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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PROSPECT AT  
MT. CRESTED BUTTE**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PROSPECT AT  
MT. CRESTED BUTTE

This Declaration of Covenants, Conditions and Restrictions for Prospect at Mt. Crested Butte is made this 3<sup>rd</sup> day of July, 2002, by CBMR Real Estate, LLC, a Colorado limited liability company.

ARTICLE I  
DECLARATION-PURPOSES

1.1 General Purposes.

(a) Declarant owns the real property hereinafter defined as the Property and intends to develop the Property as a residential resort community.

(b) Prospect Property Owners Association, a Colorado nonprofit corporation, has been or will be formed to hold, manage and maintain certain property for the common benefit of some or all Owners and their Guests; to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby; to collect and enforce the Assessments, charges and liens imposed pursuant hereto; and for all other purposes set forth in the Articles of Incorporation of the Association. This Declaration defines certain rights and obligations of Owners and their Guests within the Property with respect to the Association and with respect to Functions undertaken and Common Elements held by the Association.

(c) By this Declaration, Declarant intends to establish a means to provide for and maintain the area within the Property as a pleasant and desirable environment for all persons residing, visiting or doing business therein.

1.2 Declaration. To further the general purposes herein expressed, Declarant, for itself, its successors and assigns, hereby declares that the Property, including any property added to the Property as hereinafter provided shall, at all times, be owned, held, used, occupied, sold and conveyed subject to the provisions of this Declaration and to the covenants, conditions, restrictions, reservations, easements, Assessments, charges and liens herein contained, which shall run with the Property and burden and benefit Declarant, all other parties having any right, title or interest in the Property, or any portion thereof, and their respective successors, assigns, heirs, devisees and personal representatives.

ARTICLE II  
CERTAIN DEFINITIONS

2.1 Art. Act means the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time.



2.2 **Additional Property.** Additional Property means the real property described on Exhibit B attached hereto and made a part hereof.

2.3 **Affordable Lot.** Affordable Lot means any Lot that, pursuant to applicable regulations, ordinances or resolutions of the Town, is deed restricted for the purpose of providing affordable housing to the Owner of such Lot and the dwelling that is either constructed on such Lot or, in the case of a condominium unit, that comprises such Lot.

2.4 **Articles.** Articles means the Articles of Incorporation of Prospect Property Owners Association, as the same may be amended from time to time.

2.5 **Assessment.** Assessment means a monetary assessment, which may be a Common Assessment, a Limited Common Elements Assessment, a Special Assessment or a Specific Assessment, that is levied by the Association on one or more Lots pursuant to the terms of this Declaration.

2.6 **Association.** Association means Prospect Property Owners Association, a Colorado nonprofit corporation, and its successors and assigns.

2.7 **Association Documents.** Association Documents means this Declaration, the Plat, the Articles, the Bylaws, the Design Guidelines and the Rules and Regulations, as the same may be amended from time to time.

2.8 **Board of Directors.** Board of Directors means the board of directors of the Association, as more particularly described and defined in this Declaration and the Bylaws.

2.9 **Bylaws.** Bylaws means the Bylaws of Prospect Property Owners Association, as the same may be amended from time to time.

2.10 **Common Assessment.** Common Assessment means an Assessment levied on all the Free Market Lots subject to Assessment to fund the Common Expenses as more particularly described in Section 7.3.

2.11 **Common Elements.** Common Elements means, to the extent of the Association's interest in such real estate or improvements, any real estate within the Property (i) that is owned by the Association, (ii) that is owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to a lease, license, easement or other agreement, or (iii) that the Association is otherwise required to operate, manage, maintain or repair, together with any improvements located thereon.

2.12 **Common Expenses.** Common Expenses means allocations to reserves and all costs, expenses and liabilities incurred by or on behalf of the Association, including, but not limited to, costs, expenses and liabilities for (i) acquiring, leasing, renting, designing, constructing, managing, operating, maintaining, repairing and improving the Common Elements; (ii) administering and enforcing the covenants, conditions, restrictions, reservations and easements created by this Declaration; (iii) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant to this Declaration; (iv) advertising, promoting, regulating and managing the Property, including performing any and all Functions permitted by this

Declaration; (v) operating the Association; and (vi) any other cost or expense legally incurred by the Association; provided, however, that Common Expenses does not include Limited Common Elements Expenses and expenses of the Association recovered through Special Assessments or Specific Assessments.

2.13 **Declarant.** Declarant means, collectively, CHMR Real Estate, LLC, a Colorado limited liability company, and any party that (i) acquires all or substantially all of the Property and (ii) prior to or at the time of such acquisition is designated by a written instrument as a successor or assignee of Declarant under this Declaration. Such instrument may specify the extent and portion of the rights or interests as a Declarant which are being assigned, in which case CHMR Real Estate, LLC shall retain all other rights as Declarant.

2.14 **Declarant Control Period.** Declarant Control Period means the period beginning on the date the Association is formed and ending on the first to occur of (i) 60 days after 75% of the total number of Lots that may be created pursuant to Section 3.3 have been conveyed to Owners other than Declarant; (ii) two years after the last conveyance of a Lot by Declarant in the ordinary course of business; (iii) two years after any right to create new units pursuant to this Declaration was last exercised; or (iv) the date on which Declarant, in its sole discretion, voluntarily terminates the Declarant Control Period pursuant to a Recorded statement of termination executed by Declarant. If Declarant terminates the Declarant Control Period pursuant to the preceding clause (iv), Declarant may require that, for the balance of what would have been the Declarant Control Period had Declarant not terminated it, certain actions of the Association or the Board, as described in the Recorded statement of termination, be approved by Declarant before they become effective. After termination of the Declarant Control Period, Declarant, if still an Owner, will have all of the rights and duties given to Members under the Association Documents and will retain all of the rights belonging to Declarant under the Association Documents (including without limitation the Special Declarant Rights) other than those that expire by their terms or pursuant to the Act upon the expiration of the Declarant Control Period.

2.15 **Declaration.** Declaration means this document and all amendments or supplements hereto hereafter recorded in the real property records of Gunnison County, Colorado, together with all Plats for the Property.

2.16 **Design Guidelines.** Design Guidelines is defined in Section 71.5.

2.17 **Design Review Board.** Design Review Board means the Prospect Design Review Board established pursuant to Article XI hereof.

2.18 **Development Rights.** Development Rights shall have the same meaning as that term is defined from time to time in the Act, and these rights may be exercised by Declarant at any time during the term of this Declaration.

2.19 **Director.** Director means a member of the Board of Directors.

2.20 **District.** District means, collectively, The Reserve Metropolitan District No. 1 and The Reserve Metropolitan District No. 2.

2.21 **Dwelling Unit.** Dwelling Unit has the meaning given for it in the PUD Guide.

2.22 **Function.** Function means any activity, function or service required under this Declaration to be undertaken or performed by the Association as well as any activity, function or service otherwise undertaken or performed by the Association.

2.23 **Free Market Lot.** Free Market Lot means any Lot other than an Affordable Lot.

2.24 **General Common Elements.** General Common Elements means Common Elements that are for the benefit, use or enjoyment of all of the Owners, subject to the terms and conditions of this Declaration.

2.25 **Guest.** Guest means any family member, customer, agent, employee, independent contractor, guest or invitee of an Owner and any person or persons, entity or entities who have any right, title or interest in a Lot which is not the fee simple title to the Lot (including a tenant or subtenant), and any family member, customer, agent, employee, independent contractor, guest or invitee of such person or persons, entity or entities.

2.26 **Limited Common Elements.** Limited Common Elements means Common Elements that are for the benefit, use or enjoyment of less than all of the Owners, subject to the terms and conditions of this Declaration. The Limited Common Elements and the specific Lots to which they are allocated are depicted on the Plat. The allocation of any Limited Common Element among particular Lots may be altered or reallocated pursuant to Section 308 of the Act, upon the prior written approval of the Board and, so long as Declarant owns any portion of the Property, Declarant.

2.27 **Limited Common Elements Assessments.** An Assessment levied in accordance with Section 7.4 in order to fund the Limited Common Elements Expenses.

2.28 **Limited Common Elements Expenses.** All costs, expenses and financial liabilities incurred by the Association in operating, maintaining, managing, repairing, restoring, replacing or paying taxes on any of the Limited Common Elements.

2.29 **Lot.** A physical portion of the Property, whether improved or unimproved, that is or may be separately owned or conveyed pursuant to the ordinances, resolutions and regulations of the Town. Each Lot shall be legally described and identified on the Plat. Without limiting the generality of the preceding sentence, the term Lot shall include any superblocks, plots, tracts or similar portions of the Property that are described by the preceding sentence and that have not been further subdivided into smaller Lots, though such further subdivision is likely to occur. The term Lot shall not include any Common Elements owned in fee simple by the Association or any property dedicated to any governmental or quasi-governmental entity. The term Lot, as used in this Declaration, is intended to be coextensive with the term "unit" as used in the Act, and, without limiting the foregoing, any unit within a legally established "condominium" (as defined in the Act) shall constitute a separate Lot under this Declaration.

2.30 **Member.** Member means each person or entity who holds a Membership in the Association.

2.31 **Membership.** Membership means a membership in the Association, which is appurtenant to ownership of any Lot, and the rights granted to Owners pursuant to this Declaration to participate in the Association.

2.32 **Owner.** Owner means the record holder of legal title to the fee simple interest in a Lot or interest therein, including contract sellers, but excluding (i) contract purchasers, (ii) the Association and (iii) those having such interest merely as security for the performance of an obligation. Each Owner of a Lot shall also be the holder of the Membership in the Association appurtenant to ownership of such Lot. The term Owner shall include Declarant to the extent it is the record owner of fee simple title to a Lot.

2.33 **Person.** Person means any natural person, corporation, partnership, limited liability company, association, trustee or any other entity recognized as being capable of owning real property under the laws of the state of Colorado.

2.34 **Plat.** Plat means a subdivision plat approved by the Town pursuant to its subdivision regulations that depicts all or any portion of the Property and is filed in the real estate records of Gunnison County, as any such plat is amended or supplemented from time to time. The Plat shall be deemed to include any subdivision plats, plat amendments or condominium maps covering any portion of the Property that are Recorded from time to time.

2.35 **Property.** Property means any and all real property subject to this Declaration as described on Exhibit A and all appurtenances and improvements thereon, along with any portion of the Additional Property included by Declarant as part of the Property from time to time in accordance with Section 8.6(e).

2.36 **PUD Guide.** PUD Guide means the PUD III Guide to the Planned Unit Development Plan of Prospect at Mt. Crested Butte as approved by the Town and recorded in the real estate records of Gunnison County, including all tables, plans, exhibits and maps attached to or incorporated into such guide, as such guide may be amended from time to time. As of the date this Declaration is initially recorded, the Property is subject to the PUD Guide.

2.37 **Rules and Regulations.** Rules and Regulations means any instruments adopted by the Association for the regulation and management of the Property or any portion thereof, as the same may be amended from time to time.

2.38 **Ski Area.** Ski Area means the Crested Butte Ski Area located adjacent to the Property, as it may be known under any other name from time to time.

2.39 **Special Assessment.** Special Assessment means an Assessment levied in accordance with Section 7.5.

2.40 **Specific Assessment.** Specific Assessment means an Assessment levied in accordance with Section 7.6.

2.41 **Town.** Town means the Town of Mt. Crested Butte, a Colorado municipality.

## ARTICLE III CREATION OF THE COMMUNITY

3.1 **Creation.** Upon the Recording of this Declaration and the Plat, the Property shall be a "planned community" pursuant to the Act, and the name of the planned community shall be "Prospect at Mt. Crested Butte." Prospect at Mt. Crested Butte is located entirely within the Town, which is in Gunnison County, Colorado.

3.2 **Division of Property.** Pursuant to the Act, the Property is hereby divided into the Lots (identified and described on the Plat). The Lots are hereby designated for separate ownership. The boundaries of the Lots are described and depicted on the Plat.

3.3 **Number of Lots.** The maximum number of Lots that Declarant reserves the right to create in Prospect at Mt. Crested Butte equals 250, though it is acknowledged that the PUD Guide, as it exists as of the recording of the Declaration, permits a smaller number of Lots.

### 3.4 **Allocations.**

(a) **Allocation of Votes.** In all matters submitted to a vote of the Members of the Association, each Lot is allocated one vote; provided, however, that no vote shall be exercised for any Lot owned by the Association and no vote shall be exercised for any property which is exempt from Assessment under Section 7.13.

(b) **Allocation of Common Expenses.** Every Lot is allocated, and the Owner of each Lot is liable for, a percentage of the Common Expenses. The percentage of the Common Expenses for which each Lot is liable shall be determined as follows: (1) each Free Market Lot shall be liable for a percentage of the Common Expenses that is equal to the percentage allocated to every other Free Market Lot; (2) each Affordable Lot shall be liable for a percentage of the Common Expenses that is two-tenths (2/10) of the percentage allocated to each Free Market Lot; and (3) the total percentage liability of all the Lots for Common Expenses must equal 110%, or as close to 100% as is reasonably possible taking into account reasonable rounding. All other costs and expenses of the Association are allocated among the Lots as otherwise provided in this Declaration.

## ARTICLE IV CERTAIN OBLIGATIONS AND RIGHTS OF ASSOCIATION

### 4.1 **Property Maintenance Function.**

(a) The Association shall provide for the care, operation, management, maintenance, repair and replacement of all Common Elements. Moreover, the Association may provide for the care and maintenance of other areas of the Property if the Board of Directors, in its sole and exclusive discretion, deems such care and maintenance to be necessary or desirable for access to the boundary of or full utilization of any Lot or any improvements within the Property. Such function may include, without limitation, removal of snow from and application



of sand and salt to parking areas, roads, walks, drives, malls, stairs and other similar Common Elements as necessary for their customary use and enjoyment; maintenance and care of all easements designated on the Plat, open space or unimproved areas included in the Common Elements and of plants, trees and shrubs in such open space or unimproved areas; maintenance of lighting provided for parking areas, roads, walks, drives, malls, stairs, and other similar Common Elements; and maintenance of mailbox areas. The Board of Directors shall be the sole judge as to the appropriate maintenance, operation and management of the Common Elements and other areas of the Property.

(b) Unless otherwise agreed in writing, the Association shall be obligated to and shall provide for the care, operation, management, maintenance and repair of any Common Elements consisting of only a portion of, or defined space within, a building or other improvement owned by Declarant and shall be obligated to and shall bear and pay to Declarant its proportionate share of Declarant's costs and expenses relating to such building or improvement as a whole, including without limitation, maintenance, taxes and Assessments, insurance and depreciation. The proportionate share of the Association's costs and expenses relating to such building or improvement as a whole shall be determined by Declarant based on the actual amounts of such costs and expenses relating to such building or improvement as a whole multiplied by the ratio with a numerator that is the number of square feet of floor area of such defined space within the building or improvement and a denominator that is the number of square feet of floor area of the entire building or improvement.

(c) If, with respect to any Common Elements, Declarant reserves the right to use all or part of such Common Elements for part of the time or the right to permit third parties to use all or part of such Common Elements for part of the time and Declarant actually exercises such reserved right, Declarant shall pay to the Association the fair rental value of the use of such Common Elements by Declarant or such third party, as determined by Declarant, based on the particular type of use, the portion of such Common Elements used and the time or periods of such use, or based on the actual rental payments, income or fees received by Declarant from any third party for such use, whichever is greater; provided, however, the payment by Declarant shall not exceed the costs and expenses of the Association with respect to such Common Elements including, without limitation, maintenance, taxes and Assessments, insurance and depreciation. Declarant shall have the obligation, or shall impose on any such third party the obligation, to restore any such Common Elements to a clean and orderly condition after each use.

**4.2 Operation Function.** The Association may do all things that are within the power of the District and which are not being performed by the District that may be reasonably necessary or desirable to keep and maintain the Property as a safe, attractive and desirable community.

**4.3 Public Health and Safety Function.** The Association may provide public health and safety services within the Property, including but not limited to, providing health care services and facilities, security personnel, security systems, fire protection facilities, and a fire water system which may include periodic fire prevention inspections and equipment certifications.

4.4 **Recreation Function.** The Association may provide a year-round recreational program of suitable variety and such miscellaneous equipment as may be necessary therefor, including but not limited to, informing visitors of recreation available and stimulating their participation therein; conducting, operating, managing and maintaining programs for children, including but not limited to, daycare facilities and such equipment as may be appropriate for use in connection therewith; constructing, caring for, operating, managing, maintaining, repairing and replacing within the Property swimming pools, ice rinks, skating ponds, clubhouses, foot and bicycle trails and related facilities, saunas and steam baths, tennis courts, game courts, game or sports courts, game and special events areas, fishing areas and facilities, bob sledding and snow shoeing facilities, outdoor entertainment and other recreational amenities, and such equipment as may be appropriate for use in connection therewith; and removing snow from and clearing such facilities as necessary to permit their full use and enjoyment.

4.5 **Animal Control Function.** The Association may provide for regulations, facilities, personnel and funds to enforce animal control or exclude animals from the Property, in which case it may provide reasonable kennel facilities for the keeping and care of Owners' and Guests' animals or for the orderly dispensing of stray animals.

4.6 **Environmental Function.** The Association may monitor air, soil and water quality in the Property to determine trends and to detect violations of federal, state or local environmental laws. Neither Declarant, the Association, nor any of their respective directors, officers, agents or employees shall be required to undertake such monitoring, nor shall Declarant, the Association, nor any of their respective directors, officers, agents or employees be liable to any third party for any action which they take, or any failure to act, in connection with the inspection or monitoring of air, soil or water quality in the Property.

4.7 **Exterior Maintenance Function.**

(a) All Owners are expected to maintain their Lots as required under this Declaration, and the Association has no obligation to provide any exterior maintenance and repair of such property. If any Owner fails to maintain its Lot or related improvements or property or fails to perform any acts of maintenance or repair required under this Declaration, the Association may provide exterior maintenance and repair upon such property thereon pursuant to the provisions of Section 11.6. In addition, the Association may, without notice, make such emergency repairs and maintenance as may in its judgment be necessary for the safety of any person or to prevent damage to any other property. The cost of such exterior maintenance and repair shall be assessed against the Owner of such Lot as a Specific Assessment pursuant to Section 7.6. For the purpose of performing the exterior maintenance authorized by this Section 4.7, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to any Owner, to enter upon such site during reasonable hours on any day. The Association or its designee is hereby granted an irrevocable license over all property in the Property to inspect (in a reasonable manner) property within the Property in order to determine whether any maintenance or repair is necessary under this Section 4.7.

(b) Neither Declarant, the Association nor any of their respective directors, members, officers, agents or employees shall be liable for any incidental or

consequential damages for failure to inspect any Lot or improvements or portion thereof or to repair or maintain the same. Declarant, the Association or any other Person undertaking such repairs or maintenance at the direction of Declarant or the Association shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Lot, improvements or portion thereof.

**4.8 Television Function.** The Association may provide for the installation, operation, maintenance, repair and replacement of satellite dishes, cable television equipment and related facilities.

**4.9 Other Functions.** The Association may undertake and perform other functions as it deems reasonable or necessary to carry out the provisions of this Declaration, including without limitation, providing the following services for some or all Owners, Guests and visitors: a telephone answering service, warehousing and delivery, a central laundry facility, employee training, a central communications operation which may include a central dispatch system, a data information center and central monitoring of fire safety and property security.

**4.10 Insurance.** The Association shall obtain in its name and keep in full force and effect at all times all insurance required to be obtained and maintained by the Association under the Act and any additional insurance that the Board of Directors deems necessary. Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds for any such loss shall be paid in accordance with the terms and conditions of the Act.

**4.11 Indemnification.** The Association shall be obligated to and shall indemnify Declarant and hold Declarant harmless from all liability, loss, cost, damage and expense, including without limitation attorneys' fees and disbursements, arising with respect to any operations of the Association or any Common Elements or Functions.

**4.12 Right to Make Rules and Regulations.** The Association shall be authorized to and shall have the power to adopt, amend and enforce Rules and Regulations applicable within the Property with respect to any Common Element or Function, and to implement the provisions of the Association Documents, including but not limited to, Rules and Regulations, to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate pedestrian and vehicular traffic; to regulate animals; to protect wildlife; to regulate signs; to regulate weed and pest control on undeveloped property within the Property; to regulate use of any and all Common Elements to assure fullest enjoyment of use; to promote the general health, safety and welfare of Persons residing, visiting and doing business within the Property; and to protect and preserve property and property rights. All Rules and Regulations shall comply with the Association Documents. The Rules and Regulations shall be reasonable and shall be uniformly applied, except such rules may differentiate between reasonable categories of Lots, Owners, Guests or members of the general public. The Association may provide for enforcement of any such Rules and Regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from Common Elements or from enjoyment of any Functions, or otherwise. Each Owner and Guest shall be obligated to and shall comply with and abide by such Rules and Regulations and pay such fines or penalties upon failure to comply with



or abide by such Rules and Regulations and such unpaid fines and penalties shall be enforceable in accordance with this Declaration.

**4.13 Charges for Use of Common Elements.** The Association may establish charges for use of Common Elements to assist the Association in offsetting the costs and expenses of the Association, including depreciation and capital expenses. All charges established under this Section 4.13 shall be reasonable and shall be uniformly applied, except such charges may reasonably differentiate between reasonable categories of Lots, Owners, Guests, Members or members of the general public. Each Owner, Guest and member of the general public shall be obligated to and shall pay any such charges for use.

**4.14 Charges for Functions.** The Association may establish charges for providing any service as required or permitted by any Function on a regular or irregular basis to an Owner, Guest or member of the general public to assist the Association in offsetting the costs and expenses of the Association, including depreciation and capital expenses. All charges established under this Section 4.14 shall be reasonable and shall be uniformly applied, except such charges may differentiate between reasonable categories of Lots, Owners, Guests or members of the general public. Each Owner, Guest and member of the general public shall be obligated to and shall pay any such charges for such services.

**4.15 Taxes.** The Association shall pay all *ad valorem* real estate taxes, special improvement and other assessments (ordinary and extraordinary), *ad valorem* personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any governmental or public authority that are imposed, assessed or levied upon, or arise in connection with any Common Elements or Functions.

**4.16 Right to Dispose of Common Elements.** Subject to Section 4.19(viii) below, the Association shall have full power and authority to sell, lease, grant easements, rights-of-way, licenses, leases or concessions in or to, transfer, encumber, abandon or dispose of any Common Elements.

**4.17 Governmental Successor.** Any Common Element and any Function may be turned over to a governmental entity (including, without limitation, the District) which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate.

**4.18 Records.** The Association shall keep financial records sufficiently detailed to enable the Association to comply with Section 38-33.1-316(8) of the Act concerning statements of unpaid Assessments. All financial and other records shall be made available for examination by any Owner or such Owner's authorized agents during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials.

**4.19 Additional Powers and Rights of the Association.** The Association shall have and may exercise any right or privilege given to it expressly in this Declaration or, except in the extent limited by the terms and provisions of this Declaration, given to it by law and shall have and may exercise every other right or privilege or power and authority necessary

or desirable to fulfill its obligations under this Declaration, including without limitation the rights to:

- (i) adopt and amend the Bylaws and Rules and Regulations of the Association;
- (ii) adopt and amend budgets for revenues, expenditures and reserves and collect Assessments, including without limitation Common Assessments, from Owners;
- (iii) hire and terminate managing agents and other employees, agents and independent contractors;
- (iv) 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 Property;
- (v) make contracts and incur liabilities;
- (vi) regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- (vii) cause additional improvements to be made as part of the Common Elements, including the construction of any capital asset, in whole or in part, for the benefit of some or all of the Owners, Guests and members of the general public, including without limitation streets, mountain access roads and other limited access roads, paths, walkways, skiways, sidewalks, and trails; any facilities necessary or useful for transit purposes, including gondolas or chairlifts or other means of transportation to and from the Property; bus stops and related structures and signage; mailbox structures; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and flues; conduit installation areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road and skiway supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and improvements that the District may be empowered by law from time to time to construct;
- (viii) acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property; provided, however, that the fee interest of a Common Element may not be conveyed or subjected to a security interest except in accordance with the Act;
- (ix) grant easements, leases, licenses and concessions through or over the Common Elements. Without limiting the generality of the foregoing, the Association may grant easements, rights-of-way, leases, licenses and concessions to suppliers of utilities serving the Property or property adjacent to the Property and may grant such rights to developers or owners of property adjacent to the Property for the purpose of accommodating minor

encroachments onto the Common Elements or other purposes that do not unreasonably interfere with the use and enjoyment of the Common Elements;

(x) impose and receive any payments, fees or charges for the use, rental or operation of Common Elements;

(xi) impose charges for late payments of Assessments, recover reasonable attorneys' fees and disbursements and other costs of collection for Assessments and other actions to enforce the rights of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines and penalties for violations of the Association Documents;

(xii) impose reasonable charges for the preparation and recording of amendments to the Declaration or statements of unpaid Assessments;

(xiii) provide for the indemnification of the Association's officers and directors and maintain directors' and officers' liability insurance;

(xiv) assign its right to future income, including without limitation its right to receive Assessments to secure financing for improvements to Common Elements or performance of Functions, including without limitation construction and/or operation of transit systems which may include gondolas;

(xv) obtain and pay for legal, accounting and other professional services;

(xvi) perform any function by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be necessary or desirable; and

(xvii) enjoy and exercise any other power or authority which similar associations may now or hereafter enjoy or exercise in the State of Colorado.

#### 4.20 Association Documents.

(a) Each Owner shall comply with and may benefit from each term, provision, covenant, condition, restriction, reservation and easement contained in the Association Documents. The obligations, burdens and benefits of Membership in the Association touch and concern the Property and are, and shall be, covenants running with each Lot for the benefit of all other Lots and the Common Elements.

(b) In the event that there is any conflict or inconsistency between the mandatory terms and conditions of the Act and the terms and conditions of this Declaration, the mandatory terms and conditions of the Act shall control. In the event that there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws, the Design Guidelines or the Rules and Regulations, the terms and conditions of this Declaration shall control. In the event that there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws, the

Design Guidelines or the Rules and Regulations, the terms and conditions of the Articles shall control. In the event of any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Design Guidelines or Rules and Regulations, the terms and conditions of the Bylaws shall control.

## ARTICLE V ASSOCIATION MANAGEMENT

5.1 **Membership.** Every Owner, including Declarant, shall be a Member. When an Owner consists of more than one Person, all such Persons will, collectively, constitute one Member of the Association and all such Persons shall be jointly and severally obligated to perform the responsibilities of Owner. Membership will automatically terminate when a Person ceases to be an Owner, whether through sale, transfer, intestate succession, testamentary disposition, foreclosure or otherwise. The Association will recognize a new Owner as a Member upon presentation of satisfactory evidence of the sale, transfer, succession, disposition, foreclosure or other transfer of a Lot to such Owner. Membership may not be transferred, pledged or alienated in any way, except to a new Owner upon conveyance of a Lot. Any attempted prohibited transfer of a Membership will be void and will not be recognized by the Association.

5.2 **Board of Directors.** The affairs of the Association shall be governed by the Board of Directors, which may, by resolution, delegate any portion of its authority to an executive committee or an officer, executive manager or Director of the Association. The Board of Directors shall be appointed and elected, as applicable, in accordance with the following provisions:

(a) Appointment of Directors during the Declarant Control Period. During the Declarant Control Period, Declarant shall have the right to appoint and remove all of the Directors, subject to the following:

(i) Not later than 60 days after the date as of which 25% of the maximum number of Lots that may be created pursuant to Section 3.3 have been conveyed to Owners other than Declarant, at least one Director and not less than 25% of the Directors must be elected by Owners other than Declarant.

(ii) Not later than 60 days after the date as of which 50% of the maximum number of Lots that may be created pursuant to Section 3.3 have been conveyed to Owners other than Declarant, not less than 33.33% of the Directors must be elected by Owners other than Declarant.

(iii) No Director appointed by Declarant shall be required to be an Owner or the authorized representative of an Owner.

(iv) Any Director appointed by Declarant may be removed, with or without cause, only by Declarant and shall not be subject to removal by a vote of the Members.

(b) Section of Directors after the Declarant Control Period. Except as otherwise provided in Section 220(5) of the Act, not later than the termination of the Declarant Control Period, the Owners shall elect a Board of Directors of at least three Directors, at least a majority of which Directors must be Owners other than Declarant or authorized representatives of Owners other than Declarant. Directors elected under this Section 5.2(b) shall take office upon termination of the Declarant Control Period.

5.3 Removal of Directors. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Owners, by the affirmative vote of Owners holding more than 50% of the votes in the Association present, either in person or by proxy, and entitled to vote at any meeting of the Association at which a quorum is present, may remove, with or without cause, any Director other than a Director appointed by Declarant.

5.4 Delivery of Property to Association. Within 60 days after the Owners other than Declarant elect a majority of the Directors, Declarant shall deliver to the Association all property of the Association, as required by Section 303(9) of the Act.

5.5 Bylaws. The qualifications and number of Directors, the term of office of Directors, the manner in which Directors shall be elected and the manner in which Directors shall be replaced upon removal or resignation shall be as set forth in the Bylaws; provided that the Bylaws shall contain provisions that are identical in all substantive respects to the above provisions of Section 5.2, which provisions shall not be amended during the Declarant Control Period without the written consent of Declarant.

## ARTICLE VI BOUNDARY RELOCATION AND SUBDIVISION OF LOTS

### 6.1 Relocation of Boundaries Between Adjoining Lots.

(a) Requirements. The boundaries between adjoining Lots may be relocated upon application to the Association by the Owners of such Lots pursuant to this Section 6.1. In order to relocate the boundaries between adjoining Lots, the Owners of those Lots, as the applicant, must submit an application to the Board, which application shall be executed by those Owners and shall include:

(i) Evidence demonstrating to the Board that the applicant has complied, and that the proposed boundary relocation will comply, with the PUD Guide and all applicable rules, regulations and ordinances of the Town and that the proposed boundary relocation will not violate the terms of any mortgage;

(ii) The proposed form of Plat amendment as may be necessary to show the altered boundaries between adjoining Lots and their dimensions and identifying numbers, and any other information required pursuant to the Act and the regulations of the Town;

(iii) A deposit against attorneys fees and costs that the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board; and

(iv) Such other information as may be reasonably requested by the Board.

(b) Approval of Relocation. The Board may approve (but is not required to approve) any application for relocation of boundaries between adjoining Lots properly made under this Section 6.1 so long as the application meets the requirements of Section 6.1(a); provided, however, that so long as Declarant owns any portion of the Property, any such boundary relocation shall also require the written approval of Declarant, which approval Declarant may withhold for any reason.

(c) Execution and Recording. No relocation of boundaries between adjoining Lots pursuant to this Section 6.1 shall become effective until a Plat amendment meeting the requirements of the Act and the regulations of the Town has been executed and Recorded.

(d) Costs. All costs and attorneys fees incurred by the Association as a result of an application for relocation of boundaries between adjoining Lots shall be the sole obligation of the Owner or Owners requesting such relocation and may be assessed against the Lot(s) of such Owner or Owners as a Specific Assessment.

6.2 Subdivision of Lots. So long as Declarant owns any portion of the Property, no Lot may be subdivided into two or more Lots without the written consent of Declarant, which written consent may be withheld by Declarant in its absolute discretion. Without limiting the foregoing, no Lot may be divided into condominium units or any other common interest community without the consent of Declarant so long as Declarant owns any portion of the Property. In considering whether to approve any proposed subdivision or common interest community, Declarant shall have the right to review all documents to be used in the establishment thereof, including, without limitation, any proposed subdivision plats, condominium maps or declarations. After Declarant no longer owns any portion of the Property, no Lot may be subdivided and no common interest community may be created on the Property without the prior approval of the Association pursuant to any reasonable rules and regulations the Association may adopt.

6.3 Declarant Rights. Nothing in this Article VI shall be construed as limiting Declarant's rights pursuant to Section 3.6(e).

## ARTICLE VII ASSESSMENTS, COMMON EXPENSES, OTHER AMOUNTS AND LIENS

7.1 Financial Matters. The Board, on behalf of the Association, will discharge the following obligations with respect to financial matters:

(a) Books and Records. The Board will cause to be maintained books and records of the Association's business and operations.

(b) Returns. The Board will cause to be prepared and filed before delinquency any and all tax, corporate or similar returns or reports that the Association is required by law to prepare and file.

(c) Preparation of Budget. If making Assessments, the Board will cause to be prepared and will adopt annually, not less than 45 days prior to the beginning of each fiscal year of the Association, a proposed budget for the Association.

(d) Ratification of Budget. Within 30 days after adoption by the Board of any proposed budget for the Association, the Board will send by ordinary first-class mail or otherwise deliver to all Owners a summary of the proposed budget and will set a date for a meeting of the Owners to consider ratification of the proposed budget not less than 14 nor more than 60 days after mailing or other delivery of the summary. Unless at that meeting Owners to whom are allocated more than 50% of the votes in the Association vote to reject the proposed budget, the proposed budget will be ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the budget last ratified by the Owners will continue in effect until such time as the Owners ratify a subsequent budget proposed by the Board. For the first fiscal year of the Association, the Board may adopt Declarant's estimated budget for the Association and assess Common Assessments pursuant to Section 7.1, provided that the Board submits such budget to the Owners for ratification in accordance with the foregoing provisions within 30 days after adopting the same.

7.2 Creation of Assessments. There are hereby created Assessments for such Association expenses as may be authorized from time to time pursuant to this Declaration. There shall be four types of Assessments: (a) Common Assessments as described in Section 7.3; (b) Limited Common Elements Assessments as described in Section 7.4; (c) Special Assessments as described in Section 7.5; and (d) Specific Assessments as described in Section 7.6. Each Owner, by accepting a deed for any Lot, is deemed to covenant and agree to pay these Assessments pursuant to the terms and conditions of this Declaration.

7.3 Common Assessments. Each Lot is subject to Common Assessments for the Lot's share of the Common Expenses as allocated pursuant to Section 3.4(b). Common Assessments will be calculated, paid, adjusted and reconciled in accordance with the following provisions:

(a) Budget and Payment. Taking into account the allocation percentages for the Lots determined pursuant to Section 3.4(b), the Association shall set the Common Assessments for each fiscal year at a level that is reasonably expected to produce total income for the Association for such fiscal year equal to the total Common Expenses set forth in the budget adopted by the Board and ratified by the Owners. In determining the total funds to be generated through the levy of Common Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any Assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to Common Assessments during the fiscal year.

(b) Adjustment. If during any fiscal year it becomes apparent that the estimated Common Expenses and/or revenues of the Association as set forth in the budget upon

which the Common Assessments were based were in error for any reason, including nonpayment by any Owner of a Lot of its Common Assessments, to the extent that the Common Assessments the Board determines will be received for the balance of such fiscal year will be inadequate, or more than required, to meet the Association's obligations intended to be covered by such Common Assessments, the Board may amend the budget and increase or decrease the Common Assessments for the balance of such fiscal year upon not less than thirty (30) days' prior notice to all Owners. Notwithstanding the foregoing, however, if any such amendment individually or in the aggregate with all previous amendments within any fiscal year would increase the total Common Assessments for a fiscal year by more than 10% of the Common Assessments called for by the budget previously ratified by the Owners, then prior to increasing the Common Assessments based on such amended budget the Board must submit the same for ratification by the Owners using the procedures set forth in subsection 7.1(d).

#### 7.4 Limited Common Elements Assessments.

(a) Generally. Each Lot that is allocated any Limited Common Elements is subject to, and the Owner of such Lot is liable for, Limited Common Elements Assessments for such Lot's allocated share (as determined pursuant to Section 7.4(b) below) of the Limited Common Elements Expenses that are attributable to the Limited Common Elements allocated to such Lot. The Association shall set the Limited Common Elements Assessments for each fiscal year at a level that is reasonably expected to produce income for the Association over such fiscal year equal to the Limited Common Elements Expenses set forth in the budget adopted by the Board and ratified by the Owners pursuant to Section 7.1(d).

(b) Allocation. Each Lot to which any Limited Common Element is allocated is allocated a percentage share of the Limited Common Elements Expenses attributable to such Limited Common Element, such percentage to be derived from a fraction, the numerator of which is the number one (1) and the denominator of which is the total number of Lots to which such Limited Common Element is allocated.

7.5 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, unexpected repair or replacement of capital improvements that benefit all of the Owners and are not covered by the General Reserve Fund. The Board shall allocate liability for Special Assessments to the Lots on a uniform basis, provided that the Board shall assess the Owners of Affordable Lots for a percentage of the Special Assessments that is two-tenths (2/10) of the percentage allocated to each Free Market Lot. Except as otherwise specifically provided in this Declaration, any Special Assessments shall require the ratification by the Members in the same manner provided for ratification of budgets under Section 7.1(d). Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials. Without limiting the generality of the foregoing, the Board may levy Special Assessments to cover certain costs of restoration or replacement of General Common Elements in the event of damage, destruction or taking of Common Elements.



7.6 **Specific Assessments.** The Association shall have the power to levy Specific Assessments against one or more particular Lot(s) as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items or services to such Lot or occupants thereof upon request of the Owner of such Lot pursuant to a menu of special services the Board may from time to time authorize to be offered to Owners and occupants (which may include, without limitation, landscape maintenance and snow removal), which Specific Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover costs incurred in bringing the Lot into compliance with the terms of the Association Documents, or costs incurred as a consequence of the conduct of the Owner or such Owner's Guests, including any interest or penalties charged hereunder;

(c) to cover necessary costs or expenses incurred by the Association that solely benefit one or more Lots but fewer than all Lots, such as, for example, the costs of repairing a utility line that serves only one or two Lots but no others (but not including Limited Common Elements Expenses), and, unless the Owners of all the benefited Lots otherwise agree, each benefited Lot shall be assessed a percentage of the Special Assessments so incurred as determined by the Board in an equitable manner.

7.7 **Owners' Obligations for Assessments.**

(a) Personal Obligation. Each Assessment, together with interest (computed from the due date of such Assessment at the rate set by the Board, but not to exceed 21% per annum), late charges in such amount as the Board may establish by resolution, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which the Assessment is made until paid. Each such Assessment, together with such interest, late charges, costs and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment arose. Upon a transfer of title to a Lot, the grantee and the grantor shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance. However, no holder of a first mortgage who acquires title to a Lot by exercising the remedies provided in its mortgage shall be personally liable for unpaid Assessments which accrued prior to such acquisition of title.

(b) Terms of Payment. Common Assessments shall be paid in annual installments or in such other reasonable manner as the Board may establish. Other Assessments shall be paid in a manner established by the Board for such Assessments. The Board may grant discounts for early payment, require advance payment of Assessments at closing of the transfer of title to a Lot, and impose special requirements upon Owners with a history of delinquent payment.

7.8 **No Set-Off or Abatement.** No Owner may exempt himself or herself from liability for Assessments by non-use of Common Elements, abandonment of his Lot or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or

allowed for any alleged failure of the Association or the Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action by the Association or the Board.

7.9 Declarant's Obligation for Assessments. Except as provided in Section 7.6, until the Association establishes a budget and levies Assessments, Declarant shall pay the Association's costs and expenses. After Assessments commence as provided in Section 7.11, Declarant's obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by any combination of these.

7.10 Lien for Assessments.

(a) Perfection and Priority of Lien. The Association shall have an automatic statutory lien against each Lot to secure payment of delinquent Assessments, as well as interest (computed from the due date of such Assessment), late charges in such amount as the Board may establish by resolution, costs and reasonable attorneys' fees. Such lien shall be perfected upon the Recording of this Declaration and no further claim of lien shall be required. Notwithstanding the foregoing and without limitation on the automatic statutory lien against each Lot, the Association shall have the right, but not the obligation, to prepare and record a "Notice of Lien" which shall set forth (i) the amount of any Assessment, charge, fine or other amount due and owing to the Association; (ii) the date such amount was due and payable and the date from which interest accrues; (iii) all costs and expenses including reasonable attorneys' fees incurred in collecting the unpaid amount as of the date of recording of such Notice of Lien; (iv) the Lot affected by the lien; and (v) the name or names, last known to the Association, of the Owner of the Lot. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, Assessments and other levies which by law would be superior, and (b) the lien or charge of any first mortgage made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments shall be prior to a first mortgage to the extent provided by the Act.

(b) Enforcement of Lien. Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of mortgages under the laws of the State of Colorado. The Association may bid for a Lot at any foreclosure sale and acquire, hold, lease, mortgage and convey such Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on behalf of the Association as Owner of such Lot; (b) no Assessments shall be levied against such Lot; and (c) each other Lot shall be charged, in addition to its usual Assessments, its pro rata share of the Assessments that would have been charged the Lot acquired by foreclosure had such Lot not been acquired by the Association. The Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(c) Transfer of Lot. The sale or transfer of any Lot shall not affect an existing lien for previous Assessments or relieve such Lot from any lien for subsequent Assessments. However, the sale or transfer of any Lot pursuant to foreclosure of first mortgage on the Lot shall extinguish the lien as to any installments of such Assessments due prior to such sale or transfer, except as provided in the Act. Upon sale or transfer of a Lot pursuant to foreclosure of a first mortgage, the liability for Assessments extinguished by such foreclosure

shall become Common Expenses collectible from Owners of all Lots subject to Common Assessments.

7.11 **Commencement of Assessments.** The obligation to pay Common Assessments, Limited Common Elements Assessments and Special Assessments shall commence as to each Lot on the first day of the month following the later of: (a) the month in which the Lot is made subject to this Declaration or (b) the month in which the Association first establishes and ratifies a budget and levies Assessments pursuant to this Article VII. The obligation to pay Specific Assessments shall commence as to any Lot when the Association levies the Specific Assessments against the Lot pursuant to this Declaration. The first annual Common Assessments, Limited Common Elements Assessments and Special Assessments levied on each Lot, whether levied at the partial or full rate, shall be prorated according to the number of months remaining in the fiscal year at the time Assessments commence on the Lot.

7.12 **Failure to Assess.** Failure of the Board to fix Common Assessment amounts or rates or to deliver or mail to each Owner of a Free Market Lot a Common Assessment notice shall not be deemed a waiver, modification or release of any such Owner's obligation to pay Common Assessments. In such event, each such Owner shall continue to pay Common Assessments on the same basis as during the last year for which a Common Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

7.13 **Exempt Property.** The following property shall be exempt from payment of Assessments: (i) all Common Elements and (ii) any property dedicated to and accepted by any governmental authority or public utility.

## ARTICLE VIII CERTAIN RIGHTS OF DECLARANT, OWNERS AND ASSOCIATION

### 8.1 **Declarant's Easements and Related Rights.**

(a) Declarant hereby reserves for itself and its licensees, invitees, lessees, successors and assigns a perpetual easement on, over, upon, across, above, under and through the Common Elements as may be reasonably necessary to (i) discharge Declarant's obligations under this Declaration; (ii) exercise any Special Declarant Right; and (iii) make improvements within the Property.

(b) Declarant hereby reserves to itself and its licensees, invitees, lessees, successors and assigns, the right from time to time to establish and use nonexclusive, perpetual utility and other easements, leases, permits or licenses on, over, upon, across, above, under and through the Common Elements for uses including, but not limited to, streets, mountain and Ski Area access roads and other limited access roads, paths, walkways, skiways, sidewalks, and trails; any facilities necessary or useful for transit purposes, including gondolas or other means of transportation to and from the Property; ski lifts; snowmaking facilities; clubhouses; bus stops and related structures and signage; mailbox structures; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and

other vegetation) and appurtenances; ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and flues; conduit installation areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road and skiway supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and improvements that the District may be empowered by law from time to time to construct; and to create other reservations, exceptions and exclusions for the best interest of the Association, in order to serve all persons residing, visiting or doing business within the Property; provided that any such easement, lease, permit or license does not unreasonably impair the use of the Common Elements for their intended purpose.

(c) Declarant hereby reserves to itself, and its licensees, invitees, lessees, successors and assigns, the right at any time, and from time to time, to close or restrict the use of any mountain or Ski Area access roads or limited access roads that exist within or in the vicinity of the Property.

### 8.2 Rights and Obligations of Owners.

(a) Subject to the provisions of this Declaration and the power of the Association to regulate the use of, and convey or encumber the Common Elements as set forth in the Association Documents and/or in the Act, each Owner, for the benefit of such Owner and its Guests, shall have a nonexclusive easement over, upon, across and with respect to any Common Elements as appropriate and necessary for: access, ingress and egress to the Lot of such Owner; and to use the General Common Elements for all purposes for which they are intended.

(b) All rights, easements and obligations of an Owner under this Declaration and all rights of an Owner with respect to Membership under this Declaration are hereby declared to be and shall be appurtenant to the fee simple title to the Lot owned by such Owner and may not, except as provided in this Section 8.2, be transferred, conveyed, granted, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Lot. Every transfer, conveyance, grant, devise, bequest, encumbrance, other disposition of a Lot shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance, transfer or disposition of such rights and obligations. A transfer of ownership of a Lot may be made by deed, intestate succession, testamentary disposition, foreclosure of a deed of trust or mortgage of record or such other legal process as is now effective or may hereafter become effective under the laws of the State of Colorado.

(c) Each Owner, by accepting a deed to a Lot, agrees to abide by the provisions of the Association Documents and to cooperate with the Association in its efforts to enforce such provisions.

**8.3 Other Association Easements.** Declarant hereby grants to the Association, its licensees, invitees, lessees, successors and assigns, a nonexclusive, perpetual easement on, over, upon, across, above, under and through the Property and each portion thereof to (i) exercise any right held by the Association under this Declaration or any other Association Document, and (ii) perform any obligation imposed upon the Association by this Declaration or any other Association Document. Notwithstanding the foregoing, the Association shall not enter

upon any Lot without reasonable prior notice to the Owner of the Lot, except in cases of emergency.

#### 8.4 Other Easements.

(a) The Property shall be subject to all easements shown on any Plat and in any other easements of record or of use. In addition, the Property is subject to all easements created by this Declaration. Each Owner, by accepting a deed to a Lot, agrees to be subject to such easements and the rules and regulations from time to time in effect of the easement owners governing the use of such easement areas.

(b) Declarant hereby grants a nonexclusive perpetual easement across and over the Property for ingress and egress to all police, sheriff, fire protection, ambulance and similar emergency agencies or persons, now or hereafter serving the Property, to enter the Property in the performance of their duties.

8.5 **Enjoyment of Functions and Common Elements.** Each Owner and Guest (and members of the general public in the discretion of the Board) shall be entitled to use and enjoy any Common Elements suitable for general use or the services provided by any Functions, subject to the Rules and Regulations and subject to such reasonable and uniformly applied charges the Association may impose to offset costs and expenses, depreciation and capital expenses, subject to the provisions of this Declaration and subject to the following specific limitations. Such Rules and Regulations and charges may differentiate between different categories of Owners, Guests or members of the general public, as established by the Board of Directors from time to time; however, the rules, regulations and charges must be uniformly applied within such categories. There shall be no obstruction of any Common Elements, nor shall anything be stored in or on any part of any Common Elements, without the prior written consent of the Association. Nothing shall be altered on, constructed in or removed from any Common Elements, except with the prior written consent of the Association. Nothing shall be done or kept on or in any Common Elements that would result in the cancellation of the insurance or any part thereof which the Association is required to maintain pursuant hereto or increase the rate of the insurance or any part thereof over the amount that the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept on or in such Common Elements that would be in violation of any statute, rule, ordinance, regulation, permit or other requirement of any governmental body. No damage to, or waste of, Common Elements shall be committed, and each Owner shall indemnify and hold the Association and the other Owners and their Guests harmless against all loss resulting from any such damage or waste caused by such Owner and its Guests. No noxious, destructive or offensive activity shall be carried on with respect to any Common Elements, nor shall anything be done therein or thereon which may be or become a nuisance to any other Owner or Guest. All restrictions contained in Article IX below shall apply to the Common Elements.

8.6 **Special Declarant Rights.** Declarant hereby reserves for itself and its successors and assigns all special declarant rights as defined in Section 38-33.3-103(29) of the Act ("Special Declarant Rights"), which rights may be exercised at any time and in any order during the term of this Declaration, and include, but are not limited to:

(a) the right to complete any improvements shown on any Plat, and the right to construct any improvement that Declarant deems necessary or advisable on any Common Element, or any portion of the Property owned by Declarant, including, without limitation, streets, mountain access roads and other limited access roads, paths, walkways, skiways, sidewalks, and trails; any facilities necessary or useful for transit purposes, including gondolas or other means of transportation to and from the Property; ski lifts; snow-making facilities; clubhouses; bus stops and related structures and signage; mailbox structures; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and lines; conduit installation areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road and skiway supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and improvements that the District may be empowered by law from time to time to construct;

(b) the right to construct and maintain sales offices, booths or other structures used for sales or promotional purposes, management offices and models on any Common Element, or any portion of the Property owned by Declarant. Declarant also reserves for itself and its successors and assigns the right to construct and maintain signs advertising the Property. The number, size and location of any such sales structures and signage, management offices or models or the relocation thereof shall be determined by Declarant;

(c) the right to exercise any and all Development Rights to the full extent permitted by the Act, including without limitation, the right to add any portion of the Additional Property to the Property and to amend this Declaration in connection therewith, the right to amend this Declaration to create additional Lots and Common Elements, the right to subdivide Lots and change the boundary lines between Lots (including any Lot(s) not owned by Declarant with the consent of the Owner(s) of such Lot(s)), the right to convert any Lots into Common Elements (including any Lot(s) not owned by Declarant with the consent of the Owner(s) of such Lot(s)), and the right to withdraw any and all portions of the Property from the Property as permitted in the Act;

(d) the right to use easements through the Common Elements for the purpose of making improvements within the Property or within real property which may be added to the Property;

(e) the right to make the Property subject to a master association; and

(f) the right to merge or consolidate the Property with a common interest community of the same form of ownership.

8.7 **Declarant Right to Appoint.** Notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, to the extent permitted in the Act, Declarant shall have the exclusive right to appoint and remove all directors of the Board of Directors and all officers of the Association during the Declarant Control Period.

## ARTICLE IX RESTRICTIONS APPLICABLE TO PROPERTY

9.1 **Land Use Restrictions.** In addition to the restrictions found in Article IX, all or any portion of the Property shall be further restricted in its use, density and design according to the PUD Guide and the Design Guidelines. In the event of any conflict or inconsistency between the PUD Guide, this Declaration and/or the Design Guidelines with respect to any matter, the more restrictive provision shall control. Each Owner shall comply with all other terms, provisions, covenants, conditions, restrictions, easements and reservations on the Owner's part to be complied with under this Declaration.

9.2 **Maintenance of Property.** All Property, except for any portion of the Property then undergoing major construction, including all improvements on such Property, shall be kept and maintained by the Owner thereof in a clean, safe, attractive and slightly condition and in good repair, and no trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot so that they are visible from, or are a nuisance in any way to, any neighboring Lot or any road.

9.3 **Approval of Construction Activities.** Each Owner shall have the right to construct a building and other improvements on its Lot, provided that no building or other improvements, including without limitation, any fence, wall, driveway, paving, walk, deck, patio, canopy, awning, roof, signage, exterior lighting facility or landscaping, shall be constructed, erected, placed or installed upon any Lot, and no change or alteration of the materials or appearance (including color) of the exterior of a building or other structure shall be made, and no change in the final grade of any Lot shall be performed, and no other construction activity shall be initiated on any Lot, until all approvals as may be required by the Association Documents and by any governmental entity having jurisdiction over the Property have been obtained by such Owner. In this regard, without limiting the generality of the foregoing, each Owner is hereby advised and acknowledges that, in connection with any construction on its Lot, it must comply with the applicable provisions of the Association Documents, which documents include, among other things, the following: (i) the Design Guidelines and the procedures and necessary fees for making application to the Design Review Board for design review approval; (ii) time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under such documents; (iii) minimum and maximum square foot areas of living space that may be developed on any Lot, as applicable; (iv) landscaping and irrigation regulations, with limitations and restrictions prohibiting tree removal or requiring the replacement of existing trees, the use of plants indigenous to the locale and other practices benefiting the protection of the environment, aesthetics and architectural harmony of the Property; and (v) instructions and/or regulations for the construction, reconstruction, refinishing or alteration of any improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation of utility lines or conduits on the Property, addressing matters such

as grading, drainage, transformers, meters, fire protection, loading areas, waste storage, trash and debris removal, parking areas, outside storage, sanitary facilities, and conduct and behavior of builders, subcontractors and Owners' representatives on the Property at any time.

9.4 **Water and Sanitation.** Each structure designed for occupancy will connect, prior to occupancy, with water and sanitation facilities as are made available from time to time by the District, the Mt. Crested Butte Water and Sanitation District or any other approved utility supplier.

9.5 **Use of Property During Construction.** It shall be expressly permissible and proper for Declarant and any Owner acting with the prior written consent of the Design Review Board, and their respective employees, agents, independent contractors, successors and assigns involved in the construction of improvements on, or the providing of utility service to, the Property, to perform such activities and to maintain upon portions of the Property as they deem reasonably required, convenient, necessary or incidental to such construction and development of the Property. This permission specifically includes, without limiting the generality of the foregoing, maintaining storage yards, construction yards, portable toilets, equipment and signs. However, no activity by an Owner will be performed and no facility will be maintained by an Owner on any portion of the Property in such a way as to unreasonably interfere with the use or access of any other Owner or its Guests to such Owner's Lot. If any Owner's use under this provision is deemed objectionable by the Design Review Board, then the Design Review Board, in its sole discretion, may withdraw this permission. Notwithstanding the foregoing, this section will not operate to prevent the exercise by Declarant of any Special Declarant Rights.

9.6 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any Property nor shall anything be done or placed on any Property which is or may become a nuisance or cause any significant embarrassment, disturbance or annoyance to others. As used herein, the term "noxious or offensive activity" shall not include any activities of an Owner, Declarant or their respective designees which are reasonably necessary to the development of and construction on the Property so long as such activities do not violate Association Documents or the statutes, rules or regulations of any governmental authority having jurisdiction with respect thereto and do not unreasonably interfere with any Owner's use of its Lot or with any Owner's ingress and egress to or from its Lot and a roadway.

9.7 **No Harassment of Wildlife.** No harassment of wildlife shall be permitted. With the exception of bird feeders, the feeding, baiting, selling or other means of attracting wildlife to individual yards or Common Elements shall be prohibited.

9.8 **No Hazardous Activities.** No activities shall be conducted on any portion of the Property and no improvements constructed on any portion of the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Property; and no open fires shall be lighted or permitted on any portion of the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior wood or gas burning device (except campfires or picnic fires on Property designated for such use by



Declarant or by the Association and controlled and attended fires authorized in writing by Declarant or the Association and required for clearing or maintenance of land).

9.9 **No Unsightliness.** No unsightliness shall be permitted on any portion of the Property. Without limiting the generality of the foregoing:

(a) All unsightly structures, facilities, equipment, objects and conditions shall be kept within an enclosed structure at all times;

(b) Motor vehicles classed by manufacturer rating as exceeding three-quarter ton, mobile homes, travel trailers, tent trailers, trailers, trucks (except pickup trucks used for personal, and not commercial transport), snowmobiles, golf carts, boats, boat trailers, tractors, detached campers, camper shells, snow removal equipment and garden or maintenance equipment shall be kept in an enclosed structure at all times, except when in actual use; provided that such equipment may be parked on parking lots or other areas specifically designated by the Design Review Board for such equipment;

(c) Refuse, garbage and trash shall be kept in a covered container at all times and any such container shall be kept within an enclosed structure until time of pick-up;

(d) Service areas and facilities for hanging, drying or airing clothing or fabrics shall be kept within an enclosed structure;

(e) Pipes for water, gas, sewer, drainage or other purposes, wires, cables, poles, antennas and other facilities for the transmission or reception of audio or visual signals or electricity, utility meters or other utility facilities, gas, oil, water or other tanks, and sewage disposal systems or devices shall be kept and maintained within an enclosed structure or below the surface of the ground; and

(f) No lumber, grass, shrub or tree clippings or plant waste, compost, metals, bulk materials or scrap or refuse or trash or unused items of any kind shall be kept, stored or allowed to accumulate on any Property.

All enclosed structures shall comply with the Design Guidelines of the Design Review Board as in effect from time to time. The Design Review Board shall have the power to grant a variance from the provisions of this Section 9.9 from time to time as it deems necessary or desirable.

9.10 **Lights, Sounds and Odors.** All exterior lighting of improvements and grounds on the Property will be subject to regulation by the Design Review Board. No light shall be emitted from any Property which is unreasonably bright or causes unreasonable glare or shines directly onto an adjacent Lot. No sound shall be emitted from any Property which is unreasonably loud or annoying. No odor shall be emitted from any Property which is noxious or offensive to others. Notwithstanding the foregoing, any lights, sounds or odors that are emitted as a result of any activities related to the operation of the Ski Area, gondolas and ski lifts shall be exempt from the application of this Section 9.10.

9.11 **Restriction on Animals.** No animals of any kind shall be raised, bred or kept on any portion of the Property except in compliance with the PUD Guide.

9.12 **Restriction on Signs.** Except as otherwise provided in Section 9.19, no signs or advertising devices of any nature shall be erected or maintained on any portion of the Property in such a manner as to be visible outside any Lot except signs approved by the Design Review Board, signs required by applicable law or legal proceedings, identification signs for work under construction (as approved by the Design Review Board), temporary signs to caution or warn of danger or the Association signs necessary or desirable to give directions or advise of Rules or Regulations.

9.13 **Restrictions on Parking.** Parking of vehicles on the Property is permitted with respect to a Lot only within parking spaces constructed with the prior approval of the Design Review Board and such parking shall be used only for the parking of personal vehicles. The Association shall have the right to park any type of vehicle owned or used by the Association upon Property only within parking either built by Declarant or approved by the Design Review Board in such areas designated for such purpose by Declarant. Notwithstanding the foregoing, the Association may designate areas for off-street parking on the Property for the temporary parking of maintenance and delivery vehicles, for the sole purpose of assisting in a maintenance operation or to provide for the loading or unloading of such vehicles, or to accommodate special circumstances.

9.14 **Restriction on Recreational Vehicles.** No motorcycle, motorbike, snowmobile, golf cart or other motorized recreational vehicle shall be operated within or on the Property, except for (i) snowmobiles operated by the owner or operator of the Ski Area, (ii) licensed motorcycles and motorbikes that are driven on the roadways, and (iii) vehicular uses that are otherwise specifically permitted by the Rules and Regulations.

9.15 **Restriction on Woodburning Devices.** No wood burning device shall be operated on any Lot except in compliance with the PUD Guide or other applicable law.

9.16 **No Mining and Drilling.** No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth; provided, however, that excavation or drilling for soil testing purposes shall be permitted.

9.17 **No Fences.** No fences, walls or other barriers shall be permitted for the purpose of enclosing or demarcating any property boundaries without the prior written approval of the Design Review Board.

9.18 **General Practices Prohibited.** The following practices are prohibited on the Property: (i) removing any rock, plant material, top soil or similar items from any property of others; (ii) carrying loaded firearms on the Property, except within private residences; (iii) using surface water for construction; and (iv) disposing carelessly of cigarettes and other flammable materials. Notwithstanding the foregoing, the removal of rock, plant material, top soil or similar items from the Property by Declarant or the Association pursuant to its easement rights shall be exempt from the application of this Section 9.18.

9.19 **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent (i) the exercise by Declarant of any Special Declarant Rights; or (ii) the erection or maintenance by Declarant or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of property within the Property.

9.20 **Health, Safety and Welfare.** In the event additional uses, activities and/or facilities are deemed by the Board of Directors to be nuisances or to adversely affect the health, safety or welfare of Owners or members of the general public or the value of any Property, the Board of Directors may adopt Rules and Regulations restricting or regulating the same.

9.21 **Compliance with Law.** In addition to the compliance requirements set forth in Section 9.1 above, no Property shall be used, occupied, altered, changed, improved or repaired except in compliance with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America, State of Colorado, the Town, and all other municipal, governmental or lawful authority whatsoever, affecting the Property or the improvements thereon or any part thereof, and of all their departments, bureaus and officials. Furthermore, no Owner shall release, discharge or emit from the Property or dispose of, or allow any person under such Owner's control or direction to release, discharge or emit from the Property or dispose of, any material on, above or under the Property that is designated as a pollutant, contaminant or hazardous material under any federal, state or local law, regulation or ordinance.

9.22 **Additional Covenants, Conditions and Restrictions.** By specific provision in any deed from Declarant, Declarant may subject any Lot to be conveyed by such deed to additional covenants, conditions or restrictions applicable to the particular Lot conveyed by such deed.

**ARTICLE X  
COMMON ELEMENTS THAT MAY BE CONSTRUCTED**

10.1 **Common Elements Which May Be Constructed.** Set forth below is a general description of the type of any Common Element that Declarant anticipates may be constructed by, maintained by or operated by the Association (however, Declarant shall have no obligation to construct, maintain or operate any such Common Element):

Parking areas, streets, roads, paths, walkways, sidewalks, trails, drives, malls, stairs, skiways, ski lifts, snow-making facilities, health care facilities, security systems, fire protection facilities, fire water system, lights, signage, transportation systems including but not limited to gondola, bus, automobile or rail systems and any facilities necessary or appropriate for the proper operation and maintenance of such systems, access road control gates, daycare facilities and such equipment as may be appropriate for use in connection therewith, swimming pools, ice rinks, skating ponds, clubhouses, foot and bicycle trails and related facilities, saunas, steam baths, tennis courts, game or sports courts, game and special events areas, fishing areas and facilities, bob sledding and snow shoeing facilities, outdoor entertainment and other recreational amenities and such equipment as may be appropriate for use in connection

therewith, reception and information centers, facilities to accommodate Guests and visitors, a central waste collection and/or disposal facility, animal control facilities, kennel facilities, satellite dishes, cable television equipment and related facilities, telephone answering service facilities, warehouses, central laundry facilities, a central communications center, mailbox structures, bus stops and related structures, gardens, sprinkler systems and other landscaping improvements and appurtenances, ponds, water tanks, drainage facilities, manurements, recreational areas, storage facilities for supplies and equipment, earth walls, retaining walls and other road and skiway supports, ducts, shafts and flues, conduits, utility and service lines and systems including but not limited to water, sanitary sewer, gas, storm drainage, telephone, electricity, cable and/or satellite television, and other communications lines and systems, sales offices, booths and other structures used for sales or promotional purposes, management offices, models, buildings, environmental monitoring equipment or facilities, all types of structures, facilities and improvements that the District may be empowered by law from time to time to construct, and such other buildings, facilities, structures and improvements as the Association may from time to time deem necessary or advisable.

**ARTICLE XI  
DESIGN REVIEW**

11.1 **Purpose.** In order to preserve the natural beauty of the Property and its setting, to maintain the Property as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, and to protect and promote the value of the Property and the Lots, all exterior design, landscaping and use of all new development and additions, changes or alterations to existing use, landscaping and exterior design and development shall be subject to review by the Design Review Board under the authority of this Article XI.

11.2 **Objectives.** The design review process shall be conducted with the following objectives in mind for the Property:

- (a) Preventing excessive or unsightly grading, indiscriminate earthmoving or clearing of property, removal of trees and vegetation which could cause disruption of natural watercourses or scar natural landforms;
- (b) Ensuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the land and with surrounding lots, structures and open space, and do not unnecessarily block scenic views from existing buildings or tend to dominate any general development or the natural landscape;
- (c) Ensuring that the architectural design of structures and their materials and colors are visually harmonious with the Property's over-all appearance, history and cultural heritage, with surrounding development, with natural landforms and native vegetation, and adheres to or complies with development plans, zoning requirements, and other restrictions officially approved by Declarant, the Association or any government or public authority, if any, for the sites in which the structures are proposed to be located;

(d) Ensuring that plans for the landscaping of open spaces provide visually pleasing settings for structures on such Lots and on adjoining and nearby Lots and blend harmoniously with the natural landscape;

(e) Ensuring that any development, structure, building or landscaping complies with the provisions of this Declaration, including but not limited to, those provisions set forth in Article LX;

(f) Ensuring that building design and construction techniques respond to energy consumption and environmental quality considerations, such as heat loss, air emissions, and run-off water quality; and

(g) Ensuring that all development on the Property complies with the PUD Guide.

11.3 Design Review Board. The Association shall establish a Design Review Board that shall consist of five members. The qualifications, terms, appointment and removal of the members of the Design Review Board shall be provided for in the Bylaws; provided, however, that the Bylaws shall contain provisions identical in all substantive respects with the following:

(a) General Qualifications. Each member of the Design Review Board shall be a natural person who is eighteen years of age or older. A member of the Design Review Board need not be a Member of the Association.

(b) Specific Qualifications. The Design Review Board shall at all times be comprised of members having the following qualifications: one member of the Design Review Board shall be an architect licensed in the State of Colorado; one member of the Design Review Board shall be a practicing landscape architect with an undergraduate or graduate degree in landscape architecture from an accredited institution; one member of the Design Review Board shall be a professional engineer licensed in the State of Colorado; and the two remaining members of the Design Review Board shall meet the general qualifications of Section 11.3(a) above, but need not have any other specialized qualifications.

(c) Appointment and Removal. For so long as Declarant owns any portion of the Property (without regard to whether such portion is a Lot), Declarant shall have the exclusive right to appoint and remove, at will, all of the members of the Design Review Board; provided, that Declarant may relinquish such right at any time by delivering a duly executed written instrument to such effect to the Association. After the right of Declarant to appoint and remove the members of the Design Review Board has expired or has been relinquished, the Board of Directors of the Association shall have the right to appoint and remove, at will, all of the members of the Design Review Board. So long as Declarant has the right to appoint and remove the members of the Design Review Board as provided above, neither the Members nor the Board of Directors shall have the right to appoint or remove the members of the Design Review Board, and neither this Declaration nor the Bylaws shall be amended through any means to provide otherwise.

Subject to the requirements above, the Bylaws may address any other issue regarding the operation of the Design Review Board. The Design Review Board shall operate in accordance with this Declaration, the Bylaws, the Design Guidelines and the PUD Guide.

#### 11.4 Design Review Board Approval and Control.

(a) In addition to the requirements set forth in Section 9.3 above and except as otherwise provided in Section 9.19, no Owner shall perform the activities described in Section 9.3 above, on or under any Lot or building or structure thereon, or change the use of any Lot or building or structure thereon, unless the Design Review Board has approved the plans and specifications for the project, showing the nature, kind, shape, height, color, materials and location of same, and the construction procedures to be used to ensure compliance with Article IX, including compliance with the PUD Guide and the additional land use restrictions made applicable to the Property by Article IX. Alterations or remodeling which are completely within a building or structure and which do not change the exterior appearance and are not visible from the outside of the structure may be undertaken without Design Review Board approval, provided such alterations or remodeling do not change the use of the building or structure or the number of Dwelling Units within the building or structure. All actions taken by the Design Review Board shall be in accordance with the Design Guidelines. The Design Guidelines may be amended from time to time by action of the Design Review Board that is consistent with and fulfills the purpose of this Declaration. Actions taken by the Design Review Board shall not be arbitrary or capricious and decisions shall be conclusive and binding on all interested parties, subject only to the right of appeal and review by the Board of Directors as set forth below; and such approval or consent shall not prohibit enforcement of the provisions of this Declaration under Article XII. The Design Review Board or its designated representative shall monitor any approved project to the extent required to ensure that the construction or work on such project complies with any and all approved plans and construction procedures. The Design Review Board or its designated representatives may enter upon any Property at any reasonable time or times to inspect the progress, work status, or completion of any project. In addition to the remedies described in Article XII, the Design Review Board may withdraw approval of any project, thereby stopping all activity at such project, if deviations from the approved plan or approved construction practices are not corrected or reconciled within 24 hours after written notification to the Owner specifying such deviations.

(b) Any material to be submitted or notice to be given to the Design Review Board shall be submitted at the offices of Declarant or at such other location as the Design Review Board may designate from time to time.

**11.5 Design Guidelines and Construction Procedures.** The Design Review Board shall promulgate and publish design guidelines and rules and regulations (collectively, the "Design Guidelines") that shall state the general design theme of all projects in the Property, specific design requirements, and the general construction procedures that will or will not be allowed in the Property. The Design Guidelines also shall set forth the procedures to be followed and materials which must be provided by any Owner or his or her authorized agent in order to obtain review of proposed construction by the Design Review Board. The Association shall be obligated for the cost of the Design Guidelines, and the Design Review Board shall make copies of the Design Guidelines available to Owners.

11.6 **Exterior Maintenance.** Pursuant to the provisions of Section 4.7, the Design Review Board may, by the affirmative vote of a majority of the members of the Design Review Board present at any meeting, after 30 days' notice of such failure to the Owner of such Lot, request that the Association provide exterior maintenance and repair upon any Lot.

11.7 **Review Fee.** The Design Review Board may set a review fee schedule sufficient to cover all or part of the cost of Design Review Board time, consultant's fees, and incidental expenses. Applicants for design review may be required to deposit with the Design Review Board a fee which the Design Review Board deems sufficient to cover the costs of design review from which the actual costs shall be deducted when determined and the balance returned to the applicant following completion of the design review procedure.

11.8 **Enforcement of Restrictions.** Prior to the completion of construction or action subject to review under Section 11.4, the Design Review Board shall have primary responsibility for enforcing the restrictions set forth in Article IX of this Declaration and the Design Guidelines; provided, however, that such responsibility shall not limit the right of Declarant or the Association to act under Article XII. If the Design Review Board does not take action to enforce such restrictions within 15 days after being requested to do so by the Board of Directors, the Association may assume responsibility for enforcing such restrictions in any case in which the Design Review Board declines to act. Subsequent to the completion of construction or action subject to review under Section 11.4, the Association shall have primary responsibility for enforcing such restrictions.

11.9 **Reconsideration, Review and Appeal.** Within seven days following action of the Design Review Board, its decision to approve or disapprove the project design shall be transmitted to the applicant and to the Association, and shall be made available to other Members upon their written request. The Board of Directors may confirm, modify or reverse the decision of the Design Review Board within 20 days following the decision; provided, however, that the Board of Directors may not modify or reverse the decision of the Design Review Board except upon the affirmative vote of no less than four members of the Board of Directors. If the Board of Directors does not modify or reverse the decision of the Design Review Board, it will be deemed to have confirmed such decision. Any decision of the Design Review Board shall become final if no action is taken by the Board of Directors and no written request for reconsideration is made to the Design Review Board by the applicant or any aggrieved party within 20 days following the decision of the Design Review Board. If no action was taken by the Board of Directors and a request for reconsideration is timely made, the Design Review Board shall reconsider the matter at its next regularly scheduled meeting. The decision rendered upon such reconsideration shall be transmitted to the applicant, any aggrieved party and to the Board of Directors as set forth above, and shall become final if no written appeal to the Board of Directors is made to such decision within seven days following the date of notice of such decision. Not more than 60 days following the filing of an appeal by the applicant or aggrieved party, the Board of Directors shall review the action of the Design Review Board and shall, in writing, confirm, modify or reverse the decision of the Design Review Board. If the Board of Directors deems insufficient information is available to provide the basis for a sound decision, the Board of Directors may postpone final action for not more than 30 additional days. Failure of the Board of Directors to act within 95 days from the date of the filing of the appeal shall be deemed approval by the Board of Directors of the design of the project unless the applicant

consents to a time extension. Any decision by the Design Review Board or Board of Directors which results in disapproval of the project design shall specifically describe the purpose, development plan, covenant or provision of the Design Guidelines with which the project does not comply and the manner of noncompliance.

11.10 Lapse of Design Review Approval. Approval of the design of a project shall lapse and become void one year following the date of final approval of the project, unless prior to the expiration of one year a building permit is issued and construction is commenced and diligently pursued toward completion.

11.11 Assignment of Function. Any function to be performed by the Design Review Board pursuant to Article IX or this Article XI may be assigned to the Association in whole or in part at any time or from time to time by the Design Review Board in its discretion.

11.12 Liability. Neither Declarant, the Association nor the Design Review Board nor any of their respective officers, directors, employees or agents shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved under this Article XI nor for any defects in construction pursuant to such plans and specifications.

## ARTICLE XII ENFORCEMENT AND REMEDIES

### 12.1 Enforcement.

(a) Each provision of this Declaration enforceable against the Association or the Common Elements shall be enforceable by Declarant or by any Owner by a proceeding for a prohibitive or mandalury injunction.

(b) Each provision of this Declaration enforceable against an Owner or Tor shall be enforceable by Declarant or the Association by a proceeding for a prohibitive or mandalury injtaction or by suit or action to recover damages, or in the discretion of the Association, for so long as any Owner or Guest fails to comply with any such provisions, by exclusion of such Owner and/or such Owner's Guests from the use of any Common Elements and from the participation in any Function.

12.2 Remedies. In addition, if an Owner fails to perform or observe any covenant or condition on such Owner's part to be performed or observed under this Declaration or any other Association Document, the Association shall have the following rights and remedies:

(a) The Association may, but is not obligated to, cure such failure to comply at the Owner's, or other defaulting party's, sole cost and expense. If the Association cures any such failure to comply, such Owner shall pay to the Association the amount of all costs incurred by the Association in connection therewith as a Specific Assessment within 30 days after the Owner receives a written invoice therefor from the Association;

(b) The Association may suspend the Owner's right to vote;



(c) Except as otherwise provided in any Association document, and in addition to the fines provided for therein, the Association may fine the Owner an amount not to exceed \$1,000 for each violation, which shall be payable as a Specific Assessment. The Association may, in its sole and exclusive discretion, annually adjust for inflation the maximum amount of such fine. Each day any violation continues or is permitted to continue shall constitute a separate offense for purposes of levying such fine. The Owner shall pay any such fine to the Association within 30 days after the Owner receives written notice thereof.

(d) The Association shall have all other rights and remedies available to it under Association Documents, at law or in equity. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

### ARTICLE XII SPECIAL DISCLOSURE MATTERS

12.1 Disclosures. Each Owner and member of the general public is hereby advised of the following matters affecting the Property and the use and enjoyment thereof:

(a) The Property is located in the vicinity of skiing facilities and recreational areas, including the Ski Area (the "Mountain Recreational Areas"). The Mountain Recreational Areas are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance of the Mountain Recreational Areas (the "Mountain Activities"). The Mountain Activities include, without limitation, (a) movement and operation of (i) passenger vehicles (including, without limitation, buses, vans and other vehicles transporting passengers over adjacent streets and over, around and through the Mountain Recreational Areas, and (ii) construction vehicles and equipment; (b) activities relating to the construction, operation and maintenance of roads, trails (e.g., bicycling and biking trails), ski trails, skiways and other facilities relating to the Mountain Recreational Areas, including, without limitation, (i) tree cutting and clearing, grading and earth moving, and other construction activities, (ii) construction, operation and maintenance of access roads, snow-making equipment, chair lifts, gondolas, buses or other transportation systems, and (iii) operation of vehicles and equipment relating to trash removal, snow removal, snow grooming and over-the-snow or over-the-terrain transportation purposes and operations of safety and supervision vehicles; and (c) activities relating to the use of the Mountain Recreational Areas, including without limitation, (i) skiing, snow-boarding, ski-patrol activities and other over-the-snow activities, (ii) hiking, horseback riding, bicycling, ski racing and organized events and competitions relating to such activities, (iii) concerts, fireworks displays and other performances and special events, (iv) restaurants, clubs, restrooms and other public use facilities, (v) indoor and outdoor restaurant and bar operations (including, without limitation, the sale of food and alcoholic and non-alcoholic beverages for consumption in the vicinity of the Lots and at other locations) and preparation of hot and cold food (through the use of barbecue grills, fire pits and other smoke and/or odor producing means) and beverages at indoor and outdoor facilities in the vicinity of the Lots, (vi) public use of roadways in, through and near the Lots for access to the Mountain Recreational Areas and other lands, (vii) other activities permitted by law, and (viii) public access to adjacent

federal lands. The Mountain Activities may occur during daytime and nighttime and therefore may include illumination for such activities.

(b) The Property is located in an area that is subject to or near ongoing construction activities relating to the development of adjacent properties and the Mountain Recreational Areas (collectively, the "Construction Activities"). The Construction Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Construction Activities may include, without limitation: (a) construction traffic (including, without limitation, construction vehicles, equipment and vehicles used or owned by Seller, adjacent landowners and the employees, agents and contractors of either of them; and (b) construction activities (including, without limitation, grading, excavation, clearing, site work and the construction of improvements) relating to the Property, nearby properties or the Mountain Recreational Areas.

13.2 **Owner Acknowledgment and Waiver.** By taking title to a Lot, each Owner acknowledges that the Mountain Activities and the Construction Activities, and the impacts and disturbances generated by the Mountain Activities and the Construction Activities, may occur in and around the Owner's Lot and the Property. In addition, by taking title to a Lot, each Owner agrees to forever waive and release any claims the Owner, its successors and assigns may have against Declarant, the District, the owner(s) and operator(s) of the Mountain Recreational Areas, and their successors and assigns that in any way arise out of the impacts and disturbances generated from the Mountain Activities or the Construction Activities.

13.3 **No Ski Area Discounts.** No Owner shall, by virtue of being an Owner or a Member in the Association, receive any waiver or discount from the fees customarily charged to users of the Ski Area. Each Owner shall be required to purchase the requisite passes or lift tickets for any and all use of the ski lifts and other facilities within the Ski Area.

## ARTICLE XIV CASUALTY AND CONDEMNATION

### 14.1 **Casualty.**

(a) In the event of damage or destruction to any part of the Common Elements due to fire or other adversity or disaster, any insurance proceeds shall be collected by and paid to the Association and such insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Elements, as applicable, or if there are no insurance proceeds, the Board of Directors shall levy a Special Assessment pursuant to the Association Documents in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction. Notwithstanding the foregoing, the Association shall have no obligation to repair or reconstruct the damaged or destroyed Common Elements if such repair or reconstruction would be illegal under any state or local statute or ordinance governing health or safety or if within 60 days after such damage or destruction Owners representing 80 percent of the votes in the Association elect not to rebuild. If Owners representing 80 percent of the votes in the Association elect not to rebuild any damage or destruction to the Common Elements in

accordance with the terms and provisions set forth above, the Association shall demolish any destroyed or damaged improvements, remove all debris and rubble caused by such demolition and return the damaged or destroyed area to a slightly condition and shall have the right to levy against and collect from the Owners a Special Assessment for this limited purpose, if necessary.

(b) In the event of damage or destruction of the improvements located on any Lot or any part thereof (other than any Common Element which is governed by Section 14.1(a)) due to fire or other adversity or disaster, the Owner of such Lot shall, at its sole cost and expense, with due diligence, either (i) cause the damaged or destroyed improvements to be repaired and restored to a condition comparable to that prior to the damage or destruction, or (ii) demolish the destroyed or damaged improvements, in which event the damaged or destroyed improvements shall forthwith be demolished and all debris and rubble caused by such demolition shall be removed and the affected Lot regraded and landscaped. If such repair or restoration or such demolition, debris removal, regrading and landscaping is not commenced within 180 days, is commenced but then abandoned from the date of such damage or destruction for a period of more than 90 days, the Association may, after notice and an opportunity to be heard, impose a fine of \$1,000.00 per day or such other rate imposed by the Board of Directors in compliance with the Act, charged against the Owner of the Lot as a Specific Assessment until such repair or restoration or such demolition, debris removal, regrading and landscaping is commenced or re-commenced, as the case may be, unless the Owner can prove to the satisfaction of the Board of Directors that such failure is due to circumstances beyond the Owner's control. Such fine shall be in addition to any Assessment to which such Owner's Lot is subject and the Association shall have all of the rights pertaining to a default Assessment specified in the Association Documents for such account.

#### 14.2 **Condemnation.**

(a) In the event the Common Elements, or any portion thereof, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu thereof (herein, a "taking"), each Owner will be entitled to notice thereof, but the Association will act as attorney-in-fact for all Owners in the proceedings incident to the taking unless otherwise prohibited by law. The award for such taking will be payable to the Association as trustee for all of the Owners to be disbursed as follows:

(b) If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless restoration or replacement of such improvements would be illegal under any state or local statute or ordinance governing health or safety or unless within 60 days after such taking Owners representing 80 percent of the votes in the Association elect not to restore or replace such improvements, the Association will restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available therefor, in accordance with plans approved by the Board of Directors, the Design Review Board and any other governmental or quasi-governmental entity having jurisdiction over the Property. If such improvements are to be restored or replaced, and the award for the taking is insufficient to restore or replace such improvements, the Board of Directors shall levy a Special Assessment in the aggregate amount of such deficiency and shall proceed to restore or replace such improvements.

(ii) If the taking does not involve any improvements, or if there is a decision made not to restore or replace as set forth above, or if there are net funds remaining after any such restoration or replacement of improvements is completed, then the Association may retain such excess proceeds as an asset of the Association or distribute such excess in proportionate shares on the basis of all Common Assessments levied against such Lots for the prior 12-month period.

(b) In the event any Lot, or any portion thereof (other than any Common Element which is governed by Section 14.2(a)), is taken, the condemnation award for such taking shall be paid solely to the Owner of such Lot. The repair or restoration of any improvements located on such Lot which are affected by the taking shall be governed by the terms of Section 14.1(b). If an entire Lot is condemned, the Owner thereof shall automatically cease to be a Member of the Association.

#### ARTICLE XV MISCELLANEOUS

15.1 **Duration of Declaration.** This Declaration shall run with and bind the Property in perpetuity unless this Declaration is terminated by a recorded termination agreement that has been authorized and executed pursuant to Section 38-33.3-218 of the Act.

15.2 **Amendments.** Amendments to this Declaration shall be in writing and shall be recorded in the real property records of Gunnison County. This Declaration may be amended at any time subject to the following terms and conditions:

(a) Declarant, without the vote or consent of the Board or the Owners, may amend this Declaration to correct clerical, typographical or technical errors.

(b) Declarant, without the vote or consent of the Board or the Owners, may amend this Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the U.S. Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Company, or the Federal National Mortgage Company.

(c) Declarant, without the vote or consent of the Board or the Owners, may amend this Declaration from time to time to exercise any Special Declarant Rights.

(d) Amendments to this Declaration that, under the Act, may be made by the Association without the approval of the Owners may be so made by the Association, subject, however, to any required consent in favor of any Person expressly required by this Declaration.

(e) Except as otherwise expressly permitted under this Declaration and the Act, any amendment to this Declaration that increases the Special Declarant Rights, increases the number of Lots, changes the boundaries of any Lot, or changes the allocated interests of any Lot requires the unanimous approval of all the Owners.

(f) Any amendment to this Declaration that changes a specific clause or provision prescribing a certain percentage of affirmative votes for action to be taken under that clause or provision shall require the affirmative vote of those Owners of Lots to which at least that percentage (as prescribed in that clause or provision) of the votes in the Association are allocated.

(g) Any amendment to this Declaration that changes a specific clause or provision requiring the written consent of any Person(s) for action to be taken under that clause or provision shall require the written consent of such Person(s).

(h) Any amendment to this Declaration affecting a right that Declarant has or may exercise under this Declaration requires the written approval of Declarant in each case.

(i) Except as provided above in this Section 15.2 and in any other provision of this Declaration, this Declaration may be amended by the affirmative vote or written consent of the Owners of Lots to which at least 75% of the votes in the Association are allocated, provided that so long as Declarant owns any portion of the Property any such amendment shall also require the written approval of Declarant.

15.3 **Effect of Provisions of Declaration.** Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property by an Owner or the Association, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner or the Association, as the case may be and, as a personal covenant, shall be binding on such Owner or the Association and such Owner's or the Association's respective heirs, personal representatives, successors and assigns and, as a personal covenant of an Owner, shall be deemed a personal covenant to, with and for the benefit of Declarant and to, with and for the benefit of the Association but not to, with or for the benefit of any other Owner and, if a personal covenant of the Association, shall be deemed a personal covenant to, with and for the benefit of Declarant and to, with and for the benefit of each Owner; (c) shall be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to each parcel of real property within the Property and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of any real property now or hereafter owned by Declarant within the Property and for the benefit of any and all other real property within the Property; and (d) shall be deemed a covenant, obligation and restriction secured by a lien, binding, burdening and encumbering the title to each parcel of real property within the Property which lien with respect to any Lot shall be deemed a lien in favor of Declarant and the Association, jointly and severally and, with respect to any real property owned by the Association, shall be deemed a lien in favor of Declarant.

15.4 **Interpretation of the Declaration.** The Association, by and through its Board of Directors, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the covenants and the provisions hereof.

15.5 **Attorneys' Fees.** In the event of any dispute under or with respect to this Declaration or any other Association Document, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including but not limited to reasonable attorneys' fees and costs.

15.6 **Protection of Encumbrancer.**

(a) The Association shall furnish to an Owner or such Owner's designee or mortgagee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot. The statement shall be furnished within 14 calendar days after receipt of the request and is binding on the Association, the Board of Directors and every Owner. If no statement is furnished to the Owner, the mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert the priority of its Assessment lien upon the Lot for unpaid Assessments which were due as of the date of the request.

(b) The Association shall report to any Owner's mortgagee any unpaid Assessments remaining unpaid for more than 60 days after the same shall have become due, if such mortgagee first shall have delivered to the Association a written request for notice of unpaid Assessments. Any mortgagee holding a lien on a Lot may pay any unpaid Assessment with respect to such Lot, together with any and all costs and expenses incurred with respect to the Assessment lien securing such unpaid Assessment, and upon such payment, such mortgagee shall have a lien on the Lot for the amounts paid with the same priority as a lien of the mortgage held by such mortgagee.

15.7 **Limited Liability.**

(a) No officer or director of the Association who was appointed by Declarant shall be personally liable to the Association or any Member for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such officer or director, unless a court of competent jurisdiction finds that such officer or director breached a fiduciary duty that such officer or director owed to the Association or a Member.

(b) No officer or director of the Association, who was not appointed by Declarant and no employee, agent or committee member of the Association shall be personally liable to the Association or any Member for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such officer, director, employee, agent

or committee member, unless a court of competent jurisdiction finds that the act or omission of such officer, director, employee, agent or committee member was wanton and willful.

(c) The Association shall indemnify and hold harmless each present or former officer, director, employee, agent or committee member against any and all claims, suits, proceedings, injuries, damages, losses, costs and expenses, including, but not limited to, attorneys' fees and disbursements, asserted against or incurred by any such present or former officer, director, employee, agent or committee member to the fullest extent permitted by law; provided, however, that in no event shall the Association indemnify or hold harmless any such officer, director, employee, agent or committee member to the extent that he or she is personally liable for an act or omission under Section 15.7(a) or Section 15.7(b) above.

**15.8 Disclaimer of Representations.** Anything to the contrary in this Declaration notwithstanding, and except as otherwise may expressly be set forth on a Plat or other instrument recorded in the office of the Clerk and Recorder for Gunnison County, Colorado, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Property can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that if such land is ever used for a particular use, that such use will continue in effect.

**15.9 Successors and Assigns.** Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

**15.10 Severability.** Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

**15.11 Captions.** The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

**15.12 Construction.** When necessary for proper construction, the masculine of any word used in this Declaration shall include the feminine or neuter gender, and the singular the plural, and vice versa.

**15.13 No Waiver.** Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

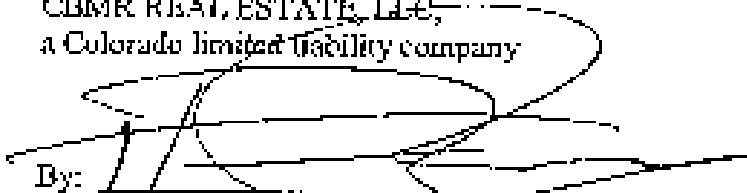
**15.14 Notices; Registration by Owner of Mailing Address.** Each Owner shall register its mailing address with the Association, and except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by first-class mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. An Owner may change its mailing address from time to time by delivering written notice of such change of address to the secretary of the Association. However, if any Owner fails to so notify the Association of a registered address, then any notice or demand may be delivered to such Owner at the address of such Owner's Lot or posted at such Owner's Lot. All

notices or demands intended to be served upon the Board of Directors, Declarant or the Association shall be sent by certified mail, postage prepaid, to c/o Crested Butte Mountain Resort, Inc., P.O. Box 5700, 600 Gothic Road, Mt. Crested Butte, CO 81225, until such address is changed by any such party.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day and year first above written.

**DECLARANT:**

CBMR REAL ESTATE, LLC,  
 a Colorado limited liability company

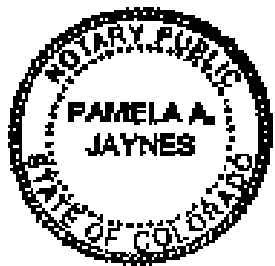
By:   
 Harrison F. Russell  
 Vice General Manager

STATE OF COLORADO            )  
   ) ss:  
 COUNTY OF GUNNISON        )

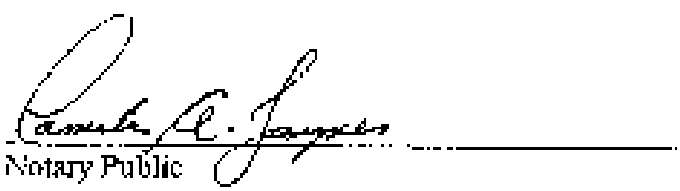
The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of July 2002, by Harrison F. Russell as Vice General Manager of CBMR Real Estate, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

(SEAL)



My Commission Expires  
 23 April 2005

  
 Notary Public

My Commission Expires: 23 April 2005



A parcel of land situated within Lot 14 of Section 13 and E1/2NW1/4, NE1/4 of Section 24, Township 13 South, Range 85 West of the 6th P.M., Town of Mt. Crested Butte, County of Gunnison, State of Colorado, being more particularly described as follows:

Beginning at a point on the west line of said Lot 14 from which the W1/16 of said Section 13 and 24 bears S0141'23"W a distance of 217.63 feet to which all bearings being relative to N87'22'04"E between the W1/16 corner and the NE1/4 corner of said Section 24; thence S43'18'39"E a distance of 119.58 feet; thence S0141'21"W a distance of 27.00 feet; thence 139.57 feet along the arc of a curve to the right, having a radius of 330.00 feet, a central angle of 247'35" and subtending a chord bearing of S21'13'27"E a distance of 138.53 feet; thence S06'05'30"E a distance of 46.83 feet; thence 177.37 feet along the arc of a curve to the left, having a radius of 270.00 feet, a central angle of 37'37'45" and subtending a chord bearing of S27'55'22"E a distance of 174.15 feet; thence S46'44'14"E a distance of 240.94 feet; thence 112.66 feet along the arc of a curve to the left, having a radius of 370.00 feet, a central angle of 17'26'44" and subtending a chord bearing of S55'27'36"E a distance of 112.22 feet; thence S64'10'58"E a distance of 114.39 feet; thence 532.86 feet along the arc of a curve to the right, having a radius of 3280.00 feet, a central angle of 09'18'29" and subtending a chord bearing of S50'31'44"E a distance of 532.27 feet; thence S51'52'29"E a distance of 86.29 feet; thence N05'53'32"W a distance of 125.01 feet; thence N07'24'25"E a distance of 92.70 feet; thence N37'28'39"E a distance of 135.25 feet; thence N04'36'22"E a distance of 199.00 feet; thence N71'07'23"E a distance of 268.62 feet; thence S70'36'42"E a distance of 288.23 feet; thence S72'13'35"E a distance of 17.29 feet; thence N40'05'42"E a distance of 21.10 feet to the NW-NE 1/64 corner of said Section 24; thence along the north line of NW1/4SE1/4NW1/4NE1/4 N87'14'31"E a distance of 348.94 feet to the C-E-NW-NE 1/256 corner of said Section 24; thence S0171'07"W a distance of 326.51 feet along the east line of said NW1/4SE1/4NW1/4NE1/4 to the SE-NW-NE 1/256 corner of said Section 24; thence N87'11'41"E a distance of 348.70 feet along the north line of S1/2SE1/4NW1/4NE1/4 to the C-S-N-NE 1/256 corner of said Section 24; thence N57'14'14"E a distance of 697.37 feet along the north line of S1/2SW1/4NE1/4NE1/4 to the C-S-NE-NE 1/256 corner of said Section 24; thence S0171'00"W a distance of 328.87 feet along the east line of S1/2SW1/4NE1/4NE1/4 to the C-E-NE 1/64 corner of said Section 24; thence N87'08'30"E a distance of 348.47 feet along the north line of W1/2NE1/4SE1/4NE1/4 to the C-E-E-NE 1/256 corner of said Section 24; thence S0121'50"W a distance of 558.33 feet along the east line of said W1/2NE1/4SE1/4NE1/4 of said Section 24 from which the C-E-SE-NE 1/256 bears S0121'30"W a distance of 82.71 feet; thence leaving the said east line N80'38'10"W a distance of 116.97 feet; thence S17'58'57"E a distance of 54.85 feet; thence S46'11'56"W a distance of 188.58 feet; thence N34'05'37"W a distance of 49.50 feet; thence S08'44'05"W a distance of 73.03 feet; thence N82'12'58"W a distance of 384.78 feet; thence S11'04'49"W a distance of 20.03 feet; thence S55'06'23"W a distance of 163.41 feet; thence S28'37'14"W a distance of 60.00 feet; thence 198.25 feet along the arc of a curve to the right, having a radius of 430.00 feet, a central angle of 28'08'57" and subtending a chord bearing of N48'18'17"W a distance of 194.55 feet; thence 157.04 feet along a reverse curve to the left, having a radius of 370.00 feet, a central angle of 247'9'07" and subtending a chord bearing of N47'23'22"W a distance of 133.87 feet; thence N78'51'26"W a distance of 73.90 feet; thence S69'26'44"W a distance of 119.75 feet; thence N46'06'26"W a distance of 75.10 feet; thence S55'08'34"W a distance of 65.10 feet; thence N56'15'24"W a distance of 21.48 feet; thence N55'08'34"E a distance of 39.67 feet; thence N34'31'20"W a distance of 57.42 feet; thence 81.46 feet along the arc of a curve to the right, having a radius of 430.00 feet, a central angle of 10'31'15" and subtending a chord bearing of N67'42'28"W a distance of 81.34 feet; thence N62'16'50"W a distance of 37.07 feet; thence N72'27'07"W a distance of 114.89 feet; thence N49'47'56"W a distance of 93.86 feet; thence N82'16'30"W a distance of 28.28 feet; thence S57'14'32"W a distance of 126.98 feet; thence S70'28'50"W a distance of 250.03 feet; thence N78'58'25"W a distance of 189.76 feet; thence N69'09'08"W a distance of 102.33 feet; thence N44'23'24"E a distance of 195.85 feet; thence N12'35'40"E a distance of 19.22 feet; thence 10.48 feet along the arc of a non-tangent curve to the right, having a radius of 60.00 feet, a central angle of 10'00'27" and subtending a chord bearing of N27'50'30"W a distance of 10.47 feet; thence S44'23'24"W a distance of 139.16 feet; thence S84'01'47"W a distance of 189.06 feet from which the C-N-S-W 1/256 of said Section 24 bears S30'56'22"W a distance of 68.39 feet; thence N52'05'28"W a distance of 264.37 feet; thence N 38'36'43"E a distance of 81.88 feet; thence N64'45'57"W a distance of 263.08 feet; thence N08'54'48"W a distance of 58.21 feet; thence N35'05'28"E a distance of 116.49 feet; thence N11'40'41"E a distance of 151.63 feet; thence N54'52'29"W a distance of 89.45 feet; thence 523.11 feet along the arc of a curve to the left, having a radius of 3220.00 feet, a central angle of 09'15'29" and subtending a chord bearing of N59'31'46"W a distance of 522.53 feet; thence N64'10'58"W a distance of 114.39 feet; thence 139.93 feet along the arc of a curve to the right, having a radius of 430.00 feet, a central angle of 17'26'44" and subtending a chord bearing of N55'27'36"W a distance of 130.42 feet; thence N36'44'14"W a distance of 120.47 feet; thence S17'41'15"W a distance of 312.87 feet; thence N89'04'40"W a distance of 188.56 feet from which the SE corner of the Sawlink Subd. bears S09'55'45"W a distance of 179.70 feet; thence N90'55'45"E along the easterly boundary of said Goldfink North Subd. a distance of 645.71 feet to the W1/16 of said Section 13 and 24; thence N01'41'23"E a distance of 217.63 feet to the point of beginning containing 65.48 acres more or less in Gunnison County, Colorado, under the name and style of PROSPECT AT W1. CRESTED BUTTE, PHASE 1.

Legal Description

Lot 14, Section 13, Township 13 South, Range 86 West, of the Sixth Principal Meridian;

Lot 7, Lot 8 and Lot 11, Section 19, Township 13 South, Range 85 West, of the Sixth Principal Meridian;

The following areas of Section 24, Township 13 South, Range 86 West, of the Sixth Principal Meridian:

- NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ,
- W  $\frac{1}{4}$  NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ,
- NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ,
- S  $\frac{1}{2}$  SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ,
- S  $\frac{1}{2}$  SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ,
- N  $\frac{1}{2}$  N  $\frac{1}{2}$  SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ ,
- SW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ,
- W  $\frac{1}{2}$  SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ,
- W  $\frac{1}{4}$  NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ,
- SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ,
- SE  $\frac{1}{4}$

Containing an aggregate of 412.96 acres, more or less.

County of Gunnison  
State of Colorado

Except for Prospect at Mt. Crested Butte, Phase 1

Richardson, 1991,  
Michigan, 11/19/91, Division of Finance, L.  
1000 Medical Center Bldg.  
Rm. 100-175  
Denver, Colorado 80202



539413  
Page 1 of 2  
Date: 01/13/02

**ASSIGNMENT OF DECLARANT'S RIGHTS  
(Prospect at Mt. Crested Butte)**

THIS ASSIGNMENT OF DECLARANT'S RIGHTS (this "Assignment") is entered into as of the 25<sup>th</sup> day of February, 2004, by and between CROCK FORD ESTATE, L.P., a Colorado limited liability company ("Assignor") and MT. CROCK FORD ESTATE, L.P., a Colorado limited liability company ("Assignee").

**RECITALS**

A. Assignor is the "Declarant" under the Declaration of Ownership, Conditions and Restrictions for Prospect at Mt. Crested Butte that was recorded in the real property records of the Clerk and Recorder of Golden County, Colorado, on July 13, 2002, at Reception No. 0211970 (the "Declaration"). The real property that is subject to the Declaration is referred to as the "Property" in this Assignment.

B. Pursuant to that certain Special Warranty Deed by and between Assignor and Assignee that has been recorded as of the date hereof, Assignor has granted and conveyed essentially all of Assignor's interest in the Property to Assignee (this certain parcel that hereinafter will be conveyed by Assignor to third parties).

C. In connection with the transfer of Assignor's interest in the Property to Assignee, Assignor desires to assign and transfer to Assignee all of Assignor's rights, title, benefits, duties, liabilities and obligations as "Declarant" under the Declaration, and Assignee desires to accept and assume all of Assignor's duties, liabilities and obligations as Declarant under the Declaration.

D. The Declaration and the covenants hereby established by the Declaration are governed by the Colorado Common Interest Ownership Act, Colo. Rev. Stat. §§ 38-101-109 or similar ("CCIOIA"). Pursuant to Section 38-103-506 of CCIOIA, the rights of a "Declarant" in transfer may be assigned to a third party.

**ASSIGNMENT**

NOW, THEREFORE, in good and lawful consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Assignor assigns and transfers to Assignee all of Assignor's rights (including, but not limited to, the "Special Warranty Rights" as defined in the Declaration), benefits, status of title, liabilities and obligations as "Declarant" under the Declaration. From and after the date of this Assignment, Assignee shall be Declarant under the Declaration for all purposes.



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Page 2 of 3  
NOT RECORDED

3. Assumption. Assignee agrees such assignment and the title and expenses and agrees to perform all of Assignor's duties, liabilities and obligations, in any, as "Declarant" under the Declaration.

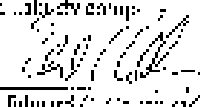
4. Full Use Assurances. Assignor and Assignee agree to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments and documents as may be reasonably necessary in order to carry out the intent and purposes of this Agreement.

5. Successors and Assigns. This Agreement will bind and inure to the benefit of the parties and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day first so forth above.

ASSIGNOR:

COMMERCIAL BANK OF COLORADO  
limited liability company

By:   
Name: Edward C. Gentry  
Title: Chairman of the Board

ASSIGNEE:

MT. COMMERICAL BANK OF COLORADO  
limited liability company

By:   
Name: Kenneth J. Mueller  
Title: President



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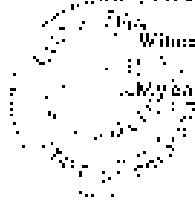
STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 29th day of February, 2004,  
by Edward C. Calloway as Chairman of the Board of CHARR Real Estate, LTD, a Colorado  
limited liability company.

Witness my hand and official seal.

My commission expires:

James S. Call  
Notary Public



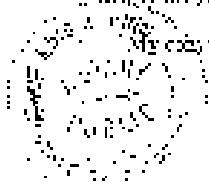
STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 29th day of February, 2004,  
by Timothy T. Mueller as President of W. CR Real Estate, LTD, a Colorado limited liability  
company.

Witness my hand and official seal.

My commission expires:

James S. Call  
Notary Public





ASSIGNMENT OF DEVELOPMENT RIGHTS

MT. CEB REAL ESTATE, LLC, a Colorado limited liability company (the "Grantor"), for and in consideration of good and valuable consideration, hereby assigns, transfers, and conveys to CRESTED BUTTE LAND HOLDINGS, LLC a Colorado limited liability company (the "Grantee") whose address is P. O. Box 5700, Crested Butte, Colorado 81224, all of Grantor's rights pursuant to the Declaration of Covenants, Conditions and Restrictions for Prospect at Mt. Crested Butte recorded July 16, 2002 at Record # No. 521972 (the "Declaration") including, but not limited to the right to construct, develop, expand, enlarge and supplement the lots within:

Exhibit A attached hereto.

and any other Development rights as defined by Declaration or by the Common Interest Ownership Act as set forth in C.R.S. §§ 38-1-101 et seq. (collectively, the "Development Rights"). Grantor represents and warrants to Grantee that: (i) Grantor is the sole owner of the Development Rights and this conveyance of the Development Rights is free and clear of any liens and encumbrances; (ii) this assignment is duly authorized and executed and is the legal, valid and binding obligation of Grantor and (iii) Grantor has not previously assigned or terminated the Development Rights.

Dated this 22<sup>nd</sup> day of October, 2014.

MT. CEB REAL ESTATE, LLC, a Colorado limited liability company

By:   
Michael C. Dawson, Vice President

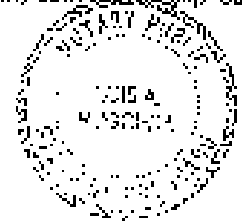
CRESTED BUTTE LAND HOLDINGS, LLC, a Colorado limited liability company

By:   
Michael C. Dawson, Vice President

STATE OF COLORADO )  
County of Gunnison ) ss.

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of October, 2014, Michael C. Dawson as Vice President of MT. CEB Real Estate, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: October 23, 2016



  
Notary Public



547554  
REGISTERED  
RECORDS SECTION  
11/8/02

STATE OF COLORADO

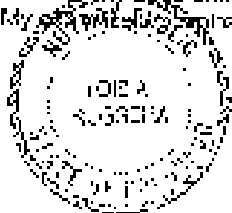
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28.

County of Gunnison

The foregoing instrument was acknowledged before me on this 22<sup>nd</sup> day of October, 2004, by Michael C. Dawson as Vice President of Crested Butte Land Holdings, LLC a Colorado limited liability company.

Witness my hand and official seal.

My office is located at 1000 1/2



Michael C. Dawson  
Notary Public



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 Page 3 of 3  
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EXHIBIT A  
 ASSIGNMENT OF DEVELOPMENT RIGHTS  
 MT. CRESTED BUTTE REAL ESTATE, LLC  
 TO  
 CRESTED BUTTE LAND HOLDINGS, LLC

**Parcel 1**

Prospect at Mt. Crested Butte, Phase 1 according to the Plat thereof filed for record on July 24, 2012, bearing Reception No. 522218

**Parcel 2**

(Prospect at Mt. Crested Butte Fulung Phases)

Township 13 South, Range 85 West, 01 P.M.

Section 12: Lots 7, 8 and 11

Township 15 South, Range 88 West, 01 P.M.

Section 19: Lot 14

Section 24: S 1/2 SW 1/4 NE 1/4 NE 1/4,  
 W 1/2 NW 1/4 NE 1/4,  
 NW 1/4 SE 1/4 NW 1/4 NE 1/4  
 S 1/2 SE 1/4 NW 1/4 NE 1/4,  
 SW 1/4 NE 1/4,  
 SE 1/2 SE 1/4 NE 1/4,  
 NW 1/4 SE 1/4 NE 1/4  
 W 1/2 NE 1/4 SE 1/4 NE 1/4,  
 NE 1/4 NW 1/4,  
 N 1/2 N 1/2 SE 1/4 NW 1/4,  
 SE 1/4

EXCEPTING THEREFROM that portion of the subject property which lies within PROSPECT AT MT. CRESTED BUTTE PHASE 1, according to the Plat thereof filed for record on July 24, 2012, bearing Reception No. 522218.

County of Garfield,  
 State of Colorado.





ASSIGNMENT OF DEVELOPMENT RIGHTS

CRESTED BUTTE LAND HOLDINGS, LLC, a Colorado limited liability company, (the "Grantor"), for and in consideration of good and valuable consideration, hereby assigns, transfers, and conveys to PROSPECT DEVELOPMENT COMPANY, INC., a Colorado corporation, (the "Grantee") whose address is P. O. Box 6700, Crested Butte, Colorado 81204, all of Grantor's rights pursuant to Declaration of Covenants, Conditions and Restrictions for Prospect at Mt. Crested Butte, recorded July 15, 2002 at Reception No. 521870 of Summit County, Colorado, and Amendment to Declaration of Covenants, Conditions and Restrictions recorded March 30, 2005 at Reception No. 552220, (the "Declarations") including, but not limited to, the right to construct, develop, expand, enlarge and supplement the units within:

Lot 12, A attached hereto,  
Summit County  
State of Colorado, (the "Property")

and any other Declarant rights as defined by Declaration or by the Common Interest Community Act as set forth in C.R.S. §§ 20-2-101 et seq. (collectively, the "Development Rights"). Grantor represents and warrants to Grantee that: (i) Grantor is the sole owner of the Development Rights as to the Property; (ii) the consequences of the Development Rights is known and clear of any liens and encumbrances; (iii) this assignment is July 8th authorized and executed and is therefore valid and binding upon Grantor; and (iv) Grantor has not previously assigned or terminated the Development Rights as to the Property.

Dated this 22<sup>nd</sup> day of February, 2005.

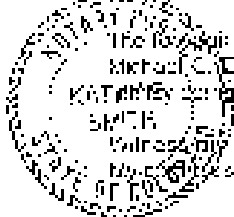
CRESTED BUTTE LAND HOLDINGS, LLC, a Colorado  
limited liability company

Michael C. Dawson, Vice President

PROSPECT DEVELOPMENT COMPANY, INC., a Colorado  
corporation

By:   
Michael Kraatz, Vice President of Real Estate &  
Development

STATE OF COLORADO )  
County of Gunnison ) ss.



The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of February, 2005, by Michael C. Dawson, Vice President of Crested Butte Land Holdings, LLC, a Colorado limited liability company  
KATHY E SMITH  
Notary Public and official seal  
My commission expires: 9/27/07  
  
Nancy Fuzile

STATE OF COLORADO )  
County of Gunnison ) ss.



The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of February, 2005, by Michael Kraatz, Vice President of Real Estate & Development of Prospect Development Company, Inc., a Colorado corporation  
KATHY E SMITH  
Notary Public and official seal  
My commission expires: 9/27/07  
  
Nancy Fuzile





13

AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PROSPECT AT MT. CRESTED BUTTE

THIS AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS OF PROSPECT PROPERTY OWNERS ASSOCIATION is executed this 30<sup>th</sup> day of March, 2005 by the Declarants of Prospect at Mt. Crested Butte (the "Declarant"), as follows:

1. FACTS AND PURPOSES.

1.1 The Declaration of Covenants, Conditions and Restrictions for Prospect at Mt. Crested Butte was recorded July 15, 2002 at Reception No. 521970 of the real property records of Gunnison County, Colorado. The Declaration of Covenants, Conditions and Restrictions for Prospect at Mt. Crested is referred to as the "Declaration."

1.2 The Declaration encumbers certain real property in Gunnison County, Colorado, more particularly described therein.

1.3 Declarant has assumed the rights of Declarant under the Declaration through the assignment recorded September 22, 2004 at Reception No. 574554 and the Assignment recorded Mar 30, 2005 at Reception No. 552220 of the records of Gunnison County, Colorado.

1.4 Pursuant to Sections 11.5 and 15.2 of the Declaration, the Declarant needs to amend the Declaration to add Additional Property and to comply with the Interstate Land Sales Full Disclosure Act.

2. AMENDMENT. The Declaration is amended as follows:

2.1 Pursuant to Section 8.6(c) of the Declaration, the real property set forth in Exhibit A, being a portion of the Additional Property, and called as Prospect at Mt. Crested Butte Phase 2 on Mar 30, 2005, at Reception No. 552220 of the records of Gunnison County, Colorado, is hereby subject to the terms and conditions of the Declaration, and shall be considered part of the Property as defined in the Declaration.

2.2 There is the addition of a new definition to the Declaration as follows:

2.12. Single Family Residence. Single Family Residence means that the Lot and Dwelling Unit constructed thereon is limited to single family residences as defined by 24 CFR § 1710.10, including townhouses, duplexes, triplexes and quadruplexes for one to four family use.



552220

Page 2 of 3  
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2.3 There is the addition of a new Section to Article IX, as follows:

"0.23 **Single Family Residential Use.** The Lots called as Lots C-1 through C-30, Lots D-1 through D-23, and Lots E-1 through E-44 shall each be limited to one (1) Single Family Residence. The Lots platted within Development Areas A and F shall be limited to one (1) to three (3) Single Family Residences, and may be townhomes, individual Dwelling Units, Duplex or Triplex Units."

IN WITNESS WHEREOF, the undersigned has executed this Amendment to Declaration, Covenants, Conditions and Restrictions of Prospect at Mt. Crested Butte with the effective date first above written.

PROSPECT DEVELOPMENT COMPANY, INC.,  
a Colorado corporation

By: *Michael C. Dawson*  
Name: Michael C. Dawson  
Title: Vice President

CRESTED BUTTE LAND HOLDINGS, LLC, a  
Colorado limited liability company

By: *Michael C. Dawson*  
Name: Michael C. Dawson  
Title: Vice President

STATE OF COLORADO )  
 ) ss.  
County of Gunnison )

The foregoing was acknowledged before me this 20<sup>th</sup> day of March, 2005, by Michael C. Dawson as Vice President of Prospect Development Company, Inc., a Colorado corporation and as Vice President of Crested Butte Land Holdings, LLC, a Colorado limited liability company.



Kathy E. Smith witnesses my hand and official seal.  
My Commission expires: 2-5-08

*Kathy E. Smith*  
Notary Public



552220

Page: 2 of 3  
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EXHIBIT A

Prospect of Mt. Crested Butte Phase 2

A Parcel of land situated in the East Tract Parcel as described at Reception No. 513451 in the office of the Clerk and Recorder, Gunnison County, Colorado, also being in Sections 19, Township 13 South, Range 86 West and Section 24, Township 13 South, Range 86 West of the 6th P.M. and more particularly describe as follows:

Beginning at the South-North 1/4th Corner of said Section 24, with all bearing being relative to N07°21'45"E between the South 1/4 Corner and the Southeast Corner Section 13, Township 13 South, Range 86 West of the 6th P.M.; also being a point along the Northeasterly boundary of said East Tract Parcel; thence along said boundary the following three (3) courses; S80°20'26"E a distance of 934.07; thence S01°17'08"W a distance of 650.73 feet; thence S01°20'12"W a distance of 737.54 feet; thence S90°00'00"W a distance of 1440.70 feet; thence S91°37'31"W a distance of 60.00 feet; thence 21.51 feet along the arc of a curve to the left, having a radius of 170.00 feet, a central angle of 10°33'10" and subtending a chord bearing of N63°59'04"W a distance of 31.27 feet; thence N68°55'39"W a distance of 87.04 feet; thence 60.38 feet along the arc of a curve to the right, having a radius of 230.00 feet, a central angle of 22°25'12" and subtending a chord bearing of N54°10'03"W a distance of 116.81 feet; thence N09°30'27"W a distance of 245.46 feet; thence 113.87 feet along the arc of a curve to the left, having a radius of 613.67, a central angle of 12°42'12" and subtending a chord bearing of N45°51'03"W a distance of 133.53 feet; thence N52°12'39"W a distance of 151.08 feet; thence 28.52 feet along the arc of a curve to the left, having a radius of 170.00 feet, a central angle of 09°36'42" and subtending a chord bearing of N57°00'59"W a distance of 28.48 feet; thence 182.73 feet along the arc of a reverse curve to the right, having a radius of 430.00 feet, a central angle of 24°20'53" and subtending a chord bearing of N49°32'54"W a distance of 181.26 feet; thence N37°28'27"W a distance of 115.24 feet; thence 61.58 feet along the arc of a curve to the left, having a radius of 170.00 feet, a central angle of 20°41'13" and subtending a chord bearing of N47°49'04"W a distance of 51.05 feet; thence N08°09'40"W a distance of 115.57 feet; thence 255.79 feet along the arc of a curve to the right, having a radius of 105.00 feet, a central angle of 135°29'13" and subtending a chord bearing of N11°04'59"E a distance of 103.27 feet; thence N04°51'59"W a distance of 165.70 feet; thence N08°17'59"E a distance of 128.18 feet; thence N26°58'13"W a distance of 31.00 feet; thence N54°01'47"E a distance of 193.29 feet; thence 61.85 feet along the arc of a non-tangent curve to the left, having a radius of 430.00 feet, a central angle of 08°14'44" and subtending a chord bearing of S57°15'24"E a distance of 61.83 feet to a point on the boundary of Prospect Phase 1 as recorded at Reception No. 522215; thence along said boundary the following nine (9) courses; N26°37'14"E a distance of 60.00 feet; thence N55°00'23"E a distance of 160.41 feet; thence N11°04'48"E a distance of 20.05 feet; thence S82°10'56"E a distance of 284.77 feet; thence N65°44'05"E a distance of 73.83 feet; thence S54°53'57"E a distance of 49.50 feet; thence N46°11'56"E a distance of 199.08 feet; thence N17°55'57"W a distance of 54.85 feet; thence S52°38'10"E a distance of 116.61 feet to the Easterly boundary of said East Tract Parcel; thence S01°21'50"W a distance of 62.71 feet; thence N87°33'07"E a distance of 348.00 to the point of beginning, said Parcel contains 72.461 acres more or less.

County of Gunnison,  
State of Colorado.



552317  
 Page 1 of 7  
 Declaration of  
 Protective Covenants

SECOND AMENDMENT TO  
 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR  
 PROSPECT AT MT. CRESTED BUTTE

THIS AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS OF PROSPECT PROPERTY OWNERS ASSOCIATION is executed this 31<sup>st</sup> day of March, 2005 by the Declarants of Prospect at Mt. Crested Butte (the "Declarant"), as follows:

1. FACTS AND PURPOSES.

1.1 The Declaration of Covenants, Conditions and Restrictions for Prospect at Mt. Crested Butte was recorded July 15, 2002 at Reception No. 621970 of the real property records of Garfield County, Colorado. The Declaration of Covenants, Conditions and Restrictions for Prospect at Mt. Crested Butte is referred to as the "Declaration".

1.2 The Declaration and where certain real property in Garfield County, Colorado, more particularly described therein.

1.3 Declarant has assumed the rights of Declarant under the Declaration through the assignment recorded October 29, 2004 at Reception No. 647864 and the Assignment recorded April 11, 2005 at Reception No. 657222 of the records of Garfield County, Colorado.

1.4 Pursuant to Sections 2.6 and 15.2 of the Declaration, the Declarant needs to amend the Declaration to add Additional Property development.

2. AMENDMENT. The Declaration is amended as follows:

2.1 Pursuant to Section 2.6(c) of the Declaration, the real property set forth in Exhibit A, being a portion of the Additional Property, is hereby subject to the terms and conditions of the Declaration, and shall be considered part of the Property as defined in the Declaration to be platted as a future phase of Prospect at Mt. Crested Butte.

IN WITNESS WHEREOF, the undersigned has executed this Second Amendment to Declaration, Covenants, Conditions and Restrictions of Prospect at Mt. Crested Butte with the effective date first above written.

11/16/04 11:00 AM  
 20050331 11:00 AM  
 11/16/04 11:00 AM



552317  
FEDERAL RESERVE BANK  
1000 MARKET STREET  
PHILADELPHIA, PA 19104

CRESTED BUTTE LAND HOLDINGS, LLC a  
Colorado limited liability company

By: [Signature]  
Name:  
Title:

WILDHORSE LLO  
a Colorado limited liability company

By: Wildhorse Development, LLC, a Colorado  
limited liability company, its Manager

By: [Signature]  
Darius L. Fitchell, Jr., its authorized  
representative

STATE OF COLORADO )  
County of Gunnison )

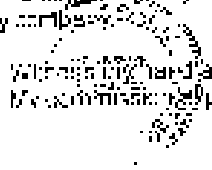
The foregoing was acknowledged before me this 1 day of April, 2005, by  
Timothy T. Mueller as President of Crested Butte Land Holdings,  
a Colorado limited liability company.



Witness my hand and official seal  
this 19 day of August, 2007.  
Cvetta A. Perush  
Notary Public

STATE OF COLORADO )  
County of Gunnison )

The foregoing was acknowledged before me this 31 day of March, 2005, by Darius  
Fitchell, Jr., as the authorized representative of Wildhorse Development, LLC, a  
Colorado limited liability company, the Manager of Wildhorse, LLC, a Colorado limited  
liability company.



Witness my hand and official seal  
this 31 day of March, 2005.  
Cvetta A. Perush  
Notary Public



BOARD OF SUPERVISORS  
COUNTY OF GUNNISON, COLORADO

CLERK OF COUNTY AND DISTRICT COURTS  
COUNTY OF GUNNISON, COLORADO  
315 EAST MAIN STREET  
GUNNISON, COLORADO 81031

CLERK OF COUNTY AND DISTRICT COURTS  
COUNTY OF GUNNISON, COLORADO  
315 EAST MAIN STREET  
GUNNISON, COLORADO 81031

CLERK OF COUNTY AND DISTRICT COURTS  
COUNTY OF GUNNISON, COLORADO  
315 EAST MAIN STREET  
GUNNISON, COLORADO 81031

**Exhibit A**  
**Real Property**  
**Development Area A, Meadows Chalets**

2/11/2015

Proposed Mt. Crested Butte  
Phase A North



**552317**  
2015 FEB 11 10:52 AM  
GUNNISON, CO

A parcel of land situated in the Twp. Ten Six (Ten) T16S, R10E, S14N, Range 16 North, Section 24, Township 16 North and Range 10 East, Gunnison County, Colorado, also being in Government Lot 19 Section 13 and the NE1/4 of Section 24, Township 16 North, Range 10 East of the 6<sup>th</sup> P.M. and more particularly described as follows:

Beginning at the NE1/4 of said Section 24 with old bearings being as follows: 367°22'04"W  
bearing found monuments for said NE1/4 and the SW1/4 of said Section 24, thence  
88°32'01.2"E along the north line of the NE1/4 SW1/4 NE1/4 of said Section 24 a distance  
of 131.22 feet to the W1/2 of the NE1/4 of said Section 24, thence 301°08'37"W along the west  
line of said NE1/2 SW1/4 NE1/4 Section 24 a distance of 666.26 feet to the NW1/4 NE1/4 of  
said Section 24 also having a point on the north line of the plat for Proposed Mt.  
Crested Butte, Phase A as recorded's Book 2410, Page 34, thence the following:  
1. Thence along the north line of said plat of Prospect Mt. Crested Butte, Phase A,  
S40°09'54.8"W a distance of 27.18 feet; thence S42°02'12"W a distance of 17.53 feet;  
thence N47°00'02"W a distance of 4799.27 feet; thence S31°05'25"W a distance of  
288.22 feet; thence S51°56'27"W a distance of 100.00 feet; thence S1°29'53"W a  
distance of 126.25 feet; thence S86°12'24"W a distance of 93.30 feet; thence  
S1°29'53"W a distance of 128.00 feet; thence N66°32'29"W a distance of 66.28 feet;  
thence 542.26 feet along the arc of a circle to the left, having a radius of 2380.00 feet, a  
center of a circle N41°18'22"E and subtending a chord bearing N50°13'46"W a distance of  
652.27 feet; thence N64°10'58"W a distance of 111.19 feet; thence 112.65 feet along the arc  
of a circle to the right, having a radius of 276.88 feet, a central angle of 17°25'44" and  
subtending a chord bearing N42°27'15"W a distance of 119.22 feet; thence N45°03'14"W  
a distance of 243.24 feet; thence 125.56 feet along the arc of a circle to the right, having a  
radius of 272.00 feet, a central angle of 20°52'14" and subtending a chord bearing  
N53°17'47"W a distance of 121.34 feet; thence N49°02'20"E a distance of 232.74 feet;  
thence N67°31'42"E a distance of 221.48 feet; thence N81°34'20"E a distance of 93.17  
feet to a point on the east line of said Government Lot 19 Section 13, thence  
N81°13'29"W along the east line of said Government Lot 19 Section 13, thence  
N87°22'04"E along the north line of the NE1/4 SW1/4 NE1/4 of said Section 24 a distance of  
666.26 feet to the point of beginning, said parcel contains 76.49% more or less

W. S. S.

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563223

Page 1 of 3  
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**THIRD AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
PROSPECT AT MT. CRESTED BUTTE**

THIS THIRD AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS OF PROSPECT PROPERTY OWNERS ASSOCIATION is executed this 28<sup>th</sup> day of February, 2006 by the Declarants of Prospect at Mt. Crested Butte (the "Declarant"), as follows.

**1. FACTS AND PURPOSES.**

1.1 The Declaration of Covenants, Conditions and Restrictions for Prospect at Mt. Crested Butte was recorded July 15, 2002 at Reception No. 521970 of the real property records of Gunnison County, Colorado. The Declaration of Covenants, Conditions and Restrictions for Prospect at Mt. Crested is referred to as the "Declaration."

1.2 The Declaration encumbers certain real property in Gunnison County, Colorado, more particularly described therein.

1.3 Declarant has assumed the rights of Declarant under the Declaration through the assignment recorded September 22, 2004 at Reception No. 574554 and the Assignment recorded Feb 28, 2006 at Reception No. 563223 of the records of Gunnison County, Colorado.

**2. AMENDMENT.** The Declaration is amended as follows:

2.1 Pursuant to Section 8.6(c) of the Declaration, the real property set forth in Exhibit A, being a portion of the Additional Property, and platted as Prospect at Mt. Crested Butte Phase 4 on Feb 28, 2006 at Reception No. 563223 of the records of Gunnison County, Colorado, is hereby subject to the terms and conditions of the Declaration, and shall be considered part of the Property as defined in the Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Third Amendment to Declaration, Covenants, Conditions and Restrictions of Prospect at Mt. Crested Butte with the effective date first above written.

PROSPECT DEVELOPMENT COMPANY, INC.,  
a Colorado corporation

By:   
Michael Kraatz, Vice President  
of Real Estate & Development



563223

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CRESTED BUTTE LAND HOLDINGS, LLC, a Colorado limited liability company

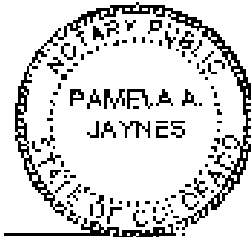
By: *Michael C. Dawson*  
Michael C. Dawson, Vice President

STATE OF COLORADO )  
 ) ss.  
County of Gunnison )

The foregoing was acknowledged before me this 28<sup>th</sup> day of February, 2006 by Michael Kraatz as Vice President of Real Estate & Development of Prosper Development Company, Inc., a Colorado corporation.

Witness my hand and official seal,  
My commission expires: 25 April 2009

*Pamela A. Jaynes*  
Notary Public

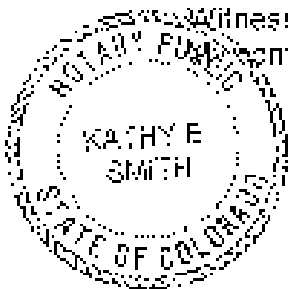


My Commission Expires  
25 April 2009

STATE OF COLORADO )  
 ) ss.  
County of Gunnison )

The foregoing was acknowledged before me this 28<sup>th</sup> day of February, 2006, by Michael C. Dawson as Vice President of Crested Butte Land Holdings, LLC, a Colorado limited liability company.

Witness my hand and official seal,  
My commission expires: 1-7-08



*Kathy E. Smith*  
Notary Public



ARTICLES OF INCORPORATION  
OF  
PROSPECT PROPERTY OWNERS ASSOCIATION

**NONPROFIT**

The undersigned hereby verifies and acknowledges, for delivery in duplicate to the Secretary of State of Colorado, these Articles of Incorporation (these "Articles") for the purpose of forming a nonprofit corporation under the Colorado Revised Nonprofit Corporation Act (the "Act") in conformance with the Colorado Common Interest Ownership Act ("CCIOA").

I. NAME

The name of the corporation is Prospect Property Owners Association (the "Association").

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CORPORATION DIVISION  
COLORADO SECRETARY OF STATE

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SECRETARY OF STATE

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II. DURATION

The period of duration of the Association will be perpetual.

III. PURPOSES

The Association is organized to be and constitutes the Association to which the Declaration of Covenants, Conditions and Restrictions for Prospect at Mt. Crested Butte (the "Declaration") refers. The Declaration has been or will be recorded in the real property records of the County of Gunnison, Colorado. All initially capitalized terms used in these Articles have the same meanings as used in the Declaration, unless otherwise defined in these Articles.

IV. POWERS

Subject to any limitations imposed by the Bylaws of the Association or the Declaration, the Association has all of the powers a nonprofit corporation may exercise under the Act, CCIOA and the laws of the State of Colorado in effect from time to time.

V. REGISTERED OFFICE AND AGENT AND PRINCIPAL OFFICE

The street address of the initial registered office of the Association is Emmons Building, 600 Gothic Road, Mt. Crested Butte, Colorado 81225. The initial registered agent of the Association at the registered office is Harrison P. Russell.

The street address of the initial principal office of the Association is Emmons Building, 600 Gothic Road, Mt. Crested Butte, Colorado 81225.

## VI. BOARD OF DIRECTORS

The affairs of the Association will be managed by a Board of Directors. The duties, qualifications, number and term of Directors and the manner of their election, appointment and removal will be as set forth in the Declaration and the Bylaws, provided that during the Declarant Control Period, Declarant under the Declaration shall have the right to appoint and remove all of the Directors, subject to the terms of the Declaration.

Initially, there are three members of the Board of Directors. The names and addresses of the persons who serve as the initial Directors are:

<u>Name</u>	<u>Address</u>
John Nestou	c/o Crested Butte Mountain Resort, Inc. P.O. Box 5700 Emmons Building 600 Gothic Road Mt. Crested Butte, Colorado 81225
Edward C. Calaway	c/o Crested Butte Mountain Resort, Inc. P.O. Box 5700 Emmons Building 600 Gothic Road Mt. Crested Butte, Colorado 81225
James E. Ruthven	c/o Crested Butte Mountain Resort, Inc. P.O. Box 5700 Emmons Building 600 Gothic Road Mt. Crested Butte, Colorado 81225

## VII. MEMBERS

The Association shall have voting Members. Each Person, or if more than one, all Persons collectively, constituting the Owner of a Lot is a Member of the Association. Each Membership is appurtenant to the fee simple title to a Lot. Membership in the Association automatically terminates when a Person ceases to be an Owner, whether through sale, intestate succession, testamentary disposition, foreclosure or otherwise, and the new Owner automatically succeeds to the Membership in the Association. The Association will recognize a new Member upon presentation by a new Owner of satisfactory evidence of the sale, transfer, succession, disposition, foreclosure or other transfer of a Lot. Membership in the Association may not be transferred, pledged or encumbered in any way, except to the new Owner upon conveyance of a Lot. Any prohibited transfer is void and will not be recognized by the Association. Following a termination of the planned community created by the Declaration, the Association will consist of all Owners entitled to share in the distribution of the assets of the Association. In matters coming before the Association for which a vote of the Members is required, each Member has

one vote in the Association for each Lot owned by the Member, except that the Association itself is not entitled to any votes for any Lot it owns.

#### VIII. PROXY VOTING

A Member may vote in person as provided in the Bylaws, and may be authorized in the Bylaws to vote by proxy on any matters on which the Member is entitled to vote.

#### IX. CUMULATIVE VOTING

Cumulative voting by Members in the election of Directors is not permitted.

#### X. BYLAWS

The Board of Directors has the power to make, amend, repeal or restate the Bylaws, not inconsistent with these Articles, the laws of the State of Colorado or the Declaration, for the administration and regulation of the affairs of the Association. The Bylaws may not be amended by vote of the Members.

#### XI. AMENDMENT OF ARTICLES

The Board of Directors may amend these Articles in those instances provided for in Section 7-120-102 of the Act. All other amendments of these Articles will be made in accordance with the Act by vote of the Members, but only so long as these Articles as amended contain provisions that are lawful under the Act and are not contrary to or inconsistent with any provision of the Declaration or CCIOA.

#### XII. DISSOLUTION

In the event of dissolution of the Association, the sale of any Common Elements and other property owned by the Association and the distribution of the proceeds from such sale will conform with the provisions of CCIOA and the Declaration, and the proceeds of the sale of the Association's other assets will, after making the distributions set forth in Section 7-124-105 of the Act, be divided among the Owners in proportion to their respective liability for the Common Expenses of the Association according to the Declaration.

#### XIII. INDEMNIFICATION AND LIMITATION OF LIABILITY

A. Indemnification. The Association will indemnify, to the maximum extent permitted by law, any person who is or was a Director or officer of the Association, and may indemnify any other person, against any claim, liability or expense arising against or incurred by the person made party to a proceeding because he or she is or was a director, officer, agent, fiduciary or employee of the Association or because he or she is or was serving another entity as

a director, officer, partner, trustee, employee, fiduciary or agent at the Association's request. The Association further may, to the maximum extent permitted by law, purchase and maintain insurance providing such indemnification, advance expenses to persons indemnified by the Association, and provide indemnification to any person by general or specific action of the Board of Directors, the Bylaws of the Association, contract or otherwise. The Association may obtain and maintain directors' and officers' insurance and such other insurance as deemed appropriate by the Board of Directors from time to time.

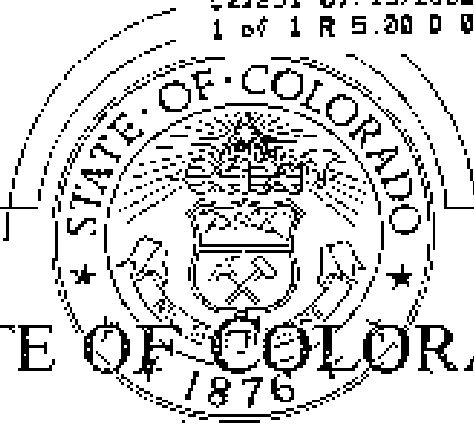
B. Limitation on Directors' and Officers' Liability. Subject to the requirements of law, no Director or officer shall be liable for actions taken or omissions made in the performance of such Director's or officer's duties as such, except for wanton and willful acts or omissions. Subject to any applicable provisions of COFOA, and without limiting the generality of the foregoing sentence, no Director shall have any personal liability to the Association or its Members for monetary damages for breach of fiduciary duty as a Director, except that the personal liability of such Director shall not be eliminated for: (i) any breach of the Director's duty of loyalty to the Association or its Members; (ii) acts or omissions by the Director not in good faith or that involve intentional misconduct or a knowing violation of the law; (iii) voting for or assenting to any unlawful distributions as defined under Section 7-128-403 of the Act, provided that the extent of liability for such vote or assent shall be determined pursuant to Section 7-128-403 of the Act; (iv) consenting to or participating in the making of any loan by the Association to any Director or officer, provided that the extent of liability for such consent or participation shall be determined pursuant to Section 7-128-501 of the Act, or (v) any transaction from which the Director directly or indirectly derived an improper personal benefit. No Director or officer shall be personally liable for any injury to person or property arising out of a tort committed by an employee of the Association unless such Director or officer was personally involved in the situation giving rise to the injury or unless such Director or officer committed a criminal offense in connection with such situation. Nothing contained in this Section XXIII will be construed to deprive any Director of his or her right to all defenses ordinarily available to a Director nor will anything herein be construed to deprive any Director of any right he or she may have for contribution from any other Director or other person.

XIV. INCORPORATOR

The Incorporator's name and address is:

<u>Name</u>	<u>Address</u>
Harison E. Russell	c/o Crested Butte Mountain Resort, Inc. P.O. Box 5769 600 Gothic Road Mt. Crested Butte, Colorado 81226

The Incorporator has verified these Articles of Incorporation for Prospect Property Owners Association and caused the same to be delivered to the Secretary of State for the State of Colorado as of July 1, 2002. The Incorporator, by such delivery, also consents to serving as the initial registered agent for such corporation as described above.



STATE OF COLORADO  
DEPARTMENT OF  
STATE  
CERTIFICATE

I, DONETTA DAVIDSON, SECRETARY OF STATE OF THE STATE OF  
COLORADO HEREBY CERTIFY THAT

ACCORDING TO THE RECORDS OF THIS OFFICE  
PROSPECT PROPERTY OWNERS ASSOCIATION  
(COLORADO NONPROFIT CORPORATION)

FILE # 2002179832 WAS FILED IN THIS OFFICE ON JULY 01, 2002  
AND HAS COMPLIED WITH THE APPLICABLE PROVISIONS OF THE  
LAWS OF THE STATE OF COLORADO AND ON THIS DATE IS IN GOOD  
STANDING AND AUTHORIZED AND COMPETENT TO TRANSACT BUSINESS  
OR TO CONDUCT ITS AFFAIRS WITHIN THIS STATE.

Dated: July 01, 2002

*Donetta Davidson*

SECRETARY OF STATE



**BYLAWS**  
**OF**  
**PROSPECT PROPERTY OWNERS ASSOCIATION**

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**BYLAWS**  
**OF**  
**PROSPECT PROPERTY OWNERS ASSOCIATION**

**ARTICLE I**

**GENERAL**

1.1 Purpose of Bylaws. These Bylaws of Prospect Property Owners Association (these "Bylaws") are adopted for the regulation and management of the affairs of the Prospect Property Owners Association (the "Association"). The Association is organized as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act, C.R.S. § 7-121-101 et seq. (the "Nonprofit Act"), in conformance with the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq. ("CCIOA"), and is the Association under the Declaration of Covenants, Conditions and Restrictions for Prospect at Mt. Crested Butte (the "Declaration"). The Declaration relates to the real property in the County of Gunnison, Colorado, which is or may become subject to the Declaration (the "Property").

1.2 Terms Defined in the Declaration. Initially capitalized terms used but not defined in these Bylaws are defined in the Declaration and have the same definition as in the Declaration.

1.3 Controlling Laws and Instruments. These Bylaws are controlled by and shall always be consistent with the provisions of the Nonprofit Act, CCIOA, the Declaration and the Articles of Incorporation of the Association filed with the Secretary of State of Colorado (the "Articles"), as any of them are amended from time to time. The Declaration, the Articles, these Bylaws and the Design Review Guidelines, as any of them may be amended from time to time, together with all exhibits or attachments to any of them, are herein collectively referred to as the "Community Instruments."

**ARTICLE II**

**OFFICES**

2.1 Principal Office. The Board, in its discretion, may fix and change the location of the principal office of the Association from time to time.

2.2 Registered Office and Agent. The Board may change the Association's initial registered office and initial registered agent specified in the Articles at any time by filing a statement as specified by law in the Office of the Secretary of State of Colorado. At all times, the street addresses of the Association's registered office and the business office of the Association's registered agent shall be identical.

## ARTICLE III

### MEMBERS AND VOTING RIGHTS

#### 3.1 General.

(a) By this reference, these Bylaws incorporate the membership and voting rights provisions of the Declaration. Each Owner of a Lot is a member of the Association (a "Member"). An Owner's membership in the Association is hereinafter referred to as a "Membership." Each Membership is appurtenant to the fee simple title to a Lot. The Owner of fee simple title to a Lot is automatically the holder of the Membership appurtenant to the Lot, and the Membership automatically passes with fee simple title to the Lot.

(b) In any matter coming before the Association for which a vote of the Members is required, for any Lot owned by multiple owners (the "Multiple Owners"): (i) if only one such Multiple Owner is present when such vote occurs, such Multiple Owner shall be entitled to cast any and all votes allocated to such Lot; (ii) if more than one of the Multiple Owners are present, any and all votes allocated to such Lot shall be cast only in accordance with the agreement of a majority in interest of the Multiple Owners, provided that a majority agreement among the Multiple Owners shall be deemed to exist if any one of the Multiple Owners casts the vote or votes allocated to such Lot without protest being made promptly to the person presiding over the meeting by any of the other Multiple Owners, and provided further that the Multiple Owners shall not be entitled to cast any vote on such matter unless a majority agreement is reached among the Multiple Owners before the conclusion of the tabulation of votes on such matter by the Association.

(c) The Association itself shall have no vote for any Lot it owns.

3.2 Votes. In all matters coming before the Association for which a vote of the Members is required each Lot is allocated one vote in the Association. Notwithstanding the foregoing, the Association shall not exercise any votes allocated to any Lot(s) owned by the Association.

#### 3.3 Authorized Representative.

(a) Any Owner that is not a natural person (i.e., an estate or a trust, corporation, partnership, limited liability company or other entity) shall appoint a natural person as such Owner's attorney-in-fact and authorized representative (an "Authorized Representative") and may vote only through its Authorized Representative. Any Owner who is a natural person may appoint a proxy to vote on behalf of the Owner in matters coming before the Members of the Association, provided that if such proxy is not a natural person, such proxy shall appoint an Authorized Representative pursuant to this Section 3.3.

(b) Any Owner required to appoint an Authorized Representative will do so immediately upon becoming an Owner. Any Owner who is required or elects to

appoint an Authorized Representative will notify the Association of its Authorized Representative or any subsequent replacement for its Authorized Representative within 10 days after appointment. The notice will (i) be signed by all Persons constituting the Owner, (ii) be dated, and (iii) contain a statement that the natural person named as the Authorized Representative in the notice will remain the Authorized Representative of that Owner until a subsequent notice is given to the Association (A) appointing a replacement Authorized Representative or (B) in the case of an Authorized Representative appointed by an Owner who is a natural person, terminating the appointment of the Authorized Representative. The notice will have the effect of a proxy given by all Persons constituting that Owner to the Authorized Representative named in the notice for all purposes under the Community Instruments, CTOA and the Nonprofit Act, except that the duration of the notice will be perpetual or as stated therein. The appointment of an Authorized Representative is binding upon all Persons comprising the appointing Owner and the vote of the Authorized Representative is conclusive as to the Association, unless and until the Association receives (A) a notice appointing a replacement Authorized Representative or (B) in the case of an Authorized Representative appointed by an Owner who is a natural person, a notice terminating the appointment of the Authorized Representative. Upon receiving any notice appointing an Authorized Representative, the Association may request additional evidence of authority that it reasonably deems necessary to verify the due appointment of the named Authorized Representative. If an Owner who is required or elects to appoint an Authorized Representative owns more than one Lot, the Owner may appoint (1) one natural person to serve as Authorized Representative for all of its Lots; or (2) a different natural person to serve as Authorized Representative for each of its Lots or any number of its Lots.

(e) Unless the context clearly indicates otherwise, the term "Member" as used in these Bylaws means a Member or its Authorized Representative.

3.4 Resignation of Members. No Member may resign from the Association. An Owner's Membership in the Association shall terminate only upon the conveyance by such Member of all of such Member's ownership interests in any and all Lots in the Planned Community.

3.5 Membership Termination; Member Sanctions. No Member may be expelled from the Association and no Member's Membership may be terminated as long as such Member is an Owner. Notwithstanding the foregoing, if any Member fails to comply with any provision of the Community Instruments, the Association may impose such enforcement sanctions as are provided for in the Declaration. Without limiting the foregoing, the Board may suspend, after notice and hearing in accordance with the provisions of Article VIII, the voting rights of any Member during and following any breach by such Member of any provision of the Declaration or any Rules adopted by the Board.

3.6 Purchase of Memberships by Association. The Association shall not purchase the Membership of any Member. The Association shall only be a Member, and shall only have such rights as are attendant to Membership, to the extent that it is also an Owner.



3.7 Resolution of Voting Disputes. In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of the Members, the Board shall act as arbitrators and the decision of a disinterested majority of the Board shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with the Colorado Uniform Arbitration Act of 1975, as the same may be amended. No dispute as to the entitlement of any Member to vote shall postpone or delay any vote for which a meeting of the Members has been duly called pursuant to the provisions of these Bylaws if a quorum is present at such meeting.

3.8 Transfer of Memberships on Association Bonds. Transfers of Memberships shall be made on the books of the Association only upon presentation of evidence, satisfactory to the Board, of the transfer of ownership of the Lot to which the Membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous owner of the Membership as being entitled to all rights in connection with the Membership.

## ARTICLE IV

### MEETINGS OF MEMBERS

4.1 Place of Members' Meetings. Meetings of the Members shall be held at the principal office of the Association or at such other place, within or convenient to the Property, as may be fixed by the Board and specified in the notice of the meeting.

4.2 Annual Meetings of Members. Annual meetings of the Members shall be held on the second Saturday in August of each year or on such other date fixed in accordance with a resolution of the Board at such time of day as is fixed by the Board and specified in the notice of meeting. The annual meetings shall be held to transact such business that properly comes before such such meeting.

4.3 Special Meetings of Members. Special meetings of the Members may be called by the Board, the President of the Association, or by the Members holding not less than 20% of the total votes in the Association. No business shall be transacted at a special meeting of the Members except as indicated in the notice thereof.

4.4 Record Date. For the purpose of determining the Members entitled to notice of, or to vote at, any meeting of the Members, or for the purpose of determining such Members for any other proper purpose, the Board of the Association may fix in advance a future date as the record date for any determination of the Members. The record date may not be more than 30 days prior to the meeting of the Members or the event requiring a determination of the Members.

4.5 Notice of Members' Meetings. Written notice of any meeting of the Members will be delivered not less than 10 nor more than 30 days before the date of the meeting, either personally or by first class or registered mail to each Member entitled to vote at the meeting. The notice of any meeting will state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes and any proposal to remove a member of the Board. If mailed, the

notice will be deemed to be delivered five business days after it is deposited in the United States mail, first-class postage prepaid, addressed to the Member at the mailing address for the Member appearing in the Association's records.

#### 4.6 Proxies.

(a) In addition to the appointment of an Authorized Representative pursuant to Section 3.3 of these Bylaws, a Member (including an Authorized Representative) that is entitled to vote may vote in person or by proxy if the proxy is executed in writing by the Member and delivered to the secretary of the meeting prior to the time the proxy is exercised. A Member may appoint a proxy by signing an appointment form, either personally or by the Member's attorney-in-fact, or by transmitting or authorizing the transmission of an electronic transmission providing a written statement of the appointment to the proxy or other person duly authorized by the proxy to receive appointments as agent for the proxy or to the Association, except that the transmitted appointment shall set forth or be transmitted with written evidence from which it can be determined that the Member transmitted or authorized the transmission of the appointment.

(b) A proxy may be revoked by a written revocation filed with the chairman of the meeting prior to the time the proxy is exercised or by voting in person. A proxy automatically ceases upon a change in the ownership of the Membership on the Association's books. No proxy is valid after 11 months from the date of its execution unless otherwise provided in the proxy appointment form. Any form of proxy or written ballot furnished or solicited by the Association will afford an opportunity for the Members to specify on the form a choice between approval and disapproval of each matter or group of related matters which is known, at the time the form of proxy or written ballot is prepared, may come before the meeting and will provide, subject to reasonably specified conditions, that if a Member specifies a choice with respect to any matter, the vote will be cast in accordance with the Member's choice.

4.7 Quorum at Members' Meeting. Except as may be otherwise provided in the Declaration, the Articles of Incorporation or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the presence, in person or by proxy, of Members entitled to cast at least 20% of the votes in the Association shall constitute a quorum at any meeting of such Members. The Members present in person or by proxy at a duly organized meeting may continue to transact business until adjournment, notwithstanding that some of the Members withdraw from the meeting, leaving less than a quorum. If the required quorum is not present in person or by proxy at any meeting of the Members, another meeting may be called, subject to the notice requirements specified in these Bylaws, and the presence, in person or by proxy, of Members entitled to cast at least 10% of the votes in the Association, shall, except as may be otherwise provided in the Declaration, the Articles of Incorporation or these Bylaws, constitute a quorum at such meeting.

4.8 Adjournments of Members' Meetings. Members present in person or by proxy at any meeting may adjourn the meeting from time to time, whether or not a quorum is present in person or by proxy, without notice other than announcement at the meeting for a total

period or periods not exceeding 60 days after the date set for the original meeting. At any adjourned meeting held without notice other than announcement at the meeting, the quorum requirement may not be reduced or changed, but if the originally required quorum is present in person or by proxy, any business may be transacted which might have been transacted at the meeting as originally called. Notwithstanding the foregoing, if the adjourned meeting is set for a date that is more than 70 days after the record date initially fixed for the meeting pursuant to Section 4.4 of these Bylaws, then notice of the adjourned meeting (pursuant to Section 4.5 of these Bylaws) must be given to the Members of record as of the new record date fixed for such adjourned meeting pursuant to Section 4.4 of these Bylaws.

4.9 Vote Required at Members' Meeting. At any meeting of the Members called and held in accordance with these Bylaws, if a quorum is present, the affirmative vote of Members entitled to cast a majority (i.e., more than 50%) of the votes, present and voting either in person or by proxy, which may be cast on a matter are necessary to adopt the matter, unless a different percentage is required by law or by the Community Instruments, in which case the different requirement shall control. There shall be no cumulative voting for Directors or for any other action considered by the Members.

4.10 Officers of Meetings. At any meeting of the Members, the President of the Association shall act as chairman, and the Secretary of the Association shall act as secretary of the meeting unless the President designates another person to act as secretary of the meeting.

4.11 Expenses of Meetings. The Association shall bear the expenses of all meetings of the Members.

4.12 Waiver of Notice. A waiver of notice of any meeting of the Members, signed by a Member, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Member. Attendance of a Member at a meeting, either in person or by proxy, shall constitute waiver of notice of such meeting except when the Member attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

4.13 Action of Members Without a Meeting. Any action required to be taken or which may be taken at a meeting of the Members may be taken without a meeting if a written consent setting forth the action taken is signed by all of the Members, including any Multiple Owners, entitled to vote on the subject matter of the action. In order for any action taken without a meeting to be effective, the written consent of all Members entitled to vote on the subject matter of the action must be received by the Association within 60 days after the earliest date upon which the Association received any such written consent. Action taken without a meeting shall be effective when the last written consent necessary to effect the action is received by the Association (the "Effective Date"), unless the written consents set forth a different Effective Date. Any Member submitting a written consent under this Section 4.13 may revoke such consent by a writing signed and dated by the Member describing the action and stating that the Member's prior consent thereto is revoked, provided that such writing is received by the Association before the Effective Date. The record date for determining Members entitled to take action without a meeting or to receive notice of such action shall be the date that the first written consent concerning the action is received by the Association.

#### 4.14 Action of Members by Mail Ballot.

(a) Any action required to be taken or which may be taken at a meeting of the Members may be taken by mail ballot without a meeting to the extent permitted by Section 7-127-109 of the Nonprofit Act. In order for an action taken by mail ballot to be effective: (i) the Association must have delivered a written ballot to every Member entitled to vote on the subject matter of the action, (ii) the number of votes cast by ballot must have satisfied the quorum requirement set forth in Section 4.7 of these Bylaws, (iii) the number of approvals must have satisfied the affirmative vote requirement set forth in Section 4.9 of these Bylaws, and (iv) all ballots and ballot solicitations must have satisfied the specific requirements therefor as set forth in Section 7-127-109 of the Nonprofit Act.

(b) With respect to any action taken by mail ballot, if only one ballot is received by the Association from among any group of Multiple Owners of a Lot, such ballot shall be deemed to represent the vote or votes, as the case may be, allocated to such Lot. If more than one ballot is received by the Association from among any group of Multiple Owners of a Lot, any and all votes allocated to such unit shall be cast only in accordance with the unanimous agreement of all such ballots received by the Association, provided that if any ballot received from among a group of Multiple Owners of a Lot conflicts with any other such ballot, none of the votes allocated to such Lot shall be entitled to be cast.

4.15 List of Members for Meeting and Action by Mail Ballot. After fixing a record date for notice of a meeting pursuant to Section 4.4 of these Bylaws or for determining the Members entitled to take action by mail ballot pursuant to Section 4.14 of these Bylaws, the Association shall prepare an alphabetical list of the names, addresses, and votes in the Association of all Members entitled to notice of, and to vote at, the meeting or to take such action by written ballot. The list shall be made available for inspection by the Members in accordance with the specific requirements set forth in Section 7-127-201 of the Nonprofit Act. Failure by the Association to prepare or make available the list of Members will not affect the validity of action taken at the meeting or by means of such written ballot.

4.16 Meetings by Telecommunication. Any or all of the Members may participate in an annual, regular, or special meeting of the Members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A Member participating in a meeting by this means is deemed to be present in person at the meeting.

## ARTICLE V

### BOARD OF DIRECTORS

5.1 General Powers and Duties of Board. The Board has the duty to manage and supervise the affairs of the Association and has all powers necessary or desirable to permit it to do so. Without limiting the generality of the previous sentence, the Board has the power to exercise or cause to be exercised by the Association, all of the powers, rights and authority of

the Association not reserved to the Owners in the Community Instruments, the Nonprofit Act, or CCIOA. The Board may delegate any portion of its authority to an officer or manager of the Association. In addition, except to the extent so provided in CCIOA, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Planned Community, or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board members.

5.2 Special Powers and Duties of Board. Without limiting the general powers and duties set forth in Section 5.1 of these Bylaws, the Board has all the powers and duties set forth for it in the Declaration, including, without limitation, the specific powers and duties set forth in the Declaration.

5.3 Qualifications of Directors. Each Director shall be a natural person who is at least 18 years of age. A Director may be reelected, and there shall be no limit on the number of terms a Director may serve on the Board. Except as required by CCIOA, each Director shall be required to be an Owner, the Authorized Representative of an Owner, or an officer, Director, member, trustee or partner of an Owner.

5.4 General Standard of Conduct for Board Members and Officers. To the extent not otherwise inconsistent with Colorado law, any Director and officer, in connection with the authority and powers granted to the Board and such officer by the Community Instruments or by any applicable law, including but not limited to, management, personnel, maintenance and operations, interpretation and enforcement of the Community Instruments, the development of rules and restrictions, insurance, contracts and finance, shall act in good faith, with such care as an ordinarily prudent person in a like position would use under similar circumstances, and in a manner that such Director or officer believes is in the best interests of the Association. In discharging his or her duties, a Director or officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by: (i) one or more officers or employees of the Association whom the Director or officer believes to be reliable and competent in the matters presented; or (ii) legal counsel, public accountants or other persons as to matters which the Director or officer believes to be within such person's professional or expert competence, so long as, in any such case, the Director or officer acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted. In addition to the limitations on liability set forth in Section 5.12 of these Bylaws, a Director or officer shall not be liable as such to the Association for any act or omission if, in connection with such act or omission, the Director or officer performed the duties of his or her position in compliance with this Section 5.4. A Director or officer shall not be deemed to be a trustee with respect to the Association, or with respect to any property held or administered by the Association.

5.5 Number and Term of Directors. The Board shall be composed of not less than three Directors nor more than seven Directors as designated from time to time by resolution of the Board of Directors. The term of each Director shall be three years, provided that the terms of the Directors first elected by the Members pursuant to Section 5.6 shall be staggered such that less than a majority of the Directors' positions comes up for election each year. There is no limit on the number of terms a Director may serve.

**5.6 Appointment and Election of Directors.** Notwithstanding any other provision contained herein:

(a) Subject to the limitations set forth in subsections 5.6(b) and 5.6(c), during the Declarant Control Period, all Directors shall be appointed by Declarant. All Directors appointed by Declarant shall be subject to removal at any time and from time to time by Declarant in its sole and absolute discretion.

(b) Not later than 60 days after conveyance of 25% of the maximum number of Lots that may be created under the Declaration to Owners other than Declarant, at least one Director and not less than 25% of the Directors of the Association must be elected by Members other than Declarant. Not later than 60 days after conveyance of 50% of the maximum number of Lots that may be created to Owners other than Declarant, not less than 33.3% of the Directors must be elected by Members other than Declarant.

(c) Not later than the termination of the Declarant Control Period, the Members shall elect a Board of at least three Directors, at least a majority of whom must be Members other than Declarant or Authorized Representatives of Members other than Declarant.

(d) The Directors elected pursuant to subsection 5.6(c) shall each serve until their successors are elected and qualified, or until their earlier death, resignation or removal.

**5.7 Removal of Directors.** At any meeting of the Members called and held in accordance with these Bylaws at which a quorum is present, any Director (other than a Director appointed by Declarant) may be removed, with or without cause, by the affirmative vote of Members entitled to cast 67% of the votes in the Association. A successor may be then and there elected to fill the vacancy for the unexpired term of his or her predecessor in office.

**5.8 Resignation of Directors.** Any Director may resign at any time by giving written notice to the President, to the Secretary or to the Board stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

**5.9 Vacancies in Directors.** Any vacancy occurring in the Board, unless filled in accordance with Sections 5.5 and 5.7 or by election at a special meeting of the Members, shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his or her predecessor in office. A vacancy in the position of a Director to be filled by reason of an increase in the number of Directors shall be filled only by vote of the Members.

**5.10 Manager or Managing Agent.**

(a) The Board, by resolution adopted by a majority of the Directors in office, may designate and appoint a manager, managing agent and/or other agent

responsible for any of the affairs of the Association. The manager, managing agent and/or other agent will have and exercise those powers and will fulfill those duties of the Board as specified in the resolution, and may be Declarant or an affiliate of Declarant.

(b) If those duties specified in the resolution delegate to any manager, managing agent or other agent any power relating to the collection, deposit, transfer or disbursement of Association funds, then such manager, managing agent and/or other agent shall (i) maintain fidelity insurance coverage or a bond in an amount not less than \$50,000, or such higher amount as the Board may require, (ii) maintain all Association funds and accounts separate from the funds and accounts of other associations managed by such manager, managing agent or other agent, and maintain all accounts of such other associations separate from the accounts of the Association, and (iii) prepare and provide to the Association an annual accounting and financial statement for the Association funds, which accounting and financial statement may be prepared by the manager, managing agent or other agent, a public accountant or a certified public accountant.

#### 5.11 Conflicting Interest Transactions.

(a) No loans shall be made by the Association to any Director or officer.

(b) No contract, transaction, or other financial relationship between the Association and a Director, or between the Association and a party related to a Director, or between the Association and an entity in which a Director of the Association is a Director or officer or has a financial interest (a "Conflicting Interest Transaction") shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a Member or by or in the right of the Association, solely because the Conflicting Interest Transaction involves a Director of the Association or a party related to a Director or an entity in which a Director of the Association is a Director or officer or has a financial interest or solely because the Director is present at or participates in the meeting of the Association's Board that authorizes, approves, or ratifies the Conflicting Interest Transaction or solely because the Director's vote is counted for such purpose if: (i) the material facts as to the Director's relationship or interest and as to the Conflicting Interest Transaction are disclosed or are known to the Board, and the Board in good faith authorizes, approves, or ratifies the Conflicting Interest Transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors are less than a quorum; or (ii) the material facts as to the Director's relationship or interest and as to the Conflicting Interest Transaction are disclosed or are known to the Members entitled to vote thereon, and the Conflicting Interest Transaction is specifically authorized, approved, or ratified in good faith by a vote of the Members entitled to vote thereon; or (iii) the Conflicting Interest Transaction is fair as to the Association. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board which authorizes, approves, or ratifies the Conflicting Interest Transaction.

### 5.12 Limitations of Liability and Indemnification of Directors and Officers

(a) Except as provided in CCIOA with respect to officers and Directors appointed by Declarant, no Director or officer shall be liable for actions taken or omissions made in the performance of such Director's or officer's duties as such, except for wanton and willful acts or omissions.

(b) Subject to any applicable provisions of CCIOA, and without limiting the generality of Section 5.12(a) of these Bylaws, no Director shall have any personal liability to the Association or its Members for monetary damages for breach of fiduciary duty as a Director, except that the personal liability of such Director shall not be eliminated for: (i) any breach of the Director's duty of loyalty to the Association or its Members; (ii) acts or omissions by the Director not in good faith or that involve intentional misconduct or a knowing violation of the law; (iii) voting for or assenting to any unlawful distributions as defined under Section 7-128-403 of the Nonprofit Act, provided that the extent of liability for such vote or assent shall be determined pursuant to Section 7-128-403 of the Nonprofit Act; (iv) consenting to or participating in the making of any loan by the Association to any Director or officer, provided that the extent of liability for such consent or participation shall be determined pursuant to Section 7-128-501 of the Nonprofit Act; or (v) any transaction from which the Director directly or indirectly derived an improper personal benefit.

(c) No Director or officer shall be personally liable for any injury to person or property arising out of a tort committed by an employee of the Association unless such Director or officer was personally involved in the situation giving rise to the injury or unless such Director or officer committed a criminal offense in connection with such situation.

(d) Nothing contained in this Section 5.12 will be construed to deprive any Director of his or her right to all defenses ordinarily available to a Director nor will anything herein be construed to deprive any Director of any right he or she may have for contribution from any other Director or other person.

(e) The Association will indemnify, to the maximum extent permitted by law, any person made a party to a proceeding because such person is or was a Director of the Association against liability incurred in the proceeding and against reasonable expenses incurred by the person in connection with the proceeding. The Association further may, to the maximum extent permitted by law, purchase and maintain insurance on behalf of a person who is or was a Director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of another domestic or foreign corporation, nonprofit corporation, or other person or of an employee benefit plan, against liability asserted or incurred by the person in that capacity or arising from the person's status as a Director, officer, employee, fiduciary, or agent.



## ARTICLE VI

### MEETINGS OF DIRECTORS

6.1 Place of Directors' Meetings. Meetings of the Board shall be held at the principal office of the Association or at such other place, within or convenient to the Property, as may be fixed by the Board and specified in the notice of the meeting.

6.2 Annual Meeting of Directors. Annual meetings of the Board shall be held on the same date as, or within 10 days of, the annual meeting of the Members. The business to be conducted at the annual meeting of the Board shall consist of the appointment of officers of the Association, the adoption of the annual budget for the following fiscal year and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board shall be necessary if the meeting is held on the same day and at the same place as the annual meeting of the Members at which the Board is elected or if the time and place of the annual meeting of the Board is announced at such annual meeting of the Members.

6.3 Special Meetings of Directors. Special meetings of the Board may be called by the President or a majority of the Directors.

6.4 Notice of Directors' Meetings. When notice is required for any meeting of the Board, notice stating the place, day and hour of the meeting will be delivered not less than two nor more than 50 days before the date of the meeting, by mail, facsimile, telephone or personally, by or at the direction of the persons calling the meeting, in each Director. If mailed, the notice will be deemed delivered five business days after it is deposited in the mail addressed to the Director at his or her home or business address as either appears in the records of the Association, with its first-class postage prepaid. If by facsimile, the notice will be deemed delivered when facsimiled to the Director at his or her home or business facsimile number as either appears on the records of the Association. If by telephone, the notice will be deemed delivered when given by telephone to the Director or to any person answering the telephone who sounds competent and mature at the Director's home or business phone number as either appears on the records of the Association. If given personally, the notice will be deemed delivered upon delivery of a copy of a written notice to, or upon verbally advising, the Director or some person who appears competent and mature at the Director's home or business address as either appears on the records of the Association. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

6.5 Proxy. For purposes of determining a quorum of Directors with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Director may be deemed to be present at a meeting and to vote if the Director has granted a signed written proxy to another Director who is present at the meeting, authorizing the other Director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy.

6.6 Quorum of Directors. A majority of the number of Directors fixed in these Bylaws shall constitute a quorum for the transaction of business by the Board.

6.7 Adjournment of Director's Meetings. The Directors present at any meeting of the Board may adjourn the meeting from time to time, whether or not a quorum is present, for a total period or periods not to exceed 30 days after the date set for the original meeting. Notice of an adjourned meeting will be given to all Directors. At any adjourned meeting, the quorum requirement will not be reduced or changed, but if the originally required quorum is present, any business may be transacted which may have been transacted at the meeting as originally called.

6.8 Vote Required at Directors' Meeting. At any meeting of the Board, if a quorum is present either in person or by proxy, the affirmative vote of a majority of the Directors present shall be necessary for the adoption of the matter, unless a greater proportion is required by law or the Community Instruments.

6.9 Officers at Meetings. The President shall act as chairman and the Board shall designate a Director to act as secretary at all meetings of Directors.

6.10 Waiver of Notice. A waiver of notice of any meeting of the Board, signed by a Director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Director. Attendance of a Director at a meeting in person shall constitute waiver of notice of such meeting, except when the Director attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

6.11 Action of Directors Without a Meeting. Any action required to be taken or which may be taken at a meeting of the Board may be taken without a meeting if all of the Directors in writing: (i) vote for such action by the unanimous affirmative vote of the Directors then in office; or (ii) vote against such action or abstain from voting, and waive the right to demand that action not be taken without a meeting. Such action taken without a meeting shall not be effective unless and until all such writings necessary to effect the action, which have not been revoked as provided herein below, are received by the Association; except that the writings may set forth a different effective date. Any Director who has signed and submitted a writing pursuant to this Section 6.11 may revoke such writing by a subsequent writing signed and dated by the Director describing the action and stating that the Director's prior vote with respect thereto is revoked, if such writing is received by the Association before the last writing necessary to effect the action is received by the Association.

6.12 Meeting Attendance: Open Meetings; Executive Sessions.

(a) The Board may permit any Director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all persons participating may hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

(b) All regular and special meetings of the Board shall be open to attendance by all Members of the Association or their representatives. Agendas for

meetings of the Board shall be made reasonably available for examination by all Members of the Association or their representatives.

(c) The Board or any committee thereof may hold an executive or closed door session and may restrict attendance to Directors and such other persons requested by the Board during a regular or specially announced meeting or a part thereof. The matters to be discussed at such an executive session shall be limited to: (i) matters pertaining to employees of the Association or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the Association; (ii) consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client; (iii) investigative proceedings concerning possible or actual criminal misconduct; (iv) matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure; or (v) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy. Prior to the time that the Board or any committee thereof convenes an executive session, the chair shall announce the general matter of discussion as enumerated above. No rule or regulation of the Board or any committee thereof shall be adopted during an executive session. The minutes of all meetings at which an executive session was held shall indicate that an executive session was held and the general subject matter of the executive session.

## ARTICLE VII

### OFFICERS

7.1 Officers, Employees and Agents. The officers of the Association shall consist of a President, one or more Vice-Presidents, a Secretary, a Treasurer and other officers, assistant officers, employees and agents as the Board deems necessary. Any two or more officers may be held by the same person.

7.2 Appointment and Term of Office of Officers. Except as otherwise provided in this Section 7.2, each officer of the Association shall be appointed by the Board at the annual meeting of the Board and shall hold office, subject to the pleasure of the Board until the next annual meeting of the Board or until the officer's successor is appointed, whichever is later, unless the officer resigns, or is earlier removed. During the Declarant Control Period, Declarant may appoint the officers of the Association.

7.3 Removal of Officers. Except as otherwise provided in this Section 7.3, any officer, employee or agent may be removed by the Board, with or without cause, whenever in the Board's judgment the best interests of the Association will be served thereby. The removal of an officer, employee or agent shall be without prejudice to the contract rights, if any, of the officer, employee or agent so removed. Election or appointment of an officer, employee or agent shall not of itself create contract rights. During the Declarant Control Period, Declarant may remove the officers of the Association with or without cause.

7.4 Resignation of Officers. Any officer may resign at any time by giving written notice to the President, to the Secretary or to the Board of the Association stating the effective date of his or her resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

7.5 Vacancies in Officers. Except as otherwise provided in this Section 7.5, any vacancy occurring in any position as an officer may be filled by the Board. During the Declarant Control Period, any vacancy occurring in any officer position may be filled by Declarant. An officer appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office.

7.6 President. The President shall be the principal executive officer of the Association and, subject to the control of the Board, shall direct, supervise, coordinate and have general powers generally attributable to the chief executive officer of a corporation. The President shall preside at all meetings of the Board and of the Members.

7.7 Vice-President. Any Vice-President may act in place of the President in case of his or her death, absence or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board or by the President. There may be more than one Vice-President.

7.8 Secretary. The Secretary shall be the custodian of the records and the seal (if any) of the Association and shall affix the seal (if any) to all documents requiring the same; shall prepare, execute, certify, and record amendments to the Declaration on behalf of the Association; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports and other documents and records of the Association are properly kept and filed; shall take or cause to be taken and shall keep minutes of the meetings of the Members, of the Board and of committees of the Board; shall keep at the principal office of the Association a record of the names and addresses of the Members and the Authorized Representative, if any, of each Member; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him or her by the Board or by the President. The Board may appoint one or more Assistant Secretaries who may act in place of the Secretary in case of his or her death, absence or inability to act.

7.9 Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association in such depositories as shall be designated by the Board; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Association and shall submit such reports thereof as the Board may, from time to time, require; shall arrange for the annual report required under Section 10.4 of these Bylaws; and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him or her by the Board or by the President. The Board may appoint one or more Assistant Treasurers who may act in place of the Treasurer in case of his or her death, absence or inability to act.

7.10 Amendments to the Declaration. The President and, in the President's absence or unavailability, any Vice President, may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

## ARTICLE VIII

### NOTICE AND HEARING PROCEDURE

8.1 Notice and Hearing. For the purposes of this Section 8.1, the term "Enforcement Action" shall refer to any action or demand taken or made by the Association against any Owner or Permittee that, pursuant to the Community Instruments, may not be taken or made until such Owner or Permittee has been given notice and an opportunity to be heard as provided in these Bylaws. Before taking any Enforcement Action, the Association shall determine that such Enforcement Action is permitted by and warranted pursuant to the following procedures:

(a) Notice. If the Association determines that an Enforcement Action may be warranted against an Owner or Permittee, it shall prepare a written notice (an "Enforcement Notice") setting forth in ordinary and concise language: (i) the Enforcement Action the Association believes is warranted; (ii) the alleged act or omission by the Owner or the Permittee giving rise to the proposed Enforcement Action; (iii) the specific provisions of the Community Instruments under which such Enforcement Action allegedly is warranted; and (iv) a statement notifying the recipient of the Enforcement Notice (the "Respondent") that he, she or it shall be entitled to a hearing before the Board on the merits of the matter addressed in the Enforcement Notice only if a written request for such a hearing is received by the Association within 10 days after receipt of the Enforcement Notice. An Enforcement Notice may be prepared and delivered by any Director, officer or managing agent of the Association, and action by the Board shall not be necessary to authorize the preparation or delivery of an Enforcement Notice. If the Association seeks to take any Enforcement Action against a Permittee, then an Enforcement Notice shall be delivered to such Permittee's Owner, and such Owner shall be considered a Respondent with respect to such Enforcement Notice.

(b) Hearing Request. Any Respondent who desires a hearing before the Board on the merits of the matter addressed in an Enforcement Notice shall so notify the Association by written request received by the Association within 10 days after the Respondent received the Enforcement Notice. If a Respondent timely requests a hearing pursuant to this Section 8.1(b), the Association shall set a date and time for the hearing and deliver notice of the hearing to the Respondent at least 10 days prior to the date of the hearing; provided that the hearing shall be held no sooner than 14 days after the Association receives the Respondent's timely request for a hearing. Upon a showing of good cause, the Board may reschedule the date or time of a scheduled hearing at the request of a Respondent.

(c) The Hearing. The President of the Association shall preside at the hearing and shall ensure that the hearing is conducted in an orderly and civil manner. After calling the hearing to order, the President shall designate another Director or officer

or the manager or managing agent of the Association to describe the Enforcement Action the Association believes is warranted and to present the reasons and evidence on which such belief is based. Once the reasons and evidence supporting the Enforcement Action have been presented, the Respondent or Respondents shall have an opportunity to present to the Board any reasons and evidence indicating why the Board should not take the proposed Enforcement Action. Any presentation to the Board under this Section 8.1(c) may be supported by documentary or testimonial evidence; provided, however, that formal rules of evidence shall not apply to the presentation of such evidence to the Board. The Board may adopt rules governing hearings conducted under this Section 8.1(c) that are not inconsistent with this Section 8.1(c). A Respondent may be represented at a hearing by legal counsel.

(d) **Decision.** The Board shall decide whether an Enforcement Action is permitted and warranted based on the evidence and information made available to it and the applicable provisions of the Community Instruments. If a Respondent fails to request a hearing in response to an Enforcement Notice pursuant to Section 8.1(b) or fails to appear at the hearing held pursuant to Section 8.1(c), the Board may reach its decision based on the evidence and information available to it without further notice to the Respondent. The Board shall render its decision in writing and shall explain its reasons for the decision it reaches. The Board's written decision shall be delivered to the Respondent and shall become effective and final upon the Respondent's receipt of it.

## ARTICLE IX

### DESIGN REVIEW AND CONTROL

9.1 **Design Review Board.** The Design Review Board of the Association (the "DRB") shall have five members (each a "DRB Member"). The DRB and the DRB Members shall be subject to the following:

(a) **General Qualifications.** Each DRB Member shall be a natural person who is eighteen years of age or older. A DRB Member need not be a Member of the Association.

(b) **Specific Qualifications.** The DRB shall at all times be comprised of DRB Members having the following qualifications: one DRB Member shall be an architect licensed in the State of Colorado; one DRB Member shall be a practicing landscape architect with an undergraduate or graduate degree in landscape architecture from an accredited institution; one DRB Member shall be a professional engineer licensed in the State of Colorado; and the two remaining DRB Members shall meet the general qualifications of Section 9.1(a) above, but need not have any other specialized qualifications.

(c) **Appointment and Removal.** For so long as the Declarant owns any portion of the Property, the Declarant shall have the right to appoint and remove, at will, all of the DRB Members; provided, that the Declarant may relinquish such right at any time by delivering a duly executed written instrument to such effect to the Association.

After the right of the Declarant to appoint the DRB Members has expired or has been relinquished, the Board of Directors of the Association shall have the right to appoint and remove, at will, all of the DRB Members. So long as the Declarant has the right to appoint and remove the DRB Members pursuant to the above provisions, the above provisions may not be amended.

(d) Term. Each DRB Member shall serve on the DRB until the appointment of his or her successor on the DRB or until his or her removal, resignation or death, whichever first occurs. Any DRB Member may resign from the DRB at any time, and acceptance of such resignation shall not be a condition of the effectiveness of such resignation.

(e) Voting; Quorum. The affirmative vote of three DRB Members shall constitute the action of the DRB on any matter. At least three DRB Members must be present in person at any meeting of the DRB to constitute a quorum, but in the absence of a quorum a single DRB Member may adjourn any meeting to a later time or date.

(f) Reimbursement of Costs. Every DRB Member shall be entitled to reimbursement for customary and reasonable out-of-pocket expenses incurred in connection with such DRB Member's services for the Association.

(g) Compensation. Each DRB Member who serves on the DRB in a professional capacity (e.g., a licensed architect, practicing landscape architect or professional engineer) shall be entitled to receive compensation at reasonable rates for his or her services. Such compensation shall be paid by the Association from the fees collected pursuant to Section 9.7.

9.2 Design Guidelines. The DRB shall adopt and promulgate rules and standards consistent with the PUD Guide that, without limitation, establish: (a) the general design theme of the Property as a whole; (b) specific site plan, design, building size, drainage, landscaping and architectural standards for development proposed on any Lot; (c) standards and rules governing, and addressed to the matters within the scope of review of the DRB pursuant to Section 9.6; (d) general construction procedures regarding construction activities on the Property; and (e) the procedures to be followed and the materials to be submitted as part of an Application in order to apply for approval from the DRB for proposed development on any Lot (the "Design Guidelines"). The Design Guidelines may be amended from time to time by the DRB so long as they remain consistent with the PUD Guide and the Declaration, subject to approval by the Town to the extent required by the PUD Guide. In addition, subject to the restrictions stated above, the Design Guidelines may prescribe different rules and standards for different uses and different portions of the Property.

9.3 Approval Required. No development shall take place on any Lot until an application for such development as required by and in a form satisfactory to the DRB (an "Application") has been approved by the DRB in writing pursuant to the Design Guidelines. Approval by the Town of any proposed development shall not affect in any manner the necessity of obtaining the approval of the DRB with respect to such development. The Design Guidelines

shall provide for a review process for Applications that is coordinated with any review process required by the Town pursuant to its regulations.

9.4 Review Process. The process for review by the DRB of all Applications shall be as set forth in the Design Guidelines.

9.5 Review Standards. All development on any Lot and all decisions of the DRB with respect to any Application shall comply with the Declaration, the PLD Guide and the Design Guidelines.

9.6 Scope of Review. The following aspects of any development proposed to be undertaken on a Lot shall be within the scope of review of the DRB: All aspects of the proposed development relating to: (i) size and height; (ii) building form, massing and structural expression; (iii) fenestration and articulation of exterior facades; (iv) the type, style, size, configuration and power of exterior lighting fixtures; (v) means of ingress and egress and vehicular access; (vi) the color, quality, type and texture of all exterior materials; (vii) location, orientation and configuration of any building on a Lot; (viii) compatibility and harmony with the topographical features of the surrounding land; (ix) compatibility and harmony with the architectural features of surrounding buildings; (x) consistency with the general design theme of the applicable area of the Property; (xi) consistency with other development on the same Lot; (xii) site development and site preparation; (xiii) home-site location and configuration; (xiv) site grading, excavation and foundations; (xv) wildlife and wildfire management; (xvi) location of parking; (xvii) landscaping and xeriscaping; (xviii) use of passive solar design; (xix) protection of viewsheds; (xx) snow storage and snow management; (xxi) provisions for storm water drainage and retention and the prevention of erosion; (xxii) plant material selection; (xxiii) irrigation and water conservation; (xxiv) refuse and trash storage and disposal; (xxv) signage; (xxvi) exterior furnishings; (xxvii) utility installation; and (xxviii) construction site management.

9.7 Schedule of Fees. The DRB shall establish and provide to applicants from time to time a current schedule of fees and other charges for the review and processing of Applications. The failure to provide any applicant with such schedule shall not limit the obligation of the applicant to pay the fees and other charges imposed by the DRB, including fees and other charges of consultants in connection with the review and processing of such applicant's Application. As a condition precedent to the review and processing of any Application, the DRB may require from the applicant an advance deposit to be applied toward the fees and other charges reasonably estimated by the DRB to be incurred for the review and processing of such Application. The fees charged applicants shall be sufficient to cover the cost of compensation to DRB Members paid pursuant to Section 9.1(f).

9.8 Consultants. The DRB is authorized to retain the services of one or more architects, landscape architects, land planners, designers, engineers and other persons as reasonably deemed necessary or convenient by the DRB in order to advise and assist the DRB in performing its functions. The fees and other charges of such consultants' services shall be paid promptly by the applicant as to whose Application such services are requested by the DRB.

9.9 Construction Activity Mitigation. In addition to any other conditions or limitations the DRB may impose, the DRB may require that during any construction period all



construction activity shall comply with the DRB's reasonable requirements as to: (a) dust control; (b) screening of construction activity and storage areas, including temporary waste disposal areas; (c) construction traffic patterns; (d) keeping adjacent drive lanes, roadways and property free of dirt and other construction debris; (e) maintaining access to and from adjoining portions of the Property; (f) maintenance; (g) noise; and (h) any hazardous materials transportation, handling or disposal.

9.10 Monitoring. The DRB or its designated representative may monitor and conduct on-site inspections of any development on a Lot to the extent required to determine that the work complies with the Declaration, the Design Guidelines and any applicable approvals, conditions or construction procedures issued, imposed or prescribed by the DRB. The DRB or its designated representatives may enter upon any Lot at any reasonable time, for the purpose of observing the progress, status or completion of any development.

9.11 Liability. Declarant, the Association and the DRB, and their respective officers, Directors, members, partners, employees, agents and consultants, shall not be responsible or liable for any defects in any plans or specifications submitted, revised or approved by the DRB, nor for any defects in construction pursuant to such plans or specifications. Approval of plans and specifications under by the DRB shall not constitute any representation by Declarant, the Association or the DRB, their respective officers, Directors, members, partners, employees or consultants that such plans or specifications are in compliance with applicable governmental regulations and other codes and shall not relieve any Owner of its obligation to comply with applicable laws, regulations and codes. In addition, neither the DRB, the Association nor Declarant, their respective successors or assigns, shall be liable in damages to anyone applying for development approval, or to any Owner affected by the Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval, approval with conditions, or failure to approve any plans or specifications for such development.

9.12 Indemnification. The Association shall indemnify each individual who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that such individual is or was a DRB Member or an officer, agent or employee of or consultant to the Association, against costs, claims, liabilities, expenses (including expert witness and attorneys' fees), judgments, fines and amounts paid in settlement which are or have been actually and reasonably incurred by such individual in connection with such threatened, pending or completed action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interest of the Association and the DRB, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner which such individual reasonably believed to be in the best interest of the Association and the DRB and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. To the extent permitted by law, the Association may provide such other and additional protection and indemnification to the extent set forth in the Articles, these Bylaws or a resolution of the Board of Directors.

## ARTICLE X

### MISCELLANEOUS

10.1 Amendment of Bylaws. Except as provided in the Nonprofit Act, the Board may alter, amend or repeal these Bylaws or adopt new Bylaws. The Bylaws may contain any provision for the regulation or management of the affairs of the Association not inconsistent with law, the Declaration or the Articles of Incorporation. The Bylaws may not be amended by vote of the Members.

10.2 Compensation of Officers, Directors and Members. No Director or officer shall have the right to receive any compensation from the Association for serving as a Director or officer except for reimbursement of expenses as may be approved by resolution of the disinterested Directors. Agents and employees shall receive such reasonable compensation as may be approved by the Board. Appointment of a person as an agent or employee of the Association shall not, of itself, create any right to compensation.

10.3 Books and Records. The Association shall keep correct and complete books and records of account and shall keep, at its principal office, a record of the names and addresses of its Members (including Declarant) and copies of the Declaration, the Articles of Incorporation, these Bylaws and any Rules which may be purchased by any Member at reasonable cost. All books and records of the Association, including the Articles of Incorporation and these Bylaws, as amended, and minutes of meetings of the Members and the Board, may be inspected by any Member, or such Member's agent or attorney, for any proper purpose. The right of inspection shall be subject to any reasonable rules adopted by the Board requiring advance notice of inspection, specifying hours and days of the week during which inspection will be permitted and establishing reasonable fees for any copies to be made or furnished.

10.4 Annual Report. The Board shall cause to be prepared and distributed to each Member, not later than 90 days after the close of each fiscal year of the Association, an annual report of the Association containing (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year; (c) a statement of changes in financial position for such fiscal year; and (d) a statement of the place of the principal office of the Association, where the books and records of the Association, including a list of names and addresses of current Members, may be found. At the discretion of the Board, the financial statements of the Association may be reviewed by an independent public accountant and, if applicable, a report based upon such review shall be included in the annual report.

10.5 Statement of Account. Upon payment of a reasonable fee to be determined by the Association and upon written request of an Owner or any person with any right, title or interest in a Lot or intending to acquire any right, title or interest in a Lot, the Association shall furnish a written statement of account setting forth the amount of any unpaid Assessments, or other amounts, if any, due or accrued and then unpaid with respect to the Lot or the Owner of the Lot and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Lot. Such statement shall, with respect to the party to

whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have then been levied.

10.6 Biennial Corporate Reports. The Association shall file with the Secretary of State of Colorado, within the time prescribed by law, biennial corporate reports on the forms prescribed and furnished by the Secretary of State and containing the information required by law and shall pay the fee for such filing as prescribed by law.

10.7 Fiscal Year. The fiscal year of the Association shall be determined by the Board.

10.8 Seal. The Board may, but is not required to, adopt a seal which shall have inscribed thereon the name of the Association and the words "SEAL" and "COLORADO."

10.9 Shares of Stock and Dividends Prohibited. The Association shall not have or issue shares of stock and no dividend shall be paid and no part of the income or profit of the Association shall be distributed to its Members, Directors or officers.

Notwithstanding the foregoing paragraph, the Association may issue certificates evidencing Membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

10.10 Minutes and Presumptions Thereunder. Minutes or any similar records of the meetings of the Members, or of the Board, when signed by the Secretary or acting secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

10.11 Checks, Drafts and Documents. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board.

10.12 Budget. The Board will cause a proposed budget for the Association to be prepared and adopted annually, not less than 30 days prior to the beginning of such fiscal year of the Association (except that, for the first fiscal year of the Association, the Board may adopt the estimated budget prepared by Declarant). Such budget shall be prepared in accordance with the requirements of the Declaration. Within 30 days after the Board adopts any proposed budget for the Association, the Board will mail, by ordinary first-class mail, or otherwise deliver a summary of the proposed budget to all Members and will set a date for a meeting of the Members to consider ratification of the proposed budget not less than 30 nor more than 60 days after mailing or other delivery of the summary. Unless at that meeting Members representing more than 50% of all the Lots vote to reject the proposed budget, the proposed budget will be ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Members will continue in effect until such time as the Members ratify a

subsequent budget proposed by the Board. For the first Fiscal Year of the Association, the Board may adopt Declarant's estimated budget for the Association if the Board submits such budget to the Members for ratification in accordance with this Section 10.12 within 60 days after adopting it. Pursuant to Sections 4.14, any action of the Members required pursuant to this Section 10.12 may be taken by mail ballot.

**CERTIFICATE OF SECRETARY**

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of PROSPECT PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation (the "Association"); and

2. The foregoing Bylaws constitute the Bylaws of the Association duly adopted by unanimous consent of the Board of the Association.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
\_\_\_\_\_, Secretary

**Minutes of the Annual Meeting  
Of the Board of Directors  
Prospect Property Owners Association  
November 12, 2007**

The Annual Meeting of the Board of Directors of the Prospect Property Owners Association was held on November 12, 2007 at 1:00 p.m. at the Axel Building, 12 Snowmass Road, Mt. Crested Butte, Colorado.

Attendance The following Directors were present and acting:

James H. Ruthven  
Randy Harrett  
Michael Kratz

The following Directors were absent and excused.

Eileen Mueller  
Erica Mueller

Call to Order The Annual Meeting of the Board of Directors of the Prospect Property Owners Association was called to order by Director Ruthven on November 12, 2007 at 1:00 p.m. during a quorum was present.

Minutes Upon review and by motion duly made and seconded it was unanimously

**RESOLVED** to approve the November 26, 2006 meeting minutes as presented.

2008 Budget Director Ruthven presented the proposed 2008 budget and reviewed the highlights. Budgeted revenues consist of Design Review Board fees of \$28,000 and interest income of \$2,500, approximately the same as 2007. Expenses are also budgeted approximately the same as last year: Design Review Board expenses of \$13,000 and insurance premiums of \$2,000. The budgeted excess of revenues over expenses is \$11,400. By motion duly made and seconded it was unanimously

**RESOLVED** to approve the 2008 budget as presented.

Adjournment By motion duly made and seconded it was unanimously

**RESOLVED** to adjourn the Annual Meeting of the Prospect Property Owners Association on November 12, 2007.

Respectfully Submitted

Secretary for the Meeting

Prospect Property Owners Association  
 Mt. Crested Butte, CO  
 2008 Budget

	<u>2006 Actual</u>	<u>2007 Actual</u>	<u>2008 Budget</u>
<b>Revenues</b>			
Design Review Board fees	\$ 26,000	\$ 26,000	\$ 26,000
Interest income	1,319	1,400	2,500
Total Revenue	<u>27,319</u>	<u>27,400</u>	<u>28,500</u>
<b>Expenses</b>			
Design Review Board expenses	17,987	15,000	15,000
Insurance	1,805	2,000	2,000
Filing fees	10	10	10
Bank charges	33	-	-
Total Expenses	<u>19,235</u>	<u>17,010</u>	<u>17,010</u>
Revenue over expenses	<u>\$ 8,084</u>	<u>\$ 8,390</u>	<u>\$ 11,490</u>