

WHEN RECORDED, PLEASE RETURN TO:

Caddis Fly Partners, LLC
1880 Lazy O Road
Old Snowmass, Colorado 81654

**DECLARATION
OF
RIVERWALK AT THE FRYINGPAN**

TABLE OF CONTENTS

RECITALS	1
ARTICLE 1 SUBMISSION/DEFINED TERMS	1
Section 1.1 Submission of Real Estate	1
Section 1.2 Defined Terms	2
ARTICLE 2 NAMES/DESCRIPTION OF REAL ESTATE.....	5
Section 2.1 Name and Type.....	6
Section 2.2 Real Estate	6
Section 2.3 Utility, Map and Plat Easements.....	6
Section 2.4 Easements for the Executive Board and Unit Owners.....	6
Section 2.5 Emergency Easements	6
Section 2.6 Utility Reservations	6
Section 2.7 Licenses of Common Element Areas.....	7
ARTICLE 3 THE ASSOCIATION	7
Section 3.1 Membership	7
Section 3.2 General Purposes and Powers of the Association.....	7
Section 3.3 Authority of the Association.....	7
Section 3.4 Specific Powers.....	7
Section 3.5 Allocated Interests	8
Section 3.6 Right to Notice and Comment	8
Section 3.7 Indemnification.....	8
Section 3.8 Declarant Control.....	8
ARTICLE 4 UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS	9
Section 4.1 Number of Units	9
Section 4.2 Identification of Units/Unit Descriptions.....	9
Section 4.3 Unit Maintenance.....	9
Section 4.4 Unit Boundaries	9
Section 4.5 Association Maintenance	11
Section 4.6 Common Elements.....	12
Section 4.7 Limited Common Elements	12
Section 4.8 Power to Provide Special Services	13
Section 4.9 Unit Owners' Easements of Enjoyment	13
Section 4.10 Delegation of Use	14
ARTICLE 5 COVENANT FOR COMMON EXPENSE ASSESSMENTS.....	14
Section 5.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments	14
Section 5.2 Apportionment of Common Expenses.....	14
Section 5.3 Annual Assessment/Commencement of Common Expense Assessments	15
Section 5.4 Effect of Non-Payment of Assessments	15
Section 5.5 Lien Priority	16
Section 5.6 Working Fund.....	16
Section 5.7 Owner's Negligence or Misconduct.....	16
Section 5.8 Assessments Related to Limited Common Elements	16

ARTICLE 6	RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY	17
Section 6.1	Use, Occupancy and Use Protection	17
Section 6.2	Prohibited Uses	17
Section 6.3	Vehicular Parking, Storage, and Repairs	17
Section 6.4	Use of Common Elements	18
Section 6.5	Nuisances	18
Section 6.6	Compliance with Insurance Requirements	18
Section 6.7	No Unsightliness	18
Section 6.8	Restriction on Signs and Advertising Devices	18
Section 6.9	No Restrictions on Mortgaging of a Unit	19
Section 6.10	Restrictions on Structural Alterations and on Improvements	19
Section 6.11	Storage Restrictions	19
Section 6.12	Rules and Regulations	19
Section 6.13	Declarant's Use	19
ARTICLE 7	DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS	20
Section 7.1	Development Rights and Special Declarant Rights	20
Section 7.2	Additional Reserved Rights	21
Section 7.3	Rights Transferable/Rights Transferred	22
Section 7.4	No Further Authorizations Needed	22
Section 7.5	Amendment of the Declaration or Map	22
Section 7.6	Interpretation	22
Section 7.7	Termination of Reserved Rights	23
ARTICLE 8	RIGHT OF FIRST REFUSAL	23
Section 8.1	Notice by Owner	23
Section 8.2	Nature of Offer	23
Section 8.3	Acceptance of Offer	23
Section 8.4	Failure to Accept Offer	24
Section 8.5	Violation	24
Section 8.6	Exceptions	24
Section 8.7	Release by Association of Right of Refusal	24
Section 8.8	Certificate of Termination of Right of First Refusal	24
ARTICLE 9	INSURANCE/CONDEMNATION	25
Section 9.1	Insurance Requirements	25
Section 9.2	General Provisions Concerning Insurance	26
Section 9.3	Deductibles	27
Section 9.4	Insurance Trustee	27
Section 9.5	Association Insurance as Primary Coverage	27
Section 9.6	Acceptable Insurance Companies	27
Section 9.7	Insurance to be Maintained by Owner and Other Owner Responsibilities	28
Section 9.8	Annual Review of Insurance Policies	28
Section 9.9	Notice of Cancellation	28
Section 9.10	Nonliability of Association and Directors	29
Section 9.11	Adjustments by the Association	29
Section 9.12	Distribution of Condemnation and Property Insurance Proceeds	29

ARTICLE 10	SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS	29
Section 10.1	General Provisions	29
Section 10.2	Special Rights	30
Section 10.4	Right to Pay Taxes and Insurance Premiums	32
ARTICLE 11	GENERAL PROVISIONS	32
Section 11.1	Compliance and Enforcement.....	32
Section 11.2	Severability	33
Section 11.3	Term of Declaration.....	34
Section 11.4	Amendment of Declaration, Map or Plat by Declarant	34
Section 11.5	Amendment of Declaration by Unit Owners	34
Section 11.6	Amendment Required by Mortgage Agencies.....	34
Section 11.7	Required Consent of Declarant to Amendment	35
Section 11.8	Captions	35
Section 11.9	Interpretation.....	35
Section 11.10	Singular Includes the Plural	35
Section 11.11	Validity of Amendments.....	35
EXHIBIT A	DESCRIPTION OF REAL ESTATE	37
EXHIBIT B	INITIAL UNITS	38
EXHIBIT C	PROPERTIES OWNED BY DECLARANT WHICH MAY BE ADDED TO THE DECLARATION	39
EXHIBIT D	OTHER PROPERTIES WHICH MAY BE ADDED TO THE DECLARATION	40

**DECLARATION
OF
RIVERWALK AT THE FRYINGPAN**

This Declaration is made on the date hereinafter set forth by Caddis Fly Partners, LLC, a Delaware limited liability company, whose address is 1880 Lazy O Road, Snowmass, CO 81654 ("Declarant").

RECITALS

A. Declarant is the owner of certain real estate in the Town of Basalt, Eagle County, State of Colorado, which is more particularly described as set forth in Exhibit A and/or Exhibit C attached hereto and by reference made a part hereof.

B. Declarant desires to create a Condominium Community on the real estate described in Exhibit A under the name of "Riverwalk at the Fryingpan," in which portions of the real estate described in Exhibit A will be designated for separate ownership and uses of a mixed use nature, and in which portions of the real estate described in Exhibit A are to become co-owned by the Unit Owners.

C. Declarant has caused the "Riverwalk at the Fryingpan Condominium Association, Inc.," a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado, as an owners' association, for the purpose of exercising the functions as herein set forth.

**ARTICLE 1
SUBMISSION/DEFINED TERMS**

Section 1.1 Submission of Real Estate. The Declarant hereby submits the real estate described in Exhibit A, and such additional real property as may be subsequently added pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the "Real Estate"), to the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as it may be amended from time to time (the "Act") and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Declarant hereby declares that all of the Real Estate described in Exhibit A, and as added by expansion, shall be held or sold, and conveyed subject to the following easements, restrictions, covenants, and conditions. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Real Estate, that this Declaration shall run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Unit Owner thereof.

Section 1.2 Defined Terms. Each capitalized term in this Declaration or in the Map shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration:

(a) "Act" means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as it may be amended from time to time.

(b) "Agency" means the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA), the Colorado Housing and Finance Authority (CHFA) and any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by any of such entities.

(c) "Assessment" includes all Common Expense Assessments, Insurance Assessments, Utility Assessments, and any other expense levied to a Unit pursuant to this Declaration or the Act.

(d) "Association" means Riverwalk at the Fryingpan Condominium Association, Inc., a Colorado nonprofit corporation, and its successors.

(e) "Class" or "Class of Members" means, respectively, all of the Owners of Commercial Units, on the one hand, and all of the Owners of Residential Units, on the other.

(f) "Commercial Unit" means any one of the Units designated on the Map or in this Declaration as a Retail Unit, an Office Unit or a Restaurant Unit, and any Garage Unit or Storage Unit which is not appurtenant to any Residential Unit, subject to restrictions of record, and subject to the reserved right of Declarant to redesignate the type of use allowed.

(g) "Common Elements" means the Real Estate within the Community other than the Units, which portion of the Real Estate shall be co-owned by the Owners and shall be as designated on the Map and in this Declaration.

(h) "Common Expense" means any expenditure made a liability received by or on behalf of the Association, together with any allocations to reserves, other than expenditures relating to insurance and utilities to the extent such expenditures relate to a particular Unit or are based on actual usage by such Unit.

(i) "Common Expense Assessment" means an Assessment levied for Common Expenses.

(j) "Community" means and refers to the mixed use Condominium Community of Riverwalk at the Fryngpan, which Community is a Condominium Community as defined in the Act and which Condominium Community is also a mixed use Common Interest Community as defined in the Act.

(k) "Declarant" means the Declarant named in this Declaration, and any successor and/or assignee designated by written notice or assignment executed by Declarant and by the transferee and recorded, to the extent any rights or powers reserved to Declarant are transferred or assigned to such transferee.

(l) "Declarant Control" means the period of time commencing on the date of recordation of this Declaration and expiring on the earlier of (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created by Declarant, or (ii) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business; provided, however, that if Declarant Control has not terminated pursuant to the foregoing provisions, Declarant Control shall in any case terminate on the date upon which all property that may be annexed into the Community has become a part of the Community and the last Unit within the Community that can be conveyed by Declarant has been conveyed by Declarant.

(m) "Development Rights" or "Special Declarant Rights" means those rights set forth in this Declaration and those rights set forth in the Act.

(n) "Director" means any person serving as a member of the Executive Board.

(o) "Eligible Holder" means a holder, insurer or guarantor of a first lien security interest who has delivered a written notice to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a security interest.

(p) "Executive Board," "Board" or "Board of Directors" means the body, regardless of name, designated in this Declaration to act on behalf of the Association.

(q) "Garage Unit" means any of the Units designated as a garage unit on the Map or in this Declaration, which may, but need not be, appurtenant to any other type of Unit, subject to restrictions of record, and subject to the reserved right of Declarant to redesignate the type of use allowed.

(r) "Governing Documents" means this Declaration, the Map, the Articles of Incorporation, the Bylaws, and the Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.

(s) "Improvement(s)" means structures installed within the Community or

within or upon a Unit.

(t) "Insurance Assessment" means an Assessment levied for insurance covering a particular Unit.

(u) "Limited Common Elements" means those portions of the Common Elements, if any, designated by Declarant or the Association for the exclusive use of one or more but fewer than all of the Units, including decks and certain storage areas.

(v) "Map" means the Condominium Map of Riverwalk at the Fryingpan, which is an engineering survey (and any supplements and amendments thereto) of the Community depicting and locating thereon the location of the buildings, the Units, the Common Elements, the Limited Common Elements, floors and elevations, and all of the land and improvements thereon, which Map is incorporated herein and made a part of this Declaration by reference.

(w) "Member" means and refers to those persons entitled to membership in the Association, as provided in the Bylaws and as set forth herein.

(x) "Office Unit" means a Unit designated as such on the Map or in this Declaration, and any Garage Unit or Storage Unit appurtenant to any Office Unit, subject to restrictions of record, and subject to the reserved right of Declarant to redesignate the type of use allowed.

(y) "Officer" means any person serving as an officer of the Association in accordance with the Bylaws.

(z) "Owner" or "Unit Owner" means the Declarant or any other person or entity that owns a Unit.

(aa) "Real Estate" means the property described in Exhibit A, and such additional property as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon. All easements and licenses which the Community is subject to as of the date of this Declaration are recited in Exhibit A.

(bb) "Residential Unit" means any of the Units designated as Residential Units on the Map or in this Declaration, and any Garage Unit or Storage Unit appurtenant to any Residential Unit, subject to restrictions of record, and subject to the reserved right of Declarant to redesignate the type of use allowed.

(cc) "Restaurant Unit" means any of the Units designated as a Restaurant Unit on the Map or in this Declaration, and any Garage Unit or Storage Unit appurtenant to

any Restaurant Unit, subject to restrictions of record, and subject to the reserved right of Declarant to redesignate the type of use allowed.

(dd) “Retail Unit” means any of the Units designated as Retail Units on the Map or in this Declaration, and any Garage Unit or Storage Unit appurtenant to any Retail Unit, subject to restrictions of record, and subject to the reserved right of Declarant to redesignate the type of use allowed.

(ee) “Riverwalk Easement” means that certain New Riverwalk Easement Agreement by and among the Town of Basalt, Declarant, the Association and Greater Atlantic Bank, recorded June 11, 2003 as Reception No. 836343, as the same may be from time to time amended, supplemented or superceded.

(ff) “Rules and Regulations” means any instrument, however denominated, which is adopted by the Executive Board for the regulation and management of the Community, including any amendment to such instruments.

(gg) “Storage Unit” means any of the Units designated as a storage unit on the Map or in this Declaration, which may, but need not be, appurtenant to any other type of Unit, subject to restrictions of record, and subject to the reserved right of Declarant to redesignate the type of use allowed.

(hh) “Swinging Bridge Easement” means that certain new Swinging Bridge Easement Agreement” by and among the Town of Basalt, Declarant, the Association and Greater Atlantic Bank, recorded June 11, 2003 as Reception No. 836344, as the same may be from time to time amended, supplemented or superceded.

(ii) "Unit" means a physical portion of the Community, designated for separate ownership, shown as a Unit on the recorded Map for the Community, the boundaries of which are defined in the Map and in this Declaration.

(jj) “Utility Assessment” means an Assessment for utilities based on the actual usage of utilities by a particular Unit.

(kk) “Utility Systems” has the meaning set forth in Section 2.6 of this Declaration.

ARTICLE 2 NAMES/DESCRIPTION OF REAL ESTATE

Section 2.1 Name and Type. The type of Common Interest Community is a mixed use Condominium Community. The name of the Condominium Community is "Riverwalk at the Fryingpan." The name of the Association is the "Riverwalk at the Fryingpan Condominium Association, Inc."

Section 2.2 Real Estate. The Community is located in the Town of Basalt, Eagle County, State of Colorado. The initial Real Estate of the Community is described in Exhibit A. All easements and licenses to which the Community is presently subject are recited in Exhibit A. Additional easements are established in the Act. The Community may be subject to other easements or licenses granted pursuant to this Declaration, or granted by authority reserved in any recorded document or established in the Act.

Section 2.3 Utility, Map and Plat Easements. Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat and on the recorded Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.4 Easements for the Association and Unit Owners. Each Unit shall be subject to an easement in favor of the Association (including its agents, employees and contractors) and to each Unit Owner to allow for their performance of obligations in this Declaration. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages, and a lien therefor is authorized and established against that party's property, pursuant to this Declaration.

Section 2.5 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

Section 2.6 Utility Reservations. Declarant hereby creates and reserves to itself, until Declarant has sold the last Unit that may be created to an Owner other than Declarant, and, thereafter, to the Association, a blanket easement upon, across, over and under the Real Estate, the Community and the Units for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment and effluent irrigation systems, gas, telephone and other telecommunications systems, electricity, heat and cooling systems, and master television and satellite antenna or cable systems, and any other utility systems as may be desired or provided (collectively, "Utility Systems"). By virtue of this blanket easement, it shall be expressly permissible for Declarant or the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Real Estate and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, heat and cooling facilities, telephone and other telecommunications facilities, telephone and television wires, circuits, conduits and meters, and any other improvements or facilities appurtenant or relating to the Utility Systems. If any

utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Real Estate is reserved, provided the easement granted does not conflict with the terms hereof. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Real Estate. Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

Section 2.7 Licenses of Common Element Areas. Portions of the Common Elements, including any plaza area, walkways, patio areas, etc., to the extent not designated as Limited Common Elements appurtenant to a Unit or Units, may be licensed by the Executive Board for use for up to one (1) year, without the approval of the Owners. Any license of Common Elements for over one (1) year shall be subject to Owner approval, as provided for in the Act.

ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership. Every person who is a record owner of a fee interest in any Unit which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of such Unit shall be the sole qualification for such membership. There shall be one (1) membership for each Unit owned within the Community.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Executive Board, shall perform functions and manage the Community as provided in this Declaration so as to protect the value and desirability of the Community and the Units and to further the collective interests of the Owners. Each purchaser of a Unit shall be deemed to have assented to, ratified and approved such management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Map, the Association's Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Executive Board. The Executive Board may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility.

Section 3.4 Specific Powers. The Association shall have the powers, authority and duties as necessary and proper to manage the business and affairs of the Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative majority

vote of the Unit Owners present at a meeting called for that purpose.

Section 3.5 Allocated Interests.

(a) The ownership interest, liability for Common Expenses and votes in the Association allocated to Units are based upon the square footage of each Unit as set forth in this Declaration or the Map, provided that the Executive Board may determine to allocate liability for Common Expenses between or within Classes of Members and/or types of Units based on usage.

(b) If Units are added to or withdrawn from the Community pursuant to the provisions of this Declaration and the Act, the formula set forth above, or then in use, shall be used to reallocate the allocated interests.

Section 3.6 Right to Notice and Comment. Pursuant to C.R.S. § 38-33.3-205(1)(o), whenever the Governing Documents require that an action be taken after "Notice and Comment," and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Further, any Unit Owner may give "Notice and Comment" to the other Unit Owners of any matter affecting the Community, and Unit Owners shall then have the right to comment, orally or in writing, on the matter. Notice shall be given to each Unit Owner in writing, delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or notice shall be published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than three (3) days before proposed action is to be taken. The notice shall invite comment (orally or in writing) to the Executive Board or a Unit Owner before the scheduled time of any meeting.

Section 3.7 Indemnification. To the full extent permitted by law, each Officer and member of the Executive Board of the Association shall be and hereby is indemnified by the Unit Owners and the Association against all expenses and liabilities, including attorneys' fees and expenses, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an Officer or member of the Executive Board of the Association, or any settlements thereof, whether or not they are an Officer or member of the Executive Board of the Association at the time such expenses are incurred; except in such cases wherein such Officer or member of the Executive Board is adjudged guilty of willful misfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Executive Board approves such settlement and reimbursement, which approval shall not be unreasonably withheld.

Section 3.8 Declarant Control. During Declarant Control, Declarant shall have the reserved power, pursuant to Section 303(5) of the Act, to appoint and remove Officers and

members of the Executive Board.

ARTICLE 4
UNITS, COMMON ELEMENTS AND
LIMITED COMMON ELEMENTS

Section 4.1 Number of Units. The number of Units initially included in the Community is zero (0). Declarant reserves the right to create and add additional Units up to Ninety-Seven (97) Units (which includes up to Thirty (30) Garage Units and up to Ten (10) Storage Units).

Section 4.2 Identification of Units/Unit Descriptions. The identification of each Unit is shown on the Map. Every contract for sale, deed, lease, security interest, will or other legal instrument shall legally describe a Unit by its identifying unit number or letter, followed by the name of the Community, with reference to the Map and the Declaration. An illustrative description is as follows:

Condominium Unit _____, Riverwalk at the Fryingpan, according to the Declaration recorded _____, 20____, at Reception No _____, and the Condominium Map recorded _____, 20____, at Reception No. _____, in the records of the Clerk and Recorder, Eagle County, State of Colorado.

Reference to the Declaration and Map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration and Map, without specific references thereto.

Section 4.3 Unit Maintenance. Unit Owners are responsible for the maintenance, repair and replacement of the Improvements and properties located within their Unit boundaries which are not specifically the obligation of the Association to maintain, replace and keep in good repair, including exteriors of windows and doors of their Unit. In the case of Commercial Units, the Owners of such Units shall keep sidewalks and walkways and plazas adjoining their Units broom clean and reasonably free of ice and trash. Each Unit, at all times, shall be kept well maintained, in good repair and condition, and in a clean, sightly, and wholesome condition. No bicycles, kayaks, sport or recreational equipment, trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, building materials or any item of personal property found by the Executive Board to be objectionable to the Association shall be permitted to remain exposed upon or within the Common Elements, or any Unit, or upon or within the Limited Common Elements, balcony, patio or deck of a Unit, or otherwise. The Association, and its agents, shall have the authority to enter, replace, maintain, repair and clean up Units which do not conform to the provisions of this Section, and to charge and collect from the Owners of such Units all reasonable costs related thereto as an Assessment hereunder.

Section 4.4 Unit Boundaries.

The following are designated as boundaries of each Unit, as defined below and as depicted on the Map:

(a) Commercial Units (Core and Shell):

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of unfinished ceilings in Units which are not on the top floor of a building or the top surface of the ceilings in Units which are on the top floor of a building, extended to an intersection with the vertical perimeter boundaries. Space above ceilings to which access is needed for repair and maintenance of the Unit and Common Elements above the Unit are Limited Common Elements to the Unit.

(ii) Lower Boundaries. The horizontal plane of the undecorated or unfinished upper surfaces of the floors, extended to an intersection with the vertical perimeter boundaries.

(iii) Vertical Perimeter Boundaries. The planes defined by the exterior surface of all perimeter walls, including corridor and stairwell walls, and the center line of common interior walls.

(b) Residential Units:

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of finished ceilings, extended to an intersection with the vertical perimeter boundaries. Space above ceilings to which access is needed for repair and maintenance of the Unit and Common Elements above the Unit are Limited Common Elements to the Unit.

(ii) Lower Boundaries. The horizontal plane of the undecorated or unfinished upper surfaces of the floors, extended to an intersection with the vertical perimeter boundaries.

(iii) Vertical Perimeter Boundaries. The planes defined by the exterior surface of all perimeter walls, including corridor and stairwell walls, the center line of common interior walls, areas depicted on the Map as a deck or patio area of a Unit, and the vertical planes indicated by boundary lines as shown on the plat or Map.

(c) Garage and Storage Units. The following are designated as the boundaries of each Garage and Storage Unit, as defined below and as depicted on the Map:

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceilings, extended to an intersection with the vertical perimeter

boundaries.

(ii) Lower Boundaries. The horizontal plane of the undecorated finished upper surfaces of the garage floor extended to an intersection with the vertical perimeter boundaries.

(iii) Vertical Perimeter Boundaries. The planes defined by the boundary lines shown on the Map between or as a part of each garage or storage space, as the case may be, including perimeter walls of areas depicted on the Map as finished inner surfaces of poured concrete or concrete block.

(d) Inclusions. Each Unit includes the spaces and improvements lying within the boundaries described above, as depicted on the Map. Each Unit also includes the spaces and improvements containing utility meters, water heating facilities, all electrical switches, wiring, pipes, ducts, conduits, fire protection, smoke detector and security systems and communications, television, telephone and other telecommunications and electrical receptacles and boxes serving that Unit exclusively, the surface of these items being the boundaries of that Unit, whether or not the spaces are contiguous.

(e) Exclusions. Except when specifically included by other provisions of this Declaration or by the Map, the following are excluded from each Unit: the spaces and improvements lying outside the boundaries described above, the exterior finished surface of the building in which Units are located, exterior street or common lighting, and any chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and other services to other Units and the Common Elements.

(f) Noncontiguous Portions. Certain Units may include special portions or pieces of equipment, such as air conditioning compressors, utility meters, meter boxes, utility connection structures, air or gas pump and storage facilities and storage portions, which are situated in buildings or structures that are detached from the Unit. Such special equipment or storage portions are a part of the Unit, notwithstanding their non-contiguity with the principal portions. Each Unit includes the spaces and improvements lying within the boundaries described above, and also includes the utilities and utility meters and communications, television, telephone and other telecommunications and electrical receptacles and boxes serving that Unit exclusively, whether or not in the boundaries or contiguous to the Unit, unless the same are maintained by a governmental agency or entity. The Common Elements are excluded from each Unit and any utilities or other facilities running through or within any Unit for the purpose of furnishing utility and other service to other Units and/or the Common Elements are also excluded.

Section 4.5 Association Maintenance. (a) The Executive Board of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's

maintenance responsibilities.

(b) The Association shall be responsible for: the improvement, maintenance, repair, upkeep and reconstruction, and replacement of the Common Elements; the improvement, maintenance, repair, upkeep, reconstruction, replacement and operation of the water and sewer lines which serve more than one Unit; the provision of common water and common sewer; trash removal; landscape irrigation lines; gas lines; electric lines; telecommunication lines; snow clearing; the maintenance, repair, and replacement of certain designated perimeter fences and perimeter landscaping; the maintenance, repair, upkeep, reconstruction and replacement of the storm drainage channels, water quality measures and storm sewers constructed as part of the Community, unless an agreement with a governmental authority provides otherwise; for the payment of expenses, if any, which may be incurred by virtue of maintenance, repair or replacement as set forth on the recorded plat and final development plan, agreement with or requirement of any local governmental authority, Eagle County or other government authorities and for operational expenses of the Association.

(c) In addition to the obligations set forth in paragraph (b) above, the Association shall be responsible for maintenance of the areas covered by the Riverwalk Easement and the Swinging Bridge Easement, in accordance with the terms of such easements. The Town of Basalt is a third party beneficiary of the provisions of this paragraph (c).

Section 4.6 Common Elements. The real estate described in the Map are the initial Common Elements. Portions of any Common Elements may be designated as a part of a Unit or as a Limited Common Element to a Unit. Portions of Units may become Common Elements or Limited Common Elements, pursuant to rights reserved elsewhere in this Declaration.

Section 4.7 Limited Common Elements.

(a) The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

(i) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit is a Limited Common Element to those

Units and any portion serving only the Common Elements is a part of the Common Elements.

(ii) Any shutters, awnings, window boxes, doorsteps, stoops, porches, decks, balconies, patios, entry foyers, corridors, stairs, and exterior doors and windows or other fixtures designed to serve less than all Units, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to

the Unit or Units they are designed to serve and their use is limited to that Unit or Units.

(iii) Stoops, steps and walls above door openings at the entrances, which provide access to less than all Units, the use of which is limited to the Units to which they provide access are Limited Common Elements to those Units.

(iv) Utility areas, the use of which is limited to a Unit or Units, are Limited Common Elements to that Unit or those Units.

(b) Declarant reserves, for itself, for ten (10) years after the recording of this Declaration, the right to allocate areas as Common Elements, and further, to allocate areas which constitute a part of any Common Elements as Limited Common Elements for the exclusive use of the Owners of Units to which those specified areas shall become appurtenant. Declarant may assign certain improved Common Elements for parking by an Owner or for storage space for an Owner. Upon that assignment of a Limited Common Element parking or storage use, the Owner with the exclusive right of use may be assessed, by the Association, for the expenses associated with the maintenance, repair or replacement of all Limited Common Element parking or storage spaces. Declarant may allocate or assign Common Elements or Limited Common Element areas (i) in a recorded instrument, (ii) by recording an appropriate amendment or supplement to this Declaration, or (iii) by recording a supplement to the Map.

Section 4.8 Power to Provide Special Services. The Association shall have the power to provide services to one (1) or more, but less than all, Owners, on an independent negotiated fee basis.

Section 4.9 Unit Owners' Easements of Enjoyment. Every Unit Owner shall have a right and easement access to their Unit and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) The right of the Association (exercised through the Executive Board) to promulgate and publish Rules and Regulations with which each Unit Owner and their tenants, invitees, licensees and guests shall strictly comply.

(b) The right of the Association (exercised through the Executive Board) to suspend the voting rights of a Unit Owner for any period during which any Assessment against such Owner's Unit remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rules and Regulations of the Association, and otherwise to enforce the Rules and Regulations of the Association and the other Governing Documents.

(c) The right, power and authority of the Association (exercised through the Executive Board) to grant any easement, right-of-way, license, lease, dedication, transfer

or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act and/or the Bylaws.

(d) The right of the Association (exercised through the Executive Board) to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

(e) The Development Rights and Special Declarant Rights of Declarant reserved in this Declaration.

Section 4.10 Delegation of Use. Any Unit Owner may delegate their right of enjoyment to the Common Elements and facilities to the members of their family, their tenants and guests.

ARTICLE 5 COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 5.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments. Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, Insurance Assessments (assessed in proportion to risk), Utility Assessments (assessed in proportion to usage), and such other Assessments as are imposed by the Association. Such Assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Unit Owner of such Unit from and after the time when the Assessment or other items charged by the Association become or fall due. The Association annual Common Expense Assessments and such other Assessments as are imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them and approved by the Executive Board. No Unit Owner may become exempt from liability for payment of the Common Expense Assessments or other Association charges by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made. All Assessments and other Association charges shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration.

Section 5.2 Apportionment of Common Expenses. Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Units in accordance

with formulas for liability for the Common Expenses as set forth in this Declaration.

Section 5.3 Annual Assessment/Commencement of Common Expense Assessments.

The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. The budget shall be submitted to the Unit Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by votes of Owners representing three-quarters of the total votes in the Association, in which case the existing budget shall continue in effect. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Executive Board. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than Declarant occurs. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 5.4 Effect of Non-Payment of Assessments.

Any Assessment or other Association charge provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Executive Board, shall bear interest at the rate established by the Executive Board, on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Executive Board. Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Unit Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Executive Board. Further, the Association may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue Assessments or other Association charges, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Association against a Unit Owner to recover a money judgment for unpaid Assessments or other Association charges, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment or other Association charges, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and a Unit Owner abandons or leaves vacant such Owner's Unit, the Executive Board may take possession and rent such Unit or apply for the appointment of a receiver for the Unit without prior notice to the Unit Owner. The rights of the Association shall be expressly subordinate to

the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 5.5 Lien Priority. The lien of the Association under this Article is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of this Declaration; (2) a first lien security interest on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Unit shall not affect the lien for Assessments or other Association charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien for Assessments or other Association charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Assessment or other Association charges thereafter becoming due, nor from the lien therefor.

Section 5.6 Working Fund. The Association or Declarant may require the first Unit Owner of each Unit (other than Declarant) to make a non-refundable payment to the Association in an amount equal to one-fourth (1/4) of the annual Common Expense Assessment against that Unit in effect at the closing thereof, which sum shall be held, without interest, by the Association as a working capital fund. Said working capital fund shall be collected and transferred to the Association at the time of closing of the initial sale by Declarant of each Unit, as aforesaid, and shall be for the use and benefit of the Association. Such payment shall not relieve a Unit Owner from making regular payments of Assessments as the same become due.

Section 5.7 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, including, but not limited to, damage from water overflowing from a tub, hot water heater leaks, or water damage from a washing machine, dishwasher or hose, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If such expenses, costs and fees incurred by the Association are not repaid to the Association within seven (7) days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration. Such expenses, costs, and fees shall automatically become a default Assessment determined and levied against such Unit, and the Association may proceed in accordance with the provisions of this Article.

Section 5.8 Assessments Related to Limited Common Elements. In the event a Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, those Common Expenses may be assessed equally against the Units to which the Limited Common Element is assigned.

ARTICLE 6
RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

All Real Estate within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Executive Board or by an appropriate committee (subject to review by the Executive Board) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules. The following use restrictions are also subject to the Development Rights and Special Declarant Rights reserved by Declarant.

Section 6.1 Use, Occupancy and Use Protection. Units within the Community shall be used only for purposes allowed by the local zoning codes. Use of Residential Units for primarily residential use shall not be unreasonably regulated or governed by the Association. Additionally, use of Commercial Units for primarily commercial uses shall not be unreasonably regulated or governed by the Association.

Section 6.2 Prohibited Uses. No building, structure, improvement, Unit, Common Element or other portion of the Community shall be used or occupied for use by any of the following:

- (a) A laundromat or dry cleaning establishment.
- (b) Any bar serving alcoholic beverages which is not an integral part of a restaurant business.
- (c) Any establishment having a business designed primarily to appeal to the prurient interest of any patron.

Section 6.3 Vehicular Parking, Storage, and Repairs.

- (a) Subject to the Development Rights of Declarant, vehicular parking upon the Common Elements shall be regulated by the Executive Board.
- (b) Parking areas may be subject to designation of individual spaces as Garage Units or as a Limited Common Element appurtenant to certain designated Units. Parking designated as visitor or guest parking shall not be used by anyone other than visitors or guests of Owners or tenants. While the buildings are under construction or being completed by Declarant, use of a reasonable number of Common Element parking spaces may be restricted to Declarant's use for construction and sales purposes.
- (c) Garage Units and designated parking spaces (designated as either a part of a Unit, a Limited Common Element or as a part of Common Elements) are restricted to

use as access or as a parking space for vehicles. Each Garage Unit shall be restricted to use by the Owner of such Unit.

(d) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted within the Community.

(e) The Rules and Regulations of the Association shall govern the types of vehicles that may be parked or stored within the Community.

(f) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

(g) Parking behind or in front of garage doors, or in alleys or other ways or lanes is prohibited, except to load or unload in lanes designated for such purpose if such activity does not exceed ten (10) minutes in duration at any one time.

Section 6.4 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Executive Board. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Executive Board.

Section 6.5 Nuisances. No nuisance shall be permitted within the Community, nor any use, activity or practice which is reasonably the source of annoyance or embarrassment to, or which reasonably offends or disturbs, any Unit Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Unit or Common Element or Limited Common Element, or any portion of the Community by Unit Owners. Further, no immoral, improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed. As used herein, the term "nuisance" shall not include any activities of Declarant or its assignees which are reasonably necessary to the development and construction of Improvements within the Community.

Section 6.6 Compliance with Insurance Requirements. Except as may be approved in writing by the Executive Board, nothing shall be done or kept on the Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 6.7 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure.

Section 6.8 Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Community except such sign or signs as may be approved in writing by the Executive Board,

provided that owners of Commercial Units shall have the right to display, at their cost, signs which comply with signage guidelines adopted by the Executive Board and which additionally conform to the Town of Basalt's Sign Code.

Section 6.9 No Restrictions on Mortgaging of a Unit. There are no restrictions on the right of the Unit Owners to mortgage or otherwise encumber their Unit. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 6.10 Restrictions on Structural Alterations and on Improvements. No structural alterations to any Unit or to any Common or Limited Common Elements shall be done by any Owner, without the prior written approval of the Executive Board and except as set forth in the Rules and Regulations. No Improvement to any Unit or to the Common or Limited Common Elements or to any landscaping shall be constructed, erected, placed or installed within the Community, unless complete plans and specifications therefor shall have been first submitted to and approved in writing by the Executive Board. The process for seeking approval from the Executive Board shall be set forth in the Rules and Regulations of the Association.

Section 6.11 Storage Restrictions. Balconies, decks and patio areas of Units may not be used as storage areas and no clotheslines or drying areas shall be installed, allowed, kept, maintained or permitted on the balcony, patio or deck areas in the Community.

Section 6.12 Food-Related Operations. In addition to the restrictions and obligations set forth elsewhere in this Declaration and in the Rules and Regulations, owners of food-related businesses in the Community shall have special obligations, at their sole cost and expense, to assure that their trash is properly stored and removed, that grease generated by their operations is properly disposed of, that interceptors or traps relating to the disposal of such grease are properly maintained, that cooking odors emanating from their premises are properly vented, that they observe proper pest control practices, and that noise within or appurtenant to their establishments is controlled and does not become a nuisance, within the intent of Section 6.5 of this Declaration, to others in the Community. In the event any owner of a food-related business in the Community fails to comply with the requirements of this Section, the Association may make arrangements for the necessary services, the cost of such services shall be charged to the Owner of the Unit or Units in which such food-related business is conducted, and such charges shall be covered by the provisions of Section 5.4 of this Declaration.

Section 6.13 Rules and Regulations. In furtherance of the provisions of this Declaration, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed, from time to time, by the Executive Board, or its successors and assigns. The Executive Board may establish and enforce penalties or fines for the infraction thereof and take any other remedial action the Executive Board may deem necessary and proper for such purpose.

Section 6.14 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its assigns, employees and agents, to perform such reasonable activities, and to maintain upon portions of the Community

such facilities as are reasonably necessary or incidental to the construction and sale of Units in the development of the Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, construction trailers, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices, parking areas and lighting facilities.

ARTICLE 7 DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 7.1 Development Rights and Special Declarant Rights. Declarant reserves, through ten (10) years after the recording of this Declaration, the following Development Rights and Special Declarant Rights:

- (a) except for Units not then owned by Declarant, the right to redesignate uses, to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements and the Limited Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements and the Limited Common Elements, subdivide Units or complete or make Improvements, as the same may be indicated on the Map or on plats filed of record or filed with the Declaration;
- (b) the right to create or construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements or to convert Common Elements into Units;
- (c) the right to add Units and to subject all or any part of the property described in Exhibit C and Exhibit D attached hereto and hereby incorporated by reference and additional unspecified real estate to the provisions of this Declaration upon the substantial completion of improvements on any portion of that property;
- (d) the right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions;
- (e) the right to withdraw all or any part of the Real Estate from the Community, provided portions of the Real Estate included within a building cannot be withdrawn once a Unit in that building has been conveyed by Declarant;
- (f) the right to make amendments to this Declaration or the other Governing Documents to meet or comply with any requirements of any Agency;
- (g) the right to exercise any development rights reserved or allowed in the Act;
- (h) the right to use, and to permit others to use, easements through the Common Elements, as may be reasonably necessary;

- (i) the right to merge or consolidate the Community with another condominium community;
- (j) the right to appoint or remove any officer of the Association or any Director during Declarant Control;
- (k) the right to exercise any additional reserved right created by any other provision of this Declaration;
- (l) the right to amend this Declaration in connection with the exercise of any development right; and
- (m) the right to amend the Map or plat in connection with the exercise of any development right.

Subsequent to the initial Real Estate and Improvements made subject to this Declaration, any additional buildings, structures and types of Improvements to be placed on the Real Estate or any part thereof shall be of at least the same level of quality as the Improvements previously constructed on the Real Estate. The Improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Real Estate as may be added or as shown on the Map.

Section 7.2 Additional Reserved Rights. In addition to the rights set forth above, Declarant also reserves the following additional rights:

- (a) Sales. The right to maintain mobile and other sales offices, parking lots, management offices and models in Units or on the Common Elements.
- (b) Signs. The right to maintain signs and advertising at the Community, and to advertise the Community or other communities developed or managed by or affiliated with Declarant.
- (c) Dedications. The right to establish, from time to time, by dedication or otherwise, public streets, utility and other easements for purposes including, but not limited to, public access, access paths, walkways, plazas, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and utility service, and to create other reservations, exceptions and exclusions.
- (d) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance and regulation of parking and/or recreational facilities and/or Common Elements, which may or may not be a part of the Community.

(e) **Construction Easement.** Declarant and its assignees expressly reserve the right to perform construction, warranty work and repairs, and to store materials in secure areas, in Units and in Common Elements, and the right to control such construction, work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Unit Owner or holder of a security interest. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for such construction, warranty work and repairs and for exercising any other reserved rights in this Declaration. Such easement includes, but is not limited to, the right to excavate and to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Real Estate.

(f) **Access Easement.** Declarant and its successors and assigns shall have an access easement to and from any real property accessible through the Community.

(g) **Other Rights.** The right to exercise any additional reserved right created by any other provision of this Declaration or by the Act.

Section 7.3 Rights Transferable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of Eagle County. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Unit Owners or any holders of a security interest in a Unit. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of Eagle County. Such instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) with the consent of the appropriate Unit Owner(s) or any holders of security interests in the Unit(s).

Section 7.4 No Further Authorizations Needed. The consent of Unit Owners or holders of security interests shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at its or their sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted.

Section 7.5 Amendment of the Declaration or Map. If Declarant or its assignees elect to exercise any reserved rights, that party shall comply with the Act.

Section 7.6 Interpretation. Recording of amendments to the Declaration and the Map or plat pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically (a) vest in each

existing Unit Owner the reallocated Allocated Interests appurtenant to their Unit, and (b) vest in each existing security interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any amendment of this Declaration or the Map. Reference to this Declaration and the Map in any instrument shall be deemed to include all amendments to this Declaration and the Map without specific reference thereto.

Section 7.7 Termination of Reserved Rights. The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by Declarant, recorded in the records of the Clerk and Recorder of Eagle County, State of Colorado.

ARTICLE 8 RIGHT OF FIRST REFUSAL

Section 8.1 Notice by Owner. Any Owner who decides to sell such Owner's Unit ("Offeror") will give written notice (the "Offer") to the Executive Board of the Owner's intention to sell, the terms and conditions of the proposed transaction and such other information as the Executive Board may reasonably require. Within five (5) days of the receipt of the Offer, the Executive Board will cause the Offer to be duplicated and will mail copies of the Offer to all Owners of record, at their addresses shown in the Association's records. A copy of the Offer will only be mailed to Owners not then in default of their obligations to pay Assessments (the Owners entitled to receive the Offer being hereafter referred to collectively as the "Offerees"). Any Offer given in accordance with this Article will be effective whether or not it is actually received.

Section 8.2 Nature of Offer. The Offer will constitute and be deemed an offer by the Offeror to sell to any Offeree (or their designees, corporate or otherwise) under the terms and conditions contained in the Offer. If the terms and conditions allow for a mortgage at the time of closing, the Offer may be accepted by an Offeree able to obtain the requisite mortgage or by an Offeree able to pay cash at the closing, at the Offeree's option. The closing date will be forty-five (45) days after the date of the Offer, unless the Offer provides for a later closing date.

Section 8.3 Acceptance of Offer. Within ten (10) days after the mailing of the Offer, an Offeree may elect to accept the Offer by written notice to the Offeror and to the Executive Board. Such notice will be either hand delivered at or mailed to the address of the Offeror contained in the Offer and at the address of the Association. If more than one Offeree elects to accept the Offer within the required time period, the President will conduct an auction between Offerees with the same priority of purchase rights. The auction will relate only to purchase price.

If no bid higher than the price in the Offer is made, the Offeree whose acceptance was received first by the Association within the time limit will win the auction. The Association will promptly give notice of any auction, and the auction will be held five (5) days after the expiration of the above-mentioned ten-day period.

Section 8.4 Failure to Accept Offer. If no Offeree accepts the Offer within the ten-day period specified in Section 8.3, the Offeror will be free to sell to any person at a price no lower than the price in the Offer and under no better terms than were contained in the Offer. If the Offeror later decides to reduce the purchase price, or otherwise materially and significantly changes the terms of the Offer, then the Offeror must first offer the improved terms to the Offerees, pursuant to and in accordance with the above provisions, before offering the improved terms to others.

Section 8.5 Violation. Any purported sale of a Unit in violation of this Article will be voidable within fifteen (15) days from the date the document evidencing the sale is recorded, at the election of the Association. The Association may take any other action against the parties to the transaction which are permitted by law.

Section 8.6 Exceptions. The provisions of this Article will not apply (a) with respect to any sale by an Owner of such Owner's Unit to the spouse, children, parents or siblings of the Owner, or to a partner or employee of the Owner or a principal in the Owner's corporate entity who has been a partner, employee or principal for at least one year prior to the conveyance, or (b) to Units owned by the Declarant, or (c) to the acquisition or sale of a Unit by a mortgagee who acquires title to the Unit by mortgage, foreclosure or deed in lieu of foreclosure, or to the acquisition of a Unit by a purchaser at any judicial sale. Any Owner will be free to convey or transfer such Owner's Unit by gift, to devise such Owner's Unit by will or to pass the same by intestacy, without compliance with any of the provisions of this Article.

Section 8.7 Release by Association of Right of First Refusal. The right of first refusal contained in this Article may be waived by the Executive Board upon notice from the other Owners or their representatives that they do not intend to exercise their right of first refusal with respect to a particular sale. If this right is waived, then the Unit, together with all appurtenant interests, may be sold or conveyed, or a previous sale or conveyance may be confirmed to be free and clear of the provisions of this Article. A waiver executed by the President or Secretary will be binding on the Association with respect to the validity of any act taken in reliance on the waiver. This provision does not relieve any officer of the fiduciary duty of good faith to the Members of the Association.

Section 8.8 Certificate of Termination of Right of First Refusal. A recordable certificate, executed and acknowledged by the President and Secretary of the Association, on behalf of the Association and the Owners, stating that the provisions of this Article have been met by an Offeror and that no Offeree has accepted the Offer, or that the Offeree's rights have been duly waived by the Association and/or the Offerees, or that the transfer is exempt from this Article, will be binding upon the Association and the Owners in favor of all persons who rely on

the certificate in good faith. The Association will furnish a certificate to any Owner who has in fact complied with the provisions of this Article.

ARTICLE 9 INSURANCE/CONDEMNATION

Section 9.1 Insurance Requirements. Commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, the Association shall maintain the following types of insurance to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of such coverage shall be paid by the Association as a Common Expense, unless assessed to the Units and Owners based on risk. Notwithstanding any of the specific insurance requirements contained in this Article, the Association may also consider, in determining the types and amounts of insurance it needs to obtain, the then-existing requirements of the Agencies with respect to their insurance, guaranty, or purchase of mortgages:

(a) Property Insurance. A policy of property insurance covering all insurable improvements located within the Community (including the Units, but not including the finished interior surfaces of the walls, floors and ceilings in the Units, or furniture and other personal property supplied or installed by Owners), except for land, foundation, excavation and other matters normally excluded from coverage, in an amount 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. Such policy shall also include coverage for or contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, an "Inflation Guard Endorsement," and a "Steam Boiler and Machinery Coverage Endorsement" with minimum coverage per accident equal to the insurable value of the building in which the machinery is located. The Association will also purchase endorsements and/or coverage on personal property owned by the Association, including fixtures and building service equipment. Such insurance shall afford protection against at least loss or damage by fire and other perils normally covered by the standard extended coverage endorsement, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

(b) Liability Insurance. A comprehensive policy of general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements and covering public liability or claims of liability for injury to persons and/or property, and death of any person or persons. Such liability insurance shall, to the extent reasonably obtainable, (i) have limits of not less than Two Million Dollars (\$2,000,000) in the aggregate and One Million Dollars (\$1,000,000) per occurrence; (ii) insure the Board of Directors, the Association and its officers, and their respective employees, agents and all persons acting as agents; (iii) include the Owners as additional insureds, but only for claims and liabilities arising in connection with the

ownership, existence, use or management of the Common Elements; (iv) cover claims of one or more insured parties against other insured parties; and (v) be written on an occurrence basis.

(c) Fidelity Insurance. A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of Officers, Directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to the estimated maximum amount of funds, including reserves, in the custody of the Association, its Officers, Directors, trustees and employees at any given time. Such coverage shall name the Association as an obligee. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this paragraph (c). In addition, the managing agent may be required to maintain such other insurance for the benefit of the Association as the Association shall deem necessary.

(d) Directors and Officers Liability Insurance. A policy to protect Directors and Officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

(e) Worker's Compensation and Employer's Liability Insurance. Worker's compensation and employer's liability insurance and all other similar insurance with respect to the employees, if any, of the Association, in the amounts and forms as may be required by law.

(f) Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as the Executive Board shall deem appropriate, to the extent that such coverage is reasonably available.

Section 9.2 General Provisions Concerning Insurance. All policies of insurance carried by the Association pursuant to this Declaration shall provide that (i) each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association; (ii) the insurer waives its rights of subrogation under the policy against the Association, each Owner, and any person claiming by, through, or under such Owner or any director, agent or employee of the foregoing; (iii) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (iv) if at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy shall be the primary insurance. An insurer that has issued an insurance policy for the insurance described in this Declaration shall issue certificates or memoranda of insurance to the Association and, upon request, to any Unit Owner or holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses. Each such policy shall contain a standard

noncontributory mortgagee's clause in favor of each Eligible Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and each Eligible Holder, insurer or guarantor of a mortgage. The Association shall furnish a certified copy or duplicate original of each such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Eligible Holders, upon request. The liability insurance policy required in this Declaration shall insure the Executive Board, the Association, any managing agent and their respective officers, employees, agents and all other persons acting as agents. Declarant and its members 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.

Section 9.3 Deductibles. No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount which is greater than the lesser of Ten Thousand Dollars (\$10,000) or 1% of the face amount of the policy or as determined by the Executive Board, in its sole discretion. Any loss falling within the deductible portion of such policy may be a Common Expense shared by all the Owners; or, in the proper instance, may be the expense of one or more Unit Owners, as the Executive Board reasonably determines, in which event the Association may assess such loss as an Assessment against such Owners and such Owners' Units, subject to all provisions of this Declaration applicable to such Assessments.

Section 9.4 Insurance Trustee. The Board of Directors shall have authority to authorize an insurance trustee to assist and consult with it and/or act as its agent and attorney-in-fact for one or more of the following purposes: to purchase and maintain the insurance required under this Declaration, to negotiate and compromise settlement of losses under any insurance, and to collect the proceeds from any insurance, hold such proceeds in trust for the Owners and Eligible Holders as their interests may appear and dispose of such proceeds as provided in this Declaration and in the Act.

Section 9.5 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by the Association's policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of such Owner, provided that if such amounts are not paid to the Association within ten (10) days after the Association shall have given notice to the Owner of the total amounts, from time to time, then the failure to so repay shall automatically become an Assessment determined and levied against such Unit and Owner.

Section 9.6 Acceptable Insurance Companies. To the extent commercially obtainable and reasonable, any hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports (or a comparable

rating by any successor or generally accepted substitute for Best's) of B/VI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to do business in the state of Colorado. The Association shall not obtain any policy where (i) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against a mortgagee or the mortgagee's designee or (ii) under the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's executive board, policy holders or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 9.7 Insurance to be Maintained by Owner and Other Owner Responsibilities.

(a) Insurance coverage on betterments and improvements installed by a Unit Owner, including finished interior surfaces of the walls, floors and ceilings in a Unit, shall be maintained by each Unit Owner, unless covered under the Association's property insurance, as allowed for in this Declaration. Furnishings, appliances and other items of personal property belonging to an Owner, and public liability coverage within each Unit, shall be maintained by the Owner of each Unit.

(b) The insurance required by this Section shall be obtained in the name of the Owner or Owners of the Unit in question and the Association from a company licensed to do business in the state of Colorado, and in the event of payment of any loss covered by such policies, the Association shall be paid first by the insurance company for the Association's loss. Such policies shall also contain an express waiver of any right of subrogation by the insurance company against the Association and the Owners hereby waive their right of subrogation against the Association.

(c) Certificates evidencing the insurance coverage required by this Section shall be submitted to the Association within ten (10) days of the effective date of each policy. The amount of any insurance coverage required in this Section shall not limit an Owner's liability for indemnification of the Association.

(d) The insurance required by this Section may be obtained by a tenant or tenants of a Unit Owner, instead of the Unit Owner, provided that such insurance otherwise conforms to the requirements of this Section.

Section 9.8 Annual Review of Insurance Policies. The Executive Board shall review the insurance carried by and on behalf of the Association at least annually for the purpose of determining the amount of insurance required pursuant to the provisions of this Article.

Section 9.9 Notice of Cancellation. If any insurance required by this Article to be obtained by the Association is not reasonably available or is canceled or not renewed without a replacement policy having been obtained, the Association shall promptly cause notice of that fact

to be hand delivered or sent by prepaid first-class mail to all Owners.

Section 9.10 Nonliability of Association and Directors. Notwithstanding the duty of the Association to obtain insurance coverage, as stated herein, neither the Association nor any Director shall be liable to any Owner, mortgagee or other person if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner or other person to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or such other person may desire, provided that Owners (or their tenants) shall, in any event, be required to obtain the insurance specified in this Declaration.

Section 9.11 Adjustments by the Association. Any loss covered by an insurance policy required to be obtained by the Association pursuant to this Declaration shall be adjusted by the Association, and the insurance proceeds shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold insurance proceeds in trust for the Association, the Unit Owners and the holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Unit Owners and holders of first lien security interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored, and unless the Executive Board has determined not to set aside surplus proceeds as a reserve for future repairs.

Section 9.12 Distribution of Condemnation and Property Insurance Proceeds. In the event proceeds of condemnation or property insurance become available for distribution to Unit Owners, the Association shall make such distribution in accordance with the respective interests of the Unit Owners and mortgagees as they appear of record and pursuant to the Act.

ARTICLE 10 SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS

Section 10.1 Member and Eligible Holder Approval. Subject to the rights of Declarant provided for in this Declaration, but notwithstanding any other provisions of this Declaration to the contrary, the Association shall not:

- (a) unless it has obtained the prior written consent of Members holding at least sixty-seven percent (67%) of the votes in the Association and the approval of at least sixty-seven percent (67%) of the Eligible Holders (based on one vote for each first mortgage):
 - (i) seek to abandon or terminate the Community, whether by act or omission, except for (A) abandonment or termination provided by law in the case of substantial destruction by fire or other casualty; or (B) in the case of a

taking by condemnation or eminent domain; or (C) for amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Real Estate or the Improvements;

- (ii) except as may otherwise be permitted in this Declaration, change the rights or obligations of any Owner or applicable to any Unit for the purpose of: (A) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (B) determining the share of ownership of each Unit in the Common Elements;
- (iii) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (excluding the granting of permits, licenses and easements as permitted in this Declaration);
- (iv) partition or subdivide any Unit; or
- (v) use hazard insurance proceeds for losses to any of the Real Estate for any purpose other than in accordance with the procedures set forth in this Declaration.

(b) unless it has obtained the prior written consent of Members holding at least sixty-seven percent (67%) of the votes in the Association and the approval of at least fifty-one percent (51%) of the Eligible Holders (based on one vote for each first mortgage), add or amend any material provisions of this Declaration or of the Articles of Incorporation or Bylaws of the Association which establish, provide for, govern or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only:

- (i) voting rights;
- (ii) Assessments, liens or the priority of liens;
- (iii) reserves for maintenance, repair and replacement of Common Elements;
- (iv) responsibility for maintenance and repair of any portion of the Community;
- (v) reallocation of interests in the Common Elements, or rights to use of the Common Elements;
- (vi) boundaries of any Unit, except as otherwise contemplated in this Declaration;

- (vii) expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Community;
- (viii) insurance, including but not limited to fidelity bonds;
- (ix) leasing of Units;
- (x) imposition of any restriction on the right of any Owner to sell or transfer such Owner's Unit;
- (xi) any decision by the Association to assume self-management of the Association, when professional management has previously been required by this Declaration or by any Eligible Holder;
- (xii) any restoration or repair of the Real Estate, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration, the Articles of Incorporation and Bylaws of the Association;
- (xiii) any action to terminate the legal status of the Community after substantial destruction or condemnation; or
- (xiv) any provisions which are for the express benefit of Eligible Holders.

Section 10.2 Notice of Action. Upon written request therefor, an Eligible Holder shall be entitled to timely written notice of:

- (a) any condemnation or casualty loss which affects a material portion of the Community or any Unit subject to a first mortgage held, insured or guaranteed by such Eligible Holder;
- (b) any delinquency in the payment of Assessments or other Association charges by the Owner of the Unit subject to a first mortgage held, insured or guaranteed by such Eligible Holder or any other default by such Owner in any obligation under the Governing Documents of which the Association has actual knowledge, when such delinquency or default remains uncured for a period of sixty (60) days;
- (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (d) any proposed action which would require the consent of a specified percentage of Eligible Holders as provided in this Article.

Section 10.3 Notice of Objection. Unless an Eligible Holder entitled to consent to certain amendments or actions as provided in this Article provides to the Secretary of the Association written notice of its objection, if any, to the proposed amendment or action within thirty (30) days after its receipt of notice of the proposal, such Eligible Holder will be deemed conclusively to have approved of the proposed amendment or other action.

Section 10.4 Right to Pay Taxes and Insurance Premiums. Any Eligible Holder shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Units if hazard insurance has not otherwise been obtained by the Association, and the Eligible Holder making such payments shall be entitled to immediate reimbursement therefor from the Association.

Section 10.5 Financial Statements and Other Documents. The Association shall maintain copies of the Governing Documents and all amendments thereto, as well as the Association's books, records and financial statements available for inspection by the Owners and by Eligible Holders. These materials will be made available by advance arrangement during ordinary business hours. The Association shall not be required to prepare audited financial statements, provided, however, that any Eligible Holder may have audited financial statements prepared at its expense.

ARTICLE 11 GENERAL PROVISIONS

Section 11.1 Compliance with and Enforcement of Governing Documents. In addition to the provisions of Article 5 of this Declaration:

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents.

(b) The Association, acting through the Executive Board, may enforce all applicable provisions of the Governing Documents and may impose sanctions for violation thereof. Such sanctions may include, without limitation:

(i) imposition of reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Unit (in the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Executive Board, the Owner shall pay the fine upon notice from the Executive Board);

(ii) suspension of the right to vote;

(iii) suspension of any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;

(iv) exercise of self-help or action to abate any violation of the Governing Documents in a non-emergency situation;

(v) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Executive Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass; and

(vi) levy of specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

(c) In addition, the Association, acting through the Executive Board, may take the following enforcement procedures to ensure compliance with the Governing Documents:

(i) exercise of self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of any parking rules and regulations); and/or

(ii) institution of suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs reasonably incurred in such action.

(e) The decision to pursue enforcement action in any particular case shall be left to the Executive Board's discretion, except that the Executive Board shall not be arbitrary or capricious in taking enforcement action.

Section 11.2 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or

applications.

Section 11.3 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 11.4 Amendment of Declaration, Map or Plat by Declarant. If Declarant shall determine that any amendments to this Declaration or the Map shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners or Eligible Holders. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of ten (10) years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Unit Owner and Eligible Holder. Each deed, security interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 11.5 Amendment of Declaration by Unit Owners. Except as otherwise provided in this Declaration and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least a majority of the total number of votes of the Members of the Association entitled to be cast, including after Declarant Control at least twenty-five percent (25%) of the votes entitled to be cast by the Members of the Association who own Residential Units and at least twenty-five (25%) of the votes entitled to be cast by the Members of the Association who own Commercial Units. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Eagle County, State of Colorado of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above. Anything in the foregoing to the contrary notwithstanding, Sections 2.5 and 4.5(c) of this Declaration may not be amended without the written consent of the Town of Basalt.

Section 11.6 Amendment Required by Eligible Holders or Agencies. Prior to ten (10) years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which an Eligible Holder or an Agency requests be amended or repealed may be amended or repealed by Declarant or by the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Eagle County, State of Colorado of a certificate setting forth the amendment or repeal in full.

Section 11.7 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant or its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of a certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate ten (10) years after the recording of this Declaration, or upon conveyance of one hundred percent (100%) of the Units to Unit Owners other than Declarant, whichever occurs first.

Section 11.8 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 11.9 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 11.10 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

[This space intentionally left blank]

Section 11.11 Validity of Amendments. As provided by the Act, any action to challenge the validity of an amendment of this Declaration must be brought within one year after the amendment is recorded in the real property records of Eagle County, Colorado.

IN WITNESS THEREOF, Declarant has caused this Declaration of Riverwalk at the Fryingpan to be executed by its duly authorized agents this 12th day of June, 2003.

Caddis Fly Partners, LLC,
a Delaware limited liability company

By: _____
Manager and Authorized Agent

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Declaration was acknowledged before me on this ____ day of _____, 2003, by Frieda K. Wallison as Manager and Authorized Agent of Caddis Fly Partners, LLC, a Delaware limited liability company.

Witness my hand and official seal.

Notary Public

My Commission Expires: _____

EXHIBIT A

DESCRIPTION OF REAL ESTATE

There is no initial "Real Estate" in the Community. Real Estate may be added by exercise of reserved development rights, as set forth in this Declaration.

Real Estate added to the Community may be subject to the following easements and interests of record:

1. Reservations or exceptions contained in U.S. Patents or in Acts authorizing the issuance thereof.
2. Terms, easements, conditions, reservations, restrictions and obligations as contained in Access and Utility Easement Agreement, recorded June 11, 2003 as Reception No. 836342.
3. Terms, conditions, reservations, restrictions and obligations as contained in Town of Basalt Ordinance No. 28, Series of 1996, approving the Amended Site Plan for the Riverwalk PUD, etc. recorded January 3, 1997 in Book 715 at Page 301 as Reception No. 611277, and Ordinance recorded December 1, 2000 as Reception No. 745422.
4. Terms, easements, conditions, reservations, restrictions and obligations as contained in New Swinging Bridge Easement Agreement by and among the Town of Basalt, Declarant, the Association and Greater Atlantic Bank, recorded June 11, 2003 as Reception No. 836344.
5. Terms, easements, conditions, reservations, restrictions and obligations as contained in New Riverwalk Easement Agreement by and among the Town of Basalt recorded June 11, 2003 as Reception No. 836343.
6. Terms, conditions, reservations, restrictions and obligations as contained in Basalt Sanitation District Riverwalk Project Sewer Line Extension Agreement recorded March 20, 2001 as Reception No. 752353.
7. Right of Way and Easement from Caddis Fly Partners, LLC to Kinder Morgan, Inc., recorded April 22, 2002 as Reception No. 793151.
9. Other documents and interests of record.

EXHIBIT B

INITIAL UNITS

There are no initial Units in the Community. Units may be added or created by exercise of reserved development rights, which rights are set forth in this Declaration.

EXHIBIT C

**PROPERTIES OWNED BY DECLARANT
WHICH MAY BE ADDED TO THE DECLARATION**

A PARCEL OF LAND SITUATED IN THE FOLLOWING DESCRIBED TRACT:

A TRACT OF LAND SITUATED IN A PART OF TRACT 48, SECTION 7, TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF BASALT, COUNTY OF EAGLE, STATE OF COLORADO, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHENCE CORNER NO. 2 OF SAID TRACT 48 BEARS N83°06'00"W 450.55 FEET; THENCE N89°15'00"E 263.80 FEET; THENCE N60°37'00"E 64.51 FEET; THENCE N44°15'00"E 49.83 FEET; THENCE S45°45'00"E 54.69 FEET; THENCE N34°37'38"E 3.45 FEET; THENCE S55°22'32"E 87.43 FEET; THENCE S52°14'00"W 243.14 FEET; THENCE S66°44'00"W 95.00 FEET; THENCE S62°44'00"W 207.55 FEET; THENCE N00°45'00"W 295.75 FEET TO THE POINT OF BEGINNING.

Subject to the terms, conditions, obligations and provisions of the documents and exceptions to title of record.

EXHIBIT D

OTHER PROPERTIES WHICH MAY BE ADDED TO THE DECLARATION

All or part of any real estate located adjacent to the Community, or across a public street or alley from the Community, provided the owner of that real estate consent.