

**CONDOMINIUM DECLARATION**  
**FOR THE**  
**WEST HOPKINS CONDOMINIUMS**

**WHEREAS,** the Aspen/Pitkin County Housing Authority, organized pursuant to the provisions of C.R.S. 29-4-501, et seq., hereinafter called "Declarant," is the owner of that real property situated in the County of Pitkin, State of Colorado, more fully described in Exhibit A attached hereto and made a part hereof; and

**WHEREAS,** Declarant desires to establish a condominium project under the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, et seq., of Colorado; and

**WHEREAS,** Declarant contemplates the construction of three (3) buildings and improvements within the real property described on Exhibit A, such improvements consisting of eleven (11) separately designated residential condominium units and other improvements; and

**WHEREAS,** Declarant does hereby establish a plan for the ownership in fee simple of the real property estates currently constructed and hereafter constructed on said real property consisting of the area or space contained in each of the air space units in the building improvements currently constructed and hereafter constructed and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining property hereinafter defined and referred to as the common elements.

**NOW, THEREFORE,** Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to Declarant, its successors or assigns, and any person or entity acquiring or owning an interest in the real property and improvements, and their devisees or assigns.

**I. DEFINITIONS**

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

1.1 Allocated Interests. "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the Association.

1.2 Association. "Association" means the West Hopkins Condominium Association.

1.3 Building. "Building" means any building constructed on the property.

1.4 Bylaws. "Bylaws" means the instrument adopted by the Association for its regulation and management, together with any amendments thereto.

1.5 Common Elements. "Common elements" means all portions of the project other than the units.

1.6 Common Expense Liability. "Common expense liability" means the liability for common expenses allocated to each unit.

1.7 Common Expenses. "Common expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

1.8 Declarant. "Declarant" means the Aspen/Pitkin County Housing Authority.

1.9 Declaration. "Declaration" means this instrument creating the project including any amendments hereto and also the plats and maps of the West Hopkins Condominiums.

1.10 Executive Board. "Executive Board" means the body designated herein to act on behalf of the Association.

1.11 Limited Common Element. "Limited common element" means a portion of the common elements allocated herein or by operation of law for the exclusive use of one or more units and fewer than all of the units.

1.12 Person. "Person" means a natural person, a corporation, a partnership, an association, a trust, or any other entity or any combination thereof.

1.13 Points. "Points" are numerical figures assigned to each unit to fix the proportionate interest of the unit owner in common elements, and the proportionate share of the total assessments levied by the Association to be borne by that unit owner. The number of points assigned to each unit is set forth in Exhibit B hereto. "Total points" means the total of points assigned for all units in the project.

1.14 Project. "Project" means the West Hopkins Condominiums located on the property, pursuant to the plats and maps thereof recorded in the records of the Pitkin County Clerk and Recorder.

1.15 Real Property and Property. "Real property" and "property" means the real property located in Pitkin County, Colorado, described in Exhibit A attached hereto, together with all rights and interests appurtenant thereto.

1.16 Special Declarant Rights. "Special Declarant rights" means rights reserved for the benefit of the Declarant to complete improvements indicated on the plats and maps filed with the Declaration; to use easements through the common elements for the purpose of making improvements within the project; or to appoint or remove any officer of the Association or any Executive Board member during the period of Declarant control.

1.17 Unit. "Unit" means a physical portion of the project which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from this Declaration.

1.18 Unit Owner. "Unit owner" means the Declarant or other person who owns a unit, but does not include a person having an interest in a unit solely as security for an obligation. The Declarant is the owner of any unit created by this Declaration until the unit is conveyed to another person.

1.19 CCIOA. "CCIOA" means the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, et seq.

## II. DECLARATION AND EFFECT THEREOF

2.1 Condominium Map. In addition to the requirements of C.R.S. 33-33.3-209, the map shall depict and show at least the following:

(a) The legal description of the land and a survey thereof; the location of the buildings; the floor and elevation plans; the location of the units within the buildings, both horizontally and vertically; the thickness of the common walls between or separating the units; the location of any structural components or supporting elements of a unit located within a building; and the building and unit designations.

(b) The map shall contain the certificate of a registered Colorado land surveyor or licensed architect, or both, certifying that the map substantially depicts the location and the horizontal and vertical measurements of the buildings, the units, the unit designations, the dimensions of the units, the elevations of the unfinished floors and ceilings as constructed, the building number or symbol, and that such map was prepared subsequent to substantial completion of the improvements. Any amendment to the map shall set forth a like certificate when appropriate. In interpreting the map the existing physical boundaries of each separate unit as constructed shall be conclusively presumed to be its boundaries. Declarant reserves the right to amend or supplement the map, from time to time, to conform the same according to the actual location of any of the constructed improvements or to reflect construction of additional improvements, to establish, vacate and relocate easements, access road easements, and on-site parking areas, and to otherwise correct or conform the map to reflect locations of improvements, additions, or changes in the real property which are consistent with and in accordance with the terms and provisions of the Declaration.

2.2 Division Into Condominium Units. The project is hereby divided into eleven (11) units. Said units are shown on the condominium map and are designated thereon. Each unit consists of a separate fee simple estate in a particular unit and an appurtenant undivided fee simple interest in and to the common elements. Each owner shall own an undivided interest in the appurtenant common elements as a tenant in common with the other owners. Each owner shall have the nonexclusive right to use and enjoy the general common elements as designated on the condominium map and shall have the exclusive right to use and enjoy any limited common elements which are designated for such exclusive use with respect to his or her particular unit, subject to the provisions of this Declaration.

2.3 Undivided Interests in Common Elements. The undivided interest in common elements appurtenant to a particular unit is a fraction, the numerator of which is the number of points assigned to that unit as set forth in Exhibit B attached hereto and the denominator of which is the total points in the project as set forth in Exhibit B attached hereto. Each unit owner shall own his or her appurtenant undivided interest in common elements as a tenant in common with all other owners.

2.4 Limited Common Elements.

(a) A portion of the general common elements is reserved for the exclusive use of individual owners of the respective units. The limited common elements are allocated as shown on the condominium map. Such allocation may not be altered without the consent of the unit owners whose units are affected.

(b) The limited common elements shall include those described in Section 2.11 of this Declaration, and shall also include parking spaces, (including those designated as carports), storage closets, and patios (A and B Buildings only), as allocated for the exclusive use of owners identified on the condominium map.

2.5 Description of a Condominium Unit.

(a) Any instrument affecting a unit may legally describe it in the following form:

Condominium Unit \_\_\_\_\_, West Hopkins Condominiums,  
pursuant to the Condominium Declaration recorded in  
Book \_\_\_\_\_ at Page \_\_\_\_\_ of the records of  
Pitkin County, Colorado.

(b) Any conveyance or other instrument affecting title to a unit or any part thereof describing the unit in substantially the foregoing form shall be deemed to include and describe the entire unit including the appurtenant undivided interest in common elements and all of the rights, easements, obligations, limitations, encumbrances, conditions and restrictions benefiting or burdening the unit under the terms of this Declaration.

(c) Any reference to a unit in the West Hopkins Condominiums in any description shall mean a unit in the West Hopkins Condominiums according to the condominium map and this Declaration, all as filed and recorded in the office of the Clerk and Recorder of Pitkin County, Colorado.

2.6 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.

2.7 Inseparability of Condominium Unit. The interest of an owner in a unit and the appurtenant undivided interest in common elements which constitute a unit shall be inseparable for the period of condominium ownership hereinabove described.

2.8 Partition of Common Elements not Permitted. The common elements shall be owned in common by all owners of units, and no owner may bring any action for partition thereof.

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 unit separately and not on the buildings or project as a whole and each unit shall be carried on the tax books as a separate and distinct parcel. For the purposes of valuation for assessment, the valuation of the common elements shall be apportioned among the units in proportion to the fractional undivided interest in common elements appurtenant to and part of the units. The Declarant shall deliver to the County Assessor of Pitkin County, Colorado a written notice as required by the CCIOA, setting forth descriptions of the 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 unit shall be confined to that unit. No forfeiture or sale of any unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other unit.

2.10 Mechanics Lien. No labor performed or materials furnished for use in connection with any unit with the consent 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 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 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 unit, or any part thereof, or any other owner for labor performed or for materials furnished in work on the first owner's unit. At the written request of any owner, the Association shall enforce such indemnity by collecting from the owner of the unit on which the labor was performed and 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.

2.11 Unit Boundaries; Subdivision.

(a) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(c) Subject to the above, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

(e) The boundaries between adjoining units may not be relocated.

(f) A unit may not be subdivided into two or more units.

(g) A limited common element may be reallocated between or among units if the owners of those units, as the applicants, submit an application for approval of the proposed reallocation to the Executive Board, which application shall be executed by those unit owners and shall include:

(i) The proposed form for an amendment to the Declaration as may be necessary to show the reallocation of limited common elements between or among units;

(ii) A deposit against attorneys' fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Executive Board; and

(iii) Such other information as may be reasonably requested by the Executive Board. No reallocation shall be effective without the approval of the Executive Board. The reallocation shall be effectuated by an amendment signed by the Association and by those unit owners between or among whose units the reallocation is made, which amendment shall be recorded as provided in C.R.S. 38-33.3-217(3). All costs and attorneys' fees incurred by the Association as a result of the application shall be the sole obligation of the applicants.

### III. VARIOUS RIGHTS AND EASEMENTS

3.1 Special Declarant Rights. The special Declarant rights defined herein may be exercised by declarant for a period of two (2) years from the date hereof.

3.2 Owner's Rights in General Common Elements. Subject to the other provisions of the Declaration, each owner, and each owner's guests, shall have a nonexclusive right to use and enjoy the common elements, provided there is no hindrance or encroachment upon the rights and enjoyment of other owners.

3.3 Owner's Rights in Units. Subject to the other provisions of the Declaration, each owner shall have full and complete dominion and ownership of the unit which is owned by such owner and such owner's guests shall have the exclusive right to use and enjoy the same.

Each owner shall have the right to paint, repaint, tile, wax, paper and otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors and doors which are the boundaries of his unit and the walls, ceilings and floors and doors within the boundaries of his unit. A unit owner may make any improvements or alterations to his or her unit that do not impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of another's units or a common element. A unit owner may not change the appearance of the common elements without the approval of the Association.

3.4 Association Rights and Easements. The Association shall have a nonexclusive right and easement to make such use of

the common elements 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 inconvenience as practicable to the owner and that any damage to the unit entered shall be repaired by, and at the expense of, the Association.

3.5 Access for Metro Sanitation. There is hereby specifically reserved for the benefit of the Aspen Consolidated Sanitation District, a right of access over and across all common elements to each unit surface element (constituting a part of the sewage system of the Subdivision) for the purpose of providing service.

3.6 Easements for Encroachments. If any unit or part of the common elements encroaches or shall hereafter encroach upon another unit or common element, a valid easement for such encroachment and for the maintenance of the same shall and does exist. The easement does not relieve a unit owner of liability in case of willful misconduct nor relieve the Declarant or any other person of liability for failure to adhere to the plat and maps. 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 original construction of the building, by error in the condominium 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.

3.7 Easements in Units for Repair, Maintenance and Replacement. 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 of the common elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the common elements or to any unit.

3.8 Easements Deemed Appurtenant. The easements and rights herein created for an owner shall be appurtenant to the unit of that owner and all conveyances of and other instruments affecting title to a 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. RIGHTS, POWERS AND OBLIGATIONS OF THE ASSOCIATION**

4.1 Association as Attorney-in-Fact for Owners. The Association is hereby irrevocably appointed by Declarant, as owner of all units, as attorney-in-fact for Declarant and its successors and assigns as owners of units and each of them to manage, control and deal with the interest of such owner in common elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; to deal with the project upon its destruction or obsolescence as hereinafter provided; and to deal with and handle insurance and insurance proceeds and condemnation and condemnation awards in accordance with the provisions of this Declaration. The acceptance by any person or entity of any interest in any unit shall constitute an appointment by that person or entity of the Association as attorney-in-fact as above provided.

4.2 Powers of Association. The Association may:

- (a) Adopt and amend bylaws and rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (c) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the project;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire and hold in its own name any right, title, or interest to real or personal property;
- (i) Grant easements, leases, licenses, and concessions through or over the common elements;

(j) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in Section 2.11;

(k) Impose charges for late payment of assessments, recover reasonable attorneys' fees and other legal costs for collection of assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the Association;

(l) Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments;

(m) Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the Declaration expressly so provides;

(o) Exercise any other powers conferred by the Declaration or bylaws;

(p) Exercise all other powers that may be exercised in Colorado by legal entities of the same type; and

(q) Exercise any other powers necessary and proper for the government and operation of the Association.

#### 4.3 Common Elements and Utilities.

(a) The Association shall be obligated to and shall provide for the care, operation, management, maintenance, improvement, repair and replacement of the common elements and for utility service to the common elements and to units. Without limiting the generality of the foregoing, said obligations shall include keeping the common elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from the common elements to permit access to the project and any unit; keeping the project safe, attractive and desirable; making necessary or desirable alterations, additions, betterments or improvements to or on the general common

elements; and paying utility charges except 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 but prior approval of the Association, acting through its officers or Executive Board, shall be required for all such work. Each unit owner shall afford to the Association all the other unit owners, and to the agents and employees, access through such owner's unit reasonably necessary for these purposes.

(b) If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair.

(c) Maintenance, repair or replacement of any drainage structure or facilities, or other public improvements required by the City of Aspen as a condition of development or any part thereof shall be the responsibility of the Association, unless such improvements have been dedicated to and accepted by the City of Aspen for the purpose of maintenance, repair, or replacement or unless such maintenance, repair, or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity.

(d) In addition to the liability that a Declarant as a unit owner has under this article, the Declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses. Unless the Declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the Declarant.

4.4 Conveyance or Encumbrance of Common Elements. ~~Neither~~ the common elements nor any portion thereof may be conveyed or subjected to a security interest by the Association.

4.5 Accounting, Billing and Record Keeping. The Association shall maintain such records, keep such accounts and do such billing and collecting as is needed in connection with its activities and under this Declaration. Financial records shall be sufficiently detailed to enable the Association to comply with Section 6.9 concerning statements of unpaid assessments.

4.6 Labor and Services. The 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. The 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. The Association may arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services to each unit.

4.7 Personal Property of Association. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Association, each 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 in the same proportion as their respective interests in the common elements.

4.8 Rules and Regulations. The Association may make and enforce reasonable and uniformly applied rules and regulations governing the use of units and of common elements. The Association shall make reasonable efforts to furnish each owner with a written copy of each rule or regulation adopted pursuant to this section. The Association may suspend any owner's voting rights in the Association or right to use any recreational facility which may be part of the common elements during any period or periods during which such owner fails to comply with such rules and regulations or with any other obligations of such owner under this Declaration. The Association may also take judicial action against any owner to enforce compliance with such rules, regulations or other obligations, or to obtain damages for noncompliance.

4.9 Implied Rights. The 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 law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.10 Association as Trustee. With respect to a third person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third person is not bound to inquire whether the Association has

the power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee.

## V. THE ASSOCIATION

5.1 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 property as provided in this Declaration and to further the interests of unit owners in the project. It shall have all powers necessary or desirable to effectuate these purposes.

5.2 Regular Membership. There shall be one regular membership in the Association for each unit, which regular membership shall be appurtenant to the fee simple title to such unit. Each unit owner shall automatically be the owner of the regular membership appurtenant to that unit and title to and ownership of the regular membership for the unit shall automatically pass with fee simple title to the unit. Each owner of the unit shall automatically be entitled to the benefits and subject to the burdens relating to the regular membership for that unit. If fee simple title to a unit is held by more than one (1) person or entity, the regular membership appurtenant to that unit 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 unit is held. Regular membership in the Association shall be limited to owners of units in the project.

### 5.3 Declarant's Membership.

(a) Declarant shall have and be deemed to hold a membership in the Association, proportionate to its ownership of units, for the period of time beginning on the date of incorporation of the Association and ending sixty (60) days after conveyance of seventy-five percent (75%) of the units in the project. As the holder of this membership, Declarant shall have the right to appoint 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 of the units, as a condition to amendment of this Declaration, amendment to the Articles of Incorporation of

the Association, amendment to the By-Laws 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) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the units that may be created to unit 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 unit owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the units that may be created to unit 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 unit owners other than Declarant.

#### 5.4 Executive Board.

(a) Not later than the termination of any period of Declarant membership, the unit owners shall elect an Executive Board of at least three (3) members and not more than five (5) members. A director must be a unit owner. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon termination of the period of Declarant membership.

(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 unit owners.

(c) The unit owners by a sixty-six and two-thirds percent (66.66%) vote of all persons present and entitled to vote at any meeting of the unit 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.

5.5 Voting of Owners; Proxies. Each unit owner shall have one (1) vote for the unit, without regard to the points assigned to

the unit for purposes of ownership of the common elements or allocation of common expense liability. If a unit is owned by one person, the right to vote shall be established by the record title thereto. In the event multiple owners of a unit as tenants in common, joint tenants, or otherwise, voting shall be as specified below.

(a) If only one (1) of the multiple owners of a unit is present at a meeting of the Association, such owner is entitled to cast all the votes allocated to that unit. If more than one (1) of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the Declaration expressly provides otherwise. There is majority agreement if any one (1) of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) Votes may be cast in person or by proxy. Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one (1) person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven (11) months after its date, unless it provides otherwise. No votes allocated to a unit owned by the Association may be cast.

5.6 Notices. Each unit 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 notices shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting. Any notice shall be deemed given and any budget or other information or material 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, postage or charges prepaid, addressed to the party, and in any event, when such party actually receives such notice, information or material. Any notice, information or material shall be deemed properly addressed to a unit 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 unit owner or, if a name and address is not furnished, if it is addressed to the unit owner at the address of the owner's unit.

5.7 Record Date. The Executive Board 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 budget or other information or material. 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 not be more than fifty (50) days prior to the date on which the particular action requiring determination of owners is proposed or expected to be taken or to occur. 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 Meetings. The meetings of the Association shall be held at least once each year. Special meetings of the Association may be called by the president, by a majority of the Executive Board, or by unit owners having twenty percent (20%), or any lower percentage specified in the By-Laws, of the votes in the Association. Not less than ten (10) nor more than fifty (50) days in advance of any meeting, the secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Executive Board.

5.9 Quorums.

(a) A quorum is deemed present throughout any meeting of the Association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the Executive Board are present, in person or by proxy at the beginning of the meeting.

(b) A quorum is deemed present throughout any meeting of the Executive Board if persons entitled to cast fifty percent (50%) of the votes on that Board are present at the beginning of the meeting.

5.10 Delivery of Property. Within sixty (60) days after the unit owners other than Declarant elect a majority of the members of the Executive Board, the Declarant shall deliver to the Association all property of the unit owners and of the Association held by or controlled by Declarant, including without limitation the following items:

(a) The original or a certified copy of the recorded Declaration as amended, the Association's Articles of Incorporation, Bylaws, minute books, other books and records, and any rules and regulations which may have been promulgated;

(b) An accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the period of Declarant membership ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the Association;

(c) The Association funds or control thereof;

(d) All of Declarant's tangible personal property that has been represented by Declarant to be the property of the Association or all of Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the common elements, and inventories of these properties;

(e) A copy of any plans and specifications used in the construction of the improvements which were completed within two (2) years before the Declaration was recorded;

(f) All insurance policies then in force, in which the unit owners, the Association, or its directors and officers are named as insured persons;

(g) Copies of any certificates of occupancy that may have been issued with respect to any improvements;

(h) Any other permits issued by governmental bodies applicable to the Association and which are currently in force or which were issued within one (1) year prior to the date on which unit owners other than Declarant took control of the Association;

(i) Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

(j) A roster of unit owners and mortgagees and their addresses and telephone numbers, if known, as shown on Declarant's records;

(k) Employment contracts in which the Association is a contracting party; and

(l) Any service contract in which the Association is a contracting party or in which the Association or the unit owners have any obligation to pay a fee to the persons performing the services.

5.11 Termination of Contracts. The following contracts and leases, if entered into before the Executive Board elected by the unit owners takes office, may be terminated without penalty by the Association, at any time after the Executive Board elected by the unit 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;

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

## VI. ASSESSMENTS

6.1 Declarant's Obligation. Until the Association makes a common expense assessment, Declarant shall pay all common expenses. After any assessment has been made by the Association, assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the Association.

### 6.2 Assessments - Generally.

(a) Each unit owner shall be obligated to pay and shall pay to the Association common expense assessments as hereinafter provided based on the points assigned to the unit of such unit owner, which amounts are herein called "assessments."

(b) Subject to the provisions hereof, the Executive Board 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 should be paid to the Association, and each unit owner shall be required to comply with any such determinations.

### 6.3 Budget and Determination of Amount of Common Expense Assessments.

(a) The total amount to be raised by assessments shall be determined for each fiscal period of the Association by the Executive Board of the Association. The amount to be raised by 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. The amount to be raised by assessments shall include amounts necessary to cover obligations made in connection with, or contemplated under, any previous budget.

(b) To determine the total amount required to be raised by assessments, the Executive Board shall cause to be prepared a budget 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.

(c) Within thirty (30) days after adoption of any proposed budget, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all unit owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the unit owners must be continued until such time as the unit owners ratify a subsequent budget proposed by the Executive Board.

6.4 Special Assessments for Capital Improvements. In addition to the assessments described above, the Association may levy special assessments, payable over such a 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, or for any other expense incurred or to be incurred as provided in this Declaration.

6.5 Supplementary Assessments. In the event the amount received by the Association on account of common expense or special assessments is less than the amount required by the Association, whether as a result of defaults by some unit owners in making payments or as a result of mistaken estimates in budgeting or otherwise, the Executive Board may, at any time, levy supplementary assessments to cover the deficiency.

6.6 Apportionment of Assessments. Except as specified above, the amount of any assessment, payable for the points assigned to the unit of an owner, shall be computed by multiplying the total amount to be raised by assessments by a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of points assigned to all units in the project.

6.7 Time for Payments. The amount of any assessment, charge, fine, penalty or other amount payable with respect to any unit owner, shall become due and payable as specified by the Executive Board of the Association and, in any event thirty (30) days after any notice of the amount due as to such assessment, charge, fine, penalty or other amount shall have been given by the Association to such unit owner, and any such amount shall bear interest at the rate of twelve percent (12%) per annum (or such

lesser rate as the Executive Board may, from time to time, by resolution, fix) from the date due and payable until paid.

6.8 Assessments for Limited Common Elements; Expenses Benefitting Less than all Units; Reallocation; No Waiver.

(a) Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, in the same proportion as the points assigned to each such unit.

(b) Any common expense or portion thereof benefitting fewer than all of the units shall be assessed exclusively against the units benefitted, and in the same proportion as the points assigned to each such unit.

(c) The costs of utilities shall be assessed in proportion to usage.

(d) If any common expense is caused by the misconduct of any unit owner, the Association may assess that expense exclusively against such owner's unit.

(e) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(f) No unit owner may be exempt from liability for payment of the common expense by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit against which the assessments are made.

6.9 Lien for Assessments.

(a) The Association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. Fees, charges, late charges, attorneys' fees, fines, and interest charged are enforceable as assessments. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except liens and encumbrances recorded before the recordation of the Declaration, or a security interest on the unit which has

priority over all other security interests on the unit and which was recorded before the date on which the assessment sought to be enforced became delinquent, or liens for real estate taxes and other governmental assessments or charges against the unit.

(c) A lien under this section is also prior to the security interests described above to the extent of an amount equal to the common expense assessments based on a periodic budget adopted by the Association which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution of an action to enforce the lien, but in no event shall the priority accorded to such lien under this section exceed one hundred fifty percent (150%) of the average monthly assessment during the immediately preceding fiscal year multiplied by six (6), and attorneys' fees and costs being incurred in an action to enforce the lien.

(d) This section does not affect the priority of mechanics' or materialmens' liens or the priority of liens for other assessments made by the Association. A lien under this section is not subject to the provisions of Part 2 of Article 41 of Title 38 or to the provisions of Section 15-11-201, C.R.S.

(e) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment is required.

(f) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments become due.

(g) This does not prohibit actions or suits to recover sums for which this section creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure.

(h) The Association shall be entitled to costs and reasonable attorneys' fees incurred by the Association in a judgment or decree in any action or suit brought by the Association under this section.

(i) The Association shall furnish to a unit owner or such unit owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage

prepaid, return receipt, to the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against such owner's unit. The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the Executive Board, and every unit owner. If no statement is furnished to the unit owner or holder of a security interest or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a priority lien upon the unit for unpaid assessments which were due as of the date of the request.

(j) In any action by an Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit owner to collect all sums alleged to be due from the unit owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's common expense assessments.

(k) The Association's lien may be foreclosed in like manner as a mortgage on real estate.

6.10 Liability of Owners, Purchasers and Encumbrances. The amount of any assessment, charge, fine or penalty payable with respect to any unit owner or unit shall be a joint and several obligation to the Association of such unit owner and such unit owner's heirs, personal representatives, successors and assigns. A party acquiring fee simple title to a unit shall be jointly and severally liable with the former unit owner for all such amounts which had accrued and were payable at the time of the acquisition of fee simple title to the unit by such party without prejudice to such party's right to recover any of said amounts paid from the former unit owner. 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, the holder of a mortgage, deed of trust or other lien on a unit shall not be liable for any such assessment, charge, fine or penalty and the lien for any such assessment, charge, fine or penalty shall be junior to any lien or encumbrance on a unit 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 a notice of failure to pay any such amount is recorded in said office, describing the unit.

6.11 Estoppel Certificate. Upon payment of a reasonable fee as determined from time to time by the Association and upon written request of any unit owner or any person with any right, title or interest in a unit or intending to acquire any right, title or interest in a 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 unit and the amount of the assessment for the current fiscal period of the Association payable with respect to the unit, which 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.

6.12 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for common expenses and any prepayment of or provision for reserves shall be credited to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

## VII. USE AND OTHER RESTRICTIONS

7.1 Occupancy and Resale Deed Restrictions. Ownership, use, occupancy, and resale of the project, including the units and common elements, is subject to the terms of the "Master Deed Restriction of the Aspen/Pitkin County Housing Authority's Occupancy and Resale Deed Restriction, Agreement, and Covenant," attached hereto as Exhibit C.

7.2 Restrictions on Use and Subdivision. Each unit shall be used for residential purposes only and none shall be used for any commercial or business purpose. No lands or structures within the West Hopkins project shall ever be occupied or used in any manner which is contrary to any zoning, subdivision or building restrictions of the City of Aspen, nor contrary to any rule or regulation promulgated by the Association pursuant hereto. No further subdivision of a unit is permitted.

7.3 Common Elements Restrictions. All use and occupancy of common elements shall be subject to and governed by rules and regulations of the Association. No unit owner shall obstruct, damage or commit waste to any of the common elements. Except as provided herein, no unit owner shall change, alter, repair or store anything in or on any of the common elements without the prior written consent of the Association.

7.4 No Imperiling of Insurance. No owner shall do anything or cause anything to be kept in or on the project which might result in an increase in the insurance premiums of insurance obtained for the project or which might cause cancellation of such insurance without the prior written consent of the Association.

7.5 No Violation of Law. No unit owner 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.

7.6 No Noxious, Offensive, Hazardous or Annoying Activities. No noxious or offensive activity shall be carried on upon any part of the project nor shall anything be done or placed on or in part of the project which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the project and no improvements shall be made or constructed on any part of the project which are or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the project which is unreasonably loud or annoying. No odor shall be emitted on any part of the project which is noxious or offensive to others. No light shall be emitted from any part of the project which is unreasonably bright or causes unreasonable glare.

7.7 No Unsightliness. No unsightliness shall be permitted on or in any part of the project. Without limiting the generality of the foregoing, nothing shall be kept or stored on or in any of the common elements, nothing shall be hung or placed on any of the common elements, and nothing shall be placed on or in windows or doors of units which would or might create an unsightly appearance.

7.8 Restriction on Signs. No signs or advertising devices of any nature shall be erected or maintained on any part of the project without the prior written consent of the Association.

7.9 Antennas. No radio, television or other type of antenna shall, without the written consent of the Association, be installed or maintained on the buildings.

7.10 Maintenance of Units and Common Elements. Each unit and all improvements, fixtures and furniture and equipment therein shall be kept and maintained by the unit owner in a clean, safe, attractive and sightly condition and in good repair. No structural alterations within any unit or with respect to any common elements shall be made and no electrical, plumbing or similar work within any unit (except minor repair work localized within the unit not affecting these overall utility systems) shall be done without the prior written consent of the Association.

7.11 Owner Caused Damage. If, due to the act or neglect of a unit owner, loss or damage shall be caused to any person or property, including the project or any unit therein, such unit 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 unit owner. The amount of such loss or damage may be collected by the Association from such unit owner as a special assessment against such unit owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the unit of such unit owner as provided elsewhere in this Declaration for assessments or other charges.

7.12 No Impairment of Structural Integrity. Nothing shall be done, without the written consent of the Association, in, on or to, any unit or the common elements, or any portion thereof, which might impair the structural integrity of the buildings or which would structurally change the buildings.

7.13 No Violation of Rules. No unit owner shall violate the provisions of this Declaration or the rules and regulations accepted from time to time by the Association whether relating to the use of the units, the use of the common elements or otherwise.

7.14 Responsibilities of Owners. Whenever this Declaration or any rule or regulation of the Association prohibits any action of, or assigns responsibility to, any unit owner and any provision of the Declaration or rule or regulation is violated by a tenant, licensee or guest of any unit owner (or anyone occupying the premises with his consent), the unit owner shall be responsible for any such violation to the same extent as if the unit owner had committed the same (except to the extent that such liability is prohibited by law).

## VIII. INSURANCE

### 8.1 Insurance Requirements Generally.

(a) Commencing not later than the time of the first conveyance of a unit to a person other than Declarant, the Association shall 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, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Colorado. All such insurance, to the extent possible, shall name the Association as the insured, in its

individual capacity and also either as attorney-in-fact or trustee for all unit owners.

(b) The cost and expense of all insurance obtained by the Association, except insurance covering additions, alterations or improvements made to a unit by a unit owner or other insurance obtained at the request of and specifically benefitting any particular unit owner, shall be a common expense to be covered by assessments as elsewhere provided in this Declaration.

### 8.2 Property Insurance.

(a) The Association shall obtain and maintain property insurance insuring the common elements and each unit against loss or damage by fire and such other hazards as are covered under standard extended coverage policies, vandalism and malicious mischief and, if available and is deemed appropriate by the Association, war risk, for the full insurable replacement cost of the project, including each unit.

(b) The total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Such insurance must include the units, but not the finished interior surfaces of the walls, floors, and ceilings of the units. The insurance need not include improvements and betterments installed by unit owners, but if they are covered, any increased charge shall be assessed by the Association to those unit owners.

8.3 Commercial General Liability Insurance. The Association shall obtain and maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements in the amount of \$1,000,000.00 for each occurrence including bodily injury and/or property damage, insuring the Executive Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a unit owner and board member. The unit owners shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements and, in cooperatives, also of all units. The

insurance shall cover claims of one or more insured parties against other insured parties.

8.4 Insurance by Owners. Except to the extent coverage therefor may be obtained by the Association and be satisfactory to a unit owner, each unit owner shall be responsible for obtaining insurance he deems desirable, including insurance covering furnishings and personal property belonging to that unit owner and covering personal liability of that unit owner.

8.5 Unavailability of Insurance - Notice. If the insurance described in Sections 8.2 and 8.3 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners.

8.6 Required Provisions. Insurance policies carried pursuant to Sections 8.2 and 8.3 must provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of such unit owner's interest in the common elements or membership in the Association;

(b) The insurer waives its rights to subrogation under the policy against any unit owner or member of his household;

(c) No act or omission by any unit owner, unless acting within the scope of such unit owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

8.7 Application of Proceeds. Any loss covered by the property insurance policy described in this Section 8.7 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association unit owners and lienholders as their interests may appear. Subject to the provisions of this Section 8.7, the proceeds must be disbursed

first for the repair or restoration of the damaged property, and the Association, unit owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the project is terminated. In the event of a surplus, proceeds shall go to the owners in proportion to their interests in the common elements.

8.8 Other Insurance by Association. The 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, directors, employees and agents of the Association.

8.9 Owner-Increased Premiums. In the event that, as a consequence of the hazardous use of any unit, or of any owner installed improvements to any unit, the premiums of any policy of insurance purchased by the Association are increased, or a special policy is required, the cost of such increase or specific policy shall be assessed to the unit owner of such unit.

8.10 Policies and Procedures. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent unit owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than one unit is damaged by a loss, the Association in its reasonable discretion may assess each unit owner a pro rata share of any deductible paid by the Association.

8.11 Certificate of Insurance - Renewal. An insurer that has issued an insurance policy for the insurance described in Sections 8.2 and 8.3 shall issue certificates or memoranda of insurance to the Association, and, upon request, to any unit owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and each unit owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

8.12 Destruction or Damage to Property.

(a) Any portion of the project for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association unless the project is terminated, or repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or eighty percent (80%) of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild, or prior to the conveyance of any such unit to a person other than Declarant, the holder of a deed of trust or mortgage on the damaged portion of the project rightfully demands all or a substantial part of the insurance proceeds.

(b) The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the project is not repaired or replaced, the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the project, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear, and the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear in proportion to the common element interests of all the units.

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

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

(a) "Substantial Destruction" shall mean any casualty, damage or destruction to the project or any part thereof if the estimate costs or 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.

(b) "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.

(c) "Substantial Obsolescence" shall exist whenever sixty six and two-thirds percent (66.66%) in interest of the unit owners 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.

(d) "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.

(e) "Restored Value" shall mean the value of the project of restoration as estimated by the Association.

(f) "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 special assessments.

(g) "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 unit for the condemnation or taking of that owner's unit.

9.2 Restoration of the Project. Subject to the requirements of Section 8.12, restoration of the project shall be undertaken by the Association without a vote of unit 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 eighty percent (80%) in interest of all Owners and eighty percent (80%) 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 unit owner, or mortgagee of a unit owner, in proportion of such unit 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 eighty percent (80%) in interest of all unit owners and consent to restoration of eighty percent (80%) 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 unit owner, or the mortgagee of a unit owner, in proportion to such unit owner's undivided interest in common elements.

9.4 Authority of Association to Restore or Sell. The Association, as attorney-in-fact for each unit owner, shall have full power and authority to restore or to sell, as the case may be, the project and each unit in the project whenever restoration or sale, as the case may be, is to be undertaken as herein 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 Association, as trustee for all of the unit 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 Association may levy and collect assessments from each unit owner in proportion to each unit 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 unit of each owner as in the case of regular assessments. Notwithstanding any other provision in this Declaration, in the event of 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 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 a particular unit or to improvements of a unit owner therein shall be apportioned to the unit owner of that unit except to the extent used for restoration of that 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 to owners of units which were not taken or condemned in proportion to their respective undivided interests in the common elements; and second, the amounts allocated to consequential damages or for other purposes shall be apportioned as the Association determines to be equitable under the circumstances.

9.8 Eminent Domain.

(a) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking. Any remnant of a unit remaining after part of a unit is taken under this section is thereafter a common element.

(b) Except as provided above, if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(i) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit or on any other basis specified in the declaration; and

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

(c) If part of the common elements is acquired by eminent domain, that portion of any award attributable to the common elements taken must be paid to the Association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition. For the purposes of acquisition of a part of the common elements other than the limited common elements under this section, service of process on the Association shall constitute sufficient notice to all unit owners, and service of process on each individual unit owner shall not be necessary.

(d) The court decree shall be recorded in Pitkin County.

(e) The reallocation of allocated interests pursuant to this section shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

## X. MISCELLANEOUS

### 10.1 Amendment of Declaration.

(a) Except as otherwise specified by statute or a specific provision of this Declaration, the Declaration, including the plats and maps, may be amended only by a vote or agreement of unit owners of units to which at least sixty seven percent (667%) of the votes in the Association are allocated,

(b) No action to challenge the validity of an amendment adopted by the Association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the Declaration must be recorded in Pitkin County in and is effective only upon recordation. An amendment must be indexed in the grantee's index in the name of the West Hopkins Condominiums and the Association and in the grantor's index in the name of each person executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of law, no amendment may create or increase special Declarant rights, increase the number of units, or change the boundaries of any unit or the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.

(e) Amendment to the Declaration to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by the secretary or the president of the Association.

(f) All expenses associated with preparing and recording an amendment to the Declaration shall be the sole responsibility of the Association.

(g) At any time until the first unit is conveyed by Declarant as reflected by a deed recorded in the office of the Clerk and Recorder of Pitkin County, Colorado, Declarant may revoke this Declaration and the condominium 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.

#### 10.2 Termination.

(a) Except in the case of a taking of all the units by eminent domain, the Association may be terminated only by agreement of unit owners of units to which at least two-thirds (2/3) of the votes in the Association are allocated.

(b) An agreement of unit owners to terminate must be evidenced by their execution of a termination agreement or ratifications thereof in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in Pitkin County and if effective only upon recordation.

(c) Subject to the provisions of a termination agreement, the Association, on behalf of the unit owners, may contract for the sale of real estate following termination, but the contract is not binding on the unit owners until approved pursuant to Subsection (a) and (b) of this section. If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the Association as trustee for the holders of all interests in the units. Thereafter, the Association has all the powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all the powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in accordance with Subsections (f) and (g) of this section. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this Declaration.

(d) If the real estate constituting the common interest community is not to be sold following termination, title to the common elements vests in the unit owners upon termination as tenants in common in proportion to their respective interests and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted such unit.

(e) Following termination, the proceeds of any sale of real estate, together with the assets of the Association, are held by the Association as trustee for unit owners and holders of liens on the units as their interests may appear.

(f) Following termination, creditors of the Association holding liens on the units, which were perfected as a result of a judgment before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the Association are to be treated as if they had perfected liens on the units immediately before termination.

(g) The respective interests of unit owners referred to above are as follows:

(i) Except as provided in Paragraph (ii) of this Subsection (g), the respective interests of unit owners are the fair market values of their units, allocated interests, and any limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved within thirty (30) days after distribution by unit owners of units to which twenty five percent (25%) of the votes in the Association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(ii) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination; in a cooperative, their respective ownership interests immediately before the termination; and in a planned community, their respective common expense liabilities immediately before the termination.

(h) If a lien or encumbrance against a portion of the real estate has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community. The Executive Board shall reallocate interests as if the foreclosed section were taken by eminent domain by an amendment to the declaration prepared, executed, and recorded by the Association.

10.3 Construction of Declaration. In the event of a conflict between the provisions of this Declaration and the Bylaws, the Declaration prevails, except to the extent that the Declaration is inconsistent with the CCIOA.

10.4 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 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 unit by a unit owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such unit owner, and, as a personal covenant, shall be binding on such unit owner and such unit owner's heirs, personal representatives, successors and assigns and, as a personal covenant to, with and for the benefit of the Association but not to, with or for the benefit of any other unit owner;

(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 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 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 unit in favor of the Association.

10.5 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. The rule against perpetuities does not apply to defeat any provision of this Declaration or rules and regulations adopted pursuant hereto.

10.6 Enforcement and Remedies. Each provision of this Declaration with respect to a unit owner or the unit 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 unit owner fails to comply with any such provisions, by denial of all voting rights of such unit owner and exclusion of

such unit owner and such unit owner's guests from use of any common elements.

If any person subject to the provisions of this Declaration fails to comply with any of its provisions or any provision of the Bylaws, Articles, or rules and regulations, any person or class of persons adversely affected by the failure to comply may require reimbursement for collection costs and reasonable attorneys' 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 of such claim the prevailing party's reasonable collection costs and attorneys' fees and costs incurred in asserting or defending the claim.

10.7 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 unit 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 unit and listing the name or names of the unit owner or unit owners of fee simple title to the unit and giving notice of such violation, breach or failure to comply; nor shall such violation, breach or failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such 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 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.

10.8 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 unit 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.

10.9 Tort and Contract Liability. Neither the Association nor any unit 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 unit 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 unit owner for all tort losses not covered by insurance suffered by the Association or that unit 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 attorneys' fees, incurred by the Association. Any statute of limitation affecting the Association's right of action under this section is tolled until the period of Declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section by being a unit 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.

10.10 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Association, and each unit owner and the heirs, personal representatives, successors and assigns of each.

10.11 Severability. Invalidity or unenforceability of any provisions 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.

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

10.13 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

ASPEN/PITKIN COUNTY HOUSING AUTHORITY

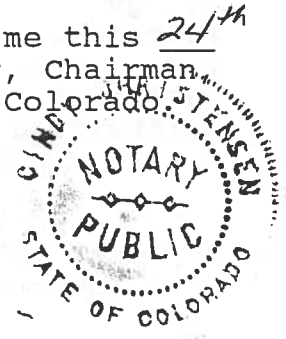
By   
David Myler, Chairman


STATE OF COLORADO    )  
                                  )    ss.  
COUNTY OF PITKIN    )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of February, 1993, by David Myler, Chairman, Aspen/Pitkin County Housing Authority, Pitkin County, Colorado.

Witness my hand and official seal.

My commission expires: July 22, 1996



  
Notary Public

#354318 02/25/93 11:24 Rec \$300.00 BK 704 PG 550  
Silvia Davis, Pitkin Cnty Clerk, Doc \$.00

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lot 1 of the West Hopkins Townhomes Subdivision, pursuant to the subdivision plat recorded in Book 29 Page 20 of the Records of the Pitkin County Clerk and Recorder, Pitkin County, Colorado

EXHIBIT "B"  
UNIT ALLOCATIONS OF COMMON AREA INTEREST AND ASSESSMENTS

| Unit | Points | Percentage |
|------|--------|------------|
| A-1  | 1.15   | 10.4%      |
| A-2  | 1.05   | 9.6%       |
| A-3  | 1.05   | 9.6%       |
| A-4  | 1.15   | 10.4%      |
| B-1  | 1.18   | 10.8%      |
| B-2  | 1.05   | 9.6%       |
| B-3  | 1.05   | 9.6%       |
| B-4  | 1.35   | 12.3%      |
| C-1  | 0.68   | 6.2%       |
| C-2  | 0.64   | 5.8%       |
| C-3  | 0.64   | 5.8%       |
|      | 11     | 100%       |

EXHIBIT C

MASTER DEED RESTRICTION OF  
THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY'S  
OCCUPANCY AND RESALE DEED RESTRICTION,  
AGREEMENT, AND COVENANT

THIS OCCUPANCY AND RESALE DEED RESTRICTION, AGREEMENT AND COVENANT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by \*\* \_\_\_\_\_ ("Owner"), for the benefit of the parties and enforceable by the ASPEN/PITKIN COUNTY HOUSING AUTHORITY (hereinafter referred to as "APCHA"), a duly constituted Multi-jurisdictional Housing Authority established pursuant to the AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT by and between the City of Aspen, Colorado (the "City") and Pitkin County, Colorado (the "County"), dated September 26, 1989 and recorded in Book 605 at Page 751 of the records of the Pitkin County Clerk and Recorder's Office.

W I T N E S S E T H:

WHEREAS, Owner has purchased from the APCHA at a price of \$\*\* \_\_\_\_\_, and owns as a result of that certain warranty deed executed on the date hereof, an approximate \*\* \_\_\_\_\_ square foot dwelling ("Dwelling") located on the real property more specifically described in Exhibit "A" attached hereto and incorporated herein. For purposes of this Agreement, the dwelling, the real property and all appurtenances, improvements and fixtures associated therewith shall hereinafter be referred to as the "Property"; and

WHEREAS, as a condition of the sale to the Owner of the Property, the Owner is required to enter into this Agreement; and

WHEREAS, Owner agrees to restrict the acquisition or transfer of the Property to "Qualified Buyers," as that term is defined in this Agreement, who fall within the Category \*\* \_\_\_\_\_ income range established and adopted by the APCHA from time to time in its Affordable Housing Guidelines. In addition, the Owner agrees that this Agreement shall constitute a resale agreement setting forth the maximum sale price for which the Property may be sold ("Maximum Sale Price"), the amount of appreciation and the terms and provisions controlling the resale of the Property should Owner desire to sell the Property at any time after the date of this Agreement. Finally, by this Agreement, Owner agrees to restrict the Property against use and occupancy inconsistent with this Agreement.

WHEREAS, "Qualified Buyers" are natural persons meeting the income, residency and all other qualifications set forth in the Aspen/Pitkin County Housing Authority Affordable Housing Guidelines ("the Affordable Housing Guidelines"), or its substitute, as

\*\*To be determined by a later recorded memorandum encumbering each individual lot.

adopted by the APCA, or its successor, and in effect at the time of the closing of the sale from Owner to the Qualified Buyer and who must represent and agree pursuant to this Agreement to occupy the Property as their sole place of residence, not to engage in any business activity on the Property other than a valid home occupation. A valid home occupation for the purposes of this agreement is permitted to the extent that it is not inconsistent with the land use provisions of the Aspen Municipal Code as in effect from time to time and subject to the applicable licensing and taxation requirements of the City.

NOW THEREFORE, for value received, the receipt and sufficiency of which is hereby acknowledged, Owner hereby represents, covenants and agrees as follows:

1. The use and occupancy of the Property shall henceforth be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers and their families.
2. Owner is a Qualified Buyer and, in connection with the purchase of this Property, Owner agrees (i) to occupy the Property as his or her sole place of residence during the time that the Property is owned by the Owner, (ii) not to engage in any business activity on or in the Property other than a valid home occupation as allowed by the Aspen Municipal Code as in effect from time to time, (iii) to sell or otherwise transfer the Property only in accordance with this Agreement and the Affordable Housing Guidelines, and (iv) not to permit any use or occupancy of the Property except in compliance with this Agreement.
3. (a) It shall be a breach of this Agreement for Owner to default in payments or other obligations due or to be performed under a promissory note secured by a first deed of trust encumbering the Property. Owner hereby agrees to notify the APCA, in writing, of any notification Owner receives from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a first deed of trust, as described herein, within five calendar days of Owner's notification from lender, or its assigns, of said default or past due payments.
- (b) Upon notification from Owner, as provided above, or other notice of such default, the APCA may offer loan counseling or distressed loan services to Owner, if any of these services are available, and is entitled to require Owner to sell the Property to avoid the commencement of any foreclosure proceeding against the Property. In the event that the APCA determines that sale of the Property is necessary, Owner shall immediately execute a

standard Listing Contract on forms approved by the Colorado Real Estate Commission with the APCA, providing for a 30-day listing period. If a sales contract has not been executed within the initial 30-day period, Owner shall extend the listing period for an additional 180 days, provided such extension does not conflict with the statutory rights of any secured creditors. The APCA shall promptly advertise the Property for sale by competitive bid to Qualified Buyers. Owner shall, upon closing, pay a fee to the APCA in an amount equal to two percent (2%) of the sales price. In the event of a listing of the Property pursuant to this Paragraph 3., the APCA is entitled to require Owner to accept the highest of any qualified bids which satisfies the Owner's financial or other obligations due under the promissory note secured by a first deed of trust and deed of trust in favor of the APCA, as described herein, and to sell the Property to such qualified bidder.

- (c) Upon receipt of notice as provided in paragraphs 3 (a) and (b), the APCA shall have the right, in it's sole discretion, to cure the default or any portion thereof. In such event the Owner shall be personally liable to the APCA for past due payments made by the APCA together with interest thereon at the rate specified in the promissory note secured by the first deed of trust, plus one percent (1%), and all actual expenses of the APCA incurred in curing the default. Owner shall be required by the APCA to execute a promissory note secured by deed of trust encumbering the Property in favor of the APCA for the amounts expended by the APCA as specified herein, including future advances made for such purposes. Owner may cure the default and satisfy it's obligation to the APCA under this subparagraph at any time prior to execution of a contract for sale, upon such reasonable terms as specified by the APCA. Otherwise, Owner's indebtedness to the APCA shall be satisfied from the Owner's proceeds at closing.
4. This Agreement shall constitute covenants running with the real property, described in Exhibit A, as a burden thereon, for the benefit of, and shall be specifically enforceable by the APCA or the City and their respective successors and assigns, as applicable, by any appropriate legal action including but not limited to specific performance, injunction, reversion, or eviction of non-complying owners and/or occupants.
5. In the event that the Owner desires to sell the Property, Owner shall execute a standard Listing Contract on forms approved by the Colorado Real Estate Commission with the APCA providing for a 180-day listing period, or such

other time period as required by the APCA Affordable Housing Guidelines in effect at time of listing. The APCA shall promptly advertise the Property for sale by competitive bid to Qualified Buyers. Owner shall, upon closing, pay a fee to the APCA in an amount equal to two percent (2%) of the sales price. If FNMA type financing is used there may be a fee charged by the APCA, based on the amount financed. The amount of this fee to be paid by the Purchaser shall be as set forth in the current Affordable Housing Guidelines and will be distributed to the APCA Mortgage Fund Account.

MAXIMUM SALE PRICE

6. In no event shall the Property be sold for an amount ("Maximum Sale Price") in excess of the lesser of:
  - (a) \$\*\* \_\_\_\_\_, plus an increase of three percent (3%) of such price per year from the date of purchase to the date of Owner's notice of intent to sell (prorated at the rate of .25 percent for each whole month for any part of a year); or
  - (b) an amount (based upon the Consumer Price Index, All Items, U.S. City Average, Urban Wage Earners and Clerical Workers (Revised), published by the U.S. Department of Labor, Bureau of Labor Statistics) calculated as follows: the Owner's purchase price multiplied by the Consumer Price Index last published prior to the date of Owner's notice of intent to sell divided by the Consumer Price Index current at the date of this Agreement. In no event shall the multiplier be less than one (1). For purposes of this Agreement, "date of intent to sell" shall be the date of execution of a listing contract when required by this agreement, or if a listing contract is not otherwise necessary, the date shall be determined to be the date upon which a requirement for the Owner to sell is first applicable.

NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE APCA, THE CITY OR THE COUNTY THAT ON SALE THE OWNER SHALL OBTAIN THE MAXIMUM SALE PRICE.

7. (a) For the purpose of determining the Maximum Sale Price in accordance with this Section, the Owner may add to the amount specified in Paragraph 6 above, fifty percent (50%) of the cost of Permitted Capital Improvements, as defined in Exhibit "B", attached hereto and incorporated herein, in a total

amount not to exceed \$\*\*\_\_\_\_\_, which is ten percent (10%) of the initial listed purchase price set forth in paragraph 6(a) above. All such Permitted Capital Improvements installed or constructed over the life of the unit shall qualify. However, the allowance permitted by this subsection is a fixed amount, which shall be calculated on a cumulative basis applicable to the owner and all subsequent purchasers, and shall not exceed the maximum dollar amount set forth in this subsection 7(a).

- (b) Permitted Capital Improvements shall not include any changes or additions to the Property made by the Owner during construction or thereafter, except in accordance with Paragraph 7(a) above. Permitted Capital Improvements shall not be included in the APCA's listed purchase price, even if made or installed during original construction.
- (c) In order to qualify as Permitted Capital Improvements, Owner must furnish to the APCA the following information with respect to the improvements which the Owner seeks to include in the calculation of Maximum Sale Price:
  - (i) Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;
  - (ii) Owner's affidavit verifying that the receipts are valid and correct receipts tendered at the time of purchase; and
  - (iii) True and correct copies of any building permit or certificate of occupancy required to be issued by the Aspen/Pitkin County Building Department with respect to the Permitted Capital Improvements.
- (d) For the purpose of determining the Maximum Sale Price in accordance with this Section, Owner may also add to the amount specified in Paragraphs 6 and 7(a), the cost of any permanent improvements constructed or installed as a result of any requirement imposed by any governmental agency, provided that written certification is provided to the APCA of both the applicable requirement and the information required by Paragraph 7(c)(i)-(iii).
- (e) In calculating the costs under Paragraphs 7(a) and

7(d), only the Owner's actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to Owner's "sweat equity" or to any appreciation in the value of the improvements.

8. All disputes between Owner and the administrative staff of the APCA shall be heard in accordance with the grievance procedures set forth in the Affordable Housing Guidelines.
9. Owner shall not permit any prospective buyer to assume any or all of the Owner's customary closing costs nor accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer.
10. In the event that one qualified bid is received equal to the Maximum Sale Price herein established, the Property shall be sold to such bidder at the Maximum Sale Price; and in the event Owner receives two or more such bids equal to the Maximum Sale Price, the Qualified Buyer shall be selected according to the priority for Sale Units set forth in the Affordable Housing Guidelines; and, in the event that all such qualified bidders are of equal priority pursuant to the Affordable Housing Guidelines, the Qualified Buyer shall be selected by lottery among the qualified bidders, whereupon the Property shall be sold to the winner of such lottery at the Maximum Sale Price. If the terms of the purchase contract, other than price, as initially presented to the Owner, are unacceptable to the Owner, there shall be a mandatory negotiation period of three (3) business days to allow the Owner and potential buyer to reach an agreement regarding said terms, including but not limited to the closing date and financing contingencies. If, after the negotiation period is over, the Owner and buyer have not reached agreement, the next bidder's offer will then be presented to the Owner for consideration and a three (3) business day negotiating period will begin again. The Owner may reject any and all bids, however, the Owner is subject to the provisions in the Affordable Housing Guidelines pertaining to the listing fee. Bids in excess of the Maximum Sale Price shall be rejected. If all bids are below Maximum Sale Price, Owner may accept the highest qualified bid. If all bids are below Maximum Sale Price and two or more bids are for the same price, the Qualified Buyer shall be selected by lottery from among the highest qualified bidders.
11. In the event that title to the Property vests by descent in individuals and/or entities who are not Qualified

Buyers as that term is defined herein, (hereinafter "Non-Qualified Transferee(s)"), the Property shall immediately be listed for sale as provided in Paragraph 5 above (including the payment of the specified fee to the APCHA), and the highest bid by a Qualified Buyer, for not less than ninety-five percent (95%) of the Maximum Sale Price or the appraised market value, whichever is less, shall be accepted; if all bids are below ninety-five percent (95%) of the Maximum Sale Price or the appraised market value, the Property shall continue to be listed for sale until a bid in accordance with this section is made, which bid must be accepted. The cost of the appraisal shall be paid by the Non-Qualified Transferee(s).

- (a) Non-Qualified Transferee(s) shall join in any sale, conveyance or transfer of the Property to a Qualified Buyer and shall execute any and all documents necessary to do so; and
- (b) Non-Qualified Transferee(s) agree not to (i) occupy the Property, (ii) rent all or any part of the Property, except in strict compliance with Paragraph 15 hereof; (iii) engage in any business activity on or in the Property, (iv) sell or otherwise transfer the Property except in accordance with this Agreement and the Affordable Housing Guidelines, or (v) sell or otherwise transfer the Property for use in a trade or business.
- (c) The APCHA and the City, or their respective successors, as applicable, shall have the right and option to purchase the Property, exercisable within a period of fifteen (15) calendar days after receipt of notice submitted to the APCHA by a Non-Qualified Transferee(s) of its acquisition of the property. In the event of exercising their right and option, the APCHA or the City shall purchase the Property from the Non-Qualified Transferee(s) for a price of ninety-five percent (95%) of the Maximum Sale Price, or the appraised market value, whichever is less. The notice shall be made by the Non-Qualified Transferee to the APCHA within fifteen (15) days of acquisition of the Property by the Non-Qualified Transferee.
- (d) Where the provisions of this Paragraph 11 apply, the APCHA may require the Owner to rent the Property in accordance with the provisions of Paragraph 15, below.

OWNER RESIDENCE

12. Owner represents and warrants that the Property shall be and is to be utilized only as the sole and exclusive place of residence of Owner.
13. Owner agrees that, in the event Owner changes domicile or ceases to utilize the Property as his sole and exclusive place of residence, the Property will be offered for sale pursuant to the provisions of Paragraph 11 of this Agreement. Owner shall be deemed to have changed Owner's domicile by becoming a resident elsewhere or accepting permanent employment outside Pitkin County, or residing on the Property for fewer than nine (9) months per calendar year without the express written approval of the APCA. Where the provisions of this Paragraph 13 apply, the APCA may require the Owner to rent the Property in accordance with the provisions of Paragraph 15, below.
14. If at any time the Owner of the Property also owns any interest alone or in conjunction with others in any developed residential property or dwelling unit(s) located in Eagle, Garfield, Gunnison or Pitkin Counties, Owner agrees to immediately list said other property or unit for sale and to sell owner's interest in such property at a sales price comparable to like units or properties in the area in which the property or dwelling unit(s) are located. In the event said other property or unit has not been sold by Owner within one hundred twenty (120) days of its listing, then Owner hereby agrees to immediately list this Property for sale pursuant to the provisions of Paragraph 11 of this Agreement. It is understood and agreed between the parties hereto that, in the case of an Owner whose business is the construction and sale of residential properties or the purchase and resale of such properties, the properties which constitute inventory in such an Owner's business shall not constitute "other developed residential property" or "dwelling unit(s)" as those terms are used in this Paragraph 14.

RENTAL

15. Owner may not, except with prior written approval of the APCA, and subject to the APCA's conditions of approval, rent the Property for any period of time. Prior to occupancy any tenant must be approved by the Homeowner's Association, if applicable, and the APCA in accordance with the income, occupancy and all other qualifications established by the APCA in its Affordable Housing Guidelines. The APCA shall not approve any rental if such rental is being made by Owner to utilize the

Property as an income producing asset, except as provided below, and shall not approve a lease with a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to the APCHA prior to occupancy by any tenant. Any such lease approved by the APCHA shall be the greater of owner's cost or the rent established in accordance with the Affordable Housing Guidelines for units which were constructed in the year in which the subject unit was deed restricted at the appropriate income category. Owner's cost as used herein includes the monthly expenses for the cost of principal and interest payments, taxes, property insurance, condominium or homeowners assessments, utilities remaining in owner's name, plus an additional twenty dollars (\$20.00) and a reasonable (refundable) security deposit.

The requirements of this Paragraph shall not preclude the Owner from sharing occupancy of the Property with non-owners on a rental basis provided Owner continues to meet the obligations contained in this Agreement, including Paragraph 12.

16. IN NO EVENT SHALL THE OWNER CREATE AN ADDITIONAL DWELLING UNIT, AS DEFINED IN THE PITKIN COUNTY OR CITY OF ASPEN LAND USE CODE, IN OR ON THE PROPERTY.
17. NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE THE APCHA TO PROTECT OR INDEMNIFY THE OWNER AGAINST ANY LOSSES ATTRIBUTABLE TO THE RENTAL INCLUDING (NOT BY WAY OF LIMITATION) NON-PAYMENT OF RENT OR DAMAGE TO THE PREMISES; NOR TO REQUIRE THE APCHA TO OBTAIN A QUALIFIED TENANT FOR THE OWNER IN THE EVENT THAT NONE IS FOUND BY THE OWNER.

#### BREACH

18. In the event that the APCHA has reasonable cause to believe the Owner is violating the provisions of this Agreement, the APCHA by its authorized representative may inspect the Property between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, after providing the Owner with no less than 24 hours' written notice.
19. The APCHA, in the event a violation of this Agreement is discovered, shall send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. Said notice shall state that the Owner may request a hearing before the APCHA within fifteen (15) days to determine the merits of the allegations. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Agreement.

If a hearing is held before the APCA, the decision of the APCA based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

#### REMEDIES

20. There is hereby reserved to the parties hereto any and all remedies provided by law for breach of this Agreement or any of its terms. In the event the parties resort to litigation with respect to any or all provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.
21. In the event the Property is sold and/or conveyed without compliance herewith, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer. Each and every conveyance of the Property, for all purposes, shall be deemed to include and incorporate by this reference, the covenants herein contained, even without reference therein to this Agreement.
22. In the event that the Owner fails to cure any breach, the APCA may resort to any and all available legal action, including, but not limited to, specific performance of this Agreement or a mandatory injunction requiring sale of the Property by Owner as specified in Paragraphs 3, 11, 13, and 14. The costs of such sale shall be taxed against the proceeds of the sale with the balance being paid to the Owner.
23. In the event of a breach of any of the terms or conditions contained herein by Owner, his heirs, successors or assigns, the APCA's initial listed purchase price of the Property as set forth in Section 6(a) of this Agreement shall, upon the date of such breach as determined by the APCA, automatically cease to increase as set out in paragraph 6 of this Agreement, and shall remain fixed until the date of cure of said breach.

#### FORECLOSURE

If FNMA type financing is used to purchase the Property, as determined by the APCA, the APCA and the City Council may, pursuant to that certain Option to Buy executed and recorded of even date herewith, the terms of which are incorporated in this Agreement by this reference as if fully set forth herein, agree to release and waive their ability to enforce the resale deed restrictions contained herein, in the event of foreclosure, provided that said Option to Buy grants to the APCA or

the City, as the designee of the APCA, the option to acquire the Property within thirty (30) days after the issuance of a public trustee's deed to the holder (including assigns of the holder) of the promissory note secured by a first deed of trust for an option price not to exceed the redemption price on the last day of all statutory redemption period(s) and any additional reasonable costs incurred by the holder during the option period which are directly related to the foreclosure.

In the event that the APCA or the City, as the designee of the APCA, exercise the option pursuant to the terms of that certain Option to Buy, described above, the APCA, and/or its designee, may sell the Property to Qualified Buyers as that term is defined herein, or rent the Property to qualified tenants who meet the income, occupancy and all other qualifications, established by the APCA in its Affordable Housing Guidelines until sale to a Qualified Buyer is effected.

#### GENERAL PROVISIONS

24. Notices. Any notice, consent or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement.
25. Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:
- To Owner:           \*\*
- To APCA:            Director  
Aspen/Pitkin County Housing Authority  
39551 Highway 82  
Aspen, Colorado 81611
26. Exhibits. Exhibit A, attached hereto, is incorporated herein and by this reference made a part hereof.
27. Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such manner as to be valid under applicable law; but, if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the

remaining provisions of such document.

28. Choice of Law. This Agreement and each and every related document is to be governed and construed in accordance with the laws of the State of Colorado.
29. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.
30. Section Headings. Paragraph or section headings within this Agreement are inserted solely for convenience of reference, and are not intended to, and shall not, govern, limit or aid in the construction of any terms or provisions contained herein.
31. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Agreement. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.
32. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.
33. Personal Liability. Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.
34. Further Actions. The parties to this Agreement agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.
35. Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by both parties and recorded with the Clerk and Recorder of Pitkin County, Colorado. Notwithstanding the foregoing, the APCHA reserves the right to amend this Agreement unilaterally where deemed necessary to effectuate the purpose and intent of this Agreement, and where such unilateral action does not materially impair the Owner's rights under this Agreement.

36. Owner and Successors. The term "Owner" shall mean the person or persons identified at the beginning of this Agreement and any other person or persons who shall acquire an ownership interest in the Property in compliance with the terms and provisions of this Agreement; it being understood that such person or persons shall be deemed an "Owner" hereunder only during the period of his, her or their ownership interest in the Property and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year above first written.

OWNER: \*\*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address:

OWNER: \*\*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address:

\*\*To be determined by a later recorded memorandum encumbering each individual condominium unit.

DECLARATION BY THE ASPEN/PITKIN COUNTY HOUSING AUTHORITY

The foregoing Master Deed Restriction of the Aspen/Pitkin County Housing Authority's Occupancy and Resale Deed Restriction, Agreement and Covenant and its terms are hereby adopted and declared by The Aspen/Pitkin County Housing Authority.

THE ASPEN/PITKIN COUNTY HOUSING  
AUTHORITY

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO        )  
                                  ) ss.  
COUNTY OF PITKIN        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_, by \_\_\_\_\_.

Witness my hand and official seal.  
My commission expires:

\_\_\_\_\_  
Notary Public

c:sales\general\wh.dr  
02/03/93

#354318 02/25/93 11:24 Rec \$300.00 BK 704 PG 566  
Silvia Davis, Pitkin Cnty Clerk, Doc \$.00

**Exhibit A**

Condominium Unit \_\_\_\_\_, West Hopkins Condominiums, pursuant to the Condominium Map recorded on February \_\_\_\_\_, 1993, in Book \_\_\_\_\_, at Page \_\_\_\_\_, of the records of the Pitkin County Clerk and Recorder, Colorado.

WEST HOPKINS CONDOMINIUMS  
EXHIBIT "B"  
TO  
THE ASPEN/PITKIN COUNTY  
HOUSING AUTHORITY'S  
OCCUPANCY AND RESALE DEED RESTRICTION,  
AGREEMENT, AND COVENANT

1. The term "Permitted Capital Improvement" as used in the Agreement shall include only the following:

(a) Improvements or fixtures erected, installed or attached as permanent, functional, non-decorative improvements to real property excluding repair, replacement and maintenance improvements.

(b) Improvements for energy and water conservation.

(c) Improvements for the benefit of seniors and/or handicapped persons.

(d) Improvements for health and safety protection devices.

(e) Improvements to add and/or finish permanent/finished storage space.

(f) Improvements to finish unfinished space.

(g) The cost of adding decks and balconies, and any extension thereto.

2. Permitted Capital Improvements as used in this Agreement shall not include the following:

(a) Landscaping;

(b) Upgrades of appliances, plumbing and mechanical fixtures, carpets, and other similar items included as part of the original construction of the unit;

(c) Jacuzzis, saunas, steam showers and other similar items;

(d) Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, carpeting and other similar items;

(e) Upgrades or addition of decorative items including lights, window coverings, and other similar items.

3. All Permitted Capital Improvements items and costs shall be approved by the APCHA staff prior to being added to the Maximum Resale Price as defined herein.