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AMENDED AND RESTATED
CONDOMINIUM DECLARATION
OF
PITCHFORK CONDOMINIUMS



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AMENDED AND RESTATED CONDOMINIUM DECLARATION OF
PITCHFORK CONDOMINIUMS

THIS AMENDED AND RESTATED CONDOMINIUM DECLARATION OF
PITCHFORK CONDOMINIUMS (the "Declaration") is made as of _____,
2002.

RECITALS

Whereas, on August 1, 2001, the Declaration Establishing Lazy S Condominiums ("Original Declaration") was recorded at Reception number 512981 in the offices of the Clerk and Recorder of Gunnison County, Colorado; and

Whereas, Section 17.4 of the Original Declaration provides that it may be amended by the Owners to which of more than 50% of the votes in the Association are allocated; and

Whereas, the undersigned are the owners of more than 50% of the votes in the Association, and the undersigned believe it is desirable to amend the Original Declaration.

Now, therefore, the Original Declaration is hereby amended and restated by execution of this Declaration, and the real property described in Exhibit A attached hereto and incorporated herein by this reference (the "Property") shall be held, sold and conveyed subject to the following easements, reservations, restrictions, liens, charges, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with title to the real property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. This Declaration shall, to the extent possible, be subordinate at all times to the Master Declaration and shall be interpreted in a manner consistent with the Master Declaration. In the event of a conflict between the Association Documents and the Master Declaration or any of the other documents governing the operation of the Master association, the more restrictive provisions shall control **This Declaration shall amend and supercede the Original Declaration in its entirety.**

ARTICLE 1

DECLARATION AND SUBMISSION

Section 1.1 Declaration. Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, the Property is submitted to the provisions of the Act.

ARTICLE 2

DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration shall have the following meanings:

Section 2.1 “Agency” means any agency or corporation such as Housing and Urban Development (HUD), Department of Veteran’s Affairs (“VA”), Federal National Mortgage Association (“FNMA”) or Federal Home Loan Mortgage Corporation (“FHLMC”) that purchases, insures or guarantees residential mortgages.

Section 2.2 “Allocated Interests” means: (a) the undivided interest in the Common Elements as set forth in Exhibit C; (b) the Common Expense liability as set forth in Exhibit C; and (c) the votes in the Association. The formulas for the Allocated Interests are as follows:

2.2.1 Percentage Share of Ownership of Common Elements and Percentage share of Common Expenses: Subject to the Board’s right to assess expenses as provided in Section 10.3, the percentage share of ownership of Common Elements and percentage share of Common Expenses is determined by the percentage equivalent to a fraction, the numerator of which shall be one, and the denominator of which shall be the total number of all Units in the Project. The percentage share of ownership of common elements and percentage share of Common Expenses at the time of filing this Declaration is set forth in Exhibit C.

2.2.2 Voting: One vote per Unit. No Owner shall be entitled to vote in any matter who is not in Good Standing with the Association. All Owners in Good Standing shall be entitled to vote in accordance with the provisions of Section 4.3 herein.

Section 2.3 “Articles” mean the Articles of Incorporation for Lazy S Condominiums Association, Inc. a Colorado nonprofit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

Section 2.4 “Annual Assessment” means the Assessment levied pursuant to the annual Common Expense budget adopted as provided in Section 10.2.

Section 2.5 “Assessments” means the Annual, Special and Default Assessments levied pursuant to Article 10 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

Section 2.6 “Association” means Lazy S Condominiums Association, Inc., a Colorado nonprofit corporation, which may do business as Pitchfork Condominium Association, Inc. and its successors and assigns.

Section 2.7 “Association Documents” means this Declaration, the Articles of

Incorporation, the Bylaws, the Map, the Design Guidelines, and any procedures, rules, regulations or policies adopted under such documents by the Association.

Section 2.8 "Bylaws" the Bylaws adopted by the Association, as Amended from time to time.

Section 2.9 "Clerk and Recorder" means the office of the Clerk and Recorder in the County of Gunnison, Colorado.

Section 2.10 "Common Element" means all portions of the Project except the Units. The Common Elements are owned by the Owners in undivided interests according to the Allocated Interests set forth in Section 2.2.1 above and consist of General Common Elements and Limited Common Elements.

2.10.1 "General Common Elements" means all tangible physical properties of this Project except Limited Common Elements and the Units, and without limiting the foregoing, specifically includes all parts of the structures or any facilities, improvements and fixtures which may be within a Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of the structures or any part thereof or any other Unit. The General Common Elements shall include, without limitation, the following:

- a. all of the land, and landscaping within the Project;
- b. all foundations, columns, girders, beams and supports of the structures making up the Units;
- c. the exterior walls of the structures making up the Units; the main or bearing walls within the structures making up the Units; the main or bearing subflooring and the roofs of the structures making up the Units; and all portions of the walls, floors or ceilings that are not part of the Unit as described in Section 2.34 below;
- d. all, stairs, stairways and walkways not within a Unit;
- e. all utility service and maintenance rooms, fixtures, apparatus, installations and central facilities for power, light, gas, telephone, television, hot water, cold water, heating, or similar utility service or maintenance purposes, including furnaces, apparatus, installations, facilities, all of which serve more than one Unit and are not located within a Unit; and
- f. in general, all other parts of the Project necessary in common use or convenient to its existence, maintenance and safety.

2.10.2 "Limited Common Elements" means those parts of the Common Elements which are either limited to or reserved in this Declaration, the Map, in a recorded certificate executed by Declarant pursuant to Article 14, or by action of the Association, for the exclusive use of an Owner of a Unit or are limited to and reserved for the common use of more than one

but fewer than all Owners. Without limiting the foregoing, any portion of a chute, flue, duct, pipe, drain, wire, conduit, bearing wall, bearing column, or other fixture which lies completely or partially within and/or completely or partially outside the designated boundaries of a Unit which serves only that Unit is a limited common element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

Section 2.11 "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves, including but not limited to: (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) expenses incurred for the benefit of more than one Owner; (iv) insurance premiums for the insurance carried under Article 9; and (v) all expenses lawfully determined to be common expenses by the Executive Board.

Section 2.12 "County" means the County of Gunnison, Colorado.

Section 2.13 "Declarant" means Coburn Development, Inc., a Colorado corporation or its successor or assignee.

Section 2.14 "Declaration" means this Declaration and the Map, and amendments and supplements to the foregoing.

Section 2.15 "Executive Board" means the governing body of the Association.

Section 2.16 "Expansion Property" means the real property described on Exhibit B attached hereto which Declarant may submit to the terms of this Declaration by one or more Supplemental Declarations.

Section 2.17 "First Mortgage" means a Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 2.18 "First Mortgagee" means any person named as a Mortgagee in any First Mortgage when the holder has notified the Association, in writing, of its name and address and that it holds a First Mortgage on a Unit. The notice must include the address of the Unit on which it has a First Mortgage. This notice shall include a request that the First Mortgagee be given the notices and other rights described in Article 15.

Section 2.19 "Good Standing" means that an Owner is no more than thirty (30) days late in the payment any Annual, Special or Default Assessments, and who has none of his, her or its membership privileges suspended.

Section 2.20 "Manager" means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

Section 2.21 "Map" means the Condominium map of the Project recorded with the Clerk and Recorder on August 1, 2001 at Reception Number 512983, depicting a plan and elevation schedule of all or a part of the Property subject to this Declaration and any supplements and amendments thereto. The Map and any supplements thereto is hereby incorporated herein by reference as if set forth in its entirety.

Section 2.22 "Master Association" means the master owners' association for the entire Pitchfork subdivision.

Section 2.23 "Master Declaration" means the Declaration of Protective Covenants for Pitchfork recorded on May 2, 2001, bearing reception number 510378, of the Gunnison County, Colorado records, Town of Mt. Crested Butte, County of Gunnison, State of Colorado, as it may be amended from time to time.

Section 2.24 "Master Plat" means the Final Plat of Pitchfork recorded on August 21, 2000, bearing reception number 504415, of the Gunnison County, Colorado records, Town of Mt. Crested Butte, County of Gunnison, State of Colorado.

Section 2.25 "Member" means any person or entity that holds membership in the Association.

Section 2.26 "Mortgage" means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

Section 2.27 "Mortgagee" means any person named as a mortgagee or beneficiary in any Mortgage or any successor to the interest of any such person under such Mortgage.

Section 2.28 "Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Unit, and "Owner" also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit.

Section 2.29 "Owner's Agent" means members of the Unit Owner's family, or the Unit Owner's agent, employee, invitee, licensee or tenant, or the agent, employee, invitee, licensee or tenant of the Unit Owner's tenant.

Section 2.30 "Project" means the common interest community created by this Declaration and as shown on the Map consisting of the Property, the Units and the Common Elements.

Section 2.31 "Successor Declarant" means any person or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an

assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

Section 2.32 "Supplemental Declaration" means an instrument which amends this Declaration.

Section 2.33 "Supplemental Map" means a supplemental Map of the Project which depicts any change in the Project through a Supplemental Declaration.

Section 2.34 "Unit" means the fee simple interest and title in and to an individual airspace which is contained within the perimeter windows, doors and unfinished surfaces of perimeter walls, floors and ceilings as shown on the Map, together with the appurtenant interest in the Common Elements. All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the interior finished surfaces thereof are a part of the Units.

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 3

NAME, DIVISION INTO UNITS

Section 3.1 Name The name of the Project is Pitchfork Condominiums. The Project is a Condominium pursuant to the Act.

Section 3.2 Association The name of the Association is Lazy S Condominiums Association, Inc. which may do business as Pitchfork Condominium Association, Inc. The Association is incorporated as a non-profit corporation under the laws of the State of Colorado.

Section 3.3 Number of Units. The number of Units in the Project is 6. Declarant reserves the right to expand the Project to a maximum number of 15 Units (the "Units that may be created").

Section 3.4 Identification of Units. The identification number of each Unit is shown on the Map.

Section 3.5 Description of Units.

3.5.1 The Project is currently comprised of Units as designated on the Map. Each Unit, the appurtenant interest in the Common Elements and the appurtenant use of Limited Common Elements, shall comprise one Unit, shall be inseparable and may be transferred, leased, devised or encumbered only as one Unit. Any attempted transfer of the appurtenant interest in the Common Elements or Limited Common Elements shall be void unless the Unit to which that

interest is allocated is also transferred.

3.5.2 Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Unit may describe it by its Unit letter, Condominiums building designation, Gunnison County, Colorado, according to the Condominium Map thereof recorded on August 1, 2001 at Reception No. 512983 and the Amended and Restated Declaration recorded on _____, 2002 at Reception No. _____ in the records of the Clerk and Recorder of Gunnison County, Colorado, as amended from time to time.

Section 3.6 Use and Occupancy Regulation.

3.6.1 All of the Units shall be held, conveyed, used, improved, occupied, owned, resided upon and secured, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. These restrictions are general in nature and the Executive Board shall have the power and duty to adopt, amend, repeal and enforce more specific and restrictive design and architectural guidelines and rules and regulations as the Executive Board deems to be reasonable and necessary to carry out the intent of this Declaration. The Units are intended to be used for the purposes specified in, and use of the Units is limited by this Declaration. Each Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit shall be used and occupied only as a residence as a single housekeeping unit, operating on a nonprofit, noncommercial basis with a common kitchen and dining area and for home operated businesses, so long as such business is (i) allowed by zoning resolutions; (ii) is not apparent or detectable by sight, sound, or smell from the exterior of the Unit, (iii) does not increase traffic within the Project; and (iv) does not increase the insurance obligation or premium of the Association. No Unit shall be inhabited by more than the following number of occupants:

Residence Size

Maximum Number of
Occupants

1 bedroom	3
2 bedrooms	4
3 bedrooms	5

Notwithstanding the foregoing, no Unit shall be inhabited by more persons than are permitted by the ordinances of the Town or as otherwise provided by law, whichever is more restrictive.

3.6.2 Each Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including ad valorem levies and special assessments. No part of the Project other than Units shall be deemed a parcel. The lien for taxes assessed to any Unit shall be confined to such Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any other way affect the title to any other Unit.

3.6.3 Subject to the remaining provisions of this Section 3.6.3, an Owner shall have the right to lease his Unit in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however, that the right to lease any Unit may be restricted in whole or in part so as to comply with any Agency requirements, and (1) a Unit may be leased only for the uses provided herein; (2) any failure of a lessee to comply with the terms of any of the Association Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not the lease contains such a provision; and (3) all leases shall be subject to rules adopted by the Executive Board; (4) all leases shall be in writing and shall provide that the lease is subject to the terms of the Association Documents and a copy of the Association's rules are provided to the Lessee with the lease; and (5) the lease shall limit the number of occupants to the maximum permitted under Section 3.6.1. herein. The Executive Board shall be entitled, from time to time, to adopt, amend, revise, add to or repeal, rules that define, and differentiate between, short term and longer term occupancy arrangements, except that, in no event shall the Executive Board be entitled to adopt a rule that eliminates or prohibits, or has the practical effect of eliminating or prohibiting, leases or occupancy arrangements, whether short term or otherwise. Without limiting the scope of the foregoing sentence, such rules may, at the discretion of the Executive Board, differentiate between short term and longer term leases or occupancy arrangements, in the enforcement of this Declaration and the rules, as well as any fines imposed for violation of the same (*for example, the Executive Board may adopt a rule that imposes a larger fine for excessive number of occupants during a short term occupancy arrangement*). The Executive Board shall strictly enforce the occupancy limits specified herein, regardless of the type of occupancy arrangement.

3.6.4 Each Owner and Owner's Agents may use the Limited Common Elements allocated to his or her Unit and the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Executive Board may adopt rules, regulations, restrictions or policies governing or

restricting the use of the Limited Common Elements and the Common Elements. Each Owner and Owner's Agents, by the Owner's acceptance of a deed or other instrument of conveyance or assignment to his or her Unit, agrees to be bound by any such adopted rules, regulations or policies.

No Owner or Owner's Agent shall cause, or further, an obstruction of the Common Elements or Limited Common Elements, nor shall anything be stored on any part of the Common Elements or Limited Common Elements, without prior written consent of the Executive Board or if appointed by the Executive Board, the Architectural Review Committee. Nothing shall be altered, constructed on, or removed from the Common Elements or Limited Common Elements except upon the prior written consent of the Executive Board.

3.6.5 Subject to the Special Declarant Rights reserved under Article 14, the following occupancy restrictions apply to all Units and to the Common Elements:

A. The Units shall be used in strict compliance with the applicable provisions of the Master Plat and Master Declaration, which are incorporated herein by reference. **Owners are advised to familiarize themselves with the provisions of the Master Declaration, which, in conjunction with this Declaration, controls and regulates the use of Units.** In the event of a conflict between the provisions of this Declaration and the Master Declaration, the more restrictive provision shall control.

B. No improper, offensive or unlawful use may be made of the Property. Owners and Owner's Agents shall comply with and conform to all applicable laws and regulations of the United States, the State of Colorado and all other governmental ordinances, rules and regulations; violations thereof shall be a breach of this Declaration, subject to enforcement by the Association.

C. Except as expressly permitted by the Development Agreement and this Declaration, no noxious, offensive, dangerous or unsafe activity shall be conducted in or on any Unit or the Common Elements, nor shall anything be done, either willfully or negligently, which may be or become a reasonable annoyance or nuisance to the other Owners or Owner's Agents. No Unit shall be used in any way or for any purpose that may endanger the health or unreasonably disturb, by noise, dust, fumes, vibration or otherwise the Owner or occupant of another Unit. Determination of whether an activity violates this covenant shall be at the discretion of the Executive Board or other committees and shall be subject to rules and regulations adopted by the Executive Board. The terms of this Section shall not apply to any activities of Declarant or a Successor Declarant which are necessary to the development and construction of, and sales activities on, the Property.

D. Except as may be approved in writing by the Executive Board, nothing shall be done or kept which may result in a material increase in the rates of

insurance or would result in the cancellation of any insurance maintained by the Association.

E. No household pet or animal shall be allowed in or about the Common Interest Community, including Common Elements, except in compliance with the terms of this Declaration and in compliance with additional Rules issued by the Executive Board, which may supplement and be more restrictive, but not supersede or be less restrictive than, the provisions of this Section 3.6.5. No Owner or Owner's Agent shall keep more than two (2) dogs or cats or more than three (3) of a combination of dogs and cats at any time. Vicious and habitually barking, howling or yelping dogs shall be deemed a nuisance and prohibited. All household pets shall be confined to the Owner's Unit or controlled on a leash. No dog shall be tied up outside for more than one hour at a time. Owners will be held responsible for any litter, waste, mess or damage created by their pets in the Common Elements and for any offensive or prolonged noises created by their pets. All dog waste shall be immediately cleaned up and properly disposed of. Animals may not be kept for any commercial purposes. The Owner of any animal and the Owner of any Unit where the animal is visiting or staying shall be jointly and severally personally liable and responsible for all actions of such animal and any damage or violation of this Declaration caused by such animal. The right to keep animals as household pets shall be coupled with the responsibility to pay for any damage caused by such animals, and any damages and any costs incurred by the Association in connection with the enforcement of the Association's rights shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in this Declaration. The Association is specifically empowered to impound any dog, cat or other animal running at large within the Property. Upon impoundment, the owner of the dog, cat or other animal, if known, shall be notified and the animal shall be taken to the nearest facility which accepts impounded dogs, cats or other animals. It is the duty of the owner of such dog, cat or other animal to recover the animal from such facility and if the animal is not recovered by the owner in accordance with the rules and regulations of such facility, the facility may destroy the animal without liability. The Project is adjacent to agricultural land used for livestock grazing. Owners of dogs should be aware that Colorado law allows owners of livestock to destroy dogs that harass livestock. Nothing in this Section 3.6.5.E shall prohibit or limit the use of qualified service animals as permitted or required under federal, state, or local law, including but not limited to the "Americans With Disabilities Act," or the "Fair Housing Amendments Act."

F. If, due to the act or neglect of an Owner or Owner's Agents, loss or damage shall occur or be caused to any person or property other than the Owner's Unit, such Owner or Owner's Agent shall be liable and responsible for the payment of same. The amount of such loss or damages and any costs incurred by the Association in connection with the enforcement of the Association's rights shall be subject to all of the Association's rights with respect to the collection and

enforcement of assessments as provided in this Declaration.

G. No abandoned or inoperable vehicle of any kind shall be stored or parked on any part of the Project. An "abandoned or inoperable vehicle" shall be defined as any vehicle which is not capable of being driven under its own propulsion or does not have current registration. No motor homes, boats, trailers, campers, oversized vehicles or equipment shall be stored or parked anywhere within the Project. Without first obtaining the approval of the Executive Board, no commercial vehicles or similar vehicles shall be stored or parked anywhere within the Project. The Executive Board shall have the right to remove or store a vehicle or equipment in violation of this section after notice and opportunity for hearing, the expense of which shall be levied against the Owner of the vehicle or equipment as a Default Assessment.

H. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicle, trailer or boat, may be performed or conducted on the Project. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

I. No signs shall be placed or permitted within the Project except those as may be permitted under the provisions of sign rules, regulations and restrictions adopted by the Executive Board. All signage shall be subject to such other or further restrictions imposed by the Town of Mt. Crested Butte.

J. All trash, garbage or other refuse shall be kept in a fully enclosed area. The Association shall provide for regular trash removal as a Common Expense. Each Unit at all times shall be kept in a clean, sightly and wholesome condition. The Executive Board may require any Owner to arrange for trash removal of excessive amounts of trash, garbage or other refuse.

K. All satellite dishes and devices or facilities to transmit or receive electronic signals, radio or television waves are prohibited outside a Unit or a Limited Common Element under the exclusive use and control of an Owner unless first approved by the Executive Board in conformance with applicable federal law.

L. All Units shall have window coverings in compliance with rules adopted by the Executive Board.

M. No Owner or Owner's Agent shall cause, or further, an obstruction of the Common Elements or Limited Common Elements, nor shall anything be stored on any part of the Common Elements or Limited Common Elements, without prior written consent of the Executive Board. Nothing shall be altered,



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constructed on, or removed from the Common Elements or Limited Common Elements except upon the prior written consent of the Executive Board.

N. Units A, B, C, D, E and F are deed restricted in accordance with the Pitchfork Occupancy and Resale Deed Restriction Agreement and Covenant recorded as Reception No. 507107 as modified by the Modification of Pitchfork Occupancy and Resale Deed Restriction, Agreement and Covenant recorded as Reception No. 510376 and the Modification of Pitchfork Final Plat recorded as Reception No. 510377 of the Gunnison County records.

3.6.7 No Unit shall be used for any purpose not permitted by the final planned unit development plan for Pitchfork approved by the Town of Mt. Crested Butte, this Declaration, or not in compliance with any local, state or federal law, statute or other ordinance, regulation or rule.

3.6.8 In addition to the restrictions on use and occupancy set forth above, the Association shall have and may exercise the right to control Owners' use and occupancy of their respective Units in any reasonable and lawful manner approved by the Executive Board.

Section 3.7 No Partition, Subdivision or Combination. No portion of the Project shall be subject to an action for partition or division and no Units shall be subdivided, resubdivided or combined.

Section 3.8 Unassigned Parking Spaces. Three unassigned motor vehicle parking spaces are depicted on the Map for use by Owners and their guests on a "first come, first served" basis. No motor vehicle shall be parked in any one of such spaces for more than 48 hours in any 7 day period.

Section 3.9 Shared Guest Parking Space. One shared parking space is dedicated on Lot 2 as shown on the Master Plat, in favor of the Unit Owners, to be used in common with, and available for use by, the owners of units in Pitchfork Townhomes, Flying G Building. No motor vehicle shall be parked in any one of such spaces for more than 48 hours in any 7 day period.

ARTICLE 4

MEMBERSHIP AND VOTING RIGHTS: ASSOCIATION OPERATIONS

Section 4.1 The Association. Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit.

Section 4.2 Transfer of Membership. An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit. The Association shall not create a right

of first refusal on any Unit and Unit Owners may transfer ownership of their Units free from any such right.

Section 4.3 Membership; Voting Rights. The Association shall have one class of membership consisting of all Owners. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in all matters affecting the Association. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents.

Section 4.4 Declarant Control. Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association during the Period of Declarant Control. The "Period of Declarant Control" begins with the appointment of the initial Executive Board and continues until the earlier of: (a) ten (10) years from the date of recording the Declaration; (b) sixty (60) days after Declarant conveys seventy-five percent (75%) of the Units that may be created to Owners other than Declarant; (c) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business; or (d) two (2) years after the right to add new Units was last exercised. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded with the Clerk and Recorder but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Owners other than a Declarant, not less than thirty-three and one third percent (33-1/3%) of the members of the Executive Board must be elected by Owners other than the Declarant. Until the expiration of the Period of Declarant Control, those members of the Executive Board elected by the Members other than Declarant shall be elected by all Members of the Association.

Section 4.5 Delivery of Documents by Declarant. Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Executive Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including, without limitation, the following items:

- A. The original or a certified copy of the recorded Declaration, as amended, the Articles of Incorporation, Bylaws, minute books, other books and records, and any Rules which may have been promulgated;
- B. An accounting for Association funds and audited financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends;
- C. The Association funds, books and records;

- D. All of the tangible personal property that has been represented by the Declarant to be the property of the Association or that is necessary for and has been used exclusively in the operation and enjoyment of the Common Elements;
- E. A copy, for the nonexclusive use of the Association, of any plans and specifications used in the construction of improvements in the Project;
- F. All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;
- G. Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Project;
- H. Any other permits issued by governmental bodies applicable to the Project and which are currently in force or which were issued within one (1) year prior to the date on which Owners other than the Declarant took control of the Association;
- I. Written warranties of any contractor, subcontractors, suppliers and manufacturers that are still effective;
- J. A roster of Owners and First Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;
- K. Employment contracts in which the Association is a contracting party; and
- L. Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the person performing the services.

Section 4.6 Executive Board. Except for members of the Executive Board appointed by the Declarant during the Period of Declarant Control, all members of the Executive Board shall be Members of the Association, or in the event that a Member is an entity other than a natural person, such member of the Executive Board shall be an authorized representative of such entity Member. Subject to the provisions of Section 4.4 above, during the Period of Declarant Control, the Executive Board shall consist of three (3) directors, none of whom need be Members of the Association. Upon expiration of the Period of Declarant Control, the Members shall elect all directors, one of whom shall serve for an initial term of one (1) year, one of whom shall serve for an initial term of two (2) years and one of whom shall serve for an initial term of three (3) years. After the initial terms, all members of the Executive Board shall serve for a terms of three (3) years.

Section 4.7 Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and

financial statements of the Association prepared pursuant to the Bylaws, and as required by the Colorado Revised Nonprofit Corporation Act. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required under the Act and as required by the Colorado Revised Nonprofit Corporation Act.

Section 4.8 Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association.

Section 4.9 Rights of Action. The Association on behalf of itself and any aggrieved Unit Owner shall be granted a right of action against any and all Unit Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Unit Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all costs and expenses, including attorney's fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

Section 4.10 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act and by the Colorado Revised Nonprofit Corporation Act.

Section 4.11 Notice. Any notice to an Owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, on the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Unit.

ARTICLE 5

POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION

Section 5.1 Powers of the Executive Board. Except for those matters expressly reserved to the Members as provided in the Association Documents and the Act and the Colorado Revised Nonprofit Corporation Act, the Executive Board may act in all instances on behalf of the Association, to:

5.1.1 Adopt and amend bylaws and rules, regulations and policies;

5.1.2 Determine Common Expenses, and adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;

5.1.3 Hire and terminate managing agents and other employees, agents and independent contractors;

5.1.4 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Project;

5.1.5 Make contracts and incur liabilities, except that any agreement for professional management of the Association's business or other contract providing for services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) day's prior written notice;

5.1.6 Regulate the use, maintenance, repair, replacement and modification of Common Elements;

5.1.7 Cause additional improvements to be made as a part of the Common Elements;

5.1.8 Acquire, hold, encumber and convey in the name of the Association any right, title or interest in real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if (a) Members entitled to cast at least two-thirds (2/3rds) of the votes agree to that action, (b) the provisions of Article 17 are followed with respect to approval of First Mortgagees, and (c) if all Owners of Units to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest.

5.1.9 Grant easements, leases, licenses and concessions through or over the Common Elements;

5.1.10 Impose and receive any payments, fees or charges for the use, rental or

operation of the General Common Elements;

5.1.11 Impose charges (including without limitation, late charges and default interest) for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of provisions of the Association Documents or otherwise suspend other membership privileges (except that notice and opportunity to be heard shall not be required before suspension of membership privileges for failure to pay Assessments within thirty (30) days after they become due);

5.1.12 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

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

5.1.14 Assign its right to future income, including the right to receive Assessments;

5.1.15 Exercise any other powers conferred by the Association Documents;

5.1.16 Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association, including without limitation, those powers specified by the Colorado Revised Nonprofit Corporation Act; and

5.1.17 Exercise any other powers necessary and proper for the governance and operation of the Association.

ARTICLE 6

MECHANIC'S LIENS

Section 6.1 No Liability. If any Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no Owner of any other Unit, nor the Association, shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Unit.

Section 6.2 Indemnification. If, because of any act or omission of any Owner, any mechanics or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and

discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

Section 6.3 Association Action. Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien may be effected against an individual Unit or Units.

ARTICLE 7

EASEMENTS

Section 7.1 Recorded Easements. The Property shall be subject to all easements as shown on any Map or plat, those of record (including those set forth an Exhibit D attached hereto), those provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article.

Section 7.2 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, the Association and for Owners in all future phases of the Project, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of the Units, or improvements on the Property or Expansion Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property or Expansion Property, or to perform warranty work and repairs and construction work on the Units and Common Elements, to store materials in secure areas and to control and have the right of access to work and repair until completion. Such rights may be exercised by Declarant from time to time, and at different times until completion of the Project by Declarant or a Successor Declarant, and no failure to exercise such rights at any time or for a period of time shall constitute a waiver of the rights contained herein.

Section 7.3 Utility Easements. There is hereby created a blanket easement upon, across, over, in and under the Property and the Expansion Property for the benefit of the Common Elements and the Units and the structures and improvements situated on the Property and the Expansion Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable television and electricity, except that such easements may not be utilized by the utility providers until after receiving written approval from the Executive Board. The Executive Board may condition its approval on such matters as it deems appropriate, including without limitation, the

location, design, alterations to existing structures and impact on the Common Elements and the Project. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, after receiving approval of the Executive Board, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Common Elements and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as provided above. Upon exercise of the rights contained in this Section, the utility providers, at their sole cost and expense, shall repair (or replace if necessary) the Property and the Expansion Property and all improvements thereon to their condition as they existed prior to the utility providers performing any work.

Section 7.4 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Elements for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the General Common and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association, such as for closure for repairs and maintenance.

Section 7.5 Emergency Access. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property and the Expansion Property, including all Units and all Common Elements in the proper performance of their duties.

Some of the Common Elements are or may be located within a Unit. All Owners shall permit a right of entry to the Executive Board, or any other person authorized by the Executive Board, whether the Owner is present or not, for access through each Unit to all Common Elements, from time to time, as may be necessary for the routine maintenance, repair, or replacement for any of the Common Elements located thereon or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit. In order to facilitate the aforesaid maintenance, repair and replacement, all Owners shall provide the Manager a key to their respective Unit.

For routine maintenance and non-emergency repairs, entry shall be made only on a regular business day during regular business hours, after service of at least one day's notice in writing to the Owner. In case of emergency, entry shall be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry.

The Board or its agent is granted the authority to use such reasonable force as is necessary to gain entry into the Unit in the event of an emergency, if no other means of entry are available in view of the circumstances. So long as the Owner has provided the Manager a key as

set forth above, the Association shall bear the full responsibility and expense of all damages incurred to the Unit and/or Common Elements because of such forcible entry.

All damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, at the instance of the Association, shall be paid for as part of the Annual Assessment by all of the Owners. No Owner shall be entitled to diminution or abatement for inconveniences or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to damage.

Notwithstanding the foregoing, if any such damage is the result of the failure of an Owner to provide the Manager with a key to their respective Unit and/or ordinary wear and tear, accident, or the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs of such repairing such damage. In the event the Owner fails within a reasonable time upon proper notice to pay the cost of the damages incurred, the Board may pay for said damages and charge the Owner responsible as a Default Assessment.

Section 7.6 Support Easement. Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of structures or improvements presently situated or to be built in the future on the Property or any Expansion Property.

ARTICLE 8

MAINTENANCE

Section 8.1 Maintenance by Owners. Each Owner shall maintain and keep in good repair the interior of his Unit, including the fixtures thereof to the extent current repair shall be necessary in order to avoid damaging other Unit Owners, and the surfaces (excluding the roofing elements) of Limited Common Elements allocated to the Unit. All fixtures and equipment installed within the Unit shall be maintained by the Owner thereof. All utilities that serve only one Unit, commencing at a point where the utilities separate to serve only such Unit shall be maintained and kept in repair by the Owner of such Unit. An Owner shall do no act or any work that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall be responsible for the maintenance of the interior non-supporting walls of his Unit, and the surface materials such as plasters, drywall, paneling, wallpaper, paint, tile and carpeting of the perimeter walls, ceilings and floors within the Unit, including Unit doors, windows and screens. The Association reserves the right to grant the maintenance responsibility to the Unit Owner of certain areas on each Unit and of other Limited Common Elements, and the Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner. Further, the Association may assume responsibility for maintenance and repair of utilities serving only one Unit, and the cost thereof shall become a Common Expense.

Section 8.2 Owner's Failure to Maintain or Repair. In the event that a Unit (including

the allocated Limited Common Elements) is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board (after a determination by the Executive Board that the condition of such Unit negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to a condition of good order and repair, except that no advance approval shall be required in the event of an emergency. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the 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 10 of this Declaration.

Section 8.3 Maintenance by Association. The Association shall be responsible for the maintenance and repair of the Common Elements, whether located inside or outside of Units (except as set forth in Section 8.1 above and unless necessitated by damage caused by casualty or the negligence, misuse or tortious act of a Unit Owner or Owner's Agent as set forth in Section 8.4 below), which shall be the Common Expense of all Owners. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping and walls which Owner is not required to maintain as set forth in Section 8. 1, gates, signage, irrigation systems, sidewalks, driveways and improvements, if any (which shall include without limitation snow removal services unless performed by another private or public organization formed for such purposes), located in the Common Elements.

Section 8.4 Association Maintenance as Common Expense. Subject to availability of any insurance proceeds, the cost of maintenance, repair and replacement by the Association shall be a Common Expense. Damage to the interior or any part of a Unit resulting from the maintenance, repair, or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall also be a Common Expense. However, if such damage is the result of casualty, or caused by negligent or tortious acts of a Unit Owner, or Owner's Agent, then such Unit Owner shall be responsible and liable for all of such damage and the cost thereof, to the extent of the casualty, or that Owner or Owner's Agent's negligence caused such damage, which must be timely paid. All unreimbursed costs shall be a lien upon the 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 10 of this Declaration.

Section 8.5 Limited Common Element Damage. In the event of damage or destruction of a Limited Common Element from any cause other than the negligence or tortious acts of an Owner or Owner's Agent, the then Owners of the Units to which the Limited Common Element is attributable shall bear equally the expense to repair or rebuild the Limited Common Element to its previous condition. The Owner shall bear the cost of such damage to the extent of such Owner's or Owner's Agent's negligence.

Section 8.6 Association Power. In performing maintenance, making repairs or replacements as required herein, no Owner shall make any addition or other alteration to any portion of the Common Elements (both General and Limited Common Elements), no matter how minor, without the express written consent of the Executive Board.

ARTICLE 9

INSURANCE

Section 9.1 General Insurance Provisions. The Association shall acquire and pay for, out of the assessments levied under Article 10 below, the following insurance policies carried with reputable insurance companies authorized to do business in Colorado:

9.1.1 Hazard Insurance Coverage. Insurance for fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes co-insurance), special condominium, building ordinance and inflation guard endorsements attached, in amounts determined by the Executive Board to represent not less than the full then current insurable replacement cost of the buildings located on the Property including all of the Units and Common Elements, including all fixtures, interior and perimeter walls and floors, partitions, decorated and finished surfaces of interior and perimeter walls, floors, and ceilings, doors, windows and other elements or materials comprising a part of the Units and including any fixtures, equipment or other property within the Units which are to be financed by a Mortgage to be purchased by an Agency including FNMA and FHLMC, and excluding any betterments and improvements made by Unit Owners and building excavations and foundations. At the discretion of the Executive Board, such insurance may be obtained, if available at a reasonable cost, for the Project as a whole. Maximum deductible amounts for such policies shall be determined by the Executive Board, provided, however, that if an Agency requires specific deductibles, the Executive Board shall follow such Agency's requirements. In the event the Project has central heating or cooling or contains a steam boiler, coverage for loss or damage resulting from steam boiler and machinery equipment accidents in an amount equal to the lower of \$1,000,000 or the insurable value of the buildings housing the boiler or machinery shall also be obtained. The Association shall obtain insurance covering the original specifications of each Unit. Each Unit Owner shall be responsible for obtaining additional or supplemental insurance covering any additions, alterations or improvements to his Unit which increase the replacement value of his Unit. In the event that a satisfactory arrangement is not made for additional insurance by the Unit Owner, the Unit Owner shall be responsible for any deficiency in any resulting insurance loss recovery and the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. Any additional premiums attributable to the original specifications of a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Section 10.7 hereof in the event the Association pays such premium for a Unit Owner.

9.1.2 Comprehensive Liability. Comprehensive general public liability and property damage insurance for the Project in such amounts as the Executive Board deems

desirable, provided that such coverage shall be for at least \$2,000,000 for bodily injury, including death and property damage arising out of a single occurrence insuring the Association, the Executive Board, the Manager or managing agent and their respective agents and employees, and the Unit Owners from liability in connection with the operation, maintenance and use of Common Elements and must include a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to condominiums similar to the Project in the Town of Mt. Crested Butte area including automobile liability insurance if appropriate. The Executive Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Executive Board that such party has current and satisfactory insurance, including workers compensation insurance, commercial general liability and automobile insurance on all of which the Association is named as an additional insured.

9.1.3 Requirements of Hazard Insurance and Comprehensive Liability

Insurance: The insurance policies required by Sections 9.1.1 and 9.1.2 above may be carried in blanket policy form naming the Association as the insured, for the use and benefit of and as attorney-in-fact for the Unit Owners. Each Unit Owner shall be an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association. Each Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Common Expenses for the Unit which the Mortgage encumbers. The insurance company shall waive its rights of subrogation under the insurance policy against any Unit Owner or member of the Unit Owner's household. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss under an insurance policy described above there is other insurance in the name of the Unit Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance.

Each Owner of a Unit shall obtain and maintain insurance coverage on the furnishings, fixtures and other items of personal property belonging to an Owner and any additions and alterations to a Unit which increase the Unit's replacement value above that of the original specifications for the Unit (unless financed by a Mortgage to be purchased by FNMA, or FHLMC), casualty and public liability insurance coverage for each Unit and the Limited Common Elements associated therewith in a minimum amount of \$300,000 per occurrence and workman's compensation insurance covering work within each Unit or on the Limited Common Elements associated therewith. In the event an Owner fails to obtain and maintain such insurance, and an uninsured loss occurs which would have otherwise been covered under the insurance required by this paragraph, such Owner shall be liable to the Association for the loss suffered, and the Association shall be entitled to recover such amounts from the Owner in the same manner as any other debts owed to the Association.

Section 9.2 Certificates of Insurance: Cancellation. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. All policies required to be carried under this Article 9 shall provide a standard non-contributory mortgagee clause in favor of each First

Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty (30) days prior written notice to each Owner and each First Mortgagee whose address is shown in the records maintained pursuant to the Association's documents. If the insurance described in this Article 9 is not reasonably available, or if any policy of such insurance is canceled 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 and to all First Mortgagees.

Section 9.3 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 9.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any 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 Mortgagees as their interests may appear. Subject to the provisions of Section 9.5 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and 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.

Section 9.4 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Sections 9.1 and 9.7 or its agent 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 it 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, and to any servicer of a Mortgage for Federal National Mortgage Association.

Section 9.5 Repair and Replacement. 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:

9.5.1 The common interest community created by this Declaration is terminated in which case the approval must first be obtained of Owners holding two thirds (2/3rds) of the votes in the Association;

9.5.2 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

9.5.3 There is a vote not to rebuild by (a) Owners holding two thirds (2/3rds) of the votes in the Association and (b) every Owner of a Unit or assigned Limited Common Element that will not be rebuilt; or

9.5.4 Prior to the conveyance of any 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.

The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a Common Expense. If all the 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 each Owner's percentage share of ownership of Common Elements.

Section 9.6 Fidelity Insurance. Fidelity insurance or fidelity bonds must 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, including any Manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than the greater of (a) fifty thousand dollars (\$50,000) or (b) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or management agent as the case may be, at any given time during the term of each policy as calculated from the current budget of the Association but in no event less than a sum equal to two (2) months' aggregate assessments plus reserve funds. In addition, if responsibility for handling funds is delegated to a Manager, such insurance or bonds must be obtained by or for the Manager and its officers, employees and agents, as applicable. Such fidelity insurance or bonds shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 9.7 Workers' Compensation Insurance. The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 9.8 Directors and Officers Liability Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of the Executive Board against any liability asserted against a Member of the Executive Board or incurred by him in his capacity of or arising out of his status as a Member of the Executive Board.

Section 9.9 Other Insurance. The Association shall maintain flood insurance if any part of the Project is located within a Special Flood Hazard Area on a Flood Insurance Rate Map, equal to the lesser of 100% of the insurable value of the Project or the maximum coverage available under the appropriate National Flood Insurance Program. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature, including umbrella or extended coverage insurance, as it shall deem appropriate with respect to the Association's responsibilities and duties or as requested by any Agency.

Section 9.10 Common Expenses. Premiums for insurance that the Association acquires are Common Expenses, provided, however, that if some of the insurance is attributable to some

but not all of the Units, the Association reserves the right to charge the Units for which the insurance coverage is attributable, an amount equal to the premium attributable to such additional insurance coverage.

ARTICLE 10

ASSESSMENTS

Section 10.1 Personal Obligation. Each Owner, including Declarant while an Owner of any Unit, is obligated to pay to the Association (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments. Each Assessment against a Unit is the personal obligation, jointly and severally, of the Owner(s) at the time the Assessment became due and shall not pass to successors in title unless they agree to assume the obligation. No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration. All Assessments shall be payable in accordance with the levy thereof, and no offsets or deductions thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under the Association Documents.

Section 10.2 Budget. The Executive Board shall, in advance, prepare and adopt a proposed Common Expense budget at least ninety (90) days before expiration of the fiscal year based on estimated Common Expenses. Within (30) days after the adoption of the proposed budget, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver, a summary of the budget to all the Owners, and shall set a date for a meeting of the 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 summaries. Unless at that meeting two thirds (2/3rds) of all Owners reject the budget, the budget is ratified, whether or not a quorum of all Members is present. In the event that a proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

Section 10.3 Annual Assessments. An Owner's Annual Assessments shall be determined based on the adopted and ratified budget. The Executive Board shall levy and assess the Annual Assessments to each Owner in accordance with the Allocated Interests in effect on the date of the Annual Assessment, provided, however, that any expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Units to which the Limited Common Element is assigned, equally, and the Executive Board reserves the right to allocate all expenses relating to fewer than all of the Units to the owners of those affected Units only. Annual Assessments shall be payable in advance monthly or on such other basis as may be determined by the Executive Board, and shall be due on the first day of each period in regular installments on a prorated basis. The omission or failure of the

Association to fix the Annual Assessments for any assessment shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.

Section 10.4 Date of Commencement of Annual Assessments. The Annual Assessments shall commence as to each Unit on the first day of the month following the effective date of adoption and ratification of the first budget. Until commencement of the Annual Assessments, the Declarant shall pay all Common Expenses of the Association.

Section 10.5 Special Assessments. In addition to the Annual Assessments, the Association may levy in any fiscal year one or more special assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section 10.5 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess the special assessment only against the Owners of affected Units. Notice in writing of the amount of such special assessments and the time for payment of the special assessments shall be given promptly to the Owners, and no payment shall be due less ten (10) days after such notice shall have been given.

Section 10.6 Default Assessments. All monetary fines and other enforcement costs assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, including without limitation attorneys fees incurred by the Association, shall be a Default Assessment and shall become a lien 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 such Assessment at least five (5) days prior to the due date.

Section 10.7 Effect of Nonpayment: Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid when due shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (i) If the delinquency continues for a period of fifteen (15) days, assess a late charge for each delinquency in such amount as the Association deems appropriate;
- (ii) If the delinquency continues for a period of thirty (30) days, assess an interest charge, in arrears, from the due date at the yearly rate of 18% per year;
- (iii) Suspend the voting rights of the Owner during any period of delinquency;

- (iv) Accelerate all remaining Assessment installments so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;
- (v) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments;
- (vi) Proceed with foreclosure as set forth in more detail below; and
- (vii) Suspend any of the Owner's membership privileges.

Assessments chargeable to any Unit shall constitute a lien on such Unit. Such lien will be subject to the provisions of Colorado Revised Statutes, Section 38-33.3-316. Such lien will be superior to all other liens, except (i) the liens of all taxes, bonds, assessments and other levies which by law should be superior and (ii) the lien or charge of any First Mortgage made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments will be prior to a First Mortgage to the extent of an amount equal to the Assessments which would have come due, in the absence of acceleration, during the six months immediately preceding institution of an action to enforce the lien. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. The Association's lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any homestead exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 10.8 Payment by Mortgagee. Any Mortgagee holding a lien on a Unit may pay any unpaid amount payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

Section 10.9 Statement of Status of Assessment Payment. Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Agency, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued 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) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

Section 10.10 Capitalization of the Association. The Association shall require the first Owner of any Unit (other than Declarant or a Successor Declarant) who purchases that Unit from Declarant or a Successor Declarant to make a nonrefundable contribution to the Association in the amount equal to one-sixth (1/6th) of the total annual assessment at the time of sale (regardless of whether or not assessments have commenced as provided herein). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant or a Successor Declarant of each Unit as aforesaid, and may be used for the benefit of the Association as the Board deems appropriate, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services. Such contribution of working capital shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of a Unit, an Owner shall be entitled to a credit from the transferee (but not from the Association) for the aforesaid contribution to working capital. The Association may, from time to time, increase the amount of the working capital contribution to an amount equal to one-sixth (1/6th) of the then current total annual assessment.

Section 10.11 Maintenance Accounts: Accounting. If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a Manager, then such other persons or Manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or Manager, (b) maintain all reserve accounts of the Association separate from the operational accounts of the Association, and (c) provide to the Association no less than once per month an accounting for the previous month. In addition, the Association shall obtain an annual accounting and financial statement of Association funds (on either a review or audit basis, at the Association's discretion) and annual tax returns prepared by a certified public accountant.

ARTICLE 11

DAMAGE OR DESTRUCTION

Section 11.1 The Role of the Executive Board. Except as provided in Section 9.5, in the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the name of the Association under Article 9, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 9 is sometimes referred to as the "Association-Insured Property").

Section 11.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board 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. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction unless the approval is obtained of Owners holding two thirds (2/3rds) of the votes in the Association, including every Owner of a Unit or assigned Limited Common Element that will not be repaired or reconstructed. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the insurance trustee, if any, determines to be necessary.

Section 11.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

ARTICLE 12

CONDEMNATION

Section 12.1 Rights of Owners Whenever all or any part of the Common Elements shall be taken by power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 12.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Owners who hold at least two thirds (2/3rds) of the votes in the Association, and Declarant during the Period of Declarant Control, shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in Article 9 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be retained by the Association to offset future expenses of the Association.

Section 12.3 Complete Condemnation. If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that approval must first be obtained of fifty-one percent (51%) of First Mortgagees, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in the Colorado Revised Nonprofit Corporation Act upon liquidation of the Association.

ARTICLE 13

ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of (a) granting easements pursuant to Article 7, (b) purchasing and maintaining insurance pursuant to Article 9, including the collection and appropriate



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disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9 upon their damage or destruction as provided in Article 11, (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article 12, above, and (d) for all other proper purposes permitted under this Declaration to be exercised by the Association. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full 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 to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE 14

RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Section 14.1 Addition of Unspecified Real Estate. Subject to those restrictions set forth in Section 222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject unspecified real property to the provisions of this Declaration.

Section 14.2 Reserved Development Rights of Expansion. Declarant reserves the right, without consent of any Owner or First Mortgagee being required, for itself and any Successor Declarant at any time and from time to time to subject additional phases of the Expansion Property to the provisions of this Declaration to include up to 9 additional Units and to expand the Common Elements.

14.2.1 Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder one or more Supplemental Declarations and Supplemental Map setting forth the Units and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion, which shall contain no more than 9 additional Units, may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant in its sole discretion, determines. All improvements to be constructed on the Expansion Property shall be substantially completed prior to the recording of the Supplemental Declaration and Map adding additional Units and the improvements shall be consistent with the Units hereby submitted to the Declaration in structure, type and quality of construction. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration.

14.2.2 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" shall mean the Units as shown on the Map plus any additional Units added by any Supplemental Declarations and Supplemental Maps, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Units shall be effective to transfer rights in the Property as expanded.

14.2.3 Declaration Operative on Expansion Property. Units added by Supplemental Declarations and Maps shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declarations, upon recording the Supplemental Map(s) depicting the Expansion Property and Supplemental Declaration(s) with the Clerk and Recorder. In the event that a portion of the Expansion Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit any additional portion of the Expansion Property to the provisions of this Declaration. The rights of Declarant and any Successor Declarant, as described herein, shall apply to all Units which are added to this Declaration in accordance with these provisions relating to enlargement thereof.

No rights or obligations of any character of any owner in Units in the Expansion Property shall attach until a Supplemental Declaration and Supplemental Map are filed with the Clerk and Recorder annexing the Units constructed in such area to the Project.

14.2.4 Effect on Expansion. Upon the construction of additional Units and their inclusion under this Declaration and the filing of the Supplemental Declaration(s) and Supplemental Map(s) thereof, the Allocated Interests applicable to a Unit shall be as set forth in Section 2.2 above, and the Supplemental Declaration shall amend Exhibit C.

Notwithstanding any inclusion of additional Units under this Declaration each Owner (regardless of whether such Owner is the owner of a Unit shown on the original Map or is the owner of a Unit constructed in the Expansion Property and included by a Supplemental Declaration and Map) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Association, including the expenses for such new Common Elements, costs and fees, if any. The recording of a Supplemental Declaration or Supplemental Plat shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.

Section 14.3 Reservation of Other Development Rights. Declarant reserves the right, without consent of any Owner or First Mortgagee being required, for itself and any Successor Declarant at any time and from time to time to exercise the following development rights within the Project: to create Units, Common Elements or limited Common Elements or convert Units into Common Elements.

Section 14.4 Other Reserved Rights. Declarant reserves the right for itself and any Successor Declarant, without consent of any Owner or Mortgagee being required, at any time

and from time to time to: (a) complete improvements indicated on the plats and Maps, (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size within one or more Units and within the General Common Elements; (c) to merge or consolidate the Project with a common interest community of the same form of ownership, (d) to appoint or remove any officer of the association or any Executive Board member during the Period of Declarant Control as set forth in Section 4.4 above; (e) to amend the Map to (i) insure that the language and all particulars that are used on the Map and contained in the Declaration are identical; (ii) establish, vacate and relocate utility easements, access easements, and parking spaces; (iii) establish certain Common Elements as Limited Common Elements; (iv) to reflect the subdivision or combination of any Unit as provided hereunder; and (v) as may be otherwise permitted by the Act; and (f) to exercise any other Declarant rights or development rights provided for herein.

Section 14.5 Change in Allocated Interests. In the event Declarant or a Successor Declarant exercises the right to add, withdraw, or convert Units as set forth above or to add Expansion Property, the Allocated Interests of the resulting Units after such expansion or withdrawal shall be according to the formula set forth in Section 2.2 above.

Section 14.6 Assign Parking. Declarant reserves the right to assign parking spaces for the exclusive use of the Owners of a particular Unit pursuant to a parking license as initially designated by the Declarant and upon such designation said parking space will be allocated to that Unit until expiration or termination of the parking license according to its terms. Declarant and the Executive Board shall have the right to modify or reassign the parking designations from time to time. Notwithstanding an assignment of parking spaces, all parking spaces shall be a part of the Common Elements.

Section 14.7 Termination of Rights. The rights reserved to the Declarant for itself, its successors and assigns in this Article shall expire, unless sooner terminated as required by the Act, until the earlier to occur of: (a) the conveyance of the last Unit to an Owner who is not Declarant or a Successor Declarant; or (b) ten (10) years from the date of recording this Declaration with the Clerk and Recorder, unless such rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Executive Board may impose on the subsequent exercise of the rights by Declarant. Further, Declarant reserves the right, at any time, and from time to time, to surrender or terminate some or all of the development or other rights reserved herein by recording a statement to that effect with the Clerk and Recorder. Notwithstanding the termination of the rights reserved to Declarant as provided herein, Declarant or a related party, may continue to own Units in the Project. By virtue of such ownership, Declarant may continue to influence and impact operation of the Association through the exercise of its voting rights, including but not limited to, election of Executive Board members and the possible appointment of persons related to Declarant to committees of the Executive Board.

ARTICLE 15

ALTERATIONS, ADDITIONS OR IMPROVEMENTS

TO COMMON ELEMENTS

Section 15.1 Alterations, Additions or Improvements to Common Elements: Other than alterations, additions or improvements made by Declarant, no alteration, addition or improvement to the Common Elements of any kind (including, without limitation, change in color, texture, street number, signage, doors or windows), or which in any manner affect the Common Elements (by way of example and not by way of limitation, air conditioning units, hot tubs, spas, fireplaces, built in cabinetry, skylights, and moving or removing structural walls), shall be made unless first approved in writing by the Executive Board. During the period specified in Section 14.8 above, Declarant shall be exempt from any requirement to obtain approval under the provisions of this Article 15. The Executive Board shall respond to any written request for approval of a proposed addition, alteration or improvement within thirty (30) days after the complete submission of the plans, specifications and other materials and information which the Executive Board may require in conjunction therewith. If the Executive Board fails to approve or disapprove any request within thirty (30) days after the complete submission of the plans, specifications, materials and other information with respect thereto, the request shall be deemed to have been disapproved by the Executive Board. In the event the Executive Board approves any such alteration, addition or improvement, it shall exercise reasonable business judgment to the end that any modifications to the Common Elements conform to and harmonize with existing surroundings and structures. The Executive Board has the absolute right to deny any requested changes.

Section 15.2 Governmental Approval: If any application to any governmental authority for a permit to make any such alteration, addition or improvement requires execution by the Association, and provided approval has been given by the Executive Board, then the application shall be executed on behalf of the Association by an authorized officer, only, without however incurring any liability on the part of the Executive Board, the Association or any of them to any contractor, subcontractor or materialman on account of such alteration, addition or improvement, or to any person having claim for injury to person or damage to property arising therefrom.

Section 15.3 Architectural Review Committee. The Executive Board shall have the right, without the obligation, to establish an Architectural Review Committee (the "Committee") which shall be responsible for such matters as may be assigned by the Executive Board, which may include, by way of example, and not by way of limitation, the following: establishment and administration of architectural or design guidelines, sign guidelines, window covering guidelines and lighting guidelines; review and recommendations for approval, disapproval or approval with conditions of alterations or additions to Common Elements (whether General or Limited); and such other matters as the Executive Board, may request.

Section 15.4 Association Right to Remove Unauthorized Alterations, Additions or Improvements: The Association, upon the majority approval by the Executive Board and after reasonable notice to the Owner of the offending Unit, may remove any alterations, additions or improvements constructed, reconstructed, refinished, altered, or maintained in violation of this Declaration, and the Owner shall immediately reimburse the Association for all expenses incurred in connection with such removal.

ARTICLE 16

MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers or guarantors of First Mortgagees. To the extent permitted under Colorado law and as applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws and Rules and Regulations of the Association.

Section 16.1 Title Taken by First Mortgagee. Any First Mortgagee of record against a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit (i) is acquired or (ii) could have been acquired under the statutes of Colorado governing foreclosure, whichever is earlier.

Section 16.2 Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any First Mortgagee against the Unit.

Section 16.3 Right to Pay Taxes and Charges. First Mortgages may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 16.4 Audited Financial Statement. Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety days an audited financial statement of the Association for the immediately preceding fiscal year at the expense of such Mortgagee.

Section 16.5 Notice of Action. Any First Mortgagee and any Agency which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and Unit number), will be entitled to timely written notice of:

16.5.1 Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (b) the interest in the Common Elements appurtenant to the Unit (excluding changes resulting from the exercise of Declarant Rights permitted under Article 14 hereof) or the liability of Assessments relating thereto, (c) the number of votes in the Association relating to any Unit, or (d) the purposes to which any Unit or the Common

Elements are restricted or any amendment set forth in Section 17.2 below:

16.5.2 Any proposed termination of the common interest community;

16.5.3 Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured or guaranteed by such Agency;

16.5.4 Any delinquency in the payment of Assessments owed by a Unit Owner subject to the Mortgage when such delinquency has continued for a period of sixty days;

16.5.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article 9.

Section 16.6 Action by Mortgagee. If this Declaration or any Association Documents require the approval of any Agency or Mortgagees then, if any Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE 17

DURATION OF COVENANTS AND AMENDMENT

Section 17.1 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.

Section 17.2 Amendment. This Declaration, or any provision of it, may be amended at any time by vote or agreement of Owners to which fifty-one percent (51%) or more of the votes in the Association are allocated, and (b) approval shall first be obtained of fifty-one percent (51%) of First Mortgagees who have provided notice to the Association, if the amendment to the Association Documents add or delete any material provisions which establish, provide for, govern or regulate any of the following:

17.2.1 Voting;

17.2.2 Assessments, Assessment liens or subordination of such liens;

17.2.3 Reserves for maintenance or repair and replacement of the Common Elements;

17.2.4 Insurance or fidelity bonds;

17.2.5 Reallocation of interests in the Common Elements, or rights to use the

Common Elements other than as set forth in Article 14;

17.2.6 Responsibility for maintenance and repair of the Project;

17.2.7 Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community other than as set forth in Article 14;

17.2.8 Boundaries of any Unit except as provided herein;

17.2.9 The interests in the Common Elements except as provided herein;

17.2.10 Convertibility of Units into Common Elements or of Common Elements into Units except as provided herein;

17.2.11 Imposition of any restrictions on the leasing of Units;

17.2.12 Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his Unit;

17.2.13 Establishment of self-management by the Association where professional management has been required by any Agency;

17.2.14 Any provision which is for the express benefit of an Agency or First Mortgagee regardless of whether the amendment is material;

17.2.15 Hazard or fidelity insurance requirements; and

17.2.16 Restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein.

Section 17.3 Amendment for Certain Actions. Notwithstanding anything else contained in this Declaration, except as provided by the Act or in furtherance of the Declarant's exercise of its Special Declarant Rights or development rights, and except in case of condemnation or substantial loss to the Units and/or Common Elements, unless at least two-thirds (2/3rds) of First Mortgagees and two-thirds (2/3rds) of Owners (other than Declarant) of the Units have given their prior written approval, the Association may not:

17.3.1 By act or omission seek to abandon or terminate the condominium regime created hereby;

17.3.2 Reallocate the Allocated Interest or obligation of any Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the Percentage Share of Ownership of Common Elements other than as set forth in Article 14;

17.3.3 Partition or subdivide any Unit;

17.3.4 Seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements by act or omission other than the grant of easements for public utilities or other public purposes consistent with the intended use of the Common Elements and other than as set forth in Article 14;

17.3.5 Use hazard insurance proceeds for losses to any part of the Property (whether Units or Common Elements) for other than the repair, replacement or reconstruction of the Project.

Section 17.4 Execution of Amendment. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted under this Declaration and the Act.

ARTICLE 18

LIMIT ON TIMESHARING

No Owner of any Unit shall offer or sell any interest in such Unit under a "timesharing" or "interval ownership" plan, or any similar plan.

ARTICLE 19

GENERAL PROVISIONS

Section 19.1 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.

Section 19.2 Enforcement. Except as otherwise provided in this Declaration, the Master Association, the Executive Board, Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or the Master Declaration. Failure by the Executive Board of the Association, Declarant or by any Owner to enforce any covenant or restriction contained in this Declaration or the Master Declaration shall in no event be deemed a waiver to the right to do so thereafter. In any action instituted or maintained for enforcement of the Association Documents, 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.

Section 19.3 Master Association The Master Association shall have the right:

19.3.1 To enforce any provision of this Declaration, the Map, the Master Declaration, the Master Plat and/or any rules, regulations, restrictions and policies adopted by the Association or the Master Association and to recover all costs, including reasonable attorneys' fees and costs, incurred in connection with such enforcement.

19.3.2 To obtain reasonable documentation within 14 days of a request therefor establishing compliance with the terms and conditions of this Declaration, the Map, the Master Declaration, the Master Plat and/or any rules, regulations, restrictions and policies adopted by the Association or the Master Association.

19.3.3 To require the Association to be managed by a professional property manager if the Master Association reasonably decides that the Association is not maintaining adequate financial reserves, maintaining required insurance, maintaining the exterior condition and/or appearance of the Property or complying with all terms and conditions of this Declaration, the Map, the Master Declaration, the Master Plat and/or all rules, regulations, restrictions and policies adopted by the Association or the Master Association.

Section 19.4 Conflicts Between Documents. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control. In case of conflict between the Association's Documents and the governing documents of the Master Association, the governing documents of the Master Association shall control.

Section 19.5 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 19.6 Conflicts Between Documents. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 19.7 Disclosures and Owners' Acknowledgment: Declarant hereby discloses, and each Owner by virtue of accepting a conveyance of a Unit hereby acknowledges, that the Project consists of many attached Units, and the proximity of such Units as well as the connection of Units may lead to higher noise levels as well as other disruptions, annoyances or inconveniences inherent in attached housing.

In Witness Whereof the undersigned have set their hands on the day and year first set forth above.



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Coburn Development, Inc., a Colorado
corporation

By: William E. Coburn II - PRESIDENT
title

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this 20th day of AUGUST,
2002, by WILLIAM E. COBURN, II as PRESIDENT of
Coburn Development, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires: 07/02/04



Angela H. Reeves
Notary Public



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CONSENT TO
AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR
PITCHFORK

The Town of Mt. Crested Butte hereby approves the above and foregoing Amended and Restated Declaration of Protective Covenants for Pitchfork.

Dated this 3rd day of September, 2002.

Town of Mt. Crested Butte

By: Charles C. Stearns
Town Manager Title

Attestation:

Donna Arwood
Town clerk Title

STATE OF COLORADO)
) ss.
COUNTY OF Gunnison)

The foregoing Consent to Amended and Restated Declaration of Protective Covenants for Pitchfork was acknowledged before me this 3rd day of September, 2002, by Chuck Stearns as Town Manager and Donna Arwood as Town Clerk of the Town of Mt. Crested Butte.

Witness my hand and official seal.

My commission expires: Feb 22, 2003

[SEAL]



MY COMMISSION EXPIRES:
February 22, 2003

Andrea Ruggera
Notary Public



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**EXHIBIT A
TO
AMENDED AND RESTATED CONDOMINIUM DECLARATION
OF PITCHFORK CONDOMINIUMS**

PROPERTY SUBJECT TO DECLARATION

LEGAL DESCRIPTION:

Lot 1, Pitchfork, according to the Plat thereof recorded August 21, 2000 as Reception No. 504415 and in Modification of Final Plat bearing Reception No. 510377 and the Declaration of Protective Covenants for Pitchfork recorded May 2, 2001, as Reception No. 510378 as amended and superseded by the Amended and Restated Declaration of Protective Covenants for Pitchfork recorded as Reception No. 523046 of the Gunnison County records, Town of Mt. Crested Butte, County of Gunnison, State of Colorado

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EXHIBIT B
TO
AMENDED AND RESTATED CONDOMINIUM DECLARATION
OF PITCHFORK CONDOMINIUMS

EXPANSION PROPERTY

LEGAL DESCRIPTION

Lots 12¹, 34 and 36, Pitchfork, according to the Plat thereof recorded August 21, 2000 as Reception No. 504415 and in Modification of Final Plat bearing Reception No. 510377 and the Declaration of Protective Covenants for Pitchfork recorded May 2, 2001, as Reception No. 510378 as amended and superseded by the Amended and Restated Declaration of Protective Covenants for Pitchfork recorded as Reception No. 523046 of the Gunnison County records, Town of Mt. Crested Butte, County of Gunnison, State of Colorado

¹ Inclusion of Lots 12 and 36 as part of the Expansion Property is not intended to signify that such lots may be used for condominiums, and such use is not permitted unless approved by the Town of Mt. Crested Butte.



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EXHIBIT C
TO
AMENDED AND RESTATED CONDOMINIUM DECLARATION
OF PITCHFORK CONDOMINIUMS

UNDIVIDED INTEREST IN COMMON ELEMENTS, VOTES IN ASSOCIATION
AND COMMON EXPENSE LIABILITY

<u>Unit Number</u>	<u>Allocated Interest in Common Elements</u>	<u>Votes Allocated to Units</u>	<u>Common Expense Liability</u>
A	16.67%	1	16.67%
B	16.67%	1	16.67%
C	16.67%	1	16.67%
D	16.67%	1	16.67%
E	16.67%	1	16.67%
F	<u>16.67%</u>	<u>1</u>	<u>16.67%</u>
	100.00%	6	100.00%

**EXHIBIT D
TO
AMENDED AND RESTATED CONDOMINIUM DECLARATION
OF PITCHFORK CONDOMINIUMS**

EASEMENTS AND LICENSES ENCUMBERING THE PROJECT

1. United States Patent recorded in Book 101 at Page 449.
2. Any tax, assessment, fees or charges by reason of the inclusion of the Property in the Mt. Crested Butte Water and Sanitation District and within the Town of Mt. Crested Butte Special Improvement District.
3. Right of Way for sewer line as shown on the plat of Snowfall Point Condominiums bearing Reception No. 299999.
4. License Agreement recorded in Book 702 at Page 606.
5. Easements, dedications, terms and provisions set forth on the plat of Pitchfork recorded as Reception No. 504415 and in Modification of Final Plat bearing Reception No. 510377.
6. Assessments, covenants, restrictions, easements, terms, and provisions set forth in the Declaration of Protective Covenants for Pitchfork recorded as Reception No. 510378 and Approval of Mt. Crested Butte recorded as Reception No. 510379.
7. Pitchfork Subdivision Improvements Agreement recorded as Reception No. 504416.
8. Dedication of Snow Storage Easements recorded as Reception No. 504418.
9. Pitchfork Occupancy and Resale Deed Restriction, Agreement and Covenant bearing Reception No. 507107 and Modification thereof bearing Reception No. 510376.