



## ELCHO IV TOWNHOMES DECLARATION OF PROTECTIVE COVENANTS

### **ARTICLE 1: Dedication**

**Section 1. Property Dedicated.** Elcho IV Townhomes LLC, a Colorado limited liability company (“Declarant”) hereby makes, declares, and establishes the following covenants, restrictions and easements which shall be binding upon and affect the real property more particularly described as:

Elcho IV Townhomes, according to the plat thereof recorded in the real property records of Gunnison County, Colorado as Reception No. 1654249.

(the “Property”)

**Section 2. Dedication.** This Declaration of Protective Covenants (the “Covenants”) shall run with the Property and shall be binding upon all persons and entities having any right, title or interest in and to the Property or any Units, tracts, or parts thereof, their heirs, successors and assigns and their tenants, employees, guests, agents and invitees and shall inure to and be for the benefit of each Owner of the Unit within the Property. These Covenants are imposed for the benefit of all Owners and all future owners of Units and areas located within the Property and to provide for the preservations of values of the Property and to provide and preserve the covenants, easements, restrictions, assessments, liens and all other matters set forth in the Covenants, all of which are for the benefit of the Property.

### **Article 2: Definitions**

**Section 2.1.** “Act” means the Colorado Common Interest Ownership Act as set forth at C.R.S. § 38-33.3-101, *et seq.* as amended.

**Section 2.2.** “Association” means the Elcho IV Townhomes Association, a Colorado nonprofit corporation.

**Section 2.3.** “Buildings” means the buildings shown on the Plat. There are two Buildings shown on the Plat. One Building contains Unit 1 and Unit 2. The other Building contains Unit 3 and Unit 4.

**Section 2.4.** “Common Elements” means all of the real property and improvements shown on the Plat except for the Units. The Common Elements include the Limited Common Elements



and all general common elements, which may also be referred to as “G.C.E.” or “GCE” in these Covenants or on the Plat.

**Section 2.5.** “Common Expenses” means expenditures made or liabilities incurred by the Association.

**Section 2.6.** “Limited Common Elements” means a portion of the Common Elements allocated by these Covenants or the Plat for the exclusive use of one or more Units, but fewer than all of the Units. The terms “L.C.E.” and “LCE” are interchangeable with “Limited Common Elements”.

**Section 2.7.** “Owner” means the owner or owners of a Unit.

**Section 2.8.** “Plat” means the plat of Elcho IV Townhomes recorded in the real property records of Gunnison County, Colorado as Reception No. 654249.

**Section 2.9.** “Units” means collectively Unit 1, Unit 2, Unit 3, and Unit 4 as shown on the Plat or, until such time as Units 1 and 2 have been added, Units 3 and 4. Each Unit consists of all interior and exterior elements of the building identified on the Plat, including all utilities and building exteriors as well as the land beneath the building identified as the Unit, but specifically excludes the roof and the interior of any shared wall between the Units. The interior of a shared wall does not include the drywall. Each Unit includes that physical portion of the Property which is designated for such separate ownership and the boundaries of which are described in the Plat. A Unit includes the land and building designated on the Plat as a Unit.

### **ARTICLE 3: Planned Community Provisions; Specific And Limited Uses**

**Section 3.1.** The name of the common interest community is the Elcho IV Townhomes. The Elcho IV Townhomes are a planned community. The Elcho IV Townhomes are located in Gunnison County, Colorado. Declarant reserves, until May 1, 2040, the right to add and create new units as shown on the Plat as Future Development Unit 1 and Future Development Unit 2 and the LCE appurtenant to Future Development Unit 1 and Future Development Unit 2, all as shown on the Plat (collectively, the “New Units”). Declarant reserves all development rights, special declarant rights, and any other rights necessary to further subdivide and create the New Units, including the right to record an amended or supplemental declaration amending this declaration to add such New Units and the right to record an amended or supplemental declaration amending the Plat to add such New Units and all other rights necessary to fully comply with the Act to add the New Units. No assurances are made with respect to the timing of the exercise of development rights. If development rights are exercised in any portion of the real estate subject to the development right, it need not be exercised in all or any other portion of the remainder of the New Units. All development rights and special declarant rights reserved by Declarant shall expire no



later than May 1, 2040. The Units are more particularly described on the Plat, which is incorporated herein by this reference. The only Limited Common Elements are those depicted on the Plat. Such Limited Common Elements may only be used by the Owner of the Unit for which such Limited Common Elements are designated. The Owners of each Unit shall have 1 vote in the Association and shall have responsibility for an equal share of the Common Expenses. Until such time as Units 1 and 2 are added, Units 3 and 4 shall each be responsible for 50% of the Common Expenses and, upon Units 1 and 2 being added each of the Units shall be responsible for 25% of the Common Expenses. All recorded easements, licenses, and similar matters are set forth on the Plat. The Elcho IV Townhomes are subject to the Act and the Association is entitled to exercise all rights, privileges, powers granted to associations under the Act and any other Colorado law. The Association is the Owner of the Common Elements. Any Assessment for any common expense that relates only to one Building, such as roof repairs, wall repairs, structural repairs or other common expenses for a given Building, shall be assessed only to the Owners of Units in that Building.

**Section 3.2.** The use of the Units and the remainder of the Property shall be limited to those uses permitted by all applicable governing entities as may be further limited or defined by the Association's rules, regulations, policies, procedures, bylaws, covenants, articles and other resolutions; provided, however, that the Property, including the Units, shall be used exclusively for residential use. **Certain property located on the Property may not be used by Owners as it is subject to easements in favor of neighboring developments, including the recreational area behind the Units and an adjacent parking area.**

**Section 3.3.** Each Owner shall be permitted to have not more than two dogs and two cats; provided, however, that the Board of Directors of the Association may allow a greater number upon a showing of good cause. No vicious animals shall be permitted. No livestock, including chickens, are permitted. Dogs shall be kept under control at all times, including through kennels, leashes, and other forms of effective restraint. Fish and other, similar confined pets that will not be out doors at any time are permitted.

**Section 3.4.** The following uses are not permitted by any Owner, including any guest, invitee, licensee, or renter of any Owner, on the Property including on or at any Unit:

- a. Posting of any signs other than for sale signs.
- b. Installing any exterior lighting or other exterior improvement without approval of the Association.
- c. Making any modifications to any exterior L.C.E. without Association approval.
- d. Parking in any spot or location that is not designed as L.C.E. for the Owner's Unit except as such additional parking may be permitted by the Association.
- e. Engaging in any activity or otherwise permitting any offensive noise, which may be further defined by the Association, but shall at a minimum prohibit any noise generated inside one Unit that may be heard inside another Unit.



- f. Engaging in any home occupation not otherwise permitted or allowed by Gunnison County and any other governing entity that generates more than five vehicle trips per day to a Unit.
- g. Parking any abandoned vehicle, which may be further defined by the Association, but shall mean at a minimum any vehicle which has not been driven under its own propulsion for a period of four months or longer.
- h. Operating or otherwise using within 10 feet of any building any propane, wood burning or other bar-b-que grill or any other device that involves fire for cooking or only semi-enclosed fire, including any chiminea and other outdoor fireplaces.

**Section 3.5.** All Owners and their guests are required to comply with all covenants, rules, regulations, policies, procedures and other governing documents of the Crested Butte South Property Owners Association (“CB South POA”). CB South POA is a master association for the community and its rules, regulations, policies, procedures, covenants, and other governing documents are in addition to those of the Association. In the event of any conflict between the CB South POA governing documents and the Association’s governing documents, Owners and their guests must comply with both sets of governing documents to the fullest extent possible, but in the event that compliance with both governing documents is not possible, Owners and their guests must comply with the CB South POA governing documents.

#### **ARTICLE 4: Duties and Powers**

**Section 4.1.** The Association shall be responsible for all upkeep, repair and replacement of the Common Elements and shall maintain adequate insurance on the same. The Association shall be responsible for all upkeep, repair and replacement of all roofs. The Association shall be responsible for all upkeep, repair and replacement for all utilities and other improvements outside of the Units. The Association shall be responsible for all upkeep, repair and replacement for all Limited Common Elements. The Association shall be responsible for all structural repairs and replacements of the interior of the common wall between the Units. The Association shall be responsible for all parking lot maintenance and snow removal.

**Section 4.2.** All Common Elements, Limited Common Elements, and other property and utilities for which the Association or any Owner is responsible for the upkeep, repair and replacement shall be kept up, repaired and replaced as necessary to ensure it is in good condition. The term “good condition” means that it is free from structural defect, operates as intended, and has a finish that does not show substantial wear or tear. Concrete that is heaving is not in good condition. Roofs that are leaking are not in good condition. Paint that is visibly chipping is not in good condition. Wood and other siding and fascia that is faded, chipped, cracked, missing or broken is not in good condition.

**Section 4.3.** Subject to the specific provisions of these Covenants and the bylaws of the Association, the Association may:



- A. Adopt and amend bylaws, policies, procedures and rules and regulations, including a schedule of fines and enforcing the same through a fine process promulgated by the Association;
- B. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses;
- 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 on behalf of owners of the Units;
- E. Make contracts and incur liabilities;
- F. Regulate the use, maintenance, repair, replacement, and modification of the Common Elements;
- G. Cause additional improvements to be made as a part of the Common Elements;
- H. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except that the Common Elements may be conveyed or subjected to a security interest only pursuant to law;
- 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;
- K. 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;
- L. Impose reasonable charges for the preparation and recordation of amendments to these Covenants or statements of unpaid assessments;
- M. Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;



- N. Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;
- O. Obtain and maintain insurance on the roof and other general common elements not a part of a Unit, with such insurance costs being divided by building for any insurance that is for a given building;
- P. Adopt and amend rules, regulations, policies and procedures regarding domestic or other household pets, subject to such limitations as may be imposed by any other governing entity; and
- Q. Exercise any other powers necessary and proper for the governance and operation of the Association.

**Section 4.5.** Every person or entity holding an ownership interest in any Unit, and by whatever means acquired, shall automatically become a member of the Association (hereinafter, "Member"), in accordance and in compliance with these Covenants, the articles of incorporation for the Association, and the bylaws for the Association. If ownership of any Unit is jointly held or held in any sort of fractional ownership, then the appertaining membership shall also be jointly held. Notwithstanding the foregoing, however, there shall not be more than one membership for each Unit. Membership shall be appurtenant to and may not be separated from the ownership of any Unit.

**Section 4.6.** All voting rights of the Association shall be exercised by the Members, each membership being entitled to one (1) vote for the appertaining Unit. If a membership is jointly held, all holders are entitled to participate in the affairs of the Association, but must act unanimously with respect to any vote to be cast for their membership. If the holders of a membership interest, that is jointly held, fail to act unanimously, they will be treated as having abstained. The Association shall be entitled to presume that the vote, if properly cast, is the united expression of such joint owners, and shall not be required to otherwise inquire as to the authority of any one joint holder to act on behalf of the others. Any designation of a proxy to act for joint holders of a membership must be signed by all such holders.

**Section 4.7.** Unless expressly stated otherwise in the bylaws or the articles of incorporation for the Association, or unless required otherwise by law, any action outside of the ordinary course by the Association requires the unanimous vote of its Members either in writing or at a meeting at which a quorum is present. No vote shall be necessary to upkeep, repair or replace the Common Elements as necessary to ensure the Common Elements are in good condition. No vote shall be necessary to perform such maintenance or repairs as may be required by any governing authority, including any local government or master association.



**Section 4.8.** Each Owner is personally obligated to pay to the Association common expense assessments, special expense assessments, and delinquent assessments. When a Unit is owned by multiple owners, each Owner shall have joint and several liability for all assessments against such Unit. Any assessments which are not paid when due shall be delinquent. The Association shall have a lien upon the Units for any assessments. The Association shall have such lien rights and assessment rights and other rights as are set forth in the Act. The priority of the Association's lien shall be as set forth in the Act. The Association's lien is perfected by the recordation of these Covenants and shall not require any further action to be perfected. If an assessment is not paid within thirty (30) days after the mailing of such assessment by certified mail, return receipt requested to the Owner at the most current address on file with the Gunnison County, Colorado Assessor, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may assess a monthly late charge thereon in such amount or at such rate as may be established by the Association from time to time. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and in the event of any such action all interest, costs, reasonable costs of collection, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. All late charges, penalties, interest, reasonable costs of collection, and reasonable attorneys' fees of the Association incurred with respect to the delinquent Owner shall be part of, and included in, the Association's lien. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his or her Unit. The Association shall keep a summary of assessments collected and expenses paid. Acceptance of ownership of a Unit is acceptance of these Covenants by such Owner and constitutes the Owner's agreement to be bound by these Covenants.

**Section 4.9.** Each Owner individually and for their family members, owners, and their agents, employees, tenants, guests and invitees expressly covenants and agrees that no cause of action nor claim of any kind shall lie or be taken against the Association, or the members of the board of directors of the Association or the duly appointed representative(s) or agent(s) of said Association for any personal injury, property or other economic damage arising from or in connection with the use of the Common Elements by any person, or of any property within the Property unless caused by an intentional or reckless act or omission of the Association. Furthermore, notwithstanding any other provision of these Covenants or any other document of the Association, to the fullest extent permitted by law the Association shall not be liable for any injury or damages suffered within a Unit or the Limited Common Elements.

**Section 4.10.** Each Owner shall maintain his or her Unit in good condition. Each Owner is responsible for maintaining the exterior of the Unit in good condition. The term "good condition" shall have the same meaning as set forth above. Visibly faded or cracked exterior elements are not in good condition. Each owner shall be responsible for immediately picking up



after any pets. Any exterior remodeling or changes in material or color must first be approved by the Association, which shall establish its own rules, regulations, policies and procedures governing such design improvements as well as any other architectural matters.

## **ARTICLE 5: Enforcement; Lien Rights**

**Section 5.1.** Any action to enforce any provision of these Covenants may be brought by the Association, its representatives, successors and assigns, and/or by any of the Owners.

**Section 5.2.** The failure to enforce or obtain compliance as to any violation shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

**Section 5.3.** In the event of any legal action or arbitration to interpret or enforce any of the provisions of these Covenants or to restrain the violation of these Covenants, whether judicial, nonjudicial or administrative, the prevailing party shall be awarded all reasonable costs, fees and expenses incurred by it in such action, including all reasonable attorneys' fees that it may incur.

**Section 5.4.** The Association shall have all lien rights for unpaid dues and all other lien rights provided to common interest community associations under the Act, including without limitation all lien rights under C.R.S. § 38-33.3-316. These Covenants perfect the lien for unpaid dues.

## **ARTICLE 6: Duration; Amendment**

**Section 6.1.** These Covenants shall be perpetual in duration.

**Section 6.2.** The conditions, restrictions, stipulations, agreements and covenants herein contained may not be waived, abandoned, terminated or amended except upon the approval of the Association and the Owners of the Units.

**Section 6.3.** These Covenants and the Plat may be amended only in accordance with the provisions for amendment set forth in the Act and upon the approval of the Owners of at least three of the four Units and such amendment shall be effective against the holders of mortgages and holders of deeds of trust encumbering the Units, notwithstanding the fact that such holders have not approved such amendment. No amendment to these Covenants nor the Plat shall be effective unless signed by the Owners of at least three of the four Units.

## **ARTICLE 7: MISCELLANEOUS**





**Section 7.1.** These Covenants, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of these Covenants is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.

**Section 7.2.** In interpreting words herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

**Section 7.3.** The exclusive proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of these Covenants or the Plat shall be the County Court or District Court of Gunnison County, Colorado.

**Section 7.4.** In the event of any conflict between these Covenants and the Plat, these Covenants control and prevail.

**IN WITNESS WHEREOF**, Declarant has executed these Covenants as of the 3 day of July, 2018.

Elcho IV Townhomes LLC,  
a Colorado limited liability company

By: [Signature] MANAGER  
Ken Buck, its Manager

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this 3 day of July, 2018, by Ken Buck as Manager of Elcho IV Townhomes LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 7-21-2021

[Signature]  
Notary Public

