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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR  
PITCHFORK TOWNHOMES**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
PITCHFORK TOWNHOMES**

**This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Pitchfork Townhomes ("Declaration")** is made this \_\_\_\_ day of \_\_\_\_\_, 2002 by Coburn Development, Inc., a Colorado corporation and Pitchfork, LLC, a Colorado limited liability company (hereafter collectively "Declarants").

**Recitals**

A. Coburn Development, Inc. previously recorded a Declaration of Covenants, Conditions and Restrictions for Pitchfork Townhomes (the "Original Declaration") at Reception No. 510711 in the office of the Clerk and Recorder of Gunnison County, Colorado which created a common interest community pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statute §38-33.3-101 et. seq. (the "Act") under the name of Pitchfork Townhomes, and which encumbers the real property situated in the County of Gunnison, State of Colorado more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. Subsequent to the recording of the Original Declaration, Coburn Development, Inc. executed and caused to be recorded a Declaration of Annexation and Amendment to the Declaration and Map with respect to the Rocking E Building.

C. Subsequent to the recording of the Original Declaration, Coburn Development, Inc. executed and caused to be recorded a Declaration of Annexation and Amendment to the Declaration and Map with respect to the Double W Building.

D. Coburn Development, Inc. previously conveyed certain of the property described in Exhibit A to Pitchfork, LLC, and along with such conveyance, assigned Declarant Rights by instrument recorded December 11, 2001 at Reception number 516452 in the offices of the Clerk and Recorder of Gunnison County, Colorado.

E. The Original Declaration provides that it may be amended by the owners of Units having sixty-seven percent (67%) of the common expense responsibility, and further, that no amendment which affects the Association shall be effective without the written approval of the Executive Board.

F. Declarants desire to amend and restate the Original Declaration, and the undersigned represent owners of Units having sixty-seven percent (67%) of the common expense responsibility, and further the Association's Executive Board has given its written approval to such amendments.



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Now, therefore, Declarants hereby declare that that portion of the Property described in **Exhibit B** attached hereto and incorporated herein by this reference 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 described real 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

### Scope of the Common Interest Community and Association; Description of Unit/Definitions

Section 1.1 **The Common Interest Community.** The name of the Common Interest Community is Pitchfork Townhomes. It is a planned community.

Section 1.2 **The Association.** The name of the Association is Pitchfork Townhomes Association, Inc.

Section 1.3 **Maximum Number of Units.** The Declarants reserve the right to create a maximum of fifty (50) Units in the Common Interest Community.

Section 1.4 **Description of Units.** Every instrument affecting the title to a Unit may describe that Unit as follows:

Unit \_\_\_\_\_, \_\_\_\_\_ [insert name of building], according to the plat thereof bearing Reception No. \_\_\_\_\_ and the Declaration of Covenants, Conditions and Restrictions for Pitchfork Townhomes bearing Reception No. \_\_\_\_\_ of the Gunnison County, Colorado records, Town of Mt. Crested Butte, County of Gunnison, State of Colorado.

Such method of description shall be sufficient for all purposes to sell, convey, transfer and encumber or otherwise affect the Unit and all other appurtenant properties and property rights and incorporate all of the rights, duties, limitations and burdens incident to ownership of a Unit as described in this Declaration. Upon annexation of additional Units as provided in this Declaration, such additional Units shall be described by their Unit identification letter, and the name of their building, according to the recorded plat for such building and lot.

Section 1.5 **Identification of Units.** The identification number of each Unit is shown on the Plat.

Section 1.6 **Lot Boundaries.** The boundaries of each Unit are as shown on the Plat.

Section 1.7 **Units as Separate Taxing Parcels.** 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.

Section 1.8 **Definitions.** The following words when used in this Declaration shall have the following meanings:

1.8.1 **"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.

1.8.2 **"Allocated Interests"** means: the Common Expense liability and the votes in the Association, all as set forth in 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 Common Interest Community (as determined by the Declarants). The percentage share of Common Expenses at the time of filing this Declaration is set forth in Exhibit E.

(ii) **Voting:** Each Unit shall be allocated a number of votes equal to the number of bedrooms in such 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 3.4 herein.

1.8.3 **"Association"** means the Pitchfork Townhomes Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

1.8.4 **"Association Documents"** means this Declaration, the Articles of Incorporation and the Bylaws of the Association, the Plat, architectural, design or other guidelines, and any procedures, rules, regulations or policies adopted under such documents by the Association.

1.8.5 **"Common Elements" or "Common Areas"** means any property within 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. The Common Elements initially owned by the Association upon execution of this Declaration by Declarants are described in **Exhibit C** attached hereto and incorporated herein by this reference.

1.8.6 "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) incurred for the benefit of more than one Owner; (iv) insurance premiums for the insurance carried under Article 5; and (v) all expenses lawfully determined to be common expenses by the Executive Board. The Common Expenses may include, but shall not be limited to, snow removal, common wall maintenance and repairs, roof maintenance or repairs, or common utilities and common facilities, driveway/parking area maintenance and plowing, liability insurance, fire and extended coverage insurance, landscaping and care of grounds, common lighting, exterior decoration, painting, repairs and renovations, refuse collection, water and sewer charges, wages, legal and accounting fees, management fees and all expenses and liabilities incurred under or by reason of this Declaration. The Association shall pay all water, sewer and trash charges levied on the individual units and any common elements, in accordance with the ordinances, rules and regulations of the Town of Mt. Crested Butte and the rules and regulations of the Mt. Crested Butte Water and Sanitation District.

1.8.7 "Eligible Mortgagee" shall mean the holder of a First Security Interest in a Unit, when the holder has notified the Association, in writing, of its name and address and that it holds a First Security Interest in a Unit. The notice must include the address of the Unit on which it has a security interest. This notice shall include a request that the Eligible Mortgagee be given the notices and other rights described in Article 13.

1.8.8 "Executive Board" means the governing body of the Association.

1.8.9 "First Security Interest" shall mean a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.8.10 "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.

1.8.11 "Limited Common Elements" means a portion of the Common Elements allocated by this Declaration, the Plat, or by operation of the Act for the exclusive use of one or more Units but fewer than all of the Units.

1.8.12 "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.

1.8.13 "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.

1.8.14 "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.

1.8.15 "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.

1.8.16 "Pitchfork Master Association, Inc." means the master owners' association for the entire Pitchfork subdivision.

1.8.17 "Plat" means the Plat of Flying G Townhomes as recorded in the Gunnison County, Colorado records, Town of Mt. Crested Butte, County of Gunnison, State of Colorado, together with such additional plats of the properties described in **Exhibit D** as may be annexed into the Association (the "Expansion Properties").

1.8.18 "Project" means the Pitchfork Townhomes, and shall have the same meaning as the term "Common Interest Community" in the Act.

1.8.19 "Security Interest" or "Mortgage" shall mean an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in a Unit or the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Article 13 hereof with respect to notice of cancellation or substantial modification of certain insurance policies, "Security Interest" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of Gunnison County, Colorado, show the Administrator as having the record title to the Unit.

1.8.20 "Unit" means each platted lot which is a physical portion of the Project, other than Common Elements, designated for separate ownership or occupancy, the boundaries of which are described on the Plat.

## ARTICLE 2

### Party Walls and Maintenance

Section 2.1 **Party Walls**. The walls that are constructed as a common part of adjacent Units and which are located between such Units constitute party walls, as shown on the Plat.

2.1.1 **Party Wall Maintenance**. Except as is otherwise provided herein, the cost of repairs, maintenance and replacement of each party wall shall be the joint expense of the Owners of the Units adjacent to such wall.

2.1.2 **Party Wall Finished Surface Maintenance**. Except as otherwise provided herein, the cost of repairs and maintenance of the drywall and finished surface of the party wall located within a Unit shall be the sole expense of the Owner of that Unit.

2.1.3 **Damage to Party Wall**. If the party wall is damaged or destroyed by the act, fault or negligence of the Owner of a Unit, such owner shall rebuild said wall and shall compensate the other Owner for any damage to the property of the Owner of a Unit adjacent to such wall (including, but not limited to, the drywall and finished surface of the party wall located within the Unit of the other owner).

2.1.4 **Insurance**. To the extent that damages to a party wall are covered by insurance, the insurance proceeds shall be used and applied to repair, restore and replace the party wall. Any deficiency shall be the joint expense of the Owners, without prejudice, however, to the right of any Owner to demand a larger contribution from the other Owner under the provisions of this Declaration or under any rule of law regarding liability for negligent or willful acts or omissions.

2.1.5 **Owner's Negligence**. Notwithstanding any provision of this Declaration to the contrary, an owner who by his negligent or willful act or omission causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

2.1.6 **Utilities**. Except as otherwise provided herein, an Owner shall have the right to maintain and repair any utility installations located within a party wall and in so doing, shall restore the party wall to its original condition. Notice shall be given to the adjoining Owner prior to undertaking any such action. All such undertakings will be done so as to avoid or minimize damage to the adjoining Owner's property.

2.1.7 **Common Systems**. Notwithstanding any other provision of this Article 2 to the contrary, all utility lines, pipes, wires, conduits, electrical, plumbing, heating/cooling, mechanical and other systems serving more than one Unit shall be maintained, repaired and replaced by the Association, and the expense therefor shall be a Common Expense.



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, as well as Limited Common Elements appurtenant to such Owner's Unit. Each Owner shall maintain and keep in good repair the interior of his Unit, including the fixtures thereof 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.

Section 2.3 **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 a 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 notice or 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 4 of this Declaration.

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 unless necessitated by damage caused by the negligence, misuse or tortious act of a Unit Owner or Owner's Agent as set forth in Section 2.5 below). In the event the Association does not maintain or repair the Common Elements, 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.

Section 2.5 **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, to be shared by Unit Owners according to the Allocated Interests therefor. 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.

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 then Owners of the Units to which the Limited Common Element is appurtenant shall bear equally the expense to repair or rebuild the Limited Common Element 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.

Section 2.7 **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 3

#### **The Association; Membership; Administration and Management**

Section 3.1 **Management By Association.** The operation and management of the Common Interest Community shall be undertaken by the Association which has been formed and will be operated as a Unit owners' association on behalf of all Owners of Units currently subject to, or hereafter annexed into and made subject to, this Declaration.

Section 3.2 **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 3.3 **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 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 3.4 **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 who is in Good Standing shall be entitled to vote in all matters affecting the Association. The Owner of a Unit is entitled to vote the number of votes allocated to each Unit owned. If more than one person holds such interest, the vote for such Unit shall be exercised as the persons holding such interest shall determine between themselves, provided that in no event shall more than the number of allocated votes be cast with respect to any Unit.

Section 3.5 **Declarant Control.** Declarants 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 this Declaration; (b) sixty (60) days after Declarants convey seventy-five percent (75%) of all Units that may be created to Owners other than Declarants; (c) two (2) years after the last conveyance of a Unit by Declarants in the ordinary course of business; or (d) two (2) years after the right to add new Units was last exercised. Declarants may voluntarily relinquish such power evidenced by a notice executed by Declarants and recorded with the Gunnison County Clerk and Recorder but, in such event, Declarants may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarants would otherwise be entitled to appoint and remove directors and officers, be approved by Declarants 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 Declarants, 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 Declarants. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Owners other than Declarants, 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 Declarants.

Section 3.6 **Delivery of Documents by Declarants.** Within sixty (60) days after the Owners other than the Declarants elect a majority of the members of the Executive Board, the Declarants shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarants, including, without limitation, the following items:

- A. The original or a certified copy of the recorded Declaration, as it may be 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 Declarants Control ends;
- C. The Association funds, books and records;
- D. All of the tangible personal property that has been represented by the Declarants 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 Declarants 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 Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarants'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 3.7 **Executive Board.** Except as otherwise provided in this Declaration or the Bylaws, the Executive Board may act in all instances on behalf of the Association. Except for members of the Executive Board appointed by the Declarants during the Period of Declarants 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. The initial Executive Board shall have three (3) members. By resolution of the Executive Board, the size of the Executive Board may be increased to five (5) or seven (7) members.

Section 3.8 **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:

- 3.8.1 Adopt and amend bylaws and rules, regulations, restrictions and policies;
- 3.8.2 Determine Common Expenses and adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;
- 3.8.3 Hire and terminate managing agents and other employees, agents and independent contractors;
- 3.8.4. 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;



3.8.5 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 Declarants 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;

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

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

3.8.8 Acquire, hold, encumber and convey in the name of the Association any 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 sixty-seven percent (67%) of the votes agree to that action, and (b) 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;

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

3.8.10 Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements (but not including the Limited Common Elements);

3.8.11 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);

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

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

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

3.8.15 Exercise any other powers conferred by the Association Documents;

3.8.16 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

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

Section 3.9 **Books and Records.** The Association shall make available for inspection to Owners, upon request, during normal business hours or under other reasonable circumstances, 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 3.10 **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.

Section 3.11 **Enforcement.** The Association and the Master Association, or both, on behalf of themselves 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, the Master Association documents or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents or in the Master Association documents. In any action covered by this section, the Association, the Master Association or any Unit Owner shall have the right but not the obligation to enforce the Association Documents or the Master Association documents, or both, 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 3.12 **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 3.13 **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 4

### Assessments

Section 4.1 **Personal Obligation.** Each Owner, including Declarants 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 4.2 **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 budgets, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver, a summary of the Common Expense 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 sixty-seven percent (67%) of all Owners reject the Common Expense budget, the Common Expense budget is ratified, whether or not a quorum of all Members is present. In the event that a proposed Common Expense 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 4.3 **Annual Assessments.** An Owner's Annual Assessments shall be determined based on the adopted and ratified Common Expense 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 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 4.4 **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 Common Expense budget. Until commencement of the Annual Assessments, the Declarants shall pay all Common Expenses of the Association.

Section 4.5 **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, maintenance, repair, restoration 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 4.5 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, subject to the right of the Association to assess only against the Owners of affected Units, any construction, reconstruction, maintenance, repair, restoration or replacement expense. 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 thirty (30) days after such notice shall have been given.

Section 4.6 **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 thirty (30) days prior to the due date.

Section 4.7 **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 during any period of delinquency.

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 security interest having priority over all other security interests in the Unit made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments will be prior to a security interest having priority over all other security interests in the Unit 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 4.8 **Payment by Holder of Security Interest.** Any holder of a security interest 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 holder of a security interest shall have a lien on the Unit for the amounts paid with the same priority as the lien of the security interest.

Section 4.9 **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, holder of a security interest or its designee 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 for unpaid Assessments which were due as of the date of the request.

Section 4.10 **Capitalization of the Association.** The Association shall require the first Owner of any Unit (other than Declarants) who purchases that Unit from Declarants 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 Declarants of each Unit as aforesaid, and may be used for the benefit of the Association as the Executive 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.

## ARTICLE 5

### **Insurance**

Section 5.1 **General Insurance Provisions.** The Association shall acquire and pay for, out of the assessments, at least the following insurance policies carried with reputable insurance companies authorized to do business in Colorado:

5.1.1 **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 townhome, 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 interior and perimeter walls and floors, partitions, finished surfaces of interior and perimeter and party walls, floors, and ceilings, doors, windows, roofs and other elements or materials comprising a part of the Units. Maximum deductible amounts for such policies shall be determined by the Executive Board. 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 shall be a Default Assessment as provided in Article 4 hereof in the event the Association pays such premium for a Unit Owner.

5.1.2 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. 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 Townhomes similar to the Project in the 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 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.

5.1.3 Requirements of Hazard Insurance and Comprehensive Liability Insurance: The insurance policies required by Sections 5.1.1 and 5.1.2 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. The holder of a security interest on any Unit shall be a beneficiary of the policy in the percentages of Common Expenses for the Unit. 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.

Section 5.2 Certificates of Insurance: Cancellation. Certificates of insurance shall be issued to each Owner and holder of a security interest on a Unit upon request. All policies required to be carried under this Article 5 shall provide a standard non-contributory mortgagee clause in favor of each holder of a security interest having priority over all other security interests on 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. If the insurance

described in this Article 5 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore 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.

Section 5.3 **Insurance Proceeds.** Any loss covered by the property insurance policy described in Section 5.1 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 holders of security interests as their interests may appear. Subject to the provisions of Section 5.4 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and lienholders 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 5.4 **Insurer Obligation.** An insurer that has issued an insurance policy for the insurance described in Sections 5.1 and 5.7 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 5.5 **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:

5.5.1 The common interest community created by this Declaration is terminated in which case the approval must first be obtained of Owners holding sixty-seven percent (67%) of the votes in the Association;

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

5.5.3 There is a vote not to rebuild by (a) Owners holding sixty-seven percent (67%) of the votes in the Association and (b) every Owner of a Unit or assigned Limited Common Element that will not be rebuilt; or

5.5.4 Prior to the conveyance of any Unit to a person other than Declarants, 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 lienholders, as their interests may appear in proportion to each Owner's percentage share of Common Expenses.

Section 5.6 **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 determined by the Executive Board. Coverage shall not be less in aggregate than two months' current assessments plus reserves, as calculated from the current budget of the association.

Section 5.7 **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 5.8 **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 5.9 **Owner's 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, 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 5.10 **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 5.11 **Common Expenses**. Premiums for insurance that the Association acquires under Sections 5.1.1, 5.1.2, 5.6, 5.7, 5.8 and 5.9 above and other expenses connected with acquiring such insurance are General 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 6

### **Architectural Control**

Section 6.1 **Alterations, Additions or Improvements to Common Elements**: Other than alterations, additions or improvements made by Declarants, no alteration, addition or improvement to a Unit of any kind (including, without limitation, change in exterior decoration or exterior materials, color, texture, street number, signage, doors or windows), or which in any manner affect the Project (by way of example and not by way of limitation, air conditioning units, hot tubs, spas), shall be made unless first approved in writing by the Executive Board. During the period specified in Section 3.5 above, Declarants shall be exempt from any requirement to obtain approval under the provisions of this Article 6. 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 conform to and harmonize with existing surroundings and structures. The Executive Board has the absolute right to deny any requested changes. In its review of such plans, specifications and other materials and information, the Executive Board may require that the applicant(s) reimburse the Association for the actual expenses incurred by the Association in the review and approval process. Such amounts, if any, shall be levied in addition to the Common Expense assessment against the Unit for which the request for Executive Board approval was made, but shall be subject to the Association's lien for assessments and subject to all other rights of the Association for the collection of such assessments, as more fully provided in this Declaration. All work authorized shall be completed within the time limits established therefor.

Section 6.2 **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 6.3 **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; and such other matters as the Executive Board, may request.

Section 6.4 **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 7

### **Use Restrictions**

Section 7.1 **General Use Restrictions.** 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, rules, regulations, restrictions and policies 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 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. 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 Units 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, restrictions or policies.

Section 7.2 **Master Declaration and Master Plat Restrictions.** 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 PITCHFORK DECLARATION, WHICH, IN CONJUNCTION WITH THIS DECLARATION, CONTROLS AND REGULATES USE OF THE UNITS.** In the event of a conflict between the provisions of this Declaration and the Pitchfork Declaration, the more restrictive provision shall control.

Section 7.3 **Use of Common Elements.** 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, restrictions or policies.

Section 7.4 **Occupancy Restrictions.** Subject to the Special Declarants Rights reserved under Article 14, 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 to adopt, amend, supplement, repeal and enforce more specific and restrictive rules, regulations, restrictions, and policies as the Executive Board deems to be reasonable and necessary to carry out the intent of this Declaration.

A. Lots shall be improved as described in the Master Declaration and, except as otherwise provided in the Master Declaration, used exclusively for residential purposes. No commercial or business enterprise of any nature shall be allowed within the Common Interest Community, except as set forth in the Master Declaration.

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. No Unit shall be inhabited by more than the following number of occupants:

<u>Residence Size</u>	<u>Maximum Number of Occupants</u>
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.

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. Except pursuant to the exercise of Development Rights provided herein, no Unit may be partitioned, separated or subdivided from any other part thereof.

F. No Improvement shall be constructed on any Lot nor shall any Improvement be altered or demolished except as approved by the Architectural Review Committee and the Town. All Improvements shall comply with the terms, conditions, definitions and objectives as set forth in any design guidelines adopted by the Executive Board.

G. 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, regulations, restrictions or policies issued or adopted by the Executive Board, which may supplement and be more restrictive, but not supersede or be less restrictive than, the provisions of this Section 7.4.G.

1. 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.

2. 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.

3. 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.

4. Animals may not be kept for any commercial purposes.

5. 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.

6. 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.

7. The Common Interest Community 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.

8. Nothing in this Section 7.4 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."

H. Parking of vehicles on a Lot is permitted only within garages or designated parking spaces, except that vehicles may be parked temporarily in other areas as an expedience while loading and unloading. Personal property storage in each garage shall be limited so as to enable the intended number of motor vehicles to be stored in each such garage.

I. The following are absolutely prohibited from within the Common Interest Community and shall not be parked or stored on any street or Unit or in a garage:

1. Motor homes, recreational vehicles, and campers except a camper mounted on a pickup;
2. All terrain vehicles (ATVs);
3. Trailers of any kind;
4. Snowmobiles;
5. Boats, except kayaks and inflatable rafts which shall be stored inside, or in a garage;
6. Abandoned or inoperable vehicles of any kind. An abandoned or inoperable vehicle shall mean any vehicle which is not capable of being driven under its own propulsion or does not have current registration.

J. No activities shall be conducted within a Unit which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no

firearms, archery equipment, or fireworks shall be discharged within the Common Interest Community. No open fires shall be lighted or permitted except in a barbecue grill while attended and in use for cooking purposes.

K. No portion of any Unit shall be used for sleeping purposes other than bedrooms in a Unit for which a certificate of occupancy has been issued. No portion of a basement shall be used for sleeping purposes.

L. No signs, window display or advertising of any nature visible from outside a Unit shall be erected or maintained on any Unit except as necessary to identify the name, ownership or use of the particular Unit and its address, or as necessary or desirable to give directions, advise of rules and regulations, or caution or warn of danger, to advertise a Unit for sale, or as may otherwise be necessitated by law. Any signs which are permitted under the foregoing restrictions shall be erected or maintained only with prior written approval by the Architectural Review Committee in compliance with the Town municipal code and in compliance with any sign guidelines adopted by the Executive Board. Approval shall be given only if such signs are of attractive design and are as small in size as is reasonably possible. Signs shall be placed or located as directed and approved by the Architectural Review Committee and the Town zoning administrator.

M. All exterior lighting shall be designed and directed as approved by the Architectural Review Committee and in compliance with the Town municipal code. No light shall be emitted from any Unit which is unreasonably bright or causes unreasonable glare. All exterior lights shall be shielded to reduce to the extent practicable visibility of such exterior lights from adjacent property and shall be directed downward. No mercury vapor lights shall be permitted. No sound shall be emitted from any Unit which is unreasonably loud or annoying. No odor shall be emitted from any Unit which is noxious or unreasonably offensive to others.

N. No refuse, including without limitation trash, garbage, lumber, grass clippings, shrub clippings or tree clippings, plant waste, compost, ashes, metals, bulk materials, or scrap materials shall be allowed to accumulate in or around any Unit. Refuse shall be disposed of in containers provided by the Association, except that the Executive Board may require any Owner to arrange for removal of excessive amounts of trash, garbage or other refuse. The burning of refuse shall not be permitted within the Common Interest Community.

O. 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 within the Common Interest Community except within a fully enclosed Garage. 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.

P. No noxious, offensive, dangerous or unsafe activity shall be conducted or

permitted to exist in or on the Common Interest Community, nor shall anything be done or permitted, either willfully or negligently, which is or may be or become an unreasonable annoyance or nuisance to the other Owners or Owner's Agents. Habitually barking, howling or yelping dogs shall be deemed a nuisance. The use of exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices on or from any Unit may be regulated or prohibited by the design guidelines, rules, regulations, restrictions or policies adopted by the Executive Board. The terms "annoyance" and "nuisance" shall not include any activities of Declarant which are reasonably necessary to the development and construction of, and sales activities on, the Units.

Q. All wood burning stoves, fireplaces and other solid fuel burning devices (except barbeque grills) are prohibited within the Common Interest Community. No coal or solid fuels of any kind shall be burned within the Common Interest Community except charcoal in barbeque grills.

R. All satellite dishes and devices or facilities to transmit or receive electronic signals, radio or television waves are subject to Rules and guidelines adopted by the Executive Board in conformance with applicable federal law.

**Section 7.5 Deed Restricted Units.** Certain specified Units within the Project (collectively the "Restricted Units") are deed restricted in accordance with the Pitchfork Occupancy and 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 ("Deed Restriction"). All occupancy and leasing of Restricted Units shall comply with the terms of the Deed Restriction.

**Section 7.6 Leasing.** Subject to the remaining provisions of this Section 7.6, 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 7.4.C. 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.

Section 7.7 **Neglect by Owner or Owner's Agents.** 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 and/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.

Section 7.8 **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 7.9 **Zoning Restriction.** 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.

Section 7.10 **Additional Rules.** 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.

## ARTICLE 8

### **Easements**

Section 8.1 **Easements and Licenses.** The Project is presently subject to easements and licenses as recited in **Exhibit A**. In addition, the Project may be subject to other easements granted by the Declarants as shown on the Plat and/or as described in this Declaration.

Section 8.2 **Easements for Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, a valid easement for such encroachment and for the maintenance of same shall and does exist. If the Unit is partially or totally destroyed and then rebuilt, the Owners of the Units agree that minor encroachments of parts of the adjacent Unit due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Nothing in this Section 8.2 shall authorize any encroachment on an easement in favor of the public or the Town of Mt. Crested Butte.





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Section 8.3 **Declarants's Rights Incident to Construction.** Declarants, for itself and its successors and assigns, 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 Declarants, 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 Declarants from time to time, and at different times until completion of the Project by Declarants or a Successor Declarants, 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 8.4 **Blanket 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, landscape irrigation system, parking, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable television and electricity, and such other purposes as deemed appropriate by the Executive Board, 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 Units 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. 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.

Section 8.5 **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.

Section 8.6 **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. 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, from time to time, as may be necessary for the routine maintenance, repair, or replacement for any of the Common Elements located adjacent thereto 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 authorized management company 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 may be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry. The Executive 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 authorized management company 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 improvements, 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 authorized management company with a key to their respective Unit and/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 8.7 **Specific Easement.** The Plats of any portion of the Property and the Expansion Property may create nonexclusive easements for ingress, egress, designated assigned parking, unassigned parking, and utilities for the benefit of Owners of Units within such property, or property adjacent thereto.

8.7.1 No parking of vehicles shall be allowed on the common driveway or parking/driveway area of the designated easements so as to impede access thereto or to

any Unit or parking area in the easement area.

8.7.2 Snowplowing and maintenance expenses relating to the easements shall be Common Expenses, except that any such expense that benefits property not within the Association shall be equitably allocated by the Executive Board to such other property.

8.7.3 No motor vehicles shall be parked in unassigned parking spaces for more than 48 hours in any 7 day period.

## ARTICLE 9

### Mechanic's Liens

Section 9.1 **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 9.2 **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 9.3 **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.

## ARTICLE 10

### Damage or Destruction

Section 10.1 **The Role of the Executive Board.** Except as provided in Section 5.5, 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 5, 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 5 is sometimes referred to as the "Association-Insured Property").

Section 10.2 **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 sixty-seven percent (67%) 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 10.3 **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 11

### **Condemnation**

Section 11.1 **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 11.2 **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 sixty-seven percent (67%) 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 5 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 11.3 **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 Eligible 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 12

### **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 8, (b) purchasing and maintaining insurance pursuant to Article 5, including the collection and appropriate 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 5 upon their damage or destruction, or (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 11. 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 13

### **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, regulations, restrictions and policies of the Association.

Section 13.1 **Title Taken by First Mortgagee.** Any holder of a Security Interest of record against a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Security Interest, including foreclosure of the Security Interest 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 13.2 **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 holder of a First Security Interest against the Unit.

Section 13.3 **Right to Pay Taxes and Charges.** Holders of Security Interests 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 holders of Security Interests making such payments shall be owed immediate reimbursement therefor from the Association.

Section 13.4 **Audited Financial Statement.** Upon written request from any Agency or Eligible 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 Eligible Mortgagee.

Section 13.5 **Notice of Action.** Any Eligible Mortgagee and any Agency which holds, insures or guarantees a First Security Interest, 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:

13.5.1 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 (e) any amendment set forth in Section 15.2 below:

13.5.2 Any proposed termination of the common interest community;

13.5.3 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 Security Interest held, insured or guaranteed by such Agency;

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

13.5.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article 8.

Section 13.6 **Action by Mortgagee.** If this Declaration or any Association Documents require the approval of any Agency or Eligible Mortgagee then, if any Eligible Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Eligible Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Eligible Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Eligible Mortgagee by certified or registered mail, return receipt requested.

## ARTICLE 14

### **Rights Reserved to Declarant**

Section 14.1 **Special Declarants Rights.** The Declarants specifically reserves the right to exercise in any order all Development Rights and Special Declarants Rights as set forth in the Colorado Common Interest Ownership Act and this Declaration for the maximum time limit allowed by law, or for ten (10) years following the recording hereof, whichever occurs first, including, without limitation, the following:

14.1.1 The right to annex all or any portion of the Expansion Property described in Exhibit D into the Association.

14.1.2 The right to appoint or remove any officer of the Association or any director of the Association during the Declarants Control Period.

14.1.3 The right to complete or make any improvements as set forth on the Plat, or as required by the Town of Mt. Crested Butte.

14.1.4 The right to maintain signs to advertise the project.

14.1.5 The right to dedicate a future public or private easement as shown on the Plat.

14.1.6 The right, without consent of any Owner or mortgagee or lienholder being required, at any time and from time to time to: (a) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size within one or more Units; (b) to subject the Property to a master association; (c) merge or consolidate the Project with a common interest community of the same form of ownership; (d) amend the Plat to (i) insure that the language and all particulars that are used on the Plat and contained in the Declaration are identical; (ii) establish and relocate utility

easements, access easements, and parking spaces; and (iii) as may be otherwise permitted by the Act; and (e) to exercise any other Declarants rights or development rights provided for herein.

## ARTICLE 15

### Duration of Covenants

Section 15.1 **Term.** The covenants and restrictions in this Declaration shall run with and bind the Property in perpetuity, subject to the termination provisions of the Act.

Section 15.2 **Amendment.** Except as otherwise provided in Section 14.1, this Declaration and/or the Plat may be terminated, extended, modified, amended or added to, in whole or in part, upon the written consent by the Owners holding 67% of the votes in the Association, subject to approval by the Town. 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.

Section 15.3 **Amendment by Declarant.** Declarant declares and reserves the right to amend this Declaration, or the Plat, Articles of Incorporation or Bylaws, without the consent of Owners or holders of Security Interests, but subject to approval by the Town, any time within ten (10) years from the date this Declaration is recorded, or before Declarant conveys the last Unit to a purchaser other than Declarant or a successor Declarant, whichever first occurs, as follows:

- A. To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.
- B. To exercise any Development Right or Special Declarant Right permitted herein or by the Act.
- C. To comply with any requirements of the Act or amendments thereto, or any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Security Interests.
- D. To add additional real estate to the Common Interest Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Common Interest Community pursuant to this sentence, and not described in the attached Exhibit A, does not exceed ten percent (10%) of the total area described in the attached Exhibit A.

Section 15.4 **Holder of Security Interest Approval Not Required.** The Declaration



and/or Plat may be amended as set forth in Sections 14.1 and 15.3 of this Declaration and such amendment shall be effective against the holders of Security Interests in the Common Interest Community notwithstanding the fact that such holders of Security Interests have not approved such amendment.

Section 15.5 **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 16

### **Miscellaneous**

Section 16.1 **Violations Deemed a Nuisance.** Every violation of the Association Documents shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof.

Section 16.2 **Failure to Comply.** The failure to comply herewith shall be grounds for an action to recover damages, for injunctive relief, for specific performance, or for any other relief available in law or at equity.

Section 16.3 **Enforcement.** Except as otherwise provided in this Declaration, the Town, 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. Failure by the Town, the Executive Board, Declarant or by any Owner to enforce any covenant or restriction contained in the Association Documents shall in no event be deemed a waiver to the right to do so thereafter.

Section 16.4 **Attorneys Fees.** In the event of any legal action or arbitration to enforce any of the provisions of the Association Documents, or for damages, or to restrain the violation of the Association Documents, whether judicial, non-judicial or administrative, the prevailing party shall be entitled to recover all costs, fees and expenses incurred by it in such action, including all reasonable attorneys' fees. The Association shall be entitled to recover reasonable attorneys' fees for any legal assistance given to the Association as above provided whether or not legal proceedings are actually filed in court.

Section 16.5 **Severability.** If any portion of this Declaration is declared invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other provisions of this Declaration.

Section 16.6 **Party Wall Law.** To the extent that they are not inconsistent with this Declaration, the general rules of law regarding party walls shall apply to the real property subject hereto.

Section 16.7 **Construction.** The singular wherever used herein shall be construed to mean the plural when applicable and necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or individuals, male or female, shall in all cases be amended as though in each case fully expressed.

Section 16.8 **Pitchfork Master Association, Inc.** The Pitchfork Master Association, Inc. shall have the right:

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

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

16.8.3 To require the Association to be managed by a professional property manager if the Pitchfork Master Association, Inc. 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 Plat, the Master Declaration, the Master Plat and/or all rules, regulations, restrictions and policies adopted by the Association or the Pitchfork Master Association, Inc.

Section 16.9 **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 16.10 **Governing Law.** This Declaration shall be interpreted in accordance with the law of the State of Colorado. Any litigation brought to enforce or interpret the provisions of this Declaration shall be brought in a court of competent jurisdiction in Gunnison County, Colorado, and the prevailing party in such litigation or in any arbitration shall be entitled to an award of reasonable attorneys' fees and costs.

Section 16.11 **Timesharing Prohibited.** A Unit may not be conveyed pursuant to a time-sharing arrangement described in Sections 38-33-110 to 113, Colorado Revised Statutes.

## ARTICLE 17

### **Revocation of Original Declaration**

Subject to approval by the Town, upon recording of this Declaration in the Gunnison County records, the Declaration of Covenants, Conditions and Restrictions for Pitchfork Townhomes (the "Original Declaration") at Reception No. 510711 in the office of the Clerk and

Recorder of Gunnison County, Colorado shall be revoked and rendered null and void and this Declaration shall be substituted therefor. Notwithstanding the foregoing revocation, the Declaration of Annexation and Amendment to Declaration and Plat recorded at Reception No. 511340 and the Declaration of Annexation and Amendment to Declaration and Plat recorded at Reception No. 511707 in the office of the Clerk and Recorder of Gunnison County, Colorado shall remain in effect insofar as such Declarations of Annexation do not conflict with this Declaration.

Executed as of the day and year first above written.

**Declarants:**

COBURN DEVELOPMENT, INC., a Colorado corporation

By: William E. Coburn II - PRESIDENT  
William E. Coburn, II, President

PITCHFORK, LLC, a Colorado limited liability company

By: William E. Coburn II - MANAGER  
Title

STATE OF COLORADO     )  
                                      ) ss.  
COUNTY OF GUNNISON    )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 2001 by William E. Coburn, II, President of Coburn Development, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires: 07/07/04



Angela H. Reeves  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of AUGUST, 2002, by William E. Coburn, II as MANAGER of Pitchfork, LLC, a Colorado limited liability company.

Witness my hand and official seal. My commission expires: 07/07/04



[Signature]  
Notary Public

Association Board of Directors

The undersigned hereby certifies that the foregoing Amended and Restated Declaration of Protective Covenants for Pitchfork was approved by a the Board of Directors of the Association on the 20 day of August, 2002.

[Signature]  
Secretary

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 21<sup>st</sup> day of August, 2002.



Town of Mt. Crested Butte

By: Charles C. Stearns Title  
Town Manager

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 21<sup>st</sup> day of August, 2002, by Charles C. 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

### Property

Lots 2, 3, 4, 5, 6, 29, 33, 35, 36, 42, 43, 44, and 50, PITCHFORK, according to the Plat thereof recorded August 21, 2000 as Reception No. 504415 and the Declaration of Protective Covenants for Pitchfork recorded 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

### Easements

See Plat

### Licenses

License Agreement recorded in Book 702 at Page 606 of the Gunnison County records.

EXHIBIT B

LEGAL DESCRIPTION OF COMMON INTEREST COMMUNITY

Flying G Building, legally described as:

Lot 2, PITCHFORK, according to the Plat thereof recorded August 21, 2000 as Reception No. 504415 and the Declaration of Protective Covenants for Pitchfork recorded May 2, 2001 as Reception No. 510378 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

AND

Rocking E Building, legally described as:

Lot 3, 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 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

AND

Double W Building, legally described as:

Lot 44, 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 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

AND

Little Annie Building, legally described as:

Lot 29, PITCHFORK, according to the Plat thereof recorded August 21, 2000 as Reception No.



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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 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

EXHIBIT C

DESCRIPTION OF INITIAL COMMON ELEMENTS

General Common Elements:

Lot 2, PITCHFORK, according to the Plat thereof recorded August 21, 2000 as Reception No. 504415 and the Declaration of Protective Covenants for Pitchfork recorded May 2, 2001 as Reception No. 510378 of the Gunnison County records, except that portion of Lot 2 described as Units A, B, C and D, Flying G Building,

Lot 3, 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 of the Gunnison County records, except that portion of Lot 3 described as Units A, B, C and D, Rocking E Building,

Lot 44, 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 of the Gunnison County records, except that portion of Lot 44 described as Units A1, A2, B1 and B2, Double W Building,

Lot 29, 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 of the Gunnison County records, except that portion of Lot 29 described as Units A, B and C, Little Annie Building,

Town of Mt. Crested Butte  
County of Gunnison  
State of Colorado

AND

1. Private drive and access easement between Lots 1 and 2, Pitchfork as depicted on the Plat.
2. Private drive and access easement between Lots 3 and 4, Pitchfork as depicted on the Plat.
3. Sanitary sewer and private access easement for Lots 44, 45, 46, 47, 48, 50, 52 and 53, Pitchfork as depicted on the Plat.

Limited Common Elements:

1. Shared landing on access stairway for the benefit of Units B and C, Lot 2, Pitchfork, as depicted on the Plat.
2. Covered parking for the benefit of Units A and D, Lot 2, Pitchfork, as depicted on the Plat.
3. Reserved parking space as depicted on the Plat, to be assigned by Declarants.

4. Shared landing on access stairway for the benefit of Units B and C, Lot 3, Pitchfork, as depicted on the Plat.
5. Covered parking for the benefit of Units A and D, Lot 3, Pitchfork, as depicted on the Plat.
6. Reserved parking space as depicted on the Plat, to be assigned by Declarant
7. Access stairway and porch for the benefit of Unit A, Lot 3 as depicted on the Plat.
8. Access stairway and porch for the benefit of Unit B, Lot 3 as depicted on the Plat.
9. Access stairway and porch for the benefit of Unit C, Lot 3 as depicted on the Plat.
10. Access stairway and porch for the benefit of Unit D, Lot 3 as depicted on the Plat.
11. Parking space for the benefit of Unit A1, Lot 44.
12. Parking space for the benefit of Unit A2, Lot 44.
13. Parking space for the benefit of Unit B1, Lot 44.
14. Parking space for the benefit of Unit B2, Lot 44.
15. Reserved parking space to be assigned by Declarant
16. Access stairway and porch for the benefit of Unit A1, Lot 44.
17. Access stairway and porch for the benefit of Unit A2, Lot 44.
18. Access stairway and porch for the benefit of Unit B1, Lot 44.
19. Access stairway and porches for the benefit of Unit B2, Lot 44 (front and back).
20. Covered breezeway and access stairways for the benefit of Units A2 and B1, Lot 44.
21. Driveways, stoops and landscaping for Units A, B and C, Lot 29, as depicted on the recorded plat for Little Annie Building.





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## EXHIBIT D

### LEGAL DESCRIPTION OF THE EXPANSION PROPERTY

Lots 4, 5, 6, 12<sup>1</sup>, 33, 35, 36, 42, 43, and 50, PITCHFORK, according to the Plat thereof recorded August 21, 2000 as Reception No. 504415 and the Declaration of Protective Covenants for Pitchfork recorded as Reception No. 510378 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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<sup>1</sup> Inclusion of Lots 12 and 36 as part of the Expansion Property is not intended to signify that such lots may be used for townhome lots, and such use is not permitted unless approved by the Town of Mt. Crested Butte.



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## EXHIBIT E

### VOTING RIGHTS AND ASSESSMENT ALLOCATION

The owner of each Unit shall have one vote for each bedroom in such Unit and be responsible for a share of the Association's Assessments equal to a fraction whose numerator is the number of votes appurtenant to such Unit and whose denominator is the total number of bedrooms in the Units then annexed into the Association.

<u>Lot</u>	<u>Unit</u>	<u>Number of Bedrooms</u>	<u>Vote(s) in the affairs of Association</u>
2	A	2	2
2	B	2	2
2	C	2	2
2	D	2	2
3	A	2	2
3	B	2	2
3	C	2	2
3	D	2	2
44	A1	2	2
44	A2	2	2
44	B1	2	2
44	B2	2	2
29	A	3	3
29	B	3	3
29	C	3	3