

**SECOND AMENDMENT TO THE AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PITCHFORK  
TOWNHOMES (PROPOSED)**

This Second Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Pitchfork Townhomes (Second Amendment) is executed with an effective date of \_\_\_\_\_, 2024, by Pitchfork Townhomes Association, Inc., a Colorado nonprofit corporation (Association). This Second Amendment to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Pitchfork Townhomes amends that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Pitchfork Townhomes, recorded in in the real property records of Gunnison County, Colorado, on August 21, 2002 at Reception No. 523047 (Covenants), and has been approved by the Owners, pursuant to Article 15, Section 15.2 of the Covenants and pursuant to the Colorado Common Interest Community Act, C.R.S. §§ 38-33.3-101, *et seq.* Pursuant to C.R.S. § 38-33.3-217(5), the Association hereby adopts, executes, and certifies the following Second Amendment to Amended and Restated Covenants and Restrictions for Pitchfork Townhomes.

WHEREAS, Pitchfork Townhomes is a phased common interest community located in Mt. Crested Butte, Colorado and was created in 2001, pursuant to C.R.S. §§ 38-33.3-101, *et seq.*, consisting of a total of eight buildings and 25 Units; and

WHEREAS, the eight buildings are Rocking E (Reception No. 511340 and amended by Reception No. 523047), Building A, Double W, Building B, Double W (both recorded at Reception No. 511707 and amended by Reception No. 523047), Flying G (Reception No. 523047), Little Annie (Reception No. 521769 and amended by Reception No. 523047), Mighty J (Reception No. 523048), Big Sky (Reception No. 561519), and Big Sky II (Reception No. 595000), collectively referred to hereinafter as Buildings, or individually, Building, all of which have been added to the Project by the proper filings in the Clerk and Recorder's Office of Gunnison County, Colorado, which reception numbers are set forth for each thereafter; and

WHEREAS, an Amendment to Amended and Restated Declaration of Protective Covenants for Pitchfork Townhomes as recorded at Reception No. 680212; and

WHEREAS, any references hereunder to exhibits, such as Exhibit E, refer to the exhibits filed and recorded with the Covenants at Reception No. 523047, as may be amended herein; and

WHEREAS, several of the lots and Buildings thereon were platted prior to completion of construction of the same, so that certain General Common Elements and Limited Common Elements were not designated as such; and

WHEREAS, the Association and Owners now desire the designate certain Limited Common Elements and General Common Elements;

WHEREAS, the Association and Owners desire to further amend certain provisions of the Covenants, having to do with the designation of certain Limited Common Elements, including maintenance thereof, and maintenance responsibility of certain Common Elements of each Building, as defined below, and have received the requisite affirmative votes as set forth herein.

NOW THEREFORE, the Association and the Owners, for themselves, their successors and assigns, do hereby publish, establish and declare that the following amendments to the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations, as they may be amended from time to time, shall be deemed to run with the land, shall be a burden and a benefit to the Association and the Owners, and binding upon any person or entity having any right, title, and interest in and to the Project or Pitchfork Townhomes, or any part thereof, and their heirs, successors and assigns, and shall inure to and be for the benefit of each Owner within Pitchfork Townhomes.

Unless amended herein, all other provisions of the Covenants shall remain in full force and effect.

- 1.) Article I, Section 1.8.2 is hereby amended to delete reference to Exhibit E in 1.8.2(i) and replace it with Exhibit F, attached hereto; to amend subpart (i) as follows; and to insert reference to Exhibit E, as amended and attached hereto, in Section 1.8.2.(ii) as follows.

1.8.2 "Allocated Interests" means: the Common Expense liability and the votes in the Association, all as set forth in the attached amended Exhibit E. The formulas for the Allocated Interests are as follows:

(i) Percentage Share of Common Expenses: This figure is determined by the percentage equivalent to a fraction, the numerator of which shall be the number of bedrooms in a Unit (as determined by the Declarants), and the denominator of which shall be the total number of all bedrooms in all Units in the eight (8) Buildings comprising Pitchfork Townhomes as set forth in the attached Exhibit E; or in the case of Special Assessments for each Building's maintenance of Common Elements, as set forth in Exhibit F.

(ii) Voting: Each Unit shall be allocated a number of votes equal to the number of bedrooms in such Unit, pursuant to Exhibit E. No Owner shall be entitled to vote on 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 3.4 herein.

- 2.) Article I, Section 1.8.5 is hereby deleted in entirety and replaced with the following provision.

1.8.5 "Common Elements" or "Common Areas" or "General Common Elements" means all of the Project which is not a Unit or a Limited Common Element, including easements or leasehold interests, owned by the Association, or for which the Association has an obligation to maintain as set forth in the attached Exhibit C. Except as further defined and unless set forth below, Common Elements shall include: (i) foundations, columns, girders, beams and supports of the buildings; (ii) siding, exterior walls of the building-studs out as well as the main or bearing subflooring; (iii) roofs of the buildings; (iv) parking areas as well as some common access alleys (not otherwise designated as a Limited Common Element); (v) landscaping and sidewalks; and (vi) all other physical or structural elements of

the Project existing or provided for common use by the Owners or which are normally or reasonably considered to be for common use by the Owners; except that any shutters, doorsteps, stoops, exterior stairs, landings, porches, decks, balconies, covered breezeways, exterior doors and windows or other fixtures designed to serve a single Unit, but outside of the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

1.8.5.1 Rather than the Association being responsible for certain General Common Elements repair and replacement, each Building within Pitchfork Townhomes shall be responsible for such repair and replacement, thereof appurtenant to each individual Building, including roofs, siding, physical or structural elements such as exterior walls of the building - i.e. studs out - as well as the main or bearing subflooring, as set forth below and in accordance with Exhibit C, as amended, including the payment therefor.

1.8.5.2 Maintenance of Limited Common Elements which are exclusive in use to fewer than all the Units in a Building shall be subject to Section 2.2 below.

3.) Article I, Section 1.8.11 is hereby deleted in entirety and replaced with the following.

1.8.11 "Limited Common Elements" means a portion of the Common Elements allocated by this Second Amendment, the Plat, or by operation of the Act for the exclusive use of one or more Units but fewer than all of the Units, which maintenance thereof is the responsibility of that Unit Owner(s), individually or collectively for a Building, as applicable. In addition to those Limited Common Elements set forth above in Section 1.8.5 and 1.8.5.2 and on the respective Plats, Exhibit C, as amended, further defines the Limited Common Elements for the Project.

4.) Article 1, Definitions, is hereby amended to add:

1.8.21 "Building" means each of the buildings within Pitchfork Townhomes, specifically being Big Sky, Big Sky II, Rocking E, Building A and Building B-Double W, Flying G, Little Annie, and Mighty J Buildings.

5.) Article 2, Section 2.2 is hereby deleted and replaced in entirety as follows:

Section 2.2 **Maintenance by Owners.** Except as otherwise provided herein, each Owner shall maintain, repair, and replace, as necessary, all portions of such Owner's Unit, including the finished surfaces of all interior parts as all walls, floors and ceilings, and other elements comprising a part of the interior of the Units, as well as Limited Common Elements appurtenant thereto which use is exclusive to such Unit. If Owners share the use of a Limited Common Element, they shall share the expense of maintenance, repair, and replacement of the same equally. Each Owner shall maintain and keep in good repair the interior of his Unit, including the fixtures thereof and the finished

surfaces of all interior parts as all walls, floors and ceilings, and other elements comprising a part of the interior of the Units, to the extent repair or maintenance shall be necessary in order to avoid damaging other Units, Owners and Common Elements. All utility lines, pipes, wires, conduits, systems, fixtures and equipment serving only a single Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of such Unit, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act or any work that will affect the Common Elements or impair the structural soundness or integrity of the Common Elements. An Owner shall do no act nor any work that will impair any easement or hereditament or do any act or allow any condition to exist that will adversely affect any other Unit or its Owner. The Association shall retain enforcement rights with respect to an Owner's responsibility to repair, including lien rights for failure to pay for such repair.

6.) Article 2, Section 2.3 is hereby deleted and replaced in entirety with the following:

Section 2.3 **Owner's Failure to Maintain or Repair**. In the event that a Unit or its Limited Common Elements is/are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit or its Limited Common Elements lies with the Owner of the Unit, or in the event that a Unit or its Limited Common Elements 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 of the same 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 or its Limited Common Elements negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit or its Limited Common Elements to perform such work as is reasonably required to restore the same to a condition of good order and repair, except that no advance notice or approval shall be required in the event of an emergency. All costs incurred by the Association in connection with the repair or restoration shall be reimbursed to the Association by the Owner of the Unit, including those responsible for the maintenance of the LCE, as a Special Assessment. 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 4 of this Declaration, and pursuant to law.

7.) Article 2, Section 2.4 is hereby deleted and replaced in entirety with the following.

Section 2.4 **Maintenance by Association**. The Association shall be responsible for the maintenance, repair and replacement of those items of the Project not specifically required to be maintained by an Owner (as set forth in Sections 2.1

and 2.2 above and subject to Section 2.5 below), and as set forth in Exhibit C. For clarity, the Association shall be responsible for the snow removal of any access alleys or driveways serving the Buildings, whether designated as a General or Limited Common Element, but not individual covered parking spaces. In the event the Association does not maintain or repair the Common Elements as set forth herein, until the expiration of the Period of Declarant Control, Declarants shall have the right, but not the obligation, to do so at the expense of the Association.

8.) Article 2, Section 2.5 is hereby deleted and replaced in entirety with the following.

Section 2.5 **Association Maintenance as Common Expense**. Subject to availability of any insurance proceeds, the cost of maintenance, repair and replacement of a Common Element or a Limited Common Element by the Association shall be a Common Expense, to be shared by Unit Owners according to the Allocated Interests therefor, unless otherwise set forth herein. Pursuant to the Allocated Interests set forth in Exhibit F, the Owners of the Units of a single Building shall vote to approve maintenance or repair of Common Elements of their Building, including the costs therefor. In the event that a majority of the Unit Owners of that Building are unable to achieve the requisite majority vote, as set forth in Exhibit F, the Executive Board may approve maintenance or repair of the Common Element(s) after making a determination that the condition of such Common Element (i) negatively impacts other Units or Owners within the Project or (ii) impairs the structural soundness or integrity of other Common Elements, or Units. Such decision shall be based on the opinion of a construction professional and a budget prepared by the construction professional and approved by the Executive Board. Costs incurred by the Association in such an event shall be reimbursed to the Association by the Owners of the Units of the Building as a Special Assessment allocated in accordance with Exhibit F. All unreimbursed costs shall be a lien upon each Unit of the Building until reimbursement is made, with the Association retaining enforcement rights thereof. 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 shared by the Owners according to the Allocated Interests. However, if such damage is 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 that the Owner or Owner's Agent's negligence caused such damage, which must be timely paid.

8. Article 2, Section 2.6 is hereby deleted and replaced in entirety with the following.

Section 2.6 **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 Owners of the Units to which the Limited Common Element is appurtenant shall bear the expense to repair or rebuild the Limited Common Element, in accordance with

Exhibit F, to its previous condition, except that, to the extent that damages to the Limited Common Elements are covered by insurance, the insurance proceeds shall be used and applied to repair, restore and replace the Limited Common Elements. An Owner shall bear the cost of such damage to the extent of such Owner's or Owner's Agent's negligence or tortious acts.

9.) Article 3, Section 3.8.6 is hereby deleted in entirety and replaced with the following.

3.8.6 Regulate the use, maintenance, repair, replacement and modification of Common Elements in accordance with the provisions of Section 2.4, 2.5 above and Exhibits C and F;

10.) Article 3, Section 3.8.8 is hereby deleted in entirety and replaced with the following.

3.8.8 Acquire, hold, encumber and convey in the name of the Association any real or personal property, except that General Common Elements may be conveyed or subjected to a security interest only if (a) Members entitled to cast at least sixty- seven percent (67%) of the votes, in accordance with Exhibit E, agree to that action, and (b) if all Owners of Units to which any Limited Common Element is appurtenant agree in order to convey that Limited Common Element or subject it to a security interest;

11.) Article 5, Section 5.5.3 is hereby deleted in entirety and replaced with the following.

5.5.3 There is a vote not to rebuild by (a) Owners holding sixty-seven percent (67%) of the votes for the Building(s) at issue, as set forth in Exhibit F, that has the damaged Common Element; and (b) every Owner of a Unit or allocated Limited Common Element that will not be rebuilt.

12.) Article 15, Section 15.2 is amended to delete and insert certain provisions as follows:

Section 15.2 **Amendment.** Except as otherwise provided in Section 14.1, this Declaration and/or the Plat may be extended, modified, amended or added to, in whole or in part, upon the written consent by the Owners holding more than fifty percent (50%) of the votes in the Association, subject to approval by the Town, and the law. Termination of this common interest community, Pitchfork Townhomes, shall be subject to an affirmative vote of approval by 67% of the Owners. Upon instruction from the Executive Board, the President and Secretary of the Association may certify in a notarized affidavit attesting to their receipt and review of the necessary number of signatures and that the appropriate number of Owners voted in favor of the amendment, in lieu of recording each individual signature. Any such amendment shall be by an instrument duly executed, acknowledged and recorded in the

records of Gunnison County, Colorado, and upon such recording shall be for the benefit of and be binding on all Owners of Units within the Common Interest Community.