

# THE UNITED STATES OF AMERICA,

Montrose 02639.  
Certificate No. \_\_\_\_\_  
Application \_\_\_\_\_

To all to Whom these Presents shall come, GREETING:

Whereas, Thomas Row Can

has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Montrose, Colorado whereby it appears that full payment has been made of the said Certificate, approved 20th May, 1882, "Secure Homesteads" according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," and the acts supplemental thereto, for Section 26 on the Public Domain," and the acts supplemental thereto, the claim of Matjes Malensee has been established and duly consummated, in conformity to law, for the south half of the northeast quarter and the north half of the southeast quarter of Section twenty-six in Township thirteen south of Range eighty-six west of the Sixth Principal Meridian, Colorado, containing one hundred sixty acres.

according to the Official Plat of the Survey of the said Lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said

Now Know Ye, That, the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Matjes Malensee and to his heirs, the said Tract above described: To Have and to Hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said Matjes Malensee and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of Courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law, and otherwise

In Testimony Whereof, I, William H. Taft, President of the United States of America, have caused these letters to be made patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the twentieth day of November, in the year of our Lord one thousand nine hundred and nine, and of the Independence of the United States the one hundred and thirty-ninth.

BY THE PRESIDENT: William H. Taft  
By W. H. Taft Secretary  
A. W. Sanborn Recorder of the General Land Office



Recorded, Vol. \_\_\_\_\_ Page \_\_\_\_\_

Filed for Record the 16 day of July, A. D. 1910, at Montrose, Colorado

Book 101 Pg. 449

Filed for record the 3 day of Oct A. D. 1975 at 2:30 o'clock P.M. Marian J. Smith  
Reception No. 307958 By: \_\_\_\_\_ DEPUTY RECORDER

TOWN OF MT. CRESTED BUTTE

SUBDIVISION REGULATION

ORDINANCE 12

SERIES, 1975

AN ORDINANCE regulating the subdivision of tracts of land within the Town of Mt. Crested Butte, Colorado and establishing procedures for filing sketch plans, preliminary plats and final plats and providing for filing fees and penalties for violation of the ordinance.

BE IT ORDAINED by the Town Council of the Town of Mt. Crested Butte, Colorado that

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ORDINANCE

SUBDIVISION REGULATIONS

Mt. Crested Butte, Colorado

Section 1

1.1 TITLE

An ordinance establishing rules, regulations and standards governing the annexation and subdivision of land within the Town, setting forth the procedure to be followed by the planning commission and the Council in applying and administering these rules, regulations and standards, and setting forth the penalties for the violation thereof as established by the state of Colorado.

1.2 SHORT TITLE

These regulations shall be known and may be cited as "The Subdivision Regulations of the Town of Mt. Crested Butte.

1.3 AUTHORITY

The Town subdivision regulations are authorized by Title 31, Article 8, Part 1 and Title 31, Article 23, Part 1, C.R.S., 1973. This ordinance is hereby declared to be in accordance with all provisions of these statutes.

1. Any person, partnership or corporation intending to subdivide land as defined in SECTION 2 of these regulations shall submit plans and plats as required by and specified in these regulations to the Town Council.
2. Plans and plats of proposed subdivision of land located within the Town shall be submitted to the Planning Commission and the Council for review and approval in accordance with the provisions of these regulations before such plats may be recorded with the Town and County Clerk and recorder. To ensure uniformity and environmental protection, such plans and plats shall conform to procedures and standards specified in these regulations.
3. Such plats shall not be filed with the county clerk and recorder unless a notation has been made on the record plat by the Council certifying that the Town Council has approved the plat in accordance with these regulations.

1.4 STATEMENT OF PURPOSES

- A. To assist the orderly, efficient and integrated development of the Town.
- B. To promote the health, safety and general welfare of the residents of the Town.
- C. To ensure conformance of land subdivision plans with the public improvement plans of the Town.
- D. To ensure coordination of inter-municipal public improvement plans and programs.
- E. To encourage well planned subdivisions by establishing adequate standards for design and improvement.
- F. To improve land survey monuments and records by establishing standards for surveys and plats.
- G. To safeguard the interests of the public, the homeowner and the subdivider.
- H. To secure equitable handling of all subdivision plans by providing uniform procedures and standards.
- I. To prevent loss and injury from fire in mountainous wooded terrain.
- J. To preserve natural vegetation and cover and promote the natural beauty of the Town.
- K. To prevent and control erosion, sedimentation and pollution of surface and subsurface water.
- L. To prevent flood damage to persons and property and minimize expenditure for flood relief and flood control projects.
- M. To restrict building on flood lands, shorelands, land slide, mud slide or snow slide areas, areas covered by poor soil or, in other areas poorly suited for building or construction.
- N. To provide adequate space for future development of schools and parks to serve the future population.
- O. To assure the planning for the provision of an adequate and safe source of water and means of sewage and other waste disposal.

1.5 TERRITORY COVERED BY ANNEXATION AND SUBDIVISION REGULATIONS

These subdivision regulations shall apply to the entire area of the Town of Mt. Crested Butte, Colorado. They shall apply

to all divisions of land into two or more parcels for the purpose, whether immediate or future, of sale or building development or for re-subdivision into smaller parcels.

#### 1.6 CONTROL OVER PLATTING

- A. Public Areas. All plans of streets or highways for public use and all plans, plats, and replats of land laid out in a subdivision or building lots, the streets, highways, alleys, or other portions of the same intended to be dedicated to a public use or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall be submitted to the planning commission for consideration and approval before they are recorded. Acceptance of said proposed dedication by the public shall be given only by specific action of the Council following approval by the planning commission.
- B. Permits. No permits, building or other structure shall be issued for the construction of any building, or other improvements requiring a permit, upon any land for which a plat is required by this regulation, unless and until the requirements thereof shall have been complied with.
- C. Public Maintenance. The Council may not be required to provide public street improvements and public maintenance or any right of way which have not been officially accepted for such purpose.

#### 1.7 PENALTIES

- A. Any subdivider, or agent of a subdivider, who transfers or sells or agrees to sell or offers to sell any subdivided land before a final plat for such subdivided land has been approved by the Town Council of the Town of Mt. Crested Butte and recorded shall be guilty of a misdemeanor and shall be subject to a fine not to exceed three hundred dollars for each parcel of interest in subdivided land which is sold or offered for sale.
- B. The Town Council of the Town of Mt. Crested Butte shall have the power to bring an action to enjoin any subdivider from selling, agreeing to sell, or offering to sell subdivided land which has not been approved by the Council.

#### 1.8 PLAT APPROVAL SEPARATED FROM ACCEPTANCE OF DEDICATION FOR ROADS

The approval of said plan or plat by the planning commission shall not be deemed an acceptance of the proposed dedication by the public. Such acceptance, if any, shall be given by action of the Council. The owners and purchasers of such lots shall be presumed to have notice of public plans, maps and reports of the planning commission affecting such property with its jurisdiction.

SECTION 2

DEFINITIONS

2.1 RULES OF LANGUAGE CONSTRUCTION.

- A. For purpose of this ordinance and when not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, the masculine includes the feminine, the word "shall" is mandatory and not directory, the word "may" is permissive, and the particular controls the general.

2.2 DEFINITIONS

- A. The following definitions represent the meanings of terms as they are used in this regulation.
1. Council. The Town Council of the Town of Mt. Crested Butte.
  2. Commission. The planning commission of the Town of Mt. Crested Butte as duly constituted by law.
  3. Comprehensive Plan. The comprehensive plan as may be adopted, prepared or being prepared for Mt. Crested Butte, and which includes any unit or part of such plan separately adopted and any amendment to such plan or parts thereof. It is a plan for the future growth, protection and development of Mt. Crested Butte, which makes recommendations and policies to provide adequate facilities for housing, transportation, convenience, public health, safety and general welfare of its population.
  4. Conservation Standard. Guidelines and specifications for soil and water conservation practices and management enumerated in the technical guide prepared by the USDA Soil Conservation Service for Gunnison County, adopted by the county soil and water conservation district supervisors, and containing suitable alternatives for the use and treatment of land based upon its capabilities from which the landowner selects that alternative which best meets his needs in developing his soil and water conservation plan.  
Covenants.
  5. Dedication. The conveyance or setting aside of land to the Council or its designee.

6. Disposition. A contract of sale resulting in the transfer of equitable title to an interest in subdivided land; an option to purchase an interest in subdivided land; a lease or an assignment of an interest in subdivided land; or any other conveyance of an interest in subdivided land which is not made pursuant to one of the foregoing.
7. Easement. A right granted by the property owner, generally established in a real estate deed or on a recorded plat, to permit the use of land by the public, a public agency, a utility, a corporation or persons for a specified purpose or use.
8. Evidence. Any map, table, chart, contract, or any other document or testimony prepared or certified by a qualified person to attest to a specific claim or condition, which evidence must be relevant and competent and must support the position maintained by the subdivider.
9. Final Subdivision Plan. The final plan of the plat, subdivision or dedication for filing or recording in conformance with these regulations.
10. Home Owners Association. An association of owners of lots in a subdivision, organized to take title to parcels of real estate and hold, manage and use the same for the use and benefit of all the owners of land in the subdivision, and the public.
11. Improvements. Street grading and surfacing, with or without curbs and gutters, sidewalks, crosswalks, water mains, sanitary and storm sewers, culverts, bridges, streets, trees, electrical transmission facilities, or other such installations as may be designated by the commission.
12. Improvements Agreement Guarantee. "Subdivision Improvements agreement" means one or more security arrangements which may be accepted by the Town to secure the construction of such public improvements as are required by Town subdivision regulations within the subdivision and shall include collateral, such as, but not limited to, performance or property bonds, private or public escrow agreements, loan commitments, assignments of receivables, liens on property, deposit of monies, bank letter of credit or other similar surety agreements.



13. Lease. An arrangement between the owner of land and another where the right of possession of a lot for a period exceeding one year is granted, but where the title and the right of reverter is retained by the owner.
14. Lot. A measured portion of a subdivision, or other parcel of land intended as a unit for transfer of ownership, lease, or for development.
15. Master Plan. Subdivider's overall plan for his entire development.
16. Permanent Monument. Any structure of masonry and/or metal permanently placed on or in the ground, including those expressly placed for surveying reference.
17. Person. Any person, group of persons, organization, corporation, or association of persons.
18. Plat. A map and supporting materials of described land prepared in accordance with subdivision regulations as an instrument for recording of real estate interests with the county clerk and recorder.
19. Preliminary Subdivision Plan. The map or maps of a proposed subdivision and supporting documents, drawn and submitted in accordance with the requirements of these regulations, to permit the evaluation of the proposal prior to detailed engineering and design.
20. Resubdivision. The changing of any existing lot or lots of any subdivision plat previously recorded with the county clerk and recorder.
21. Reverse Frontage Lots. Lots which front on one public street and back on another.
22. Roadway. That portion of the street right-of-way designed for vehicular traffic.
23. Sketch Plan. The sketch map or maps of a proposed subdivision, together with supporting documents, drawn and submitted in accordance with the requirements of these regulations, to evaluate feasibility and design characteristics at an early stage in the planning.
24. Street. Any street, avenue, boulevard, road, lane, parkway, viaduct, alley, or other way for the movement of vehicular traffic which is an existing state, county or municipal roadway, or a street or way shown upon a plat, heretofore approval, pursuant to law or approved by official action; and includes the land between street lines, whether improved or unimproved

and may comprise pavement, shoulders, gutters, sidewalks, parking areas and other areas within the right-of-way. For the purpose shall be classified as defined in this regulation, streets shall be classified as defined in the following subsections (a) through (h):

- (a) Major Highway. A major regional highway designed to carry vehicular traffic into, out of, or through the regional area (inter-regional); from one political subdivision of the region to another or from an inter-regional highway (intra-regional).
  - (b) Major or Arterial Street. A street designed to carry vehicular traffic from one part of a political subdivision to another part of that same political subdivision.
  - (c) Collector Street. A street designed to carry vehicular traffic from one or more residential or non-residential area to or from a major street or major highway.
  - (d) Local Street. A street or road designed to carry vehicular traffic from one or more individual residential or non-residential unit to or from a collector street.
  - (e) Alley. A minor way which is used primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.
  - (f) Cul-De-Sac. A dead-end street terminating in a vehicular turn-around area.
  - (g) Half Street. A street parallel and contiguous to a property line and of lesser right-of-way width than is required for other streets.
  - (h) Stub Street. A street or road extending from within a subdivision boundary and terminating there with no permanent vehicular turn-around. Stub streets are provided to permit adjacent undeveloped parcels of land to be developed later with an adjacent connecting street system.
25. Street Right-of-Way. That portion of land dedicated to public use for street and utility purposes.

26. Subdivider or Developer. Any person, group, corporation, or other entity, dividing or proposing to divide land so as to constitute a subdivision.

27. Subdivision.

(a) "Subdivision" or "subdivided land" means any parcel and land in the state which is divided into two or more parcels, separate interest or interests in common, either in the surface of the land, the subsurface or the airspace above the land, unless exempted under paragraphs (b), (c) or (d) of this subsection.

(b) The terms "subdivision" and "subdivided land" as defined in paragraph (a) of this subsection shall not apply to any division of land which creates parcels of land each of which comprise thirty-five or more acres of land, none of which is intended for use by multiple owners.

(c) (I) Unless the method of disposition is adopted for the purpose of evading this resolution, the terms "subdivision" and "subdivided land", as defined in paragraph (a) of this subsection, shall not apply to any division of land;

(II) Which creates parcels of land, such that the land area of each of the parcels, when divided by the number of interests in any such parcel, results in thirty-five or more acres per interest;

(III) Which is created by order of any court in this state or by operation of law;

(IV) Which is created by a lien, mortgage deed of trust or any other security instrument;

(V) Which creates an interest or interests in oil, gas, minerals, or water which are now or hereafter severed from the surface ownership of real property; or

(VI) Which is created by the acquisition of a parcel of land owned by a person, by additional persons in joint tenancy, or as tenants in common and any such interest shall be deemed for purposes in this subsection as only one interest.

(d) The Council may, pursuant to rules and regulations or resolution, exempt from this definition of the terms "subdivision" and "subdivided land", any division of land if the Council determines that such division is not within the purposes of this regulation.

(e) The term "subdivision" shall further mean the development of any land for the use, occupancy or enjoyment by means of joint or cooperative ownership or the acquiring of any interest by virtue of the use of any legal entity or form of ownership whereby a person acquires the right to the use, enjoyment or ownership of a specific parcel or tract of land or air space within said land.

28. Town. The Town of Mt. Crested Butte, Colorado.

SECTION 3

PLANNING REQUIREMENTS

1. OBLIGATION OF THE COMMISSION

- A. No subdivision plat shall be approved by the commission and no land shall be subdivided unless said subdivision is in conformance with the comprehensive plan, zoning ordinance and all other resolutions in effect in the Town of Mt. Crested Butte.
- B. The commission will study each set of proposed subdivision plats submitted with all supporting data in connection with the zoning resolution and the general character of the area, the general requirements of the Town and the best use of the land to be subdivided. Particular attention will be given to the specific requirements for parks, open space, school sites, public building sites, roads, utility easements, pedestrian walkways, adequate streets and street patterns and waterways.
- C. The commission shall review the subdividing of lands to insure that their location can be efficiently served by public utilities, fire protection or other public services. The subdivision plans for lands that are located in areas subject to flooding, or that are topographically unsuitable for development, and lands designated to be under the control of HB 1041 or that for any other reasons are being unwisely or prematurely subdivided shall be reviewed.
- D. The commission shall encourage the replatting of land deemed unsatisfactorily subdivided.
- E. It shall be the duty of the commission to encourage the co-ordinated platting of small adjacent parcels of land.

2. PLANNING PRINCIPLES

- A. Sound engineering and planning practices shall be employed and utilized.
- B. Natural and cultural features such as scenic points, water courses, and historic sites shall be preserved wherever practicable.
- C. Steep land, unstable land, land subject to snow slides, mud slides, land slides, flooding or to inadequate drainage, or otherwise substandard land may be platted, but may not be built upon. The health, safety, and welfare of the inhabitants of the Town shall be considered at all times.

- D. The proposed uses within the subdivision shall not result in an over intensive use of the land.
- E. Consideration of public areas, such as parks, recreation areas, schools, public buildings, streets, street patterns and parking space within the subdivision.
- F. An adequate water supply shall be available for the proposed development.
- G. An adequate sewage system shall be available for the proposed development.
- H. The soil and drainage conditions shall be of a sufficiently stable nature as to support development including whatever disposal treatment is utilized.
- I. Provisions for solid waste disposal shall be provided.
- J. The proposed uses within the subdivision shall not create water, air, noise or visual pollution.
- K. Fire hazards shall not be created or increased without adequate and proper provisions being made to correct the situation.
- L. No other adverse conditions shall be created by a use or subdivision of the land which is inappropriate or beyond its capability to support the proposed development.
- M. Development of the subdivision shall not adversely effect any land, historical, recreational or aesthetic value, or any vested water rights.

SECTION 4

PROCEDURES

4.1 SKETCH PLAN

- A. Before preparing the master plan or preliminary plat of a subdivision, the subdivider shall prepare and submit in 7 copies, a sketch plan of his proposed subdivision and consult with the commission concerning the relation of his property to existing conditions, community facilities, utilities, services, regulations and conformance to present Town Zoning Ordinance.

The subdivider shall also consult with parties interested in the proposed development, such as land planners, engineers, and lending institutions, to clearly establish the suitability and location of the proposed subdivision and the most advantageous general plan or arrangement of streets, lots and other features of the proposed development.

- B. In the event that the sketch plan requires a change in zoning, such changes shall be reviewed and approved by the Board of Adjustments, concurrently with the sketch plan approval, in accordance with the Town Zoning Ordinance.
- C. The commission shall review the sketch plan with the Council and the Council will approve or disapprove the sketch plan. Approval or conditional approval of a sketch plan by the Council shall be only for the purpose of guidance in the preparation and submission of the preliminary plan.

4.2 MASTER PLAN

If the subdivider intends to present his plans for the subdivision of his lands to the commission in stages wherein he relies upon the performance of acts to be done in the future to obtain approval of plats theretofore submitted, he must perform those acts at the time of filing his first final plan.

4.3 PRELIMINARY PLAN

- A. The subdivider shall apply on appropriate forms to the commission for preliminary approval of a preliminary subdivision plan at least 15 days prior to the meeting of the commission at which the plan is scheduled to be considered.
- B. Twenty (20) prints of the preliminary plan of the subdivision shall be filed with the commission at the time application for preliminary approval is made. The plan shall comply with the provisions of Section 7 of these regulations.
- C. The appropriate fee, as set forth in Section 9 of these regulations shall be paid in full at the time of application for preliminary plan approval.

- D. The preliminary plan will be thoroughly evaluated in the regular commission meeting at which review has been scheduled in accordance with this Section 4. If in acceptable form for further processing, that plat shall be referred by the commission to the following offices for study:
1. The Council.
  2. Gunnison County adjoining and adjacent municipalities located within two miles of the area to be subdivided.
  3. School districts serving the area.
  4. Private and public utility companies, districts serving the area.
  5. The Colorado Department of Public Health and local health authority.
  6. The Planning Commission.
  7. To the Colorado State Forester, when applicable.
  8. To the local Soil Conservation District when applicable.
  9. To the State Geologist.
  10. Colorado Land Use Commission.
  11. Other offices as may be deemed necessary by the commission. Each of these offices shall return their recommendations to the commission within 24 days of receipt of their copy of the preliminary plan unless an extension of time, not to exceed 30 days, is agreed upon by the developer and the commission.
- E. Concurrent with review by the interested agencies identified above, the commission shall proceed with its own review. The Commission shall endeavor to conclude its review within 24 days of receipt of the preliminary plat except that it may withhold approval for a longer, but fixed, period in order to accomplish any other essential review requirement, or a mutually agreed upon time extension.
- F. Following commission review and discussion with the subdivider concerning the changes deemed advisable and the kind and extent of improvements to be made in the subdivision and upon receiving the result of the review of said plan by the commission, the commission shall recommend to the Council approval as submitted, approve conditionally, or disapproval of the preliminary plan. Approval or conditional approval of a preliminary plan by the Council shall be only for the purpose of guidance in the preparation of a final plan.



- G. Preliminary plan approval shall be effective for a maximum period of twenty-four (24) months, unless, upon application by the subdivider, the Town Council grants an extension. If the final plan has not been submitted for approval within the time limit, a preliminary plan must again be submitted to the commission for approval.

4.4 FINAL SUBDIVISION PLAN APPROVAL.

- A. The subdivider shall apply on appropriate forms to the commission for review of the final subdivision plan. The final plan may represent all or part of a subdivision which has received preliminary approval. The final plan and required accompanying data shall be filed with the commission at least 15 days prior to the regular meeting of the commission at which it is scheduled to be considered.
- B. Two (2) plastic or cloth tracings and five (5) prints of the final subdivision plan shall accompany the application for final approval.

The final plan shall comply with the provision of Section 7 of these regulations and shall be accompanied by such other documents and materials as may be required by these regulations.

- C. The final plan will be thoroughly evaluated in a regular commission meeting at which review has been scheduled in accordance with this Section 4. If said plan is found to be in conformity with the approved preliminary plan and all other requirements of the Town subdivision regulations, the commission shall approve the final plan as submitted. The subdivider shall be notified in writing, within seven (7) days, of the commission's action and reasons therefor.
- D. Following approval of the final plan by the commission, the Council shall consider said plan at its next regular meeting and approve the same if said plan meets with all legal requirements and all fees paid. No changes, erasures, modifications or revisions shall be made on a final plan after approval of the plan has been given by the Council.
- E. The subdivider, immediately following approval of the final plan by the Council shall file said final plan in the office of the country clerk and recorder; otherwise the approving action of the Council shall be deemed to have been withdrawn.

4.5 VACATION OF A PLAN OR RECORD OF ANY PART THEREOF

A. Conditions: A subdivider or land owner may make application to the commission to vacate any plan of record or any part thereof under the following conditions:

1. The plan to be vacated is a legal plat of record.
2. Vacation of the subdivision or any part thereof will not interfere with development of, nor deny access via public thoroughfare to, adjoining properties, utility service or other improvements.
3. Vacation of the subdivision or any part thereof will not be contrary to the Town zoning regulations.
4. No plan shall be vacated if such vacation should result in damage to any individual lot owner.

B. Procedure: The land owner shall present a proposal to the commission containing the legal description of the subdivision and calling for vacation thereof. The commission shall study the proposal and shall send recommendations to the board. The board shall approve or deny the proposal. If the proposal is approved, it shall then be recorded in the office of the county clerk and recorder. All fees for the recording of such vacation shall be paid by the person seeking the vacation.

4.6 RESUBDIVISION

Any subdivision being of record at the time of adoption of this regulation which a developer intends to resubdivide shall follow the procedure as outlined herein.

4.7 REGULATION

This regulation shall be fully applicable as to the requirements necessary for the submission of all maps, plats, and supporting data, provided however, that where a condominium map is required under the condominium ownership act of the State of Colorado, said map shall serve in lieu of a subdivision plat so long as the same is in full conformity with this act.

SECTION 5

DESIGN CRITERIA

5.1 GENERAL SITE CONSIDERATIONS

The subdivider shall prepare his proposed plan in conformance with the following provisions:

- A. Reports concerning streams, ditches, lakes, general topography, and vegetation shall be provided by the subdivider. Land subject to hazardous conditions such as land slides, mud flows, rock falls, snow avalanches, possible mine subsidence, shallow water table, open quarries, floods, and polluted or nonpotable water supply shall be identified and shall not be subdivided until the hazards have been eliminated or will be eliminated by the subdivision and construction plans.
- B. The design and development of a subdivision shall preserve, insofar as possible, the natural drainage, existing topsoil, and trees.
- C. Special consideration and study shall be given steep lands of forty (40) per cent slope or more concerning their practicability to be built upon, accessibility or desirability of their use for open space.

5.2 STREETS AND ROADS

- A. All rights of way shall be at least 60 feet in width, with the center of the road being the center of the right-of-way.  
If snow and wind create problems in certain areas, an 80 foot right-of-way is needed.
- B. All alleys dedicated to the public use shall be not less than 20 feet in width.
- C. The maximum grade of any public road shall not exceed 7 per cent.
- D. All cul-de-sacs shall be terminated by an area for a turn around not less than fifty (50) feet in radius; except that in areas with difficult snow conditions, the turn around shall be not less than sixty (60) feet in radius.
- E. Street intersections shall be at right angles or as nearly as may be possible under the circumstances.

F. Maintenance of any streets or public ways to be dedicated to the public use shall not be accepted for maintenance until the following requirements are met:

1. A petition requesting the maintenance of the streets has been filed with the Town Council by the owner of the land within the subdivision.
2. At the discretion of the Town, any street or road for Town maintenance must have 30% of the lots or tracts with completed improvements on them.
3. The Town Council shall have the right to the full width of the right-of-way for snow removal and further may have the right to move snow on anyone's property, willful and wanton conduct excepted.
4. All streets shall have a gravel aggregate surface of not less than 8 inches in depth or an equivalent surface acceptable to the Town Council.
5. All roads shall have a top surface of at least 2 inches of gravel no larger than 1 inch in size.
6. All streets shall be constructed on proper grade with proper drainage and culverts as may be necessary to provide adequate drainage. No pipe less than 18 inches in diameter or as needed for larger drainage.
7. All roads shall be constructed so that no runoff from any property or road shall be allowed to enter upon the surface of any connected roads. They shall be fixed so that they drain into the borrow pit.
8. Any street shall be constructed on a grade so as to be functional and coordinated with any existing streets, roads, highways, and public ways.
9. No utilities, roadcuts, or right of way shall be constructed above, on, or beneath any street or road without first obtaining a permit from the Town of Mt. Crested Butte. The said permit shall require a deposit of \$250, which will ensure the correct repairs of any road needed to be cut. The \$250 deposit shall be returned to the depositor after 12 months have lapsed and no repairs have been necessary.

10. No irrigation ditches shall be constructed parallel to the road within the right-of-way of any street or road.
11. Such other requirements as may be determined by the Town Council may be made according to circumstances.
12. Street and road name signs shall be installed at intersections in every subdivision. All streets and road names shall be approved by the Planning Commission.
13. All roads shall have a 24 foot travel surface with a 5 foot shoulder on each side and shall be ditched and drained so that no water can reach the travel surface of the road. Whenever possible, backslopes shall be at the ratio of 1 1/2 feet to 1 foot and shall be seeded. Regulation shall be established before final acceptance.
14. Service access to the interior of blocks may be permitted in certain instances, in which case such alleys must be indicated in the plan and plat.

PROCEDURE FOR ACCEPTANCE OF STREET AND ROADS

- A. Preliminary acceptance. Upon completion of street or road construction, the subdivider shall notify the Town Council in writing and request inspection. The Town Council or their agent shall inspect all street improvements and shall notify the subdivider by mail of non-acceptance shall be stated, and corrective measures shall be outlined in the letter of notification. Until such time that the developer has written acceptance for full maintenance of the streets by the Town of Mt. Crested Butte, the developer shall be responsible for all maintenance and repairs to the street improvements.
- B. The Town of Mt. Crested Butte shall not accept street improvements for maintenance from November through March since deficiencies noted on inspection cannot usually be determined or corrected during this period.
- C. Final acceptance. One year following preliminary acceptance, the Town Council or their agent shall inspect all street improvements for final acceptance. The Town Council shall notify the subdivider by mail of non-acceptance shall be outlined in the letter of notification.

If the street improvements are found to be acceptable following a resolution of acceptance by the Town Council, the Town of Mt. Crested Butte shall assume full maintenance responsibility of the streets and roads.

### 5.3 BLOCKS

- A. Block lengths and widths shall be approved the commission and made suitable for the types of land uses permitted in the subdivision as determined by zoning as described in the Town zoning regulations.
- B. As a guide for determining the suitability of block lengths and widths, the subdivider and the commission shall consider the following:
  - 1. Provisions of adequate building sites suitable to the special needs of the type of use contemplated.
  - 2. Zoning requirements as to lot sizes and dimensions.
  - 3. Needs for convenient access, circulation, control and safety or street traffic.
  - 4. Limitations and opportunities of topography.
  - 5. In general, block lengths should not exceed sixteen hundred (1,600) feet, nor be less than four hundred (400) feet.

### 5.4 LOTS

- A. Lot dimensions and sizes shall conform to applicable zoning requirements.
- B. All lots in subdivisions shall have access to a public street.
- C. Side lot lines shall be at substantially right angles or radial to street lines. Where lot lines are not at right angles to the street lines this shall be indicated.
- D. In the case of wedge-shaped lots, no lot shall be less than forty (40) feet in width at the front property line.
- E. Lots which were of record prior to the enactment of these regulations shall be considered as legal lots,

### 5.5 PUBLIC SITES AND OPEN SPACES

- A. The commission and the Council upon consideration of Town circulation and facilities and the particular type of development proposed in the subdivision, may require the dedication of areas or sites of a character, extent, and location suitable for public use for schools, parks, greenbelts, playgrounds or other necessary public purposes

other than subdivision streets) according to one of the following alternatives:

1. The Commission upon consideration of each subdivision presented shall require areas for use in common. Such public space reserved may be made in accordance herewith.
  2. Public space reserved shall be detailed and shown in covenants, character and extent.
  3. The Commission shall examine each subdivision as presented and require public space accordingly.
- B. The location of all public or quasi-public land intended to be conveyed or reserved in the deeds for use of all property owners shall be shown on the preliminary and final plats and the master plan if required, together with the proposed method of ownership, management, maintenance, and such other information as is necessary for the commission to evaluate the proposal.
- C. At the time of the approval of the final plat by the commission, a warranty deed shall be presented for all land to be conveyed to the Town or the home owners improvement association. The deed shall be accompanied by a title insurance policy or other evidence that the land is free and clear from all encumbrances.
- D. Fees in lieu of dedication. The commission, with the approval of the Council, shall have authority to accept a cash payment in lieu of dedication of land for public purposes as provided herein, if in its opinion the welfare of the people of the Town would be better served by such payment. Any such payment must be earmarked and spent by the Council for public improvement purposes.

## SECTION 6

## IMPROVEMENTS

6.1 IMPROVEMENTS AGREEMENT

No final plat showing improvements not yet completed shall be approved by the Council until the subdivider has submitted to them a subdivision improvement agreement or a contract approved by the Council guaranteeing the construction of the uncompleted required improvements as set forth in this regulation.

6.2 GUARANTEE OF COMPLETION

The subdivision improvement agreement shall include provisions for the following:

- A. Suitable collateral, in an amount stipulated in the subdivision improvement agreement, shall accompany the final plat submission, to ensure completion of the improvements according to design and time specifications. Said collateral shall be in the form of a corporate surety bond, certified check, bank letter of credit, or other legal assurance as may be deemed adequate in the judgement of the Council to guarantee the completion of said improvements.
- B. As improvements are completed, the subdivider may apply to the Council for a release of part or all of the collateral deposited with said Council. Upon inspection, and approval, the Council shall release said collateral. If the Council determines that any of the improvements are not constructed in compliance with specifications, it shall furnish the subdivider a list of specific deficiencies and shall be entitled to withhold collateral sufficient to ensure such compliance. If the Council determines that the subdivider will not construct any or all of the improvements in accordance with all of the specifications, the Council upon 30 days notice to the subdividers, may withdraw and employ from the deposit of collateral such funds as may be necessary to construct the improvements.

6.3 UTILITIES

All lots shall be platted dedicating an 8' utility easement on each side of the sides and rear lot lines.

- A. Sanitary sewage disposal.
  1. No lots shall be platted unless an economical, practical, and sanitary method of sewage disposal is available to that lot. Disposal by individual systems is not permitted.



2. (a) Where a public sanitary sewer system is to be constructed, the design and construction of the system must be in conformity with the regulations of the Crested Butte Water and Sanitation District and must be so approved: approval must also be by the Council.
- (b) Where a public sewage system is to be installed, an organization shall be set up to administer the operation of this system. Administration shall be by an incorporated town, a sanitation district, or an approved corporation or individual or other entity.
- (c) Estimated number of gallons of sewage and treatment facilities shall be set out, and estimated construction cost and proposed method of financing sewage collection system.

B. Water Supply

Write in all lots on Crested Butte Water and Sanitation District Lines

1. A water supply that is sufficient in terms of quality, quantity and dependability shall be available to all platted areas.
2. Where a public water system is proposed the following requirements shall be met.
  - (a) 1. Water supply, treatment and distribution facilities must be provided in conformance with the requirements of the Crested Butte Water and Sanitation District, of public health, the local health authority and the Town Council.
  2. The minimum size of water main shall be six inches in diameter unless the subdivider proves that a smaller main would be adequate.
  3. An estimate of the total number of gallons per day utilizing the proposed distribution system is to be made.
  4. The report shall include the estimated construction cost and method of financing the water system.
- (b) If water is to be obtained from an existing public water supply system, a contract for such services shall be presented which must obtain commission and Council approval.

6. Tree Planting. The planting of trees of an appropriate species and at appropriate locations may be required by the commission on the basis of standards established by the Council.
7. Other Improvements. Other improvements not specifically mentioned herein and found appropriate and necessary by the commission or the Council, shall be constructed at the subdivider's expense within such time and in conformance with such specifications as deemed necessary and appropriate.

E. Review

The construction of all improvements is contingent on approval of the Council, and it shall be the responsibility of the subdivider to furnish the necessary data required for such approval.

6.4 SURVEY MONUMENTS

All surveying data shall be tied to primary control points, the location and description of these control points shall be recorded with the Town and county. Permanent survey monuments shall be set at all subdivision boundary corners, at points within the subdivision where there is a change of direction and at all lot corners. Said monuments shall not be more than 1,320 feet apart and set in such a manner so as not to be disturbed during construction. Construction of survey monuments shall be as set forth below:

A. Perimeter and Block Monuments.

1. Firm soil: No 5 steel rebar 36" long.
2. Solid Rock: One 3/8" diameter metal tablet with 1 1/2" long shank countersunk in rock and grouted with cement.
3. Loose soil, sand, marsh, etc.: Monuments shall not be set, but shall be witnessed pursuant to the statutes of Colorado.

B. Lot Markers

1. Firm soil: No 5 steel rebar 24" long.
2. Monuments within streets or roads.
  - (a) No 5 rebar 36" long. Monuments set within road way areas shall be placed so that their tops are 6 to 8 inches below the final road surface.

C. Fire Protection

Fire hydrants shall be required in all subdivisions. Hydrants shall be spaced not more than 1,000 feet apart and provided with adequate water pressure for fire fighting purposes. Hydrant locations must be approved by the Town's Chief of the Bureau of Fire Prevention. Fire hydrant locations must appear on all plats submitted for approval. All hydrant locations will be submitted to the Insurance Service Organization for their recommendation.

D. Storm Drainage; Other Improvements.

1. Drainage easements, channels, culverts and required bridges shall be designed by a registered engineer and shall be capable of handling a flow as determined necessary by a drainage study.
2. Drainage easements shall be provided as required to accommodate and expected maximum flow in any 25 year period. In no case shall drainage easements be less than 20 feet wide.
3. Culverts or drainage pipes where required shall be galvanized, corrugated steel or the approved equivalent with the strength design in accordance with AASHTO recommendations for an H-20 live load. Minimum culvert size shall be 18" in diameter unless a smaller size is approved by the road supervisor.
4. In cases where subdivisions lie within drainage basins where special problems exist, the commission shall delineate the general drainage basin development area; and the subdivider shall be obligated to pay a drainage basin development fee. The process of payment shall be deposited in a separate Town account and shall be used only for the development, construction and maintenance of drainage way within the delineated basin. The amount of said fee shall be based upon the Council's estimate of the total basin development cost prorated over the number of acres lying within the designated drainage basin, including area for streets or other public use. Said fee shall be paid in total at the time the commission approves the final plat.
5. Underground utilities. Underground placement of utility lines shall be required by the commission in order to preserve the natural character of the area.

- (b) At the time a road is paved, all such monuments within the paved area shall be fitted with monuments boxes. Any monuments set after a road or street is paved shall also be provided with monument boxes.

SECTION 7

SPECIFICATIONS FOR PLANS AND PLATS

7.1 SKETCH PLAN.

A. Purpose and Intent.

The purpose of the sketch plan is to secure the basic design of the subdivision; delineate separate land uses, such as residential, business, and public areas; to determine the location and classification of streets especially as they may continue into or otherwise affect adjacent areas; and to evaluate feasibility of design characteristics at an early state in the planning.

B. Data Required on the Sketch Plat.

The sketch plat shall contain or shall be accompanied by the following:

1. Scale of all sketch plats shall be 200 feet to the inch.
2. Proposed name of subdivision.
3. Date of preparation.
4. Scale (written and graphic).
5. North arrow (designated as true and magnetic north).
6. Indication of number of separate filings.
7. A vicinity sketch drawn at a scale of one inch equals 500 feet although if such maps are not available, a USGA quadrangle map, 1:24,000 scale may be accepted. The vicinity sketch should show tract lines of all abutting subdivisions, the locations of streets and highways, location of all adjacent utility systems of the proposed subdivision; the natural drainage courses for streams and ditches flowing through the proposed subdivision with the limits of tributary areas shown where this is reasonable. The vicinity sketch shall also show the distance to the boundaries of any municipal or county corporation or district which is situated within two miles of the proposed subdivision.
8. Names and addresses of all adjacent property owners if not subdivided, or the name of the subdivision if adjacent property is subdivided.

9. Names and addresses of the property owners or owners, the subdivider, the land planner or designer of the subdivider, the surveyor, who shall be licensed by the Colorado State Board of Examiners for engineers and land surveyors.
10. Legal description of land to be subdivided.
11. Location and principal dimensions for all existing or recorded section lines, streets, alleys, easements, watercourses, streams, ditches, lakes, vegetation, improvements and other important features within and adjacent to the tract to be subdivided.
12. High-water elevations of streams.
13. Number of residential lots, lot size, gross acreage of the subdivision excluding existing, dedicated public right-of-way, and number of proposed dwelling units.
14. Proposed land use and the size of the land parcel in square feet for single-family residential use, multi-family residential use, business areas, industrial areas, churches, schools and parks, or other public quasi-public, or non-public uses and the total number of proposed off street parking space.
15. A topographic map of the area to be subdivided. The map shall have contour intervals of not more than ten (10) feet and may be an enlargement of a U.S. Geological Survey map 7-1/2 minute series.
16. Zoning on the property adjacent to the subject tract.
17. Certificate of Compliance with Town Zoning Ordinance #2 as amended.
18. Utilities on and adjacent to the tract.
19. A map showing soil types and their boundaries, as shown on soil survey maps prepared by the U.S. Department of Agriculture, soil conservation service and also a table of interpretations for the soil types shown on the soil map prepared by the soil conservation service.
20. A report concerning geologic characteristics of the area significantly affecting the land use and determining the impact of such characteristics on the proposed subdivision.
21. General description of water supply system.
22. General description of sanitary sewage disposal system.
23. General description of storm sewer system.

25. General description of solid waste disposal.
26. Seven copies of the sketch plan shall be submitted to the commission.
27. Such additional preliminary information as may be required by the commission which will aid in the proper evaluation of the proposed subdivision.

7.2 PRELIMINARY PLAN

A. Purpose and Intent

The purpose of the preliminary plan is to review and check the proposed subdivision against the specific standards and improvements requirements as set forth in these regulations.

B. Data Required on the Preliminary Plan.

The preliminary plan shall contain the following:

1. The name of the subdivision (including the number of the filing, if applicable).
2. Scale (written and graphic).
3. North arrows (designated true and magnetic north).
4. Date of preparation.
5. Scale of all preliminary plans will be 100 feet to the inch or as otherwise approved by the commission. In the case of large subdivisions requiring more than two sheets at such a scale, a total area plan showing the total area, on a single sheet at an appropriate scale shall also be submitted.
6. Number of residential lots, lot size in square feet and/or acres, and gross acreage in the subdivision.
7. Zoning on the property adjacent to the subject tract.
8. Zoning approved per submission of sketch plan.
9. Sheet size shall be 24" x 36", as many sheets as necessary may be submitted for each subdivision of filing.
10. Location of the subdivision as a part of some larger subdivision or tract of land and by reference to permanent survey monuments with a tie to a section corner or quarter-section corner.
11. Proposed street lay-out with street names, widths, curves, radii and other dimensions clearly shown.

12. Proposed land use and size of the land parcels in square feet for single-family residential use, multi-family residential use, business areas, industrial areas, churches, schools and parks, or other public, quasi-public or non-public uses.
13. A minimum of twenty (20) black and white or blue on white prints of the preliminary plan shall be submitted.
14. If subdivision consists of 20 or more lots, proof of a subdivider's license shall be held by the developer.
15. Any additional information that may be required by the commission which will aid in the evaluation of the proposed subdivision.
16. A clear and complete description of any alternations or change in the sketch plan.

C. Required Accompanying Data.

The preliminary plan shall be accompanied by the following data:

1. A contour map certified by a professional engineer or land surveyor at a scale of one inch equals 100 feet. Elevation contours may be drawn on the preliminary plat or a supplemental plat. Contours shall be drawn normally at 5 foot intervals unless a maximum 10 foot or other contour interval is approved by the commission for rugged areas.
2. A slope analysis map setting forth by areas the following percent of slope:
  - 0 - 7 percent
  - 8 -15 percent
  - 16 -30 percent
  - 31 -40 percent
  - 41 percent and above.
3. Proof of feasibility of driveway access for all lots and building areas.
4. These plans will be coordinated with and approved by the Crested Butte Water and Sanitation District.
  - a. A resolution from the Crested Butte Water and Sanitation District certifying there is adequate water and sewage treatment facilities available for the proposed subdivision and authorizing the developer to connect the Crested Butte Water and Sanitation District facilities.



- b. Documentation of the water right supported by a registered engineer's certificate as to the amount of water able to be generated by such rights and a certificate of a Colorado licensed attorney as to the ownership, validity and reliability of such rights, accompanied by a statement of acceptance or denial from the Colorado State Department of Health and local health authority.
  - c. A detailed description of the community sewage disposal system proposed in a form adequate to fully inform the Planning Commission of the adequacy of such system to collect, treat and dispose of the sewage which would be generated by the population of the subdivision. An estimated total number of gallons per day of sewage to be treated shall be reported, accompanied by a statement of acceptance or denial from the Colorado State Department of Health and local health authority.
5. In large area developments, a feasibility study for public water and sanitary sewer service to the entire area planned for inclusion in the proposed subdivision, prepared by a qualified licensed engineer and accompanied with a statement of acceptance from the Crested Butte Water and Sanitation District.
  6. A drainage study certified by a registered engineer showing all existing water courses, irrigation ditches, marshy areas and swamps; limits of tributary areas, where practical; computations of expected tributary flows and the results indicated. The limits of 100 year flood stage shall be studied and plotted, if available. Where permanent flood control dams have been built, their effects may be noted. Design of service and underground drainage facilities shall be such as to prevent major damage or flooding of the subdivision area in a 25 year storm history. Location and sizes of all culverts to be provided, bridges and drainage ditches, channels and easements shall be shown.
  7. Centerline profiles of streets and roads shall be plotted with sufficient accuracy to insure that street designs will conform to the prescribed standards approved by the board. All centerline profiles shall be drawn to a scale of 10 feet vertical and 100 feet horizontal to the inch, or 5 feet vertical and 50 feet horizontal to the inch.
  8. Payment in the proper amount to cover processing of the preliminary plat.

9. A preliminary draft of the protective covenants or deed restrictions (if such instruments are desired by the subdivider or required by dedication or setting aside of public land).
10. A title commitment and/or a title opinion of a title insurance company or a Colorado licensed attorney's which shall set forth the names of all owners of the property included in the plat and shall include a list of all liens and encumbrances of record in the county and the details thereof, which shall affect the property covered by the plans. If the commitment policy or opinion of title discloses any of the above, then at the option of the commission or the board, the holders or owners of such liens and encumbrances shall be required to join in and approve the application before the plan shall be acted upon by the commission.
11. A qualified report of estimated construction cost and proposed method of financing of the streets and related facilities, water distribution system, sewage collection system, storm drainage facilities, and such other utilities as may be required of the developer by the commission.
12. The plan for the construction, maintenance and utilization of its public, quasi-public for common recreation areas, e.g., lakes, golf courses, ski facilities, parks and playgrounds.
13. Such additional information as may be required by the commission which will aid in the proper evaluation of the subdivision.

### 7.3 FINAL PLAT.

#### A. Purpose and Intent

The purpose of the final plat is to provide a permanent and accurate record of the exact size, shape and location of the lots, blocks, streets, easements, and other parcels of land within the subdivision. The final plat, when recorded by the county clerk and recorder, becomes the legal instrument whereby the location and boundaries of separate land parcels within the subdivision are identified. The final plat submission shall conform in all respects to the preliminary plan as previously reviewed and approved by the Council and shall incorporate all modifications required in its review.

#### B. Data Required on the Final Plat.

The final plat shall contain the following:

- I. The exact name of the subdivision (including the number of the filing, when applicable)

2. The legal description of the land platted.
3. Scale (written and graphic).
4. North arrows (designated true and magnetic north).
5. Approved zoning districts.
6. Diagram showing location and extent of all utility, and other easements.
7. Location of the subdivision as a part of some larger subdivision or tract of land and by reference to permanent survey monuments with a tie to a section corner or quarter-section corner.
8. All lots and blocks shall be numbered in consecutive order.
9. All streets and cul-de-sacs shall be named.
10. The final plat shall be drawn at a scale of 100 feet to the inch.
11. Sheet size shall be 24" x 36" with a 1/2-inch border on the top, bottom, and right-hand side, and a 1-1/2 inch border on the left-hand side. As many sheets as necessary may be submitted for a single plat or filing.
12. The names of abutting subdivisions; or in the case of abutting unplatted property, the notation "Unplatted" shall appear.
13. All public or quasi-public areas shall be identified.
14. Plat shall be drawn in india ink or tracing cloth or plastic.
15. All section, quarter section, range and township lines shall be shown.
16. All boundary lines and lot lines shall have exact lengths and bearings, which must close within the limits of one in 10,000 and any traverse shall have an error of closure of not greater than one in 10,000.
17. All curve data shall be shown in chart form on the plat, including radii, internal angles, length of all arcs. Points of all curvature shall be shown on the plat.
18. A reference to any protective covenants which shall be filed with the plat.
19. Certification by registered surveyor to the effect that the plan represents a survey by him, and that the monuments shown thereon exist as located and that all dimensional and geodetic details are correct, in accordance with 6.4 of this regulation and CRS 136-2-1 and 136-2-2.

20. Notarized certification by the owners of the land of the adoption of the plat and the dedication of sewers, water distribution lines and other improvements and of streets and other public areas.
21. Wording of the following required statements on the final plat shall be as follows:

(a) Heading

The heading of the final plat shall include the complete name of the subdivision, the quarter sections, township, range and principal meridian, Gunnison County, Colorado. Also where applicable, the United States mineral claim name, number and mining district shall be shown.

(b) Dedication

Know all men by these present: That (printed name of owner), being the owner(s) of the land described as follows:

(insert legal description of land being subdivided and include area in acres to two decimal places) in Gunnison County, Colorado, under the name and style of (complete name of subdivision in capital letters), has laid out, platted and subdivided same as shown on this plat, and by these present do (does) hereby convey to the Town of Mt. Crested Butte, Colorado, the streets, alleys, roads, and other public areas as shown hereon and hereby dedicate those portions of land labeled as easements for the installation and maintenance of public utilities as shown hereon.

In witness whereof, the said (printed name of owner) has caused his name to be hereunto subscribed this \_\_\_\_\_ day of \_\_\_\_\_, A.D.,  
19 \_\_\_\_\_.

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

(c) Notarial

State of Colorado

County of \_\_\_\_\_ The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 19\_\_\_\_ by (printed name of owner). (If by natural persons here insert name; if by person acting in a representative official capacity, then insert the name of said person and his capacity; if by officers of a corporation, then insert the names of said officers as the president or other officers of such corporation, naming it.)

My commission expires on (to be filled in by notary).

Witness my hand and official seal.

(Signature) \_\_\_\_\_ (Seal)  
(Printed Name of Notary)

Notary Public

(d) Attorney's Opinion

I, (printed name of attorney), being an Attorney at Law duly licensed to practice before courts of record in the State of Colorado, do hereby certify that I have examined the title to all lands herein dedicated and shown upon this plat and that title to such lands is in the dedicator free and clear of all liens, taxes, and encumbrances, except as follows:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_\_\_.

Signature  
Attorney-at-law

(e) Land Surveyor's Certificate

I, (printed name of Land Surveyor), being a registered land surveyor in the State of Colorado, do hereby certify that this plat and survey of (name of subdivision in capitol letters) was made by me and under my supervision and that both are accurate to the best of my knowledge. Steel pins and/or brass cap monuments were set at all boundary corners.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 19\_\_\_\_.

(Signature) \_\_\_\_\_ (Seal)

Colorado Registration Number (number of registration)

(f) Mt. Crested Butte Planning Commission Approval

The Planning Commission of the Town of Mt. Crested Butte, Colorado does hereby authorize and approve this plat of the above subdivision at a meeting of said commission held on this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 19\_\_\_\_\_.

(Signature) \_\_\_\_\_

(Printed name of Chairman)

Chairman

(g) Mt. Crested Butte Town Council

The within plat of \_\_\_\_\_ is approved for filing this \_\_\_\_\_ day of 19\_\_\_\_\_, The dedication of the public ways shown hereon are accepted by the Town of Mt. Crested Butte, Colorado, subject to the condition that said county shall undertake the maintenance of said public ways only after construction of said public ways has been satisfactorily completed to the County specifications, by the subdivider, and a resolution of the board accepting the same has been adopted and placed of record.

Town Council  
Mt. Crested Butte, Colorado

By \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Town Clerk

(h) Gunnison County Clerk and Recorder's Acceptance

(to be placed in the lower right-hand corner of the cover sheet)

This plat was accepted for filing in the office of the clerk and recorder of Gunnison County, Colorado, on this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_\_\_\_.

Book Number \_\_\_\_\_ Page Number \_\_\_\_\_  
Reception Number \_\_\_\_\_ Time \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
County Clerk

(i) Recordation of Protective Covenants (if applicable)

Protective Covenants recorded in

Book \_\_\_\_\_ Page Number \_\_\_\_\_

C. Required Accompanying Data

The final plat shall be accompanied with the following data:

1. A certified statement by the subdivider to the effect that all supplemental information furnished with the preliminary plat together with information contained on the preliminary plat, is embodied in the final plat or if this is not the case, revised supplemental data of the same scope and format as required for the preliminary plat is being furnished with the final plat. In the event that substantial changes have been made on the final plat, the board may require an additional filing fee not to exceed the amount specified for the preliminary plat.
2. Utility location plan.
3. Three copies of all the protective covenants or restrictions placed on the subdivision; one copy of which shall be filed with the plat. The Town of Mt. Crested Butte is hereby granted the authority to enforce all protective covenants.
4. Engineering plans, descriptions and cost estimates for streets, drainage facilities, utility systems, bridges and for other improvements proposed to be installed by the subdivider.
5. Payment for the total amount of the subdivision filing fee.
6. Warranty deed to Town of Mt. Crested Butte or a home owners improvement association conveying all public lands other than streets shown on the plat.
7. Payment for any other fees applicable to the subdivision.

## SECTION 8

## VARIANCES

8.1 HARDSHIPS

- A. Upon application by the subdivider therefore, and where it can be shown in the case of a particular proposed subdivision, that strict compliance with the requirements of these regulations would result in extraordinary hardship to the subdivider because of unusual topography, or other such conditions, thus retarding the achievement of the objective of these regulations, then the commission may vary, modify, or waive requirements so that substantial justice may be done and the public interest secured; provided that such variance, modification or waiver will not have the effect of nullifying the intent and purpose of these regulations, or of the comprehensive plan.
- B. In no case shall any variance, modification or waiver be more than a minimum easing of the requirements; in no case shall it have the effect of reducing the traffic capacity of any major or secondary streets; and in no case shall it be in conflict with existing zoning resolution.
- C. In granting variances, modifications or waivers, the commission may require such conditions as will, in its judgement, secure substantially the objectives of the standards and regulations as affected.



SECTION 9

FEEES

9.1 AMOUNT OF FEES

In order to cover the cost of review and other expenses incidental to the approval of a subdivision, the subdivider shall pay a fee at the time of application for approval of a preliminary plat. Such fee will be based upon the number of lots or acres created. At the time of application for approval of the preliminary subdivision plat, the required fee shall be paid in full according to the following rates. No preliminary or final subdivision plat shall be considered by the commission or Council until all fees are paid in full. No fees are refundable upon any processing, partial or complete, of a subdivision plat.

FEEES

\$40.00 per lot or \$10.00 per acre for each acre in the subdivision, whichever is greater, paid at the time of application for approval of the preliminary plat, with a minimum fee of \$150.00.

## SECTION 10

## GENERAL AND LEGAL STATUS PROVISIONS

10.1 AMENDMENTS

These regulations may be amended at any time by the Council after a public hearing has been held on such amendments as provided by law.

10.2 APPEAL

In the event that the plat of a subdivision has been disapproved by the commission, the applicant may petition the Council for a hearing upon said rejection. After a public hearing, the Council upon a favorable vote of two-thirds (2/3) of its entire membership may approve the subdivision or take other action consistent with the provisions of this regulation.

10.3 PENALTY

Whoever, being the owner, or agent of the owner, of any land located within a subdivision, transfers leases, or sells, or agrees to sell, or otherwise disposes of any land, by reference to, or exhibition of, or by use of a plan of a subdivision, before the final plan has been approved or filed in the office of county clerk and recorder, shall forfeit and pay a penalty of three hundred dollars (\$300) for each lot or parcel so transferred, or sold, or agreed, or negotiated, to be sold; and the description of such lot, or parcel, by metes and bounds, or other means, in the instrument of transfer, or other document used in the process of selling or transferring shall not exempt the transaction from such penalty, or from the remedies herein provided. The Town of Mt. Crested Butte may enjoin such transfer, or sale, or agreement, by action for injunction brought by civil action in any court of competent jurisdiction.

10.4 SEPARABILITY CLAUSE

If an article, section, subsection, sentence, clause or phrase of these regulations is for any reason held to be unconstitutional or illegal, such invalidity shall not affect the validity of the remaining portion. The Council hereby declares that it would have passed these regulations and every article, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one more articles, sections, subsections, sentences, clauses or phrases be declared unconstitutional or illegal.

10.5 CONFLICTING REGULATIONS REPEALED

All regulations or parts of regulations in conflict herewith are hereby repealed, except any regulations that impose more restrictive regulations than are imposed herein.

10.6 EFFECTIVE DATE

This regulation shall be in effect from the date of its adoption by the Town Council of the Town of Mt. Crested Butte, Colorado and recorded with the County Clerk and recorder.

10.7 EMERGENCY PROVISION

It is hereby set forth and acknowledged that this ordinance is necessary for the immediate social welfare and health of the people of the Town, and that therefore this ordinance shall be deemed to be passed under the police powers of the Town, and shall take effect upon final passage as provided by the Charter of the Town.

Passed, adopted and approved this 5th day of August, 1975.

TOWN OF MT. CRESTED BUTTE, COLORADO

James R. Larkin  
Mayor

ATTEST:

Jane Wiley  
Town Clerk

ENGINEER'S AFFIDAVIT

I, David B. Smith, licensed to practice in the State of Colorado as a Professional Engineer, do hereby certify that the plat hereon is a true and correct copy of the original as shown to me by the owner and that the same has been prepared in accordance with the provisions of the laws of the State of Colorado.

APPROVALS

GROUP OF GUNWISON COUNTY COMMISSIONERS

The foregoing plat is accepted for filing and recording by the Commission on this day of August, 1923, and the same is hereby approved and recorded by the Commission on this day of August, 1923.

RECORDED FOR THE GUNWISON COUNTY CLERK AND RECORDER OFFICE BY: [Signature]

FILE NO. 100-27293

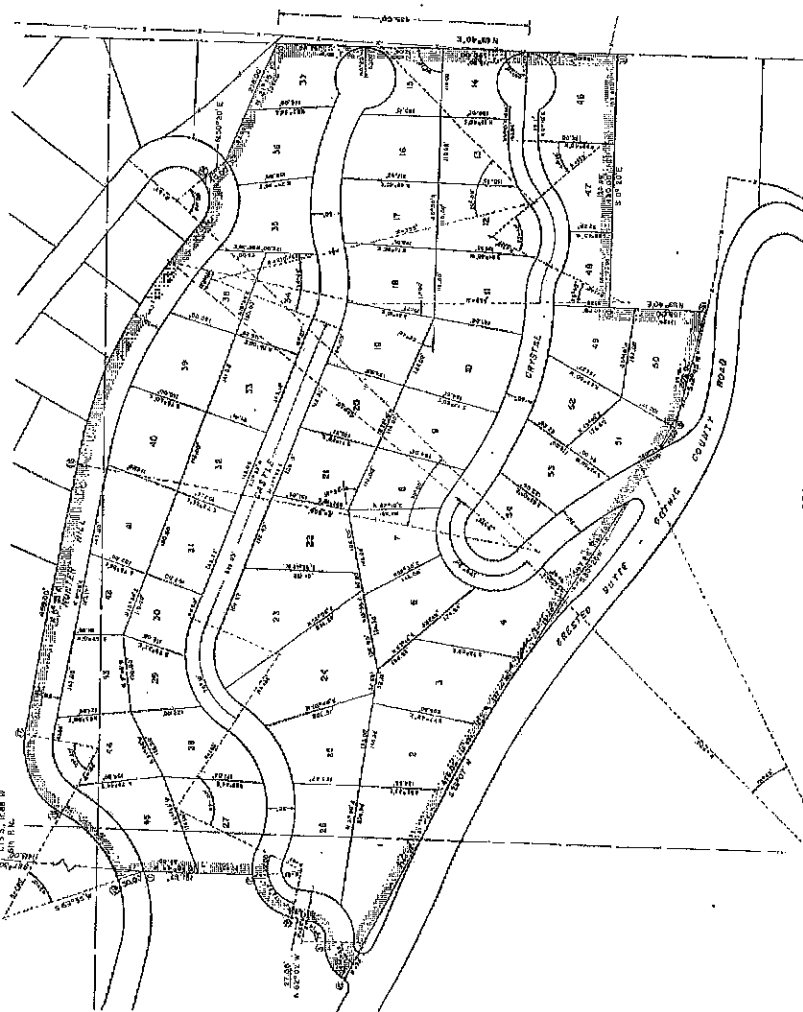
STATE OF COLORADO, in and for the County of Gunnison, do hereby certify that the foregoing plat is a true and correct copy of the original as shown to me by the owner and that the same has been prepared in accordance with the provisions of the laws of the State of Colorado.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the owners of the land hereinafter described, do hereby dedicate to the public use of the State of Colorado, the right of way for a public highway, the location of which is shown on the plat hereon, and the same is hereby dedicated to the public use of the State of Colorado, and the same is hereby dedicated to the public use of the State of Colorado, and the same is hereby dedicated to the public use of the State of Colorado.

NOTARY'S ACKNOWLEDGEMENT

I, the undersigned, Notary Public for the State of Colorado, do hereby certify that the foregoing plat was acknowledged before me this 1st day of August, 1923, by the persons whose names are subscribed to the same.



DESCRIPTION

A parcel of land containing 100 acres located in the SE 1/4 of Section 20, Township 35 North, Range 10 West, 103rd Meridian, County of Gunnison, State of Colorado, the 100 acres being the same as described in the plat hereon, and the same is hereby dedicated to the public use of the State of Colorado, and the same is hereby dedicated to the public use of the State of Colorado, and the same is hereby dedicated to the public use of the State of Colorado.

PLAT OF THE CHALET VILLAGE ADDITION NO. 3 CRESTED BUTTE, ILL.

SITUATED IN THE SE 1/4 SEC. 26, T. 13 S., R. 86 W., 6TH P. M. GUNWISON COUNTY, COLORADO

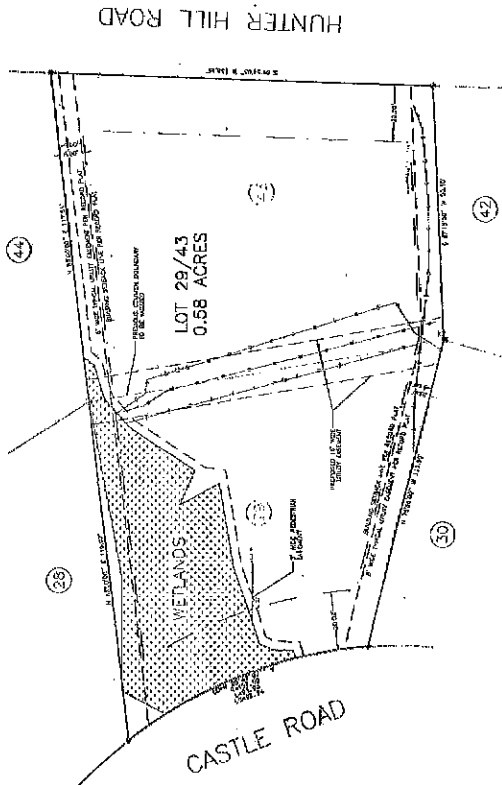
SCALE: 1 INCH = 100 FEET

PREPARED BY: [Company Name] CONSULTING ENGINEERS DENVER, COLORADO



# REPLAT OF LOTS 29 AND 43, CHALET VILLAGE ADDITION NO.3

TOWN OF MT. CRESTED BUTTE  
GUNNISON COUNTY, COLORADO



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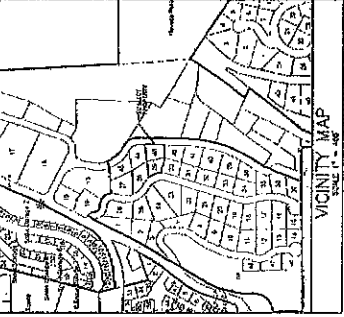
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 THE VICTORIAN AND RESTORATION...

**LEGEND**  
 PROPERTY OWNER - MOUNTAIN VIEW...  
 PROPERTY OWNER - MOUNTAIN VIEW...  
 PROPERTY OWNER - MOUNTAIN VIEW...

**LEGEND**  
 PROPERTY OWNER - MOUNTAIN VIEW...  
 PROPERTY OWNER - MOUNTAIN VIEW...  
 PROPERTY OWNER - MOUNTAIN VIEW...



REPLAT OF  
 LOTS 29 AND 43,  
 CHALET VILLAGE ADDITION NO.3  
 TOWN OF MT. CRESTED BUTTE  
 GUNNISON COUNTY, COLORADO

PREPARED BY: [Name]  
 DATE: [Date]  
 SCALE: AS SHOWN



SCALE 1" = 20'

SHEET 1 OF 1



2

UTILITY AND PEDESTRIAN EASEMENT AGREEMENT

This Agreement is entered into Sept. 9, 2005 by and between Triple J Development, LLC, a Colorado limited liability company (the "Owner"), and the Town of Mt. Crested Butte, Colorado (the "Town").

WHEREAS, the Owner is the owner of record of the following real property:

Lots 29 and 43, CHALET VILLAGE ADDITION NO. 3, Town of Mt. Crested Butte, County of Gunnison, State of Colorado (the "Lots");

WHEREAS, the Owner desires to vacate the lot line between the Lots and will record a replat of the Lots (the "Replat");

WHEREAS, a utility easement currently runs within eight (8) feet on both sides of the lot line to be vacated; and

WHEREAS, the Town desires that the Owner dedicate a utility easement in the same location as the existing utility easement; and

WHEREAS, the Town desires that the Owner dedicate a pedestrian easement for public use across the property between Hunter Hill Road and Castle Road.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the Owner and the Town agree as follows:

1. Utilities.

1.1 The Owner hereby grants to the Town a perpetual easement and right-of-way (the "Utility Easement"), running with the land, for the erection, construction, reconstruction, replacement, modification, uprating, upgrading, removal, maintenance, reasonable expansion and operation of utility facilities, and other equipment and fixtures, with the right to alter, repair, maintain, upgrade and remove the same, in whole or in part, at any time, which Utility Easement shall extend 8 feet on each side of the following described line:

Beginning at the northwest corner of Lot 42 of Chalet Village Addition No. 3, Town of Mt. Crested Butte, County of Gunnison, State of Colorado ("CVA3"); then north 9°46' a distance 130 feet to the southwest corner of Lot 44 of CVA3,

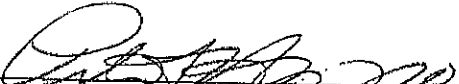
across, and under the Lots and as depicted on the Replat.

1.2 The Owner agrees to either sleeve and/or relocate all utilities so as to be accessible for repairs, maintenance and upgrades as necessary without the need to dig up any paved areas of the Development.

2. Pedestrian Easement. The Owner hereby grants to the Town a pedestrian easement as depicted on the Replat (the "Pedestrian Easement"). The Owner shall not be required to improve the Pedestrian Easement in any manner that may interfere with skier access.

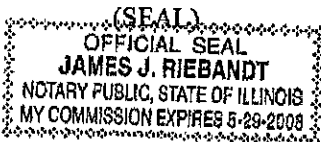
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

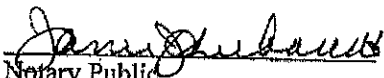
**Triple J Development, LLC,  
 A Colorado limited liability company**

By:   
 Peter Abruzzo, Manager

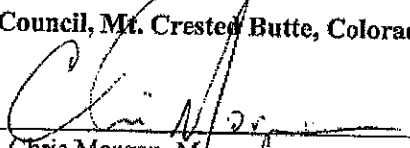
STATE OF ILLINOIS )  
 ) ss.  
 County of Cook )

The foregoing Lot Line Vacation and Dedication was acknowledged before me this 2<sup>ND</sup> day of SEPTEMBER 2005, by Peter J. Abruzzo as Manager of Triple J Development, LLC, a Colorado limited liability company.



  
 Notary Public  
 My commission expires: MAY 29, 2008

Town Council, Mt. Crested Butte, Colorado

By:   
 Chris Morgan, Mayor

Attest:

\_\_\_\_\_  
 Town Clerk

APPROVED BY:

**Adelphia**

By: \_\_\_\_\_  
 Ernie Young, General Manager

**Gunnison County Electric Association**

By: \_\_\_\_\_  
 Patsy Tankersley, Staking Engineer

**Mt. Crested Butte Water & Sanitation District**

By: \_\_\_\_\_  
 Frank Glick, District Manager

**Qwest Communications**

By: \_\_\_\_\_  
 Doug Schleimer, Field Engineer

**Atmos Energy Corporation**

By: \_\_\_\_\_  
 Mike Johnson, Engineering Technician





UTILITY AND PEDESTRIAN EASEMENT AGREEMENT

(TERMINATING PREVIOUS AGREEMENT RECORDED WITH THE GUNNISON COUNTY CLERK AND RECORDER AT RECEPTION NO. 558014)

This Agreement terminates and replaces the former Utility and Pedestrian Easement Agreement recorded with the Gunnison County Clerk and Recorder at Reception No. 558014, and is entered into this 21 day of June, 2007 by and between Triple J Development, LLC, a Colorado limited liability company (the "Declarant") and the Town of Mt. Crested Butte, Colorado (the "Town").

The Declarant is the owner of record of the following real property:

Hawk's Nest Town Homes, according to the Condominium Plat bearing Reception No. 576691 of the records of Gunnison County, Colorado.  
Town of Mt. Crested Butte  
County of Gunnison  
State of Colorado

In consideration of the mutual promises and agreements set forth below, the Declarant and the Town agree as follows:

1. **Utilities.**

1.1 The Declarant grants to the Town a perpetual easement and right-of-way (the "Utility Easement"), running with the land, for the erection, construction, reconstruction, replacement, modification, upgrading, removal, maintenance, reasonable expansion and operation of utility facilities, and other equipment and fixtures, with the right to alter, repair, maintain, upgrade and remove the same, in whole or in part, at any time, which Utility Easement shall extend eight (8) feet on each side of the following described line:

Beginning at the northwest corner of Lot 42 of Chalet Village Addition No. 3, Town of Mt. Crested Butte, County of Gunnison, State of Colorado ("CVA3");  
Then north 9°46" a distance 130 feet to the southwest corner of Lot 44 of CVA3,

across and under the Lots and as depicted on the Final Plat for Hawk's Nest Town Homes (the "Plat").

1.2 The Owner agrees to either sleeve and/or relocate all utilities so as to be accessible for repairs, maintenance and upgrades as necessary without the need to dig up any paved areas of the Development.

2. **Pedestrian Easement.**

2.1 The Declarant hereby grants to the Town a public right-of-way for pedestrian use (the "Pedestrian Easement") between Castle Road and Hinter Hill Road running north and east of the delineated wetlands on the Plat.

2.2 The Town agrees to indemnify the Declarant and its successors and assigns from and against any and all costs, losses, liabilities, damages, litigation, claims, costs, and expenses, including reasonable attorneys' fees and other expenses of investigation and defense (collectively,



the "Damages") to which the Declarant or its successors and assigns may become subject or which are incurred in connection with, arise out of, result from, or are attributable to public use of the Pedestrian Easement, except such Damages arising out of intentional acts of the Declarant or its successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

TRIPLE J DEVELOPMENT, LLC,  
a Colorado limited liability company

By: *Peter Abruzzo*  
Peter Abruzzo, Manager

STATE OF ILLINOIS )  
  )ss.  
County of Lake )

The foregoing Utility and Pedestrian Easement Agreement was acknowledged before me this 21 day of June, 2007 by Peter Abruzzo, Manager of Triple J Development, LLC, a Colorado limited liability company.

(SEAL)



*Mary Crow*  
Notary Public

My commission expires: 01/25/2011

TOWN COUNCIL, MT. CRESTED BUTTE,  
COLORADO

By: *Cliff*  
Mayor

ATTEST:  
*Donna Drewood*  
Town Clerk



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**GRANT OF UTILITIES EASEMENT**

**TRIPLE J DEVELOPMENT, LLC**, a Colorado limited liability company ("Grantor"), whose address is 3030 Salt Creek Lane, Suite 120, Arlington Heights, Illinois 60005, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants and conveys to **MT. CRESTED BUTTE WATER & SANITATION DISTRICT**, a Colorado Special District ("Grantee"), whose address is P.O. Box 5740, Mt. Crested Butte, CO 81225, a permanent easement and right of way 16 feet in width, extending 8 feet on either side of line described on Exhibit A ("Easement Area") to install, construct, reconstruct, replace, remove, maintain and use, an underground water line and all necessary and proper appurtenances connected therewith, hereinafter collectively referred to as the "Utilities", together with the right of ingress and egress over and across said Easement Area as may be necessary for the installation, use and maintenance of said Utilities, at any time.

Said easement and right of way shall be subject to the following terms and conditions:

1. Grantor shall have the right to use the Easement Area for any purpose not inconsistent with the full use and enjoyment of the Easement Area by Grantee and which will not interfere with or endanger any of the facilities therein.
2. Immediately upon completion of the installation or maintenance of the Utilities, Grantee shall restore the property disturbed or damaged by such installation or maintenance to a condition as near as reasonably possible as it was prior to the installation or maintenance of the Utilities or otherwise restore the area of such installation or maintenance to a level and clean condition. Notwithstanding the foregoing, in no event shall Grantee be required to replace, or repair any asphalt, or other improvements, that may be placed or installed by Grantor within the Easement Area.
3. Liability and Indemnity. The Grantor agrees to hold harmless and to indemnify the Grantee from any and all claims (including all costs, expenses, liabilities and reasonable attorney fees) arising or alleged to arise from any act or omission of the Grantor, their invitees, employees, contractors or agents, from any injury or damage to any person, or the property of any person, pertaining to the Easement. The Grantor agrees to use the Easement at its own risk and hereby releases the Grantee from any and all claims for any damage or injury to the full extent permitted by law.
5. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered; mailed by registered or certified mail, return receipt requested; delivered by overnight delivery service such as Federal Express or United Parcel Service; or sent by telecopier or telegraphic transmission. Service of such notice shall be deemed given and received when personally delivered, or 3 business days after mailed properly addressed with postage prepaid, or the day sent by telecopier or telegraphic transmission, or the day following the delivery to an overnight delivery service with delivery charges prepaid. All notices shall be given to the required party at the following address:

Grantor: 3030 Salt Creek Lane, Suite 120,  
Arlington Heights, Illinois 60005



Grantee: P.O. Box 5740  
Mt. Crested Butte, CO 81225

Any party may change its address by giving written notice of a change of address to the other party in the manner above provided.

6. Entire Agreement. This Agreement constitutes the entire and only agreement between the parties. All prior negotiations, agreements, representations and understandings, whether written or oral, are merged into and superseded by this Agreement and shall be of no further force and effect.

7. Applicable Law. This Agreement is executed in Gunnison County, Colorado, and shall be interpreted, construed and governed by the laws of the State of Colorado.

8. Jurisdiction and Venue. Jurisdiction and venue of any action as to this Agreement, and the interpretation, enforcement, construction or the determination of the rights and duties of the parties hereto, shall be the District Court of Gunnison County, Colorado.

9. Attorney Fees. If any legal action is commenced or maintained in court, whether in law or in equity, by any party to this Agreement as to the interpretation, enforcement, construction or the determination of the rights and duties of the parties to this Agreement, the prevailing party in any such action shall be awarded reasonable attorney fees together with all reasonable costs and expenses incurred in such action.

10. Binding Agreement. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

This Grant of Utilities Easement shall be appurtenant to and run with the property described herein and shall be binding upon the heirs, representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the Grantor has executed this Grant of Utilities Easement this 2ND day of SEPTEMBER, 2005.

GRANTOR

Triple J Development, LLC,  
a Colorado limited liability company

By: [Signature]  
Peter J. Abruzzo, Manager



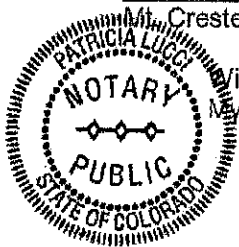
GRANTEE

Mt. Crested Butte Water & Sanitation District,  
 a Colorado Special District

By: *Frank L Glick*  
 Name: Frank L Glick  
 Title: Mgr

STATE OF COLORADO )  
 )ss.  
 COUNTY OF GUNNISON )

The foregoing Grant of Utilities Easement was acknowledged before me this 30<sup>th</sup> day of  
August, 2005 by Frank L. Glick as Dist Mgr of  
 Mt. Crested Butte Water & Sanitation District, a Colorado Special District.



Witness my hand and official seal.  
 My commission expires: 9/30/2008

*Patricia Lucci*  
 Notary Public

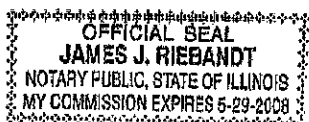
STATE OF ILLINOIS )  
 )ss.  
 COUNTY OF COOK )

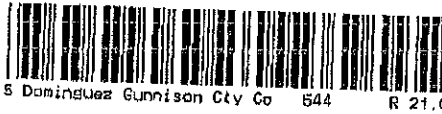
The foregoing Grant of Utilities Easement was acknowledged before me this 2<sup>nd</sup> day of  
SEPTEMBER, 2005 by Peter J. Abruzzo, as Manager of Triple J Development,  
 LLC, a Colorado limited liability company.

Witness my hand and official seal.  
 My commission expires:

MAY 29, 2008

*Peter J. Abruzzo*  
 Notary Public





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Page: 4 of 4  
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**EXHIBIT A**

Beginning at the northwest corner of Lot 42 of Chalet Village Addition No. 3, Town of Mt. Crested Butte, County of Gunnison, State of Colorado ("CVA3"); then north 9°46" a distance of 130 feet to the southwest corner of Lot 4 of CVA3.

and as depicted on the Replat of Lots 29 and 43, Chalet Village Addition No., recorded Sept. 9, 2005 bearing Reception No. 558013, Town of Mt. Crested Butte, County of Gunnison, State of Colorado.

**CONDOMINIUM DECLARATION FOR  
HAWK'S NEST TOWN HOMES**

THIS CONDOMINIUM DECLARATION FOR HAWK'S NEST TOWN HOMES (this "Declaration") dated as of this 1<sup>st</sup> day of August, 2005, shall be effective upon recordation and is made by **Triple J Development, LLC**, a Colorado limited liability company ("Declarant"). Declarant is the owner of certain real property in Gunnison County, Colorado, more particularly described as follows (the "Property"):

The Replat of Lots 29 and 43, CHALET VILLAGE ADDITION NO. 3, according to the Plat thereof recorded September 4<sup>th</sup>, 2005 bearing Reception No. 558013, Town of Mt. Crested Butte, County of Gunnison, State of Colorado.

Declarant hereby makes the following grants, submissions, and declarations:

**ARTICLE I  
STATEMENT OF PURPOSE OF DECLARATION**

**1.1 Purpose.** The purpose of this Declaration is to create a multi-family common interest community project (the "Project") pursuant to the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time (the "Act"), within the Building (as hereinafter defined) and other improvements located on the Property, which Project shall incorporate residential uses and shall be referred to as the "Project". Further, this Declaration is executed to define the character, duration, rights, duties, obligations and limitations of single-family common interest community use and ownership of the property and to provide for the benefit of all unit owners located within the project.

**1.2 Intention of Declarant.** Declarant desires to (a) protect the value and desirability of the Project as a whole while respecting the separate and distinct interests of the owners of each of the Residential Units (b) further a plan for the improvement, sales, and common interest ownership of the Project (c) create a harmonious and attractive development within the Project, and (d) promote and safeguard the health, comfort, safety, convenience, and welfare of the owners of Town Home units of the Residential project.

**1.3 Development and Use.** The Project will consist of a maximum of four (4) town home units, which all shall be designated for single-family residential use. No additional town home units may be established on the Property by subdivision of existing units, conversion of non-residential space, or otherwise by the Declarant or the homeowner's association.

**1.4 Declaration.** To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to the provisions of the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration below. Further, Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved, subject to the provisions of this Declaration.



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## CONDOMINIUM DECLARATION FOR HAWK'S NEST TOWN HOMES

THIS CONDOMINIUM DECLARATION FOR HAWK'S NEST TOWN HOMES (this "Declaration") dated as of this 1<sup>st</sup> day of August, 2005, shall be effective upon recordation and is made by Triple J Development, LLC, a Colorado limited liability company ("Declarant"). Declarant is the owner of certain real property in Gunnison County, Colorado, more particularly described as follows (the "Property"):

The Replat of Lots 29 and 43, CHALET VILLAGE ADDITION NO. 3, according to the Plat thereof recorded September 4<sup>th</sup>, 2005 bearing Reception No. 558013, Town of Mt. Crested Butte, County of Gunnison, State of Colorado.

Declarant hereby makes the following grants, submissions, and declarations:

### ARTICLE I STATEMENT OF PURPOSE OF DECLARATION

1.1 **Purpose.** The purpose of this Declaration is to create a multi-family common interest community project (the "Project") pursuant to the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time (the "Act"), within the Building (as hereinafter defined) and other improvements located on the Property, which Project shall incorporate residential uses and shall be referred to as the "Project". Further, this Declaration is executed to define the character, duration, rights, duties, obligations and limitations of single-family common interest community use and ownership of the property and to provide for the benefit of all unit owners located within the project.

1.2 **Intention of Declarant.** Declarant desires to (a) protect the value and desirability of the Project as a whole while respecting the separate and distinct interests of the owners of each of the Residential Units (b) further a plan for the improvement, sales, and common interest ownership of the Project (c) create a harmonious and attractive development within the Project, and (d) promote and safeguard the health, comfort, safety, convenience, and welfare of the owners of Town Home units of the Residential project.

1.3 **Development and Use.** The Project will consist of a maximum of four (4) town home units, which all shall be designated for single-family residential use. No additional town home units may be established on the Property by subdivision of existing units, conversion of non-residential space, or otherwise by the Declarant or the homeowner's association.

1.4 **Declaration.** To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to the provisions of the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration below. Further, Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved, subject to the provisions of this Declaration.





1.5 **Covenants Running With the Land.** All provisions of this Declaration shall be deemed to be covenants running with the land, or equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

1.6 **Colorado Common Interest Ownership Act.** Declarant declares the Property to be a Common Interest Community in accordance with the Colorado Common Interest Ownership Act.

**ARTICLE II  
DEFINITIONS**

The following words, when used in this Declaration and any exhibits attached hereto, shall have the meanings designated below unless the context shall expressly provide otherwise:

1.1 **“Assessments”** shall mean any assessments, whether regular, special or otherwise, levied pursuant to this Declaration or the Association Documents to provide the necessary funds for all requirements of this Declaration and the obligations of the Association. Assessments are also referred to as a Common Expense Liability under the Act.

1.2 **“Association”** shall mean “Hawk’s Nest Town Homes Owners Association” a Colorado nonprofit corporation, and its successors and assigns.

1.3 **“Association Documents”** shall mean the basic documents creating and governing the Project, including, but not limited to, this Declaration, the articles of incorporation and bylaws of the Association, the Map, and any procedures, rules, regulations, or policies relating to the Project adopted under such documents by the Association or the Executive Board.

1.4 **“Board of Directors”** or **“Board”** shall mean the Board of Directors of the Association duly elected and acting according to the Association Documents as the governing body of the Association provided in the Articles of Incorporation and bylaws of the Association.

1.5 **“Building”** shall mean the building (including all fixtures and improvements contained within it) in which Town Home Units and Common Elements are located.

1.6 **“Common Elements”** shall mean all of the Project, except the Individual Air Space Units, and including, without limiting the generality of the foregoing, the following components:

1.5.1 The property, excluding improvements on the Property unless specifically described in this subsection;

1.5.2 The Building (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, fireplaces, chimneys, flues, chimney chases, roofs, patios, decks, balconies, corridors, vestibules, entrances and exits; and the mechanical installations of the Building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating and central air-conditioning which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith and the areas designated on the Map as including those installations; trash rooms and storage rooms; elevators and stairs), except for the Individual Air Space Units;



1.5.3 The yards, sidewalks, walkways, parking areas, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, gardens and related facilities upon the Property;

1.5.4 The pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the Building existing for use of one or more of the Owners; and

1.5.5 In general, all other parts of the Project designated by Declarant as Common Elements and existing for the use of one or more of the Owners.

The Common Elements shall be owned by the Owners of the separate Condominium Units, each Owner of a Condominium Unit having an undivided interest in the Common Elements as provided below.

1.7 “Common Expense(s)” shall mean and include the following:

1.7.1 Expenses of administration, insurance, operation, and management, repair, or replacement of the Common Elements except to the extent such repairs and replacements are responsibilities of an Owner as delineated in Section 9.2 below;

1.7.2 Expenses declared Common Expenses by the provisions of this Declaration or the bylaws of the Association;

1.7.3 All sums lawfully assessed against the Town Home Units by the Board;

1.7.4 Expenses agreed upon as Common Expenses by the members of the Association; and

1.7.5 Expenses provided to be paid by the Owners in accordance with the terms of this Declaration pursuant to the respective Management Agreements for the maintenance of the General Common Elements.

1.8 “Declarant” shall mean Triple J Development, LLC, a Colorado limited liability company, and its successors and assigns.

1.9 “Declaration” shall mean this Declaration for Hawk’s Nest Town Homes together with any supplement or amendment to this Declaration, recorded by Declarant in the office of the Clerk and Recorder of Gunnison County, Colorado.

1.10 “Director” shall mean a member of the Board.

1.11 “First Mortgage” shall mean an unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the office of the Clerk and Recorder of Gunnison County, Colorado, which secures financing for the construction or development of the Project or which encumbers a Town Home Unit, and which, in any case, has priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments)

1.12 “First Mortgagee” shall mean the Mortgagee under a First Mortgage.

1.13 “General Common Elements” shall mean the Common Elements.



1.14 **“Individual Air Space Unit”** shall mean, that portion of a single Town Home Unit designated for separate ownership by an Owner depicted on the Map and consisting of enclosed rooms and bounded by the unfinished perimeter walls, ceilings, floors, doors, and windows thereof.

Unit(s) shall be those boundaries as are designated on the Map. For the purpose of defining an Individual Air Space Unit, the terms set forth below shall be defined as follows:

1.13.1 **“Unfinished perimeter wall”** shall mean the studs, supports, and other wooden, metal, or similar structural materials which constitute the interior face of a wall of an Individual Air Space Unit.

1.13.2 **“Unfinished ceiling”** means the beams, joists, and wooden or other structural materials which constitute the ceiling of an Individual Air Space Unit.

1.13.3 **“Unfinished floor”** means the beams, floor joists, and floor deck material which constitute the floor of an Individual Air Space Unit.

An Individual Air Space Unit shall include any drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, windows and window frames, shutters, awnings, doorsteps, stoops, and doors and door frames. An Individual Air Space Unit shall also include any fireplace or stove hearth, facing brick, tile or firebox. An Individual Air Space Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings, and floors. An Individual Air Space Unit shall include any heating and refrigerating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air-conditioning, hot and cold water, electrical, or other utility services to the Individual Air Space Unit and located within the unfinished perimeter walls, ceilings, and floors; provided, however, that an Individual Air Space Unit shall not include any of the structural components of the Building or utility or service lines located within the Individual Air Space Unit but serving more than one Individual Air Space Unit.

1.15 **“Management Agreement”** shall mean any contract or arrangement entered into for purposes of discharging the responsibilities of the Board or the Directors as the case may be, relative to the operation, maintenance, and management of the Project.

1.16 **“Managing Agent”** shall mean a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Project.

1.17 **“Maximum Rate”** shall mean two percentage points greater than that rate of interest charged by a bank (designated from time to time by the Board) to the best commercial customers of the designated bank for short-term loans and identified as the “prime rate” by such bank as of the date on which such Maximum Rate is imposed with respect to any amount payable under this Declaration, or if less, the maximum rate allowed by law.

1.18 **“Mortgage”** shall mean any unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the office of the Clerk and Recorder of Gunnison County, Colorado, which secures financing for the construction or development of the Project or which encumbers a Town Home Unit.

1.19 **“Mortgagee”** shall mean any person or entity named as a mortgagee or beneficiary under any Mortgage, or any successor to the interest of any such person under such Mortgage.



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1.20 **“Owner”** shall mean any record owner (including Declarant, and including a contract seller, but excluding a contract purchaser), whether a natural person or persons, or an entity, of a fee simple title interest in and to any Town Home Unit; excluding, however, any record owner with an interest therein merely as a Mortgagee (unless such Mortgagee has acquired fee simple title interest in the Town Home Unit pursuant to foreclosure or any proceedings in lieu of foreclosure)

1.21 **“Snow storage area”** shall mean any area designated on a Plat or Map as a snow storage area. Any snow storage area may be used by the Town or its authorized representative to store snow thereon as required for snow removal on the dedicated streets and roads.

1.22 **“Town”** shall mean the Town of Mt. Crested Butte, Colorado

1.23 **“Town Home Map”** or **“Map”** shall mean and include any engineering survey or surveys of the Property locating the Town Home Units in the Building and the Building on the Property, and depicting the floor plans of the Units together with other drawings or diagrammatic plans and information regarding the Property including, but not limited to a Plat, as may be included in the discretion of the Declarant, as recorded by Declarant in the office of the Clerk and Recorder of Gunnison County, Colorado. Any use of these terms shall include the Plat.

1.24 **“Town Home”** or **“Unit”** or **“Town Home Unit”** shall mean with the fee simple interest in and to an Individual Air Space Unit, together with the undivided interests in the Common Elements appurtenant to the Individual Air Space Unit as specified in the attached Exhibit B. Town Home Unit is also referred to as a Unit under the Act.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meanings specified or used in the Act.

**ARTICLE III  
DIVISION OF PROJECT INTO SEPARATE OWNERSHIP**

2.1 **Division Into Separate Units.** As of the recording of this Declaration, the Property is hereby divided into Four (4) Town Home Units. Each Town Home Unit consists of a fee simple interest in an Individual Air Space Unit and an undivided fee simple interest in the Common Elements in accordance with the respective undivided interests in the Common Elements as set forth in Exhibit A. Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units.

2.2 **Delineation of Unit Boundaries.** The boundaries of each Individual Air Space Unit are delineated and designated by an identifying number on the Map, and those numbers are set forth in Exhibit A.

2.3 **Inseparability of Town Home Unit.** No part of a Town Home Unit or of the legal rights comprising ownership of a Town Home Unit may be partitioned or separated from any other part thereof during the period of Town Home ownership prescribed in this Declaration. Subject to Section 3.1 above, each Town Home Unit shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Town Home Unit. Every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Town Home Unit or any part thereof shall be presumed to be a disposition of the entire Town Home Unit, together with all appurtenant rights and interests created by law or by this Declaration.



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**2.4 Nonpartitionability of Common Elements.** Subject to the provisions of this Article and Article 5 below, the Common Elements shall be owned in common by all of the Owners and shall remain physically undivided. No Owner shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment to a Town Home Unit, each Owner of the Unit shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the General Common Elements, and this Section 3.4 may be pleaded as a bar to the maintenance of such an action. Any Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Association's costs, expenses, and reasonable attorneys' fees in defending any such action. Such amounts shall automatically become a default Assessment determined and levied against such Owner's Unit and enforced by the Association in accordance with Sections 8.10, 8.11 and 8.12 below.

Notwithstanding the foregoing the Association shall have the right to dedicate, sell or otherwise transfer all or any part of the Common Elements to any public, governmental, or quasi-governmental agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. However, such dedication or transfer of the Common Elements shall not be effective unless an instrument has been signed by members holding an aggregate interest equal to at least seventy-five percent (75%) of the votes of the Owners agreeing to such dedication, sale or transfer. Notwithstanding the preceding sentence, the granting of easements by a majority of voting Directors of the Board, for public utilities, for access by pedestrians or for other public purposes not inconsistent with the intended use of the Common Elements shall not be deemed a transfer requiring such consent of the Owners within the meaning of this Section.

**ARTICLE IV  
TOWN HOME MAP**

**3.1 Town Home Map.** The Map shall be filed for record in the office of the Clerk and Recorder of Gunnison County, Colorado. Any Map filed subsequent to the first Map shall be termed a supplement to such Map, and the numerical sequence of such supplements shall be shown thereon. The Map shall be filed for record following substantial completion of those portions of the Building subject to this Declaration and prior to the conveyance of any Town Home Unit depicted on the Map to a purchaser. The Map shall show the location of the Building on the Property; the floor and elevation plans; the location of the Town Home Units within the Building, both horizontally and vertically; the thickness of the common walls, if any, between or separating the Town Home Units one from the other, or from Common Elements, as applicable; the Town Home Unit designations; designation of General Common Elements and such other information as Declarant may require in its discretion. The Map shall contain a certificate of a registered professional engineer or licensed architect or a licensed land surveyor certifying that the Map substantially depicts the location and the horizontal and vertical measurements of the Building and the Town Home Units, the dimensions and, if Declarant directs, the square foot areas of the Town Home Units, and the elevations of the unfinished floors and ceilings as constructed, and certifying that such Map is prepared subsequent to the substantial completion of the improvements. Each supplement or amendment shall set forth a like certificate when appropriate. The Map shall further contain such other information, certifications and depictions as may be required under Section 38-33.3-209 of The Act.

**3.2 Amendment.** Declarant reserves the right to amend the Map, from time to time, to the fullest extent permitted under the Act.



**ARTICLE V  
OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS**

**4.1 General Common Elements.** Every Owner and the family members, guests, tenants, and licensees of each Owner shall have a perpetual right and easement of access over, across, and upon the General Common Elements for the purpose of entering and exiting such Owner's Town Home Unit, the parking area of such Owner and the public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Town Home Unit; provided, however, that such right and easement shall be subject to the following:

**4.1.1** The covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, and the Town Home Map;

**4.1.2** The right of the Association to regulate on an equitable basis the use of parking spaces and storage spaces which are General Common Elements, from time to time;

**4.1.3** The right of the Association to adopt, from time to time, rules and regulations concerning vehicular traffic and travel upon, in, under, and across the Project; and

**4.1.4** The right of the Association to adopt, from time to time, any and all rules and regulations concerning the Town Home Elements as the Association may determine are necessary or prudent, subject to the terms of Section 7.7 and Article 13 hereof.

Notwithstanding the foregoing, the Association shall take no action which unreasonably restricts any Owner's or his family members', guests', tenants' and licensees' right and easement of access over, across and upon the General Common Elements to his Unit(s)

**4.2 Parking.** The Owners acknowledge that in addition to the individually owned garages that are part of each Unit, the Association will own parking spaces located on the Project. The Association will have full right, power and authority to regulate such parking on an equitable basis as determined by the Board including, without limitation, the right to assign exclusive parking spaces to certain Units and the right to adopt rules and regulations governing the use and maintenance of such parking consistent with the Parking Documents.

**ARTICLE VI  
MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

**5.1 Association Membership.** Every Owner shall be a member of the Association and shall remain a member for the period of the Owner's ownership of a Town Home Unit. No Owner, whether one or more persons, shall have more than one membership per Town Home Unit owned, but all of the persons owning a Town Home Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Town Home Unit. However, any Owner may appoint, in a written instrument furnished to the secretary of the Association, a delegate to exercise the rights of such Owner as a member of the Association, and in the event of such appointment, the delegate shall have the power to cast votes on behalf of the Owner as a member of the Association, subject to the provisions of and in accordance with the procedures more fully described in the bylaws of the Association.

**5.2 Voting Rights.** All owners within the Project shall be Members of the Association. Each Unit shall be entitled to one vote in the Association. The one vote for each unit shall be exercised by the Owner and when more than one person or entity holds an interest in a Unit, the vote for the Unit



shall be exercised as the Owners may determine among themselves, but the vote for the Unit shall be cast by only one person.

**5.3 Fairness Standard.** The Board, the officers of the Association and the Association shall have the duty to represent the interest of all Owners in a fair and just manner on all matters.

**5.4 Registration of Mailing Address.** Each Owner shall register his mailing address with the Association within seven (7) days of transfer of title to said Owner. Except for monthly statements and other routine notices, all notices or demands to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addresses in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent by certified mail, postage prepaid, to the address of the Association.

**5.5 Single Address for Mailing.** In the event any Unit is owned by more than one person, or by a partnership, joint venture, corporation, or other such entity, the Owners thereof shall designate to the Association and to the Town of Mt. Crested Butte, Colorado, in writing the name and address of the agent of the Owner to whom all legal or official assessments, liens, levies or other such notices may be properly and lawfully mailed. Upon failure to so designate an agent, the Association shall be deemed to be the agent for receipt of notices to such Owners. If the address of the Unit is the registered address of the Owners, then any notice shall be deemed duly given if delivered to any person occupying the Unit or, if the Unit is unoccupied, if the notice is held and available for the Owners at the principal office of the Association.

**ARTICLE VII  
ASSOCIATION DUTIES**

**6.1 Association Management Duties.**

**6.1.1** Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the General Common Elements (including facilities, furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments and in compliance with the Crested Butte Water and Sanitation District, and, subject to the budget approval procedures of Section 8.6 below. Prior approval of the Owners shall not be required in order for the Association to pay any such expenses, and fees.

**6.1.2** The Owners shall be responsible for the exclusive management, control, maintenance, repair, replacement and improvement of the Common Elements. The expenses, costs and fees of such management, operation, maintenance and repair of the Common Elements shall be part of the Assessments to be paid by the Owners for such Common Elements and, subject to the budget approval procedures of Section 8.6 below, prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs and fees.

**6.1.3** Notwithstanding the foregoing, if any Common Element is exclusively allocated to one or more Units, (such as private garages) the Owners of such individual Unit(s) shall be responsible for any Common Element to such Unit(s), other than parking spaces which for purposes of this Section shall be maintained by the Association in the same manner as the other Common Elements described above, and also responsible for other areas which, pursuant to Section 5.1.2 above, may be designated for



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use in connection with the Owner's Town Home Unit, and each Owner shall also be responsible for keeping the same in a good, clean, sanitary, and attractive condition.

**6.2 Reserve Account.** The Association shall establish and maintain, as part of its budget and out of the installments of the annual Assessments, adequate reserve accounts for maintenance, repair, or replacement of those Common Elements that must be replaced on a periodic basis.

**6.3 Owner's Negligence.** In the event that the need for maintenance, repair, or replacement of all, or any portion of the Common Elements is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's family, or by an Owner's guests, invitees, or tenants, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner; and, if the Owner fails to repay the expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Section 7.3, and such expenses shall automatically become a default Assessment determined and levied against such Town Home Unit, enforceable by the Association in accordance with Sections 8.10, 8.11 and 8.12 below.

**6.4 Acquiring and Disposing of Personal Property.** The Association may acquire, own, and hold tangible and intangible personal property for the use and benefit of all Owners, and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests in the Common Elements. Such interests shall not be transferable except with the transfer of a Town Home Unit. A conveyance of a Town Home Unit shall transfer ownership of the transferor's beneficial interest in such personal property without any reference thereto. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Town Home Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Town Home Unit.

**6.5 Issuance of Rules and Regulations.** The Board may make and amend reasonable rules and regulations governing the use and rental of the Units and the use of the Common Elements. The Board may, by a majority of the voting Directors, make and amend reasonable rules and regulations governing the use and operation of the General Common Elements. Notwithstanding the foregoing, any such rules and regulations shall not be inconsistent with the terms of this Declaration, including, but not limited to Article 13. In addition, such rules and regulations shall, when applied to each of the Town Home Units considering the use of such Unit, be equitable and reasonable as applied to the Unit with respect to the use thereof. The Board shall provide thirty (30) days written notice prior to the adoption or amendment of any rules and regulations and provide for a reasonable opportunity for Owners to comment at a meeting of the Executive Board on the proposed adoption or amendment of any rules and regulations.

**6.6 Enforcement of Association Documents.** The Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such rules and regulations and with the other provisions of the Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law.

**6.7 Identity of The Board and Managing Agent.** From time to time, but no less frequently than annually, there shall be mailed by the Association to each Owner a notice containing the names and addresses of the members/directors of the Board and the Managing Agent(s), if any.

**6.8 Payments to Working Capital Account.** In order to provide the Association with adequate working capital funds, the Association shall collect at the time of the sale of each Town Home Unit an amount equal to three months' installments of annual Assessments at the rate in effect at the time





of the sale. The Association shall maintain the working capital funds to meet unforeseen expenditures or to acquire additional equipment or services in connection with the General Common Elements for the benefit of the members of the Association, subject to the budget approval procedures of Section 8.6 below. Such payments to this fund shall not be considered advance payments of annual Assessments. The unused portion of the working capital deposit shall be returned to each Owner upon the sale of his Town Home Unit, provided that the new purchaser of the Unit has deposited the required working capital deposit with the Association.

**6.9 Implied Rights.** The Association may exercise any and all other rights or privileges given to it by this Declaration, or by the other Association Documents, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association in the Association Documents or reasonably necessary to effectuate any such right or privilege.

**6.10 Books and Records of the Association.** The Board and/or each Managing Agent, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the Common Elements and shall maintain such other books and records as may be required under the Act. Owners and Mortgagees may inspect the records of receipts and expenditures of the Managing Agent or the Board at convenient weekday business hours. In addition, the other books, records, and papers of the Association, including this Declaration, the articles of incorporation and the bylaws of the Association, as well as any Management Agreement and any rules and regulations of the Association, shall be available for inspection by any Owner or Mortgagee at all times during convenient weekday business hours.

**ARTICLE VIII  
ASSESSMENTS**

**7.1 Covenant of Personal Obligation of Assessments.** Declarant, by creating the Town Home Units pursuant to this Declaration, and every other Owner, by acceptance of the deed or other instrument of transfer of his Town Home Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), is deemed to personally covenant and agree, with the Association, and hereby does so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) default Assessments applicable to the Owner's Town Home Unit. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities contained in the Common Elements or by abandoning or leasing his Town Home Unit.

**7.2 Purpose of Assessments.** The Assessments levied by the Association shall be used for the purpose of promoting the health, safety, convenience, and general welfare of the Owners, including the improvement and maintenance of the Property and of the services and facilities located on the Property. Proper uses of the Assessments shall include, but are not limited to, the following:

**7.1.1** Repairing, replacing, renovating and maintaining any of the Common Elements not made the responsibility of the Owners by Section 7.1 or Section 7.3 above, Section 9.2 below, or other provisions of this Declaration;

**7.1.2** Installing, maintaining, and repairing underground utilities upon, across, over, and under any part of the Project which are not conveyed to and accepted by utility companies;

**7.1.3** Furnishing garbage and trash pickup and water and sewer services to the Project;



7.1.4 Obtaining and maintaining insurance in accordance with the provisions of Article 10 below;

7.1.5 Establishing and maintaining reserves for repairs, replacement, maintenance, taxes, capital improvements and other purposes;

7.1.6 Carrying out all other powers, rights, and duties of the Association specified in the Association Documents;

7.1.7 Providing for and maintaining adequate snow removal services; and

7.1.8 Generally, addressing any other expenses necessary to meet the primary purposes of the Association.

7.3 **Commencement of Assessments.** All of the Units shall be allocated full Assessments, subject to the provisions of Section 8.6 below, no later than sixty (60) days after Declarant conveys the first Unit in the Project to a purchaser.

7.4 **Amount of Total Annual Assessments.** The total annual Assessments against all Town Home Units 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 fiscal year, as approved by the Owners pursuant to Section 8.6 below, which estimates may include, among other things, the costs associated with the items enumerated in Section 8.2 above, together with any other costs and fees which may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of the Association Documents. In the event of surplus funds remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves, the Board may within its discretion apply the surplus funds (a) into reserves, (b) toward the following year's Common Expenses, (c) toward a credit to Owners against future assessments or in the form of a distribution, or (d) any combination of the foregoing.

7.5 **Apportionment of Annual Assessments.** The total annual Assessment for any fiscal year of the Association shall be assessed to each Unit as follows:

7.4.1 The annual Assessment for each Unit shall be in an amount equal to the percentage interest in the General Common Elements allocated to such Unit as shown on Exhibit A multiplied by the GCE Budget (as defined hereinafter).

7.4.2 To the extent any Common Expense relating to the General Common Element disproportionately benefits any Owner or group of Owners, the Board may, by a majority of the voting Directors adjust the assessment for such Common Expense in such proportion as may be appropriate. The Board, with the assistance of any company providing insurance for the benefit of the Owners under Article 10, may reasonably adjust the allocation to each Owner of the cost of premiums for any insurance carried for, and to be charged to, a particular Owner, as more fully detailed in Article 10. The total annual Assessments of the Association shall be apportioned among all Town Home Units as provided in this Section.

7.6 **Annual Budget.**

7.6.1 Within thirty (30) days after the adoption of any proposed budgets for the Association in accordance with the procedures described below, the Board shall deliver by ordinary first-class mail or in person a summary of the budget information relative to each of the Unit Owners. The



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Board shall also set a date for the meeting of all Owners to consider ratification of the budgets not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the budgets.

7.6.2 Any proposed budget shall be deemed ratified upon majority vote of all the Owners pursuant to the Act.

7.6.3 The Board shall adopt budgets and submit the budgets to a vote of the Owners as provided herein no less frequently than annually. The Board shall levy and assess the Association's annual Assessments in accordance with the annual budgets.

7.7 **Special Assessments.** In addition to the annual Assessments authorized above, the Board, if permitted under the Act, may at any time and from time to time determine, levy, and assess in any fiscal year (without the vote of the members of the Association, except as provided in the Act and in this Section below) a Special Assessment applicable to that particular fiscal year (and for any such longer period as the Board may determine) against all of the Owners with respect to the General Common Elements for the purpose of defraying, in whole or in part the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the project or of any facilities located on the project, specifically including any fixtures and personal property related to it. Any amounts determined, levied and assessed in connection with the General Common Elements pursuant to this Declaration shall be assessed by a majority of the voting of the Board to the Town Home Units in proportion to the respective undivided interests in the General Common Elements allocated to the Units as shown in Exhibit A provided however, that any extraordinary insurance costs incurred as a result of the value of a particular Owner's Town Home Unit or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Special Assessments shall be based on a budget adopted in accordance with Section 8.6 provided that, if necessary, the Association may adopt a new budget pursuant to Section 8.6 prior to levying a special Assessment. Such special Assessment(s) shall be due and payable as determined by the Board.

7.8 **Due Dates for Assessment Payments.** Unless otherwise determined by the Board, the annual Assessments and any special Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Board may otherwise direct in any Management Agreement, without notice (except for the notices required by this Article 8), on the first day of each quarter. If any such installment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Board may assess a "late charge" on the installment in an amount of \$100 or such other charge as the Board may fix by rule from time to time as provided in the bylaws of the Association to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Town Home Unit commences or terminates on a day other than the first day or last day, respectively, of a quarter or other applicable payment period.

7.9 **Declarant's Obligation to Pay Assessments.** Declarant shall be obligated to pay the annual and special Assessments (including installments thereof) on each Town Home Unit owned by it.

7.10 **Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner shall become liens against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default Assessment shall be sent to the Owner subject to the Assessment at least thirty (30) days prior to the due date.

7.11 **Lien for Assessments.** The annual, special, and default Assessments (including installments of the Assessments) arising under the provisions of this Declaration (together with any and



all interest, costs, late charges, expenses, and reasonable attorneys' fees, including legal assistants' fees, which may arise under the provisions of Section 8.12 below) shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Town Home Unit to which such Assessments apply. To further evidence such lien upon a specific Town Home Unit, the Association may, but shall not be obligated to, prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the bylaws of the Association and Section 8.12 below, the name of the Owner or Owners of the Unit, and, any and all other information that the Association may deem proper. Any such lien notice shall be signed by a member of the Board and shall be recorded in the office of the Clerk and Recorder of Gunnison County, Colorado. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Town Home Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied.

**7.12 Effect of Nonpayment of Assessments.** If any annual, special, or default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (i) interest shall accrue at the Maximum Rate on any amount of the Assessment which was not paid within such 30-day period or on the amount of Assessment in default, whichever shall be applicable, accruing from the due date until date of payment, (ii) the Association may declare due and payable all unpaid quarterly or other installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (iii) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, and (iv) the Association may proceed to foreclose its lien against the particular Town Home Unit in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments (or any, installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. If any such Assessment (or installment thereof) is not fully paid when due and if the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against any Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Town Home Unit, then all unpaid installments of annual and special Assessments and all default Assessments (including any such installments or Assessments arising during the proceedings of such action or foreclosure proceedings), any late charges under Section 8.8 above, any accrued interest under this Section 8.12, the Association's costs, expenses, and reasonable attorneys' fees (including legal assistants' fees) incurred for any such action and/or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Town Home Unit in satisfaction of the Association's lien.

Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Association shall have the power and right to bid in or purchase any Town Home Unit at foreclosure or other legal sale and to acquire and hold, lease, or mortgage the Town Home Unit, and to convey, or otherwise deal with the Unit acquired in such proceedings.

First Mortgagees shall be entitled to cure any delinquency in the payment of Assessments of the Owner of a Town Home Unit encumbered by the First Mortgagee. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.



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**7.13 Successor's Liability for Assessments.** Notwithstanding the personal obligation of each Owner of a Town Home Unit to pay all Assessments on the Unit, and notwithstanding the Association's perpetual lien upon a Town Home Unit for such Assessments, all successors in interest to the fee simple title of a Town Home Unit, except as provided in Section 8.14 and Section 8.15 below, shall be jointly and severally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Town Home Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. However, such successor in interest shall be entitled to rely upon the existence and status of unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest pursuant to the provisions of Section 8.15 below.

**7.14 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments.** By acceptance of the deed or other instrument of transfer of a Town Home Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Town Home Unit for Assessments shall be superior to all other liens and encumbrances except the following:

**7.13.1** Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute;

**7.13.2** To the extent permitted under the Act, the lien of any First Mortgage, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens.

**7.15 Statement of Status of Assessments.** Upon fourteen (14) calendar days written request (furnished in the manner described below for the response to such request) to the Board or the Association's registered agent and payment of a reasonable fee set from time to time by the Board, any Owner, prospective purchaser of a Town Home Unit, or Mortgagee shall be furnished, by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) a statement of the Owner's account setting forth:

**7.15.1** The amount of any unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Town Home Unit;

**7.15.2** The amount of the current installments of the annual Assessment and the date that the next installment is due and payable;

**7.15.3** The date of the payment of any installments of any special Assessments then existing against the Town Home Unit; and

**7.15.4** Any other information deemed proper by the Association.

Upon the issuance of such a certificate signed by a member of the Board, or by an officer of the Association, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith. Unless such a statement of status of Assessments is delivered as described above within said fourteen (14) calendar day period, the Association shall have no right to assert a priority lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.



7.16 Liens. Except for annual, special, and default Assessment liens as provided in this Declaration, mechanics' liens (except as provided in Article 12 below), tax liens, and judgment liens and other liens validly arising by operation of law and liens arising under Mortgages, there shall be no other liens obtainable against the Common Elements or against the interest of the Owner of any Town Home Unit.

**ARTICLE IX  
MAINTENANCE RESPONSIBILITY**

8.1 Owner's Rights and Duties with Respect to Interiors. Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales or leases to initial purchasers of the Town Home Units, each Owner shall have the exclusive right and duty to paint, tile, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, and doors forming the boundaries of such Owner's Individual Air Space Unit and all walls, floors, ceilings, and doors within such boundaries

8.2 Responsibility of the Owner. The Owner at the Owner's expense shall maintain and keep in repair the interior of the Town Home Unit, including the fixtures and utilities located in the Town Home Unit to the extent current repair shall be necessary in order to avoid damaging other Town Home Units or the Common Elements. All fixtures, equipment, and utilities installed and included in an Individual Air Space Unit serving only that Unit, commencing at a point where the fixtures, equipment, and utilities enter the Individual Air Space Unit shall be maintained and kept in repair by the Owner of that Unit. An Owner shall also maintain and keep in repair all windows and other glass items related to such Owner's Town Home Unit, any entry door or doors serving such Unit and any garage door or doors serving the Unit. An Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing Systems or integrity of the Building, or impair any easement or hereditament.

8.3 Responsibility of the Association. The Association, without the requirement of approval of the Owners but subject to Section 8.6 above, shall maintain and keep in good repair, replace and improve, as a Common Expense, the General Common Elements and all the Project not required in this Declaration to be maintained and kept in good repair by an Owner, or Declarant.

8.4 Owner's Failure to Maintain or Repair. In the event that portions of a Town Home Unit or other improvements are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained improvement lies with the Owner of the Town Home Unit, or in the event that such improvements are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after written notice to the Owner and the expiration of a thirty (30) day cure period, and with the approval of the Executive Board, shall have the right to enter upon the Town Home Unit to perform such work as is reasonably required to restore the Town Home Unit and other improvements to a condition of good order and repair; provided, however, if such repair and reconstruction due to an event of casualty cannot be reasonably performed within such thirty (30) day cure period, the Owner shall have such time as reasonably required to perform such repair and reconstruction so long as the work has been commenced within such cure period and is diligently pursued to completion. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Town Home Unit, upon demand. All unreimbursed costs shall be a lien upon the Town Home Unit until reimbursement is made. The lien may be enforced in



the same manner as a lien for an unpaid Assessment levied in accordance with Article 8 of this Declaration.

**ARTICLE X  
INSURANCE AND FIDELITY BONDS**

**9.1 General Insurance Provisions.** The Association shall maintain, to the extent reasonably available:

**9.1.1** Property insurance on the Common Elements and the Units for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured Property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping, personal property and other items normally excluded from Property policies; and

**9.1.2** Commercial general liability insurance by the Association, through the Board for the General Common Elements against claims and liabilities arising in connection with the ownership, existence, use, or management of the General Common Elements and the Association, in an amount, if any, deemed sufficient in the judgment of the Board. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the Ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

**9.1.3** The Association may carry such other and further insurance that the Board considers appropriate, including insurance on Town Home Units that the Association is not obligated to insure, to protect the Association or the Owners.

**9.2 Cancellation.** If the insurance described in Section 10.1 above is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

**9.3 Policy Provisions.** Insurance policies carried pursuant to Subsection 10.1 above must provide that:

**9.2.1** 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;

**9.2.2** The insurer waives its rights to subrogations under the policy against any Owner or member of his household;

**9.2.3** 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

**9.2.4** 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 provides primary insurance.

**9.4 Insurance Proceeds.** Any loss covered by the Property insurance policy described in Subsection 10.1 above must be adjusted with the Association, but the insurance proceeds for that loss



shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and First Mortgagees as their interests may appear. Subject to the provisions of Subsection 10.7 below, the proceeds must be disbursed first for the repair or restoration of the damaged Property, and the Association, Owners and First Mortgagees 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 or the regime created by this Declaration is terminated.

**9.5 Association Policies.** The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to the Property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

**9.6 Insurer Obligation.** An insurer that has issued an insurance policy for the insurance described in Subsection 10.1 above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew if until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

**9.7 Repair and Replacement.**

**9.6.1** Any portion of the Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (i) The regime created by this Declaration is terminated; or
- (ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or
- (iii) Seventy-five percent (75%) of the votes of the Owners and all directly adversely affected Owners agree in writing not to rebuild; or
- (iv) Prior to the conveyance of any Town Home Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

**9.6.2** The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If all damaged Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or mortgagees, as their interests may appear in proportion to their respective ownership interests in the Common Elements.

**9.8 Common Expenses.** Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.





**9.9 Fidelity Insurance.** Fidelity bonds shall be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than two (2) months' current Assessments plus reserves as calculated from the current budget of the Association. The Association must also secure and maintain, or require to be secured or maintained by any parties handling the collection, deposit, transfer or disbursement of Association funds, fidelity insurance with aggregate coverage of not less than two (2) months' assessments plus reserves, as calculated from the then-current budget of the Association; provided, however, in no event shall the coverage for third parties handling the collection, deposit, transfer or disbursement of Association funds be less than \$50,000. In addition all funds and accounts of the Association being held by a Managing Agent or other third persons shall be kept in an account separate from the funds of other parties held by such Managing Agent or third party, and all reserves of the Association shall be kept in an account separate from the operational account of the Association. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions.

**9.10 Worker's Compensation Insurance.** If the Association has employees, the Association shall obtain worker's compensation or similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

**9.11 Other Insurance.** The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Board may deem appropriate on behalf of Directors and officers against any liability asserted against a Director or officer or incurred by him in his capacity of or arising out of his status as a Director or officer. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to its responsibilities and duties.

**9.12 Insurance Obtained by Owners.** It shall be the responsibility of each Owner, at such Owner's expense, to maintain physical damage insurance on such Owner's personal property and furnishings and public liability insurance covering such Owner's Individual Air Space Unit. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Town Home Unit as the Owner in the Owner's sole discretion shall conclude to be desirable. However, none of such insurance coverage's obtained by such Owner shall affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Association and the Owner. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association as a result of insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners. Each Owner shall be responsible to provide insurance coverage for the amount of any additional value to any Town Home Unit caused by any improvement to the Town Home Unit made by such Owner and not initially made by Declarant, including, but not limited to, the value of structural upgrades or fixtures supplied by the Owner, or if the applicable insurance is to be provided by the Association, for any additional insurance costs associated with such increased value due to the improvements.

The Board may require an Owner who purchases additional insurance coverage for the Owner's Town Home Unit (other than coverage for the Owner's personal property) to file copies of such policies



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with the Association within thirty (30) days after the purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

**ARTICLE XI  
CONVEYANCES AND TAXATION OF TOWN HOME UNITS**

**10.1 Contracts to Convey Entered into Prior to Recording of Town Home Map and Declaration.** A contract or other agreement for the sale of a Town Home Unit entered into prior to the filing for record of the Town Home Map and this Declaration in the office of the Clerk and Recorder of Gunnison County, Colorado, may legally describe such Town Home Unit in substantially the manner set forth in Section 11.2 below and may indicate that the Town Home Map and this Declaration are to be recorded.

**10.2 Contracts to Convey and Conveyances Subsequent to Recording of Town Home Map and Declaration.** Subsequent to the recording of the Town Home Map and this Declaration, contracts to convey, instruments of conveyance of Town Home Units, and every other instrument affecting title to a Town Home Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required under the Act or by the circumstances or appropriate to conform to the requirements of any governmental authority or any usage or requirement of law with respect thereto:

Town Home Unit \_\_\_\_\_, Hawk's Nest, according to the Town Home Map recorded at Reception No. \_\_\_\_\_, on Sept, 9, 2005, and as defined and described in the Declaration for Hawk's Nest, recorded at Reception No. 558016 in the office of the Clerk and Recorder of Gunnison County, Colorado.

**10.3 Conveyance Deemed to Describe an Undivided Interest in Common Elements.** Every instrument of conveyance, Mortgage, or other instrument affecting the title to a Condominium Unit which legally describes the Unit substantially in the manner set forth in Section 11.2 above shall be construed to describe the Individual Air Space Unit, together with the undivided interest in the Common Elements appurtenant to it, and together with all fixtures and improvements contained in it (unless any such fixtures or improvements shall be Common Elements), and to incorporate all the rights incident to ownership of a Condominium Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, including the easement of enjoyment to use the Common Elements.

**10.4 Separate Tax Assessments.** Upon the recording of this Declaration and the filing of the Condominium Map for record in Gunnison County, Colorado, Declarant shall deliver a recorded copy of this Declaration and the Map to the Assessor of Gunnison County, Colorado, as provided by law, which notice shall set forth the descriptions of the Condominium Units, including the interest in the Common Elements appurtenant to the Unit, so that thereafter all taxes, assessments and other charges by the State or any governmental or political subdivision or any special improvement district or any other taxing agent or assessing authority shall be assessed against and collected on each Condominium Unit, each of which shall be carried on the tax records as a separate and distinct parcel for that purpose. For the purpose of such assessment against the Condominium Units, valuation of the Common Elements shall be apportioned among the Units in proportion to the fractional interest in the Common Elements appurtenant to such Units. Accordingly, the Common Elements shall not be assessed separately but shall be assessed with the Condominium Units as provided pursuant to Colorado Revised Statutes Subsection 38-33.3-105(2).



The lien for taxes assessed to the Owner or Owners of a Town Home Unit shall be confined to his Individual Air Space Unit and to his appurtenant undivided interest in the Common Elements. No forfeiture or sale of any Town Home Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Town Home Unit.

**ARTICLE XII  
MECHANICS' LIENS**

**11.1 Mechanics' Liens.** Subsequent to the filing of the Map and recording of this Declaration, no labor performed or materials furnished for use and incorporated in any Town Home Unit with the consent of or at the request of the Owner of the Unit or the Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against a Town Home Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Individual Air Space Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien for labor performed or for materials furnished in work on such Owner's Town Home Unit against the Town Home Unit of another Owner or against the Common Elements, or any part thereof.

**11.2 Enforcement by the Association.** At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper), the Association shall enforce the indemnity provided by the provisions of Section 12.1 above by collecting from the Owner of the Town Home Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. In the event that the Owner of the Town Home Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount of the claim, or any portions thereof from time to time then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 12.2, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Town Home Unit, and enforceable by the Association in accordance with Sections 8.10, 8.11 and 8.12 above.

**ARTICLE XIII  
USE RESTRICTIONS**

**12.1 Use of Town Home Units.** Residential uses only are contemplated within the Project, and any functions, activities and uses permitted under any zoning or other laws, rules or regulations applicable to the Town are expressly allowed, except that under no circumstances shall any unit be used for commercial purposes. No rules and regulations relating to the Project shall be adopted which unfairly discriminate against any use permitted within the Units. All Owners will be subject to the rules and regulations of the Association.

**12.2 Residential Uses.** All Units shall be used for dwelling and lodging purposes only, in conformity with all zoning laws, ordinances and regulations, which uses shall not cause unreasonable disturbance to other Owners and which are permitted by applicable zoning codes. Notwithstanding the foregoing restrictions, Residential Units may be used as a Project sales office, Unit management office, storage facility and/or such other uses as may be permitted under the Act.

**12.3 No Commercial Use.** No commercial or business enterprise of any nature shall be allowed or permitted on any lot; provided, however, that the Owner of a Unit may be permitted to



conduct an in-home executive office or an in-home occupation, artistic or literary activity in a Unit upon the prior approval of the Board as to such occupation or activity. No such occupation or activity shall be approved by the Board which would create a visual, sound or traffic nuisance. Any such occupation or activity shall be subject to a reasonable limitation as to the number of persons and the number and type of motor vehicles involved in such occupation or activity. Certain in-home activities may require a permit from the Town of Mt. Crested Butte.

**12.4 Use of Common Elements.** There shall be no obstruction of, nor shall anything be kept or stored by any Owner or other party on any part of the General Common Elements without the prior written approval of the Association.

**12.5 Signs.** No sign of any kind shall be displayed to public view on any portion of any Unit, except only a sign not to exceed two square feet identifying the Owner and/or address of the Unit and a sign identifying the model Unit, if any, and sales office, if any, of the Declarant.

**12.6 Trash.** No trash, ashes, garbage or other refuse shall be allowed to accumulate or placed on or around any Unit or Common Area. There shall be no burning or other disposal of refuse out of doors. Each Owner shall provide suitable receptacles for the temporary storage and collection of such refuse and all such receptacles shall be screened from the public view and from the wind and protected from animal and other disturbance.

**12.7 Abandoned or Inoperable Vehicles.** Abandoned or inoperable vehicles of any kind shall not be stored or parked on any portion of the Common areas or external parking areas of the Project. "Abandoned or inoperable vehicles" shall be defined as any vehicle which has not been driven under its own propulsion for a period of six weeks or longer. A written notice describing the vehicle and requesting removal thereof may be personally served upon the Owner or posted on the vehicle in question. If such vehicle has not been moved within seventy-two (72) hours of said notice, the Association shall have the right to remove the vehicle without liability to it, and the expense thereof shall be charged against the Owner.

**12.8 Noise.** No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of persons and improvements on a Unit, shall be placed or used on or around any Unit.

**12.9 Hazardous or Illegal Activities.** No activities shall be allowed or conducted on the Project Property which are illegal or which are or might be unsafe or hazardous to any person or property. Such activities include, but are not limited to, fireworks, firearms, bow and arrows, crossbows, explosives, air or pellet guns or any similar type devices except only in approved areas in accordance with the Rules and Regulations adopted by the Board. No use of illegal drugs or allowance of underage consumption of alcohol shall be allowed. Penalties for violations of this section shall be assessed by the Board in compliance with the rules and Regulations of the Association.

**12.10 Conveyance of Town Home Units.** All Town Home Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, as the same may be amended from time to time.

**12.11 Prohibition of Increases in Insurable Risks and Certain Activities.** Nothing shall be done or kept in any Town Home Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project without the prior written approval of the Association. Nothing shall be done or kept in any Town Home Unit or in or on the



Common Elements which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body. No damage to or waste of the Common Elements shall be committed by any Owner, or by any member of the Owner's family, or by any guest, invitee, or contract purchaser of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him, the members of his family, or his guests, invitees, or contract purchasers. Failure to so indemnify shall be a default by such Owner under this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Town Home Unit. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a default Assessment as provided in Sections 8.10, 8.11 and 8.12 above.

**ARTICLE XIV  
EASEMENTS**

**13.1 Easement of Enjoyment.** Every Owner shall have a nonexclusive easement for the use and enjoyment of the General Common Elements, which shall be appurtenant to and shall pass with the title to every Town Home Unit, subject to the easements set forth in this Article 14.

**13.2 Delegation of Use.** Any Owner may delegate, in accordance with the Association Documents, the Owner's right of enjoyment in the Common Elements to the Owner's tenants, employees, family, guests, and invitees.

**13.3 Recorded Easements.** The Property shall be subject to any easements as shown on any recorded plat affecting the Property, and as shown on the recorded Town Home Map. The recording data for recorded easements and licenses appurtenant to or included in the Property or to which any parts of the Property may become subject is set forth on the attached Exhibit B.

**13.4 Easements for Encroachments.** The Project, and all portions of it, are subject to easements hereby created for encroachments between Town Home Units and the Common Elements as follows.

**13.3.1** In favor of the Association so that it shall have no legal liability when any part of the Common Elements encroaches upon on Individual Air Space Unit;

**13.3.2** In favor of each Owner of each Unit so that the Owner shall have no legal liability when any part of his Individual Air Space Unit encroaches upon the Common Elements or upon another Individual Air Space Unit;

**13.3.3** In favor of all Owners, the Association, and the Owner of any encroaching Individual Air Space Unit for the maintenance and repair of such encroachments.

Encroachments referred to in this Section 14.4 include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Building or any Town Home Unit constructed on the Property, by error in the Town Home Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Project. Such encroachments shall not be considered to be encumbrances upon any part of the Project.

**13.5 Utility Easements.** There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity, and a



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cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical, telephone, and other communication services to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of the Owners, the Association, and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, Declarant or the Board shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 14.5 shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

**13.6 Reservation of Easements, Exceptions, and Exclusions.** Declarant reserves for itself and its successors and assigns and hereby grants to the Association the concurrent right to establish from time to time by declaration or otherwise, utility and other easements within the Common Elements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, consistent with the common interest ownership of the Project for the best interest of all of the Owners and the Association, in order to serve all the Owners within the Project.

**13.7 Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

**13.8 Maintenance Easement.** An easement is hereby granted to the Association and any Managing Agent and their respective officers, agents, employees, and assigns upon, across, over, in, and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

**13.9 Drainage Easement.** An easement is hereby reserved to Declarant and its successors and assigns and granted to the Association and its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Project for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.

**13.10 Easements of Access for Repair Maintenance, and Emergencies.** Some of the Common Elements are or may be located within the Individual Air Space Units or may be conveniently accessible only through the Individual Air Space Units. The Owners of other Individual Air Space Units and the Association shall have the irrevocable right, to be exercised by the Association as the Owners' agent, to have access to each Individual Air Space Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, snow removal, repair, removal, or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Individual Air Space Unit. In addition, an easement is hereby created for such Common Elements as they currently exist within the Individual Air Space Units. Subject to the provisions of Section 7.3 above, damage to the interior of any part of an Individual Air Space Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Individual Air Space Unit at the instance of the Association or of Owners shall be a Common Expense.



**13.11 Declarant's Rights Incident to Construction and Marketing.** Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Property and the right to store materials on the Property and to make such other use of the Property as may be reasonably necessary or incident to the complete construction and sale of the Project, including, but not limited to, construction trailers, temporary construction offices, sales offices and directional and marketing signs; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, or family members, guests, or invitees of an Owner. Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Town Home Unit or Units as sales offices, management offices or model residences so long as Declarant, or any successor to the rights of Declarant under this Declaration, continues to be an Owner of a Town Home Unit. The use by Declarant of any Unit as a model residence, office or other use shall not affect the Unit's designation on the Map as a separate Unit.

**13.12 Right of Declarant and Association to Own Units and to Use Common Elements.** An easement is hereby reserved by Declarant for itself and its successors and assigns and granted to the Association and its officers, agents, employees, successors and assigns to maintain offices, storage areas, conference areas, and recreational areas for use by the Association within the General Common Elements. The Association shall also have the right (but not the obligation) to purchase and own any Town Home Unit for the purpose of maintaining an office for the Association or for any other use which the Association determines is consistent with the operation of the Project. The costs and carrying charges incurred by the Association in purchasing and owning any such Town Home Unit shall be part of the Common Expenses.

**13.13 Remodeling Easement.** Declarant, for itself and its successors and assigns, including Owners, retains a right and easement in and about the Building for the construction and installation of any duct work, additional plumbing, or other additional services or utilities in the Common Elements in connection with the improvement or alteration of any Town Home Unit, including the right of access to such areas of the Common Elements as is reasonably necessary to accomplish such improvements; provided, however, no such right shall be exercised within the General Common Elements without consent of the Board, such consent not to be unreasonably withheld with respect to the General Common Elements. In the event of a dispute among Owners with respect to the scope of the easement reserved in this Section, the decision of the Board shall be final.

**13.14 Easements Deemed Created.** All conveyances of Town Home Units hereafter made, whether by Declarant or otherwise shall be construed to grant and reserve the easements contained in this Article 14, even though no specific reference to such easements or to this Article 14 appears in the instrument for such conveyance.

**ARTICLE XV  
ASSOCIATION AS ATTORNEY-IN-FACT**

**14.1 Appointment.** Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Project upon its damage, destruction, condemnation, or obsolescence as provided below in Articles 16, 17 and 18. In addition, the Association, or any insurance trustee or substitute insurance trustee designated by the Association, is hereby appointed as attorney-in-fact under this Declaration for the purpose of purchasing and maintaining insurance under Article 10 above, including: the collection and appropriate disposition of the proceeds of such insurance; the negotiation of losses and the execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any insurance trustee, shall hold or



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otherwise properly dispose of any insurance proceeds in trust for the Owners and their Mortgagees, as their interests may appear. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointments of the attorneys-in-fact as provided above. Notwithstanding any other provision of this Declaration to the contrary, the Association may exercise its authority as attorney-in-fact for any purpose permitted pursuant to this Declaration only if, in each and every instance where such exercise is so permitted, the Board approves the exercise of such authority by the affirmative vote of a majority of the voting Directors. If the Board fails to so approve any exercise of authority as attorney-in-fact, the Association shall have such authority as it may have pursuant to the Act.

**14.2 General Authority.** As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

**ARTICLE XVI  
DAMAGE OR DESTRUCTION**

**15.1 The Role of the Board.** Except as provided in Section 16.6, in the event of damage to or destruction of all or part of the General Common Elements, or other property covered by insurance written in the name of the Association under Article 10, the Board shall arrange for and supervise the prompt repair and restoration of the damaged areas of the Project, including, without limitation, the floor coverings, fixtures, and appliances initially installed therein by Declarant, and replacement thereof installed by the Owners up to the value of those initially installed by Declarant, but not including any furniture, furnishings, fixtures, equipment, or other personal property supplied or installed by the Owners in the Town Home Units unless covered by insurance obtained by the Association. Notwithstanding the foregoing, each Owner shall have the right to supervise the redecorating of that Owner's Unit.

**15.2 Estimate of Damages or Destruction.** As soon as practical after an event causing damage to or destruction of any part of the Project, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Project damaged or destroyed. "Repair and reconstruction" as used in this Article 16 shall mean restoring the damaged or destroyed part of the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Individual Air Space Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before.

**15.3 Repair and Reconstruction.** As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the part of the Project damaged or destroyed. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary in connection with that action.

**15.4 Funds for Repair and Reconstruction.** Subject to the provisions of Section 16.6 below, the proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction.

**15.5 Insurance Proceeds Sufficient to Repair.** In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association as attorney-in-fact to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power as





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attorney-in-fact to cause the repair and restoration of the improvements. Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

**15.6 Insurance Proceeds Insufficient to Repair; Special Assessment; Remedies for Failure to Pay Special Assessment.** If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is not more than seventy percent (70%) of the total replacement cost of all of the Town Home Units in the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and if permitted under the Act, the proceeds of a special Assessment to be made against all of the Owners and their Town Home Units. Any such special Assessment shall be a Common Expense in accordance with Section 8.7 above and shall be due and payable within thirty (30) days after written notice as provided in Article 8 above. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair, replacement, or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the Assessment.

Any Assessment provided for in this Section 16.6 shall be a debt of each Owner and a lien on the Owner's Town Home Unit and may be enforced and collected as provided in Article 8 above. In addition, the Association as attorney-in-fact shall have the absolute right and power to sell the Town Home Unit of any Owner refusing or failing to pay such deficiency Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Town Home Unit of the delinquent Owner shall be sold by the Association as attorney-in-fact pursuant to the provisions of this Section 16.6. The Assessments for the Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notice, interest at the Maximum Rate on the amount of the Assessment, and all reasonable attorneys' fees. The proceeds derived from the sale of such Town Home Unit shall be used and disbursed by the Association as attorney-in-fact in the following order:

**15.5.1** For payment of real property ad valorem taxes, special assessment liens duly imposed by a governmental subdivision, and customary expenses of sale;

**15.5.2** For payment of the balance of the lien of any First Mortgage affecting the Town Home Unit;

**15.5.3** For payment of unpaid Association Assessments, interest, costs, late charges, expenses, and attorneys' (and legal assistants') fees;

**15.5.4** For payment of junior Mortgages affecting the Town Home Unit in the order of and to the extent of their priority; and

**15.5.5** For payment of the balance remaining, if any, to the Owner of the Town Home Unit.

If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is more than seventy percent (70%) of the total replacement cost of all of the Town Home Units in the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and, if permitted under the Act, the proceeds of a special Assessment made against all of the Owners and their Town Home Units, provided, however, that Owners representing an aggregate ownership interest in the Common Elements of seventy-five percent (75%) or more, may elect to terminate the Project; and in such event, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary, the entire Project shall be sold pursuant to the



provisions of this Section by the Association as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, and the articles of incorporation, and bylaws of the Association. Assessments for Common Expenses shall not be abated during the period prior to sale.

In such event, the insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Owner's interest in the Common Elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Town Home Units. Each such account shall be in the name of the Association, and shall be further identified by the Town Home Unit designation and the name of the Owner and designated as an agency account. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contributions from one account to another, toward the partial or full payment of the lien of any First Mortgagee encumbering the Town Home Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire Property. Such apportionment shall be based upon each Town Home Unit Owner's interest in the Common Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association as attorney-in-fact for the same purposes and in the same order as is provided in Sections 16.6.1 through 16.6.5 above.

In the event that the Owners do not elect to terminate the Project as provided above, Owners representing at least seventy-five percent (75%) of the total allocated votes in the Association (other than Declarant), and all directly adversely affected Owners may alternatively agree in writing not to repair and reconstruct improvements within the Common Elements and if no alternative improvements are authorized, then and in that event the damaged Property shall be restored to its natural state and maintained as an undeveloped portion of the Common Elements by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with the Act.

**15.7 Repairs.** All repairs and reconstruction contemplated by this Article 16 shall be performed substantially in accordance with this Declaration, the Map, and the original plans and specifications for the Project, unless other action is approved by the Association in accordance with the requirements of this Declaration and the other Association Documents.

**15.8 Notice of Damage or Destruction.** In the event that any portion of the Project encompassing more than one Individual Air Space Unit is substantially damaged or destroyed by fire or other casualty, then written notice of the damage or destruction shall be given by the Association to each Owner and First Mortgagee of the affected Units within a reasonable time following the event of casualty damage.

**ARTICLE XVII  
OBSCOLESCENCE**

**16.1 Adoption of Plan; Rights of Owners.** The Owners representing an aggregate ownership interest in the Common Elements of seventy-five percent (75%) or more may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction thereof. Written notice of the adoption of such a plan shall be given to all Owners and a copy of such plan shall be recorded in the office of the Clerk and Recorder of Gunnison County, Colorado, and the expense of renewal and reconstruction shall be payable by all of the Owners as Common Expenses; provided, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen (15) days after the date of adoption of such plan that his Town Home Unit shall be purchased by the Association for the fair market value of the Unit in cash or certified funds. The Association shall then have thirty (30) days after the expiration of such 15-day period within which to



cancel such plan. If such plan is not canceled, the Town Home Unit of the requesting Owner shall be purchased according to the following procedures.

If such Owner and the Association can agree on the fair market value of the Unit, then such sale shall be consummated within ninety (90) days after such agreement. If the parties are unable to agree, the date when either party notifies the other that no agreement may be reached shall be the "commencement date" from which all periods of time mentioned hereafter shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an appraiser. If either party fails to make such a nomination, the appraiser nominated shall, within five (5) days after default by the other party, appoint and associate with another appraiser. If the two designated or selected appraisers are unable to agree on the fair market value of the Unit, they shall appoint another appraiser to be umpire between them, if they can agree on such person, which umpire shall independently determine the fair market value of the Unit in the case of continued disagreement. If the two appraisers are unable to agree upon such umpire, each appraiser previously appointed shall nominate two appraisers, and from the names of the four appraisers so nominated one shall be drawn by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser.

The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire shall be final and binding, and a judgment based upon the decision rendered may be entered in any court having jurisdiction thereof. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds for the same purposes and in the same order as provided in Sections 16.6.1 through 16.6.5 above.

**16.2 Sale of Obsolete Units.** The Owner's representing an aggregate ownership interest in the Common Elements of seventy-five percent (75%) or more may agree that the Town Home Units are obsolete and that the Project should be sold. In such instance, the Association shall immediately record in the office of the Clerk and Recorder of Gunnison County, Colorado, a notice setting forth such fact or facts, and upon the recording of such notice by the Association, the Project shall be sold by the Association as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Town Home Map, and the articles of incorporation and bylaws of the Association. Unless otherwise agreed in writing by all the Owners, the sale proceeds (and any insurance proceeds under Section 16.5 above) shall be apportioned among the Owners in proportion to each Owner's undivided interest in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Town Home Unit. Each such account shall be in the name of the Association, and shall be further identified by the Town Home Unit designation and the name of the Owner and designated as an agency account. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in Sections 16.6.1 through 16.6.5 above.

**ARTICLE XVIII  
CONDEMNATION**

**17.1 Consequences of Condemnation.** If, at any time or times during the continuance of the Project pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu or in avoidance of condemnation, then all compensation, damages, or other proceeds of condemnation, the sum of which is referred to as the



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"condemnation award" below, shall be payable to the Association, and the provisions of this Article 18 shall apply.

**17.2 Complete Taking.** In the event that the entire Project is taken or condemned or sold or otherwise disposed of in lieu or in avoidance of condemnation, the common interest ownership pursuant to this Declaration shall terminate, subject to the provisions of Section 18.7 below. The condemnation award shall be paid to the Association for the use and benefit of the Owners and the Mortgagees as their interests may appear. Such award shall be apportioned among the Owners and the Mortgagees on the basis of the undivided interest in the Common Elements appurtenant to the Unit in which such Owners and Mortgagees have an interest; provided, however, that if a standard different from the value of the Project as a whole is employed to measure the condemnation award in the negotiation, judicial decree, or otherwise, then in determining such apportionment the same standard shall be employed. The Association shall, as soon as practical, determine the share of the condemnation award to which each Owner and Mortgagee is entitled and such shares shall be paid into separate accounts and disbursed as soon as practical for the same purposes and in the same order as is provided in Sections 16.6.1 through 16.6.5 above.

**17.3 Partial Taking.** In the event that less than the entire Project is taken or condemned or sold or otherwise disposed of in lieu or in avoidance of condemnation, the common interest ownership under this Declaration shall not terminate. Each Owner (and Mortgagee holding an interest in such Owner's Unit) shall be entitled to a share of the condemnation award to be determined under the following provisions. The condemnation award shall be paid to the Association for the use and benefit of the Owners and the Mortgagees as their interests may appear. As soon as practical, the Association shall reasonably and in good faith allocate the condemnation award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners, unless otherwise required under the Act, as follows:

**17.2.1** The total amount allocated to a taking of or injury to the Common Elements shall be apportioned among Owners and their Mortgagees on the basis of each Owner's undivided interest in the General Common Elements.

**17.2.2** The total amount allocated to severance damages shall be apportioned to the Owners and Mortgagees of those Town Home Units which were not taken or condemned;

**17.2.3** The respective amounts allocated to the taking of or injury to a particular Town Home Unit or to improvements an Owner has made within the Owner's own Town Home Unit shall be apportioned to the Owner and Mortgagees of that particular Town Home Unit involved; and

**17.2.4** The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable under the circumstances.

If an allocation of the condemnation award is already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award, the Association shall employ such allocation. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees.

**17.4 Reorganization.** In the event a partial taking results in the taking of an Individual Air Space Unit, the Owners thereof shall automatically cease to be members of the Association, and their ownership interests in the Common Elements shall terminate and vest in the Owners of the remaining Town Home Units. Thereafter, subject to the provisions of Section 18.7 below, the Association shall reallocate the ownership, voting rights, and Assessment ratios determined in accordance with this



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Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of the remaining Individual Air Space Units for the amendment of this Declaration.

**17.5 Repair and Reconstruction.** Any repair and reconstruction necessitated by condemnation shall be governed by the procedures contained in Article 16 above.

**17.6 Notice of Condemnation.** In the event that any portion of the Project shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and First Mortgagee.

**17.7 Limitations on Actions of Association.** Except as provided by statute, in case of condemnation, unless Owners representing an aggregate ownership interest in the Common Elements of seventy-five percent (75%) or more have given their prior written approval, the Association may not take any of the actions specified in Sections 18.1 through 18.6 above.

**ARTICLE XIX  
OTHER ASSOCIATION MATTERS**

**18.1 Architectural Control.**

**18.1.1** No exterior or structural addition to or change or alteration to the General Common Elements (including the construction of any additional skylight, window, awning or door) shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing by the Board as to harmony of external design and location in relation to surrounding structures and topography.

No exterior or structural addition to or change or alteration to a (including the construction of any additional skylight, window, awning or door) shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Association.

The alterations and changes described in this section shall also be in compliance with any applicable zoning and other laws, rules and regulations, including the rules and regulations promulgated by the Association.

**18.1.2** After receiving the approval of the Board, the Owner required to obtain such approval shall thereafter obtain all other approvals as may be required by any governmental or quasi-governmental body having jurisdiction over the Property.

**18.2 General Reservation.** Subject to any applicable restrictions under the Act, Declarant reserves the right to dedicate any access roads and streets serving the Property for and to public use and to allow such street or road to be used by owners of adjacent land

**18.3 Community Housing.** The Declarant is required to comply with the Town's Employee Housing Unit Policy. The Declarant made a payment in lieu of producing a community housing unit or acquiring an existing unit pursuant to Section 22-8 of the Code of the Town of Mt. Crested Butte.



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**18.4 No Use of Trademark.** The term "Hawk's Nest" is a service mark and trademark of Triple J Development, LLC, a Colorado limited liability company. Each Owner, by accepting a deed to a Lot, covenants and agrees that such Owner shall not use the term "Hawk's Nest" without the prior written permission of Triple J Development, LLC.

**18.5 Access.** Each Owner, by accepting a deed to a Town Home Unit, agrees to be subject to the easements and the rules and regulations of the Town of Mt. Crested Butte governing the use of roads, as from time to time are in effect.

**18.6 Limit on Timesharing.** No Owner of any Town Home Unit shall offer or sell any interest in such Town Home Unit under a "timesharing" or "interval ownership" plan, or any similar plan without the specific prior written approval of the Association.

**18.7 Fireplaces.** Each Owner, by accepting a deed to a Town Home Unit, acknowledges that the use of any fireplace in the Unit is governed by the rules and regulations of the Town of Mt. Crested Butte pertaining to fireplaces, and each Owner agrees to abide by all of such rules and regulations.

**18.8 Resort Activities.** Each Owner is hereby advised of the following matters affecting the Property and the Owners' use and enjoyment thereof:

(a) Hawk's Nest is located adjacent to a public skiing facility and recreation area (the "Ski Facility"), which may generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof. The activities associated with the Ski Facility include, without limitation: (i) vehicular and residential traffic, including, without limitation, (A) buses which transport skiers and others around Mt. Crested Butte and between the base of the Ski Facility and the parking lots located adjacent to the Town's roadways, (B) buses, vans, snowcats, snowmobiles and other vehicles which transport residents and guests of Mt. Crested Butte over, around and through the Ski Facility and Crested Butte Mountain Resort, and (C) construction vehicles and equipment; (ii) activities relating to the construction, operation and maintenance of ski trails, skiways and skier bridges and tunnels relating to the Ski Facility including, without limitation, (A) tree cutting and clearing, grading and earth moving, and other construction activities, (B) construction, operation and maintenance of access roads, snowmaking equipment and chair lifts, gondolas and other skier transportation systems, and (C) operation of snow-grooming vehicles and equipment and safety and supervision vehicles; and (iii) activities relating to the use of the Ski Facility, including, without limitation, skiing, snow-boarding, hiking, horseback riding, bicycling and other recreational activities and organized events and competitions relating to such activities.

(b) Substantial construction-related activities relating to the development of Hawk's Nest or other development within or near the Town of Mt. Crested Butte may cause considerable noise, dust and other inconveniences to the Owners.

**18.9 Amenities.** No interest in any amenity located on or near Hawk's Nest, shall be conveyed to an Owner pursuant to this Declaration. The owners of those facilities shall have the right, in their sole discretion, to remove, relocate, discontinue operation, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to any residents of Hawk's Nest.

**18.10 Snow Removal.** The Association, as a Common Expense to the Owners, shall be responsible for contracting for the removal and storage of snow from the roofs of the Units and all areas requiring such removal as addressed herein or as otherwise deemed necessary by the Board or the Town of Mt. Crested Butte. All roofs shall be shoveled after every snowfall exceeding 6". All walkways,



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driveways and access roads shall be shoveled and/or plowed after every snowfall exceeding 3". All such snow that is accumulated as a result of these snow clearing activities shall be stored off premises at a site to be leased by the Association for such snow storage. Under no circumstances shall any snow be stored or allowed to accumulate on the right-of-ways of the Town. If the Association fails to remove any snow from its property as set forth herein or is otherwise responsible for the accumulation of any snow on the Town's right-of-ways, after twenty four (24) hours notice from the Town, penalties as set forth in the Town's Zoning Ordinance at Sections 21-5, 21-6, and 21-7 may apply.

**ARTICLE XX  
DECLARANT'S RIGHTS REGARDING TRANSFER**

Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association, or other entity, only by written instrument executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Gunnison County, Colorado. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

**ARTICLE XXI  
RESERVATIONS BY DECLARANT**

**Rights of Declarant.** Notwithstanding any other provisions expressed or implied in this Declaration or the Association Documents of the Association, the Declarant specifically reserves unto itself, its successors and assigns the following rights:

To appoint members of the Board of Directors during the period of Declarant control. The period of Declarant control shall terminate no later than the earlier of (1) sixty (60) days after the conveyance of seventy-five percent (75%) of the Units within the Project to Owners other than the Declarant, or (2) two (2) years after Declarant has conveyed a Unit within the Project in the ordinary course of business. Further, no later than sixty (60) days after the conveyance of least twenty-five percent (25%) of the Units to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors shall be elected by the Unit Owners other than Declarant and not later than sixty (60) days after the conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not less than one-half (1/2) of the members of the Board of Directors shall be elected by the Unit owners other than Declarant.

**ARTICLE XXII  
ANIMALS**

**21.1 Permitted Animals.** No animals shall be kept or maintained within the Property except usual domestic household pets. Such household pets shall be confined to the Owner's Unit or controlled on a leash.

**21.2 Impoundment of Animals.** The Association is specifically empowered to impound any animal running at large within the Project Property. Upon impoundment, the Owner of the animal, if known, shall be immediately notified and the animal taken to the nearest facility which accepts impounded animals. It is the duty of the Owner of such animal to recover the animal from such facility and to pay all costs and fees incurred in the impoundment of the animal. If the animal is not recovered by the Owner in accordance with the rules and regulations of the impoundment facility, the facility may destroy the animal without liability to the facility, any other Owner or the Association by the Owner of such animal.



**ARTICLE XXIII  
MISCELLANEOUS**

**22.1 Restriction on Declarant Powers.** Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

**22.2 Term.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

**22.3 Amendment.** The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon the written consent of Owners representing an aggregate ownership interest in the Common Elements of seventy-five percent (75%) or more, provided, however, matters not requiring Owner approval as described in C.R.S. 38-33.3-217(1) may be handled by the Board. Such amendment shall be effective against the holders of Mortgages encumbering Units in the Project notwithstanding the fact that such holders of Mortgages have not approved such amendment. In addition, a majority of the voting Directors of the Board including may make, without the approval of the Owners, (a) changes to the Map or any other Association Documents to the extent necessary to correct a factual error, and (b) any proposed amendment to this Declaration which affects any right of Declarant shall require the prior written approval of Declarant, in addition to the approval requirements otherwise set forth herein.

**22.4 Unilateral Amendment Rights Reserved by Declarant.** Notwithstanding any provision in this Declaration to the contrary, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration to the fullest extent permitted under the Act.

**22.5 Recording of Amendments.** Any amendment to this Declaration made in accordance with this Article 21 shall be immediately effective upon recording in the office of the Clerk and Recorder of Gunnison County, Colorado, a copy of the amendment, executed and acknowledged by the appropriate number of Owners, accompanied by a certificate of a licensed title insurance company as to ownership, or upon the recording of a copy of the amendment, together with a duly authenticated certificate of the secretary of the Association stating that the required number of consents of Owners and a certificate of a licensed title company as to title to the Town Home Units were obtained and are on file in the office of the Association.

**22.6 Enforcement/Attorney Fees.** Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the articles, the bylaws and the rules and regulations of the Association, all as amended, shall be by any proceeding at law or in equity against any person or persons, including the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings, and the Association shall further have the right (after notice and an opportunity to be heard) to levy and collect fines for the violation of any provision of the aforesaid documents. Any legal action initiated by the Association other than as described in this Declaration shall require the majority approval of the Board. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.





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22.7 **Severability.** Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

22.8 **Conflict of Provisions.** In case of any conflict between this Declaration and the articles or the bylaws of the Association, this Declaration shall control. In case of any conflict between the articles and the bylaws, the articles shall control. The foregoing to the contrary notwithstanding, in the event of any inconsistency between this Declaration or the articles or the bylaws, on the one hand, and the Act, on the other, then in all events the Act shall control.

22.9 **Nonwaiver.** Failure by Declarant, the Association, or any Owner or First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

22.10 **Number and Gender.** Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

22.11 **Captions.** The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

22.12 **Exhibits.** All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Executed as of the 1<sup>st</sup> day of AUGUST, 2005

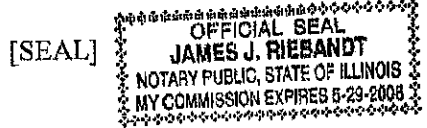
TRIPLE J DEVELOPMENT, LLC,  
a Colorado limited liability company

By: *Peter Abruzzo*  
Peter Abruzzo, Manager

STATE OF ILLINOIS        )  
  ) ss.  
County of Cook            )

This document was acknowledged before me on the 1<sup>st</sup> day of AUGUST, 2005, by **Peter Abruzzo** as Manager of **Triple J Development, LLC**.

WITNESS my hand and official seal.  
My commission expires:



*James J. Riebandt*  
Notary Public



558016

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**EXHIBIT A**  
**(DIVISION OF UNITS AND RESPECTIVE UNDIVIDED INTERESTS)**

<u>UNIT #</u>	<u>INTEREST</u>
Unit # 1	1/4 interest
Unit # 2	1/4 interest
Unit # 3	1/4 interest
Unit # 4	1/4 interest



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**EXHIBIT B**  
**(EASEMENTS TO WHICH PROPERTY IS SUBJECT)**

1. Terms and Conditions as contained in the Utility and Pedestrian Easement Agreement recorded Sept. 9, 2005, at Reception No. \_\_\_\_\_.

FIRST AMENDMENT  
TO THE  
CONDOMINIUM DECLARATION FOR  
HAWK'S NEST TOWN HOMES

THIS FIRST AMENDMENT TO THE CONDOMINIUM DECLARATION FOR HAWK'S NEST TOWN HOMES (the "First Amendment to Declaration"), shall be effective upon recordation and is made by **Triple J Development, LLC**, a Colorado limited liability company ("Declarant"). Declarant hereby makes the following amendments to the Condominium Declaration for Hawk's Nest Town Homes recorded on September 9th, 2005 and bearing Reception No. 558013 in the office of the Gunnison County Clerk and Recorder ("Declaration"):

The legal description of the real property described in the Declaration is hereby deleted in its entirety and amended to read that Declarant is the owner of certain real property in Gunnison County, Colorado, more particularly described as follows (the "Property"):

The Plat of Hawk's Nest Town Homes, recorded 7/5/07  
2007 bearing Reception No. 576690, Town of Mt. Crested Butte, County  
of Gunnison, State of Colorado.

Section 1.1 of the Declaration is hereby amended by deleting Section 1.1 in its entirety and restating Section 1.1 to read as follows:

**1.1 PURPOSE.** The purpose of this Declaration is to create a multi-family common interest community project (the "Project") pursuant to the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time (the "Act") and the Colorado Condominium Ownership Act as set forth in Article 33, Title 38, Colorado Revised Statutes, within the Building (as hereinafter defined) and other improvements located on the Property, which project shall incorporate residential uses and shall be referred to as the "Project." Further, this Declaration is executed to define the character, duration, rights, duties, obligations and limitations of single-family common interest community use and ownership of the property and to provide for the benefit of all unit owners located within the Project.

Section 1.6 of the Declaration is hereby amended by deleting Section 1.6 in its entirety and restating Section 1.6 to read as follows:

**1.6 "Common Elements"** shall mean all of the Project, except the Individual Air Space Units, and including, without limiting the generality of the foregoing, the following components:

1.6.1 The property, excluding improvements on the Property, unless specifically described in this subsection;

1.6.2 The Building (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, fireplaces, chimneys, flues, chimney chases, roofs, patios, decks, balconies, corridors, vestibules, entrances and exits; and the mechanical installations of the Building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating and central air-conditioning which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith and the areas designated on the Map as including those installations; trash rooms and storage rooms; elevators and stairs), except for the Individual Air Space Units;

1.6.3 The yards, sidewalks, walkways, parking areas, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, gardens and related facilities upon the Property;

1.6.4 The pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the Building existing for use of one or more of the Owners; and

1.6.5 In general, all other parts of the Project designated by Declarant as Common Elements and existing for the use of one or more of the Owners.

The Common Elements shall be owned by the Owners of the separate Condominium Units, each Owner of a Condominium Unit having an undivided interest in the Common Elements as provided below. On the Final Plat for Hawk's Nest Town Homes, the "General Common Elements" are abbreviated as "GCE" and the "Limited Common Elements" are abbreviated as "LCE".

Section 1.13 of the Declaration is hereby amended by deleting Section 1.13 in its entirety and restating Section 1.13 to read as follows:

1.13 **"General Common Elements"** shall mean the Common Elements. The General Common Elements are abbreviated on the Final Plat for Hawk's Nest Town Homes as "GCE".

Section 22.3 of the Declaration is hereby amended by deleting Section 22.3 in its entirety and restating Section 22.3 to read as follows:

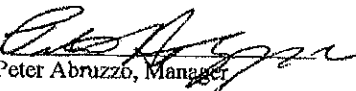
22.3 **REVOCATION OR AMENDMENT OF DECLARATION.** The Declaration shall not be revoked nor shall any of the provisions be amended unless the owners representing an aggregate ownership interest of sixty-seven percent (67%), or more, of the general common elements, and fifty-one percent (51%), or more, of holders of any recorded first mortgage covering or affecting any or all units, consent and agree to

such revocation or amendment by instrument(s) duly recorded in Gunnison County, Colorado, provided, however, that the percentage of the undivided interest in the general common elements appurtenant to each unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the unit owners expressed in an amended Declaration duly recorded in Gunnison County, Colorado.

Signed this 21 day of June, 2007

HAWK'S NEST TOWN HOMES OWNERS ASSOCIATION,  
a Colorado nonprofit corporation

By: TRIPLE J DEVELOPMENT, LLC,  
a Colorado limited liability company

By:   
Peter Abruzzo, Manager

STATE OF ILLINOIS            )  
  ) ss.  
County of Lake                )

The foregoing instrument was acknowledged before me on this 21 day of June, 2007 by Peter Abruzzo as Manager of Triple J Development, LLC, a Colorado limited liability company.


My commission expires: 01/25/2011  
WITNESS my hand and official seal.

(SEAL)



Mary Crow  
Notary Public

S Dominguez Gunnison County, CO 576985  
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134 R: \$11.00 D: \$0.00



**SECOND AMENDMENT  
TO THE  
CONDOMINIUM DECLARATION FOR  
HAWK'S NEST TOWN HOMES**

THIS SECOND AMENDMENT TO THE CONDOMINIUM DECLARATION FOR HAWK'S NEST TOWN HOMES shall be effective upon recordation and is made by Triple J Development, LLC, a Colorado limited liability company ("Declarant"). Declarant hereby makes the following amendments to the Condominium Declaration for Hawk's Nest Town Homes recorded on September 9th, 2005 and bearing Reception No. 558016 in the office of the Gunnison County Clerk and Recorder ("Declaration") and to the First Amendment to the Condominium Declaration for Hawk's Nest Town Homes recorded on July 5, 2007 and bearing Reception No. 576690 in the office of the Gunnison County Clerk and Recorder ("First Amendment"):

Section 1.6.3 of the First Amendment is hereby amended by deleting Section 1.6.3 in its entirety and restating Section 1.6.3 to read as follows:

**1.6.3** The yards, sidewalks, walkways, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, gardens and related facilities on the property and parking areas, but not including those parking spaces located directly outside the garage of each individual unit. Despite the fact that such parking spaces located directly outside the garage of each individual unit are labeled on the Town Home Map as General Common Elements, such parking spaces are hereby limited to the exclusive use of the unit owners and guests of the individual unit that lies adjacent to such parking spaces.

Section 4.1 of the Declaration is hereby amended by adding the following paragraph:


**4.1.5** The parking spaces located directly outside the garage of each individual unit, and which are labeled on the Town Home Map as General Common Elements, are hereby no longer designated as General Common Elements. Such parking spaces located directly outside the garage of each individual unit are hereby limited to the exclusive use of the unit owners and guests of the individual unit which lie adjacent to such parking spaces.

Section 4.2 of the Declaration is hereby amended by deleting Section 4.2 in its entirety and restating Section 4.2 to read as follows:

**4.2 Parking.** The Owners acknowledge that in addition to the individually owned garages that are part of each unit, the Owners of each unit and their guests hereby have exclusive use of the parking space that lies directly outside the garage of their respective unit. Such parking spaces located outside of the garage of each unit

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are not to be considered General Common Elements, despite being labeled as such on the Town Home Map. In regards to all other parking areas, other than those located directly outside the garage of each unit, the Association will have full right, power and authority to regulate such parking areas on an equitable basis as determined by the Board including, without limitation, the right to assign exclusive parking spaces to certain units and the right to adopt rules and regulations governing the use and maintenance of such parking areas.

Signed this 12 day of July, 2007

HAWK'S NEST TOWN HOMES OWNERS ASSOCIATION,  
 a Colorado nonprofit corporation

By: TRIPLE J DEVELOPMENT, LLC,  
 a Colorado limited liability company

By: *Peter Abruzzo*  
 Peter Abruzzo, Manager

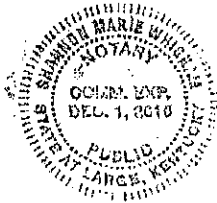
Kentucky  
 STATE OF ~~ILLINOIS~~ )  
 County of Jefferson ) ss.

The foregoing instrument was acknowledged before me on this 12<sup>th</sup> day of July, 2007 by Peter Abruzzo as Manager of Triple J Development, LLC, a Colorado limited liability company.

My commission expires: Dec 1, 2010  
 WITNESS my hand and official seal.

(SEAL)

*Sharon Marie Whelan*  
 Notary Public

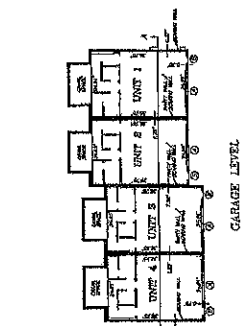




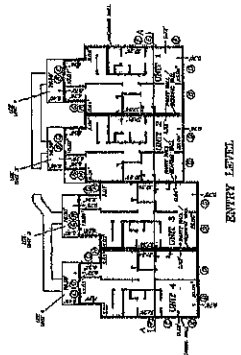


**HAWK'S NEST TOWN HOMES**

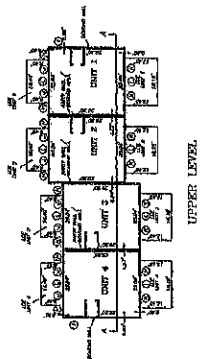
WITHIN THE SE1/4NE 1/4  
 SEC. 28 T.15S. R.86W., 6TH P.M.  
 TOWN OF MT. CRESTED BUTTE  
 GUNNISON COUNTY, COLORADO



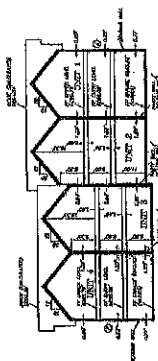
GARAGE LEVEL



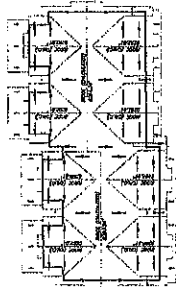
ENTRY LEVEL



UPPER LEVEL



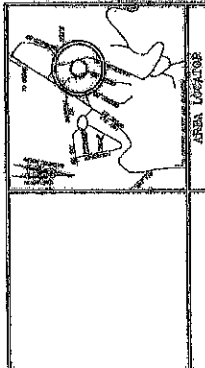
SECTION A-A



ROOF PLAN

**TYPICAL LEGEND**

- 1/2" x 4" STUDS
- 2" x 4" STUDS
- 2" x 6" STUDS
- 2" x 8" STUDS
- 2" x 10" STUDS
- 2" x 12" STUDS
- 2" x 14" STUDS
- 2" x 16" STUDS
- 2" x 18" STUDS
- 2" x 20" STUDS
- 2" x 22" STUDS
- 2" x 24" STUDS
- 2" x 26" STUDS
- 2" x 28" STUDS
- 2" x 30" STUDS
- 2" x 32" STUDS
- 2" x 34" STUDS
- 2" x 36" STUDS
- 2" x 38" STUDS
- 2" x 40" STUDS
- 2" x 42" STUDS
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- 2" x 52" STUDS
- 2" x 54" STUDS
- 2" x 56" STUDS
- 2" x 58" STUDS
- 2" x 60" STUDS
- 2" x 62" STUDS
- 2" x 64" STUDS
- 2" x 66" STUDS
- 2" x 68" STUDS
- 2" x 70" STUDS
- 2" x 72" STUDS
- 2" x 74" STUDS
- 2" x 76" STUDS
- 2" x 78" STUDS
- 2" x 80" STUDS
- 2" x 82" STUDS
- 2" x 84" STUDS
- 2" x 86" STUDS
- 2" x 88" STUDS
- 2" x 90" STUDS
- 2" x 92" STUDS
- 2" x 94" STUDS
- 2" x 96" STUDS
- 2" x 98" STUDS
- 2" x 100" STUDS



SCALE 1" = 20'

GUNNISON COUNTY CLERK AND RECORDS ACCEPTANCE  
 This plan was accepted for filing in the office of the Clerk and Recorder of Gunnison County, Colorado on this 15th day of March, 2007. Notarize Number  
 1574174  
 Date 15/03/07  
 [Signature]  
 County Clerk

SURVEYOR'S CERTIFICATION  
 I, the undersigned, being a duly licensed and sworn Surveyor of the State of Colorado, do hereby certify that the foregoing is a true and correct copy of the original plan as filed in my office, and that the same is a true and correct copy of the original plan as filed in my office, and that the same is a true and correct copy of the original plan as filed in my office.



GUNNISON VALLEY SURVEY  
 6859 BERRY RD  
 GUNNISON CO. 81401

**HAWK'S NEST TOWN HOMES**  
 WITHIN THE SE1/4NE 1/4  
 SEC. 28 T.15S. R.86W., 6TH P.M.  
 TOWN OF MT. CRESTED BUTTE  
 GUNNISON COUNTY, COLORADO  
 GUNNISON PLAZA BUILDING  
 GUNNISON, COLORADO  
 DATE: 9/15/07 10:50 AM  
 SHEET # OF #

SUBDIVISION IMPROVEMENT AGREEMENT

This agreement is entered into this 2 day of July, 2007, between the TOWN OF MT. CRESTED BUTTE, COLORADO (hereafter "Town"), and TRIPLE J DEVELOPMENT, LLC, a Colorado limited liability company (hereafter "Developer").

Whereas, the subdivision regulations of the Town provide that no final plat showing improvements not yet completed shall be approved until the Developer has submitted a subdivision improvement agreement guaranteeing the construction of the uncompleted required improvements; and

Whereas, the subdivision regulations provide that suitable collateral, in an amount stipulated in the subdivision improvement agreement, shall accompany the final plat submission, to ensure completion of the improvements according to design and time specifications, which collateral may be in the form of a check adequate to guarantee the completion of the improvements; and

Whereas, the Developer herein proposes to file the final plat of Hawk's Nest Town Homes which has been previously approved by the Town; and

Whereas, the parties hereto mutually agree that the Developer has furnished a check in the amount of TWENTY-TWO THOUSAND, FIVE HUNDRED and EIGHTY-TWO and 72/100 DOLLARS (\$22,582.72) as a cleanup bond, which is also adequate to guarantee the completion of the required improvements.

Now, therefore, in consideration of the mutual terms, covenants and conditions herein contained, the parties agree as follows:

(1) *Required improvements.* That the Developer, as a condition of approval by the Town to gain a temporary certificate of occupancy or certificate of occupancy for Hawk's Nest Town Homes, hereby agrees to construct the following improvements not later than the dates set forth hereafter, with completion of all improvements to be not later than the \_\_\_\_\_ day of \_\_\_\_\_, 2007, emergencies and acts of God excepted:

a. Pedestrian easement bridge. The pedestrian easement bridge shall be built in accordance with the plans and specifications previously approved by the Town. The total estimated cost of the bridge is to be SIX THOUSAND AND FIVE HUNDRED and 00/100 DOLLARS (\$6,500.00), and the estimated date of completion is to occur on the 1st day of September, 2007.

(2) *Default in performance.* The applicable procedures required under the ordinances of the Town pertaining to the inspection and acceptance of the above improvements shall pertain under this Agreement. In the event of any default by Developer, the Town may apply to the District Court for Gunnison County for the appointment of a receiver to operate the Developer's business for the sole purpose of



completing the construction of the required improvements, and such receiver shall have authority to perform all acts reasonably necessary to construct such improvements, including use of Developer's check for the above purposes. Alternatively, the Town may elect either to complete the construction of such improvements in the manner provided, or it may hire a third party to complete such work in such manner.

(3) *Security.* To guarantee the performance of this Agreement, the Developer shall, upon full execution of this Agreement, unless payment has previously occurred, deliver a check to the Town as security to guarantee the completion of the construction of the aforesaid improvements, and which shall be available to such receiver or the Town, as the case may be, to pay for any and all expenses, including court costs, legal fees, court-determined receiver's allowances, and other costs of the receivership, if any, which may be incurred in completing the construction of the improvements, whether such funds are advanced directly to the Developer, or to a receiver, or to the Town, as the case may be.

(4) *Release of security.* Upon partial completion of the construction of the improvements, the Developer, upon submitting a statement of partial completion certified by Developer's registered professional engineer, shall be entitled to written release by the Town of so much of the security as shall be equal to the amounts expended by the Developer upon such partial completion, less twenty-five percent (25%) thereof. Such release may be accomplished by the Developer's furnishing substitute collateral in the resulting smaller amount. Upon full completion of the construction of all the aforesaid improvements, all obligations on the part of the Developer to furnish the collateral shall terminate and it shall be returned to the Developer.

(5) *Extension of time.* If the Developer is unable to complete the construction of the required improvements within the allotted time, it may obtain a reasonable extension of time within which to do so upon the following conditions:

- a. That an unconditional guarantee or other security satisfactory to the Town is given to guarantee the construction of the improvements within the new time period requested; and
- b. That the Town determines that it would not be detrimental to the interests of the Town to allow such extension.

(6) *Notice of litigation.* Nothing contained in this section shall prevent either party from obtaining a judicial determination of the violation of its rights under this section; provided, however, that thirty (30) days' notice in writing must be given to the other party, advising the other party of the alleged violation, and if the matter is not resolved by the parties within such thirty-day period, then the other party shall be free to resort to legal action as to the matters stated in the notice.

(7) *Time of essence.* It is mutually agreed that time of performance is an essential part of this Agreement, and that all the terms, covenants and conditions herein



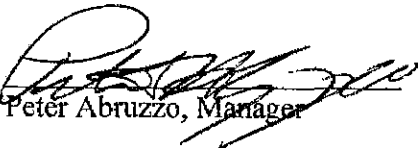
shall extend to and become obligatory upon the successors and assigns of the respective parties hereto.

(8) *Assignment.* The Developer shall have the right to assign its duties and obligations, rights and privileges under this Agreement to any third party only with the prior written consent of the Town, which consent shall not be withheld by the Town provided only that the prospective assignee can demonstrate suitable financial ability to fully perform all of the Developer's duties and obligations under this section. Such written consent by the Town shall contain a provision constituting a release of the developer named herein from further liability under this agreement.

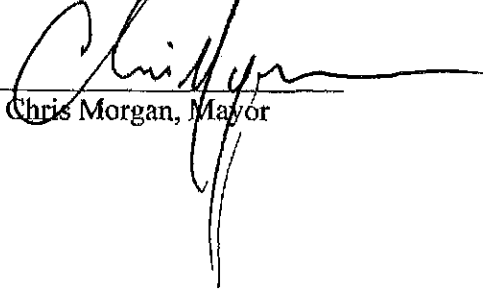
In witness whereof, the parties hereto have executed this agreement the date first above written.

DEVELOPER:

TRIPLE J DEVELOPMENT, LLC,  
a Colorado limited liability company

By:   
Peter Abruzzo, Manager

TOWN OF MT. CRESTED  
BUTTE, COLORADO

By:   
Chris Morgan, Mayor