

DECLARATION  
OF  
PROTECTIVE AND RESTRICTIVE COVENANTS OF  
LACET SUBDIVISION

Table of Contents

|  | <u>Page</u> |
|--|-------------|
| RECITALS   |             |
| ARTICLE 1 SUBMISSION; DEFINED TERMS  |             |
| Section 1.1. Submission of Real Estate   | 1           |
| Section 1.2. Defined Terms   | 1           |
| ARTICLE 2 NAMES; DESCRIPTION OF REAL ESTATE  |             |
| Section 2.1. Names   | 2           |
| (a) Common Interest Community  | 2           |
| (b) Association  | 2           |
| Section 2.2. Real Estate   | 2           |
| ARTICLE 3 THE ASSOCIATION  |             |
| Section 3.1. General Purpose and Powers  | 2           |
| Section 3.2. Authority   | 2           |
| Section 3.3. Powers  | 2           |
| (a) Statutory Powers   | 2           |
| (b) Assignment of Future Income  | 2           |
| Section 3.4. Regular Membership  | 3           |
| Section 3.5. Declarant's Membership  | 3           |
| Section 3.6. Executive Board   | 4           |
| Section 3.7. Termination of Contracts  | 4           |
| Section 3.8. Notice to Owners  | 4           |
| ARTICLE 4 LOTS   |             |
| Section 4.1. Number of Lots  | 5           |
| Section 4.2. Identification of Lots  | 5           |
| Section 4.3. Lot Boundaries  | 5           |
| ARTICLE 5 LIMITED COMMON ELEMENTS  |             |
| Section 5.1. Limited Common Elements   | 5           |
| Section 5.2. Allocation of Specified Common Elements   | 5           |
| ARTICLE 6 COVENANT FOR COMMON EXPENSE ASSESSMENTS  |             |
| Section 6.1. Creation of Association Lien and Personal Obligator To Pay Common Expense Assessments | 5           |
| Section 6.2. Apportionment of Common Expenses  | 6           |

11-9-93

|   |   |    |
|---|---|----|
| Section 6.3.  | Annual Assessment/Commencement<br>of Common Expense Assessments | 6  |
| Section 6.4.  | Special Assessments   | 6  |
| Section 6.5.  | Owner's Failure to Maintain Lot                                 | 6  |
| Section 6.6.  | Effect of Non-Payment<br>of Assessments                         | 7  |
| ARTICLE 7 MAINTENANCE, REPAIR AND REPLACEMENT                     |   |    |
| Section 7.1.  | General and Limited<br>Common Elements                          | 8  |
| Section 7.2.  | Expense Allocation  | 8  |
| Section 7.3.  | Working Fund  | 7  |
| ARTICLE 8 SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS |   |    |
| Section 8.1.  | Special Declarant Rights  | 7  |
| (a)   | Completion of Improvement                                       | 7  |
| (b)   | Sales Management and Marketing                                  | 8  |
| (c)   | Construction Easements  | 8  |
| (d)   | Master Association  | 8  |
| (e)   | Merger  | 8  |
| (f)   | Amendment of Declaration  | 8  |
| (g)   | Amendment of Map  | 8  |
| Section 8.2.  | Additional Reserved Rights                                      | 8  |
| (a)   | Dedications   | 8  |
| (b)   | Use Agreements  | 8  |
| (c)   | Other Rights  | 9  |
| Section 8.3.  | Rights Transferrable  | 9  |
| ARTICLE 9 ALLOCATED INTERESTS                                     |   |    |
| Section 9.1.  | Allocated Interests   | 9  |
| Section 9.2.  | Determination of<br>Allocated Interests                         | 9  |
| ARTICLE 10 RESTRICTIONS ON USE AND OCCUPANCY                      |   |    |
| Section 10.1.   | Use and Occupancy Restrictions                                  | 9  |
| Section 10.2.   | Nuisances and Negligence  | 9  |
| Section 10.3.   | Eyesores and Fire Restrictions                                  | 10 |
| Section 10.4.   | Limited Common Elements   | 10 |
| Section 10.5.   | Structural Integrity  | 10 |
| Section 10.6.   | Enforcement   | 10 |
| ARTICLE 11 EASEMENTS AND LICENSES                                 |   |    |
| Section 11.1.   | Recording Data  | 10 |
| Section 11.2.   | Lot Easements   | 11 |
| ARTICLE 12 ARCHITECTURAL COVENANTS AND RESTRICTIONS               |   |    |

11-9-93

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|---------------|--|----|
| Section 12.1. | No Change in Property Without Approval             | 11 |
| Section 12.2. | Definitions and Restrictions                       | 11 |
| Section 12.3. | Landscaping  | 13 |
| Section 12.4. | Architectural Control Committee Approval and Plans | 13 |

ARTICLE 13 MISCELLANEOUS

|                |                                     |    |
|----------------|-------------------------------------|----|
| Section 13.1.  | Declarant's Rights Transferable     | 15 |
| Section 13.2.  | Number and Gender                   | 15 |
| Section 13.3.  | Construction                        | 15 |
| Section 13.4.  | No Dedication                       | 15 |
| Section 13.5.  | Notices                             | 15 |
| Section 13.6.  | Mortgagee Rights                    | 16 |
| Section 13.7.  | Disclaimer                          | 17 |
| Section 13.8.  | Severability                        | 17 |
| Section 13.9.  | Attorney-In-Fact                    | 18 |
| Section 13.10. | Termination                         | 18 |
| Section 13.11. | Construction of Declaration         | 18 |
| Section 13.12. | Effect of Provisions of Declaration | 18 |
| Section 13.13. | Duration of Declaration             | 18 |
| Section 13.14. | Enforcement and Remedies            | 18 |
| Section 13.15. | Protection of Encumbrancer          | 19 |
| Section 13.16. | Limited Liability                   | 19 |
| Section 13.17. | Tort and Contract Liability         | 19 |
| Section 13.18. | Successors and Assigns              | 19 |
| Section 13.19. | Severability                        | 19 |
| Section 13.20. | Captions                            | 19 |
| Section 13.21. | No Waiver                           | 20 |
| Section 13.22. | Enforcement                         | 20 |

11-9-93

DECLARATION OF PROTECTIVE AND RESTRICTIVE COVENANTS

OF

LACET SUBDIVISION

THIS DECLARATION of Protective and Restrictive Covenants of Lacet Subdivision ("Declaration") is made as of October 29<sup>th</sup>, 1993, by Lacet Limited Liability Company, a Colorado limited liability company ("Declarant").

RECITALS

A. Declarant is the owner of certain real estate located in the City of Aspen, County of Pitkin, State of Colorado, which is more particularly described on Exhibit A attached as a part hereof consisting of seven single family Lots (the "Project"); and

B. Declarant desires to create a Common Interest Community in accordance with the provision of the Colorado Common Interest Ownership Act; and

C. Declarant has caused to be incorporated under the laws of the State Colorado, Lacet Homeowners' Association, Inc., a nonprofit corporation, for the purpose of exercising the functions as herein set forth.

ARTICLE 1

SUBMISSION; DEFINED TERMS

Section 1.1. Submission of Real Estate. Declarant hereby declares that all of the real estate described in Exhibit A (the "Property") is hereby made subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real estate and be binding on all parties having any right, title or interest in the real estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof. Additionally, Declarant hereby submits the real estate to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.3-101, et seq., Colorado Revised Statutes, as amended from time to time (the "Act"). In the event the Act is repealed, the Act as existing immediately prior to its repeal shall remain applicable.

Section 1.2. Defined Terms. Each capitalized term not otherwise defined in this Declaration or on the Final Plat of East Cooper Affordable Housing Subdivision recorded on July 21, 1993, in

11-9-93

Plat Book 32 at Page 15 of the records of Pitkin County, Colorado,  
(the "Map") shall have the meanings specified or used in the Act.

ARTICLE 2

NAMES; DESCRIPTION OF REAL ESTATE

Section 2.1. Names.

(a) Common Interest Community. The name of the Common Interest Community is Lacet Subdivision.

(b) Association. The name of the Association is the Lacet Homeowners' Association, Inc. (the "Association").

Section 2.2. Real Estate. The Common Interest Community consisting of the real estate described on Exhibit A is located in the City of Aspen, County of Pitkin, State of Colorado.

ARTICLE 3

THE ASSOCIATION

Section 3.1. General Purposes and Powers. The Association has been or will be incorporated to be and constitute the Association to which reference is made in this Declaration, to perform functions and hold and manage the Property as provided in this Declaration and to further the interests of Lot Owners in the Project. It shall have all powers necessary or desirable to effectuate these purposes.

Section 3.2. Authority. The business affairs of the Common Interest Community shall be managed by the Association, a Colorado nonprofit corporation. The Association shall be governed by its Bylaws, as amended from time to time and any Rules and Regulations adopted pursuant thereto and hereto.

Section 3.3. Powers.

(a) Statutory Powers. The Association shall have all of the powers, authority, duties, rights and benefits permitted pursuant to the Act and the non-profit corporation laws of the State of Colorado.

(b) Assignment of Future Income. The Association may assign its future income, including its rights to receive Common Expense assessments, only by the affirmative vote of the Owners, at a meeting called for that purpose. Such assignment may only be made to secure loans for capital improvements or repairs, provided that the Association may not assign funds needed to pay other known expenses as reflected in the approved budget.

11-9-93

Section 3.4. Regular Membership. There shall be one regular membership in the Association for each Lot, which regular membership shall be appurtenant to the fee simple title to such Lot. Each Lot Owner shall automatically be the Owner of the regular membership appurtenant to that Lot and title to and ownership of the regular membership for the Lot shall automatically pass with fee simple title to the Lot. Each Owner of the Lot shall automatically be entitled to the benefits and subject to the burdens relating to the regular membership for that Lot. If fee simple title to a Lot is held by more than one (1) person or entity, the regular membership appurtenant to that Lot shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership as fee simple title to the Lot is held. Regular membership in the Association shall be limited to Owners of Lots in the Project.

Section 3.5. Declarant's Membership.

(a) Declarant shall have and be deemed to hold a membership in the Association, proportionate to its ownership of Lots, for the period of time beginning on the date of incorporation of the Association and ending no later than either: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the seven Lots (ie., six Lots) in the Project to Lot Owners other than the Declarant; or (ii) two years after the Declarant has last conveyed a Lot in the ordinary course of business. As the holder of this membership, Declarant shall have the right to appoint all members of the Executive Board of the Association for a period beginning on the date of incorporation of the Association. As the holder of this membership, the approval of Declarant shall be required (if it owns a majority or at least four of the Lots), as a condition to amendment of this Declaration, amendment to the Articles of Incorporation of the Association, amendment to the Bylaws of the Association, and to merger, consolidation or dissolution of the Association, but such rights shall terminate upon expiration of the Declarant's membership.

(b) Notwithstanding Section 3.5(a), not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created (ie., two Lots) to Lot Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board must be elected by Lot Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created (ie., four Lots) to Lot Owners other than Declarant, not less than thirty-three and one-third percent (33.33%) of the members of the Executive Board must be elected by Lot Owners other than Declarant.

11-9-93

Section 3.6. Executive Board.

(a) Not later than the termination of any period of Declarant membership, the Lot Owners shall elect an Executive Board of at least three (3) members. A director must be a Lot Owner. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

(b) The affairs of the Association shall be managed by the Executive Board which may, however, by resolution, delegate any portion of its authority to an executive committee or other committee appointed by the Executive Board. However, the Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Association, or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term. Members of the Executive Board shall be elected annually by Lot Owners.

(c) The Lot Owners by a majority vote of all Lot Owners present and entitled to vote at any meeting of the Lot Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by Declarant.

Section 3.7. Termination of Contracts. The following contracts and leases, if entered into before the Executive Board elected by the Lot Owners takes office, may be terminated without penalty by the Association, at any time after the Executive Board elected by the Lot Owners takes office, upon not less than ninety (90) days' notice to the other party:

(a) Any management contract, employment contract, or lease of recreational or parking areas or facilities; or

(b) Any other contract or lease between the Association and Declarant or an affiliate or Declarant.

Section 3.8. Notice to Owners. Any notice to an Owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given if such notice is in writing and is delivered personally, by courier or private service delivery or the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Lot.

11-9-93

ARTICLE 4

LOTS

Section 4.1. Number of Lots. The number of Lots in the Lacet Subdivision is seven (7). The Declarant reserves no rights to create additional Lots.

Section 4.2. Identification of Lots. The identification number of each Lot is shown on the Map as Lots 1 through 7 (but not including Lot 8) and Exhibit B of this Declaration.

Section 4.3. Lot Boundaries. The boundaries of each Lot are located as shown on the Map as Lots 1 through 7 (excluding Lot 8).

ARTICLE 5

LIMITED COMMON ELEMENTS

Section 5.1. Limited Common Elements.

(a) A "Limited Common Element" means a portion of the Common Elements, if any, designated in this Declaration, on the Map or by the Act, for the exclusive use of one or more but fewer than all of the Lots. Any Limited Common Element specifically designated for the sole use of a particular Lot on the Map cannot be redesignated for the use of a different Lot without the prior written consent of the Owner of the Lot from which the Limited Common Element is being transferred.

Section 5.2. Allocation of Specified Common Elements. The Board may designate parts of the Common Elements from time to time for use by less than all of the Owners or by nonowners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Board. Any such designation by the Board shall not be a sale or disposition of such portions of the Common Elements.

ARTICLE 6

COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 6.1. Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments. Declarant and each Owner, by acceptance of a deed to his, her or its Lot shall be deemed to covenant and agree to pay to the Association annual Common Expense assessments. Such assessments, including fees, charges, late charges, attorney fees, costs of collection, fines and interest charged by the Association shall be the personal obligation of the Owner at the time when the assessment or other charges become due. The personal obligation to pay any past sums

11-9-93

due the Association shall not pass to successors in title unless expressly assumed by them. No Lot Owner shall convey the Lot unless and until all sums due the Association and not assumed by the transferee are currently paid. At least five business days prior to any conveyance, the Lot Owner shall deliver written notice to the Association advising it of the proposed transaction and the names and addresses of the proposed transferee. The Common Expense assessments of the Association shall be a continuing lien upon the Lot against which each such assessment is made and is subject to the Association's right to foreclose. Acceleration of any installment of the annual Common Expense assessment shall be in the Association's sole discretion on a case by case basis.

Section 6.2. Apportionment of Common Expenses. Common Expenses shall be assessed against all Lots in accordance with their Common Expenses allocated interest as described in Section 9.1 of this Declaration. Except as otherwise set forth, Common Expense assessments associated with maintenance, repair or replacement of a Limited Common Element, or in the judgment of the Board benefitting fewer than all of the Lots, shall be assessed against the Lot or Lots to which the maintenance, repair, replacement or benefit is attributable. The cost of utilities not separately metered may be assessed in proportion to usage as reasonably determined by the Board.

Section 6.3. Annual Assessment/Commencement of Common Expense Assessments. The Common Expense assessment shall be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements by it to provide for the administration and performance of its duties during such assessment year. Common Expense assessments may be collected in the manner as determined by the Board. Common Expense assessments shall begin in the month in which conveyance of the first Lot to an Owner other than the Declarant occurs.

Section 6.4. Special Assessments. The Association may levy one or more special assessments if the Board determines, in its reasonable discretion, that the annual Common Expense assessments are insufficient to provide required maintenance, repair, or replacement of any part of the Common Interest Community required to be maintained by the Association, whether such work is caused by casualty, emergency, age of the building, or otherwise.

Section 6.5. Owner's Failure to Maintain Lot. The Association may perform the maintenance, repair or replacement obligations of any Lot Owner with respect to a Lot if, following five days written notice to the Lot Owner by the Association, the Lot Owner does not perform its obligations (or undertake to perform its obligations if the obligations are such that they cannot reasonably be performed within such five day period). The cost of any such performance shall be charged to the defaulting Lot Owner

11-9-93

and may be assessed as a portion of the annual assessment, or as a special assessment.

Section 6.6. Effect of Non-Payment of Assessments. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof shall bear a late charge and interest at the rate (not to exceed 18% per annum) as determined by the Board. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may be pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor.

#### ARTICLE 7

##### MAINTENANCE, REPAIR AND REPLACEMENT

Section 7.1. General and Limited Common Elements. The Association shall be responsible for the maintenance and repair and replacement (including removal of snow, leaves and debris) of all of the General and Limited Common Elements, all in accordance with the standards set by the Board. The Association may delegate to the Owner of any Lot to which a Limited Common Element is attributable, the responsibility for that Owner to maintain, repair or replace the specified Limited Common Elements.

Section 7.2. Expense Allocation. Any Common Expense associated with the maintenance, repair or replacement of a General Common Element shall be assessed according to the allocation described in Section 9. Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Lot to which the Limited Common Element is assigned.

Section 7.3. Working Fund. The Association or Declarant shall require the first Owner of each Lot to make a non-refundable payment to the Association in the amount of \$250.00, which sum shall be held, without interest, by the Association as a working fund. The working fund shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Lot. Such payment shall not relieve an owner from making regular payments of assessments as the same become due. Upon the transfer of the Lot, an Owner shall be entitled to a credit from his transferee for any unused portion of the working fund.

11-9-93

ARTICLE 8  
SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 8.1. Special Declarant Rights. Declarant hereby reserves the right, from time to time, during the period of Declarant membership in the Association, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

- (a) Completion of Improvements. The right to complete improvements, if any, indicated on the Map.
- (b) Sales Management and Marketing. The right to maintain sales offices, management offices, and signs advertising the Project and models.
- (c) Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements within the Project.
- (d) Master Association. The right to make the Project subject to a Master Association.
- (e) Merger. The right to merge or consolidate a Project with another Project of the same form of ownership.
- (f) Amendment of Declaration. The right to amend the Declaration in connection with the exercise of any development rights.
- (g) Amendment of Map. The right to amend the Map in connection with the exercise of any development rights.

Section 8.2. Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 8.1. above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

- (a) Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Lot Owners within the Project.
- (b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking and/or recreational facilities, which may or may not be a part of the Project for the benefit of the Lot Owners and/or Association.

11-9-93

(c) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 8.3. Rights Transferrable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Pitkin County, Colorado. Such instrument shall be executed by the transferor Declarant and accepted by the transferee.

#### ARTICLE 9

##### ALLOCATED INTERESTS

Section 9.1. Allocated Interests. The undivided interest in the Common Elements, the Common Expense liability and votes in the Association allocated to each Lot are set forth in Exhibit B.

Section 9.2. Determination of Allocated Interests. The interests allocated to each Lot have been calculated as follows:

(a) the undivided interest in Common Elements, on the basis of an equal share for each Lot;

(b) the percentage of liability for Common Expenses, subject to specific allocations made in this Declaration, on the basis of an equal share for each Lot; and

(c) the number of votes in the Association, or, the basis of one vote per Lot. If there is a tie vote, the Board shall vote on the matter which created the tie vote, with the majority decision of the Board breaking the tie.

#### ARTICLE 10

##### RESTRICTIONS ON USE AND OCCUPANCY

Section 10.1. Use and Occupancy Restrictions. Use, occupancy, and development on each Lot shall be limited as provided in Ordinance No. 18, Series of 1993, recorded in Book 710 at Page 980 of the records of Pitkin County, Colorado, the Agreement between the Declarant and the Aspen/Pitkin County Housing Authority recorded July 14, 1993, in Book 717 at Page 763 of the records of Pitkin County, Colorado, and the Planned Unit Development and Subdivision Improvement Agreement between the City of Aspen and the Declarant recorded July 21, 1993, in Book 718 at Page 477 of the records of Pitkin County, Colorado.

Section 10.2. Nuisances and Negligence. There shall be no noxious or offensive activities carried on, in or upon any Lot or Common Element, and no loud noises (including noises from dogs or

11-9-93

pets), or noxious odors shall be permitted anywhere in the Common Interest Community. Nothing shall be done in the Common Interest Community which may be or become an unreasonable annoyance or a nuisance to any other Owner or any occupant of any Lot. The Board shall have the right to determine if any activity, noise or odor constitutes a nuisance or annoyance. No Owner or occupant of any Lot shall permit or cause anything to be done or kept on the Common Interest Community which will increase the rate of insurance or which will result in the cancellation of such insurance; such prohibition is not intended to relate to whether a Lot is or is not occupied. Each Owner shall be accountable to the Association and the other Owner for the behavior of its tenants or guests. Any damage to the Common Elements or the property of another Owner or occupant of any Lot that is caused by any Owner, guest or occupant of any Lot, shall be repaired at the sole expense of the Owner in whose Lot such persons are visiting or residing.

Section 10.3. Eyesores and Fire Restrictions. Nothing unsightly shall be hung out or exposed on any part of the Common Elements visible to the public. The Common Elements, windows and doors shall be kept free and clear of rubbish, debris and other unsightly materials. Trash, garbage or other waste shall be disposed of in a designated trash container. No portion of the Common Elements visible to the public shall be used for the storage of building materials, refuse, or any other materials, other than in connection with approved construction. There shall be no exterior fires except in contained barbecues unless otherwise regulated or permitted by the Board.

Section 10.4. Limited Common Element. No Owner or occupant shall decorate or fence any Limited Common Element without the prior written authorization of the Board.

Section 10.5. Structural Integrity. Nothing shall be done to any Lot or the Common Elements that will impair the structural integrity of or structurally change the Common Interest Community unless prior written authorization is obtained from the Board.

Section 10.6. Enforcement. The Association, any member of the Board and any Owner shall have the right to enforce this Declaration and any Rules and Regulations of the Association and the right to collect costs and expenses (including without limitation attorney's fees) incurred in any enforcement action.

#### ARTICLE 11

#### EASEMENTS AND LICENSES

Section 11.1. Recording Data. The easements and licenses to which the Common Interest Community is presently subject are recited in Exhibit A. In addition, the Common Interest Community may be subject to other easements or licenses granted by the

11-9-93

Declarant pursuant to Section 11.2 in this Declaration or on the Map.

Section 11.2. Lot Easements. There is hereby created for the benefit of the Association and its authorized agents, contractors and employees, an easement over and across the logical paths of travel over each Lot as is reasonably necessary to access the Common Elements for the purpose of discharging the Association's obligations under this Declaration.

#### ARTICLE 12

##### ARCHITECTURAL COVENANTS AND RESTRICTIONS

Section 12.1. No Change In Property Without Approval. No alteration, change, modification, or addition ("Change in Property") to the exterior of any Lot, single family home, other building, or improvement shall be made or permitted, without the prior written approval of the Association, and compliance with the provisions of this Article 12.

Section 12.2. Definitions and Restrictions. "Change in Property" shall include: (a) the construction or expansion of any single family home building, structure or improvements, including utility facilities; (b) the destruction by voluntary action or the abandonment of any building, structure, or other improvements; (c) the excavation, filling or similar disturbance of the surface of land including without limitation, change of grade, stream bed, ground level or drainage pattern; (d) the clearing, marring, defacing or damaging of trees, shrubs or other growing things, (e) the landscaping or planting of trees, shrubs, lawns or plants; or (f) any change or alteration, including without limitation, any change of color, texture or exterior appearance from any previously approved Change in Property. In all events, the following restrictions shall apply:

(a) Any expansion of single family homes, buildings or improvements shall be strictly limited to the area within the building envelopes as specified on the Map.

(b) All buildings shall be located within the building envelopes as defined on the Map. No structures shall be permitted outside the building envelope.

(c) The mass of the buildings shall be kept to a minimum by means of architectural design. No more than two stories of living space shall be permitted above natural grade. Where two stories are to be constructed, the homeowner is encouraged to minimize the expanse of two story exterior walls by means of architectural facade treatment and/or the placement of one story elements in front of two story elements. Large overhangs will additionally reduce the perceptual mass of the building by creating

11-9-93

shadows and should be considered by homeowners. Buildings should utilize natural grade to the extent possible to further reduce the mass of the building.

(d) Only building materials that are indigenous to the area and compatible with residential development, such as wood and stone should be considered. Combinations of materials are encouraged to add visual interest and reduce the perceptual mass of the building. Reflective materials are prohibited. All flashings, sheet metal roof intersections, gutters, external vents, external window sashes, external PVC protuberances, etc., shall be coated with either a non-reflective material consistent with the exterior color of the house, or flat black.

(e) Any change in exterior material or color as well as any addition of any exterior material or color shall be subject to review by the Association acting as an architectural control committee.

(f) No Lot shall ever be further subdivided into smaller lots or conveyed or encumbered in any less than the full dimensions as shown on the Map.

(g) With respect to the new construction or extension of any service utilities from any Lot line including but not limited to water, sewer, gas, electric, telephone, or cable television shall be buried underground and not be carried on overhead poles or above the surface of the ground. Any areas of natural vegetation or terrain disturbed by the burying of utility service lines shall be revegetated by and at the expense of the Owner or Owners causing the installation of the utilities no later than the next growing season following installation.

(h) Equipment, service yards or storage piles on any Lot may be permitted during construction if they receive Association approval. All rubbish and trash shall be removed from all Lots and shall not be allowed to accumulate and shall not be burned thereon.

(i) Any construction activity on any Lot shall be completed, fully cleaned up, and landscaped within eighteen (18) months from the issuance of building permit or shall obtain a variance from the Association for a longer period of construction upon proof of due diligence. In the event a variance is not secured and eighteen months from issuance of building permit has passed, the Association may assess penalties in any amount it deems appropriate.

(j) No used or previously erected or temporary house, structure, mobile home or trailer is permitted. This prohibition shall not apply to construction trailers which shall be permitted for eighteen (18) months from the issuance of building permit. Provided, however, construction trailers may only be used for

11-9-93

construction, office or storage purposes and shall not be occupied as a residence.

(k) All unsightly structures, facilities, equipment and other items, including but not limited to those specified below, shall be enclosed within a solid, covered structure. Any motor home, trailer, boat, truck, tractor, snow removal or garden equipment, and any similar items shall be kept at all times, except when in actual use, in an enclosed garage. Any refuse or trash containers, utility meters, propane tanks, fuel storage tanks or other facilities, service area, or storage piles shall be enclosed within a structure or appropriately screened from view by planting or fencing approved by the Association and adequate to conceal the same from neighbors, streets and private roads. No lumber, metals, bulk materials, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any Lot except building materials during the course of construction and only for such reasonable periods of time as are necessary prior to the collection and disposal thereof.

(l) All driveways, aprons, approaches and parking spaces shall be concrete and all roofing material shall be wood shake unless approved by the Association.

(m) There shall be a ten-foot landscape easement adjoining the road easement of Barb's Way which shall be maintained by the Association as a Common Expense.

(n) All outdoor lighting shall be restricted to low level fixtures which shall be shielded from view of adjacent properties.

(o) All fencing shall be approved by the Association.

Section 12.3. Landscaping. No existing vegetation shall be removed without Association review. In the event any existing vegetation is removed without approval of the Association, any person or entity responsible for such removal shall be subject to a penalty of up to \$100 per day for each day the violation exists or continues. The amount of any penalty shall be established by the Board, and may be assessed and collected in the manner provided herein.

Section 12.4. Architectural Control Committee and Approval of Plans.

(a) There is hereby established an Architectural Review Committee consisting of not less than three (3) members, with the exact number of the members of the Architectural Review Committee to be established from time to time by the Board of Directors. The Architectural Review Committee shall be appointed by the Board of Directors of the Association. The vote of a majority of the members shall constitute the action of the Architectural Review

11-9-93

Committee. The Architectural Review Committee shall have the right to employ consultants to assist in the performance of its functions hereunder. Whenever the provisions of this Article 12 require approval of the Association, it shall be deemed to require the approval of the Architectural Review Committee on behalf of the Association.

(b) No dwelling or other improvements shall be constructed, erected, placed, altered, maintained or permitted on any Lot or on the Common Elements, nor shall any construction or excavation whatsoever be commenced or materials, equipment, or construction vehicles be placed on any Lot until plans and specifications with respect thereto (in manner and form satisfactory to the Architectural Review Committee showing the proposed improvements, plot layout and all exterior elevations, materials and colors, landscaping, grading, easements and utilities, and such other information as may be requested by said Committee) have been submitted to and been approved in writing by the Architectural Review Committee. Such plans and specifications shall be submitted in writing and be signed by the Owner or the Owner's authorized agent. The Architectural Review Committee shall have the right to charge persons submitting such plans, other than Declarant or the Association, a reasonable fee for reviewing each application for approval of the plans and specifications in an amount not to exceed Five Hundred Dollars (\$500.00) with respect to any single submittal with reference to construction or expansion of a dwelling on a Lot or remodeling thereof, and a fee not to exceed Three Hundred Dollars (\$300.00) with reference to approval of landscaping plans or modifications to existing landscaping.

(c) Approval shall be based, among other things, on suitability of exterior design, colors, and materials, relation of the proposed improvements to the natural topography, grade, and finished ground elevation; relation of the structure to that of neighboring structures and natural features; and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Architectural Review Committee shall not arbitrarily or unreasonably withhold or delay its approval of such plans and specifications.

(d) If the Architectural Review Committee fails either to approve or to disapprove such plans and specifications (including resubmission of disapproved plans and specifications which have been revised) within thirty (30) days after the same have been submitted or resubmitted to it (provided that all required information has been submitted), it shall be conclusively presumed that said plans and specifications have been approved subject, however, to the restrictions contained in this Declaration. The Architectural Review Committee shall notify the Owner in writing upon receipt of all required, complete plans and specifications and the aforesaid 30-day period shall commence on the date of such notification.

11-9-93

ARTICLE 13

MISCELLANEOUS

Section 13.1. Declarant's Rights Transferable. Any right or interest of the Declarant established or reserved in this Declaration may be transferred by Declarant either separately or with one or more of such rights or interests, to any person or entity, if a written assignment of Declarant's rights and interest, specifically referencing this Section 13.1, is recorded in the records of the Clerk and Recorder of Pitkin County, Colorado.

Section 13.2. Number and Gender. Unless the context shall otherwise provide, a singular number shall include the plural, a plural number shall include the singular, and the use of any gender shall include all genders.

Section 13.3. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and maintenance of a residential community and for the maintenance of the Common Areas or Common Elements. Exhibits attached hereto shall be considered a part of this Declaration for all purposes as if fully incorporated herein. Any reference to an Exhibit shall be deemed to include any supplements thereto unless specified otherwise. In the event of any conflict between the City of Aspen Land Use Code, any applicable deed restrictions, the provisions of this Declaration, or the Articles or Bylaws of the Association, the provisions of the City of Aspen Land Use Code shall control over such deed restrictions, this Declaration, the Articles, or the Bylaws, and any deed restrictions shall control over this Declaration, the Articles, or the Bylaws, and this Declaration shall control over the Articles or the Bylaws.

Section 13.4. No Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public or for any public use.

Section 13.5. Notices.

(a) Manner of Serving Notice. Any notice permitted or required under this Declaration shall be in writing and delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy has been deposited in the United States mail, postage prepaid for first class mail and addressed in accordance with paragraph (b) or (c) of this Section.

(b) Owners' Mailing Addresses. Regardless of the number of persons or entities holding title to a Lot, notice shall be deemed to have been properly mailed if it is addressed to the person or entity last known by the Association to be the Owner at

11-9-93

the last address provided by the Owner to the Association or in the records of the Tax Assessor for Pitkin County, Colorado. An Owner, or multiple Owners of a single Lot, may register with the Association, in writing, not more than one alternate address where notices may be mailed to the Owner or Owners. Such alternate address shall continue as the official mailing address for the Lot until the Association receives written notice of a change in the alternate address.

(c) Mortgagees' Mailing Addresses. Each first priority beneficiary of a deed of trust, or first priority mortgagee ("First Priority Mortgagee") shall notify the Association, in writing, of its mailing address. Until the Association receives written notice of a change in address for any First Priority Mortgagee, all notices required and permitted to be given First Priority Mortgagees under this Declaration shall be deemed properly delivered if mailed to the address last registered with the Association.

(d) Association's Mailing Addresses. Any notice to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

(e) Declarant's Address. Any notice to the Declarant shall be sent to Suite 204, FirstBank Center, 160 Highway 6, Drawer 1099, Silverthorne, CO 80498 or at such address as it may from time to time designate to the Association or Owners.

(f) Notice Among Owners. Any Owner or Owners desiring to give any other Owners notice of any matter affecting the Property may have reasonable access to the Association's mailing lists and may otherwise follow the procedures set forth in this section.

Section 13.6. Mortgagee Rights. Any holder of a First Priority Mortgage will, upon request, be entitled to:

(a) inspect the books and records of the Association during normal business hours;

(b) receive financial statements of the Association within ninety (90) days following the end of any fiscal year;

(c) receive written notice of meetings of the Association and be permitted to designate a representative to attend all such meetings; and

(d) receive written notice of any default on the part of its respective mortgagor(s) regarding any obligations imposed under this Declaration which are not cured within thirty (30) days.

11-9-93

Section 13.7. Disclaimer. Except as expressly set forth in this Declaration, or in an instrument in writing expressly referencing this Section 13.7, no representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the operation, maintenance, cost of maintenance, taxes or regulation of the Project.

Section 13.8. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforcement of any other portion hereof.

Section 13.9. Attorney-In-Fact. Whenever this Declaration refers to the Association acting as attorney-in-fact, acceptance by a purchaser of a deed to a Lot constitutes an appointment by the purchaser of the Association as his attorney-in-fact for the purposes set forth in this Declaration.

Section 13.10. Termination. Except in the case of a taking of all the Lots by eminent domain, the Association may be terminated only as provided by the Act.

Section 13.11. Effect of Provisions of Declaration. Each provision of this Declaration, as the same may be amended from time to time, and any agreement, promise, covenant and undertaking to comply with each such provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any such 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 Lot 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 Lot by a Lot Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Lot Owner, and, as a personal covenant, shall be binding on such Lot Owner's heirs, personal representatives, successors and assigns and, as a personal covenant to, with and for the benefit of the Association;

(c) shall be deemed a real 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 Lot 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 Lot; and

11-9-93

(d) shall be deemed a covenant, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering title to the Project and each Lot in favor of the Association.

Section 13.12. Duration of Declaration. All provisions contained in this Declaration shall continue and remain in full force and effect until this Declaration is terminated or revoked as provided herein. The rule against perpetuities does not apply to defeat any provision of this Declaration or rules and regulations adopted pursuant hereto.

Section 13.13. Enforcement and Remedies. Each provision of this Declaration with respect to a Lot Owner or the Lot of an Owner shall be enforceable by the 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 Lot Owner fails to comply with any such provisions, by denial of all voting rights of such Lot Owner and exclusion of such Lot Owner and such Lot Owner's guests from use of any Common Elements.

If any person subject to the provisions of this Declaration fails to comply with any provision of this Declaration or any provision of the Bylaws, Articles, or rules and regulations, any person or class of persons adversely affected by such failure to comply may require compliance and reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. For each claim, including but not limited to counterclaims, cross-claims, and third-party claims, in any legal proceeding to enforce the provisions of the Declaration, Bylaws, Articles or rules and regulations, the court shall award to the party prevailing on such claim the prevailing party's reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim.

Section 13.14. Protection of Encumbrancer. 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 mortgage, deed of trust or other lien on any Lot taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of Pitkin County, Colorado, prior to the time of recording in said office of an instrument describing the Lot and listing the name or names of the Lot Owner or Lot Owners of fee simple title to the Lot 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 holders of any such mortgage, deed of trust, or other lien or the title or interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust, or

11-9-93

other lien or result of any liability, personal or otherwise, of any such holder 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.

**Section 13.15. Limited Liability.** If appointed by Declarant, in the performance of their duties, the officers and members of the Executive Board are required to exercise the care required of fiduciaries of the Lot Owners. If not appointed by the Declarant, no member of the Executive Board and no officer shall be liable for actions taken or omissions made in the performance of such member's duties except for wanton and willful acts or omissions.

**Section 13.16. Tort and Contract Liability.** Neither the Association nor any Lot Owner except Declarant is liable for any cause of action based upon that Declarant's acts or omissions in connection with any part of the Project which Declarant has the responsibility to maintain. Otherwise, any action alleging an act or omission by the Association must be brought against the Association and not against any Lot Owner. If the act or omission occurred during any period of Declarant control and the Association gives Declarant reasonable notice of an opportunity to defend against the action, Declarant who then controlled the Association is liable to the Association or to any Lot Owner for all tort losses not covered by insurance suffered by the Association or that Lot Owner and all costs that the Association would not have incurred but for such act or omission. Whenever Declarant is liable to the Association under this section, Declarant is also liable for all expenses of litigation, including reasonable attorney fees, incurred by the Association. Any statute of limitations affecting the Association's right of action under this section is tolled until the period of Declarant control terminates. A Lot Owner is not precluded from maintaining an action contemplated by this section by being a Lot Owner or a member or an officer of the Association.

Declarant is liable to the Association for all funds of the Association collected during the period of Declarant control which were not properly expended.

**Section 13.17. Successors and Assigns.** This Declaration shall be binding upon and shall inure to the benefit of the Association and each Lot Owner and the heirs, personal representatives, successors and assigns of each.

**Section 13.18. Severability.** Invalidity or unenforceability of any provisions of this Declaration in whole or in part shall not

11-9-93



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Silvia Davis, Pitkin Cnty Clerk, Doc \$.00

**EXHIBIT A**

**DESCRIPTION OF LAND**

Lots 1, 2, 3, 4, 5, 6 and 7 according to the plat of the  
East Cooper Affordable Housing Subdivision recorded July  
21, 1993 in Plat Book 32 at Page 15, of the records of  
Pitkin County, Colorado.

11-9-93

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Silvia Davis, Pitkin Cnty Clerk, Doc \$4.00

TITLE EXCEPTIONS

1. Taxes for 1993 and subsequent years, payable in 1994 and subsequent years.
2. Reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
3. Any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, claimed or known to exist within subject property as of March 23, 1885, as expressly excepted and excluded in United States Patent recorded June 17, 1949, in Book 175 at Page 246.
4. Easement and right-of-way for Riverside Ditch as evidenced by Alpine Surveys dated July 10, 1989.
5. Agreement between Lacet Limited Liability and The Aspen/Pitkin County Housing Authority recorded July 14, 1993, in Book 717 at Page 763.
6. Planned Unit Development and Subdivision Improvement Agreement between The City of Aspen and Lacet Limited Liability Company, recorded July 21, 1993, in Book 718 at Page 477.
7. Easements and building envelopes as shown on the Plat of said Subdivision.
8. Ordinance No. 18 (Series of 1993), recorded May 3, 1993, in Book 710 at Page 980.

EXHIBIT B

TABLE OF INTEREST

| Lot No. | Percentage share of<br>Common Elements | Percentage share of<br>Common Expenses | Vote in<br>the affairs<br>of the<br>Association |
|---------|--|--|---|
| 1       | 14.2857143%                            | 14.2857143%                            | 1   |
| 2       | 14.2857143%                            | 14.2857143%                            | 1   |
| 3       | 14.2857143%                            | 14.2857143%                            | 1   |
| 4       | 14.2857143%                            | 14.2857143%                            | 1   |
| 5       | 14.2857143%                            | 14.2857143%                            | 1   |
| 6       | 14.2857143%                            | 14.2857143%                            | 1   |
| 7       | 14.2857143%                            | 14.2857143%                            | 1   |
| Total:  | 100.00%                                | 100.00%                                | 7   |

11-9-93