

**DECLARATION OF  
BRUSH CREEK VILLAGE**

This Declaration of Brush Creek Village ("Declaration") is executed with an effective date of August 12, 2024 by Basin Real Estate Holdings, LLC, a Texas limited liability company and AFC Development LLC, a Texas limited liability company (collectively, "Declarant").

**ARTICLE 1. PURPOSE AND PLAN**

1.1. Ownership of Property. Declarant is the Owner of the following described real property situated in Gunnison County, Colorado (the "Property"):

Lots M1-6, M1-7, M1-8, and M1-9, Buckhorn Ranch Filing No. 2b, according to the plat recorded April 26, 2004, at reception number 541322,

EXCLUDING Resultant Parcel Lot M1-6 and M1-7 and Resultant Parcel Lot M1-8 and M1-9 as shown on the Plat of Brush Creek Village, recorded in the real property records of Gunnison County, Colorado at reception number \_\_\_\_\_, but specifically including the easements as shown thereon across such resultant parcels subject, however, to such easements being nonexclusive,

County of Gunnison,  
State of Colorado

1.2. Purpose. Declarant desires to divide the Property and certain improvements thereon into a planned community under the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, *et seq.*, (the "Act") of 12 townhome units (the "Units") which are more particularly described on the Plat of Brush Creek Village, recorded in the real property records of Gunnison County, Colorado at reception number \_\_\_\_\_ (as recorded and as may be supplemented and amended, collectively, the "Plat"). The Project will be completed in two or more phases with Phase 1 including 12 Units as shown on the Plat and subsequent phases to include up to a cumulative total of 12 additional Units. Brush Creek Village is a common interest community and a planned community.

1.3. Declaration of Protective Covenants. All of the Property 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 Units and Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof, and the Units and Property shall be subject to the Act. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

**ARTICLE 2. DEFINITIONS**

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

2.2. "Association" means Brush Creek Village Townhomes Association, a Colorado nonprofit corporation formed for management of the common interest community.

2.3. "Association Documents" means this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, the Plat, and any policies, procedures, rules, and regulations, adopted by the Association (such policies, procedures, rules and regulations being the "Regulations").

2.4. "Building" means the buildings shown on the Plat.

2.5. "Common Elements" means any real estate within the Project owned or leased by the Association, except for the Units and "Resultant Parcel Lot M1-6 and M1-7" and "Resultant Parcel M1-8 and M1-9" as shown on the Plat (which resultant parcels are collectively, the "Resultant Parcels"), which Resultant Parcels are subject to a reserved development right, as shown on the Plat and remain owned by Declarant until subdivided. The Resultant Parcels are not Common Elements. The Common Elements include any Limited Common Elements (which may also be referred to in these Covenants and on the Plat as "L.C.E.") and all General Common Elements (which may also be referred to as "G.C.E." in these covenants or on the Plat) and all areas designated as common area or open space, which are to be treated as G.C.E. if not specifically labeled L.C.E.

2.6. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

2.7. "Declarant" means Basin Real Estate Holdings, LLC, a Texas limited liability company and AFC Development LLC, a Texas limited liability company, its members, employees, representatives, successors, and assigns.

2.8. "Declaration" means this document with all Exhibits attached hereto, and the Plat, which documents will be recorded pursuant to the Act, all as the same may be amended or supplemented in the future.

2.9. "Executive Board" or "Board of Directors" or "Board" shall mean the governing board of the Association elected or chosen pursuant to the Act to operate, maintain, and manage the Project.

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

2.11. "Limited Common Elements" means any portion of the Common Elements as may be allocated by the Declaration and as may be shown on the Plat for the exclusive use of one or more Units but fewer than all of the Units.

2.12. "Managing Agent" shall mean a person or entity employed by the Association as its managing agent to perform the obligations of the Association relative to operation, maintenance, and management of the Project.

2.13. "Owner" means any person, persons, partnership, corporation, limited liability company, trust, 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 their 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.

2.14. "Owner's Agent" means members of the Unit Owner's family, or the Unit Owner's agents, employees, invitees, licensees or tenants, or the agents, employees, invitees, licensees or tenants of the Unit Owner's tenant.

2.15. "Project" means the Property and all improvements and structures thereon, together with all rights, easements, and appurtenances belonging thereto, submitted to the Brush Creek Village planned community pursuant to this Declaration and the Act, or which may be subsequently submitted to the planned community pursuant to any supplement or amendment hereto, including all Units, Buildings, Common Elements, and other rights and improvements shown on the Plat.

2.16. "Unit" means the portions of the Project that are designated for separate ownership and occupancy and the boundaries of which are illustrated on the Plat.

2.17. "Votes" and "Percentage of Owners". Whenever in this Declaration or the Bylaws, a vote of Owners is required or permitted, each Owner shall be entitled to the voting percentage set forth on attached Exhibit A.

### **ARTICLE 3. SUBMISSION AND CONVEYANCE**

3.1. Grant and Submission. The Common Elements and all improvements located thereon are hereby submitted to Brush Creek Village planned community and the terms of this Declaration.

### **ARTICLE 4. OCCUPATION AND USE**

4.1. Division of Project into Units. The first phase of the Project is divided into 12 existing fee simple Units shown on the Plat. Declarant reserves the right to construct and include in the Project in one or more additional phases up to 12 additional Units on the Resultant Parcel Lot M1-6 and M1-7 and Resultant Parcel Lot M1-8 and M1-9 as shown on the Plat and which states "Resultant Parcel Lot M1-6 and M1-7" and "Resultant Parcel Lot M1-8 and M1-9". Declarant reserves the right to construct and include in the Project in one or more phases up to 12 additional Units on the Resultant Parcels.

4.2. Conveyance of Units. Each Unit and the appurtenances thereto shall be inseparable and may be conveyed, leased or encumbered only as a Unit.

4.3. Description of Units. Every instrument affecting title to a Unit in Brush Creek Village may describe the Unit as follows:

Unit \_\_\_ of Brush Creek Village according to the Plat thereof bearing Reception No. \_\_\_\_\_ and the Declaration of Brush Creek Village bearing Reception No. \_\_\_\_\_ recorded in the real property records of Gunnison County, Colorado.

4.4. Exclusive Possession and Use Restriction. 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 the Owner's Unit, if any. Except as otherwise provided in the Association Documents, 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 this Declaration and the other Association Documents, each Unit shall be used or occupied exclusively for residential purposes, including home occupations conducted exclusively by the inhabitants of the Unit, if approved by the Association as compatible with the quiet, residential nature of the Project. Except for such approved home occupations, no Unit or Common Element may be used for any commercial or business enterprise of any nature.

4.5. Right of Access and Emergency Repairs. The Association shall have the right of access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of those parts of the Unit that are the responsibility of the Association to maintain, repair, or replace pursuant to this Declaration, or at any time deemed necessary for the making of emergency repairs to prevent damage to the Common Elements, the Unit, or another Unit.

4.6. No Partition or Subdivision. No Unit or Common Element may be partitioned or subdivided except as provided for in the Declarant's reservation of development rights to expand pursuant to Articles 12 and 14 herein or as otherwise permitted under this Declaration.

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

4.8. Leasing. All leasing and other renting of Units must comply with the Regulations adopted by the Association. Any leasing or other renting of Units that does not comply with the Regulations adopted by the Association is prohibited.

4.9. Neglect by Owner or Owner's Agents. If, due to the act or neglect of an Owner or Owner's Agents, loss or damage shall occur or be caused to any person or property other than the Owner's Unit, such Owner and, to the fullest extent permitted by law, such 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.

## ARTICLE 5. BRUSH CREEK VILLAGE TOWNHOMES ASSOCIATION

5.1. Owners Association. The administration of Brush Creek Village and the Project shall be governed by this Declaration and the other Association Documents. 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 Brush Creek Village and the Project. An Owner of a Unit shall automatically become a member of the Association and shall remain a member for the period of Owner's ownership. All Executive Board members shall be elected by Owners of Units except as otherwise permitted by the Act and this Declaration. Each Owner, including Declarant, while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents.

5.2. Association Management. The Association shall conduct the general management of the Project and the enforcement of the Association Documents.

5.3. Association Budget. The budget shall be submitted to the Owners, pursuant to § 38-33.3-303(4) of the Act. Common Expense assessments shall be due and payable annually or in periodic installments, or in any other manner. The omission or failure of the Executive Board to levy the assessment for any period shall not be deemed a waiver, modification, or a release of the Owners from their obligation to pay.

5.4. Agent of Owner. If any Unit is owned by more than one person or by a partnership, joint venture, corporation, limited liability company, trust, or other entity, the Owners 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. Until such time as such designation is made, the Owner of such a Unit shall not be able to cast any votes in the Association and any communications required by the Association will be addressed to the name of the entity or other persons identified as the Owner on the most recent deeds for the Unit.

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 by email unless mailed notice is required by law, in which case notice will be provided in writing addressed to each Unit Owner at the address provided to the Association by each Unit Owner, but 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. Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except as directed by the Executive Board.

5.7. Rights of Action. The Association, on behalf of itself and any aggrieved Unit Owner, has a right of action against any and all Unit Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association. The Unit Owners shall have a right of action against the Association for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association.

In any action covered by this section, the Association or any Unit Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party or parties in any arbitration or judicial proceeding shall be awarded reimbursement from the non-prevailing party or parties for all reasonable costs and expenses, including attorneys' fees, in connection with such arbitration or judicial proceeding. Failure by the Association or any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce that provision or any provision thereafter.

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

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

- a. Adopt and amend Bylaws and Regulations;
- b. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments;
- c. Hire and terminate management 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 contract providing for the services of Declarant may not exceed three years and must provide for termination by either party without cause and without payment of a termination fee on ninety days or less written notice;
- 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 to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only in accordance with the Act;
- 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 powers of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents all in accordance with the Act.
- l. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments;

- m. Provide for 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 in accordance with the Act;
- o. Exercise any other powers conferred by the Act, 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; and
- q. Exercise any other powers necessary and proper for the governance and operation of the Association.

5.10. Regulations.

- a. The Executive Board may adopt and amend Regulations by majority vote. The Regulations may not directly contradict this Declaration. To the fullest extent permitted by law, the Regulations shall be interpreted in a manner harmonious with this Declaration.
- b. The Regulations shall contain such matters as are required by the Act and may set forth such other matters regarding the use of the Common Elements and the Units 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, junk, maintenance, lighting, use of Common Elements and easements, home occupations, commercial activities, marijuana cultivation and use, smoking, and installing and maintaining of improvements. The Regulations may define such uses and prohibit them, in whole or in part, in Common Areas and in Units 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. 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. The Regulations will not address long term renting or short term renting.

5.11. Architectural Control.

- a. *No Unapproved Improvements.* No new Improvement shall be erected, maintained, constructed, excavated, or otherwise put in place, allowed, accomplished, or occur on or adjacent to any Unit or Limited Common Element unless and until approved by the Board in writing.
- b. *General Requirements.* All Improvements shall be constructed and maintained in accordance with all applicable building and fire codes. All buildings must be harmonious with existing buildings within the subdivision. The Board may promulgate, enact, and amend as part of the Regulations design guidelines that shall further restrict, require, or otherwise govern architectural matters within the Project.

- c. *Submission of Application.* After receiving approval from Buckhorn Ranch Association, Inc. as to any Improvement that requires approval of Buckhorn Ranch Association, Inc., any Owner seeking to erect, maintain, construct, excavate, or otherwise put in place or allow any Improvement on the Owner's Unit or Limited Common Element shall first submit plans for the Improvement to the Board. Such plans shall include a drawing of the Improvement with samples of all exterior materials and finishes and colors if applicable (collectively, the "Application").
- d. *Approval.* The Board shall, within 30 days of receipt of a complete Application, approve or reject the Application in writing. If the Application is not approved, the Board shall provide a short statement explaining why it is not approved. If the Board fails to respond to a complete Application within 30 days of receipt of the complete Application, the Application shall be deemed approved. Notwithstanding any of the foregoing, no Application shall be approved if the Application or Improvements constructed pursuant to the Application do not fully comply with the applicable fire code, building code, and Gunnison County Land Use Resolution in effect at the time of submission of the complete application.
- e. For the purpose of this section, "Improvement" means any fence or walls, pavement, excavation, dirt moving, grading, road construction, decks, patios, porches, awnings, enclosures, house, garage, barn, any and other form of building, structure or other development, and also includes any material alteration of any exterior of any existing Improvement. Any exterior alteration of any existing Improvement is a material alteration if the material type or color is not substantially identical to the exterior elements or finishes it is replacing.

## ARTICLE 6. COMMON EXPENSES

6.1. Common Expenses. Common Expenses may be incurred for the purpose of promoting the health, safety, and welfare of the occupants of the Project and the value of the Units, including the overhead expenses of the Association, costs of maintenance, repair, and replacement of the Common Elements and those parts of the Units under the responsibility of the Association pursuant this Declaration, taxes and special assessments unless separately assessed, insurance premiums for insurance coverage as deemed desirable or necessary by the Association or this Declaration, utility charges for Common Elements including gas, electricity, water, sewer, trash and garbage collection, guard service, burglar alarm service, landscape maintenance and snow removal, janitorial service, legal and accounting fees, management fees, Common Element charges, any other expenses incurred by the Association in exercising the powers granted to it under this Declaration, and the creation of a reasonable contingency or reserve for surplus funds.

6.2. Personal Obligation to Pay Common Expense Assessments. Each Owner is liable for assessments made against such Owner and such Owner's Unit during the period of ownership of such Unit. No Unit Owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the assessments are made. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner at the time when the assessment or other charges became due. Each Owner shall be



responsible for and have the obligation to pay assessments to the fullest extent permitted by the Act.

6.3. Assessment.

- a. Common Expenses shall be estimated by the Association annually for the ensuing calendar year and each Owner shall be assessed for the Owner's share thereof in advance of the commencement of each such year. The Association may establish any reasonable system for periodic collection of assessments, in advance or arrears, as deemed desirable. At the end of each calendar year, the Association shall determine actual expenses and either assess each Owner or credit the Owner against the assessment for the next ensuing calendar year, as the case may be, for the Owner's share of the difference between estimated and actual expenses. The failure of the Association to fix the assessment for any assessment period shall not be deemed a waiver, modification, or a release of the Owners from their obligation to pay the Common Expenses.
- b. 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, 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 shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration.
- c. Any Common Expense assessment shall be assessed to Owners according to the Standard Common Expense Liability ratios shown on **Exhibit A**, except that:
  - i. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed equally only against the Units to which that Limited Common Element is assigned;
  - ii. Any Common Expense or portion thereof benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited; and
  - iii. The costs of insurance shall be assessed in proportion to risk, and the costs of utilities shall be assessed in proportion to usage.
  - iv. If any Common Expense is caused by the negligence, misuse, tortious act, or misconduct of any Unit Owner, the Association may assess that expense exclusively against such Owner's Unit.
  - v. Assessments for a specific Building shall be assessed against the Owners of the Units in the Building.
  - vi. Any assessment for less than all the Units shall be pro rata such that each Unit assessed pays an equal share of the total assessment.
- d. Notice in writing of the amount of any special assessments and the time for payment of the special assessments shall be given promptly to the Owners, and no payment shall be delinquent less than ten (10) days after such notice shall have been given.
- e. To the fullest extent permitted by law, all monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the

Association on behalf of the Owner pursuant to the Association Documents, shall be a default assessment and is a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration and the Act.

6.4. Nonpayment of Assessments and Lien. All sums assessed but unpaid for the Common Expenses chargeable to any Owner shall constitute a lien on such Owner's Unit as set forth in the Act and the lien shall have priority as set forth in the Act. Absent any contrary provision of the Act, a lien exists as of the recording of this Declaration against each Unit for all assessments made against the Owner of each Unit.

6.5. Effect of Non-Payment of Assessments. Any assessment, charge, or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid when due shall result in such late charges and interest as set forth in the Regulations. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Unit all in accordance with the Act. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor.

## ARTICLE 7. MAINTENANCE AND REPAIR

7.1. Maintenance by Owners. Except as otherwise provided herein, each Owner shall maintain, repair, and replace, as necessary, all portions of the interior of Buildings on such Owner's Unit, including the finished surfaces of all interior parts of all walls, floors, and ceilings, and other elements or materials comprising a part of the interior of the Building. Each Owner shall keep in good repair, the interior of Buildings on Owner's Unit. Each Owner shall maintain, repair, replace, and keep in good repair the exterior portions of Owner's Unit including any yard, fence, doors, locks, windows and any other part of the exterior portion of the Unit except roofs and Building exteriors which are the responsibility of the Association to repair, maintain, replace, and keep in good repair. All utility lines, pipes, wires, conduits, systems, fixtures and equipment serving a Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the Unit, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act or any work that will affect the Common Elements or impair the structural soundness or integrity of the Common Elements or a Building. An Owner shall do no act nor any work that will impair any easement or hereditament or do any act or allow any condition to exist that will adversely affect any other Unit.

7.2. Owner's Failure to Maintain or Repair. In the event that a Unit is not properly maintained or repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that a Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board shall have the right to enter upon the Unit to perform such work as is

reasonably required to restore the Unit to a condition of good order and repair, except that no advance notice or approval shall be required in the event of an emergency. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with this Declaration and the Act.

7.3. Maintenance by Association. The Association shall be responsible for the maintenance, repair, and replacement of those items of the Project not specifically required to be maintained by an Owner as set forth in in this Declaration including, except as set forth above, maintenance, repair, and replacement of all roofs and Building exteriors, all Common Elements including General and Limited Common Elements, and all structural repairs and replacements of the interior of the common wall between Units and the costs of such maintenance, repair, and replacement obligations of the Association shall be considered a Common Expense. However, to the extent any maintenance, repair, or replacement under this Section is necessitated by damage caused by the negligence, misuse, misconduct, or tortious act of an Owner or an Owner's Agent, such Owner shall be responsible for the costs of the maintenance, repair, or replacement. The Association shall be responsible for snow removal from the driveways and roofs of all Units.

7.4. Repair or Reconstruction after Damage. In the event of damage to a structure for which the Association is responsible for maintaining hazard insurance, and the insurance proceeds are not sufficient to defray the costs of reconstruction and repair due to failure of the Association to maintain coverage as committed to by the Association, the additional cost is to be a Common Expense. If, for any other reason, the insurance proceeds are not sufficient to defray the costs of reconstruction and repair, as determined by the Association, the additional costs shall be assessed against the Owners of the Units damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. If there are surplus funds after repair and reconstruction is completed, those funds are to be common funds of the Association to be used as directed by the Association.

## ARTICLE 8. INSURANCE

8.1. General Insurance Provisions. The Association shall acquire and pay for, out of assessments, at least the following insurance policies:

- 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 townhome, building ordinance and inflation guard endorsements attached, in amounts determined by the Executive Board to represent not less than the full then current insurable replacement cost of the Buildings located on the Property including all Common Elements and exterior parts of the Buildings and Units, excluding all interior portions of the Buildings such as the finished interior surfaces of all walls, floors, and ceilings, and other elements or materials comprising a part of the interior of the Buildings, and fixtures, furnishings, and items of personal property. 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 except for the excluded parts

of the Units described above. Any additional premiums attributable to the original specifications of a Unit for which the insurance is increased as herein provided shall be a Default Assessment as provided in this Declaration 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 the 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 projects similar to the Project in the Crested Butte area including automobile liability insurance if appropriate.
- c. *Directors and Officers Liability Insurance.* The Association shall maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate for any liability asserted against a member of the Executive Board or incurred by him or her in his or her capacity of or arising out of his or her status as a member of the Executive Board.

8.2. Owner's Insurance. Each Owner of a Unit shall obtain and maintain insurance coverage on the interior portions of the Building on an Owner's Unit including the finished interior surfaces of all walls, floors, and ceilings, and other elements or materials comprising a part of the interior of the Building, and furnishings, fixtures and other items of personal property belonging to an Owner and any additions and alterations to a Unit which increase the Unit's replacement value above that of the original specifications for the Unit, casualty and public liability insurance coverage for each Unit and the Limited Common Elements associated therewith, if any, in a minimum amount of \$300,000 per occurrence and workman's compensation insurance covering work within each Unit or on the Limited Common Elements associated therewith, if any. In the event an Owner fails to obtain and maintain such insurance, and an uninsured loss occurs which would have otherwise been covered under the insurance required by this paragraph, such Owner shall be liable to the Association for the loss suffered, and the Association shall be entitled to recover such amounts from the Owner in the same manner as any other debts owed to the Association.

## ARTICLE 9. PARTY WALLS

9.1. Party Walls. The common wall separating any two Units, the footings underlying the wall, and the portion of roof overlying said wall shall constitute and shall be referred to herein as a "Party Wall."

- a. To the extent not inconsistent with this Declaration, the general rules of law regarding party walls and liability for damage due to negligence, willful acts, and omissions shall apply to each Party Wall.
- b. Any damage occurring to a Party Wall shall be promptly repaired, and the cost shall be borne in equal shares by the Owners sharing the Party Wall, except that damage to the Party Wall that is occasioned by the act or the negligence

- of one Owner or Owner's Agent, or deterioration that occurs on the surface of a Party Wall that is within one Unit, shall be promptly repaired to at least its former condition and paid for by that Owner.
- c. Each Owner shall have the sole responsibility of maintaining the finished surfaces of a Party Wall located within the Owner's Unit.
  - d. Each Owner sharing a Party Wall shall have the right to enter the Party Wall to maintain the utility installations located therein, as long as he or she restores it to its original condition.
  - e. Each Owner sharing a Party Wall shall have the right to repair the Party Wall and to charge the other Owner for that Owner's proportionate share of the costs.
  - f. Each Owner sharing a Party Wall has the right of contribution against the other Owner for negligent acts or omissions which damage the Party Wall or which cause the interior of the Party Wall to be exposed to the elements. Rights of contribution run with the land.
  - g. Any insurance proceeds covering damage to a Party Wall must be applied to repair unless the Owners of both Units agree otherwise.
  - h. The Owners of each Unit sharing a Party Wall shall have a perpetual easement in and to that part of the other Unit on which the Party Wall is located, for party wall purposes, including mutual support, maintenance, repair, replacement, and inspection.

#### **ARTICLE 10. RESTRICTIONS ON USE AND OCCUPANCY**

10.1. Use and Occupancy Restrictions. The following use restrictions apply to all Units and to the Common Elements:

- a. No structures of a temporary character, trailer, tent, shack, or other out building shall be allowed or used on any portion of the Property at any time as a residence, either temporarily or permanently.
- b. Loud parties are prohibited.
- c. No activity is allowed which, by noise, dust, fumes, vibration or other impact, disturbs the neighbors or the occupant(s) of any other Unit or Common Element.

10.2. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on the Property, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. No more than two pets of the same species shall be allowed in any Unit. Such household pets shall be adequately maintained and cared for in order to avoid constituting a nuisance to other Owners.

10.3. Dogs. Owners of dogs shall:

- a. Not allow their dogs to bark or otherwise disturb, threaten, scare, injure or otherwise bother any person or animal;
- b. Immediately clean up the dog's waste; and
- c. At all times control their dogs by leash or voice command.

10.4. Solid Fuel Burning Devices. Woodburning stoves, fireplaces and other solid fuel burning devices are prohibited within the Project.

10.5. Exterior Appearance.

- a. The exterior of each Unit shall be kept and maintained in a neat, clean and orderly condition and appearance at all times.
- b. The selection of color, type of paint, exterior decoration, and any exterior materials shall be subject to the written approval of the Association. Principal colors shall be muted earth tones.
- c. To the extent reasonably practicable, the Owners shall maintain a uniform exterior appearance within the entire Project.

10.6. Signs. Except as otherwise required to be permitted by law, no Unit Owner shall install or maintain any sign:

- a. Except upon prior written approval of the Association and Gunnison County; and
- b. Which is larger than 1.5 square feet.

10.7. Outside Parking and Storage. No Unit Owner shall have or allow more than two motor vehicles to be parked outside on the Property at any time. The following are absolutely prohibited unless parked or stored within a fully enclosed garage:

- a. Inoperable vehicles (a vehicle which has not been driven under its own power for a period of one week or longer);
- b. Construction equipment, tools, snowblowers, and other equipment; and
- c. Trucks larger than 1-ton trucks.

## **ARTICLE 11. RESTRICTIONS ON ALIENATION**

11.1. Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing arrangement described in C.R.S. §§ 38-33-110 to 113.

## **ARTICLE 12. DEVELOPMENT RIGHTS, EXPANSION, AND MODIFICATION**

12.1. Reservation of Right to Expand. Declarant expressly reserves for Declarant or Declarant's representatives, successors or assigns, the right to expand this Project by constructing up to twelve additional Units on the Resultant Parcels.

12.2. Supplemental Declaration and Supplemental Plat. Such expansion shall be accomplished by Declarant filing for record in the office of the Clerk and Recorder of Gunnison County, Colorado, a supplemental or amended Declaration and supplemental or amended Plat containing such information as is required by the Act.

12.3. Expansion of Definitions and Interests. Except as otherwise provided in this Article 12, in the event of such expansion, the definitions used in this Declaration shall automatically be expanded to encompass and refer to the Project as so expanded.

12.4. Declaration Operative on New Units. The new Units shall be subject to all the terms and conditions of this Declaration upon the recording of a supplemental or amended Plat and Declaration in the office of the Clerk and Recorder of Gunnison County, Colorado.

## ARTICLE 13. EASEMENTS AND LICENSES

13.1. Existing Easements and Licenses. All easements and licenses to which the Property is presently subject are recited or set forth in this Declaration or are shown on, or identified in the attorney's opinion on, the Plat.

13.2. Easements for Encroachments. Each Unit that shares a Party Wall with another Unit shall be subject to an easement for encroachment created by construction, settling and overhang as designed or constructed by Declarant, and a valid easement for such encroachment and for the maintenance of the same shall and does exist. If a Building is partially or totally destroyed and then rebuilt, the Owners of the Units containing that Building 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. Easement for Maintenance. Each Owner and the Association shall have the irrevocable right, to be exercised by the Manager, the Executive Board or officers or employees of the Association, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of those parts of the Units that are the responsibility of the Association or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements, the Unit, or another Unit. In the event insurance proceeds under this Declaration are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

13.4. Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, the Association, and/or for Owners including those in all future phases of Brush Creek Village, reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements as shown on the Plat, together with the right to store materials on such Common Elements, to build and maintain temporary walls, and to make such other use of such Common Elements as may be reasonably necessary or incident to any construction of the Units, or improvements on the Property or other properties abutting and contiguous to the Property, provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Project by the Owners.

13.5. Utility Easements. There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Units and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable tv, and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to locations.

13.6. 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 Common Elements and Limited Common Elements, 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, such as for closure for repairs and maintenance.

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

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

#### **ARTICLE 14. RIGHTS RESERVED TO DECLARANT**

14.1. Special Declarant Rights. The Declarant reserves the right to exercise in any order all Development Rights and Special Declarant Rights as set forth in the Act and this Declaration within twenty five (25) years following the recording of the Plat including, without limitation, the following:

- a. The right to complete or make any improvements as set forth on the Plat, as amended or supplemented, or as required by Gunnison County.
- b. The right to maintain signs to advertise the Project.
- c. The right to dedicate a future public or private easement.
- d. 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.
- e. The right, without consent of any Owner or mortgagee or lienholder being required, at any time and from time to time to: (a) complete improvements indicated on the Plat, (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size within one or more Units; (c) amend the Plat to (i) insure that the language and all particulars that are used on the Plat and contained in the Declaration are identical; (ii) establish, vacate and relocate utility easements, access easements, and parking spaces; and (iii) as may be otherwise permitted by the Act; and (d) to exercise any other Declarant rights or development rights provided for herein.
- f. The right to expand and modify the Project to add up to 12 Units, as described in Article 12 and to subdivide the Property into Units, Common Elements, and Limited Common Elements consistent with Declarant's right to expand and modify the Project.
- g. Declarant shall be entitled to appoint and remove the members of the Association's executive board and officers of the Association during the term of Declarant Control. "Declarant Control" begins with the appointment of the



initial Executive Board. The period of Declarant Control shall terminate at the earlier of the time period set forth in this Article or upon termination of Declarant Control as set forth in the Act, whichever occurs first.

- h. The right to amend this Declaration and the Plat to create Units, Common Elements, and Limited Common Elements for additional phases of the Project on that area of the Plat labeled as "Resultant Parcel Lot M1-6 and M1-7" and "Resultant Parcel M1-8 and M1-9".
- i. The right to construct utility lines, pipes, wires, ducts, conduits, and other facilities across any portion of the Property for the purpose of furnishing utility and other services to Buildings and Improvements now located on or to be constructed on the Property.

No assurances are made by the Declarant as to whether the Declarant will exercise its Development Rights or the order in which such Development Rights will be exercised or the portions of Property on which the Development Rights will be exercised. The Development Rights may be exercised at different times with respect to areas on the Plat labeled as "Resultant Parcel Lot M1-6 and M1-7" and "Resultant Parcel M1-8 and M1-9". No assurance is made as to the order in which those portions, whether "Resultant Parcel Lot M1-6 and M1-7" or "Resultant Parcel M1-8 and M1-9", may be subjected to the exercise of Development Rights. The exercise of Development Rights as to some portions of the Property will not obligate the Declarant to exercise them as to other portions.

**14.2. Declarant Control of the Association.**

- a. To the fullest extent permitted by Colorado law, there shall be a period of Declarant Control of the Association, during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers of the Association and Members of the Executive Board. Unless an earlier termination date is required by Colorado law, the period of Declarant control shall terminate no later than the earlier of:
  - i. 60 days after conveyance of 75 percent of the Units that may be created in the Brush Creek Village common interest community to owners other than Declarant; or
  - ii. Two years after the last conveyance of a Unit by the Declarant in the ordinary course of business; or
  - iii. Two years after any right to add new Units was last exercised; or
  - iv. 25 years following the recording of the Plat.
- b. Not later than 60 days after conveyance of 25 percent of the Units that may be created in the Brush Creek Village common interest community to owners other than Declarant, at least one Member and not less than 25 percent of the Members of the Executive Board shall be elected by Owners other than the Declarant. Not later than 60 days after conveyance of 50 percent of the Units that may be created in the Brush Creek Village common interest community to owners other than Declarant, not less than 33 and 1/3 percent of the Members of the Executive Board must be elected by Owners other than Declarant.
- c. Not later than the termination of any period of Declarant Control, the Owners shall elect an Executive Board of at least three Members, at least a majority of

whom shall be Owners other than Declarant or designated representatives of Owners other than Declarant. The Executive Board shall elect the officers.

14.3. Voluntary Surrender. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and Members of the Executive Board before termination of the period described above. In that event, the Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

#### ARTICLE 15. MECHANIC'S LIENS

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

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

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

#### ARTICLE 16. MISCELLANEOUS PROVISIONS

16.1. Separate Tax Assessment. Each Unit shall be deemed a separate parcel of real property and subject to separate assessment and taxation.

16.2. Compliance with Declaration. Each Owner shall comply strictly with the provisions of this Declaration and any other Association Documents 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, or by an aggrieved Owner.





**EXHIBIT A**

**TABLE OF INTERESTS**

Unit	Share of Vote	Standard Common Expense Liability
101	1/12	1/12
103	1/12	1/12
105	1/12	1/12
107	1/12	1/12
109	1/12	1/12
111	1/12	1/12
113	1/12	1/12
115	1/12	1/12
117	1/12	1/12
119	1/12	1/12
121	1/12	1/12
123	1/12	1/12

This Table of Interests shall be adjusted as build out of up to 12 additional Units in subsequent phases is complete. As Units are added, the share of vote and common expense liability will be reduced proportionally. For example, if all 12 Units in the subsequent phases are added, each Unit owner will have 1/24 share of vote and 1/24 share of the standard common expense liability.