

Filed for record the 29 day of Jan A. D. 1974 at 2:40 o'clock P. M. By Merin A. Smith RECORDER DEPUTY
Reception No. 298685

DECLARATION OF RESTRICTIONS, COVENANTS,
EASEMENTS AND RESERVATIONS

This Declaration is made by Owen P. O'Fallon and Barbara A. O'Fallon of Crested Butte, Colorado, hereinafter collectively called "the Declarant", at the Town of Crested Butte, Gunnison County, Colorado, as of the 25th day of October, 1973.

RECITALS

1. The Declarant is the owner of certain real property hereinafter called "the Land", situate in Gunnison County, Colorado, described as follows:

Lots Seventeen (17) and Eighteen (18), Block Sixty-two (62) in the Town of Crested Butte, Gunnison County, Colorado, according to the official plat of said Town on file and of record in the office of the Clerk and Recorder for Gunnison County, Colorado.

2. The Declarant intends that the Land shall be developed as a townhouse development which will achieve certain objects and purposes: namely, that the development will be a residential community which is aesthetically pleasing, harmonious with the environment, and conducive to residential use for all concerned on a lasting basis and that such development will preserve the natural beauty of the Land to the fullest extent possible during all seasons of the year. One building will be constructed by Declarant having four units and common or party walls. Additional townhouses may be hereafter constructed upon adjoining land and made subject to this Declaration, at the Declarant's option.

3. The Declarant believes that such objects and purposes can be best achieved through the imposition of restrictions, covenants, easements, and reservations upon the Land and through the control of the location, composition and architecture of the improvements to be placed on the Land. The Declarant further believes that the objects and purposes may be implemented by continuing control either directly by the Declarant or through other entities to be created for such purposes, all as hereinafter set forth.

NOW THEREFORE, in order to achieve the above described objects and purposes, the Declarant does hereby impose upon the above described Land the restrictions, covenants, easements, reservations, and other encumbrances set forth herein. All such encumbrances shall run with the Land and shall be considered to be a part of any and all conveyances, transfers, leases, and other documents affecting all or any part of the Land whether or not specifically set forth in such documents.

ARTICLE I - DEFINITIONS

1.1 "Association" shall mean the nonprofit corporation described in Article IV hereof.

1.2 "Buildings" or "Improvements" means an improvement constructed upon the Land in furtherance of the plan of development set forth in the preamble hereof.

1.3 "Common Area" shall mean any unit area within the Land which has been or hereafter may be conveyed by the owner thereof to the Association and accepted thereby, or any areas so designated on the Plat and reserved as common areas on such Plat by Declarant, including any improvements thereon, which areas exist for the common use of all owners, their guests and invitees.

1.4 "Owner" shall mean the title holder of each respective unit.

1.5 "Plat" shall mean the plat subdividing the Land described in the preamble hereof and as filed in the County records of Gunnison County, Colorado. Such plat reflects the legal description of each unit and indicates the separate number and designation of each unit. Declarant reserves the right to amend the plat from time to time in the manner permitted by law to establish, vacate, and relocate easements and parking areas.

1.6 "Unit" shall mean such separately numbered and designated parcels of land, and easements and rights appurtenant thereto, as shown upon the plat and the improvements thereon.

1.7 "Common Expenses" shall mean the costs and expenses of managing, maintaining and operating the common areas and facilities as described in section 4.4 hereof. Each owner shall be responsible for his pro rata share of the common expenses as set forth in Section 4.7 hereof.

ARTICLE II - EASEMENTS

2.1 Generally. Easements shall be as shown upon the plat. Such easements upon the Land shall be for the purposes of parking, utilities, drainage, walkways, recreation and access as designated.

2.2 Interference with Easements. No improvement, structure or barricade of any kind whatsoever may be erected or placed upon any platted easement without the prior written approval of the Declarant.

2.3 Additional Easements. In addition to the easements shown upon the plat, there is hereby reserved to the Declarant an easement through the basement area of each unit for purposes of installation, replacement, repair, and maintenance of all utilities, including water, sewer, gas, electricity, telephone, and any other utilities necessary or desirable; and for a right of access to and from any part of the Land in connection with the construction of improvements thereon. The installation of utilities shall be accomplished in a manner consistent with the preservation of the purposes and uses of the area.

2.4 Maintenance Easement. An easement is hereby reserved to the Declarant with respect to each unit for access to perform any maintenance or managerial duties or functions.

ARTICLE III - COMMON AREA

3.1 Right to Use. Title to the common area will be conveyed to the Association by Declarant, free and clear of any liens and encumbrances, except the easement and restrictions created hereby. Each owner shall have a right and easement of use and enjoyment of the common area. Such easement shall apply to the guests of owners, and such other persons as may from time to time be authorized by the Association and shall be appurtenant to each unit. The use of the common area shall be subject to such rules and regulations as the Association may prescribe and may be subject to suspension of voting rights and right to use as provided in the Bylaws of the Association for the failure of an owner to pay an assessment when due or for a violation of the provisions of this Declaration.

3.2 Expenses. The common expenses associated with the common area shall be borne by the Association and shall be prorated as set forth in Article VI hereof and the Bylaws of the Association.

ARTICLE IV - ASSOCIATION

4.1 Creation. The Declarant shall cause a nonprofit corporation ("Association") to be formed under the laws of the State of Colorado. Such corporation shall be named CEDARWOOD TOWNHOUSES, INC. or such other name as permitted under the laws of Colorado.

4.2 Membership. The owner or owners of each unit, including any unit owned by the Association, shall be entitled to one membership in the Association per unit and such membership shall continue as long as such member is an owner. There shall be one vote per membership.

4.3 Representative of Owners. The owner of each unit and, in the event that a unit is owned by more than one person, then all such owners or the governing body representing such owners, as appropriate, shall designate in writing to the Association the person entitled to represent and to cast the vote for such unit.

4.4 Duties. The Association shall have the duty of providing management, maintenance, repair, landscaping, and, should the same be authorized, improvements for the common area and facilities and for all easements described in Article II hereof. It shall have the duty of maintaining and repairing all of those portions of the building constructed by the Declarant which shall be for the mutual benefit of all the owners, including the roof, party walls, and foundation thereof. It shall further be responsible to provide such insurance as may be necessary or desirable with respect to the improvements on the land and the common area and with respect to such easements. The Association may employ a managing agent to perform its duties hereunder. Such agent shall have the powers and duties set forth in the Bylaws of the Association.

4.5 Assignment and Delegation by Declarant. It is contemplated that the Declarant may from time to time transfer, assign, and delegate those powers and rights reserved to the Declarant under this Declaration, together with the obligations attendant thereof, to the Association. Upon approval of the Association, it shall then be the responsibility of the Association to recognize and to exercise such powers, rights, and obligations. At such time as the Declarant shall have sold seventy-five per cent (75%) of the units, the Declarant shall assign and delegate all of those powers and rights reserved to the Declarant under this Declaration, together with the obligations attendant thereof, to the Association.

4.6 Costs of Association. The Association shall perform its duties and obligations upon a cost basis and shall have the right to establish appropriate cash reserves to insure the performance of its duties and obligations.

4.7 Assessments. The common expenses incurred by the Association in its operation shall be borne by the owners upon an assessment basis. Each owner of a unit, by acceptance of a deed therefor, whether or not so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association his respective assessment as herein provided. Each owner shall be responsible for an equal fractional proportion of the total assessment with the owners of all other units in the development. The assessments made shall be based upon the cash requirements deemed to be such aggregate sum as the Association shall from time to time determine is to be paid by all of the owners, including Declarant, for unsold units, to provide for the payment of all estimated expenses incurred in connection with the maintenance and operation of the common areas and facilities, which may include, but is not limited to, expenses of operation, management, taxes and special assessments until separately assessed, insurance premiums on common areas and buildings thereon (including fire insurance with extended coverage, vandalism, and malicious mischief insurance, public liability and other insurance), landscaping and

care of grounds, common lighting and heating, repairs and renovations, trash and garbage collections, wages, common water and utility charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Resident Manager, or Board of Managers, under or by reason of this Declaration, the payment of any deficit remaining from a previous assessment period, the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the common areas. Assessments shall also include the costs of exterior maintenance expense of an owner's unit if such maintenance is undertaken by the Association pursuant to Article VII hereof. The omission or failure of the Board to fix the assessment for any assessment period shall not be deemed a waiver, modification or a release of the owners from their obligation to pay. The assessments for estimated common expenses shall be due monthly in advance and the Association shall prepare and deliver or mail to each owner an itemized statement showing the estimated or actual expenses for the assessment period and the proportionate amount due by such owner. No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas or by abandonment of his unit.

4.8 Lien for Assessments. All sums assessed but unpaid for the share of common expenses chargeable to any unit shall constitute a lien on such unit superior to all other liens and encumbrances, except for:

(a) Tax and special assessment liens on the unit in favor of any assessing unit.

(b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance.

If any assessment shall remain unpaid after fifteen days after the due date thereof, the Association may impose a penalty on such defaulting owner in an amount equal to one per cent (1%) of such assessment. Likewise, a penalty equal to one per cent (1%) of the unpaid assessment may be imposed on the first day of each calendar month thereafter so long as such assessment shall be unpaid.

To evidence the lien as above provided, the Association may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the amount of accrued penalty thereon, the name of the owner of the unit and a description of the unit. Such a notice shall be signed by one of the Association and may be recorded in the office of the Clerk and Recorder of Gunnison County, Colorado. Such lien for assessment shall attach from the due date of the assessment. Such lien may be enforced by foreclosure of the defaulting owner's unit by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof. In the event of any such foreclosure the owner shall be liable for the amount of unpaid assessments, any penalties thereon, the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Association shall have the power to bid on the unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

4.9 Personal Obligation of Owner. The amount of the common expenses assessed against such unit shall also be a personal obligation of the owner thereof at the time the assessment is due. Suit to recover a money judgment for unpaid assessments, and any penalties thereon shall be maintainable without foreclosing or waiving the lien securing same.

4.10 Payment by Encumbrancer. Any encumbrancer holding a lien on a unit may pay any unpaid assessment payable with respect to such unit, and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid of the same priority as the lien of his encumbrance.

ARTICLE V - PARTY WALLS

5.1 General Rules of Law to Apply. Each wall which is built as part of the original construction of the building upon the Land and which placed on the dividing line between the units or which is an exterior wall bearing the burden of the roof shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

5.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

5.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

5.4 Weatherproofing. Notwithstanding any other provision of this Article, an owner who by his negligent or willful act causes an interior party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

5.5 Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the Land and shall pass to such owner's successors in title.

5.6 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all of the arbitrators shall be final and conclusive of the question involved.

ARTICLE VI - ENFORCEMENT

6.1 By Whom. The provisions of this Declaration may be enforceable by the Declarant, by the Association, or by any owner. An owner shall have the right to enforce the provisions of this Declaration only after giving the Declarant notice of an alleged violation of the provisions hereof and upon failure of the Declarant to initiate remedial action as hereinafter provided within thirty (30) days after receipt of such notice. The right of enforcement conferred upon the owner shall not be effective as to any waiver granted by the Declarant or the Association under the provisions of this Declaration.

6.2 Enforcement by Law. The enforcement of the provisions of this Declaration may also be by a proceeding in law for a prohibitive or mandatory injunction or by a suit or action to recover damages. A judgment in any action at law or in equity shall include reasonable attorney's fees. In addition thereto, the Declarant may exclude any owner or the guests of any owner from the use and enjoyment of the common area and any facilities thereon.

6.3 Effect of Violation. No violation of, or failure to comply with any provision of this Declaration nor any action to enforce such provision shall affect, defeat, render invalid, or impair any mortgage, deed of trust or other lien on any portion of the Land which was taken in good faith and for value and perfected by recording with the Clerk and Recorder of Gunnison County, Colorado, prior to the time of recording of a notice of violation which shall identify such portion of the Land and the owner(s) thereof and shall describe the nature of such violation or failure to comply. No such violation, failure to comply

nor action to enforce shall affect, defeat, render invalid, or impair the title or interest of the holder of, or the purchaser upon foreclosure under, any such mortgage, deed of trust, or other lien or result in any liability, personal or otherwise, to any such holder or purchaser. Any such purchaser upon foreclosure shall, however, take subject to this Declaration except that any violation of, or failure to comply with, any provision of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed a violation hereof or a failure to comply herewith with respect to such purchaser, his heirs, representatives, successors, and assigns. Nothing contained in this paragraph 6.3 shall be deemed to relieve any owner of personal liability for assessments, costs, expenses, and fees accruing or owed under this Declaration and pertaining to his ownership of a portion of the Land. The Declarant shall have the right to obtain personal judgment against any such owner for such liability through any court of competent jurisdiction.

ARTICLE VII - MAINTENANCE AND REPAIR OF IMPROVEMENTS

7.1 By Owner. An owner shall maintain and keep in good repair all that part of the Land and improvements thereon contained on such owner's unit not required to be maintained and kept in good repair by the Association. It is the responsibility of each owner to keep adequate fire, casualty and public liability insurance coverage on his unit.

7.2 Definitions. For the purposes of this Article VII, total damage is defined as such damage as to render, in the judgment of the Association, any unit on the Land untenable. Any damage less than total damage as so defined is partial damage for the purposes of this Article VII. Repair or reconstruction as used in this Article VII means restoration of improvements to substantially the same condition which they existed prior to the damage, with each unit and the common areas having substantially the same horizontal and vertical boundaries as before.

7.3 Duty of Repair or Reconstruction. It is the duty of each owner upon damage (either partial or total) to his unit to repair or reconstruct as follows:

(a) Partial Damage. A partial damage to the unit shall be repaired as promptly as possible by the owner under the direction of the Association, and any cost of such repair, whether undertaken by the Association or not, shall be the responsibility of or assessed against such owner.

(b) Total Damage. In the event of total damage to a unit, the Association shall determine whether to raze the improvements upon such unit and place the unit in a natural condition, or to construct replacement improvements on the unit. Such a determination shall be binding upon the owner of such unit, and such razing or replacement shall be undertaken and completed promptly following the Association's determination.

7.4 Covenant to Repair. Declarant hereby covenants for itself, its successors and assigns, that any partial damage to the common areas will be repaired regardless of the extent of damage to a unit.

7.5 Power of Attorney. This Declaration hereby appoints the Association as the irrevocable attorney-in-fact for all owners to deal with a unit if not maintained in accordance with paragraph 7.1 hereof or upon its damage and repair or razing and replacement. Any repairs or razing and replacement required to be made by an owner under this Article VII, and not so made, may be undertaken by the Association at the sole expense of the owner of the affected unit, and the Association shall have a lien on such unit for the cost of such repairs in the same manner as a lien for assessments, except as otherwise set forth herein.

ARTICLE VIII - MISCELLANEOUS

8.1 Effect and Duration of Covenants. The provisions of this Declaration shall be for the benefit of and binding upon the Land, each unit, each owner, and his successors, heirs, representatives, and assigns. Such provisions shall continue in full force and effect until January 1, 2000, at which time they shall automatically be extended for five successive terms of ten years each unless, at any time after January 1, 2000, the owners of three-fourths of the units shall, at a meeting duly called for such purpose, vote for the termination of the provisions of this Declaration. At any such meeting, each unit shall have one vote.

8.2 Estoppel Certificate. Upon payment of a reasonable fee not to exceed \$10.00 and upon written request of any owner or any person with any right, title or interest in a unit or intending to acquire any right, title or interest in a unit, the Declarant shall furnish a written statement setting forth the amount of any unpaid assessments, charges, fines or penalties, if any, due or accrued under this Declaration with respect to any unit or portion thereof. Such statement shall, with respect to the party to whom it is issued be conclusive against the Declarant and all other parties that no greater or other unpaid amounts were then due or accrued.

8.3 Limited Liability. Neither the Declarant nor any agent or employee thereof shall be liable to any party for any action or for any failure to act with respect to any matter under this Declaration if the action taken or failure to act was in good faith or was without malice.

8.4 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 any provision.

8.5 No Waiver. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision nor of any other provision hereof.

8.6 No Partition. The common areas shall be owned in common by all of the owners of the units and shall remain undivided and no owner shall bring any action for partition or division of the common areas.

8.7 Mechanic's Lien Rights and Indemnification. Subsequent to the completion of the improvements described on the plat, no labor performed or materials furnished and incorporated on a unit with the consent or at the request of an owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the unit or any other unit not expressly consenting to or requesting the same, or against the common areas. Each owner (indemnitor) shall indemnify and hold harmless each of the other owners and the Association from and against all liability arising from the claim of any lien against the Land of any other owner or against the common areas for construction performed or for labor, materials, services or other products.

8.8 Right to Mortgage. Any owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage or encumbrance shall be one which has first and paramount priority under applicable law. The owner of a unit may create junior mortgages on the following conditions: (i) that any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, lien for common expenses, and other obligations created by this Declaration and by the Bylaws; (ii) that the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon the said premises which insurance policies

were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association, and if such request is not granted, such release may be executed by the Association as attorney-in-fact for such junior mortgagee.

8.9 Assignment. The Declarant may from time to time transfer, assign, and/or delegate its powers, rights, and obligations under this Declaration to the Association. The Declarant shall be deemed to have assigned such powers, rights, and obligations to the Association upon his bankruptcy, or death. Such transfer, assignment, and/or delegation shall be effected by the recording with the Clerk and Recorder of Gunnison County a notice identifying this Declaration and specifically describing the provisions thereof affected by such transfer.

8.10 Amendment. The Declarant shall have the right to amend, delete or supplement any provision of this Declaration at any time prior to the sale of all the units, provided that any such amendment, deletion or supplement shall not have a materially adverse effect upon any of the then owners. The owners shall have the right to amend, delete or supplement any provision of this Declaration by means of any affirmative vote given by the owners of three-fourths of the units. Such right to amend shall include the right to effectively transfer to the Association any powers, rights or obligations granted to the Declarant under the Declaration. Such vote shall be taken at a meeting called for such purpose. At any such meeting, each unit shall have one vote.

Signed and dated at Crested Butte, Colorado, as of the date first above written.

Owen P. O'Fallon
Owen P. O'Fallon

Barbara A. O'Fallon
Barbara A. O'Fallon

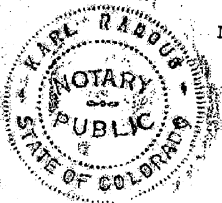
STATE OF COLORADO)
) ss.
County of Gunnison)

The foregoing Declaration of Restrictions, Covenants, Easements and Reservations was acknowledged before me this 25th day of October, 1973, by Owen P. O'Fallon and Barbara A. O'Fallon.

Witness my hand and official seal.

My Commission expires June 19, 1976

My commission expires _____



Karl Raboug
Notary Public