

AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS
FOR PITCHFORK



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AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS
FOR
PITCHFORK

Restate

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AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS
FOR
PITCHFORK

THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR PITCHFORK ("Declaration"), is made with an effective date of the ___ day of _____, 2002, by Coburn Development, Inc., a Colorado corporation and Pitchfork LLC, a Colorado limited liability company (collectively "Declarant").

Recitals

A. On August 21, 2000, Coburn Development, Inc. caused to be recorded a Final Plat of Pitchfork at Reception number 504415 in the offices of the Clerk and Recorder of Gunnison County, Colorado, and in conjunction therewith, on May 2, 2001, Coburn Development, Inc. recorded a Declaration of Protective Covenants For Pitchfork (the "Original Declaration") at Reception number 510378 in the offices of the Clerk and Recorder of Gunnison County, Colorado. The Original Declaration created a common interest community pursuant to the Colorado Common Interest Ownership Act, C.R.S. §§8-33.3-101 et. seq. (the "Act") under the name of Pitchfork and which encumbers the real property situated in the County of Gunnison, State of Colorado more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("Property").

B. The Original Declaration provides that it may be amended upon the written consent of the Owners holding 67% of the votes in the Association, and Declarant holds more than sixty-seven percent (67%) of the votes in the Association.

C. Declarant desires to amend and restate the Original Declaration.

Now, therefore, Declarant hereby amends and restates the Original Declaration by execution of this Declaration, for the purpose of creating the Pitchfork Master Association, Inc. and declares that the Property described in Exhibit A attached hereto and incorporated herein by this reference shall be held, sold and conveyed subject to the following easements, reservations, restrictions, liens, charges, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with title to the real property and be binding on all parties having any right, title or interest in the described real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. **This Declaration shall amend and supercede the Original Declaration in its entirety.**

ARTICLE 1

STATEMENT OF PURPOSE

Section 1.1 - Subdivision of Property. The Property shall be subdivided and platted as "Pitchfork", which is a Common Interest Community including a planned community and condominiums. Declarant reserves the right to plat Lots and create Units within Pitchfork in one



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or more phases, as shown on the Plat or Plats, or the Maps, as the case may be. Declarant reserves the right to create a maximum of 105 Lots and Units if Declarant exercises its right to phase the Common Interest Community;

A. Declarant shall not convey Lots or Units in the Common Interest Community, except those platted and subdivided on one or more recorded Plats, or as depicted on a Map;

B. Declarant shall have the right to plat and subdivide Lots or create Units in a subsequent phase or phases of the Common Interest Community by recording:

i. one or more supplemental Plats or Maps containing comparable information for the subsequent phase(s) as was contained on the original Plat or Map;

ii. one or more supplements to this Declaration amending Exhibit B to describe the allowed use of each Lot or Unit in a subsequent phase and to set forth any other provisions which apply to the Lots or Units in a subsequent phase;

C. No Assessments shall be levied against Lots or Units in a subsequent phase until the supplements to the Plat, Map and Declaration adding such Lots or Units to the Common Interest Community, and annexing such Lots or Units into the Master Association have been recorded in the office of the Clerk and Recorder of Gunnison County, Colorado.

Section 1.2 - Declaration of Covenants. Declarant hereby makes, declares and establishes that the Property shall be held and conveyed subject to the terms, covenants, conditions, restrictions and easements set forth herein which 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 part thereof, their heirs, successors and assigns and their tenants, employees, guests and invitees and shall inure to and be for the benefit of each Owner of a Lot or Unit within Pitchfork.

Section 1.3 - Statement of Purpose.

A. This Declaration is imposed for the benefit of all Owners and future owners of Lots and Units located within Pitchfork and to provide for the preservation of values of Pitchfork and to preserve the covenants, easements, restrictions, assessments and liens hereafter set forth, all of which are for the benefit of the Property and the Owners of Lots and Units.

B. Pitchfork will have relatively high density in order to provide more affordable family housing opportunities than are generally available in Mt. Crested Butte. In order to preserve the aesthetics, appearance, neatness, cleanliness and general desirability of dwellings within Pitchfork, and to provide for the general health, safety and welfare of the Members of the Association, this Declaration imposes covenants, easements and restrictions not ordinarily found in Gunnison County subdivisions regarding storage of snow and personal property, mandatory landscaping maintenance and other matters, which shall be strictly implemented and enforced by the Association.

ARTICLE 2

DEFINITIONS

The following terms and words shall have the definitions set forth in this Article 2:

Section 2.1 - "Act" shall mean the Colorado Common Interest Ownership Act, C.R.S. Section 38-33.3-101 et. seq.

Section 2.2 - "Agencies" shall mean the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

Section 2.3 - "Allocated Interests" shall mean the Common Expense liability and votes in the Association, allocated in Lots and Units in the Common Interest Community, as set forth in Exhibit C.

Section 2.4 - "Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as they may be amended from time to time.

Section 2.5 - "Assessments" shall mean the funds required to be paid by each Owner in payment of Common Expense liability, including regular monthly, quarterly or annual assessments, special assessments or default assessments levied pursuant to the Association Documents to provide funds for the Association.

Section 2.6 - "Association" shall mean Pitchfork Association, Inc., a Colorado non-profit corporation, or any successor thereof, charged with the powers, duties and obligations set forth herein.

Section 2.7 - "Association Documents" shall mean this Declaration and amendments thereto (and supplements thereto, if any), the Plat (and supplements thereto, if any), any Maps (and supplements thereto, if any), the Articles of Incorporation and Bylaws of the Association, the Design Guidelines and any procedures, or Rules adopted thereunder by the Association or the Design Review Board.

Section 2.8 - "Bylaws" shall mean the Bylaws of the Association, as they may be amended from time to time.

Section 2.9 - "Common Elements" shall mean any property within the Common Interest Community owned by the Association, or under any other arrangement whereby the Association or its Members have a right or obligation to use, or maintain, repair, replace or

restores such property.

Section 2.10 - "Common Expenses" shall mean the expenses or financial liabilities for the operation of the Common Interest Community. These expenses include:

- a. Expenses of administration, maintenance, repair or replacement of any Common Elements or property owned or maintained (under an easement, lease, license or contract) by the Association;
- b. Expenses declared to be Common Expenses by the Documents or by the Act;
- c. Expenses agreed upon as Common Expenses by the Executive Board;
- d. Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held or maintained (under an easement, lease, license or contract) by the Association; and
- e. The costs and expenses imposed on the Association, benefiting fewer than all the Lots and Units, shall be a Common Expense, when assessed exclusively against those Lots or Units benefited.

Section 2.11 - "Common Interest Community" shall mean all of the Property subdivided and platted by the Plat or depicted on a Map, including amendments thereto, filed in the records of Gunnison County, Colorado pertaining to Pitchfork.

Section 2.12 - "Cottage" shall mean a Single Family Dwelling whose Living Area does not exceed 1,000 square feet.

Section 2.13 - "Declarant" shall mean Coburn Development, Inc., a Colorado corporation, and Pitchfork, LLC, a Colorado limited liability company, and their successors and assigns.

Section 2.14 - "Design Guidelines" shall mean those guidelines, rules and regulations published from time to time by the Design Review Board upon approval by the Town. All Design Guidelines shall be consistent with the provisions of this Declaration.

Section 2.15 - "Design Review Board" shall mean the Design Review Board appointed by the Executive Board.

Section 2.16 - "Development Rights" shall mean the rights as defined by Section 38-13.3-102(14) of the Act reserved by the Declarant under Article 13 of this Declaration.

Section 2.17 - "Dwelling Unit" shall mean the residence constructed on each Lot and any replacement thereof, including any basement and attached Garage, and shall specifically

include a Single Family Residence, Townhome and condominium Unit.

Section 2.18 - "Eligible Mortgagee" shall mean the holder of a First Security Interest in a Lot, when the holder has notified the Association, in writing, of its name and address and that it holds a First Security Interest in a Lot. The notice must include the address of the Lot on which it has a security interest. This notice shall include a request that the Eligible Mortgagee be given the notices and other rights described in Article 14.

Section 2.19 - "First Security Interest" shall mean a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.20 - "Executive Board" shall mean the Board of Directors of the Association duly elected and acting according to the Articles of Incorporation and Bylaws of the Association.

Section 2.21 - "Garage" shall mean an accessory building or an accessory portion of a Single Family Residence designed for the storage of one or more motor vehicles and for incidental uses.

Section 2.22 - "Home Occupation" shall mean a use conducted entirely within a dwelling which is incidental and secondary to the use of the dwelling for dwelling purposes and which does not change the residential character thereof.

Section 2.23 - "Improvements" shall mean any exterior construction, structure, fixture, landscaping or facilities existing or to be placed on any property in the Common Interest Community, including but not limited to: buildings, outbuildings, patios, patio covers, awnings, solar collectors or panels, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, Garages, carports, driveways, fences, screening walls, retaining walls, stairs, docks, drainage facilities, landscaping (including any material change in slope, pitch or drainage pattern), hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, recreational or sporting equipment, signs, satellite dishes, antennas, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment.

Section 2.24 - "Landscaping" shall mean planted areas and plant materials, including trees, shrubs, lawns, flower beds and ground cover.

Section 2.25 - "Large House" shall mean a Single Family Dwelling whose Living Area does not exceed 2,000 square feet.

Section 2.26 - "Living Area" shall mean the floor area having a ceiling height in excess of five feet of a residence designed for interior occupancy and use by the inhabitants, but excluding basements (floor areas more than 4' below adjacent grade), Garages and areas designed for vehicle access and loading, balconies, porches, decks, patios, breezeways, hallways, corridors, stairways and service areas outside the living area or accommodation, enclosures and

uninhabited heating or mechanical equipment areas.

Section 2.27 - "Lot" shall mean the Lots as shown on the Plat or Plats of Pitchfork, other than Common Elements, and shall specifically include Townhome Lots.

Section 2.28 - "Map" shall mean a depiction in three dimensions of any Units in a Subassociation having horizontal boundaries, as required by the Act.

Section 2.29 - "Member" shall mean any person holding membership in the Association.

Section 2.30 - "Multi-Family Building" shall mean a duplex, triplex, 4-plex, 5-plex or 6-plex building subdivided into condominium Units or Townhomes pursuant to a Supplemental Declaration.

Section 2.31 - "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot or Unit; provided, however, that prior to the first conveyance of any Lot or Unit after the recording of this Declaration, Owner shall mean Declarant unless Declarant has designated a successor in ownership of fee simple title to exercise the rights, duties and obligations of ownership.

Section 2.32 - "Perimeter Lots" shall mean Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 28, 29, 30, 31, 32, 33, 34 and 35.

Section 2.33 - "Permitted User" shall mean members of an Owner's family, or the Owner's agent, employee, guest, invitee, licensee or tenant, or the agent, employee, invitee, licensee or tenant of the Owner's tenant or family member.

Section 2.34 - "Person" shall mean a person, corporation, limited liability company, partnership, joint venture, association, fiduciary, trust or any other type of entity or designation by which title to any Lot or Unit is held.

Section 2.35 - "Plat" shall mean the plat for the Common Interest Community as filed in the records of Gunnison County, Colorado, and as such Plat may be amended, revised or supplemented from time to time, and shall specifically include Plats of the Townhomes.

Section 2.36 - "Property" shall mean and include the Property described on attached Exhibit A which is subject to this Declaration.

Section 2.37 - "Public Area" shall mean that part of the Property set aside for the public uses depicted or described on the Plat. Declarant shall convey to the Town title to the Public Areas.

Section 2.38 - "Rules" shall mean policies, rules, regulations and restrictions adopted and amended from time to time by the Executive Board pursuant to this Declaration for the

regulation of the Common Interest Community.

Section 2.39 - "Security Interest" shall mean an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in a Lot, Unit or the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Article 14 hereof with respect to notice of cancellation or substantial modification of certain insurance policies, "Security Interest" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of Gunnison County, Colorado, show the Administrator as having the record title to the Lot or Unit.

Section 2.40 - "Single Family Residence" shall mean a detached building designed for or used as a dwelling exclusively as an independent housekeeping unit.

Section 2.41 - "Special Declarant Rights" shall mean rights reserved for the benefit of Declarant to: (1) complete improvements indicated on the Plat; (2) exercise any Development Right; (3) maintain sales offices, management offices, signs advertising the Common Interest Community, and models; (4) use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within real estate that may be added to the Common Interest Community; (5) appoint or remove an officer of the Association or any Executive Board member during any period of Declarant control; (6) merge or consolidate a Common Interest Community of the same form or ownership; (7) appoint or remove any Design Review Board member; or (8) make a Subassociation subject to this Association.

Section 2.42 - "Small House" shall mean a Single Family Dwelling whose Living Area does not exceed 1,600 square feet.

Section 2.43 - "Subassociation" shall mean the Pitchfork Townhomes Association, Inc. and the Lazy S Condominiums Association, Inc. Such Subassociations shall have jurisdiction over the properties described in the Declaration of Covenants, Conditions and Restrictions for Pitchfork Townhomes, as amended from time to time, and in the Declaration Establishing Lazy S Condominiums, as amended from time to time.

Section 2.44 - "Supplemental Declaration" shall mean any Declaration of Covenants, Conditions and Restrictions creating or affecting any Subassociation, or any portion thereof, which may be hereafter recorded by Declarant in accordance with Section 13.1. The term "Supplemental Declaration" does not include this Declaration. Any Supplemental Declaration shall be subordinate at all times to this Declaration and shall be interpreted in a manner

consistent with this Declaration.

Section 2.45 - "Town" shall mean the Town of Mt. Crested Butte, Colorado.

Section 2.46 - "Townhome" shall mean those Dwelling Units constructed or to be constructed on Lots 2, 3, 4, 5, 6, 29, 33, 35, 36, 42, 43, 44 and 50, Pitchofork, Gunnison County, Colorado.

Section 2.47 - "Unit" shall mean the physical portion of the Common Interest Community having horizontal boundaries, other than Common Elements, designated for separate ownership or occupancy, the boundaries of which are depicted on a Map.

ARTICLE 3

PITCHFORK ASSOCIATION, INC.

Section 3.1 - Establishment of Association. Pitchfork Association, Inc., a Colorado non-profit corporation, shall be governed by and shall exercise all of the duties, privileges, obligations and powers set forth in the Association Documents and the Act. In the event of any conflict between the documents or procedures governing the operation of the Subassociations and the documents or procedures governing the operation of the Association, the documents or procedures governing the operation of the Association shall control.

Section 3.2 - Executive Board. The Executive Board of the Association shall manage and set policy for the Association. Except as otherwise provided in this Declaration or the Bylaws, the Executive Board may act in all instances on behalf of the Association. The initial Executive Board shall have three (3) directors. Except for members of the Executive Board appointed by the Declarant during the Period of Declarant Control, all members of the Executive Board shall be Members of the Association, or in the event that a Member is an entity other than a natural person, such member of the Executive Board shall be an authorized representative of such entity Member. Subject to the provisions of Section 3.5 below, during the Period of Declarant Control, the Executive Board shall consist of three (3) directors, none of whom need be Members of the Association. At such time as the Declarant conveys fifty percent (50%) of the Units that may be created, the number of directors on the executive Board shall increase to five (5). Upon expiration of the Period of Declarant Control, the Members shall elect all five directors as follows: the Owners of Single Family Residence Lots shall elect two members to the Executive Board, one of whom shall serve for an initial term of one (1) year, and one of whom shall serve for an initial term of two (2) years; the Owners of Units in Multi-Family Buildings shall elect two members to the Executive Board, one of whom shall serve for an initial term of one (1) year, and one of whom shall serve for an initial term of two (2) years; and all Members shall elect one "At Large" member to the Executive Board who shall serve for a term of one (1) year. After the initial terms, all members of the Executive Board, except the At Large member, shall serve for a term of two (2) years. The At Large member shall always serve for a term of one (1) year.

Section 3.3 - Owners' Easements. Every Owner shall have a nonexclusive right and easement for the purpose of access to their Lots and Units and for use for all other purposes allowed by this Declaration, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot and Unit. Any Owner may delegate their right of enjoyment in the Common Elements and facilities to the members of their family, their Permitted Users, or contract purchasers who reside on their Lot or in their Unit.

Section 3.4 - The Association's Rights. The rights of each Owner shall be subject to the Development Rights and Special Declarant Rights of the Declarant reserved herein and the following rights of the Association:

- A. To borrow money to improve the Common Elements and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest unless such is approved by Members casting at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots and Units not owned by the Declarant.
- B. To convey or dedicate all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots and Units not owned by the Declarant, and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. The granting of permits, licenses and easements for public utilities or for other purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this clause.
- C. To adopt and distribute Rules with which each Owner and their Permitted Users shall strictly comply.
- D. To suspend the voting rights of a Member for any period during which any assessment remains unpaid and, following notice and hearing, during any period of any other violation of the Association Documents and for up to sixty (60) days thereafter.
- E. To take such steps as are reasonably necessary to protect the Common Elements against foreclosure.
- F. To enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of Common Elements by Owners and Permitted Users for any purpose(s) the Executive Board may deem to be useful, beneficial or otherwise appropriate.
- G. To close or limit the use of the Common Elements temporarily while maintaining, repairing and making replacements in the Common Elements, or permanently if approved by a majority vote of Members present in person or by proxy at a meeting duly held.

Section 3.5 - Powers of the Executive Board. Except for those matters expressly reserved to the Members as provided in the Association Documents and the Act and the Colorado Revised Nonprofit Corporation Act, the Executive Board may act in all instances on behalf of the Association, to:

- A. Adapt and amend bylaws and rules, regulations and policies;
- B. Determine Common Expenses and adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;
- C. Hire and terminate managing agents and other employees, agents and independent contractors;
- D. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Common Interest Community;
- E. Make contracts and incur liabilities;
- F. Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- G. Cause additional improvements to be made as a part of the Common Elements;
- H. Acquire, hold, encumber and convey in the name of the Association any right, title or interest in real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if (a) Members entitled to cast at least sixty-seven percent (67%) of the votes agree to that action, (b) the provisions of Article 17 are followed with respect to approval of First Mortgagees, and (c) if all Owners of Units in which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest;
- I. Grant easements, leases, licenses and concessions through or over the Common Elements;
- J. Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements;
- K. Impose charges (including without limitation, late charges and default interest) for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of provisions of the Association Documents or otherwise suspend other membership privileges (except that notice and opportunity to be heard shall not be required before suspension of membership privileges for failure to pay Assessments within thirty (30)

days after they become due);

L. Impose reasonable charges for the preparation and recording of amendments to the Declaration or statements of unpaid Assessments;

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

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

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

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

Section 3.6 - Declarant Control. Declarant shall be entitled to appoint and remove the members of the Executive Board and officers of the Association during the Period of Declarant Control. The "Period of Declarant Control" begins with the appointment of the initial Executive Board and continues until the earlier of: (a) ten (10) years from the date of recording the Declaration; (b) sixty (60) days after Declarant conveys seventy-five percent (75%) of the Lots and Units that may be created to Owners other than Declarant; (c) two (2) years after the last conveyance of a Lot or Unit by Declarant in the ordinary course of business; or (d) two (2) years after the right to add new Lots or Units was last exercised. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded with the Gunnison County Clerk and Recorder but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots and Units that may be created to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots and Units that may be created to Owners other than a Declarant, not less than thirty-three and one third percent (33 1/3%) of the members of the Executive Board shall be elected by Owners other than the Declarant. Until the expiration of the Period of Declarant Control, those members of the Executive Board elected by the Members other than Declarant shall be elected by all Members of the Association without regard to ownership of Single Family Residence Lots or Units in Multi-Family Buildings.

Section 3.7 - Delivery of Documents by Declarant. Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Executive Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including, without limitation, the following items:

- A. The original or a certified copy of the recorded Declaration, as amended, the Articles of Incorporation, Bylaws, minute books, other books and records, and any Rules which may have been promulgated;
- B. An accounting for Association funds and audited financial statements from the date the Association received funds and ending on the date the period of Declarant control ends in accordance with Section 38-33.3-302(9)(b) of the Act;
- C. The Association funds, books and records;
- D. All of the tangible personal property that has been represented by the Declarant to be the property of the Association or that is necessary for and has been used exclusively in the operation and enjoyment of the Common Elements:
 - E. A copy, for the nonexclusive use of the Association, of any plans and specifications used in the construction of improvements in the Common Interest Community;
 - F. All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;
 - G. Any other permits issued by governmental bodies applicable to the Common Interest Community and which are currently in force or which were issued within one (1) year prior to the date on which Owners other than the Declarant took control of the Association;
 - H. Written warranties of any contractor, subcontractors, suppliers and manufacturers that are still effective;
 - I. A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;
 - J. Employment contracts in which the Association is a contracting party; and
 - K. Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the person performing the services.

Section 3.8 - Management Agreements and Other Contracts. Any agreement for professional management of the Association's business or other contract providing for services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) day's prior written notice.

Section 3.9 - Members. Each Owner shall be a Member of the Association. No Owner, whether one or more persons or entities, shall have more than one membership per Lot or Unit owned by such Owner, but all persons owning each Lot or Unit shall be entitled to the rights of

membership and the use and enjoyment appurtenant to the ownership of each Lot or Unit, except that votes allocated to such Lot or Unit shall be exercised as provided herein and in any non-conflicting provisions of the Bylaws.

Section 3.10 - Termination of Membership. The right of membership in the Association and the status as a Member shall terminate upon the termination of status as an Owner of a Lot or Unit. Upon conveyance, sale or assignment of the Owner's interest, the selling Owner shall be relieved of liability for assessments from and after the date of such sale or conveyance; provided, however, that no such sale or conveyance of any ownership shall relieve an Owner of liability arising prior to the date of such sale or conveyance.

Section 3.11 - Share of Common Expenses; Voting Rights. The Owner of each Lot or Unit shall be liable for payment of assessments and entitled to votes in the Association according to the provisions of attached **Exhibit C**. The vote for each Lot or Unit shall be exercised by the Owner and when more than one person or entity holds an interest in a Lot or Unit the vote for the Lot or Unit shall be exercised as the Owners may determine among themselves, but the vote for the Lot or Unit shall be cast by only one person.

Section 3.12 - Compliance with Documents. Each Owner and Permitted User shall abide by and have the benefit of the provisions, covenants, conditions and restrictions contained in the Association Documents.

Section 3.13 - Rules. The Executive Board shall from time to time adopt, amend and repeal Rules not inconsistent with this Declaration to be known as the "Pitchfork Rules and Regulations" governing, among other things, and without limitation:

- A. The use of any property owned or controlled by the Association or subject to this Declaration.
- B. The use of all easements shown on the Plat and described herein, except that use of such easements shall not conflict with or restrict the uses of easements as depicted and described on the Plat.
- C. Repair, maintenance and upkeep of all property owned by the Association and any property under the jurisdiction of the Association.
- D. Standards for the repair, maintenance, upkeep and use of all Lots, Units and all Improvements, grounds and landscaping situated upon such Lots within the Common Interest Community.
- E. Times when parking shall be prohibited in parking areas to facilitate snow removal and maintenance.
- F. The right to regulate window coverings in Dwelling Units in compliance with the Design Guidelines or Rules.

G. Any other matter set forth in the Association Documents, authorized by law or authorized by the Executive Board.

H. Any other matter relating to the Common Interest Community or the use of any Lot or Unit not inconsistent with this Declaration.

Section 3.14 - Fines. After notice and an opportunity to be heard, the Executive Board shall have the power to levy reasonable fines for any violation of the Association Documents. The Executive Board shall have the right to require any Owner or Permitted User who has violated any provision of the Association Documents to deposit and maintain funds with the Executive Board as security for the payment of fines imposed and/or expenses incurred as a result of such past or any future violation(s).

ARTICLE 4

RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY OF LOTS AND UNITS

Section 4.1 - Use of Lots and Units.

All of the Lots and Units shall be held, conveyed, used, improved, occupied, owned, resided upon and secured subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. These restrictions are general in nature and the Executive Board shall have the power to adopt, amend, supplement, repeal and enforce more specific and restrictive use restrictions, Design Guidelines and Rules as the Executive Board deems to be reasonable and necessary to carry out the intent of this Declaration. No improper, offensive or unlawful use may be made of the Property. Owners and Owner's Agents shall comply with and conform to all applicable laws and regulations of the United States, the State of Colorado and all other governmental ordinances, rules and regulations; violations thereof shall be a breach of this Declaration, subject to enforcement by the Association. Except as may be approved in writing by the Executive Board, nothing shall be done or kept which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

A. Lots shall be improved as described on attached Exhibit B and, except as otherwise provided on Exhibit B, used exclusively for residential purposes. No commercial or business enterprise of any nature shall be allowed within the Common Interest Community, except:

- i. As set forth on attached Exhibit B; and
- ii. One Home Occupation is permitted per Dwelling Unit, subject to the following restrictions: any noise or activity related to such Home Occupation shall not interfere with the quiet and dignity of the neighborhood and no persons other than the primary dwelling occupants and one employee shall be employed in such Home Occupation; the existence or operation of the Home Occupation is not apparent or detectable by sight, sound, or smell from

the exterior of the Dwelling Unit, and does not increase traffic; the Home Occupation conforms to all zoning requirements for the property; the Home Occupation does not increase the insurance obligation or premium of the Association; and the Home Occupation is consistent with the residential character of the Common Interest Community and does not constitute a nuisance or hazardous or offensive use, determined in the sole discretion of the Executive Board.

B. No time share estates, time span estates or other interval estates shall be allowed within the Common Interest Community.

Section 4.2 - Limits on Unrelated Inhabitants. No Single Family Residence or Unit shall be inhabited by more than the following number of occupants:

<u>Residence Size</u>	<u>Maximum Number of Occupants</u>
1 bedroom	3
2 bedrooms	4
3 bedrooms	5

Notwithstanding the foregoing, no Dwelling Unit shall be inhabited by more persons than are permitted by the ordinances of the Town or as otherwise provided by law, whichever is more restrictive.

Section 4.3 - Subdivision or Partition of Lots. Except pursuant to the exercise of Development Rights provided herein, no Lot or Unit may be partitioned, separated or subdivided from any other part thereof.

Section 4.4 - Approval by Design Review Board and Town. No improvement shall be constructed on any Lot nor shall any improvement be altered or demolished except as approved by the Design Review Board and the Town. All Improvements shall comply with the terms, conditions, definitions and objectives as set forth in the Design Guidelines.

Section 4.5 - Animals. No household pet or animal shall be allowed in or about the Common Interest Community, including Common Elements, except in compliance with the terms of this Declaration and in compliance with additional Rules issued by the Executive Board, which may supplement and be more restrictive, but not supersede or be less restrictive than, the provisions of this Section 4.6.

A. No Owner or Permitted User shall keep more than two (2) dogs or cats or more than three (3) of a combination of dogs and cats at any time. Vicious and habitually barking, howling or yelping dogs shall be deemed a nuisance and prohibited.

B. All household pets shall be confined to the Owner's Lot or Unit or unrolled on a leash. No dog shall be tied up outside for more than one hour at a time.

C. Owners will be held responsible for any litter, waste, mess or damage created by their pets in the Common Elements and for any offensive or prolonged noises created by their pets. All dog waste shall be immediately cleaned up and properly disposed of.

D. Animals may not be kept for any commercial purposes.

E. The Owner of any animal and the Owner of any Lot or Unit where the animal is visiting or staying shall be jointly and severally personally liable and responsible for all actions of such animal and any damage or violation of this Declaration caused by such animal. The right to keep animals as household pets shall be coupled with the responsibility to pay for any damage caused by such animals, and any damages and any costs incurred by the Association in connection with the enforcement of the Association's rights shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in this Declaration.

F. The Association is specifically empowered to impound any dog, cat or other animal running at large within the Property. Upon impoundment, the owner of the dog, cat or other animal, if known, shall be notified and the animal shall be taken to the nearest facility which accepts impounded dogs, cats or other animals. It is the duty of the owner of such dog, cat or other animal to recover the animal from such facility and if the animal is not recovered by the owner in accordance with the rules and regulations of such facility, the facility may destroy the animal without liability.

G. The Common Interest Community is adjacent to agricultural land used for livestock grazing. Owners of dogs should be aware that Colorado law allows owners of livestock to destroy dogs that harass livestock.

H. Nothing in this Section 4.5 shall prohibit or limit the use of qualified service animals as permitted or required under federal, state, or local law, including but not limited to the "Americans With Disabilities Act," or the "Fair Housing Amendments Act."

Section 4.6 - Parking. Parking of vehicles on a Lot is permitted only within Garages or designated parking spaces, except that vehicles may be parked temporarily in other areas as an expedience while loading and unloading. Personal property storage in each Garage shall be limited so as to enable the intended number of motor vehicles to be stored in each such Garage. No Persons shall park any vehicles on Outlot A, designated on the Plat, except Owners and Permitted Users of Lots 7, 8, 9 and 10.

Section 4.7 - Prohibited Vehicles and Conveyances. The following are absolutely prohibited from within the Common Interest Community and shall not be parked or stored on any street or Lot or in a Garage:

A. Motor homes, recreational vehicles, and campers except a camper mounted on a pickup;

- B. All terrain vehicles (ATVs);
- C. Trailers of any kind;
- D. Snowmobiles;
- E. Boats, except kayaks and inflatable rafts, which shall be stored inside or outside in the rear of the Lot if such storage is neat and not visible from any street.
- F. Abandoned or inoperable vehicles of any kind. An abandoned or inoperable vehicle shall mean any vehicle which is not capable of being driven under its own propulsion or does not have current registration.

Section 4.8 - Hazardous Activities. No activities shall be conducted on any Lot or within a Unit and no Improvements shall be constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, an firearms, archery equipment, or fireworks shall be discharged within the Common Interest Community. No open fires shall be lighted or permitted except in a contained pit or other barbecue unit while attended and in use for cooking purposes.

Section 4.9 - Occupancy. No portion of any Lot or Unit shall be used for sleeping purposes other than bedrooms in a Dwelling Unit for which a certificate of occupancy has been issued. No portion of a basement shall be used for sleeping purposes.

Section 4.10 - Signs. No signs, window display or advertising of any nature visible from outside a Lot or Unit shall be erected or maintained on any Lot or Unit except as necessary to identify the name, ownership or use of the particular Lot or Unit and its address, or as necessary or desirable to give directions, advise of rules and regulations, or caution or warn of danger, to advertise a Lot or Unit for sale, or as may otherwise be necessitated by law. Any signs which are permitted under the foregoing restrictions shall be erected or maintained only with prior written approval by the Design Review Board in compliance with the Town municipal code and in compliance with any sign guidelines adopted by the Executive Board. Approval shall be given only if such signs are of attractive design and are as small in size as is reasonably possible. Signs shall be placed or located as directed and approved by the Design Review Board and the Town zoning administrator.

Section 4.11 - Light, Sounds and Odors.

A. All exterior lighting shall be designed and directed as approved by the Design Review Board and in compliance with the Town municipal code. No light shall be emitted from any Lot or Unit which is unreasonably height or causes unreasonable glare. All exterior lights shall be shielded to reduce to the extent practicable visibility of such exterior lights from adjacent property and shall be directed downward. No mercury vapor lights shall be permitted.

B. No sound shall be emitted on any Lot or from any Unit which is unreasonably

loud or annoying.

C. No odor shall be emitted on any Lot or from any Unit which is noxious or unreasonably offensive to others.

Section 4.12 - Refuse.

A. No refuse, including without limitation trash, garbage, lumber, grass clippings, shrub clippings or tree clippings, plant waste, compost, ashes, metals, bulk materials, or scrap materials shall be allowed to accumulate on any Lot. Each Owner of a Lot on which a Single Family Residence is constructed shall provide suitable covered, noiseless, animal-proof receptacles for the collection of such refuse in preparation for regularly scheduled periodic pickup. Refuse shall be stored for such pickup in such containers which shall, in turn, be enclosed in a structure approved by the Design Review Board so as to be screened from public view and protected from disturbance. Except on Perimeter Lots, such containers may also be stored neatly in the rear of a Lot if such containers are not visible from any street. No refuse may be thrown or dumped on any part of the Common Interest Community. The Association may arrange for regular trash removal as a Common Expense, and in such event each Owner shall use the services of such provider, except that the Executive Board may require any Owner to arrange for removal of excessive amounts of trash, garbage or other refuse.

B. The burning of refuse shall not be permitted within the Common Interest Community.

Section 4.13 - Continuity of Construction. All construction, alteration and demolition of Improvements approved by the Design Review Board or the Town, as the case may be, shall be completed within twelve months of commencement, unless extended by the Design Review Board and the Town for good and sufficient cause. The foregoing sentence shall not apply to construction, alteration or demolition of Improvements by the Declarant.

Section 4.14 - Mobile Homes. No mobile home or temporary structure shall be permitted within the Common Interest Community, except on a temporary basis for use by Declarant as a construction office.

Section 4.15 - Fences.

A. The westerly boundary lines of Lots 12 through 26 are fenced to keep out livestock with a fence that is approximately 5 feet west of the Property line of the Common Interest Community. Declarant waives any claim Declarant has or might have for any interest in the land between the Property line of the Common Interest Community and the existing fence under adverse possession or any other doctrine. Owners of Lots 12 through 26 (as such lot boundaries may be amended) shall have the right, subject to review and approval by the Design Review Board, to erect and maintain fences on their westerly property lines. No other Lots shall be fenced, except that (i) fences approved by the Design Review Board shall be permitted in rear yards in accordance with the Design Guidelines, and (ii) Lot 36 of the Common Interest

Community may be fenced to comply with federal, state or local laws, rules, regulations governing operation of daycare facilities.

B. The Association shall be responsible for maintenance, repair or replacement of the fence between Common Interest Community and adjacent agricultural land as necessary to keep livestock out of the Common Interest Community in accordance with Colorado law regarding fences.

C. All other fences shall be maintained, repaired or replaced by the Owners thereof in a manner consistent with the Design Guidelines

Section 4.16 - Foundations. No Building shall be approved or constructed within the Common Interest Community unless the foundation for such Building has been designed by a Colorado licensed engineer or architect who has affixed his seal to the foundation plans which shall be based on a site-specific geotechnical study.

Section 4.17 - Utilities. All utilities shall be installed underground.

Section 4.18 - Clotheslines. All outdoor clotheslines shall be shielded from view and are subject to prior approval by the Design Review Board.

Section 4.19 - Motor Vehicle Repair. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicle, trailer or boat, may be performed or conducted within the Common Interest Community except within a fully enclosed Garage. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

Section 4.20 - Camping. No camping shall be allowed within the Common Interest Community.

Section 4.21 - Nuisance. No noxious, offensive, dangerous or unsafe activity shall be conducted or permitted to exist in or on the Common Interest Community, nor shall anything be done or permitted, either willfully or negligently, which is or may be or become an unreasonable annoyance or nuisance to the other Owners or Permitted Users. Habitually barking, howling or yelping dogs shall be deemed a nuisance. The use of exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices on any Lot or Unit may be regulated or prohibited by the Design Guidelines and Rules. The terms "annoyance" and "nuisance" shall not include any activities of Declarant which are reasonably necessary to the development and construction of, and sales activities on, the Lots or Units.

Section 4.22 - Outside Storage.

A. Nothing shall be stored on any part of the Common Interest Community without prior written consent of the Design Review Board, unless it is not visible from any other location

in the Common Interest Community, or in accordance with the Design Guidelines or Rules. Notwithstanding the foregoing, no outside storage shall be allowed on any Perimeter Lot. Outside storage in the front of a Lot is prohibited, except in conformance with the Design Guidelines or Rules. Storage on Outlots A and B shall be subject to the Design Guidelines or Rules.

B. Except on Perimeter Lots on which outside storage is prohibited, outside storage in the rear of a Lot on which a Single Family Residence is constructed is allowed if such storage is neat and is not visible from any street, and in conformance with the Design Guidelines or Rules.

C. No trash containers or recycling bins shall be stored on the front porch or front yard of any Lot or in the rear yard of any Perimeter Lot.

Section 4.23 - Solid Fuel Burning Devices. All wood burning stoves, fireplaces and other solid fuel burning devices (except barbecue grills) are prohibited within the Common Interest Community. No coal or solid fuels of any kind shall be burned within the Common Interest Community except charcoal in barbecue grills.

Section 4.24 - Snow Storage Easements.

A. All Lots shall be subject to and encumbered by snow storage easements as depicted on the Plat. All Lots shall be subject to and encumbered by snow storage easements for snow which slides off or falls from neighboring roofs.

B. All Lots contiguous to the fifteen foot (15') snow storage areas shown on the Plat shall be subject to an additional five foot (5') snow storage easement.

C. All Lots which are contiguous to the eight foot (8') public parking shown on the Plat shall be subject to a ten foot (10') wide snow storage easement, as shown on the Plat. The Association shall maintain all of such eight foot (8') wide public parking easements.

D. In the event that normal snow plowing by the Town damages improvements on a Lot, the Town shall not be responsible for such damage if the Town did not deposit snow on the Lot beyond the snow storage easement. As used herein, "normal snow plowing" means plowing of snow by a plow moving along a street parallel to vehicular travel but shall not include plowing of snow or pushing back snow banks by a plow moving in any direction other than along a street parallel to vehicular travel.

E. In the event that the Town hauls snow removed from rights of way within the Common Interest Community to an off-site location, the Association shall reimburse to the Town 50% of all reasonable expenses incurred to load, haul and dispose of such snow off-site.

F. No snow from private driveways shall be deposited into the public rights of way.

Section 4.25 - Limited Common Elements. Declarant dedicates the following Limited Common Elements, as depicted on the Plat:

- A. Shared parking for:
 - i. Lots 1 and 2
 - ii. Lots 34 and 35
 - iii. Lots 33 and 34
 - iv. Lots 7, 8, 9 and 10 on Outlot A

- B. Shared storage for:
 - i. Lots 7, 8, 9 and 10 on Outlot A
 - ii. Lots 55, 57, 58 and 60 on Outlot B

Section 4.26 - Drainage Easements. The Lots within the Common Interest Community are subject to and encumbered by drainage easements as depicted on the Plat, and by drainage swales constructed in accordance with plans approved by the Town.

A. No drainage easements or swales shall be modified without first obtaining the written approval of the Town and the Design Review Board. No such modifications shall cause additional drainage over an adjacent lot, nor shall the natural drainage of any lot be modified more than the minimum necessary as approved by the Design Review Board. Drainage swales and drainage easements for underground storm drainage facilities shall not be obstructed. Trees and bushes shall not be planted in swales or over storm drain pipes. No permanent improvements shall be installed in drainage easements or swales without first obtaining the written approval of the Town and the Design Review Board.

B. Underground storm drain pipes within the Town's right of way and in easements between Lots 18 and 19, Lots 29 and 30, and exiting the Common Interest Community through easements on Lot #12 will be maintained by the Town at the Town's expense. Lot Owners shall not block access to these facilities with trees, bushes, fences, sheds, or other surface features or improvements.

Section 4.27 - Landscaping and Yard Maintenance.

A. Owners of Lots on which Single Family Residences are constructed must complete all landscaping within 45 days after issuance of approval of landscape improvements by the Design Review Board, and in any event, no later than 90 days after issuance of a temporary or permanent Certificate of Occupancy, except that, if a certificate of occupancy is issued between September 15 and May 15, landscaping need not be completed until August 15.

B. Owners of Lots on which Single Family Residences are constructed shall be responsible for maintenance of yards, which shall be kept in a neat and tidy condition at all times, with landscaping watered and lawns neatly cut. The Association, after notice to a

defaulting Owner and an opportunity to be heard, shall have authority to complete landscaping and/or perform yard maintenance and charge the defaulting Owner for all reasonable costs incurred, including reasonable administrative and legal costs.

C. All unreimbursed landscaping and yard maintenance costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment as set forth in Article 6 of this Declaration.

Section 4.28 - Mandatory Sprinklers. Automatic sprinkler systems to irrigate all front and side yard lawn and landscaping areas are required on all Lots on which Single Family Residences are constructed. Owners shall maintain and repair such sprinklers in operating condition and utilize such sprinklers as often as necessary to maintain all front and side yard lawn and landscaped areas in a healthy, attractive condition.

Section 4.29 - Satellite Dishes. All satellite dishes and devices or facilities to transmit or receive electronic signals, radio or television waves are subject to Rules and guidelines adopted by the Executive Board in conformance with applicable federal law.

Section 4.30 - Leasing. Subject to the remaining provisions of this Section 4.30, an Owner shall have the right to lease his Dwelling Unit in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however, that the right to lease any Dwelling Unit may be restricted in whole or in part so as to comply with any Agency requirements, and (1) a Dwelling Unit may be leased only for the uses provided herein; (2) any failure of a lessee to comply with the terms of any of the Association Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not the lease contains such a provision; and (3) all leases shall be subject to Rules adopted by the Executive Board; (4) all leases shall be in writing and shall provide that the lease is subject to the terms of the Association Documents and a copy of the Association's rules are provided to the Lessee with the lease; and (5) the lease shall limit the number of occupants to the maximum permitted under Section 4.2 herein. The Executive Board shall be entitled, from time to time, to adopt, amend, revise, add to or repeal, Rules that define, and differentiate between, short term and longer term occupancy arrangements, except that, in no event shall the Executive Board be entitled to adopt a Rule that eliminates or prohibits, or has the practical effect of eliminating or prohibiting, leases or occupancy arrangements, whether short term or otherwise. Without limiting the scope of the foregoing sentence, such Rules may, at the discretion of the Executive Board, differentiate between short term and longer term leases or occupancy arrangements, in the enforcement of this Declaration and the Rules, as well as any fines imposed for violation of the same (for example, the Executive Board may adopt a Rule that imposes a larger fine for excessive number of occupants during a short term occupancy arrangement). The Executive Board shall strictly enforce the occupancy limits specified herein, regardless of the type of occupancy arrangement.

ARTICLE 5

MAINTENANCE RESPONSIBILITIES

Section 5.1 - Maintenance by Owners. In addition to the maintenance requirements set forth elsewhere in this Declaration, each Owner of a Lot on which a Single Family Residence is constructed shall maintain, repair, and replace, as necessary, such Owner's Lot and the Improvements located thereon. 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 impair any easement.

Section 5.2 - Maintenance by Association. The Association shall be responsible for the maintenance, repair and replacement of those items of the Common Interest Community not specifically required to be maintained by an Owner (unless necessitated by damage caused by the negligence, misuse or tortious act of an Owner or Permitted User as set forth in Section 5.5 below) or a Subassociation. Without limiting the foregoing, the Association shall: (a) be responsible for all snow removal from the public rights of way within the Common Interest Community in accordance with standards established by the Town; and (b) manage, operate, insure, maintain, repair and replace all of the Common Elements, and any drainage structure or facility or other public improvements required by local governmental entities under Section 38-33.3-307(1.5) of the Act. The Association may contract with any Subassociation to manage, operate, maintain, repair and replace, for a reasonable fee, all Subassociation Common Elements for said Subassociation.

Section 5.3 - Owner's Failure to Maintain or Repair. In the event that a Lot or a Unit (including the allocated Limited Common Elements) is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Lot or the Unit lies with the Owner of the Lot or the Unit, or in the event that the Lot or 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 Lot or Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board (after a determination by the Executive Board that the condition of such Lot or Unit negatively impacts other Owners or the value of other Lots or Units within the Common Interest Community) shall have the right to enter upon the Lot or Unit to perform such work as is reasonably required to restore the Lot or Unit to a condition of good order and repair, except that no advance 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 Lot or Unit, upon demand. All unreimbursed costs shall be a lien upon the Lot or 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 Article 7 of this Declaration.

Section 5.4 - Right of Access. Any person authorized by the Executive Board shall have the right of access to all portions of any Lot or Unit for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Common Interest Community, for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing and replacing utility meters and related pipes, valves,

wires and equipment, provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Owner. In case of an emergency, no request of notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

Section 5.5 - Neglect by Owner or Permitted Users. If, due to the act or neglect of an Owner or Permitted Users, loss or damage shall occur or be caused to any person or property other than the Owner's Lot or Unit, such Owner and Permitted User shall be jointly and severally 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 6

DESIGN REVIEW AND APPROVAL

Section 6.1 - Design Review Board. The Design Review Board shall consist of three (3) or more persons appointed by the Executive Board, except that during the Period of Declarant Control, the members of the Design Review Board shall be appointed by the Declarant. The power to appoint shall include the power to fill any vacancy and remove any member of the Design Review Board, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the Executive Board. The Design Review Board shall be responsible for such matters as may be assigned by the Executive Board, which may include, by way of example, and not by way of limitation, the following: establishment and administration of Design Guidelines, sign guidelines, window covering guidelines and lighting guidelines; review and recommendations for approval, disapproval or approval with conditions of alterations or additions to Lots, Dwelling Units, Units or Common Elements (whether General or Limited); and such other matters as the Executive Board, may request.

Section 6.2 - Review and Approval. No Improvement, including a fence, wall or hedge, shall be commenced, constructed, erected or maintained on any Lot, nor shall any landscaping be done, nor shall any exterior painting, addition, change, alteration or demolition be made, until the plans and specifications therefor have been submitted to and approved in writing by the Design Review Board in the manner hereafter set forth. However, the Declarant shall be exempt from seeking or obtaining Design Review Board approval during Declarant's construction on, or sales of, any Improvements on any Lot. Notwithstanding the foregoing, when considering an application the Design Review Board need not preserve any views. If design review or architectural review is required under the governing documents of any Subassociation, the Owner of the Unit shall obtain such Subassociation approval before submitting a request for approval to the Design Review Board. The requirements of the Design Review Board shall supersede any conflicting approvals or requirements of the Subassociation.

Section 6.3 - Purpose of Review. The Design Review Board shall consider the suitability of the proposed Improvement and in particular the harmony of the Improvement with the environment, the effect of the Improvement on the utilization and view of the Lot and surrounding Lots and property and the placement of the Improvement with respect to topography, drainage, snow removal, ground elevations and existing natural and terrain features and compliance with the Design Guidelines.

Section 6.4 - General Requirements. All Improvements within the Common Interest Community shall be constructed or made in compliance with the Design Guidelines. The Design Review Board shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures. In its review of plans, specifications and other materials and information, the Design Review Board may require that the applicant(s) reimburse the Design Review Board for the actual expenses incurred in the review and approval process. Such amounts, if any, shall be levied in addition to regular assessments against the Lot or Unit for which the request for approval was made, but shall be subject to the Association's lien for assessments and subject to all other rights of the Association for the collection of such assessments, as more fully provided in this Declaration.

Section 6.5 - Submittal Procedure. Prior to the commencement of any work requiring the approval of the Design Review Board as above set forth, the plans and specifications for any such Improvement shall be submitted to the Design Review Board for approval. The submittal for approval shall include, at a minimum, all documents required by the Design Guidelines. The plans and specifications shall show exterior design, height, materials, color, and location of the Improvements, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information that may be required by the Design Review Board. The Design Review Board shall approve or disapprove all requests for approval within thirty-five (35) days after the complete submission of the plans, specifications and other materials and information which the Design Review Board may require in conjunction therewith. If the Design Review Board fails to approve or disapprove any request within thirty-five (35) days after the complete submission of the plans, specifications, materials and other information with respect thereto, the request shall be deemed to have been approved by the Design Review Board.

Section 6.6 - Vote and Appeal. A majority vote of the members of the Design Review Board is required to approve a request for approval pursuant to this Article. If an application for approval is denied by the Design Review Board, the applicant shall have the right to appeal such decision to the Executive Board, if a written request for a hearing on an appeal of the same is submitted to the Executive Board within thirty (30) days after such denial by the Design Review Board.

Section 6.7 - Records. The Design Review Board shall maintain written records of all applications submitted to it and all actions taken by it, and such records shall be available to Members for inspection at reasonable hours.

Section 6.8 - Limitation of Liability. The Design Review Board and the members thereof, as well as the Declarant, the Association, the Executive Board, or any representative of

the Design Review Board appointed to act on its behalf, shall not be liable for any loss, damage or injury arising out of or in any way connected with the performance of the Design Review Board for any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder, if such action was in good faith or without malice. In reviewing any matter, the Design Review Board shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an improvement be deemed approval of such matters. Each Owner is responsible for obtaining all approvals, licenses and permits as may be required by the Town and any Special District providing services to the Lot prior to starting construction, alteration or demolition of any improvement.

Section 6.9 - Variance. The Design Review Board may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments (1) shall be granted only in case the granting thereof shall not be materially detrimental or injurious to other property or improvements in the Common Interest Community; (2) shall not militate against the general intent and purpose hereof; and (3) shall not set a precedent for any other applicant.

Section 6.10 - Waivers. The approval or consent of the Design Review Board, any representative thereof, or the Executive Board, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Design Review Board, any representative thereof, or the Executive Board, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

Section 6.11 - Design Guidelines. Subject to approval by the Town, the Declarant and/or the Executive Board may adopt Design Guidelines which shall include design requirements for the construction of any Improvement upon any Lot within the Common Interest Community. Such Design Guidelines may be altered, amended, revised, changed, and added to from time to time, in whole or in part, as determined by the Executive Board.

Section 6.12 - Rules and Regulations. The Design Review Board may adopt such rules and regulations as are appropriate to govern its proceedings or the implementation of its responsibilities.

ARTICLE 7

ASSESSMENTS

Section 7.1 - Obligation to Pay Assessments; Creation of Lien. Each Owner of any Lot or Unit, 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; and (2) any special Assessments or charges; and (3) any default Assessments or charges, all of which shall be fixed, established and collected as determined by the Association.

The annual, special and default Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot or Unit against which each such Assessment is levied until paid. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of such Lot or Unit at the time when the Assessment became due.

Section 7.2 - Purpose of Assessments. The Assessments levied by the Association shall be used for the following:

- A. Any costs and expenses pertaining to the operation of the Association in the performance of its duties and the exercise of its powers.
- B. Acquisition, rental, maintenance, operation and improvement of any real or personal property or other facility for the use or benefit of the Owners.
- C. Plowing snow from and maintaining public parking and other easements throughout Pitchfork, including Multi-Family Building common areas.
- D. Any maintenance, repair or improvement required to be made by any Owner to any improvement or any Lot or Unit which the Owner fails perform.
- E. Maintenance of drainage swales on and serving the Property.
- F. Payment of insurance premiums and deductibles.
- G. Any other purpose set forth in the Association Documents, any other purpose not inconsistent with this Declaration, or as necessary or desirable to provide for the health, safety or welfare of the Owners or Permitted Users.

Section 7.3 - Regular Assessments. Regular Assessments shall be levied on an annual basis against all Lots and Units and shall be based upon the Association's advance budget of the cash requirements needed by it for the purposes set forth herein. The budget shall include those amounts necessary to fund costs of managing, maintaining, repairing or replacing Limited Common Elements, and the Owners having the right to use such Limited Common Elements shall pay as part of their regular Assessments, the cost of management, maintenance, repair or replacement thereof. Regular Assessments may be collected in monthly, quarterly, biannual or annual installments, or in any other manner as determined by the Executive Board. Regular Assessments may begin on the first day of the month in which conveyance of the first Lot or Unit to an Owner other than the Declarant occurs. The regular Assessments shall commence as to each Lot and Unit on the first day of the month following the effective date of adoption and ratification of the budget. Until commencement of the regular Assessments, the Declarant shall pay all Common Expenses of the Association. 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. No assessment may be levied retroactively.

Section 7.4 - Special Assessments. In addition to the regular Assessments set forth in Section 7.3 above, the Executive Board may levy in any fiscal year one or more special Assessments for the purpose of defraying, in whole or in part, any expense which was not anticipated at the time the budget was adopted. Notice of the amount and due dates for such special Assessments shall be sent to each Owner at least thirty days prior to the due date.

Section 7.5 - Allocation of Assessments. Subject to the provisions of Section 7.6 below, all regular and special Assessments shall be allocated as set forth on attached **Exhibit C.**

Section 7.6 - Common Expenses Attributable to Fewer than all Lots or Units. Common Expenses attributable to fewer than all Lots and Units may be levied at any time, shall be due and payable as established by the Executive Board, and are exempt from any voting requirements by the membership called for under this Declaration. The Executive Board reserves the right to allocate all expenses relating to fewer than all of the Units to the owners of those affected Units only, including without limitation, the following:

- A. Any insurance premium increase attributable to a particular Lot or Unit by virtue of activities in or construction on the Lot or Unit,
- B. If a Common Expense is caused by the misconduct of an Owner or Permitted User, the Association may assess that expense exclusively against that Owner's Lot
- C. Fees, including attorney fees, charges, taxes, impositions, late charges, fines, collection costs and interest charged against an Owner pursuant to the Association Documents and the Act.
- D. Any common expense benefitting fewer than all of the Lots and Units, including Common Expenses relating to Limited Common Elements, may be assessed exclusively against the Lots and Units benefited. Without limiting the foregoing, the expense of managing, maintaining, repairing, or replacing Outlot A or Improvements thereon shall be borne equally by the Owners of Lots 7, 8, 9 and 10, and the expense of managing, maintaining, repairing, or replacing Outlot B or Improvements thereon shall be borne equally by the Owners of Lots 55, 57, 58, 63. The expense of plowing snow from Subassociation common elements shall be borne by the respective Subassociations.

Section 7.7 - Default Assessments. 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 and shall become a lien against such Owner's Lot or Unit and may thereafter be foreclosed or otherwise collected as provided herein. Owners are responsible for violations of the Association Documents committed or allowed by their Permitted Users. Notice of the amount and due date of such default Assessment shall be sent to the Owner subject to such Assessment at least thirty days prior to the due date.

Section 7.8 - Budget Adoption and Ratification. Within thirty (30) days after adoption of any proposed budget for the Common Interest Community, the Executive Board shall mail

first class or deliver a summary of the budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the budget. The meeting shall be not less than fourteen (14) or more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting at least sixty-seven percent (67%) of all Owners vote to reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners continues until the Owners ratify a new budget proposed by the Executive Board.

Section 7.9 - Nonpayment of Assessments. Any Assessment, whether regular, special or default Assessment, which is not paid within thirty days of its due date shall be deemed delinquent. In the event that any Assessment becomes delinquent, the Association, in its sole discretion, may take one or more of the following actions:

- A. If the delinquency continues for a period of fifteen (15) days, assess a late charge for each delinquency in such amount as the Association deems appropriate;
- B. If the delinquency continues for a period of thirty (30) days, assess an interest charge, in arrears, from the due date at the yearly rate of 18% per year;
- C. Suspend the voting rights of the Owner during any period of delinquency;
- D. Accelerate all remaining Assessment installments so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;
- E. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments;
- F. Proceed with foreclosure as set forth in more detail below; and
- G. Suspend any of the Owner's membership privileges.

Section 7.10 - Enforcement of Lien. Assessments chargeable to any Lot or Unit together with the Association's attorneys' fees and costs incurred in connection with such delinquency, including the preparation and recording of a Statement of Lien and any release thereof shall constitute a lien on such Lot or Unit. Such lien will be subject to the provisions of Colorado Revised Statutes, Section 38-33.3-316. Such lien will be superior to all other liens, except (i) the liens of all taxes, bonds, assessments and other levies which by law should be superior and (ii) the lien or charge of any First Security Interest made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments will be prior to a First Security Interest to the extent of an amount equal to the Assessments which would have come due, in the absence of acceleration, during the six months immediately preceding institution of an action to enforce the lien. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and

expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for the Lot or Unit during the period of any foreclosure. The Association shall have the power to bid on a Lot or Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. The Association's lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any homestead exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot or Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 7.11 - Successor's Liability for Assessment. In addition to the personal obligation of each Owner to pay all Assessments and the Association's lien on a Lot or Unit for such Assessments, all successors to the ownership of a Lot or Unit shall be jointly and severally liable with the prior Owner for any and all unpaid Assessments, interest, costs, expenses and attorneys' fees against such Lot or Unit.

Section 7.12 - Payment by Holder of Security Interest. Any Security Interest holder holding a lien on a Lot or Unit may pay any unpaid amount payable with respect to such Lot or Unit, together with any and all costs and expenses incurred with respect to the lien and upon such payment that Security Interest holder shall have a lien on the Lot or Unit for the amounts paid with the same priority as the lien of the Security Interest.

Section 7.13 - Statement of Status of Assessment Payment. Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Agency, holder of a Security Interest, prospective holder of a Security Interest or prospective purchaser of a Lot or Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot or Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Lot or Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

Section 7.14 - Capitalization of the Association. The Association shall require the first Owner of any Lot or Unit (other than Declarant) who purchases that Lot or Unit from Declarant to make a nonrefundable contribution to the Association in the amount equal to one-sixth (1/6th) of the total annual assessment at the time of sale (regardless of whether or not assessments have commenced as provided herein). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Lot or Unit as aforesaid, and may be used for the benefit of the Association as the Executive Board deems appropriate, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services. Such contribution of working capital shall not relieve an

Owner from making regular payments of assessments as the same become due. Upon the transfer of a Lot or Unit, an Owner shall be entitled to a credit from the transferee (but not from the Association) for the aforesaid contribution to working capital. The Association may, from time to time, increase the amount of the working capital contribution to an amount equal to one-sixth (1/6th) of the then current total annual assessment.

Section 7.15 - Maintenance of Accounts: Accounting. If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a Manager, then such other persons or Manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or Manager, (b) maintain all reserve accounts of the Association separate from the operational accounts of the Association, and (c) provide to the Association no less than once per month an accounting for the previous month. In addition, the Association shall obtain an annual accounting and financial statement of Association funds (on either a review or audit basis, at the Association's discretion) and annual tax returns prepared by a certified public accountant.

ARTICLE 8

INSURANCE

Section 8.1 - General Insurance Provisions. The Association shall acquire and pay for, out of the assessments, at least the following insurance policies carried with reputable insurance companies authorized to do business in Colorado:

A. **Hazard Insurance Coverage.** The Association shall obtain insurance for fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes co-insurance), in amounts determined by the Executive Board to represent not less than the full then current insurable replacement cost of Improvements owned by the Association and Common Elements. The property insurance will be for an amount (after application of any deductions for depreciation) equal to one hundred percent (100%) of the full insurable replacement cost of the insured property less applicable deductibles, exclusive of land, foundations, excavations and other items normally excluded from property policies. The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing replacement cost of the property, and the cost of such appraisals shall be a Common Expense. Maximum deductible amounts for such policies shall be determined by the Executive Board.

B. **Comprehensive Liability.** Comprehensive general public liability and property damage insurance for the Common Interest Community 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 Owners from liability in connection with the operation, maintenance and use of Common Elements. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to subdivisions similar

to the Common Interest Community in the Mt. Crested Butte area including automobile liability insurance if appropriate. The Executive Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as Certificate of Insurance) to the Executive Board that such party has current and satisfactory insurance, including workers compensation insurance, commercial general liability and automobile insurance on all of which the Association is named as an additional insured.

C. Mandatory Provisions. The insurance policies carried pursuant to Sections 5.10 A. and B. above shall provide that:

- i. Each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;
- ii. The insurer waives the right to subrogation under the policy against an Owner or member of the household of an Owner;
- iii. No act or omission by an Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;
- iv. If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance; and
- v. The insurer shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a Security Interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 8.2 - Fidelity Insurance. Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others, including any manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than the greater of (a) fifty thousand dollars (\$50,000) or (b) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or management agent as the case may be, at any given time during the term of each policy as calculated from the current budget of the Association but in no event less than a sum equal to three (3) months' aggregate assessments plus reserve funds. In addition, if responsibility for handling funds is delegated to a manager, such insurance or bonds must be obtained by or for the manager and its officers, employees and agents, as applicable. Such fidelity insurance or bonds shall contain waivers of all defenses based upon the exclusion of

persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 8.3 - Workers' Compensation Insurance. The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 8.4 - Directors and Officers Liability Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of the Executive Board against any liability asserted against a member of the Executive Board or incurred by him in his capacity of or arising out of his status as a member of the Executive Board.

Section 8.5 - Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association. If any parcels of real property which the Association has an obligation to repair or reconstruct is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then the Executive Board may obtain a policy of flood insurance on such parcels in an amount at least equal to the lesser of:

- A. The maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or
- B. One hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

Section 8.6 - Premiums. Insurance premiums for insurance carried by the Association shall be a Common Expense.

Section 8.7 - Procedures. The Executive Board may adopt written nondiscriminatory policies and procedures for claims adjustment and responsibility for deductibles. To the extent the Association settles claims for damages to real property owned by the Association, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. If more than one (1) Lot or Unit is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

Section 8.8 - General Provisions. All Association insurance shall be carried in blanket policy form naming the Association as insured, or naming its designee as trustee and attorney-in-fact for the Association. The policies shall contain:

- A. A standard noncontributory Security Interest holder's clause in favor of each holder of a First Security Interest, and shall provide that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice

is given to the insured.

B. Waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association. Upon request, the Association shall furnish a certified copy or duplicate original of such policy or renewal thereof with proof of premium payment and a certificate identifying the interest of the Owner in question to any party in interest, including holders of First Security Interests.

Section 8.9 - Insurance Proceeds. Any loss covered by the property insurance policy described in Section 8.1.A above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any holder of a Security Interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and lienholders as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged property, and the Owners, Association and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored. If hazard insurance proceeds are distributed to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record, and pursuant to the Act. The Association may designate a Trustee for the receipt, administration and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses and other sources.

Section 8.10 - Damage to Property: Any portion of the Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- A. The Common Interest Community is terminated in which case the approval must first be obtained of Owners holding sixty-seven percent (67%) of the votes in the Association;
- B. Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- C. There is a vote not to rebuild by (a) Owners holding sixty-seven percent (67%) of the votes in the Association and (b) every Owner of a Lot or Unit or assigned Limited Common Element that will not be rebuilt; or
- D. Prior to the conveyance of any Lot or Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

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

proportion to the Common Expense liabilities of all of the Lots and Units.

Section 8.11 - Proof of Insurance. The Association shall furnish proof of such insurance coverage to any Owner upon request.

ARTICLE 9

DAMAGE OR DESTRUCTION

Section 9.1 - The Role of the Executive Board. Except as provided in Section 9.5, in the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the name of the Association under Article 9, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 9 is sometimes referred to as the "Association-Insured Property").

Section 9.2 - Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction unless the approval is obtained of Owners holding sixty-seven percent (67%) of the votes in the Association, including every Owner of a Unit or assigned Limited Common Element that will not be repaired or reconstructed. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the insurance trustee, if any, determines to be necessary.

Section 9.3 - Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

ARTICLE 10

ENFORCEMENT OF COVENANTS

Section 10.1 - Violations Deemed a Nuisance. Every violation of the Association Documents shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof.

Section 10.2 - Failure to Comply. The failure to comply herewith shall be grounds for an action to recover damages, for injunctive relief, for specific performance, or for any other relief available in law or at equity.

Section 10.3 - Enforcement. Except as otherwise provided in this Declaration, the Town, Executive Board, Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Town, the Executive Board, Declarant or by any Owner to enforce any covenant or restriction contained in the Association Documents shall in no event be deemed a waiver to the right to do so thereafter.

Section 10.4 - Attorneys Fees. In the event of any legal action or arbitration to enforce any of the provisions of the Association Documents, or for damages, or to restrain the violation of the Association Documents, whether judicial, non-judicial or administrative, the prevailing party shall be entitled to recover all costs, fees and expenses incurred by it in such action, including all reasonable attorneys' fees. The Association shall be entitled to recover reasonable attorneys' fees for any legal assistance given to the Association as above provided whether or not legal proceedings are actually filed in court.

ARTICLE 11

DURATION OF COVENANTS

Section 11.1 - Term. The covenants and restrictions in this Declaration shall run with and bind the Property in perpetuity, subject to the termination provisions of the Act.

Section 11.2 - Amendment. Except as otherwise provided in Sections 1.1 and 13.1, this Declaration and/or the Plat may be terminated, extended, modified, amended or added to, in whole or in part, upon the written consent by the Owners holding 67% of the votes in the Association, subject to approval by the Town. Upon instruction from the Executive Board, the President and Secretary of the Association may certify in a notarized affidavit attesting to their receipt and review of the necessary number of signatures and that the appropriate number of Owners voted in favor of the amendment, in lieu of recording each individual signature. Any such amendment shall be by an instrument duly executed, acknowledged and recorded in the records of Gunnison County, Colorado, and upon such recording shall be for the benefit of and be binding on all Owners of Lots and Units within the Common Interest Community.

Section 11.3 - Amendment by Declarant. Declarant declares and reserves the right to amend this Declaration, or the Plat, Articles of Incorporation or Bylaws, without the consent of Owners or holders of Security Interests, but subject to approval by the Town, any time within ten (10) years from the date this Declaration is recorded, or before Declarant conveys the last Lot to a purchaser other than Declarant or a successor Declarant, whichever first occurs, as follows:

- A. To make non-material changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.

B. To exercise any Development Right or Special Declarant Right permitted herein or by the Act.

C. To comply with any requirements of the Act or amendments thereto, or any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Security Interests.

D. To add additional real estate to the Common Interest Community from such locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Common Interest Community pursuant to this sentence, and not described in the attached Exhibit A, does not exceed ten percent (10%) of the total area described in the attached Exhibit A.

Section 11.4 - Holder of Security Interest Approval Not Required. The Declaration and/or Plat may be amended as set forth in Sections 1.2, 11.2 and 11.3 of this Declaration and such amendment shall be effective against the holders of Security Interests in the Common Interest Community notwithstanding the fact that such holders of Security Interests have not approved such amendment.

Section 11.5 - Execution of Amendment. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted under this Declaration and the Act.

ARTICLE 12

EASEMENTS AND LICENSES

Section 12.1 - Easements and Licenses. Easements or licenses to which the Lots and the Common Interest Community are presently subject are recited in Exhibit D, and as described herein and on the Plat. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article 13 of this Declaration.

Section 12.2 - Easements for the Executive Board. Each Lot and Unit shall be subject to an easement in favor of the Executive Board (including its agents, employees and contractors) to perform its obligations pursuant to this Declaration.

Section 12.3 - Declarant's Easements. Anything to the contrary herein notwithstanding, the Declarant hereby reserves for itself, and for its, agents, employees, business invitees, successors or assigns, reasonable easements and rights-of-ways over all Lots and Units for the sole purpose of constructing improvements to the Common Interest Community and making

repairs pursuant to contracts of sale made with Purchasers of Lots or Units, but only if access thereto is otherwise not reasonably available, including the right to erect temporary buildings to store any and all materials. Such easements and rights-of-way, however, shall not unreasonably inhibit the use of Lots or Units by Owners and Permitted Users. The Declarant shall be fully responsible for any damage to Lots or Units caused by its use of such easements and rights-of-way.

Section 12.4 - Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Property, to enter upon any part of the Common Interest Community in the performance of their duties.

Section 12.5 - Easement for Encroachments. If any Lot, Unit or Common Element encroaches on any other Lot, Unit or Common Element, a valid easement for the encroachment exists. The easement does not relieve an Owner of liability in case of willful misconduct nor relieve a Declarant or any other Person of liability for failure to adhere to the Plats or Maps.

Section 12.6 - Easements for Drainage and Utilities. Easements for the installation and maintenance of utilities, drainage facilities, Association, public or private improvements and access thereto are reserved as shown on the Plats and other documents affecting the Lots and any amendments to such plats and documents or as established by any other instrument of record. Declarant hereby reserves, to itself and to the Association, easements for drainage or drainage facilities as noted on the Plats. No Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such front, rear and side yard drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon each Lot and at any time to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time.

Section 12.7 - Easements Deemed Created. All conveyances of any Lot or Unit hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article even though no specific reference to such easements or to this Article appears in the instrument of such conveyance.

ARTICLE 13

RIGHTS RESERVED TO DECLARANT

Section 13.1 - Development Rights and Special Declarant Rights. The Declarant specifically reserves the right to exercise in any order all Development Rights and Special Declarant Rights as set forth in the Colorado Common Interest Ownership Act and this Declaration for the maximum time limit allowed by law, including, without limitation, the following:

- A. The right to amend the Declaration or Plat as set forth in Section 11.3.
- B. The right to replat the Property as deemed desirable, and create Lots, Units and Common Elements.
- C. The right to appoint or remove any officer of the Association or any Director of the Association during the period of Declarant control.
- D. The right to complete or make any Improvements as set forth on the Plat, the Association Documents or as required by the Town.
- E. The right to maintain construction, sales and management offices, and signs to advertise the Common Interest Community and models.
- F. The right to dedicate a future public or private easement as shown on the Plat and to use and to permit others to use easements through the Common Interest Community for construction, and to discharge Declarant's obligations under the Act and this Declaration.
- G. The right to amend this Declaration or the Plats or Maps to comply with the requirements of the Act or any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee a First Security Interest.
- H. For any area developed, Declarant (or if the area is owned by another person or entity, Declarant and such other person or entity as owner) may record one or more Supplemental Declarations with respect to such area which shall refer to this Declaration, and which may supplement this Declaration with a Supplemental Declaration containing such additional covenants, conditions, and restrictions as Declarant (or, as applicable, Declarant and such other owner) may deem appropriate for that area. Such Supplemental Declaration(s) may provide for the establishment of one or more Subassociation(s) to be comprised of Owners within the area subject to such Supplemental Declaration. Any Supplemental Declaration may provide its own procedure for the regulation of the Subassociation area and amendment of any provisions thereof (such as, for example, by a specified vote of only the Owners of some of the Property within the area subject thereto). All lands, Lots, Units, Improvements and uses in each area so developed shall be subject to both this Declaration and the Supplemental Declaration for that area. In the event of conflict, this Declaration and other Association Documents shall control over any Supplemental Declaration and organizational documents of any Subassociation.
 1. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the Property except on any portion of a Lot where improvements may be located.

Section 13.2 - Construction; Declarant's Easements. The Declarant reserves the right to perform warranty work, and repairs and construction work on Lots, Units and Common Elements, to store materials in accpete areas, and to control and have the right of access to work

and repairs until completion. All work may be performed without the consent or approval of the Association. The Declarant has an easement through each Lot, Unit and the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Development or Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey utility and drainage easements to public utilities, municipalities or metropolitan or special improvement districts, the State, riparian owners or upland owners to fulfill the plan of development.

Section 13.3 - Reciprocal Easements. If all or part of the Development Property is not submitted to this Declaration:

A. The Owner(s) of the Development Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Common Interest Community; and

B. The Owner(s) in the Common Interest Community shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Development Property.

Declarant shall prepare and record in the office of the Clerk and Recorder of Gunnison County whatever documents are necessary to evidence such easements and shall amend Exhibit D to the Declaration to include reference to the recorded easement(s). Such recorded easement(s) shall specify that the Owners of the Development Property and the Owners in the Common Interest Community shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall exclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

ARTICLE 14

RIGHTS OF HOLDERS OF SECURITY INTERESTS

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

Section 14.1 - Title Taken by First Security Interest. Any holder of a First Security Interest of record against a Lot or Unit who obtains title to the Lot or Unit pursuant to remedies exercised in enforcing the Security Interest, including foreclosure of the Security Interest or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Lot or Unit (i) is acquired or (ii) could have been acquired under the statutes of Colorado governing foreclosure, whichever is earlier.

Section 14.2 - Right to Pay Taxes and Charges. Holders of Security Interests may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and holders of Security Interests making such payments shall be owed immediate reimbursement therefor from the Association.

Section 14.3 - Audited Financial Statement. Upon written request from any Agency or Eligible Mortgagee which has an interest or prospective interest in any Lot or Unit or the Common Interest Community, the Association shall prepare and furnish within ninety days an audited financial statement of the Association for the immediately preceding fiscal year at the expense of such Eligible Mortgagee.

Section 14.4 - Notice of Action. Any Eligible Mortgagee and any Agency which holds, insures or guarantees a First Security Interest, upon written request to the Association (which shall include the Agency's name and address and the Lot or Unit number), will be entitled to timely written notice of:

A. Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Lot or Unit or the exclusive easement rights appurtenant thereto (excluding changes resulting from the exercise of Declarant Rights permitted under Article 13 hereof), (b) the interest in the Common Elements appurtenant to the Lot or Unit (excluding changes resulting from the exercise of Declarant Rights permitted under Article 13 hereof) or the liability of Assessments relating thereto, (c) the number of votes in the Association relating to any Lot or Unit, or (d) the purposes to which any Lot or Unit or the Common Elements are restricted or any amendment set forth in Article 4 above;

B. Any proposed termination of the Common Interest Community;

C. Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or which affects any Lot or Unit on which there is a First Security Interest held, insured or guaranteed by such Agency;

D. Any delinquency in the payment of Assessments owed by a Lot or Unit Owner subject to the Security Interest when such delinquency has continued for a period of sixty days;

E. Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article 8.

Section 14.5 - Action by Holder of Security Interests. If this Declaration, any Association Documents, or Agencies require the approval of any Agency or holders of Security Interests then, if any holder of a Security Interest or Agency fails to respond to any written proposal for such approval within thirty (30) days after such holder of a Security Interest or

Agency receives proper notice of the proposal (or such longer time as may be set forth in the notice), such holder of a Security Interest or Agency shall be deemed to have approved such proposal provided that the notice was delivered to the holder of a Security Interest or Agency by certified or registered mail, return receipt requested.

ARTICLE 15

MECHANIC'S LIENS

Section 15.1 - No Liability. If any Owner shall cause any material to be furnished to his Lot or Unit or any labor to be performed therein or thereon, no Owner of any other Lot or 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 Lot or Unit.

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

Section 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 effected against an individual Lot or Unit.

ARTICLE 16

TERMINATION

Termination of the Common Interest Community may be accomplished only in accordance with Section 38-33.3-218 of the Act, upon agreement of Owners to which at least sixty-seven percent (67%) of the votes are allocated.

ARTICLE 17

RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its future income, including its right to receive Assessments, by the affirmative vote of fifty-one percent (51%) of Members at a meeting called for such purpose at which a quorum is present in person or by proxy.

ARTICLE 18

CONDEMNATION

Section 18.1 - Rights of Owners. Whenever all or any part of the Common Elements shall be taken by power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, such Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 18.2 - Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Owners who hold at least sixty-seven percent (67%) of the votes in the Association, and Declarant during the Period of Declarant Control, shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in Article 8 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be retained by the Association to offset future expenses of the Association.

Section 18.3 - Complete Condemnation. If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that approval must first be obtained of fifty-one percent (51%) of Eligible Mortgagees, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in the Colorado Revised Nonprofit Corporation Act upon liquidation of the Association.

ARTICLE 19

ASSOCIATION AS ATTORNEY IN FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of (a) granting easements pursuant to Article 11, (b) purchasing and maintaining insurance pursuant to Article 8, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 8 upon their damage or destruction, or (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article 17. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE 20

PRINCIPLES OF INTERPRETATION

Section 20.1 - Severability. This Declaration, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of this Declaration is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.

Section 20.2 - 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 20.3 - Headings. The headings on any section or article are included only for purposes of convenient reference and shall not affect the meaning or interpretation of this Declaration.

Section 20.4 - Written Notice. All notices required under this Declaration shall be in writing. Notice to any Owner shall be considered delivered and effective upon personal delivery or five days after mailing by certified or registered mail, return receipt requested, to the address of such Owner on file in the records of the Association at the time of such mailing.

Section 20.5 - Limitation of Liability. Neither the Association nor any officer or director shall be liable to any party for any action or omissions with respect to any matter arising by, through or under this Declaration except for wanton and willful acts or omissions. The Association shall indemnify, defend and hold harmless all officers and directors with respect to any action taken in their official capacity as provided in the Association Documents.

Section 20.6 - Applicable Law. The exclusive proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of the Association Documents shall be the County Court or District Court of Gunnison County, Colorado, unless otherwise chosen by the Association.

Section 20.7 - Interest. Any sums, amounts or monies due and owing to the Association under the Association Documents shall bear interest at 1.5% per month (18% per year) or at such other rate of interest as the Executive Board shall set from the date due until paid.

Section 20.8 - Assignment. Declarant may assign all or any part of its rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale, and/or to the Association, in whole or in part. Such successor shall be identified, the particular rights being assigned shall be specified, and, to the extent required, concomitant obligations shall be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Clerk and Recorder of Gunnison County, Colorado.

Section 20.9 - Town Code. The provisions of the Town Code pertaining to Planned Unit Developments shall apply to all land use within the Common Interest Community, except as provided otherwise in this Declaration or on the Plat, in which event this Declaration or the Plat shall control.

Section 20.10 - Conflict. The Association Documents are intended to comply with the requirements of the Act and the Colorado Revised Nonprofit Corporation Act. If there is any conflict between the Association Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

ARTICLE 21

REVOCATION OF PRIOR DECLARATION

Subject to approval by the Town, upon recording of this Declaration in the Gunnison County records, the Declaration of Protective Covenants for Pitchfork recorded August 21, 2000 as Reception No. S04414 shall be revoked and rendered null and void and this Declaration shall be substituted therefor.

Executed as of the day and year first above written.

Coburn Development, Inc., a Colorado corporation

By: William E. Coburn II
William E. Coburn, II, President

Pitchfork, LLC, a Colorado limited liability company

By: William E. Coburn II - President
Title

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The above and foregoing Declaration of Protective Covenants for Pitchfork was acknowledged before me this 5th day of August, 2002, by William E. Coburn, II as President of Coburn Development, Inc., a Colorado corporation.

Witness my hand and official seal. My commission expires: 07/09/04

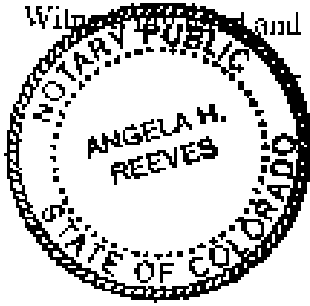


Angela H. Reeves
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The above and foregoing Declaration of Protective Covenants for Pitchfork was acknowledged before me this 15th day of Aug 25th, 2002, by William E. Coburn, II as MANAGER of Pitchfork, LLC, a Colorado limited liability company.

With my hand and official seal, My commission expires: 07/07/04



Angela H. Reeves
Notary Public

CONSENT TO
AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR
PITCHFORK

The Town of Mt. Crested Butte hereby approves the above and foregoing Amended and Restated Declaration of Protective Covenants for Pitchfork.

Dated this 21st day of August, 2002.


Attestation:
Donna Howard
Town Clerk Title

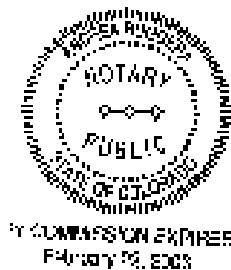
Town of Mt. Crested Butte
By: Charles C. Stearns
Town Manager Title

STATE OF COLORADO)
) ss.
COUNTY OF Garrison)

The foregoing Consent to Amended and Restated Declaration of Protective Covenants for Pitchfork was acknowledged before me this 21st day of August, 2002, by Charles C. Stearns as Town Manager and Donna Howard as Town Clerk of the Town of Mt. Crested Butte.

Witness my hand and official seal.
My commission expires: Feb 22, 2003

[SEAL]



[Signature]
Notary Public

**EXHIBIT A
TO
AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS
FOR
PITCHFORK**

LEGAL DESCRIPTION OF THE PROPERTY

A tract of land located in the East 1/2 of Section 26, Township 13 South, Range 86 West, 6th Principal Meridian, Gunnison County, Colorado, more particularly described as follows:

BEGINNING at a point on the West line of the East 1/2 of said Section 26, from which the North quarter corner bears $N01^{\circ}43'44''W$, 2643.04 feet; thence along a tract of land described in Book 477, Page 143, being known and platted as Snowfall Point Condominiums, $S86^{\circ}23'28''E$, 409.08 feet; thence along a tract of land described in Book 410, Page 393, being known and platted as Elk Ridge II Condominiums, $S13^{\circ}15'00''E$, 189.39 feet; thence continuing along the boundary of Elk Ridge II Condominiums, $N68^{\circ}52'00''E$, 216.21 feet to a point on the Westerly right of way of the Crested Butte-Golthic County Road, also known as Gunnison County Road No. 317; thence along the Westerly right of way of said Road No. 317, 229.00 feet along the arc of a curve to the right, with a central angle of $08^{\circ}44'50''$, a radius of 1500 feet and a chord of $S32^{\circ}13'00''W$, 328.78 feet; thence continuing along said Westerly right of way, $S36^{\circ}35'18''W$, 206.43 feet; thence continuing along said Westerly right of way, 157.00 feet along the arc of a curve to the left, with a central angle of $17^{\circ}59'26''$, a radius of 500.00 feet and a chord of $S27^{\circ}35'35''W$, 156.35 feet; thence continuing along said westerly right of way, $S18^{\circ}35'52''W$, 229.52 feet to a point which is common to the Westerly right of way of said Gunnison County Road No. 317 and an existing access road to property in the West 1/2 of said Section 26; thence $S72^{\circ}52'51''W$, 118.43 feet; thence $N74^{\circ}56'33''W$, 128.31 feet to a point on the West line of the East 1/2 of said Section 26; thence along said West line of the East 1/2 of Section 26, 849.47 feet to the **POINT OF BEGINNING**,

Containing 7.90 acres more or less.

**EXHIBIT B
 TO
 AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS
 FOR
 PITCHFORK**

DESCRIPTION OF LOTS AND LINTS; RESTRICTIONS ON USE OF LOTS

<u>LOT</u>	<u>PHASE</u>	<u>ALLOWED USE</u>	<u>BEDROOMS</u>	<u>LOT</u>	<u>PHASE</u>	<u>ALLOWED USE</u>	<u>BEDROOMS</u>
1	-	5- PLEX	4	19	2	LARGE HOUSE	3
2	1	4- PLEX	8	38	2	LARGE HOUSE	3
3	1	4- PLEX	8	39	2	SMALL HOUSE	3
4	2	DUPLEX	4	40	2	COTTAGE	2
5	1	4- PLEX	10	41	2	COTTAGE	3
6	2	4- PLEX	16	42	2	TRI- PLEX	6
7	1	COTTAGE	2	43	2	TRI- PLEX	6
8	1	COTTAGE	2	44	1	4- PLEX	8
9	1	COTTAGE	2	45	-	SMALL HOUSE	3
10	2	COTTAGE	2	46	1	SMALL HOUSE	3
11	2	SMALL HOUSE	3	47	1	SMALL HOUSE	3
12	2	COMMUNITY MEETING HOUSE OR LARGE HOUSE	N/A	48	2	SMALL HOUSE	3
		LARGE HOUSE		49	1	COTTAGE	2
13	2	LARGE HOUSE	4	50	2	DUPLEX	4
14	2	SMALL HOUSE	3	51	-	COTTAGE	2
15	2	COTTAGE	2	52	2	LARGE HOUSE	3
16	2	COTTAGE	2	53	1	LARGE HOUSE	4
17	2	COTTAGE	2	54	3	COTTAGE	2
18	2	SMALL HOUSE	3	55	1	COTTAGE	2
19	1	SMALL HOUSE	3	56	2	COTTAGE	2
20	1	COTTAGE	2	57	1	COTTAGE	2
21	1	COTTAGE	3	58	1	COTTAGE	2
22	1	COTTAGE	2	59	2	COTTAGE	2
23	3	SMALL HOUSE	3	60	2	LARGE HOUSE	4
24	2	SMALL HOUSE	3	61	2	COTTAGE	2
25	2	SMALL HOUSE	3	62	2	COTTAGE	2
26	2	LARGE HOUSE	3	63	1	COTTAGE	2
27	-	LARGE HOUSE	3				
28	2	LARGE HOUSE	4				
29	1	TRI PLEX	9				
30	2	LARGE HOUSE	4				
31	1	LARGE HOUSE	3	OUTLOT A	1	STORAGE/PARKING	
32	1	LARGE HOUSE	3	OUTLOT B	1	STORAGE	
33	1	4- PLEX	8				
34	2	6- PLEX	6				
35	2	DUPLEX	4				
36	2	DAYCARE OR DUPLEX	N/A				
			4				

**EXHIBIT C
TO
AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS
FOR
PITCHFORK
VOTING RIGHTS AND ASSESSMENT ALLOCATION**

Until issuance of a Certificate of Occupancy for a Unit in a Building on a Lot, the Owner of such Lot shall have one vote in the Association and be responsible for a share of the Association's Assessments for each Unit equal to fifteen percent of the Assessments due for Lots on which a Building is located and for which a Certificate of Occupancy has been issued.

After issuance of a Certificate of Occupancy for a Unit in a Building on a Lot, the Owner of each Single Family Residence or Unit shall have one vote for each Single Family Residence or Unit in the Association, and be responsible for a share of the Association's Assessments equal to a fraction whose numerator is one and whose denominator is the total number of Lots and Units in the Association.

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EXHIBIT D
TO
AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS
FOR
PITCHFORK

EASEMENTS AND LICENSES AFFECTING THE
COMMON INTEREST COMMUNITY

See attachments for easements and licenses

Any right of way for a sewer line as shown on the plat of Snowfall Point Condominiums filed for record April 13, 1974 as Reception No. 299999.

Terms and conditions in License Agreement between Cimarron Mountain Partners, and Crested House Condominium Association as recorded March 9, 1992 in Book 702 at page 606.

Covenants and restrictions in Declaration of Protective Covenants For Pitchfork recorded August 21, 2000 as Reception No. 504414, recorded May 2, 2001 bearing Reception No. 510378 and Approval Of Town Of Mt. Crested Butte recorded May 2, 2001 bearing Reception No. 510379, and Assignment of Declarant's Rights recorded December 11, 2001 as Reception No. 515451, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicap persons.

Any and all easements, notes and deed restrictions as set forth on the Plat of PITCHFORK SUBDIVISION recorded August 21, 2000 as Reception No. 504415 and in Modification of Final Plat recorded May 2, 2001 bearing Reception No. 510377.

Terms and conditions in Pitchfork Subdivision Improvements Agreement between the Town of Mt. Crested Butte, Colorado and Coburn Development, Inc. a Colorado corporation recorded August 21, 2000 as Reception No. 504416.

Modification of Snow Storage Easements recorded August 21, 2000 as Reception No. 504418.

Pitchfork Occupancy and Resale Deed Restriction, Agreement, and Covenant recorded November 29, 2000 as Reception No. 507107, Modifications recorded May 2, 2001 as Reception No. 510376 and March 29, 2002 as Reception No. 519317, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicap persons.

An Agreement by and between the Town of Mt. Crested Butte and The Anton J. Kapushion and Co., and Ina Kristine Kapushion and Antonette C. Kapushion for the provision of access through Pitchfork Subdivision MMB to the land west of Pitchfork Subdivision and limiting the use of that access, recorded June 14, 2001 as Reception No. 511540.

Terms and Conditions in Pitchfork Subdivision Improvements Agreement between The Town of Mt. Crested Butte, Colorado and Pitchfork LLC, a Colorado limited liability company recorded November 2, 2001 as Reception No. 515597.