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DECLARATION
OF
PITCHFORK FLATS

Name of Common Interest Community:
Type of Common Interest Community:
Name of the Association:

Pitchfork Flats
Condominium
Pitchfork Flats Association, Inc.

Person Executing the Declaration:

Pitchfork, LLC, a Colorado limited liability
company



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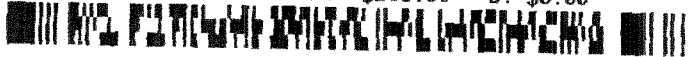
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DECLARATION OF PITCHFORK FLATS

THIS DECLARATION OF PITCHFORK FLATS (the "Declaration") is made as of _____, 2007, by Pitchfork, LLC, a Colorado limited liability company (the "Declarant").

RECITALS

A. Declarant is owner of that certain real property located in the County of Gunnison, Colorado, more particularly described on Exhibit A, attached hereto (the "Property").

B. Declarant desires to create a condominium common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statute § 38-33.3-101 et. seq. (the "Act") under the name of which is Pitchfork Flats.

ARTICLE 1 DECLARATION

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

Section 1.2 Subordination to Master Association. This Declaration shall be a Supplemental Declaration as that term is defined in Section 2.44 of the Declaration of Protective Covenants for Pitchfork (the "Master Declaration"), and 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 Documents and the Master Declaration or any of the other documents governing the operation of the Master Association, the more restrictive documents shall control. All Members of the Association shall be members of the Master Association.

ARTICLE 2 DEFINITIONS

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

Section 2.1 "Agency" means any agency or corporation such as Housing and Urban Development (HUD), Department of Veteran's Affairs ("VA"), Federal National Mortgage Association ("Fannie Mae") or Federal Home Loan Mortgage Corporation ("Freddie Mac") that purchases, insures or guarantees residential mortgages.

Section 2.2 "Allocated Interests" the undivided interest in the Common Elements, Assessments and votes in the Association allocated to each Unit as set forth in Exhibit B attached hereto. The formulas for the Allocated Interests are as follows:

2.2.1 Percentage Share of Common Expenses and Percentage Share of Ownership of Common Elements: The figure is determined by the percentage equivalent to a fraction, the numerator of which shall be the area of a Unit (as determined by the Declarant), and the denominator of which shall be the area of all Units in the Project (as determined by the Declarant). The percentage share of ownership of Common Elements and percentage share of the Assessments at the time of filing this Declaration is set forth in Exhibit B.

2.2.2 "Voting" One vote per Unit.

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

Section 2.4 "Annual Assessment" means the Assessment levied pursuant to an annual budget.

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

Section 2.6 "Association" means Pitchfork Flats Association, Inc. , a Colorado nonprofit corporation, and its successors and assigns.

Section 2.7 "Association Documents" means this Declaration, the Articles of Incorporation, the Bylaws, the Map, the Design Guidelines, and any procedures, rules, regulations or policies adopted under such documents by the Association, as such documents may be amended from time to time.

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

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

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

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

Elements shall include, without limitation, the following:

- a. all of the land and landscaping within the Project;
- b. all foundations, columns, girders, beams and supports of the structures making up the Units;
- c. the exterior walls of the structures making up the Units; the main or bearing walls within the structures making up the Units; the main or bearing subflooring and the roofs of the structures making up the Units; and all portions of the walls, floors or ceilings that are not part of the Unit as described in Section 2.33 below;
- d. all stairs, stairways and walkways not within a Unit;
- e. all utility service and maintenance rooms, fixtures, apparatus, installations and central facilities for power, light, gas, telephone, television, hot water, cold water, heating, or similar utility service or maintenance purposes, including furnaces, apparatus, installations, facilities, all of which serve more than one Unit and are not located within a Unit; and
- f. in general, all other parts of the Project in common use or convenient to its existence, maintenance and safety.

2.10.2 "Limited Common Elements" means those parts of the Common Elements which are either limited to or reserved in this Declaration, the Map, in a recorded certificate executed by Declarant pursuant to Article 14, or by action of the Association, for the exclusive use of an Owner of a Unit or are limited to and reserved for the common use of more than one but fewer than all Owners. Without limiting the foregoing, any portion of a chute, flue, duct, pipe, drain, wire, conduit, bearing wall, bearing column, or other fixture which lies completely or partially within and/or completely or partially outside the designated boundaries of a Unit which serves only that Unit is a limited common element allocated solely to that Unit. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

Section 2.11 "Common Expenses" means (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) insurance premiums for the insurance carried under Article 9; and (iv) all expenses lawfully determined to be common expenses by the Executive Board.

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

Section 2.13 "Declaration" means this Declaration and the Map, and any future amendments and supplements to the foregoing.

Section 2.14 "Declaration of Annexation" means an instrument which amends this Declaration to add Units and Common Elements to the Project as provided herein.

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

Section 2.16 "First Mortgage" means a Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 2.17 "First Mortgagee" means any person named as a Mortgagee in any First Mortgage.

Section 2.18 "Good Standing" means that an Owner is no more than thirty (30) days late in the payment any Annual, Special or Default Assessments, and who has none of his, her or its membership privileges suspended.

Section 2.19 "Manager" means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

Section 2.20 "Map" means the Condominium map of the Project recorded with the Clerk and Recorder, depicting a plan and elevation of all or a part of the Property subject to this Declaration and any annexations, supplements and amendments thereto.

Section 2.21 "Master Association" means the master owners' association for the entire Pitchfork subdivision.

Section 2.22 "Master Declaration" means the Amended and Restated Declaration of Protective Covenants for Pitchfork recorded August 21, 2002 at Reception No. 523046 of the Gunnison County, Colorado records, Town of Mt. Crested Butte, County of Gunnison, State of Colorado, as it may be amended from time to time.

Section 2.23 "Master Plat" means the Final Plat of Pitchfork recorded on August 21, 2000, bearing reception number 504415, as modified by Modification of Final Plat bearing Reception No. 510377, of the Gunnison County, Colorado records, Town of Mt. Crested Butte, County of Gunnison, State of Colorado.

Section 2.24 "Member" means any person or entity that holds membership in the Association.

Section 2.25 "Mortgage" means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

Section 2.26 "Mortgagee" means any person named as a mortgagee or beneficiary in any

Mortgage or any successor to the interest of any such person under such Mortgage.

Section 2.27 "Owner" the owner of record, whether one or more persons or entities, of fee simple title to any Unit, and "Owner" also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit.

Section 2.28 "Permitted User" means members of the Owner's family, or the Owner's agent, employee, invitee, licensee or tenant, or the agents, employees, invitees or licensees of an Owner's tenant.

Section 2.29 "Project" means the common interest community created by this Declaration and as shown on the Map, consisting of the Property, the Units and the Common Elements.

Section 2.30 "Successor Declarant" means any person or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

Section 2.31 "Supplemental Declaration" means an instrument which amends this Declaration.

Section 2.32 "Supplemental Map" means a supplemental Map of the Project which depicts any change in the Project through a Declaration of Annexation.

Section 2.33 "Unit" means the fee simple interest and title in and to an individual airspace which is contained within the perimeter windows, doors and unfinished surfaces of perimeter walls, floors and ceilings, together with the appurtenant interest in the Common Elements. All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the interior finished surfaces thereof are a part of the Units.

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

ARTICLE 3 NAME; UNITS

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

Section 3.2 Association. The name of the Association is Pitchfork Flats Association, Inc. Declarant has caused the Association to be incorporated as a nonprofit corporation under the laws of the State of Colorado.

Section 3.3 Number of Units. Declarant reserves the right to create a maximum of ten (10) Units in the Project.

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

Section 3.5 Description of Units

3.5.1 Each Unit and its appurtenant interest in the Common Elements and Limited Common Elements shall comprise one Unit, shall be inseparable and may be transferred, leased, devised or encumbered only as one Unit. Any attempted transfer of the appurtenant interest in the Common Elements or Limited Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

3.5.2 Any contract of sale, deed, lease, Mortgage, will or other instrument affecting title to a Unit may describe it by its Unit number, Pitchfork Flats, County of Gunnison, State of Colorado, according to the Condominium Map thereof recorded on _____, 200__ at Reception No. _____ and the Declaration recorded on _____, 200__ at Reception No. _____ in the records of the Clerk and Recorder of the County of Gunnison, Colorado, as amended from time to time.

Section 3.6 Additional Restrictions on Use of Units 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, repeal and enforce more specific and restrictive design and architectural guidelines and rules and regulations as the Executive Board deems to be reasonable and necessary to carry out the intent of this Declaration.

3.6.1 Subject to the provisions of Article 14, each Unit shall be used and occupied only as a residence. Notwithstanding the above, home operated businesses are allowed so long as such business is (i) allowed by zoning resolutions; (ii) is not apparent or detectable by sight, sound, smell or vibration from the exterior of the Unit, (iii) does not increase traffic or parking within the Project; and (iv) does not increase the insurance obligation or premium of the Association. Uses described as "day care" or "child care" facilities (whether licensed or unlicensed) are expressly prohibited in the Units.

3.6.2 Subject to the provisions of Section 4.10, 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 (i) no leases shall be made for less than a twelve-month period; (ii) no lease shall be for less than the entire Unit; (iii) all leases shall be in writing and shall provide that the lease is subject to the terms of this Declaration and the Bylaws; (iv) a Unit may be leased only for the uses provided herein; and (V) any failure of a lessee to comply with the terms of this Declaration or any other 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. As used herein, the term lease shall mean any agreement for occupancy of the Unit by persons other than the Owner.

3.6.3 The right to keep animals as household pets may be restricted by rules, regulations

or restrictions issued by the Board. No household pet or animal shall be allowed in or about the Project, including Common Elements, except in compliance with the terms of this Declaration and in compliance with such additional rules, regulations and restrictions issued by the Executive Board, which may supplement, but not supersede or be less restrictive than, the provisions of this Section. No Owner or Permitted User shall keep more than two (2) of any combination of dogs and cats at any time. No household pet or animal shall be allowed at any time without adequate supervision by an Owner or Permitted User, or left unattended outside a Unit. 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. Animals may not be kept for any commercial purposes. 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.

3.6.4 Parking of vehicles is permitted only within designated parking spaces, except that vehicles may be parked temporarily in other areas as an expedience while loading and unloading. Notwithstanding the above, no abandoned or inoperable vehicle of any kind shall be stored or parked on any of the General or Limited Common Elements. An "abandoned or inoperable vehicle" shall be defined as any vehicle which is not capable of being driven under its own propulsion or does not have current registration. No motor homes, boats (except kayaks and inflatable rafts, which shall be stored inside a Unit), trailers, campers, all terrain vehicles (ATVs), snowmobiles, oversized vehicles or equipment shall be stored or parked anywhere within the Project. The Executive Board shall have the right to remove or store a vehicle or equipment in violation of this section after notice and opportunity for hearing, the expense of which shall be levied against the Owner of the vehicle or equipment as a Default Assessment.

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

3.6.6 No signs of any nature shall be placed or permitted within the Project except political signs permitted under the Act and "For Sale," "For Rent," and "Open House" signs as may be permitted under the provisions of any sign policies adopted by the Executive Board from time to time.

3.6.7 No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate on any Common Element or Unit unless placed in a suitable container suitably located solely for the purpose of garbage pickup.

3.6.8 Balconies, decks or patio areas appurtenant to Units may not be used as storage

areas. All outdoor clotheslines shall be shielded from view and are subject to prior approval by the Design Review Board.

3.6.9 No camping shall be allowed within the Project.

3.6.10 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.

3.6.11 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.

3.6.12 No offensive or unlawful use may be made of the Property. Owners and Permitted Users 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. No Unit shall be used for any purpose not in compliance with any local, state or federal law, statute or other ordinance, regulation or rule. No portion of the Property may be used for the manufacture, storage or disposal of hazardous materials other than in reasonable quantities typically used for purposes of residential cleaning, maintenance and repair.

3.6.13 Except as expressly permitted by this Declaration, no noxious, offensive, dangerous or unsafe activity shall be conducted in or on any Unit or the Common Elements, nor shall anything be done, either willfully or negligently, which may be or become an unreasonable annoyance or nuisance to the other Owners or Permitted Users. No Owner or Permitted User shall make or permit any disturbing noises nor do or permit anything to be done by others that will unreasonably interfere with the rights, comforts or convenience of other Owners or Permitted Users. Determination of whether an activity violates this covenant shall be at the discretion of the Executive Board or a committee appointed by the Executive Board, and shall be subject to rules and regulations adopted by the Executive Board. The terms "annoyance" and "nuisance" shall not include any activities of Declarant which are necessary to the development and construction of, and sales activities on, the Project.

3.6.14 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.

3.6.15 The Executive Board may adopt additional rules further restricting the use of a Unit and the Common Elements, which rules may be enforceable to the same extent as the provisions of this Declaration.

Section 3.7 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.

ARTICLE 4 MEMBERSHIP AND VOTING RIGHTS: ASSOCIATION OPERATIONS

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

Section 4.2 Transfer of Membership. An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit, and then only to the purchaser or Mortgagee of his Unit. The Association shall not create a right of first refusal on any Unit and Unit Owners may transfer ownership of their Units free from any such right.

Section 4.3 Membership. The Association shall have one (1) class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in this Declaration, each Member who is in Good Standing shall be entitled to vote in Association matters as set forth in Section 2.2.2 above. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents.

Section 4.4 Declarant Control. Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association during the term of Declarant Control. "Declarant Control" begins with the appointment of the initial Executive Board and continues until the earlier of (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created to Owners other than the Declarant; or (ii) two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business to Owners other than the Declarant; or (iii) two (2) years after any right to add new Units was last exercised, but in no event more than five years after the conveyance of the first Unit to an Owner other than Declarant. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded with the Clerk and Recorder but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the

recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Owners other than the Declarant, not less than thirty-three and one third percent (33-1/3%) of the members of the Board of Directors must be elected by Owners other than the Declarant.

Section 4.5 Books and Records. Upon request, the Association shall make available for inspection during normal business hours to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association. At the discretion of the Board, all records may also be inspected at the next regularly scheduled meeting if such meeting occurs within thirty (30) days after the request to inspect has been received. The Association may charge a reasonable fee for copying such materials, not to exceed the actual cost per page. The Association shall maintain such books and records as may be required under the Act.

Section 4.6 Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except as directed by the Executive Board.

Section 4.7 Rights of Action. The Association on behalf of itself and any aggrieved Unit Owner shall be granted a right of action against any and all Unit Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Unit Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all costs and expenses, including attorney's fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

Section 4.8 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act and by the Colorado Revised Nonprofit Corporation Act.

Section 4.9 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 either (i) personally, (ii) by courier or private service delivery, or (iii) certified U.S. mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Unit. Notice will be deemed to have been given on the date of delivery if delivered personally or by

courier or private service delivery or on the third business day after deposit in the mail.

Section 4.10 Owner Use and Occupancy Regulation. The Association shall have and may exercise the right to control Owner's use and occupancy of their respective units in order to assure Unit Owners of eligibility of the Project for any Agency. In this regard, the Association may adopt rules and regulations with respect to rental of Units to non-Owners. Not less than seventy percent (70%) of the Units (or such lower percentage as may be allowed from time to time by all Agencies with jurisdiction over the Project) must be Owner-occupied (as a primary residence or second home) at all times. Any Owner wishing to lease a Unit shall be subject to this percentage occupancy requirement and must first apply for authorization from the Association for any non-Owner residential use. Allowance of a Unit Owner to rent a Unit shall be on a first-come, first-serve basis and the Association shall have the authority to permit or deny the use or leasing of any Unit within the Project, subject to then-current federal mortgage eligibility requirements.

ARTICLE 5
POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION

Section 5.1 Powers of the Executive Board. Except as provided in the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association, to:

- 5.1.1 Adopt and amend bylaws and rules and regulations;
- 5.1.2 Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;
- 5.1.3 Hire and terminate managing agents and other employees, agents and independent contractors;
- 5.1.4 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Project;
- 5.1.5 Make contracts and incur liabilities, except that any contract providing for the services of Declarant may not exceed three years and must provide for termination by either party without cause and without payment of a termination fee on ninety days or less written notice;
- 5.1.6 Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- 5.1.7 Cause additional improvements to be made as a part of the Common Elements;
- 5.1.8 Acquire, hold, encumber and convey in the name of the Association any right, title or interest in real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if (a) Members entitled to cast at least sixty seven percent (67%) of the votes agree to that action, (b) the provisions of this Declaration are

followed with respect to approval of First Mortgages, and (c) if all Owners of Units to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest;

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

5.1.10 Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements;

5.1.11 Impose charges 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 the Association Documents;

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

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

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

5.1.15 Exercise any other powers conferred by the Declaration or Association Bylaws;

5.1.16 Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and

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

Notwithstanding any other provision of this Declaration to the contrary, in carrying out its duties and exercising its powers hereunder, the actions of the Executive Board shall be subject to the business judgment rule.

ARTICLE 6 MECHANIC'S LIENS

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

Section 6.2 Indemnification. If, because of any act or omission of any Owner, any mechanics or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

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

ARTICLE 7 EASEMENTS

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

Section 7.2 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, the Association and/or Owners in any future phases of Pitchfork Flats, 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 other real property owned by Declarant, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Project by the Owners.

Section 7.3 Utility Easements. There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Units and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, storm sewer, gas, telephone, cable television and electricity. 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, 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 Project, subject to approval by the Association as to location.

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

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

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

Section 7.7 Snow Storage Easements. All Lots shall be subject to and encumbered by snow storage easements as depicted on the Master Plat and described in the Master Declaration.

ARTICLE 8 **MAINTENANCE**

Section 8.1 Maintenance by Owners. Each Owner shall maintain and keep in good repair the interior of his Unit, including the fixtures thereof to the extent current repair shall be necessary in order to avoid damaging other Unit Owners. All utilities serving a Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner of such Unit. All fixtures and equipment installed within the Unit shall be maintained by the Unit Owner. An Owner shall do no act or any work that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall be responsible for the maintenance of the interior non-supporting walls of his Unit, and the surface materials such as plasters, drywall, paneling, wallpaper, paint, tile and carpeting of the perimeter walls, ceilings and floors within the Unit, including Unit doors, windows, glass and screens. Each Owner shall also be responsible for the maintenance and repair of any patio, deck, or balcony appurtenant to their Unit. The Association reserves the right to grant the maintenance responsibility to the Unit Owner of certain areas on each Unit and of other Limited Common Elements, and the Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is made in a nondiscriminatory manner.

Section 8.2 Owner's Failure to Maintain or Repair. In the event that a Unit, including the allocated Limited Common Elements, is not properly maintained and repaired, and if the



maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board (after a determination by the Executive Board that the condition of such Unit negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to a condition of good order and repair.

Notwithstanding the foregoing sentence, no prior notice or approval of the Executive Board is required in the event repairs or restoration are necessary due to an emergency, or in the event of damage or casualty which does or may impose an imminent threat of damage to another Unit or the Common Elements, except that in no event may a Unit's construction be altered or demolished without a court order authorizing the same. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, and the expense therefor shall be paid by the Owner to the Association upon demand, and until paid, shall constitute a default assessment enforceable in the same manner as any other unpaid Assessment.

Section 8.3 Owner's Failure to Notify of Repairs To Common Elements. Each Owner shall be responsible for notifying the Association, in a timely manner, of any necessary repairs to the Common Elements appurtenant to that Owner's Unit. An Owner shall be responsible for all damages to the Common Elements that result from their failure to make such a timely repair request to the Association. All costs incurred by the Association in connection with the repair of the Common Elements, attributable to the Owner's omission, shall be paid by the Owner to the Association upon demand, and until paid, shall constitute a Default Assessment enforceable in the same manner as any other unpaid Assessment.

Section 8.4 Maintenance by Association. The Association shall be responsible for the maintenance and repair of the Common Elements, whether located inside or outside of Units (except as set forth in Sections 8.1, 8.2, 8.3, 8.5 and 8.7), which shall be the Common Expense of all Owners. This maintenance shall include, but shall not be limited to, upkeep, repair, and replacement of all fences, landscaping, walls which Owners are not required to maintain as set forth in Section 8.1, gates, signage, irrigation systems, sidewalks, driveways, drainage improvements and any other improvements located in the Common Elements, all storm sewer easements and facilities, and utility service lines not maintained by the utility provider, from the point where they connect to a main line maintained by the utility provider to the point where they enter the Unit. The Association's maintenance obligations shall also include providing for snow and trash removal services, unless performed by another private or public entity formed for such purposes. In the event the Association does not maintain or repair the Common Elements or satisfy its other maintenance responsibilities set forth herein, Declarant shall have the right, but not the obligation, to do so at the expense of the Association.

Section 8.5 Association Maintenance as Common Expense. The cost of maintenance and repair by the Association shall be a Common Expense of all of the Owners, to be shared by each Unit Owner according to the Allocated Interests therefor set forth on Exhibit B. 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 Common Expense of all of the Owners. However, if such damage is caused by negligent or tortious acts of a Unit Owner, or Permitted User, 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 Permitted User's negligence caused such damage, which must be timely paid.

Section 8.6 Easement for Maintenance. Each Owner and the Association shall have the irrevocable right, to be exercised by the Manager, the Executive Board or officers, employees or agents of the Association, to have access to the Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom or to the Unit itself, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or another Unit. In the event insurance proceeds under Article 9 are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

Section 8.7 Limited Common Element Damage. In the event of damage or destruction of a Limited Common Element from the negligence or tortious acts of an Owner or Permitted User, the then Owners of the Units to which the Limited Common Element is attributable shall bear equally the expense to repair or rebuild the Limited Common Element to its previous condition. The Owner shall bear the cost of such damage to the extent of such Owner's or Permitted User's negligence.

Section 8.8 Association Power. The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Elements. No Owner shall make any addition or other alteration to any portion of the Common Elements, no matter how minor, without the express written consent of the Executive Board.

ARTICLE 9 INSURANCE

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

9.1.1 Hazard Insurance Coverage. Insurance for fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes co-insurance), special condominium, building ordinance, steam boiler or machinery coverage, 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 improvements located on the Project including all of the Units and Common Elements, including all fixtures, interior and perimeter walls and floors, partitions, decorated and finished surfaces of interior and perimeter walls, floors, and ceilings, doors, windows and other elements or materials comprising a part of the Units and including any fixtures, equipment or other property within the Units which

are to be financed by a Mortgage to be purchased by an Agency, and excluding any betterments and improvements made by Unit Owners and building excavations and foundations. Maximum deductible amounts for such policy shall be determined by the Executive Board, provided, however, that if an Agency requires specific deductibles, the Executive Board shall follow such Agency's requirements. The Association shall obtain insurance covering the original specifications of each Unit. If the Project has central heating or cooling, the endorsement for steam boiler or machinery coverage shall be in the minimum amount of \$2,000,000 or the insurable value of the buildings housing the boiler or the machinery.

9.1.2 Comprehensive Liability. Comprehensive general public liability and property damage insurance for the Project in such amounts as the Executive Board deems desirable, provided that such coverage shall be for at least \$1,000,000 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, or both, if any, and their respective agents and employees, and the Unit Owners from liability in connection with the operation, maintenance and use of Common Elements. The policy must include a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to condominiums similar to the Project including automobile liability insurance if appropriate. The executive Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Executive Board that such party has current and satisfactory insurance, including workers compensation insurance, commercial general liability and automobile insurance, and to the extent available, on which the Association is named as an additional insured.

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

Section 9.2 Owner Policies. Each Owner of a Unit shall obtain and maintain the following insurance coverage: (1) property 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; (2) casualty and liability insurance coverage for each Unit and the Common Elements appurtenant thereto in a minimum amount of \$300,000 per occurrence; and (3) loss of use insurance coverage for additional living expenses and the fair rental value of the Unit. The Owner shall provide the

Association with proof that such coverage has been obtained or renewed no later than ten (10) days before the expiration of such coverage. In the event an Owner fails to obtain and maintain such insurance, or provide proof of the existence or renewal as required herein, the Association shall have the right, without the obligation, to obtain such insurance coverage in the Owner's name and behalf, and the expense therefor shall be paid by the Owner to the Association upon demand, and until paid, shall constitute a default assessment enforceable in the same manner as any other unpaid Assessment. In the event an Owner fails to obtain and maintain such insurance, and an uninsured loss occurs which would have otherwise been covered under the insurance required by this paragraph, such Owner shall be liable to the Association for the loss suffered, and the Association shall be entitled to recover such amounts from the Owner in the same manner as any other debts owed to the Association.

Section 9.3 Certificates of Insurance; Cancellation. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. All policies required to be carried by the Association under this Article 9 shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty (30) days prior written notice to each Owner and each Mortgagee whose address is shown in the records maintained pursuant to the Association's documents. If the insurance described in this Article 9 required to be obtained by the Association is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and to all First Mortgagees.

Section 9.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 9.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 9.6 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 9.5 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Section 9.1 and 9.8 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 Fannie Mae.

Section 9.6 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 (1) The common interest community created by this Declaration is terminated, in which case the approval must first be obtained of sixty-seven percent (67%) of all Unit Owners, (2) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, (3) there is a vote not to rebuild by sixty-seven percent (67%) of the Owners entitled to vote and every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, or (4) prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds. Any portion of a Unit which is damaged or destroyed must be repaired or replaced by the Unit Owner.

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

Section 9.7 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses, provided, however, that if the Association's fire and extended coverage insurance covers fixtures, equipment or other property within some but not all of the Units, or other insurance attributable to some but not all of the Units (such as boiler insurance), the Association reserves the right to charge the Owners of such Units for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage.

Section 9.8 Fidelity Insurance. Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others, including any manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than the greater of (a) twenty-five thousand dollars (\$25,000) or (b) the estimated maximum of funds, including reserve funds, in the custody of the Association or management agent as the case may be, at any given time during the term of each policy as calculated from the current budget of the Association but in no event less than a sum equal to three (3) months' aggregate assessments plus reserve funds. In addition, if responsibility for handling funds is delegated to a Manager, such insurance or bonds must be obtained by or for the Manager and its officers, employees and agents, as applicable. Such fidelity insurance or bonds shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 9.9 Workers' Compensation Insurance. The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 9.10 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. Such insurance shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 9.11 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 Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties or as requested by any Agency.

ARTICLE 10 ASSESSMENTS

Section 10.1 Obligation. Each Owner, including Declarant while an Owner of any Unit, is obligated to pay to the Association the Annual Assessments; Special Assessments; and Default Assessments.

Section 10.2 Budget. The Executive Board shall adopt a budget for the Project and shall submit the budget to a vote of the Owners as provided herein no less frequently than annually. Within ninety (90) days after adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Executive Board shall give notice to the Unit Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Executive Board does not require approval from the Unit Owners and it will be deemed approved by the Unit Owners in the absence of a veto at the noticed meeting by sixty-seven percent (67%) of all Unit Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Unit Owners must be continued until a subsequent budget proposed by the Executive Board is not vetoed by the Unit Owners. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 10.3 Annual Assessments. Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to Section 10.2 above. The first Assessment shall begin no later than sixty (60) days after the first Unit is conveyed to an Owner other than Declarant. Until the effective date of an Association budget with a different amount for the Annual Assessments, the amount of the Annual Assessments against each Unit shall not exceed Two Thousand Four Hundred Dollars (\$2400.00) per Unit per annum. Estimated Common Expenses shall include, but shall not be limited to, (1) the cost of routine maintenance and operation of the Common Elements, (2) expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, (3) landscaping of the

General Common Elements, (4) care of grounds within the General Common Elements, (5) routine repairs and renovations within the Common Elements, (6) wages, (7) common utility and water charges for the Common Elements, (8) water charges to the Units (9) legal, accounting, and management fees, (10) expenses and liabilities incurred by the Association under or by reason of this Declaration, (11) payment of any default remaining from a previous assessment period, and (12) the creation of a reasonable and adequate reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs, and replacement of improvements within the Common Elements on a periodic basis, as needed.

Annual Assessments shall be payable in monthly installments on a prorated basis in advance and shall be due on the first day of each month. The omission or failure of the Association to fix the Annual Assessments for any assessment shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.

Section 10.4 Apportionment of Annual Assessments. The Common Expenses shall be allocated among the Units on the basis of the Allocated Interests for Common Expenses in effect on the date of assessment, provided, however, that the Association reserves the right to allocate all expenses relating to fewer than all of the Units (such as those expenses attributable to Limited Common Elements and insurance premiums described in Section 9.7) to the owners of those affected Units only.

Section 10.5 Special Assessments. In addition to the Annual Assessments, at the discretion of the Executive Board and without the approval of the Owners, the Association may levy one or more Special Assessments, payable over such a period as the Executive Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section 10.5 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units any extraordinary maintenance, repair or restoration expense. Expenses attributable to fewer than all of the Units shall be borne by the Owners of those affected Units only, and any extraordinary insurance costs as a result of the value of a particular Owner's Unit or the actions of a particular Owner or Permitted User shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less ten (10) days after such notice shall have been given.

Section 10.6 Default Assessments. All monetary fines 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, 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 ten (10) days prior to the due date.

Section 10.7 Effect of Nonpayment; Assessment Lien Any assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid on or before ten (10) days after its due date 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) Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- (ii) Assess an interest charge from the due date at the yearly rate of six (6) points above the prime rate charged by the Association's bank, or such other lawful rate as the Executive Board may establish, not exceeding eighteen percent (18%) per year;
- (iii) Suspend the voting rights and membership privileges 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; and
- (vi) Proceed with foreclosure as set forth in more detail below.

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

Section 10.8 Personal Obligation Each Assessment against a Unit is the personal obligation of the person who owned the Unit 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.

Section 10.9 Payment by Mortgagee. Any Mortgagee holding a lien on a Unit may pay any unpaid amount payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

Section 10.10 Statement of Status of Assessment Payment. Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Agency, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

Section 10.11 Capitalization of the Association. The Association shall require the first Owner of any Unit who purchases that Unit from Declarant to make a nonrefundable contribution to the Association in the amount equal to one-sixth (1/6th) of the total annual assessment at the time of sale (regardless of whether or not assessments have commenced). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit as aforesaid, and may be used for the benefit of the Association as the Board deems appropriate, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of their Unit, an Owner shall be entitled to a credit from their transferee (but not from the Association) for the aforesaid contribution to working capital fund. Declarant is prohibited from using any portion of the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

Section 10.12 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, (c) provide to the Association no less than once per quarter an accounting for the previous quarter, and (d) provide to the Association an annual accounting and financial statement of Association funds prepared by a certified public accountant.

ARTICLE 11
DAMAGE OR DESTRUCTION

Section 11.1 The Role of the Executive Board. Except as provided in Section 9.6, in the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the name of the Association under Article 9, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 9 is sometimes referred to as the "Association-Insured Property").

Section 11.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the insurance trustee, if any, determines to be necessary.

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

Section 11.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees. If the proceeds of the Association's insurance are sufficient to pay the estimated or actual cost of such repair or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, levy, assess and collect in advance from the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in a like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

Section 11.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be retained by the Association to offset future expenses of the Association.

ARTICLE 12
CONDEMNATION

Section 12.1 Rights of Owners Whenever all or any part of the Common Elements shall be taken by power of condemnation or eminent domain or whenever all or any part of the Common Elements are 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 conveyance. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

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

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least sixty-seven percent (67%) of the votes of all of the Owners 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 Executives Board. If such improvements are to be repaired or restored, the provisions in Article 11 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be retained by the Association to offset future expenses of the Association.

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

ARTICLE 13
ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of (a) granting easements pursuant to Article 7, (b) executing documents or instruments to convey or encumber Common Elements upon approval of Owners as provided herein, (c) purchasing and maintaining insurance pursuant to Article 9, 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 9 upon their damage or destruction as provided in Article 11, or (d) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article 12, above. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE 14

RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

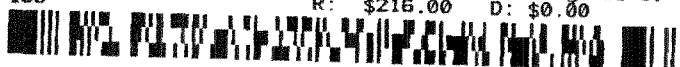
Section 14.1 Addition of Unspecified Real Estate. Subject to those restrictions set forth in Section 222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject unspecified real property to the provisions of this Declaration.

Section 14.2 Reserved Development Rights of Expansion. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time subject additional Units and other real property to the provisions of this Declaration to include up to a total of ten (10) Units in the Project and to expand the Common Elements.

Section 14.3 Reservation of Withdrawal Rights. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from the provisions of this Declaration individual Units and/or Common Elements, provided however that none of the real estate may be withdrawn after any Unit within a building has been conveyed by Declarant to a purchaser. This restriction shall not apply to any other portions of the Project on which Units are not yet constructed and conveyed by Declarant to a purchaser.

Section 14.4 Reservation of Rights to Amend Declaration. Notwithstanding any provision to the contrary found elsewhere in this Declaration, Declarant reserves the right to amend this Declaration to reduce the financial burdens imposed on any deed restricted Units. This right to amend includes, but is not limited to, the right to reduce such Unit's obligation to pay Assessments pursuant to Article 10 above or to reduce the Allocated Interests of such Unit.

Section 14.5 Other Reserved Rights. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to: (a) complete improvements indicated on the plats and Maps, (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size within one or more Units and within the General Common Elements so long as Declarant or Successor Declarant continues to be an Owner of a Unit or, if earlier, seven (7) years from the recording of this Declaration with the Clerk and Recorder, (c) to subject the Project to a master association, (d) to merge or consolidate the Project with a common interest community of the same form of ownership, and (e) to appoint or remove any officer of the association or any Executive Board member during the period of Declarant control as set forth in Section 4.4 above. Declarant reserves the right to periodically enter upon the



Common Elements to inspect the maintenance and upkeep of the Common Elements, including building exteriors, common mechanical systems, common structural items, landscaping, irrigation systems and common area amenities such as playgrounds and club houses that may have been constructed by Declarant. Declarant will schedule and coordinate its review of the Common Elements through the Manager or the president of the Board of Directors of the Association. During the inspection, Declarant will review and, if appropriate, make recommendations to the Association relating to the repair, maintenance and upkeep of the Common Elements. Declarant may also, if it so chooses, make repairs or take other corrective action with respect to repair or maintenance items that it identifies during the review.

Section 14.6 Termination of Rights. The rights reserved to the Declarant for itself, its successors and assigns in this Article shall expire, unless sooner terminated as required by the Act, until the earlier to occur of: (a) the conveyance of the last Unit to an Owner who is not Declarant or a Successor Declarant; or (b) five (5) years from the date of recording this Declaration with the Clerk and Recorder, unless such rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Executive Board may impose on the subsequent exercise of the rights by Declarant. Further, Declarant reserves the right, at any time, and from time to time, to surrender or terminate some or all of the development or other rights reserved herein by recording a statement to that effect with the Clerk and Recorder.

Section 14.7 Change in Allocated Interests. In the event Declarant or a Successor Declarant exercises the right to add, withdraw, or convert Units as set forth above, the Allocated Interests of the resulting Units after such expansion or withdrawal shall be according to the formula set forth in Section 2.2 above.

ARTICLE 15 **ARCHITECTURAL CONTROL AND DESIGN REVIEW**

Section 15.1 Common Elements. Other than alterations, additions or improvements made by Declarant, no alteration, addition or improvement to the Common Elements of any kind (including, without limitation, change in color, texture, materials, street number, signage, doors, windows, or additional landscaping), or which in any manner affect the Common Elements (by way of example and not by way of limitation, air conditioning units, hot tubs, spas, fireplaces, skylights, and moving or removing structural walls), shall be made unless first approved in writing by the Executive Board. Until the termination of Declarant's reserved rights as provided in Section 14.5 above, Declarant shall be exempt from any requirement to obtain approval under the provisions of this Article 15. The Executive Board shall respond to any written request for approval of a proposed addition, alteration or improvement within forty five (45) days after the complete submission of the plans, specifications and other materials and information which the Executive Board may require in conjunction therewith, which may include, without limitation, plans and specifications showing the proposed improvements, complete building plans and material specifications, and exterior elevations, materials and colors. All improvements shall be constructed only in accordance with approved plans. If the Executive Board fails to approve or disapprove any request within forty five (45) 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.

Section 15.2 Criteria for Approval. The Executive Board has the absolute right to deny any requested changes. The Executive Board may approve any proposed improvement only if it deems in its reasonable discretion that the improvements in the location indicated will not be detrimental to the appearance of the surrounding areas of the Project as a whole; that the appearance of the proposed improvement will be in harmony with the surrounding areas of the Project; that the upkeep and maintenance of the proposed improvement will not become a burden on the Association; and that the proposed improvements will not adversely affect the Common Elements. Specific factors considered in approving plans include, among other things, conformity and harmony of the design, colors and materials, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Executive Board may condition its approval of any proposed improvement upon the making of such reasonable changes therein as the Executive Board may deem appropriate.

Section 15.3 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 materialmen on account of such alteration, addition or improvement, or to any person having claim for injury to person or damage to property arising therefrom.

Section 15.4 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: exercising all of the power of the Executive Board under the provisions of this Article 15, establishment and administration of architectural or design guidelines, sign guidelines, window covering guidelines and lighting guidelines; review and recommendations for approval, disapproval or approval with conditions of alterations or additions to Common Elements (whether General or Limited); and such other matters as the Executive Board, may request.

Section 15.5 Association Right to Remove Unauthorized Alterations, Additions or Improvements. The Association, upon the majority approval by the Executive Board and after 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 expense therefor shall be paid by the Owner to the Association upon demand, and until paid, shall constitute a Default Assessment enforceable in the same manner as any other unpaid Assessment.

Section 15.6 Design Guidelines. The Executive Board or the Committee may adopt, establish, and publish from time to time design guidelines for the Project and such design guidelines shall be an Association Document, the terms of which shall be complied with by all Owners. The design guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for the Project including, but not limited to, items such



as color, texture, structure, design, appearance, landscaping and site improvement standards. The design guidelines may be modified or amended from time to time by the Executive Board and shall be made available to all Owners and their representatives for review. Further, the Committee may recommend, and the Executive Board, in its sole discretion may excuse compliance with such requirements as not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Project's design review process and design standards is not a substitute for compliance with city or county building, zoning, and subdivision regulations and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. In the event of a conflict between the terms of this Declaration and the design guidelines, the terms of this Declaration shall control.

ARTICLE 16 MORTGAGEE'S RIGHTS

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

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

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

Section 16.3 Right to Pay Taxes and Charges. Mortgagees who hold First Mortgages against Units 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 Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

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



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

16.5.1 Any condemnation or casualty loss that affects either a material portion of the Project or the Unit secured by the Mortgage;

16.5.2 Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which the Mortgagee holds the Mortgage;

16.5.3 A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

16.5.4 Any proposed action that requires the consent of a specified percentage of eligible Mortgagees.

Section 16.6 Action by Mortgagee. If this Declaration or any Association Documents require the approval of any Agency or Mortgagees then, if any Agency or Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Agency or Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Agency or Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Agency or Mortgagee by certified or registered mail, return receipt requested, at the address provided to the Association by the Agency or Mortgagee. To become an eligible Mortgagee, the Agency or Mortgagee must make a written request for notification to the Association in care of the Association's registered agent. If the Agency or Mortgagee fails to make a written request for notification to the Association in care of the Association's registered agent (which shall include the Agency's or Mortgagee's name and address and Unit number concerned), the Agency or Mortgagee shall be deemed to have approved such proposal, and no further approval or consent shall be required by such Agency or Mortgagee.

ARTICLE 17 DURATION OF COVENANTS AND AMENDMENT

Section 17.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 17.2 Amendment. This Declaration, or any provision of it, may be amended at any time by vote or agreement of Owners to which sixty-seven percent (67%) or more of the votes in the Association are allocated.

Section 17.3 Amendment for Certain Actions. Notwithstanding anything else contained in this Declaration, except as provided by the Act, and except in case of condemnation or substantial loss to the Units and/or Common Elements, unless at least two-thirds (2/3rds) of Eligible Mortgagees and Owners to which sixty-seven percent (67%) or more of the votes in the Association are allocated have given their prior written approval, the Association may not:

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

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

17.3.3 Partition or subdivide any Unit except as specifically provided herein;

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

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

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

ARTICLE 18 LIMIT ON TIMESHARING

No Unit shall be used (a) for the operation of a timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years; or (b) for the operation of a reservation or time-use system among co-Owners of a Unit managed by a party other than the co-Owners themselves or a system whereby co-Owners are required as a condition of purchase of a fractional interest in the Unit to subject the fractional interest to a pre-determined reservation or time-use system among co-Owners, regardless of whether or not the co-Owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating. Any such uses are hereafter defined as a "Fractional Interests."

ARTICLE 19 GENERAL PROVISIONS

Section 19.1 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers are restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such

provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 19.2 Enforcement. Except as otherwise provided in this Declaration, the 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 Executive Board, Declarant or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver to the right to do so thereafter. In any action instituted or maintained for enforcement of the Association Documents, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. 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. The decision of the Association to pursue enforcement action in any particular case shall be left to the Executive Board's discretion, subject to the duty to exercise its business judgment, and the Executive Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that it is not in the Association's best interests, based on hardship, expense or other reasonable criteria, to pursue enforcement action.

Section 19.3 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

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

Section 19.5 Indemnification. To the fullest extent permitted by Colorado law, the Association shall indemnify every present and former director, officer, committee member, agent or employee against loss, costs, and expense, including attorneys' fees reasonably incurred in connection with any action, suit, or proceeding in which such person may be made a party by reason of being, or having been such director, officer, committee member, agent or employee of the Association. Any such indemnification may be limited to and paid out of the insurance proceeds provided by an insurer furnishing officers and directors errors and omissions insurance coverage or similar protection and any other insurance protecting the Association from liability because of the negligent acts of its servants, including insurance covering motor vehicles or public liability, property damage, medical and other similar coverage. In the event of an insurance settlement, the settlement shall be approved by the Board of Directors and paid for by the insurance carrier out of the insurance proceeds.

In Witness Whereof the Declarant has set its hand and seal on the day and year first set forth above.

Declarant:

Pitchfork, LLC, a Colorado limited liability company

By: William E. Cohen II

Title

MANAGER MEMBER

STATE OF COLORADO)

) ss.

COUNTY OF Gunnison)

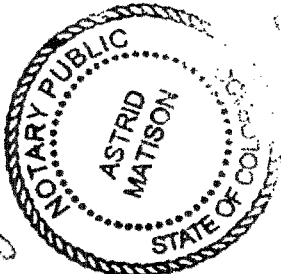
The foregoing instrument was acknowledged before me this 9th day
of May, 2007, by WILLIAM E. COHEN II MANAGER MEMBER of
Pitchfork, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 11-2-09

[SEAL]

Notary Public



S Dominguez Gunnison County, CO 575116
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133 R: \$216.00 D: \$0.00



EXHIBIT A
TO
DECLARATION OF PITCHFORK FLATS
PROPERTY SUBJECT TO DECLARATION

Lot 6 and Lot 33, PITCHFORK, according to the Plat thereof recorded August 21, 2000 at Reception No. 504415 as modified by Modification of Final Plat bearing Reception No. 510377 and the Amended and Restated Declaration of Protective Covenants for Pitchfork recorded August 21, 2002 as Reception No. 523046 of the Gunnison County records, Town of Mt. Crested Butte, County of Gunnison, State of Colorado.

**EXHIBIT B
TO
DECLARATION OF PITCHFORK FLATS**

UNDIVIDED INTEREST IN COMMON ELEMENTS, ASSESSMENTS AND VOTES

Lot Number	Unit Number	Allocated Interest in Common Elements	Allocated Interest in Assessments	Number of Votes
6	412	10.2%	10.2%	1
6	414	19.3%	19.3%	1
6	416	19.3%	19.3%	1
6	418	10.2%	10.2%	1
33	A	7.3%	7.3%	1
33	B	10.3%	10.3%	1
33	C	10.4%	10.4%	1
33	D	13%	13%	1



**EXHIBIT C
TO
DECLARATION OF PITCHFORK FLATS**

**EASEMENTS AND LICENSES BURDENING AND SERVING THE
PROJECT**

1. Taxes and assessments which are a lien or due and payable; and any tax, special assessments, charges or lien imposed for water or sewer service, or for any other special taxing district, any unredeemed tax sales,
2. Right of way for ditches or canals constructed by the authority of the United States as reserved in United States Patent recorded February 16, 1910 in Book 101 at page 449.
3. Any tax, assessment, fees or charges by reason of the inclusion of the subject property in the Mt. Crested Butte Water and Sanitation District and within the Town of Mt. Crested Butte Special Improvement District.
4. Any right of way for a sewer line as shown on the plat of Snowfall Point Condominiums filed for record April 23, 1974 as Reception No. 299999.
5. Terms and conditions in License Agreement between Cinnamon Mountain Partners, and Crested House Condominium Association as recorded March 9, 1992 in Book 702 at page 606.
6. Covenants, conditions and restrictions (deleting any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in Declaration of Protective Covenants for Pitchfork recorded May 2, 2001 as Reception No. 510378, Approval of Town of Mt. Crested Butte recorded May 2, 2001 as Reception No. 510379 and Amended and Restated Declaration of Protective Covenants recorded August 21, 2002 as Reception No. 523046, not in violation of state or federal law.
7. Any and all easements, notes and deed restrictions as set forth on the Plat of PITCHFORK SUBDIVISION recorded August 21, 2000 bearing Reception No. 504415 and in Modification of Final Plat recorded May 2, 2001 bearing Reception No. 510377.
8. Terms and conditions in Pitchfork Subdivision Improvements Agreement between the Town of Mt. Crested Butte, Colorado and Coburn Development, Inc., a Colorado corporation recorded August 21, 2000 as Reception No. 504416.
9. Dedication of Snow Storage Easements recorded August 21, 2000 as Reception No. 504418.
10. Pitchfork Occupancy and Resale Deed Restriction, Agreement, and Covenant recorded November 29, 2000 as Reception No. 507107, Modification recorded May 2, 2001 as



Reception No, 510376, Second Modification recorded March 29, 2002 as Reception No. 519317 and Third Modification recorded February 21, 2003 as Reception No. 528219.

11. An Agreement by and between the Town of Mt. Crested Butte and The Anton J. Kapushion and Co., and Ina Kristine Kapushion and Antonette C. Kapushion for the provision of access through Pitchfork Subdivision PUD to the land west of Pitchfork Subdivision and limiting the use of that access, recorded June 14, 2001 as Reception No. 511540.
12. Terms and conditions in Pitchfork Subdivision Improvements Agreement between the Town of Mt. Crested Butte, Colorado and Pitchfork, LLC, a Colorado limited liability company recorded November 2, 2001 as Reception No. 515597.
13. Covenants, conditions and restrictions (deleting any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Pitchfork Townhomes recorded August 21, 2002 as Reception No. 523047 and Amendment to Correct Amended and Restated Declaration recorded October 1, 2002 as Reception No. 524283, not in violation of state or federal law.
14. Covenants, conditions and restrictions (deleting any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in Amended and Restated Condominium Declaration of Pitchfork Condominiums recorded September 6, 2002 as Reception No. 523492 and First Amendment to Correct Amended and Restated Condominium Declaration of Pitchfork Condominiums recorded December 22, 2004 as Reception No. 549515, not in violation of state or federal law,
15. Terms and conditions in Pitchfork Subdivision Improvements Agreement between the Town of Mt. Crested Butte, Colorado and Pitchfork, LLC, a Colorado limited liability company recorded February 21, 2003 as Reception No. 528218.