



DECLARATION OF PROTECTIVE COVENANTS

APERTURE

July 26, 2017



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ARTICLE 1: Dedication

Section 1. Property Dedicated. Cypress Foothills, LP, a Texas limited partnership (“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:

Aperture according to the Plat thereof filed for record the 15th day of Aug., 2017 and bearing Reception No. 648057 of the Records of Gunnison County, Colorado, which is more particularly described on the attached **Exhibit A**, which is incorporated herein by this reference, all as located in Gunnison County, Colorado.

(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 Lots, 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 Lot within the Property. These Covenants are imposed for the benefit of all Owners and all future owners of Lots, parcels 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: Additional Definitions

Section 1. “Association” Shall mean the Aperture Homeowners Association, Inc., a Colorado nonprofit corporation.¹

Section 2. “Association Documents” shall mean these Covenants, the Articles of Incorporation and Bylaws for the Association, any amendments to these Covenants and such articles and bylaws, and the Regulations.

Section 3. “Assessments” shall mean such regular, annual, periodic, special, default, or delinquent assessments as levied pursuant to these Covenants and CCIOA by the Association.

¹ Declarant reserves the right to change the name of the Association prior to the recording of this Declaration.

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Section 4. "Board of Directors" or "Board" shall mean the Board of Directors of the Association duly elected and acting according to the Association Documents.

Section 5. "Building" shall mean a structure having a roof supported by walls or any similar type of improvement.

Section 6. "Building Envelope" shall mean the envelope or area within a Lot or tract, as shown on the Plat, where a building or other improvement shall be located, always subject to the prior written approval of the Board and such other approvals as required herein.

Section 7. "Common Area" shall mean all real property so identified on the Plat and any other real property in which the Association owns or obtains any interest or has a leasehold interest for the common use and enjoyment of its members, including without limitation estates in fee, estates for a term of years, and leasehold estates or easements. Each and every Common Area may have a restricted use or enjoyment and may be designated for a specific use for such Common Area.

Section 8. "Garage" shall mean any accessor building or accessory portion of a main residence designed for the storage of one or more motor vehicles and any incidental use associated therewith.

Section 9. "Home Occupation" shall mean any business use carried on within a dwelling which is:

- A. Conducted entirely within a dwelling by the occupants of the dwelling;
- B. Incidental and secondary to the use of the subject Lot for residential purposes;
- C. Conducted in such a fashion that the manner or character of use of the dwelling is not changed;
- D. Conducted in such a fashion that any noises and activities do not interfere with the quiet of the neighborhood;
- E. Conducted without the employment of individuals other than the occupants of the dwelling;
- F. Conducted without generating substantial traffic, such as, by way of example but not limitation, a high frequency of delivery vehicles traveling to the Lot;
- G. Conducted without requiring customers or clients to visit the Lot for the business to be conducted;
- H. Conducted without requiring any vehicles to be parked outside of the Lot and without resulting in any increase in vehicles parked on the Lot;
- I. Conducted without any exterior signs on the Lot advertising or regarding such business; and
- J. Defined and permitted by Gunnison County as an in-home occupation.

Section 10. "Idle, abandoned or inoperable vehicle" is defined as any vehicle which has not been driven under its own propulsion for a period of three months or longer.



Section 11. "Improvement" shall mean all buildings, structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, recreational facilities, signs, decks, enclosures, changes in exterior building color or shape, excavation, changes in type of exterior building materials, and all other site work including without limitation grading, paving, dirt moving, road construction, trail construction, utility improvements, removal of trees or plantings, and any new exterior construction, exterior improvement, exterior change constructed, completed, or maintained on the Property.

Section 12. "Lot" shall mean a tract or lot as shown on the Plat and any subsequent plat, but not including Common Areas.

Section 13. "Member" shall mean any person holding membership in the Association.

Section 14. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot.

Section 15. "Plat" shall mean the Plat of Aperture filed for record the 15th day of Aug, 2017 and bearing Reception No. 648057 of the Records of Gunnison County, Colorado, and as the same may be amended or revised.

Section 16. "Regulations" shall mean such rules, regulations, policies and procedures as may be adopted and amended by the majority vote of the Board. The Regulations may not directly contradict these Covenants, but may further define or expound upon these Covenants and may resolve any ambiguity or uncertainty in these Covenants. To the fullest extent permitted by law, the Regulations shall be interpreted in a manner harmonious with these Covenants.

ARTICLE 3: Association Matters

Section 1. Governance of Association. The Association shall have all powers and rights that may be afforded to a homeowners' association under the Colorado Common Interest Ownership Act, as amended ("CCIOA") and the Colorado Nonprofit Corporation Act, as amended, and these Covenants, including without limitation the power, authority and right to raise and impose assessments, foreclose liens for assessments, adopt and amend the Regulations, adopt and amend design guidelines, and any other right or power that may be exercised by an Association.

Section 2. Regulation of Common Areas and Activities Infringing Thereon. The Regulations shall contain such matters as are required by CCIOA and set forth such matters regarding the use of the Common Areas and the Lots as the Board believes appropriate. Specifically, but without limitation, the Regulations may include rules, regulations, policies and procedures regarding hazardous activities, nuisances, noise, pets, parking, trash, debris, landscape maintenance, residence, Garage, and accessory building maintenance, lighting, yard maintenance, junk, use of Common Areas and easements, Home Occupations, commercial activities, short term rentals, leases, marijuana cultivation and use, smoking, installing and maintaining of Improvements, and



business enterprises. The Regulations may define such uses and prohibit them, in whole or in part, on Common Areas and on Lots or may define such uses and permit them upon such terms, conditions, obligations and provisions as the Board believes in the best interests of the Association; provided, however, that such Regulations must be consistent with these Covenants. The Regulations shall also address matters such as enforcement of the Association Documents, imposition of fines, collection of Assessments, and reserve studies and funding. All Owners shall be bound by and comply with the Regulations. All Owners shall be responsible for, and liable to the Association for, any violation of the Association Documents by such Owner and such Owner's agents, guests, invitees, tenants, lessees, contractors, and employees.

Section 3. Members. Each Owner shall be a Member; provided, however, that each Lot shall only have one membership, vote and share of common expenses, but all persons and entities that are Owners shall have the same rights to the use and enjoyment of the Common Areas.

Section 4. Grant of Utility Easements. The Lots and Common Area are subject to certain easements shown on the Plat. In addition, the Association shall have the authority to give, grant, and convey a utility easement for the installation, construction and maintenance of underground utilities and/or water lines over and across any road or street easement or roadway or street designed on the Plat. The Owner of each Lot hereby authorizes and empowers the Association, as its attorney in fact, to give and grant:

- A. A utility and/or water line and/or ditch easement up to 10 feet in width adjacent to the exterior boundary line of each Lot for the installation, construction and maintenance of underground utilities, water lines, and ditches; provided, however, that such easements shall not traverse or overlap with any Building Envelope.

ARTICLE 4: Assessments

Section 1. Creation of Lien. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any deed, is deemed to covenant and agree to pay to the Association: (1) all regular assessments or charges; (2) special assessments and charges; (3) default assessments or charges; (4) late fees, returned check charges, default interest; (5) attorney's fees and costs; (6) default assessments; and (7) fines imposed against such Owner. All of such amounts shall be fixed, established and collected as determined by the Association. All of such amounts and any other amounts that the Association is entitled to recover against an Owner under CCIOA or other law shall be a charge and continuing lien upon the Lot against which such assessment is made or that such Owner may own, whichever may be applicable. The Association shall have a lien against each Lot to the fullest extent permitted and provided for by CCIOA. Such liens shall have the priority provided by CCIOA and shall be prior and superior to all other liens and interests in the Lots to the fullest extent permitted by the law.

Section 2. Purpose of Assessments. All assessments shall be levied for purposes permitted under Colorado law, including without limitation: maintenance of Common Areas, repair of



Common Areas, snow removal from Common Areas, costs and expenses pertaining to the operation of the Association in the performance of its duties, legal fees, accounting fees, manager fees, and any other expense, fee, cost, obligation, debt or liability incurred by the Association upon the majority vote of the Board.

Section 3. Regular Assessments. Regular Assessments shall be imposed based upon an annual budget adopted by the Association all as provided by CCIOA.

Section 4. Special Assessments. Special Assessments shall be imposed as provided by CCIOA and for unbudgeted or unforeseen expenses or for those matters not adequately budgeted for. Any special assessment in excess of \$20,000.00 shall be approved by the Members at a meeting called for such purpose.

Section 5. Default Assessments. All fines imposed against an Owner by the Association shall be a default assessment. Any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner shall be a default assessment.

Section 6. Nonpayment of Assessments. Any assessment, whether regular, special or default, which is not paid within thirty days of its due date shall be deemed delinquent. All delinquent assessments shall bear interest at 18% per annum. A late charge of 10% of the delinquent amount shall be charged on all delinquent assessments. The Association shall have all powers of collection and enforcement provided and permitted by law, including without limitation the power to collect delinquent assessments through judicial foreclosure of the lien created by these Covenants, through personal judgment against such delinquent Owner, through referring an account to a collections agency, through the filing of a statement of lien against a delinquent Owners' Lot in the Gunnison County, Colorado Clerk and Recorder's Office, and through such further actions as an association is entitled to take upon compliance with CCIOA.

Section 7. Liability for Assessments. In addition to the personal obligation of each Owner of a Lot to pay all assessments and the Association's lien on a Lot for such assessments, all successors to the ownership of a Lot shall be jointly and severally liable together with the prior Owner or Owners for any and all unpaid assessments, penalties, interest, costs, charges, expenses, attorneys' fees and other amounts secured by such lien.

Section 8. Real Estate Transfer Fee. Except with respect to sales from the Declarant, its affiliates, or a successor developer, all Lots are subject to the real estate transfer fee and other obligations set forth and described in that certain Declaration of Covenant recorded in the real property records of Gunnison County, Colorado at Reception No. 648055.

ARTICLE 5: Enforcement of Covenants

Section 1. Violations Deemed a Nuisance. Every violation of the Association's Documents, including without limitation these Covenants and the Regulations, shall be deemed to be a



nuisance and is subject to all the remedies provided by law for the same, including without limitation abatement thereof.

Section 2. Failure to Comply. An Owner's failure to comply with any of the Association's Documents shall be grounds for the imposition of a fine in accordance with and pursuant to the Regulations, an action to recover damages, or for injunctive relief or for specific performance, or any of them.

Section 3. Who May Enforce. Any action for the enforcement or interpretation of these Covenants may be brought by the Association in the name of the Association and on behalf of the Owners, and by the Owner of any Lot. Additionally, Gunnison County may enforce any and all sections of Article 8, and the Town of Crested Butte may enforce Sections 5, 6, and 15 of Article 8.

Section 4. No Waiver. The failure of the Board, the Association, or any Owner 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.

ARTICLE 6: Use of Lots

Section 1. Residential Use Only. All Lots shall be used exclusively for a single-family residence, including Home Occupations, one attached or detached Garage, detached accessory buildings, and the easements specifically authorized by these Covenants. All such residences may be used as rental properties; provided, however, that all such rentals must comply with the any applicable Regulations of the Association, which may include, without limitation, a prohibition on rentals less than 30 days in duration, mandatory provisions for leases, and other terms and restrictions governing the use of such residences as rental properties. All Owners are liable to the Association for all violations of the Association Documents by their lessees. No commercial use or business enterprise of any nature shall be allowed or permitted on any Lot except as expressly set forth in this section. Lots are not subject to any short term rental regulations created by the Town of Crested Butte, Colorado.

Section 2. Building Envelope. All Buildings and other Improvements, including without limitation the single-family residence, Garage, and all detached accessory buildings shall be located within the designed Building Envelope of the Lot.

ARTICLE 7: Architectural Review and Approval

Section 1. Board. The Board shall be the Architectural Review Board.

Section 2. Review and Approval. No single-family residence, Garage, Building or other Improvement shall be commenced, constructed, erected or maintained on any Lot until the plans



and specifications therefor have been submitted to and approved in writing by the Board in the manner hereafter set forth. Specifically, but without limitation, no landscaping shall be done, nor shall any exterior addition, change or alteration be made, nor any other work which requires a building permit, until the plans and specifications therefor have been submitted to and approved in writing by the Board in the manner hereafter set forth. No secondary building, accessory building, outbuilding or detached building may be constructed prior to the construction of the primary residence.

Section 3. Standards, Process, and Fee. The standards and procedure for submission of plans, review of plans, denial of plans, and the approval of plans, together with the fee for such review and all other design related matters shall be set forth in the design guidelines, which shall be a section of the Regulations and shall be adopted by the Board. The design guidelines shall be consistent with the standards set forth in these Covenants. The Board shall have the authority to impose a fee, which shall be set forth in the design guidelines, which fee may include the cost and expenses of retaining an architect to assist in the review of the matter, including without limitation ensuring compliance with the design guidelines, as well such amounts as the Board believes to be appropriate to offset the cost to the Association associated with the implementation of such plans, which for example, may include repair costs caused by additional construction traffic for a new residence or Garage. All plans and construction on any Lot must comply with these Covenants, including without limitations Article 5, which limits the use of Lots to residential purposes and limits the construction of Buildings and Improvements to the Building Envelopes, and Article 8, which specifically addresses certain construction matters required by Gunnison County or the Town of Crested Butte. Among other things, the design guidelines will establish standards for construction, such as the burying of all electrical, telephone and other lines, provisions regarding antennas and satellite dishes and other matters. Prior to commencing any construction, including without limitation any site work, the Owner shall contact the Association and obtain the most current version of the design guidelines.

Section 4. Mobile Homes, Temporary Structures, and Recreational Vehicles. No mobile home, trailer house, travel trailer, recreational vehicle, boat, snowmobile, trailer, bicycle, motorcycle or temporary structure shall be permitted on any Lot unless contained within a fully enclosed Garage. No mobile homes, trailer house, travel trailer, or recreational vehicle shall be used on any Lot.

Section 5. Continuity of Construction. All construction, reconstruction, alterations, or improvements shall be prosecuted diligently to completion and shall be completed within twelve months of the commencement thereof, unless an extension is granted by the Board for good cause.

Section 6. Partition of Lots. No Lot may be further subdivided or partitioned.



ARTICLE 8: Provisions Required By Gunnison County Or The Town of Crested Butte

Section 1. Lighting. Lighting is permitted provided, however, that all lighting must comply with the requirements of Gunnison County at the time of installation. Exterior lighting fixtures shall be full cutoff, fully-shielded, shielded by roof elements, or effectively recessed.

Section 2. Building Matters.

- A. Total aggregate square footage for all Improvements shall not exceed 5,750, with a main residence not in excess of 5,000 square feet, inclusive of any Garage if attached to the main residence, and the aggregate square footage of all detached accessory buildings, inclusive of any detached Garage, not in excess of 750 square feet.
- B. Maximum height of any building constructed upon a lot (exclusive of steeples, chimneys, or spires which may extend ten feet higher than the roof peak) will be 30 feet.
- C. All buildings and Improvements other than driveways and approved landscaping must be within the Building Envelope except for features or Improvements appropriate to display street numbers.
- D. Any metal roof must be non-reflective and have a color finish with no bright colors.
- E. All buildings shall be built in an exterior style and with colors and materials harmonious with the area. No exterior walls shall consist of sheet metal, metal material, T-111 or any similar material, composition shingles or unplastered cement or similar type block. The exterior siding, excluding the roof, shall be comprised of at least two different materials. No roof shall contain untreated cedar wood shake shingles or other combustible roofing material. All roofs shall be pitched. All colors of exterior walls and roofs will be natural or earth tones in color to blend with the natural surroundings, except that colored trim may be allowed upon approval of the Board. No A-frames, geodesic domes, or yurts shall be allowed, even temporarily.
- F. No exterior radio, television, microwave or other type of antennae or antenna dish or signal capture or distribution device, unless 18 inches in diameter or less, shall be permitted, installed or maintained on any Lot unless it is entirely screened from view on all sides, and such screening is in keeping with the terrain and environment.
- G. All chimneys will include spark arrestors on chimney terminations and all chimney caps or shrouds shall provide access for cleaning and servicing said chimneys.
- H. Monitored, automatic fire suppression systems shall be included in all residences.

Section 3. Compliance With Applicable Code; Fire Protection Matters. All Buildings and other Improvements will meet all applicable requirements of all applicable governing bodies, including without limitation the applicable fire code and building code. All Lots shall maintain defensible space to protect against wildfire hazards in such minimum distances and in such a manner as may be recommended from time to time by the local fire protection district and



Gunnison County. Owners are referred to publications of the CSFS, the Gunnison County Weed Specialist, and the Gunnison County Public Works Department. Wildfire mitigation shall be conducted in such a fashion as to minimize soil erosion, removal of existing vegetation, thinning of trees, and adverse impacts to wildlife beyond that which is necessary. The Lots are located within the boundaries of the Crested Butte Fire Protection District, and the Crested Butte Fire Protection District shall have the authority to enforce this provision of these Covenants. All building foundations shall be designed by a Colorado registered engineer or architect. All buildings will be built with an exterior style and colors and materials harmonious with the area. All applications to Gunnison County for building permits must comply with all applicable building codes adopted and amended by Gunnison County, and with any applicable energy and resource conservation standards required by the County at the time of such application.

Section 4. Landscaping and Buffering on Common Areas by Association. Plant materials and landscaping elements are to be used throughout the subdivision (including in the Common Areas) in order to provide for privacy and preserve and enhance the unique identity of the site. The Association shall maintain all landscaping and buffering on the Common Areas. Landscaping will be kept and maintained in a natural state except with respect to any landscaping or buffering placed for purposes of buffering.

Section 5. Water Fees and Usage, Lawn Irrigation and Site Disturbances. Water to the Property is supplied by the Town of Crested Butte. Owners will pay tap and usage fees to the Town of Crested Butte pursuant to and in accordance with the Crested Butte Municipal Code, as amended. Owners also agree to abide by the Town of Crested Butte's water usage rules and conservation measures. Owners shall be limited to irrigation of 2,500 square feet of lawn, garden, and landscaping on each Lot. Any excavation, except as approved by the Association and, as applicable Gunnison County, is prohibited. Any site disturbance, including permitted and approved excavation, must be promptly revegetated. No landscaping shall alter or interfere with drainage from the Property.

Section 6. Solid Fuel Burning Devices. Owners shall adhere to the regulations regarding solid-fuel-burning devices contained in the Crested Butte Municipal Code, as amended. At this time, these regulations include, but are not limited to, the requirement that there be only one approved solid-fuel-burning device in each residential structure located on a lot. The Town of Crested Butte shall have the right to inspect such devices for compliance with the Crested Butte Municipal Code and enforce such requirements in accordance with the Crested Butte Municipal Code.

Section 7. Roads. The Association shall remove snow from the private roads owned by the Association and any private parking spaces on Common Areas owned by the Association. The Any public parking or public roads that the Town of Crested Butte has agreed to perform the snow removal on, shall not be the responsibility of the Association. Plowing, dumping and storage of snow in the Slate River is prohibited. Upon completion of construction of the private roads, the Association shall at all times keep such roads in good repair and maintain the same in suitable condition for the use of the Members. The Association shall have no obligation to



maintain public roads that the Town of Crested Butte has agreed to maintain nor shall the Association maintain private driveways.

Section 8. Standards to Ensure Compatible Uses. Hazardous uses, nuisances and excessive noise are prohibited. Construction activity is limited to between the hours of 7:00 a.m. to 7:00 p.m. All trash must be promptly placed in bear proof trash receptacles.

Section 9. Amendment. No amendment to Article 8 of these Covenants shall be effective until approved by Gunnison County, which approval shall not be unreasonably withheld.

Section 10. Use and Maintenance of Common Areas. Common Areas, including all open space, shall be used and maintained consistent with its purpose. The Association shall maintain the Common Areas and allow such use of the Common Areas by Owners as is permitted by, and in accordance with, the Regulations. Camping, hunting, discharging firearms, and practicing archery are prohibited on all Common Areas.

Section 11. Domestic Animal Control; No Livestock.

- A. No more than three domesticated household pets of any one species shall be allowed, kept, or maintained on any Lot.
- B. No horses or other livestock shall be allowed on the Property.
- C. Household animals, including those of visitors, guests, and construction workers, must be controlled by kenneling, leashing, fencing or other physical constraint. No vicious animals shall be permitted.
- D. If any animal is unreasonably or repeatedly noisy, unruly, or creates a disturbance within the Property, it shall promptly be removed by the owner thereof, or it may be removed by the Association at the expense of, and with no liability to, the owner thereof.
- E. Gunnison County shall have the authority to enforce the animal control restrictions set forth in the Covenants, and any expense of enforcement by Gunnison County shall be at the expense of the responsible individual. If the responsible individual fails or refuses to reimburse Gunnison County for such expense, the Association shall reimburse Gunnison County and any amount so reimbursed by the Association shall become a lien in favor of the Association against any Lot or Lots owned by the owner of the animal necessitating the enforcement action and if such person is not an owner of a Lot, against the Lot of the Owner of whom such person is a guest, invitee, lessee, tenant or visitor.

Section 12. Fencing. The Association may erect and maintain wildlife friendly exterior fencing, not to exceed 42 inches in height, to the extent necessary to protect against agricultural uses on adjacent properties. No other fencing may be erected or maintained on any Lot, except for an area not to exceed 500 square feet within the Building Envelope and in close proximity to the primary residence or a detached accessory building to facilitate privacy, landscaping, kenneling of animals, maintaining a garden, or other similar purposes. Any such internal fencing within a



Building Envelope shall require the prior written approval of the Architectural Review Board in accordance with Article 7.

Section 13. Signs. All signs are prohibited within the subdivision except to the extent required by law and, to the extent required by law, Owners must comply with all Gunnison County regulations, including obtaining a sign permit as may be required, prior to installing any sign. Notwithstanding the foregoing, signage as is typically used for real estate sales may be placed on Lots that are for sale provided that such signage complies with all applicable law, including Gunnison County regulations, as well as applicable Regulations of the Association. Declarant and the Association shall not be bound by this signage limitation and may have any signage not prohibited by Gunnison County or any applicable laws.

Section 14. Parking. Operable vehicles shall be parked only within individual Lots. Each Lot shall provide sufficient parking areas so that no parking shall occur on the roads within the subdivision. Residents must customarily park their operable vehicles within a Garage. No vehicles with advertising shall be parked except within a Garage. No idle, abandoned or inoperable vehicles of any kind may be stored or parked on any portion of the subdivision except in an enclosed Garage. Sufficient Garage space must exist to contain all vehicles used by persons residing on such Lot, including all operable vehicles, mobile homes, trailer house, travel trailer, recreational vehicle, boat, snowmobile, trailer, bicycle, or motorcycle. No mobile homes, trailer house, travel trailer, or recreational vehicle shall be used on any Lot. Equipment and other implements shall be stored within a garage or other approved improvement.

Section 15. Agreement with Town. The Lots are subject to, and must comply with all obligations contained within, the Pre-Annexation Agreement dated February 16, 2016 between the Town of Crested Butte Colorado and Cypress Foothills, LP recorded in the real property records of Gunnison County, Colorado at Reception No. 638399 as the same was amended by that certain Amendment to Pre-Annexation Agreement recorded in the real property records of Gunnison County, Colorado at Reception No. 643828. Specifically, but without limitation, Owners shall be obligated to comply with the provisions of the Crested Butte Municipal Code, as amended, relating to water and sewer service and usage.

Section 16. Weed Control and Revegetation. Following construction of any Improvements and any other site disturbance, if required by applicable law, the ground shall be revegetated in accordance with the reasonable recommendations of Gunnison County's Weed Control Specialist. Owners must attempt to comply with the most current version, if any, of the Gunnison Basin Weed District Management Plan or such other plan as may be prescribed by the Gunnison County Weed District of general applicability, if any, as well as any earthmoving site revegetation and noxious weed control plan adopted by the Association.

ARTICLE 9: Provisions Pertaining To CCIOA



Section 1. CCIOA Community. Aperture is a common interest community that is a planned community governed by Aperture Homeowners Association, Inc., a Colorado nonprofit corporation.² The common interest community is subject to CCIOA. The common interest community is located in Gunnison County. A legally sufficient description of the real estate included in the common interest community is attached hereto as **Exhibit A**. The boundaries of each unit created by the Covenants is set forth on the Plat, including the unit's identifying number and its size. There are no limited common elements.

Section 2. Allocation of Interests. There are 23 Lots. Each Lot has one voting interest as set forth above and one share of common expense liability. Each Lot is allocated 1/23rd of the vote in the Association and 1/23rd of the common expenses of the Association.

Section 3. Lot Line Eliminations and Building Envelope Adjustments. An Owner of adjacent Lots may cluster the Lots in order to remove the lot lines between the adjacent Lots as follows: (i) by applying for the clustering in accordance with the procedures set forth in C.R.S. § 38-33.3-212, (ii) by paying a deposit at the time of the application to the board in an amount determined by the board as a reasonable estimate of the Association's costs and expenses associated with the application, (iii) by receiving approval from Gunnison County, Colorado for the clustering, and (iv) by obtaining all necessary signatures, authorizations and approvals to amend these covenants and any plats as may be necessary to accomplish the clustering. All clustered lots will be treated as one lot for purposes of allocation of voting interests and allocation of common expenses assessments. No clustering shall be effective without the necessary amendments to the declaration and plats as executed and recorded as required by Colorado law as well as the necessary approvals from Gunnison County.

Section 4. Declarant Control. Declarant (or any successor declarant) shall have all the powers and rights permissible under CCIOA during the period of declarant control, as defined under CCIOA, including without limitation the power to appoint and remove Directors and officers. The period of declarant control commences upon the recordation of these Covenants and will end at the earlier of fifty years from the date of recordation of these Covenants or at such time as these rights are required expire or terminate under CCIOA.

Section 5. Development Rights. Declarant reserves the following development rights and special declarant rights: (1) the right to maintain a sales office, management office, viewing platforms or similar structures, or models in the common interest community and any such sales office, management office, viewing platform or similar structure, or model shall be owned by Declarant and shall not be a common element and shall be removed promptly after the expiration of the timeframe set forth herein for the exercise of development rights, (2) the right to complete improvements as contemplated on the plats filed with this Declaration, (3) the right to amend Lots or Common Area, (4) the right to create, use and provide Owners with the right to use any trail, utility, access and other easements through the Common Area and/or through any Lot for the purpose of implementing the development plan provided, however, that no such trail, utility,

² Declarant reserves the right to change the name of the Association prior to the recording of this Declaration.



access or other easement shall cross or enter any Building Envelope, (5) the right to amend the Plat and these Covenants, including without limitation the right to unilaterally amend the Plat and these Covenants to exercise any development rights or special declarant rights to the fullest extent permitted by CCIOA, and (6) the right to amend these Covenants and the Plat to correct any clerical, typographical, or technical errors. All development rights and special declarant rights shall expire, and must be exercised prior to, the earlier of fifty years from the date of recordation of these Covenants or such time that such rights are required to expire or terminate under CCIOA. The development right may be exercised with respect to different parcels of real estate at different times and no assurances are made as to the order in which the different real estate may be subjected to the exercise of each development right. If any development right is exercised in any portion of the real estate subject to that development right, that development right need not be exercised in all or any other portion of the remainder of that real estate. The scope of any easement established by the Declarant shall also be established by the Declarant, and the Declarant and Association shall have the right to use, and provide to others, access and use by heavy equipment and all manners of vehicles and equipment to any easement show on the Plat or added by Declarant.

Section 6. Notice. Notice of matters affecting the common interest community may be given to Owners by the Association or other Owners by posting the same at the message board intended for such purpose as will be erected and maintained on the Common Area to the east of the Slate River. In addition, the Association may give notice of matters to Owners by providing such notice by email to any email address for an Owner provided by such Owner to the Association. Notice may also be given by regular, U.S. mail sent to the address of record for the Owner as made available online by the Gunnison County Assessor.

ARTICLE 10: Duration of Covenants; Miscellaneous

Section 1. Term. These Covenants shall remain in effect perpetually from the date of recordation.

Section 2. Amendment. Except to the extent that a different percentage is required by CCIOA, these Covenants may not be waived, abandoned, terminated or amended, in whole or in part, except by an instrument: (i) setting forth the written consent of the owners of two-thirds of the Lots or containing the certification by the Secretary of the Association that the owners of two-thirds or more of the Lots voted in favor of such amendment at a duly called and properly noticed meeting of the membership, and (ii) with respect to Article 8 only, approved by the Board of County Commissioners of Gunnison County, Colorado, which approval shall not be unreasonably withheld. No mortgage or lienholder approval is required.

Section 3. Severability. These Covenants shall, to the fullest extent possible, be construed so as to give validity to all of the provisions hereof. If any provision or portion of provision in these Covenants is determined to be invalid, unenforceable or prohibited by any court, the same shall



not affect any other provision or portion thereof or section hereof and all other provisions, portions of provisions and sections shall remain in full force and effect.

Section 4. Construction. 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 5. Headings. The headings on any section or article are included only for the purposes of convenient reference and shall not affect the meaning or interpretation of these covenants.

Section 6. Limitation of Liability. Neither the Association nor any officer, director or other representative of the Association shall be liable to any party for any action or for any failure to take any action with respect to any matter arising by, through, or under these Covenants if the action or failure to act was made in good faith. The Association shall indemnify all officers, directors or other representatives of the Association with respect to any action taken in their official capacity as provided in the Articles of Incorporation and Bylaws of the Association. Such indemnification shall include repayment of all costs and expenses incurred, including reasonable attorneys' fees.

Section 7. Attorneys' Fees. The Association shall be entitled to recover attorney's fees and costs as provided by CCIOA as shall any other party. In the absence of an applicable attorney's fees provision under CCIOA, the prevailing party in any legal action in any Court of law to enforce or interpret any provisions of the Association Documents shall be entitled to recover from the non-prevailing parties reasonable attorney's fees and costs incurred in such legal action, including without limitation all costs and fees incurred in collection, on appeal, and in bankruptcy proceedings.

Section 8. Applicable Law. Gunnison County, Colorado district court or county court shall be the exclusive venue for any action arising out of or relating to the Association Documents or any other dispute between the Association and any Owner provided, however, that the Association may establish exclusive venue, means and procedures for the enforcement of fines, which may include binding arbitration.

IN WITNESS WHEREOF, the Declarant has executed these Covenants as of the day and year first above written.

CYPRESS FOOTHILLS, LP,
a Texas limited partnership

By: CYPRESS FOOTHILLS, GP, LLC,
a Delaware limited liability company, its
General Partner

By: 
Lauren Maguire, its Vice President

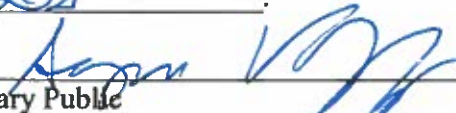


STATE OF COLORADO)
)ss.
COUNTY OF GUNNISON)

The foregoing letter was acknowledged before me this 26th day of July, 2017, by Lauren Maguire, as Vice President of Cypress Foothills GP, LLC, which is the General Partner of Cypress Foothills, LP.

Witness my hand and official seal.

My commission expires: 6/25/2021


Notary Public

AGNES KRONERAFF
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20134039223
My Commission Expires June 25, 2021



EXHIBIT A

A parcel of land known as Tract Q of Book 516 Page 474, Parcel 13 of Book 552 Page 63, Parcel 1 of Warranty Deed recorded at Reception No. 570819, Parcel 1 of Quitclaim Deed recorded at Reception No.570822, Parcel 1 of the Correction Warranty Deed recorded at Reception No.584439, Parcel 1 of the Special Warranty Deed recorded at Reception No.612899, and the Correction Deed recorded at Reception No.618498 all located in the SW 1/4 of Section 35, Township 13 South, Range 86 W of the Sixth PM, Gunnison County, Colorado being more particularly described as follows:

Beginning at a point on the westerly boundary of Trampe Parcel described in Book 516 Page 494 also being on the easterly right of way line of County Road 317 (Gothic Road) as recorded at Reception No. 00119 and being on the south line of the SW1/4 of said Section 35 from which the southwest Corner of said Section 35 bears N89°43'49"W a distance of 130.05 feet; thence S89°43'49"E a distance of 17.52 feet to a point on the westerly line of the Dyer Subdivision as recorded at Reception No.497990; thence along the westerly, northerly and easterly lines of said Dyer Subdivision the following eleven (11) courses:

- 1) N00°01'42"W a distance of 15.19 feet,
- 2) N89°58'18"E a distance of 495.36 feet,
- 3) N00°01'42"W a distance of 226.55 feet,
- 4) N61°00'00"E a distance of 620.66 feet,
- 5) S79°30'09"E a distance of 381.57 feet,
- 6) N61°00'00"E approximately 31.96 feet to the high water line of the Slate River; thence along the high water line of the Slate River approximately
- 7) S44°00'17"E a distance of 2.43 feet,
- 8) S61°14'28"E a distance of 180.87 feet,
- 9) S45°20'59"E a distance of 257.67 feet,
- 10) S39°16'06"E a distance of 215.58 feet,
- 11) S50°53'25"E a distance of 97.51 feet to the southerly line of the SW1/4 of said Section 35; thence along said southerly line S89°43'49"E, approximately 506.01 feet to the S1/4 Corner of said Section 35, said corner being a 3 1/4" Aluminum Cap; thence along an existing fence line as it exists in the field and as shown and described in a Boundary Agreement recorded in Book 769 at Page 881 the following three (3) courses:

- 1) N00°11'53"E a distance of 271.72 feet,
- 2) N00°50'11"W a distance of 932.90 feet,
- 3) N01°19'37"W a distance of 346.89 feet to a point on the northerly line of the Trampe Partition Parcel 13 and the southerly line of Spann Parcel 23 as described in Court Decree Amended Order of Partition as recorded in Book 552 at Page 63; thence along the northerly line of said Parcel 13



N90°00'00"W a distance of 570.01 feet to a point on the easterly line of the Town of Crested Butte Cemetery as described in Exhibit A(5) in Court Decree of Partition as recorded in Book 516 at Page 474; thence along the easterly line of said Cemetery Parcel S01°20'33"W a distance of 220.37 feet to the northerly corner of a parcel of land described in Book 518 at Page 403; thence along the northwesterly line of said parcel S29°46'00"W a distance of 470.46 feet to a point on the northerly line of said Trampe Partition Parcel 13, said point also being on the southerly line of said Cemetery Parcel; thence along said northerly line of said Parcel 13 N90°00'00"W a distance of 1116.19 feet to a point on the easterly right of way line of County Road 317 (Gothic Road); thence along said easterly right of way line as described in deeds recorded at Reception No.474960 and 474961 the following five (5) courses:

- 1) S46°12'21"W a distance of 116.48 feet,
- 2) S35°50'27"W a distance of 185.49 feet,
- 3) S35°50'28"W a distance of 88.19 feet,
- 4) S40°05'13"W a distance of 207.37 feet,
- 5) S39°55'42"W a distance of 238.91 feet; thence continuing along the easterly line of said right of way and westerly line of said Trampe Partition Parcel 13, 155.77 feet along the arc of a non-tangent curve to the left having a radius of 441.28 feet, a central angle of 20°13'30" and a long chord which bears S16°19'42"W a distance of 154.96 feet to a point which is common to the southwest corner of a parcel of land described in Book 518 at Page 403; thence S00°00'04"W continuing along the easterly right of way of said County Road 317 as recorded at Reception No.00119 and in accordance with Court Decree (Judgment) recorded in Book 516 at Page 494, a distance of 117.72 feet to the Point of Beginning.

Said Parcel as described above contains 44.50 acres, more or less.

All bearings shown hereon are relative to a bearing of N89°43'49"W between a GLO brass cap dated 1939 found at the southwest corner of Section 35 and a 3 ¼ inch aluminum cap stamped 18480 and dated 1995 found at the south quarter corner of Section 35.