

**DECLARATION
FOR
SHADY LANE CONDOMINIUMS**

THIS DECLARATION is made as of the 10th day of December, 2001 by 328 PARK AVENUE, LLC, a Colorado limited liability company (the "Initial Owner").

RECITALS

- A. The Initial Owner is the owner of the following described real property in the City of Aspen, County of Pitkin, State of Colorado (herein, the "Property" or "Community"): Lots A and B, Shady Lane Condominiums, according to the Condominium Map thereof recorded on December 10, 2001 in Plat Book 59 at Page 26 as Reception No. 461614, in the real estate records of Pitkin County, Colorado (the "Plat").
- B. The Initial Owner wishes to create two (2) residential lots in which portions of the Property are designated for separate ownership, one lot to include a free-market residential compound, and the other lot to include a deed-restricted employee housing unit, consisting of a single-family residence.
- C. The terms, covenants and restrictions contained herein reflect that one lot is free-market, which consists of approximately 84% of the Real Property, and the other lot is deed-restricted employee housing. In consideration of the foregoing, this Declaration grants certain rights to the free-market lot that are not given to the deed-restricted lot, providing certain reasonable restrictions that are necessary to fulfill the intent of the Project.

**ARTICLE 1
PROJECT PURPOSES**

- 1.01 Submission of Real Property. The Initial Owner hereby declares that all of the Property and improvements are hereby made subject to the following easements, restrictions, covenants and conditions which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof. The Initial Owner expressly does not submit the Property to the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as amended from time to time.
- 1.02 General Purposes. The Initial Owner desires to establish a means to ensure the proper use and appropriate development of the Project as a high quality, aesthetically pleasing and harmoniously designed planned community by means of mutually beneficial covenants, conditions and restrictions imposed on the Project for the benefit of the Initial Owner and all future owners of the Lots.
- 1.03 Declaration. To further the purposes expressed in Section 1.02 hereof, the Initial Owner, for itself, its successors and assigns, hereby declares that the Property shall, at all times, be owned, held, used and occupied subject to the provisions of this instrument, to the covenants, conditions and restrictions contained herein and to all amendments and supplements hereto.
- 1.04 Creation and Name of the Project. The Initial Owner hereby creates the project by the name of the Shady Lane Townhomes (the "Project"). The Project has only vertical boundaries and does not have horizontal boundaries. The Project has neither general nor limited common elements.
- 1.05 Location and Type of Project. The Project is situated in the City and Townsite of Aspen, Pitkin County, Colorado. Each Lot is designated for separate ownership. Because the Project is not a common interest community, as defined under the Act, this Declaration shall govern the Project.
- 1.06 No Declarant. The Initial Owner is entering into this instrument in its capacity as owner of the Property and declares that it is its intention that it shall not be considered a "declarant" (as such term is defined in the Act) and, accordingly, it shall not have either the rights or obligations of a declarant under the Act. However, the Initial Owner has the obligation to deliver a copy of this instrument as recorded to the Assessor of Pitkin County, Colorado. This instrument does, however, create certain rights and obligations



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of "Developer" (as such term is defined in Section 2.07 hereof) with respect to the Project which are similar to rights and obligation of a declarant under the Act, but the rights and obligations of Developer are governed by this "Declaration" (as such term is defined in Section 2.06 hereof) and not by the Act.

- 1.07 No Development Rights. The Initial Owner declares that it is its intention not to reserve any development rights which may include the rights to: (a) add real estate to the Project; (b) create additional "units" or "lots" or "common elements" or "limited common elements" (as such terms are defined in the Act) within the Project; (c) subdivide "lots" or convert "lots" into "common elements"; or (d) withdraw real estate from the Project.

ARTICLE 2 CERTAIN DEFINITIONS

In addition to the definitions set forth above or below, the following terms shall have the following meanings when used herein:

- 2.01 Act. The "Act" shall mean the Colorado Common Interest Ownership Act (Article 33.3 of Title 38 of Colorado Revised Statutes).
- 2.02 Declaration. "Declaration" shall mean this instrument, the Plat and all amendments and supplements to this instrument and the Plat hereafter recorded in the real property records of Pitkin County, Colorado.
- 2.03 Developer. "Developer" shall mean the Initial Owner.
- 2.04 Guest. "Guest" shall mean any individual who is present at the Property at the express or implied invitation of an Owner including, without limitation, friends, relatives, agents, contractors, employees, tenants or business invitees of an Owner.
- 2.05 Improvements. "Improvements" shall mean any construction, including, but not limited to, walls, roofs, foundations, skylights, telephone boxes, electrical transformers, fixtures, utilities, outdoor painting, windows and window coverings, flower boxes, drains, gutters, patios, and patio walls, that is constructed on a Lot which is intended to benefit each individual Lot.
- 2.06 Lot. "Lot" shall mean the parcels of land comprising the Property and designated as a lot on the Plat. Each Lot is identified by Lot A or B as shown on the Plat. An individual Lot may be referred to in this Declaration by such Lot's letter as shown on the Plat.
- 2.07 Owner. "Owner" shall mean any individual, corporation, partnership, limited liability company, joint venture, trust or other legal entity capable of holding title to real property in Colorado that is the record owner of a fee simple interest in one or more Lots according to the real property records of Pitkin County, Colorado. 328 Park Avenue, LLC, or its successor and assigns as "developer" of the Project, is the Initial Owner of Lots A and B. Every subsequent Owner of a Lot shall, upon acquiring title to a Lot, give notice to the other Lot Owner (in accordance with Section 7.03, below) of such new Owner's name, address and evidence of insurance required in Section 6.04, below.
- 2.08 Plat. "Plat" shall mean the "plat" (as such term is defined in the Act) of the Property which shall meet the requirements of Section 209 of the Act, described in Section 1.01 above, and which has been recorded in the real estate records of Pitkin County, Colorado, and all amendments and supplements thereto thereafter recorded in the real estate records of Pitkin County, Colorado.
- 2.09 Residence. "Residence" shall mean a fully or partially enclosed structure located on a Lot, including the foundation, all decks, all fixtures, all utility facilities and equipment, and all other Improvements located on that Lot which serve only that Lot.



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**ARTICLE 3
PROPERTY RIGHTS**

- 3.01. Lots and Improvements. By this instrument, the Initial Owner has created the Project by dividing the Property into two Lots. The Initial Owner has not reserved the right to add additional Lots to the Project so that the maximum number of Lots that may be made subject to this Declaration is two.
- 3.02 Easements. The Plat depicts any easements located on the Property. The Initial Owner hereby makes, establishes, declares, grants and reserves a blanket easement in favor of the Lot A Owner with respect to Lots A and B, the Lot B Owner with respect to Lot B, and any governmental, quasi-governmental or private entity providing utility services to the respective Owner's Lot, over, under, across, upon, and through such Lot for installing, replacing, repairing, maintaining and providing all utility services to the Residence on the Lot, including, without limitation, water, gas, electric, storm sewer, sanitary sewer, cable television, satellite communications and telephone services. The Lot A Owner has the right, at its expense and after giving written notice of at least one (1) business day to the Lot B Owner, to relocate any such lines, services and facilities within Lots A or B; provided, however, that such relocation shall be accomplished without interrupting the need of the Lot B Owner for the use of such lines or facilities (including the providing of temporary service, if necessary), except as the Lot B Owner specifically permits. Any easement created by this Section 3.02(a) shall be appurtenant to each Lot, as applicable.
- 3.03 Title to Lots. Title to a Lot may be held individually or by any entity or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Lot in which such Owner owns an interest.
- 3.04 Legal Description. Any contract of sale, deed, lease, deed of trust, mortgage, will or other instrument affecting a Lot (Lot A or Lot B) shall legally describe it substantially as follows:

"LOT ____, AS SHOWN ON THE SHADY LANE CONDOMINIUM PLAT,
recorded December 10, 2001 in Plat Book 59 at Page 26 as Reception No. 461614
County of Pitkin, State of Colorado."

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, lease or otherwise affect not only the Lot, but also the interest in the easements made appurtenant to such Lot by this Declaration. The interest in the Easements made appurtenant to any Lot shall be deemed conveyed or encumbered with that Lot, even though the legal description in the instrument conveying or encumbering such Lot may only refer to that Lot. The reference to this Declaration in any instrument shall be deemed to include any supplements or amendments to this Declaration, without specific reference thereto.

- 3.05 Separate Assessment. The Initial Owner shall give written notice to the Assessor of Pitkin County, Colorado requesting that the Lots be separately assessed and taxed. After this instrument has been recorded in the real estate records of Pitkin County, Colorado, the Initial Owner shall deliver a copy of this instrument as recorded to the Assessor of Pitkin County, Colorado.
- 3.06 Use Compliance. The use of the Lots shall comply with: (a) the terms, conditions and obligations set forth in this Declaration; (b) the matters set forth on the Plat; (c) the terms, conditions and obligations of those documents of record encumbering the Property; and (d) all present and future laws, rules, requirements, orders, directions, ordinances and regulations (including zoning regulations) affecting the Lots of any governmental authority having jurisdiction over the Lots and of their departments, bureaus or officials; provided, however, that nothing contained in this Section 3.06 shall limit, impair or otherwise affect any vested rights conferred upon the Property by the City of Aspen, Colorado and nothing herein shall prevent Owners from contesting or challenging any new laws, rules, requirements, orders, directions, ordinances or regulations (including zoning regulations).
- 3.07 No Partition of Lots. No Owner may assert any right of partition with respect to such Owner's Lot. By becoming an Owner, each Owner waives any and all rights of partition such Owner may hold with respect

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to such Owner's Lot. This Section 3.07 shall not, however, limit or restrict the right of the Owners of a Lot to bring a partition action pursuant to Section 38-28-101 et seq. of Colorado Revised Statutes requesting the sale of the Lot and the division of the proceeds among such Owners; provided that no physical division of the Lot shall be permitted as a part of such action and no such action shall affect any other Lot.

3.08 Encroachments. Upon acceptance of a deed conveying a Lot, an Owner consents to existing encroachments for any Improvements, including but not limited to, footings, eaves, drains, outward opening windows and doors, balconies, or any other exterior feature constructed to overhang or extend over the Property. No other encroachments shall be permitted.

3.09 No Mechanic's Liens.

(a) If any Owner shall cause any material to be furnished to such Owner's Lot or any labor to be performed therein or thereon, the Owner of the other Lot shall not under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to such Owner's Lot. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge any Lot other than that of such Owner with any mechanic's or materialmen's lien or other lien or encumbrance whatever. On the contrary (and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against any Owner or any Owner's Lot for work done or materials furnished to the other Owner's Lot is hereby expressly denied.

(b) If, because of any act or omission of any Owner, any mechanic's or materialmen's lien or other lien or order for the payment of money shall be filed against the other Owner's Lot or against the Initial Owner, the Owner whose or which act or omission forms the basis for such lien or order shall at such Owner's own cost and expense cause the same to be canceled and discharged of record or bonded in an amount and by a surety company reasonably acceptable to the party or parties affected by such lien or order within 20 days after the filing thereof, and further shall indemnify and save all such parties harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorney's fees resulting therefrom.

3.10 No Dedication. Nothing contained in this Declaration (which includes the Plat) shall be deemed a grant or dedication of all or any portion of the Property to the public or for public use unless such grant or dedication is expressly provided for in this Declaration.

ARTICLE 4 RESTRICTIONS

4.01 Use Restrictions. Only Residences may be constructed on the Lots. Only one Residence (which, with respect to Lot A, shall include the entire residential compound to be located thereon) may be constructed on each Lot. After a Residence has been constructed on a Lot, no modification of such Residence that would have the effect of increasing the floor area of such Residence shall be permitted unless said modification receives approval from the City of Aspen. Each Residence constructed on a Lot shall be used and occupied for residential use by the Owner of such Lot and such Owner's Guests. An Owner shall have the right to lease such Owner's Lot upon such terms and conditions as such Owner may deem advisable; provided, however, that: (i) any such lease shall be in writing and shall provide that the lease is subject to the terms of this Declaration, (ii) a Lot may be leased only for the uses and occupancies described in this Section 4.01, (iii) any failure of a lessee to comply with the terms of this Declaration shall constitute a default by such Owner and (iv) any lease of Lot B must comply with the housing guidelines of the Aspen/Pitkin County Housing Authority and the other requirements of the Deed Restrictions entered into between the Developer and the Aspen/Pitkin County Housing Authority and recorded in the real estate records of Pitkin County, Colorado, or any other similar deed restriction hereinafter recorded in the real estate records of Pitkin County, Colorado. The use and occupancy restrictions contained in this Section 4.01 shall not apply to Developer to the extent Developer exercises any of the rights of Developer set forth in Section 4.02 hereof.

4.02 Developer's Use During Construction and Sales. During the period of construction of the Residences, Developer and Developer's agents, employees and contractors shall be permitted to maintain on any

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portion of any Lot owned by Developer, such facilities as in the sole discretion of Developer may be reasonably required, convenient or incidental to such construction, including, without limitation, storage areas, parking areas and lighting and temporary parking facilities. During the period of sales of the Lots, Developer and Developer's agents, employees and contractors shall be entitled to maintain signs on any Lot owned by Developer advertising the Property. Developer and Developer's agents, employees and contractors hereby reserve an easement over, across, through and upon any Lot for the purposes of (a) discharging Developer's obligations under this Declaration or (b) exercising any of Developer's other rights under this Declaration.

- 4.03 Animals. No animals shall be raised, bred, kept or regularly brought to the Property except for animals which are trained to and are in fact assisting persons with disabilities and except for the following pets which may be kept: Lot A: no other limitation except as restricted by the City of Aspen; and Lot B: (a) no more than two dogs; (b) no more than two cats; and (c) any number of other small ordinary household pets which are confined to the Residence such as parakeets, parrots, canaries, gerbils and fish.
- 4.04 Signs.
- (a) Except for the signs which Developer is entitled to maintain on the Property as described in Section 4.02 hereof, and except for one (1) "for sale" sign maintained by the Lot B Owner (which shall not exceed 24" by 36" in size), no signs of any kind or nature shall be placed on any portion of the Property by the Lot B Owner without the prior written approval of the Lot A Owner, which approval may be granted or withheld by the neighboring Lot A Owner based upon the standard that all signs must be compatible with the architecture of the Project. The process for obtaining the approval of the Lot A Owner of any proposed sign is set forth in Section 5.02 hereof and the liability of the Lot A Owner with respect to such approval process is limited in the manner set forth in Section 5.03 hereof. Any sign maintained by the Lot A Owner shall be compatible with the architecture of the Project and shall only be restricted by the applicable rules and regulations of the City of Aspen.
- 4.05 Parking. No vehicles shall be parked on any portion of a Lot except in the driveway or the area of the Lot designed for parking. No buses, trucks larger than pickup trucks, trailers, mobile homes, truck campers, detached camper units, boats or commercial vehicles, or any other oversized vehicle, may be parked anywhere on the Property except while making deliveries or providing services to Residences or in connection with the construction of the Residences.
- 4.06 Unightly Conditions, Dumping and Outside Storage. No unsightly objects or materials shall be placed on the exterior portions of a Lot. No part of a Lot shall be used as a dumping ground for garbage, trash or waste and the same shall be stored in a covered container and disposed of in a sanitary manner. No outside storage, including without limitation vehicles such as motorcycles, bicycles, all-terrain vehicles, snowmobiles and similar vehicles, shall be permitted on any Lot except in connection with the construction of the Residences.
- 4.07 No Noxious, Offensive Hazardous or Annoying Activities. No noxious or offensive activity shall be carried on upon any part of the Property nor shall anything be done or placed on any part of the Property that is or may become a nuisance or cause any unreasonable disturbance or annoyance to others. No activities shall be conducted on any part of the Property that are or might be unsafe or hazardous to any person or property. No glaring light, loud or annoying sound or vibration, smoke or unpleasant odor arising from the use of a Lot shall be permitted.
- 4.08 No Imperiling of Insurance. No Owner and no Owner's Guests shall do anything or cause anything to be kept in or on the Property that might result in an increase in the premiums of insurance obtained by a neighboring Lot Owner or which might cause cancellation of such insurance without the prior written consent of the neighboring Lot Owner first having been obtained.
- 4.09 No Violation of Law. No Owner and no Owner's Guests shall do anything or keep anything in or on the Property that would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

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- 4.10 No Resubdivision, Condominium Form of Ownership or Time Share Estate. No Lot shall be resubdivided into smaller tracts or lots nor shall any Lot be combined with any other Lot. No Lot shall be subjected to a declaration that creates a "condominium" (as such term is defined in the Act) form of ownership with respect to such Lot. No Lot shall be made subject to a "time share estate" (as such term is defined in Section 38-33-110 of Colorado Revised Statutes).
- 4.11 Mining and Drilling. No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth. No water wells shall be drilled on a Lot.
- 4.12 Solar Applications. The installation or use of either active or passive solar equipment shall not be prohibited or restricted solely on the basis of aesthetic considerations unless such considerations are reasonable and do not significantly increase the cost of such installation or use; provided, any solar equipment on Lot B shall be restricted to the southern roof of the Residence.
- 4.13 Temporary Structures, Occupancy and Incomplete Structures. No temporary structures, mobile home or trailer shall be allowed on any Lot other than in connection with and during the period of construction, alteration or demolition of a Residence on a Lot. No space in a Residence on a Lot shall be occupied in any manner prior to completion of construction and the issuance of a temporary or permanent certificate of occupancy by the appropriate governmental authority with respect to such space. No partially completed structure shall be allowed to remain on a Lot except during the period of construction, alteration or demolition of such structure and providing that the completion of such construction, alteration or demolition is being pursued with reasonable diligence.
- 4.14 Denial of Certain Rights with Respect to the Lots. The Owners shall not have the following rights with respect to their Lots as described in the Act: (a) the right to relocate boundaries between adjoining Lots in accordance with the provisions of Section 212 of the Act; and (b) the right to subdivide a Lot in accordance with the provisions of Section 213 of the Act.

**ARTICLE 5
ARCHITECTURAL CONTROL**

- 5.01.1 Approval of Construction and Exterior Modifications. Except for construction by Developer, no building, fence, wall or other structure may be constructed on Lot B and no modifications to the exterior of any Improvements already constructed on Lot B (including without limitation an addition to the Residence or the painting of the Residence a different color) may be undertaken without, in each case, obtaining the prior written approval of the proposed construction or modification from the Lot A Owner. Upon receipt of a request for construction or modification, the Lot A Owner must consider whether the proposed changes are architecturally compatible and in a compatible color scheme to the Project, which do not materially affect the architectural design and style of the Project, and may in his or her discretion withhold approval without giving reason therefor.
- 5.01.2 Approval Procedures. The Lot A Owner shall have 60 days to approve the request in writing as submitted, to approve the request with conditions or to reject the request and, if the Lot A Owner does not so act within such 60 day period, the request shall be deemed approved as submitted. If the request is approved, the Lot B Owner shall undertake the matter approved in accordance any conditions placed upon such approval.
- 5.01.3 No Liability. The Lot A Owner shall not be responsible or liable for damages because of any failure to act, disapproval nor failure to approve or disapprove any request for approval described in Section 5.01 hereof. The Lot B Owner agrees and covenants not to bring any action or suit to recover damages against the Lot A Owner or its advisors, employees or agents.
- 5.01.4 Lot A. The Lot A Owner shall have the right to construct any building, fence, wall or other structures on Lot A and make any modifications to the exterior of any Improvements located or to be located on Lot A (including without limitation an addition to the Residence or the painting of the Residence a different color), without requesting the approval of or obtaining any approval from the Lot B Owner.



- 5.05 No Unsightliness. No unsightliness or waste shall be permitted on or in any part of the Property. All trash shall be collected and motorized vehicles (of every type) shall be parked in areas designated on the Plat. No wiring, television antennae or satellite dish (except 18" DSS dishes), or other items may be installed which protrude through windows, walls or roof areas, except as expressly authorized by the Lot A Owner or this Declaration.

**ARTICLE 6
MAINTENANCE AND INSURANCE**

- 6.01 Maintenance and Repairs by Owners. Each Owner shall be responsible, without limitation, for maintaining in a clean, safe, attractive and sightly condition, and in good order and repair, all portions of such Owner's Lot and the Residence on the Owner's Lot.

- 6.02 Ice and Snow. Each Owner shall be responsible, without limitation, for the removal of all ice and snow from such Owner's roof, eaves, gutters, and downspouts in order to safeguard the neighboring Owner, his guests, invitees, agents and employees, and the neighboring Lot and Residence.

- 6.03 Insurance.

(a) Property Insurance. Property Insurance will be maintained by each Owner covering that Owner's Lot and Residence, including all fixtures, equipment, Improvements and betterments, for loss or damage by fire and extended coverage perils for the replacement value of the Property.

(b) Liability Insurance. Liability insurance shall be maintained by each Owner to cover all occurrences, including death, bodily injury and property damage arising out of or in connection with use, ownership or maintenance of each Residence and all fixtures, equipment, Improvements and betterments. Each Owner shall name the other Lot Owner as an additional insured party under such policy.

**ARTICLE 7
MISCELLANEOUS PROVISIONS**

- 7.01 Enforcement and Remedies. The provisions of this Declaration that create certain rights in Developer shall be enforceable by the party or parties entitled to such rights and the other provisions of this Declaration shall be enforceable by each Owner. In enforcing this Declaration, an Owner shall be entitled to any remedy at law or in equity including without limitation, an action seeking a prohibitive or mandatory injunction or damages or both. In any action for the enforcement of this Declaration, the party or parties against which or whom enforcement is sought shall pay the reasonable attorneys' fees and costs, including the reasonable attorneys' fees and costs of any appeal, incurred by the party enforcing this Declaration in the amount determined by the Court if the party enforcing this Declaration is the prevailing party in such action. The issuance of a building permit or certificate of occupancy, which may be in contravention of this Declaration, shall not prevent enforcement of this Declaration.

- 7.02 Duration. This Declaration shall continue and remain in full force and effect in perpetuity, as the same may be amended from time to time in accordance with the provisions of Section 7.04 hereof.

- 7.03 Notice. Any notices required or permitted to be given to an Owner shall be delivered regular mail or overnight courier directed to the address on file at the Pitkin County Assessor's Office for said Owner, unless another address has been previously designated in writing and delivered to the other Owner. All notices so given will be considered effective, if delivered by courier, one business day after timely deposit with the courier service; or if mailed, three days after deposit, first class postage prepaid, with the United States Postal Service.

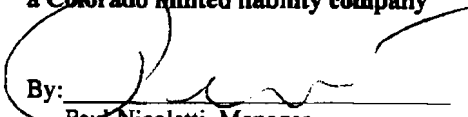
- 7.04 Amendment. The Owners shall be entitled to amend this Declaration with the written consent of both Owners. The provisions of this Declaration that create certain rights in the Developer may be amended only with the prior written consent of the party entitled to such rights. Any amendment shall be effective only upon the recording of a written instrument specifying and evidencing the amendment.

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- 7.05 Covenants Running with the Land. Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration shall be deemed a covenant running with the land as a burden with and upon the title to each parcel of real property within the Property for the benefit of any other real property within the Property.
- 7.06 Successors and Assigns. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of the Initial Owner and each subsequent Owner and their respective heirs, devisees, personal representatives, successors and assigns. The Initial Owner and each subsequent Owner shall be fully discharged and relieved of liability with respect to the obligations of such party under this Declaration upon ceasing to own an interest in a Lot.
- 7.07 Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration. If any provision of this Declaration is inconsistent with or otherwise contravenes any mandatory requirement of the Aspen/Pitkin County Housing Authority, with respect to the limited rights granted to the Lot B Owner hereunder, such mandatory requirement shall prevail and this Declaration shall be deemed to be modified to satisfy such requirement.
- 7.08 Captions. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provisions of this Declaration.
- 7.09 Construction. When necessary for proper construction, the masculine of any word used in this Declaration shall include the feminine or neutered gender, and the singular the plural and vice versa.
- 7.10 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of such provision or of any other provision of this Declaration.
- 7.11 Governing Law. This Declaration shall be governed by and construed under Colorado law.

EXECUTED as of the date first set forth above.

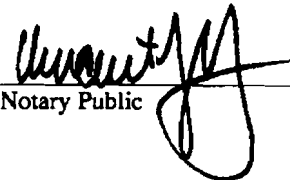
328 PARK AVENUE, LLC
a Colorado limited liability company

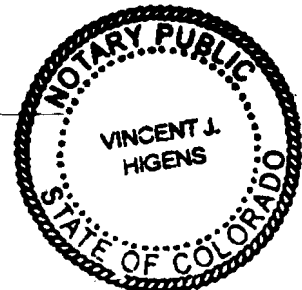
By: 
Paul Nicoletti, Manager

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

The foregoing instrument was acknowledged before me this 8 day of December, 2001, by Paul Nicoletti, as Manager of 328 Park Avenue, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: _____


Notary Public



Vincent J. Higen / Notary Public
My Commission Expires 8/25/2003
601 E. Hopkins
Aspen, CO 81811

Return to:
Brandt & Feigenbaum
132 Midland Ave., Suite 4
Basalt, Co. 81621
Attn: Micheal Feigenbaum