

# MAP OF GREEN DRAKE CONDOMINIUMS

LOTS 27 AND 28, BLOCK 20, TOWN OF CRESTED BUTTE  
GUNNISON COUNTY, COLORADO  
WITHIN THE NE 1/4 SECTION 3, T14S, R86W, 6th P.M.

## DEDICATION

KNOW ALL MEN BY THESE PRESENTS: That Elk Ave LLC, a Colorado limited liability company, being the owner of the following described real property, hereby declares and executes this Map of GREEN DRAKE CONDOMINIUMS, Town of Crested Butte, County of Gunnison, State of Colorado as follows:

1. **DESCRIPTION.** The property description of the real property laid out and platted as GREEN DRAKE CONDOMINIUMS shown on this Map is:

Lots 27 and 28, Block 20, TOWN OF CRESTED BUTTE, County of Gunnison, State of Colorado.

2. **CONDOMINIUM DECLARATION.** The real property laid out as GREEN DRAKE CONDOMINIUMS, Town of Crested Butte, County of Gunnison, State of Colorado is platted and dedicated pursuant to the terms and conditions of the DECLARATION ESTABLISHING GREEN DRAKE CONDOMINIUMS dated March 13, 2017 and recorded March 22, 2017, as Reception No. 1645538.

IN WITNESS WHEREOF, Elk Ave LLC has executed this Declaration this 13 day of March, 2017.

Elk Ave LLC, a Colorado  
limited liability company

By: Chuck Schiavo  
Chuck Schiavo, Manager

State of Colorado  
County of Gunnison

The foregoing Dedication was acknowledged before me the 13 day of March, 2017 by Chuck Schiavo, Manager of Elk Ave LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires:

David L. Lumsden  
Notary Public



## CRESTED BUTTE TOWN COUNCIL APPROVAL

The within Map of GREEN DRAKE CONDOMINIUMS is approved for filing this 13th day of March, 2017

By: John Maishel  
Mayor

Attest: Deborah J. Stetson  
Clerk

## GUNNISON COUNTY CLERK AND RECORDER'S ACCEPTANCE

This Map was accepted for filing in the office of the Clerk and Recorder of Gunnison County, Colorado on this 22nd day of MARCH, 2017.

Reception No. 1645537 Time 11:01 AM

Jan M. Bae, Deputy  
County Clerk



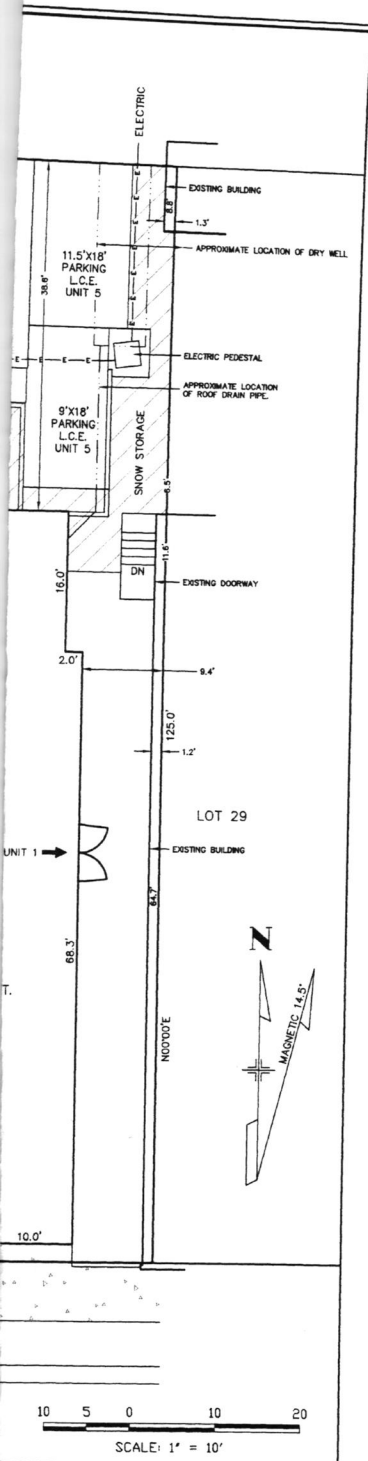
Gunnison County, CO 645537  
3/22/2017 11:01:25 AM Page 1 of 2  
305 R 23.00 D [Fee: doc]



GREEN DRAKE CONDOMINIUMS  
LOTS 27 AND 28, BLOCK 20  
TOWN OF CRESTED BUTTE

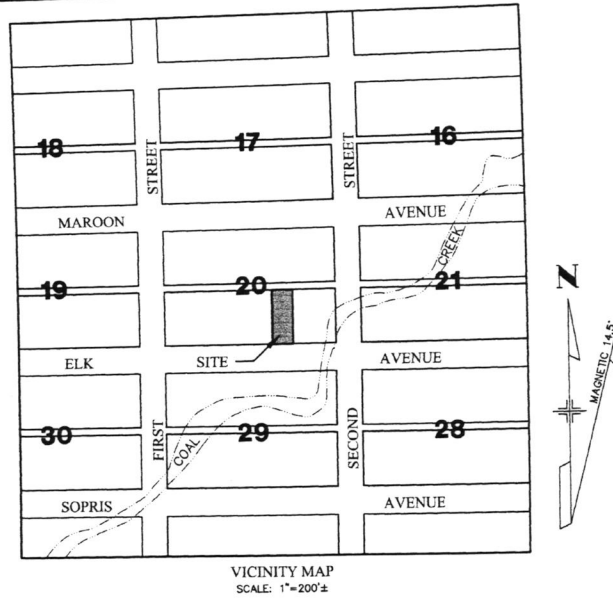
COVER SHEET

Prepared By:  
NCW & Associates, Inc.  
P.O. Box 3688 Crested Butte  
(970) 349-6384 Colorado 81224  
PROJECT: 16153.00 DWG.: C10Sc  
DATE: 2/28/17 SHEET 1 OF 2



0385 in the office of the Gunnison County Clerk and

used as a long-term rental or as an owner occupied  
ing. In order to utilize the unit as an owner occupied  
unit for which a conditional use for a residential unit is  
rental unit as a permitted use or an approved  
the residential unit. Only owners conducting  
residential unit. Leasing the nonresidential unit to  
g for his or her own use or conducting business  
within the B-1 zone, per code."



#### ATTORNEY'S OPINION

I, David Leinsdorf, attorney at law duly licensed to practice before courts of record in the State of Colorado, do hereby certify that I have examined the title to all lands as shown herein dedicated and that title to such lands is in Elk Ave LLC, a Colorado limited liability company, free and clear of all liens, taxes and encumbrances, except as follows:

1. The lien for 2017 real property taxes and assessments;
2. United States Patent reservations;
3. Any taxes, fees, assessments, charges and/or obligations as imposed by Notices of Ordinances in the Town of Crested Butte recorded December 1, 1986 in Book 636 at Page 145, recorded August 23, 1995 in Book 769 at Page 94, recorded May 2, 1996 in Book 782 at Page 272 and recorded May 24, 1996 in Book 783 at Page 548; and
4. Restrictive Covenant Agreement bearing Reception No. 640385 and Grant of Easement bearing Reception No. 636349, 5. Construction Deed of Trust bearing Reception No. 636457.

Note: All Book and Page and Reception Number references are to the records in the office of the Gunnison County Clerk and Recorder.

Signed this 1st day of March, 2017

*David Leinsdorf*  
David Leinsdorf, Attorney Reg #2740  
215 Elk Avenue, 3rd Floor  
P.O. Box 187  
Crested Butte, CO 81224-0187  
Phone: (970) 349-6111  
Fax: (970) 349-6243  
david81224@gmail.com

#### NOTES:

1. Bearings and distances are as shown on the Town plat.
2. Location is based on Town plat and control monuments located at 3rd Street and Elk Avenue and 7th Street and Elk Avenue.
3. All units are subject to a blanket utility easement as set forth in Section 13.4 and 13.5 of the Declaration Establishing Green Drake Condominiums, recorded as Reception No. 645538 of the Office of the Gunnison Clerk and Recorder.
4. All utility locations are approximate and shall not be relied upon for construction. The appropriate agencies should be contacted before digging.
5. According to Colorado law you must commence legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based on any defect in this survey be commenced more than ten years from the date of the surveyor's certificate shown here on.
6. Items denoted with "" were not in or completed at time of survey.

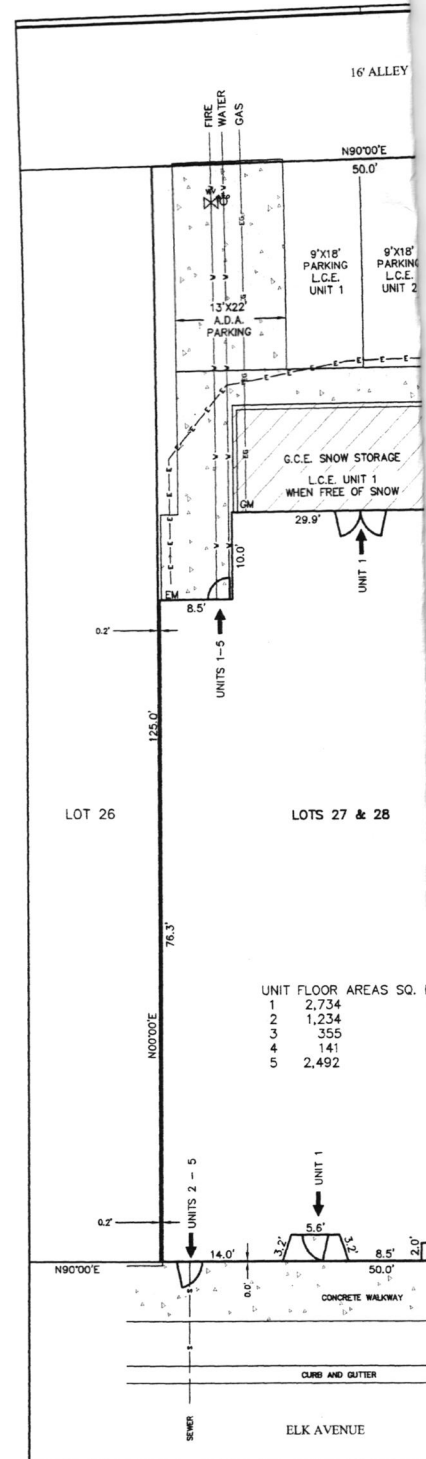
#### LAND SURVEYOR'S CERTIFICATE

I, Norman C. Whitehead, being a registered land surveyor in the State of Colorado, do hereby certify that this Map of GREEN DRAKE CONDOMINIUMS was made by me and under my supervision, is accurate to the best of my knowledge, and that the improvements as constructed conform substantially to this Map. This Map fully and accurately depicts the layout, measurements and location of the improvements on the real property, the condominium unit designations, and the dimensions of such units and the elevations of the unfinished floors and ceilings.

Dated this 28th day of February, 2017.



Norman C. Whitehead, Colorado Professional  
Land Surveyor No. 27739



#### NOTICE OF RESTRICTIVE COVENANT

The Restrictive Covenant Agreement bearing Reception No. 640385 and Grant of Easement bearing Reception No. 636349, 5. Construction Deed of Trust bearing Reception No. 636457, Recorder provides as follows:

"Per Code Section 16-5-130(2), the residential unit can only be used as a residence, as defined in the Crested Butte Municipal Code and following unit the following must be met: in the event that the owner of a unit is granted, owns and uses for his or her own use another nonresidential use within the same building, the owner may occupy business themselves in their nonresidential unit may occupy the unit for another person or entity for his or her use is not considered use of himself or herself. Limitations on short-term leasing are imposed."



DECLARATION ESTABLISHING

GREEN DRAKE CONDOMINIUMS

Elk Ave LLC, a Colorado limited liability company (Declarant), does hereby make the following grants, submissions and declarations:

ARTICLE I

PURPOSE AND PLAN

**1.1 Purpose.** The purpose of this Declaration is to create a Condominium Common Interest Community pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes Section 38-33.3-101, et seq., 1973, as amended.

**1.2 Plan.** Declarant is the owner of the land described on attached **Exhibit A** (Land) which is shown and described on the Map, filed pursuant to Section 2.16 hereinafter. Located on the Land is one building (Building) with related improvements. The location of the Building on the Land and its dimensions are shown on the Map. The Building contains five (5) units.

Declarant hereby declares that all of the Land described in Exhibit A shall be held or sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Land and be binding on all parties having any right, title or interest in the Land or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof. Additionally, Declarant hereby submits the Land to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.30-101, et seq., Colorado Revised Statutes, as it may be amended from time to time (the Act). In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

The Map identifies Units by number. Each Unit shall have appurtenant thereto the undivided interest in the common elements and common expenses of the association and a portion of the votes in the association as described on attached **Exhibit B**.

ARTICLE 2

DEFINITIONS

**2.1 Act.** "Act" means the Colorado Common Interest Ownership Act, Colorado Revised Statutes Sections 38-33.3-101 et seq., as amended.

**2.2 Association.** "Association" means the Green Drake Condominiums Association, a Colorado non-profit corporation, its successors and assigns.

**2.3 Association Documents.** "Association Documents" means this Declaration, the Articles of Incorporation, the Bylaws, the Map, and any procedures, rules, regulations or policies adopted under such documents by the Association.



**2.4 Building.** "Building" means the structure on the Land as shown on the Map.

**2.5 Common Expenses.** "Common Expenses" are defined in Section 6.1 hereof.

**2.6 Condominium.** "Condominium" shall mean the entity created by this Declaration and the Map and shall include all of the Units, Common Elements, the Building and the Land as defined herein and in the Map known as Green Drake Condominiums.

**2.7 Condominium Unit or Unit.** "Condominium Unit" or "Unit" means an individual air space unit contained within the unfinished interior surfaces of the perimeter walls, floors, ceilings, windows and doors of an air space unit as reflected on and described on the Condominium Map, together with all fixtures and improvements therein contained, the interior decorated or finished surfaces of such Unit's interior wall, floors, ceiling, windows and doors, and the interior non-supporting or non-load bearing walls within the Unit, except for common utility facilities. The interior surfaces of a window or door means the points at which such surfaces are located when such windows or doors are closed. The term does not include the undecorated or unfinished surfaces of the perimeter walls, floors or ceilings of a Unit, any utility facilities running through the Unit that serve more than one Unit, any structural component of the Buildings, or any other Common Element or part thereof located within the Unit. The term Unit includes the undivided interest in the General Common Elements and the Limited Common Elements appurtenant thereto.

**2.8 Declarant.** "Declarant" means Elk Ave LLC, a Colorado limited liability company, its representatives, successors or assigns.

**2.9 Declaration.** "Declaration" means this document with all Exhibits attached hereto which by this reference are incorporated herein, and all supplements hereto, and the Map, which documents will be recorded pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes Sections 38-33.3-101, et seq., as amended.

**2.10 Executive Board.** "Executive Board" shall mean the governing board of the Association elected by the Owners to operate, maintain and manage the Condominium.

**2.11 First Mortgage or Deed of Trust.** "First Mortgage" or "First Deed of Trust" means a security interest on a Unit which has priority over all other security interests on the Unit.

**2.12 General Common Elements or Common Elements.** "General Common Elements", "Common Elements" or "GCE" means all of the Project except the Units.

**2.13 Land.** "Land" means the real property described on attached Exhibit A.

**2.14 Limited Common Elements.** "Limited Common Elements" or "LCE" means common elements reserved for the use of less than all of the Units. All such areas are shown on the Map as Limited Common Elements and allocated thereby to the appropriate Unit or Units.

**2.15 Managing Agent.** "Managing Agent" shall mean the person or entity employed by the Association to perform the obligations of the Association relative to operation, maintenance and management of the Condominium.

**2.16 Map.** "Map" means the survey and drawings prepared by Norman C. Whitehead, Colorado P.L.S. No.27739, of Green Drake Condominiums and filed for record with the Clerk and





Recorder of the County of Gunnison, Colorado, on March 22, 2017, Reception No. 645537, which reflects the legal description and location of the Land and all Units.

**2.17 Owner.** "Owner" means any person, persons, partnership, corporation, limited liability company or other entity or any combination thereof owning all or part of the fee simple title to a Unit. In the event a Unit is owned by more than one person or entity, (a) such Owner shall designate in writing one person or entity and such person's or entity's address to represent such owner and receive notices and (b) liability for all obligations created by this Declaration shall be joint and several. Upon the failure of an Owner to so designate one person or entity, the Association shall be deemed to be the agent for receipt of notices to such Owners.

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

**2.19 Project.** Project means the Land and the Building and all improvements and structures thereon, together with all rights, easements, and appurtenances belonging thereto, submitted to condominium ownership by this Condominium Declaration and which may be subsequently submitted to condominium ownership under the terms of this Condominium Declaration or any supplemental declaration as is hereinafter provided.

**2.20 Votes and Percentage of Owners.** Whenever in this Declaration a vote of Owners is required or permitted, each Owner shall be entitled to the vote set forth on attached Exhibit B. Whenever in this Declaration reference is made to a percentage of Owners, such percentage shall mean the aggregate voting percentage of the Owners voting or represented.

### ARTICLE 3

#### GRANT AND SUBMISSION

**3.1 Grant and Submission.** Declarant hereby grants and submits to condominium ownership all of the Land, the Building thereon, and the improvements related or incidental thereto, as located upon the Land.

**3.2 Conveyance of Fixtures.** Declarant hereby grants and submits to condominium ownership all of the equipment, supplies, materials, and other property which are affixed to the Land or the improvements appurtenant thereto.

**3.3 Allocated Interests.** The undivided interest in the Common Elements, the Common Expense liability and votes in the Association allocated to each Unit are set forth in Exhibit B. The interests allocated to each Unit have been calculated as follows:

(a) the undivided interest in Common Elements, on the basis of approximate square footage of each Unit;

(b) the percentage of liability for Common Expenses, on the basis of approximate square footage of each Unit; and



(c) the number of votes in the Association, on the basis of approximate square footage of each Unit.

## ARTICLE 4

### OCCUPATION AND USE

**4.1 Division of Condominium into Units.** The Condominium is divided into five (5) fee simple estates known as Condominium Units which are shown on the Map.

**4.2 Conveyance of Condominium Units.** Each Unit and the undivided ownership interest in the Common Elements appurtenant thereto shall be inseparable and may be conveyed, leased or encumbered only as a Condominium Unit.

**4.3 Description of Condominium Units.** Every deed, lease, mortgage, trust deed or other instrument shall legally describe a Unit by its letter followed by the words "Green Drake Condominiums" with further reference to this Declaration and the Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber, or otherwise affect a Unit, and such Unit's percentage of interest in the Common Elements.

**4.4 Exclusive Possession and Use.** Each Owner shall be entitled to exclusive ownership and possession of such Owner's Unit (including any fixtures appurtenant thereto) and exclusive possession and use of the Limited Common Elements allocated to his Unit. Each Owner may use the Common Elements in accordance with the purposes for which they are intended, without hindering or encroaching upon the lawful rights of other Owners. Subject to the provisions of Article 12, below, each Unit may be used or occupied in any manner consistent with the building, and zoning and other regulations of the Town of Crested Butte, Colorado, or other authority having jurisdiction over Green Drake Condominiums.

**4.5 Right of Access and Emergency Repairs.** The Association shall have the right of access to each Unit and its appurtenant Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of Common Elements, or at any time deemed necessary for the making of emergency repairs to prevent damage to the Common Elements or to the Unit or to another Unit.

**4.6 No Partition.** No Owner shall bring an action for partition of his Unit or of the Common Elements, or of the Land.

**4.7 Right to Mortgage.** Each Owner shall have the right from time to time to encumber his interest in his Unit by deed of trust, mortgage or other security instrument.

**4.8 Notice of Restrictive Covenant.** The Restrictive Covenant Agreement bearing Reception No. 640385 in the office of the Gunnison County Clerk and Recorder provides as follows:

"Per Code Section 16-5-130(2), the residential unit can only be used as a long-term rental or as an owner occupied unit, as defined in the Crested Butte Municipal Code and following. In order to utilize the unit as an owner occupied unit the following must be met: in the event that the owner of a unit for which a conditional use for a residential unit is granted, owns and uses for his or her own use another nonresidential unit as a permitted use or an approved conditional use within the same



building, the owner may occupy the residential unit. Only owners conducting business themselves in their nonresidential unit may occupy their residential unit. Leasing the nonresidential unit to another person or entity for his or her use is not considered using for his or her own use or conducting business himself or herself. Limitations on short-term leasing are imposed within the B-1 zone, per code."

## ARTICLE 5

### GREEN DRAKE CONDOMINIUMS ASSOCIATION

**5.1 Management By Association.** The operation and management of Green Drake Condominiums shall be undertaken by the Green Drake Condominiums Association, a Colorado non-profit corporation, which has been formed and will be operated as a Unit owners' association on behalf of all Owners of Units in the Green Drake Condominiums. The Association shall have all of the powers, authority and duties permitted pursuant to the Act necessary or convenient to manage the business and affairs of the Condominium. An Owner of a Condominium Unit shall automatically become a member of the Association and shall remain a member for the period of his ownership. The Executive Board of the Association shall have three (3) members. Except for members of the Executive Board appointed by Declarant during the period of Declarant control, all Executive Board members shall be elected by owners of Units in Green Drake Condominiums.

**5.2 Declarant Control.** Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association during the Period of Declarant Control. The "Period of Declarant Control" begins with the appointment of the initial Executive Board and continues until the earlier of: (a) ten (10) years from the date of recording the Declaration; (b) sixty (60) days after Declarant conveys seventy-five percent (75%) of the Units that may be created to Owners other than Declarant; or (c) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded with the Gunnison County 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 to owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units to owners other than a Declarant, not less than thirty-three and one third percent (33 1/3%) of the members of the Executive Board must be elected by owners other than the Declarant.

**5.3 Association Management.** The Association shall conduct the general management, operation and maintenance of the Condominium and the Units and the enforcement of the provisions of this Declaration and of the Articles and Bylaws of the Association and rules and regulations adopted thereunder. The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of the Owners of Units to which at least 51 percent of the votes in the Association are allocated, at a meeting called for that purpose.



**5.4 Agent of Owner(s).** If any Unit is owned by more than one person or by a partnership, joint venture, corporation, limited liability company or other entity, the Owner(s) shall designate to the Association in writing the name and address of the agent to whom all legal or official assessments, liens, levies or other notices may be mailed. Upon failure to so designate an agent, the Association shall be deemed to be the agent for receipt of notices to such Owner(s).

**5.5 Notice to Unit Owners.** Notice of matters affecting the Association, the Common Elements or other aspects of the project shall be given to Unit Owners by the Association or other Unit Owners in writing addressed to each Unit Owner at the address provided to the Association by each Unit Owner. If a Unit Owner has failed to provide an address, the Association shall use the address set forth in the deed or other instrument of conveyance recorded in the Gunnison County records by which the Unit Owner acquired title.

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

- (a) The original or a certified copy of the recorded Declaration, as it may be amended, the Association's Articles of Incorporation, Bylaws, minute books, other books and records, and any Rules which may have been promulgated;
- (b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends;
- (c) The Association funds, books and records;
- (d) All of the tangible personal property that has been represented by the Declarant to be the property of the Association or that is necessary for and has been used exclusively in the operation and enjoyment of the Common Elements;
- (e) A copy, for the nonexclusive use of the Association, of any plans and specifications used in the construction of improvements in the Project;
- (f) All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;
- (g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Project;
- (h) Any other permits issued by governmental bodies applicable to the Project and which are currently in force or which were issued within one (1) year prior to the date on which Owners other than the Declarant took control of the Association;
- (i) Written warranties of any contractor, subcontractors, suppliers and manufacturers that are still effective;
- (j) A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;



(k) Employment contracts in which the Association is a contracting party; and

(l) Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the person performing the services.

**5.7 Executive Board** . Except as otherwise provided in this Declaration or the Bylaws, the Executive Board may act in all instances on behalf of the Association. Except for members of the Executive Board appointed by the Declarant during the Period of Declarant Control, all members of the Executive Board shall be Members of the Association, or in the event that a Member is an entity other than a natural person, such member of the Executive Board shall be an authorized representative of such entity Member.

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

- (a) Adopt and amend bylaws and rules, regulations and policies;
- (b) Determine Common Expenses and adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;
- (c) Hire and terminate Managing Agents and other employees, agents and independent contractors;
- (d) 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;
- (e) Make contracts and incur liabilities, except that any agreement for professional management of the Association's business or other contract providing for services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) day's prior written notice;
- (f) Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (g) Cause additional improvements to be made as a part of the Common Elements;
- (h) 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 (i) Members entitled to cast at least sixty-six percent (66%) of the votes agree to that action, (ii) 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;
- (i) Grant easements, leases, licenses and concessions through or over the Common Elements;





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

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

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

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

(n) Assign its right to future income, including the right to receive Assessments;

(o) Exercise any other powers conferred by the Declaration or Association Bylaws;

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

(q) Exercise any other powers necessary and proper for the governance and operation of the Association.

**5.9 Books and Records.** The Association shall make available for inspection to Owners, upon request, during normal business hours or under other reasonable circumstances, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws, and as required by the Colorado Revised Nonprofit Corporation Act. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required under the Act and as required by the Colorado Revised Nonprofit Corporation Act.

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

**5.11 Town Utilities.** The Association shall pay all water, sewer and trash collection charges levied on the individual Units and any Common Elements, in accordance with the



ordinances, rules and regulations of the Town of Crested Butte. The Association has the authority to allocate Owners' responsibility for utilities on any basis which it reasonably believes to be fair and equitable based on usage.

## ARTICLE 6

### COMMON EXPENSES

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

**6.2 Budget.** The Executive Board shall, in advance, prepare and adopt a proposed Common Expense budget at least ninety (90) days before expiration of the fiscal year based on estimated Common Expenses. Within (30) days after the adoption of the proposed budget, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver, a summary of the Common Expense budget to all the Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summaries. Unless at that meeting eighty percent (80%) of all Owners reject the Common Expense budget, the Common Expense budget is ratified, whether or not a quorum of all Members is present. In the event that a proposed Common Expense budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

### **6.3 Annual Assessments.**

(a) An Owner's Annual Assessments shall be determined based on the adopted and ratified Common Expense budget. The Executive Board shall levy and assess the Annual Assessments to each Owner primarily in accordance with the Allocated Interests in effect on the date of the Annual Assessment, provided, however, that the Executive Board reserves the right to allocate all expenses relating to fewer than all of the Units to the owners of those affected Units only. The Executive Board also has the authority to allocate Owners' responsibility for Annual Assessments on any basis which it reasonably believes to be fair and equitable based on impact. Annual Assessments shall be payable in advance monthly or on such other basis as may be determined by the Executive Board, and shall be due on the first day of each period in regular installments on a prorated basis. The omission or failure of the Association to fix the Annual Assessments for any assessment shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.





(b) The expense of maintaining certain Limited Common Elements ("LCE") shall be assessed to the owner(s) of the Unit(s) to which the LCE is appurtenant. Therefore, Units 1 and 5 shall each be assessed for 50% of the expense of maintaining and plowing the LCE contiguous to the north wall of Unit 1. Unit 3 shall be assessed for maintaining the Unit 3 deck. Unit 5 shall be assessed for maintaining the Unit 5 deck.

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

**6.5 Special Assessments.** In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section 6.5 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 primarily according to their Allocated Interests, subject to the right of the Association to assess only against the Owners of affected Units, any extraordinary maintenance, repair or restoration expense. The Executive Board also has the authority to allocate Owners' responsibility for Special Assessments on any basis which it reasonably believes to be fair and equitable based on impact. 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.

**6.6 Default Assessments.** All monetary fines and other enforcement costs assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, including without limitation attorneys fees incurred by the Association, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least five (5) days prior to the due date.

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

(a) If the delinquency continues for a period of fifteen (15) days, assess a late charge for each delinquency in such amount as the Association deems appropriate;

(b) If the delinquency continues for a period of thirty (30) days, assess an interest charge, in arrears, from the due date at the yearly rate of 18% per year;

(c) Suspend the voting rights of the Owner during any period of delinquency;



(d) Accelerate all remaining Assessment installments so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;

(e) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments;

(f) Proceed with foreclosure as set forth in more detail below; and/or

(g) Suspend any of the Owner's membership privileges during any period of delinquency and for up to sixty (60) days thereafter.

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

**6.8 Payment by Holder of Security Interest.** Any holder of a security interest on a Unit may pay any unpaid amount payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien and upon such payment that holder of a security interest shall have a lien on the Unit for the amounts paid with the same priority as the lien of the security interest.

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



**6.10 Capitalization of the Association.** The Association shall require the first Owner of any Unit (other than Declarant) 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 as provided herein). 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 Executive Board deems appropriate, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services. Such contribution of working capital shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of a Unit, an Owner shall be entitled to a credit from the transferee (but not from the Association) for the aforesaid contribution to working capital. The Association may, from time to time, increase the amount of the working capital contribution to an amount equal to one-sixth (1/6th) of the then current total annual assessment.

## ARTICLE 7

### ARCHITECTURAL CONTROL

**7.1 Alterations, Additions or Improvements to Common Elements.** Other than alterations, additions or improvements made by Declarant, no alteration, addition or improvement to a Unit of any kind (including, without limitation, change in exterior decoration or exterior materials, color, texture, street number, signage, doors or windows), or which in any manner affect the Project shall be made unless first approved in writing by the Executive Board. During the period specified in Section 5.2 above, Declarant shall be exempt from any requirement to obtain approval under the provisions of this Article 7. The Executive Board shall respond to any written request for approval of a proposed addition, alteration or improvement within thirty (30) days after the complete submission of the plans, specifications and other materials and information which the Executive Board may require in conjunction therewith. If the Executive Board fails to approve or disapprove any request within thirty (30) days after the complete submission of the plans, specifications, materials and other information with respect thereto, the request shall be deemed to have been disapproved by the Executive Board. In the event the Executive Board approves any such alteration, addition or improvement, it shall exercise reasonable business judgment to the end that any modifications conform to and harmonize with existing surroundings. The Executive Board has the absolute right to deny any requested changes. In its review of such plans, specifications and other materials and information, the Executive Board may require that the applicant(s) reimburse the Association for the actual expenses incurred by the Association in the review and approval process. Such amounts, if any, shall be levied in addition to the Common Expense assessment against the Unit for which the request for Executive Board approval was made, but shall be subject to the Association's lien for assessments and subject to all other rights of the Association for the collection of such assessments, as more fully provided in this Declaration. All work authorized shall be completed within the time limits established therefor.

**7.2 Governmental Approval.** If any application to any governmental authority for a permit to make any such alteration, addition or improvement requires execution by the Association, and provided approval has been given by the Executive Board, then the application shall be executed on behalf of the Association by an authorized officer without, however, incurring any liability on the part of the Executive Board, the Association or any of them to any contractor, subcontractor or



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

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

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

## ARTICLE 8

### MAINTENANCE AND ALTERATIONS

**8.1 Maintenance.** Responsibility for the maintenance of the Condominium shall be as follows:

(a) **By the Owner.** The Owner shall maintain and keep in good repair the interior surfaces of walls, ceilings and floors (including carpeting, tile, wallpaper, paint or other covering) as well as all fixtures and appliances, including baseboard heating elements, located within such Owner's Unit and any Limited Common Elements allocated to such Unit. An Owner shall not be responsible for repairs occasioned by damage as defined in Article 10 hereinafter, unless such damage is due to the act or negligence of the Owner, his guests, invitees or tenants.

(b) **By the Association.** The Association shall maintain and keep in good repair all that part of the Building and related improvements not required to be maintained and kept in good repair by an Owner.

**8.2 Alterations.** No Owner shall alter, modify, remove or destroy any Common Element without the prior written consent of the Executive Board, except for room partitions and dividers located within a Unit which are not load-bearing and which do not contain any utility service lines or ducts. All alterations made to the Common Elements must be performed under the supervision of an architect or other qualified person approved by the Association, with approval of any governmental authority having jurisdiction thereof, and performed in a good and workmanlike manner. Alteration work shall be completed as rapidly as possible and in such a manner as to not interfere with the use and occupancy of any other Unit and of the Common Elements of the Buildings. An Owner owning two or more Units adjacent to each other on the same floor of the Building or on adjacent floors of the Building shall have the right to combine such Units by common doorways or stairs and stairways, provided, however, that the plans, specifications and performance of work in combining such Units must be approved in writing by the Association. In like manner, the relocation of any balcony must be approved in writing by the Association. No





balcony on any floor of the Building may be enclosed in any fashion other than as originally constructed, without such approval.

## ARTICLE 9

### INSURANCE

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

(a) **Hazard Insurance Coverage.** Insurance for fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes co-insurance), special condominium, Building ordinance and inflation guard endorsements attached, in amounts determined by the Executive Board to represent not less than the full then current insurable replacement cost of the Building located on the Land, 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 and party walls, floors, and ceilings, doors, windows, roofs and other elements or materials comprising a part of the Units and including any fixtures, equipment or other property within the Units. Maximum deductible amounts for such policies shall be determined by the Executive Board. The Association shall obtain insurance covering the original specifications of each Unit. Each Unit Owner shall be responsible for obtaining additional or supplemental insurance covering any additions, alterations or improvements to his Unit which increase the replacement value of his Unit. In the event that a satisfactory arrangement is not made for additional insurance by the Unit Owner, the Unit Owner shall be responsible for any deficiency in any resulting insurance loss recovery and the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. Any additional premiums attributable to the original specifications of a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Article 6 hereof in the event the Association pays such premium for a Unit Owner.

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

**9.2 Fidelity Insurance.** Fidelity insurance or fidelity bonds may be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and



employees and on the part of all others, including any manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount determined by the Executive Board.

**9.3 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.

**9.4 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.

**9.5 Proof of Insurance.** The Association shall furnish proof of such insurance coverage to any Owner upon request.

**9.6 Owner's Insurance.** In addition, each Owner shall, at his own expense, carry insurance for homeowner's liability, theft, and other insurance covering personal property damage or loss, with coverages and terms specified by the Association. Proof of such insurance shall be provided to the Association annually and upon request.

## ARTICLE 10

### DAMAGE AND REPAIR

**10.1 Repair or Reconstruction after Damage.** For the purposes of this Article 10, total damage is defined as such damage as to render, in the judgment of the Association, all the Units in the Building untenable. Any damage less than total damage as so defined is partial damage for the purposes of this Article 10. Repair or reconstruction as used in this Article 10 means restoration of improvements to substantially the same condition which they existed prior to the damage, with each Unit and the Common Elements having substantially the same horizontal and vertical boundaries as before.

**10.2 Insurance Proceeds Sufficient to Repair.** In the event that proceeds from insurance coverage are sufficient to cover the cost of repair or reconstruction after damage to the Building or any part thereof, then such repair or reconstruction shall be promptly performed by the Association, as attorney-in-fact for the Owners.

**10.3 Insurance Proceeds Insufficient to Repair.** If insurance proceeds are insufficient to repair the damaged Buildings, the following provisions shall govern:

(a) **Partial Damage.** A partial damage to the Building shall be repaired as promptly as possible under the direction of the Association, and any cost of such repair in excess of insurance proceeds shall be assessed against all Owners of the Project as a Common Expense.

(b) **Total Damage.** In the event of total damage to a Building, a special meeting of the Owners of Units in the Project shall be held for the purpose of determining whether the reconstruction should be done. If fifty-one percent (51%) of the Owners in the damaged Building



vote in favor of reconstruction, then all Owners shall be bound and the cost of reconstruction in excess of insurance proceeds shall be assessed against all Owners as a Common Expense. If fifty-one percent of such Owners do not vote in favor of reconstruction, then the Association shall forthwith sell the entire Condominium Project as attorney-in-fact for the Owners. In such case the insurance proceeds, if any, payable as a result of the damage shall be collected by the Association and after payment of costs of collection thereof and of other outstanding obligations and charges owed by the Association as a result of the damage, the Association shall disburse the insurance proceeds and the proceeds of sale to the Owners in accordance with each Owner's percentage interest in the Common Elements. Such proceeds as may be necessary to satisfy any lien, mortgage or deed of trust against a Unit may be paid out of such Owner's share of proceeds.

**10.4 Power of Attorney.** This Declaration hereby appoints the Association as the irrevocable attorney-in-fact for all Owners to deal with the Condominium Project upon its damage and repair.

## ARTICLE 11

### FIRST RIGHT OF REFUSAL

**11.1 Right of First Refusal.** This Declaration vests no right of first refusal in the Association or any Owner to purchase or lease the Unit of any other Owner. An Owner may enter into a separate written right of first refusal.

## ARTICLE 12

### RESTRICTIONS ON USE AND OCCUPANCY

**12.1 Use of Units.** Subject to the provisions of this Declaration, Units may be used for any purpose permitted by the Code of the Town of Crested Butte.

**12.2 Noise, Dust, Fumes, Vibration.** No Unit shall be used in any way or for any purpose that may endanger the health or unreasonably disturb, by noise, dust, fumes, vibration or otherwise, the Owner or occupant of another Unit.

**12.3 Exterior Maintenance.** The exterior of each Unit shall be kept and maintained by the Unit Owner in a neat, clean and orderly condition and appearance at all times. No personal property shall be stored outside of any Unit.

**12.4 Compliance with Laws.** No improper, offensive or unlawful use may be made of any Unit or Common Element. Owners and Owner's Agents shall comply with and conform to all applicable laws and regulations of the United States, the State of Colorado, the Town of Crested Butte and all other governmental ordinances, rules and regulations; violations thereof shall be a breach of this Declaration, subject to enforcement by the Association.

**12.5 Offensive Activities.** 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 a reasonable annoyance or nuisance to the other Owners or Owner's Agents. No Owner or Owner's Agent shall make or permit any disturbing noises nor do or permit anything to be done by others





that will interfere with the rights, comforts or convenience of other Owners or Owner's Agents. Determination of whether an activity violates this covenant shall be at the discretion of the Executive Board and shall be subject to rules and regulations adopted by the Executive Board.

**12.6 Insurance Rate Increase.** 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. Any increase in insurance premiums caused by restaurant or other use of a Unit shall be paid by the Owner of the Unit causing the increase in premiums.

**12.7 Pets.** 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 additional rules, regulations and restrictions issued by the Executive Board, which may supplement, but not supersede, the provisions of this Section 12.7. No Owner or Owner's Agent shall have more than one (1) dog upon the Project at any time. No dog shall be allowed at any time without adequate supervision or left unattended by an Owner or Owner's agent. An Owner will be held responsible for any litter, waste, mess or damage created by his or her dog in the Common Elements and for any offensive or prolonged noises created by such dog. Dog waste must be cleaned up immediately. The right to have a dog on the premises shall be coupled with the responsibility to pay for any damage caused by such dog, and any damages and any costs incurred by the Association in connection with the enforcement of the Association's rights shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments, as provided in this Declaration. The Association may banish from Green Drake Condominiums the dog of any Owner or Owner's Agent who fails to comply with the pet provisions of the Association Documents.

**12.8 Inoperable Vehicles.** No abandoned or inoperable vehicle of any kind shall be stored or parked on any part of the Project. An "abandoned or inoperable vehicle" shall be defined as any vehicle which is not capable of being driven under its own propulsion or does not have current registration. No motor homes, boats, trailers, campers, oversized vehicles or equipment shall be stored or parked anywhere within the Project. Without first obtaining approval of the Executive Board, no commercial vehicles or similar vehicles shall be stored or parked anywhere within the Project. The Executive Board shall have the right to remove and store a vehicle or equipment which violates 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.

**12.9 Repair of Vehicles, Boats, etc.** No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicle, trailer or boat, may be performed or conducted on the Project.

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

**12.11 Refuse.** All trash, garbage or other refuse shall be kept in a fully enclosed bear proof container. Each Owner must provide for regular removal of garbage, and each Unit at all times shall be kept in a clean, neat and wholesome condition. The Executive Board may require any Owner to arrange and pay for trash removal of excessive amounts of trash, garbage or other refuse.



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

**12.13 Window Coverings.** All Units shall have window coverings in compliance with rules adopted by the Executive Board.

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

**12.15 Cleanliness.** Each Owner shall keep his Unit at all times in a neat and clean condition. 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 in any Unit or on any Common Element. Each Owner shall provide for a regular removal of garbage and agrees to use the trash company as designated by the Executive Board, if one is so designated; the Association has the power (and, under ordinances of the Town of Crested Butte, the obligation) to provide and pay for regular or periodic trash removal as a Common Expense. The Association shall have the right, through its agents and employees, to enter upon any Unit and maintain it and remove unsightly objects and materials. The cost of such maintenance and removal shall be chargeable to such Owner.

**12.16 Leasing.** Subject to the remaining provisions of this section 12.15, 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 (a) all leases shall be in writing and shall provide that the lease is subject to the terms of the Association Documents and a copy of the Association's rules are provided to the Lessee with the lease; (b) a Unit may be leased only for the uses provided herein; and (c) 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. All leases shall be filed with the Association.

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

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



## ARTICLE 13

### EASEMENTS

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

**13.2 Easements for Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, a valid easement for such encroachment and for the maintenance of same shall and does exist. If the Unit is partially or totally destroyed and then rebuilt, the Owners of the Units agree that minor encroachments of parts of the adjacent Unit due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

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

**13.4 Blanket Easements.** There is hereby created a blanket easement upon, across, over, in and under the Project for the benefit of the Common Elements and the Units and the structures and improvements situated on the Land for ingress and egress, streambank maintenance, landscape irrigation system, parking, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable television and electricity, and such other purposes as deemed appropriate by the Executive Board, except that such easements may not be utilized by the utility providers until after receiving written approval from the Executive Board. The Executive Board may condition its approval on such matters as it deems appropriate, including without limitation, the location, design, alterations to existing structures and impact on the Common Elements and the Project. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, after receiving approval of the Executive Board, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Project, subject to approval by the Association as provided above. Upon exercise of the rights contained in this Section, the utility providers, at their sole cost and expense, shall repair (or replace if necessary) the Project and all improvements thereon to their condition as they existed prior to the utility providers performing any work.



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

**13.6 Emergency Access.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Project, including all Units and all Common Elements in the proper performance of their duties. All Owners shall permit a right of entry to the Executive Board, or any other person authorized by the Executive Board, whether the Owner is present or not, for access through each Unit, from time to time, as may be necessary for the routine maintenance, repair, or replacement for any of the Common Elements located adjacent thereto or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit. In order to facilitate the aforesaid maintenance, repair and replacement, each Owner shall provide the Association with a key to his Unit.

For routine maintenance and non-emergency repairs, entry shall be made only on a regular business day during regular business hours, after service of at least one day's notice in writing to the Owner. In case of emergency, entry may be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry. The Executive Board or its agent is granted the authority to use such reasonable force as is necessary to gain entry into the Unit in the event of an emergency, if no other means of entry are available in view of the circumstances. So long as the Owner has provided the Association with a key as set forth above, the Association shall bear the full responsibility and expense of all damages incurred to the Unit and/or Common Elements because of such forcible entry. All damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the improvements, at the instance of the Association, shall be paid for as part of the Annual Assessment by all of the Owners. No Owner shall be entitled to diminution or abatement for inconveniences or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to damage.

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



## ARTICLE 14

### RESTRICTIONS ON ALIENATION

**14.1 Restrictions on Alienation.** A Unit may not be conveyed pursuant to a time-sharing arrangement described in Sections 38-33-110 to 113, Colorado Revised Statutes.

## ARTICLE 15

### EXPANSION AND MODIFICATION

**15.1 Waiver of Right to Expand.** Declarant expressly waives the right to expand this condominium project.

## ARTICLE 16

### RIGHTS RESERVED TO DECLARANT

**16.1 Special Declarant Rights.** The Declarant and specifically reserves the right to exercise in any order all Development Rights and Special Declarant Rights as set forth in the Colorado Common Interest Ownership Act and this Declaration for the maximum time limit allowed by law, or for twenty (20) years following the recording hereof, whichever occurs first, including, without limitation, the following:

- (a) The right to appoint or remove any officer of the Association or any Executive Board Member of the Association during the Declarant Control Period.
- (b) The right to complete or make any improvements as set forth on the Map, or as required by the Town of Crested Butte.
- (c) The right to maintain signs to advertise the project.
- (d) The right to dedicate a future public or private easement.
- (e) The right to appoint the members of the Executive Board during the period of Declarant control.
- (f) The right to maintain a business and sales office, construction facilities, construction equipment, advertising signs and displays and other facilities as may be reasonably necessary, appropriate or customary during the construction, development and sale of all of the Units within the Condominium.
- (g) The right, without consent of any Owner or mortgagee or lienholder being required, at any time and from time to time to: (i) complete improvements indicated on the Map, (ii) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size within one or more Units; (iii) convert any non-residential unit and its





associated limited common element(s) to residential use; (iv) create additional garage space adjacent to the Block 29 alley for the use of the Owner of a residential unit; (v) amend the Map to (a) insure that the language and all particulars that are used on the Map and contained in the Declaration are identical; (b) establish, vacate and relocate utility easements, access easements, and parking spaces; (c) reflect the subdivision, combination or alteration of any Unit as provided hereunder; and (d) as may be otherwise permitted by the Act.

(h) The right to exercise any other Declarant rights or development rights provided for herein or in the Act.

## ARTICLE 17

### MISCELLANEOUS PROVISIONS

**17.1 Separate Tax Assessment.** Declarant shall advise the Assessor of Gunnison County, Colorado, of the creation of the Condominium so that each Unit shall be deemed a separate parcel of real property and subject to separate assessment and taxation.

**17.2 Compliance with Map and Declaration.** Each Owner shall comply strictly with the provisions of the Map, this Declaration, the Articles of Incorporation, By-Laws, rules, regulations and resolutions of the Association, and any management agreement entered into by the Association as the same may from time to time be in force and effect. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, and/or by an aggrieved Owner.

**17.3 Severability.** If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, word or section, or the application thereof in any circumstance shall be invalidated by any court, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, word or section in any other circumstances shall not be affected thereby.

**17.4 Amendment.** Except as otherwise provided herein, neither this Declaration nor the Map shall be amended only by vote or agreement of Unit Owners to which at least sixty-six percent (66%) of the votes in the Association are allocated, which instrument shall be recorded in the office of the Gunnison County Clerk and Recorder; provided, however, that no amendment which affects the Association shall be effective without the written approval of the Executive Board. Approval by holders of deeds of trust, mortgages and/or other liens or encumbrances shall not be required. No amendment which alters Unit Owners' proportional responsibility for common expenses or voting rights shall be effective except upon the written approval of the owners of record of all Units. Declarant reserves the right to amend the Association Documents without the consent of Owners before Declarant conveys the last Unit that may be created to a purchaser other than Declarant or a successor Declarant, whichever first occurs, as follows (i) to make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement; or (ii) to comply with any requirements of the Act or amendments thereto. No amendment shall be effective until placed of record in the office of the Clerk and Recorder of the County of Gunnison, Colorado.

**17.5 Attorneys' Fees.** If any action is brought in a court of law to enforce, interpret or construe this Declaration or any Association Document, the prevailing party shall be awarded all



reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action, including expert witness fees and costs.

**17.6 Binding Agreement.** This Declaration shall bind and inure to the benefit of the parties hereto and their respective representatives, heirs, successors and assigns.

**17.7 Term.** The covenants and restrictions in this Declaration shall run with and bind the Project in perpetuity, subject to the termination provisions in the Colorado Common Interest Ownership Act, Section 38-33.3-101, et. seq., Colorado Revised Statutes.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 13 day of March, 2017.

ELK AVE LLC, a Colorado,  
limited liability company

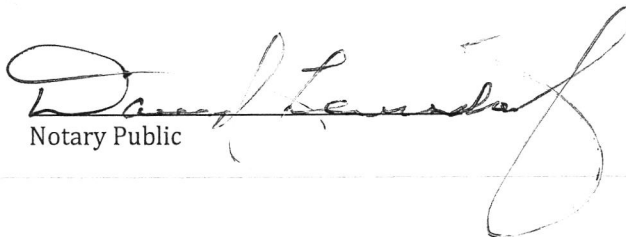
By: 

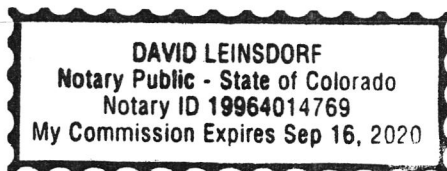
Chuck Schiavo, Manager

STATE OF Colorado )  
 ) ss.  
COUNTY OF Gunnison )

The foregoing instrument was acknowledged before me this 13 day of March, 2017 by Chuck Schiavo, Manager of Elk Ave LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires:

  
Notary Public







## EXHIBIT A

### Land

Lots 27 and 28, Block 20, TOWN OF CRESTED BUTTE, according to the official plat thereof recorded June 6, 1881 at Reception No. 14191, with the Clerk and Recorder of Gunnison County, Colorado,

County of Gunnison  
State of Colorado

### Easements

See Map

### Licenses

None



EXHIBIT B

VOTING RIGHTS AND ASSESSMENT ALLOCATION

<u>Unit</u>	<u>Percentage ownership of General Common Elements</u>	<u>Percentage Responsibility for Common Expenses</u>	<u>Vote(s) in the affairs of Association</u>
1	40%	40%	40%
2	18%	18%	18%
3	6%	6%	6%
4	2%	2%	2%
5	34%	34%	34%
Totals	100%	100%	100%