial Obsolescence, but shall be undertaken in the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence only with the consent of sixty-six and two-thirds percent (66-2/3%) in interest of all Owners in both the Billings Place Units and the Ute Trail Townhomes Units and sixty-six and two-thirds percent (66-2/3%) in number of all Mortgagees. In the event the insurance proceeds actually received exceed the cost of restoration when such restoration is undertaken pursuant to this section, the excess shall be paid and distributed to each Owner, or Mortgagee of any Owner, in proportion of such Owner's undivided interest in the Common Elements.

9.3 Sale of the Project. The Project shall be sold in the event of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence unless consent to Restoration has been obtained from sixty-six and two-thirds percent (66-2/3%) in interest of all Owners in both the Billings Place Units and the Ute Trail Townhomes Units and consent to Restoration of sixty-six and two-thirds percent (66-2/3%) in number of all Mortgagees has been obtained. In

the event of a sale, condominium ownership under this Declaration shall terminate and the proceeds of sale and any insurance proceeds, condemnation awards or payments in lieu of condemnation shall be distributed by the Association to each Owner, or the Mortgagee of an Owner, in proportion to such Owner's undivided interest in Common Elements.

9.4 **Authority of Association to Restore or Sell.** The Associations, as attorneys-in-fact for each Owner, collectively shall have full power and authority to restore or to sell, as the case may be, the Project and each Condominium Unit in the Project whenever Restoration or Sale, as the case may be, is to be undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or Sale, as the case may be.

9.5 **Payment of Proceeds.** In the event of Substantial Destruction, Condemnation or Obsolescence, all insurance proceeds, proceeds of sale, condemnation awards or payments in lieu of condemnation shall be paid to the Associations, as trustee for all of the Owners and any Mortgagee, as the interest of such Owners and any such Mortgagee may appear.

9.6 **Special Assessments for Restoration.** When Restoration is to be undertaken, the Associations may levy and collect assessments from each Owner (or as the case may be applicable from the Owners of either the Billings Place Units or Ute Trail Townhomes Units in the event restoration is only necessary in respect of one component of the Project or the other) in proportion to each Owner's undivided interest in Common Elements, payable over such period as the Association may determine, to cover the costs and expenses of Restoration to the extent not covered by Available Funds. Such special assessments shall be secured by a lien on the Condominium Unit of each Owner as in the case of regular assessments. Notwithstanding any other provision in this Declaration, in the case of Substantial Destruction, Substantial Condemnation or Substantial Obsolescence, any such special assessment shall not be a personal obligation of any Owner who did not consent to Restoration but, if not paid, may be recovered only by foreclosure of the lien against the Condominium Unit of such Owner.

9.7 **Receipt and Application of Condemnation Funds.** All compensation, damages or other proceeds constituting awards in condemnation or eminent domain or payments in lieu of condemnation or eminent domain shall be payable to the Association. The amount thereof allocable to compensation for the taking of or injury to the Unit within a Condominium Unit or to improvements of an Owner therein shall be apportioned to the Owner of that Condominium Unit. The balance of the award shall be applied to costs and expenses of Restoration, if undertaken, and, to the extent not so applied, shall be allocated as follows:

First, any portion of the award allocable to the taking of or injury to Common Elements shall be apportioned among all Owners of Units in that component of the Project actually affected by the eminent domain proceedings in proportion to their respective undivided interests in the Common Elements; second, the amounts allocable to severance damages shall be apportioned to Owners of Condominium Units with a Unit which was not taken or condemned in proportion to their respective undivided interests in the Common Elements; and third, the amounts allocated to consequential damages or for other purposes shall be apportioned as the Associations determine to be equitable under the circumstances.

9.8 **Reorganization in the Event of Condemnation.** In the event all of the Unit of a Condominium Unit is taken in condemnation, the Condominium Unit containing that Unit shall cease to be part of the Project, the Owner thereof shall cease to be a member of the Association, and the undivided interest in Common Elements appurtenant to that Unit shall automatically become vested in the Owners of the remaining Units in proportion to their respective undivided interest in the Common Elements associated with that component of the Project in which such Unit was situate. In the event part of the Unit of a Condominium Unit is taken in condemnation, the Common Element allocation attributable to that Condominium Unit shall be reduced in direct proportion to the reduction in square footage of the Unit, and the undivided interest of Owners in Common Elements and the voting rights and assessment obligation of all Owners shall automatically be adjusted accordingly.

X. MISCELLANEOUS

10.1 **Duration of Declaration.** All other provisions contained in this Declaration shall continue and remain in full force and effect until condominium ownership of the Project and this Declaration is terminated or revoked, as hereinafter provided.

10.2 **Amendment and Termination.** At any time until the first Condominium Unit is conveyed by Declarant as reflected by a deed recorded in the office of the County Clerk and Recorder of Pitkin County, Colorado, Declarant may revoke this Declaration and the Map and terminate condominium ownership of the Project by the recording of a written instrument setting forth Declarant's intent to so revoke and terminate.

Except as limited by the provisions of the Act, any provision contained in this Declaration may be amended, or additional provisions may be added to this Declaration, or this Declaration and condominium ownership of the Project may be terminated or revoked, by the recording of a written instrument or instruments specifying the amendment or addition or the fact of termination and revocation, executed by the Owners representing seventy-five percent (75%) in interest of the undivided interests in all Common Elements of the Project and seventy-five

percent (75%) in number of all First Mortgagees, as shown by the records in the office of the County Clerk and Recorder of Pitkin County, Colorado.

Nothing by the requirement herein to obtain the consent of First Mortgagees, or any other provision of this Declaration shall operate or be construed as operating to deny or delegate control over the general administrative affairs of the Association by the Board of Managers.

10.3 Effect of Provisions of Declaration. Each provision of this Declaration, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right, or interest to effectuate any provision of this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right title or interest in the Project or in any Condominium Unit is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in the Project or in any Condominium Unit by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and as a personal covenant, shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns, and as a covenant to, with and for the benefit of the Association but not to, with or for the benefit of any other Owner; (c) shall be deemed a covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to the Project and each Condominium Unit, and as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the Project and each Condominium Unit; and (d) shall be deemed a covenant, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the Project and each Condominium Unit in favor of the Association.

10.4 Enforcement and Remedies. Each provision of this Declaration with respect to an Owner or the Condominium Unit of an Owner shall be enforceable by the applicable Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages, or, in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, by denial of all voting rights of such Owner and exclusion of such Owner and Related Parties of such Owner from use of any Common Elements. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees.

10.5 Protection of First Mortgagee. 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 on any Condominium Unit taken in good faith and for value and perfected by recording in the office of the County Clerk

and Recorder of Pitkin County, Colorado, prior to the time of recording in such office of an instrument describing the Condominium Unit and listing the name or names of the Owner or Owners of fee simple title to the Condominium Unit and giving notice of such violation, breach or failure to comply. In addition, no such violation, breach or failure to comply and no action to enforce any provision of this Declaration shall affect, defeat, render invalid or impair the title or interest of the First Mortgagee or the title or interest acquired by any purchaser upon foreclosure of any such First Mortgage, or result in any liability, personal or otherwise, of any such First Mortgagee or purchaser. Any such purchaser on foreclosure shall, however, take subject to this Declaration except only that violations or breaches of, or failures 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 failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

10.6 **Limited Liability.** Neither Declarant, the Associations, the Boards of Managers, or Officers of the Associations, any Manager, nor any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Without limiting the generality of the foregoing, the Boards of Managers, Officers of the Associations and any Manager, and each of them, shall, not be liable for any failure of any services to be obtained and paid for by the Associations hereunder, or for any injury or damage to person or property caused by the elements or by another Owner or person in the Project, or damage from electricity, water, rain, snow or ice which may leak or flow from outside or from any part of the Building, or from any of its pipes, drains, conduits, appliances or equipment or from any other place, unless caused by gross negligence of the Board of Managers, Officers of the Association or the Manager, as the case may be. No diminution or abatement of regular assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements or from any action taken to comply with any law, ordinance or order of a governmental authority.

10.7 **Failure of Board of Managers to Insist on Strict Performance.** The failure of the other Board of Managers or any Manager to insist, in any one or more instances, upon strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver of a relinquishment with respect to the future enforcement of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The inactivity of either Board of Managers after receipt by any one of them of any charge from any Owner with knowledge of the breach of any covenant, term, condition or restriction hereof shall not be deemed a waiver of such breach, and no waiver by either Board of Managers or any Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the applicable Board of Managers or Manager.

10.8 **Name.** The name of the condominium created hereby is the "Ute Trail Townhouses and Billings Place Condominiums," although for purposes of describing any Unit in connection with its conveyance, the provisions of Paragraph 2.4, above shall apply.

10.9 **Successors and Assigns.** This Declaration shall be binding upon and shall inure to the benefit of the Association, and each Owner and the heirs, personal representatives, successors and assigns of each.

10.10 **Severability.** Invalidity or unenforceability of any provision of this Declaration, in whole or in part, shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

10.11 **Captions.** The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

IN WITNESS WHEREOF Declarant has executed this Declaration the day and year first above written.

James H. Pugh, Jr.
By Robert W. Hughes
James H. Pugh, Jr. by Robert W. Hughes, his attorney-in-fact

(Notarial acknowledgment on page 31, following)

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

The foregoing instrument was acknowledged before me this 22nd day of DECEMBER, 1994 by James H. Pugh, Jr. by Robert W. Hughes, his attorney-in-fact.

WITNESS my hand and official seal.

My commission expires:

January 17, 1995.

(SEAL) MY COMMISSION EXPIRES
NOTARY
1995

Frank T. Uyehara
Notary Public

EXHIBIT A

The percentage ownership interest in the
Common Elements of the entire project
of Unit

And its voting interest in the Ute Trail
Townhomes Condominium Association
shall be:

A	is	22.233%	one-third (1/3)
B	is	22.233%	one-third (1/3)
C	is	22.233%	one-third (1/3)

66.7%

And the percentage liability of each Unit for assessments of
the Ute Trail Townhome Condominium Association
shall be:

Unit A	33 1/3%
Unit B	33 1/3%
Unit C	33 1/3%

(Exhibit A continued on page following)

EXHIBIT A continued:

The percentage ownership interest in the Common Elements of the entire Project of Unit:

And its voting interest in Billings Place Condominium Association shall be:

D	is	5.123%	one-seventh (1/7)
E	is	5.123%	one-seventh (1/7)
F	is	2.561%	one-seventh (1/7)
G	is	2.561%	one-seventh (1/7)
H	is	5.123%	one-seventh (1/7)
I	is	5.123%	one-seventh (1/7)
J	is	7.686%	one-seventh (1/7)

33.3%

And the percentage liability of each Unit of assessments of the Billings Place Condominium Association shall be:

Unit D	15.4%
Unit E	15.4%
Unit F	7.7%
Unit G	7.7%
Unit H	15.4%
Unit I	15.4%
Unit J	23.0%

PLAT RECORDING INFORMATION

RECORDING LABEL:

377467 B-35 P-79-83 12/22/94 09:44A PG 1 OF 1
SILVIA DAVIS PITKIN COUNTY CLERK & RECORDER

REC DOC
50.00

DOCUMENT TYPE: PLAT

GRANTOR: 1. OWNER'S NAME: Last name, First name
2. NAME OF PLAT

1. PUGH James H. JR
2. Ute trail townhomes
3. Billings Place Condos

GRANTEE: NAME OF PLAT - Limit 38 spaces
(Name of plat should have either word "SUBDIVISION" or "CONDOMINIUM" at end)

UTE TRAIL TOWNHOMES CONDO
Billings Place Condos

REMARKS

- Several options:
1. 1ST AMENDED
 2. SUPPLEMENTAL

PROPERTY DESCRIPTIONS:

- 1) NAME OF PLAT Ute Trail Townhomes Condo
- 2) ALL OTHER LEGALS... Billings place Condo
- 3)
- 4)

NOTE: The name of the plat should appear in following places

1. grantor
2. grantee
3. legal description

pc_clerk:wp:recording:plats