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REVISED CONDOMINIUM DECLARATION

FOR

EAGLE'S NEST TOWNHOUSES OF MT. CRESTED BUTTE



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REVISED CONDOMINIUM DECLARATION FOR EAGLE'S NEST TOWNHOUSES OF MT. CRESTED BUTTE

RECITALS

The Original Declaration and the First Supplement (both defined below) are amended by this Revised Condominium Declaration for Eagle's Nest Townhouses of Mt. Crested Butte. The recitals, paragraphs 1 through 62, and the exhibits of the Original Declaration are hereby stricken. The recitals, paragraphs 1 through 10, and the exhibits of the First Supplement are hereby stricken. The following provisions are hereby enacted and ratified.

ARTICLE 1: DEFINITIONS

The terms that are capitalized (excluding headings) shall have the specific meanings assigned herein. Specifically defined terms include the following:

101. **"Act"** means the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes §§ 38-33.3-101, et seq., as it may be amended from time to time.
102. **"Article"** means the respective caption herein.
103. **"Articles"** means the Articles of Incorporation of the Association, which have been filed in the Office of the Secretary of State of Colorado, as said Articles may be amended from time to time. As the context dictates, the plural "Articles" alternatively refers to the respective captions herein.
104. **"Assessment"** means an amount determined by the Association as payable to the Association by an Owner. This definition does not apply to Sections 305, 907.B.1, and 907.F.2. Assessments may be "Annual Assessments," "Special Assessments," or "Specific Assessments," as described in Sections 903, 904, and 905, respectively.
105. **"Association"** means Eagle's Nest Townhouses of Mt. Crested Butte Condominium Association, a Colorado nonprofit corporation, and its successors and assigns. It is hereby acknowledged that the Association was erroneously and variously designated in the Original Declaration and the First Supplement as "Eagle's Nest Townhouses of Mt. Crested Butte, Inc." and as "Eagle's Nest Townhouses of Mt. Crested Butte Condominiums Association." It is further acknowledged that, despite the errors, Eagle's Nest Townhouses of Mt. Crested Butte Condominium Association has been, is, and will be the Association, and all prior actions taken by the Association under such various names on behalf of Eagle's Nest are hereby ratified and affirmed.
106. **"Board"** means the governing body of the Association as defined under the Act and the Governing Documents. In addition "Board" means and includes the term "executive board" as contemplated under the Act.
107. **"Board of Arbitration"** is defined in Section 1401.
108. **"Bylaws"** means the bylaws of the Association, as they may be amended from time to time.
109. **"Common Elements"** means all of the Project except the Units.
110. **"Common Expense"** means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.
111. **"Condominium Map"** means the Condominium Map of Eagle's Nest Townhouses of Mt. Crested Butte recorded via two documents in the office of the Clerk and Recorder of Gunnison County, Colorado, the first being recorded on March 27, 1981, and bearing the



Reception Number 357917, and the second being recorded on June 17, 1981, and bearing Reception Number 359735, as it may be amended from time to time, which shall be and hereby is incorporated into the Declaration.

112. **"Condominium Unit"** means a Unit; the Unit's corresponding undivided interest in the General Common Elements, the Limited Common Elements, and the easements appurtenant thereto, if any; and the Unit's corresponding membership interest in the Association.
113. **"Declarant"** means the person or entity, and its successors and assigns, that dedicated Eagle's Nest to condominium ownership.
114. **"Declaration"** means this Revised Condominium Declaration for Eagle's Nest Townhouses of Mt. Crested Butte, as it may be amended from time to time, which shall include the Condominium Map, together with the Original Declaration and the First Supplement as they are amended hereby.
115. **"Eagle's Nest" or "Eagle's Nest Townhouses of Mt. Crested Butte"** means the condominium, being a common interest community located entirely within Gunnison County, Colorado, consisting of the Project, the Owners, and the Association, as governed by the Governing Documents.
116. **"First Mortgage" or "First Mortgagee"** means a Mortgage or Mortgagee, respectively, that has first and paramount priority under applicable law.
117. **"First Supplement"** means the First Supplement to Condominium Declaration for Eagle's Nest Townhouses of Mt. Crested Butte recorded on or about June 17, 1981, in the office of the Gunnison County Clerk and Recorder at Book 567, Page 409 bearing Reception Number 359736, that amended the Original Declaration.
118. **"General Common Elements"** means all Common Elements except Limited Common Elements.
119. **"Governing Documents"** means the Declaration, Articles, Bylaws, and Rules and Regulations.
120. **"Improvements"** means the improvements constructed on the Real Property.
121. **"Junior"** means, with respect to any Mortgage, Mortgagee, lien, or encumbrance, that which does not have first and paramount priority under applicable law.
122. **"Limited Common Elements"** means any portion of the Common Elements designated and reserved for the exclusive use by the Owner of a particular Condominium Unit, and shall include the following: Any balcony, stairs, terrace, porch, patio, or storage area that is identified on the Condominium Map with the same designation by which a Condominium Unit is identified.
123. **"Mortgage"** means any real estate mortgage, deed of trust, or security instrument by which a Condominium Unit is encumbered. Used as a verb, "Mortgage" means to so encumber a Condominium Unit.
124. **"Mortgagee"** means any holder or beneficiary of a Mortgage.
125. **"Original Declaration"** means the Condominium Declaration for Eagle's Nest Townhouses of Mt. Crested Butte recorded on or about March 27, 1981, in the office of the Gunnison County Clerk and Recorder at Book 564, Page 157 bearing Reception Number 357918.
126. **"Owner"** means every person, limited liability company, corporation, or other entity, collectively, jointly, and severally, that holds record title to a particular Condominium Unit, whether title is held in joint tenancy, tenancy in common, or in any other form.



127. **"Project"** means the Real Property and the Improvements, together with all rights, easements, and appurtenances belonging thereto, and all property owned by the Association.
128. **"Real Property"** means the real property, excluding Improvements, located solely in Gunnison County, Colorado, as described in Exhibit A, incorporated herein by reference.
129. **"Repair"** and its derivatives means to repair, reconstruct, and/or replace (as determined to be appropriate by the Association) the Improvements such that the Improvements are restored to substantially the same condition in which the same existed prior to the corresponding damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. Used as a noun, "Repair" and its derivatives means the action of so repairing, reconstructing, and/or replacing the Improvements.
130. **"Rules and Regulations"** means the rules and regulations of the Association, if any, as amended from time to time. The Association retains the discretion to decide whether to issue any Rules and Regulations.
131. **"Section"** refers to the language following a numbered, underlined heading, Like This, and ending with the next such heading, or to the specifically enumerated and identified part thereof.
132. **"Unit"** means an individual air space designated for separate ownership or occupancy and contained within the windows, doors, and unfinished perimeter walls, floors, and ceilings thereof as described on the Condominium Map, together with all fixtures and improvements therein contained. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors, or ceilings are a part of the Common Elements; provided, however, that notwithstanding any other provisions herein to the contrary, flues, fireplace boxes, and chimneys servicing a particular air space unit are a part of the Unit.
133. **"Utilities"** means any and all utility lines, pipes, wires, conduits, or systems.

ARTICLE 2: STATEMENT OF PURPOSE

201. Purpose.

The purpose of this Declaration is to to define the character, duration, rights, duties, obligations, and limitations of condominium ownership in Eagle's Nest. Additionally, this Declaration is executed to reaffirm the submission of the Project to condominium ownership pursuant to the Act and to amend the Original Declaration and the First Supplement.

202. Declaration.

- A. The following terms, covenants, conditions, easements, restrictions, uses, limitations, and obligations shall be deemed to run with the Project in perpetuity and shall be binding upon and accrue to any person acquiring and holding an interest in the Project and to any such person's grantees, successors, heirs, personal representatives, executors, administrators, or assigns.
- B. The Declarant no longer owns any portion of Eagle's Nest, and all Declarant rights, special and otherwise, have terminated.



ARTICLE 3: CONDOMINIUM OWNERSHIP

301. Condominium Units.

The Project is divided into forty-two (42) fee simple estates consisting of forty-two (42) separately designated Condominium Units, each including an undivided fractional interest in the Common Elements appurtenant thereto. Each Condominium Unit's allocated interest in the Common Elements shall be equal to the quotient obtained by dividing such Common Elements by the total number of Condominium Units.

302. Title to Condominium Units.

Except as otherwise provided herein, any Condominium Unit may be owned by more than one person or entity as joint tenants or as tenants in common or in any real property tenancy relationship recognized under the laws of the State of Colorado.

303. Partition Not Permitted.

- A. By the acceptance of the deed or other instrument of conveyance or assignment, each Owner specifically waives its right to institute or maintain a partition action or any other action designed to cause a division of the Common Elements among the Owners or to cause a division of any Condominium Unit, and each Owner specifically agrees not to institute any action therefor and that this Section 303 may be pleaded as a bar to the maintenance of such an action.
- B. Each Condominium Unit shall be conveyed, leased, devised, or encumbered only as a whole.
- C. All Owners and the Association covenant that, except as may otherwise be provided herein, they shall neither by act nor omission seek to abandon, subdivide, encumber, sell, or transfer the Common Elements without first obtaining the written consent of at least eighty percent (80%) of the First Mortgagees.
- D. Any violation of this Section 303 shall entitle the Association to the actual attorney fees, costs, and other damages the Association incurs due to such violation.

304. Time Share Estates Prohibited.

Time share estates, as contemplated in Colorado Revised Statutes § 38-33-110 and in § 18-465 of the Mt Crested Butte Code, are prohibited within Eagle's Nest.

305. Separate Tax Assessment.

Each Condominium Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed. The Common Elements shall not be assessed separately but shall be assessed with the Condominium Units as provided pursuant to Colorado Revised Statutes §§ 39-1-103(10) and 38-33.3-105(2) and subject to Exhibit B. In the event that for a period of time any taxes or assessments are not separately assessed to each Owner, but are assessed on the Project as a whole, then each Owner shall pay its proportionate share thereof in accordance with its fractional interest in the Common Elements, as shown in Exhibit B.

ARTICLE 4: LEGAL DESCRIPTION OF CONDOMINIUM UNITS

401. Legal Description.

Any instrument affecting title to a Condominium Unit may legally describe a Condominium Unit substantially as follows:



Condominium Unit _____, Eagle's Nest Townhouses of Mt. Crested Butte, according to the Revised Condominium Declaration for Eagle's Nest Townhouses of Mt. Crested Butte, as recorded with the Clerk and Recorder of Gunnison County, Colorado, on _____ at Reception No. _____, and according to the Condominium Map thereof recorded via two documents in the office of the Clerk and Recorder of Gunnison County, Colorado, the first being recorded on March 27, 1981, and bearing the Reception Number 357917, and the second being recorded on June 17, 1981, and bearing Reception Number 359735,

Town of Mt. Crested Butte,
County of Gunnison,
State of Colorado.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect the Condominium Unit and all other appurtenant properties and property rights, and shall incorporate all of the rights, limitations, and burdens incident to the ownership of a Condominium Unit as described in this Declaration. Each such description shall be construed to include a nonexclusive easement for ingress to and egress from the applicable Condominium Unit. Under no circumstances shall this Section 401 be deemed to invalidate or have deleterious effect on the legal description in any instrument affecting title in effect as of the date of this Declaration that would have complied with paragraph 6 of the Original Declaration prior to its having been stricken hereby.

402. Supplements.

The reference to the Condominium Map and Declaration in any instrument shall be deemed to include any and all supplements or amendments to the Condominium Map or Declaration. In interpreting the Condominium Map or any part thereof, the existing physical boundaries of any Unit shall be conclusively presumed to be such Unit's boundaries.

ARTICLE 5: USE AND OCCUPANCY

501. Use.

Subject to the Bylaws, to the Rules and Regulations, and to the limitations herein, each Owner:

- A. Shall have the non-exclusive right to use and enjoy the General Common Elements and shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to the Condominium Unit of such Owner, if any; and
- B. May use such General Common Elements and Limited Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners.

502. Occupancy.

- A. All Condominium Units shall be used for residential purposes only. Any commercial use of a Condominium Unit is strictly prohibited; provided, however, that leasing of Condominium Units shall be permitted subject to the Governing Documents and to resolutions, decisions, and policies made pursuant thereto.
- B. Notwithstanding Section 502.A, the Association may own or lease any Condominium Unit and use it as a business office or a residence for any manager or employee of the Association or as contemplated in Section 1602.



503. Property for Common Use.

The Association may acquire and hold, for the use and benefit of all of the Owners, real and personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by the Owners in the same proportion as their respective interests in the Common Elements and shall not be transferable except with a transfer of a Condominium Unit.

504. Rules and Regulations.

The Association may make reasonable Rules and Regulations governing the use of the Units and of the Common Elements, which Rules and Regulations shall be consistent with the rights and duties established in this Declaration. Such Rules and Regulations shall be binding upon all Owners, and the Association may take such action, including judicial action as may be necessary to enforce compliance with such Rules and Regulations and to obtain damages and reasonable attorney fees for non-compliance to the extent permitted by law.

505. Compliance with Rules.

Each Owner shall comply strictly with the Governing Documents and to resolutions, decisions, and policies made pursuant thereto. The failure of any Owner or an Owner's invitees, guests, agents, or renters to comply with any of the Governing Documents and to resolutions, decisions, and policies made pursuant thereto shall be grounds for an action to recover sums due for damages or equitable relief or both and for reimbursement of all costs and attorney fees incurred in connection therewith, which action shall be maintainable by the Board in the name of the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner.

ARTICLE 6: MEMBERSHIP AND MANAGEMENT

601. Membership Corporation.

The Association shall be a membership corporation without certificates or shares of stock. There shall be one (1) membership in the Association for each Condominium Unit, for a total of forty-two (42) memberships; provided that the Association shall under no circumstances be considered to be a member of itself. Each Owner, upon becoming an Owner, shall be entitled and required to be a member of the Association and shall remain a member for the period of its ownership.

602. Membership and Voting Rights.

A. Proportional Vote.

- A.1. Except as provided in Sections 601, 602.A.2, and 602.E, each Owner shall be entitled to cast a vote in accordance with such Owner's fractional interest in the Common Elements, as set forth in Exhibit B. No cumulative voting shall be allowed, and there shall be one class of members.
- A.2. When the Association owns a Unit, unless otherwise required by law:
 - A.2.(a) No votes allocated to a Unit owned by the Association may be cast;
 - A.2.(b) The Association shall not be counted for purposes of determining a quorum or a majority (or other threshold) vote;
 - A.2.(c) Though it may cast no vote, the Association's fractional interest in the Common Elements shall be counted when determining whether a vote has obtained the approval by Owners representing an applicable aggregate percentage interest in the Common Elements; and



- A.2.(d) The Association shall not be counted as an Owner with respect to the notice or other provisions in the Governing Documents relating to communications with Owners.
- B. **Plural Ownership.** In the event the ownership of a Condominium Unit is held by more than one person or entity:
- B.1. The Owner, upon becoming an Owner, shall designate one individual as attorney-in-fact, who shall act as the spokesperson and voter for the Owner;
 - B.2. Any vote by the Owner shall be cast only as a single vote, and split or divided votes shall not be allowed; and
 - B.3. Despite the foregoing, if an Owner cannot render a single vote due to conflict or indecision, the Owner's vote for all votes to which such conflict or indecision applies shall be regarded as an abstention.
- C. **Transfer.** Each membership in the Association shall be appurtenant to a Condominium Unit and shall be transferred automatically together with a conveyance of the corresponding Condominium Unit. No person other than an Owner may be a member of the Association, and membership may not be transferred except in connection with the conveyance or transfer of a Condominium Unit; provided, however, that such membership may be assigned to a Mortgagee as further security for the loan secured by the lien of the Mortgagee.
- D. **Termination.** Membership shall terminate without any formal action whenever an Owner ceases to be an Owner, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies that the Association or others may have against such former Owner arising out of or in any way connected with such membership.
- E. **Good Standing.** The Association may suspend, and subsequently reinstate, an Owner's right to vote for failure to pay Assessments, as may be provided in the Bylaws or Rules and Regulations.
603. **Management.**
- A. The administration and management of the Project shall be executed by the Association and shall be governed by the Governing Documents and subject to resolutions, decisions, and policies made pursuant thereto.
 - B. In addition to all other rights, duties, privileges, and liabilities of the Association, as provided by this Declaration and the Governing Documents, the Association shall provide to the Owners the following duties and services:
 - B.1. The heating, lighting and other utility services for all common areas.
 - B.2. The obtaining and maintaining of all required insurance as hereafter provided.
 - B.3. The enforcement of the Governing Documents, and the collection of all Assessments.
 - B.4. To perform all other acts required by the Governing Documents.
 - C. The Association shall have the right to hire one or more managing agents to perform the Association's duties and services. No contract or agreement for the employment of a managing agent shall be for a term in excess of three (3) years, and any such agreement shall provide that the same may be terminated with or without cause, and without payment of any termination fee, on ninety (90) days written notice.



ARTICLE 7: EASEMENTS AND ACCESS RIGHTS

701. Easement for Encroachment.

If any portion of the Common Elements encroaches upon a Unit, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall exist. If any portion of a Unit encroaches upon the Common Elements or upon an adjoining Unit, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall exist. In the event that the Improvements are partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location and as a result of such rebuilding any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units. In interpreting any and all provisions of the Declaration, deeds, and Mortgages relating to Condominium Units, the actual location of a Unit shall be deemed conclusively to be the property intended to be sold, transferred, conveyed, reserved, or encumbered, notwithstanding any minor horizontal or vertical deviations from the location of such Unit indicated on the Condominium Map.

702. Limited Access Rights.

- A. The Association shall have the irrevocable right to have access to each Unit from time to time during reasonable hours under the particular circumstances as may be necessary for the maintenance, repair, or replacement of any of the Common Elements; for making repairs necessary to prevent damage to the Common Elements or to another Unit; and to make a reasonable inspection of a Unit's flues, fireplace boxes, and chimneys.
- B. In the event damage to the Common Elements or any part of a Unit is caused by the misuse or negligence of an Owner or its invitees, guests, agents, or renters, then such Owner shall be solely responsible for all expenses to restore the damaged items to their condition prior to such damage.
- C. The Association shall repair incidental damage to any Unit resulting from performance of work that is the responsibility of the Association.

ARTICLE 8: MAINTENANCE

801. Owners.

- A. The Owner of a Condominium Unit shall keep and maintain the following in a good and proper state of repair and in a clean, sanitary, and attractive condition and shall have the right to repair, alter, and remodel the same, subject to the limitations herein: the interior of its Unit, including the interior walls, ceilings, floors, windows, glass, Utilities from the point where they enter the Unit, and all permanent fixtures and appurtenances thereto.
- B. The Owner shall not be deemed to own any Utilities running through its Unit which serve one or more other Units except as tenants in common with the other Owners. No Utilities shall be altered, changed, relocated, or disturbed without the prior written consent of the Association.
- C. Such right to repair, alter, and remodel shall carry the obligation to repair any finished materials removed with similar types of finishing materials. Prior to any such repair, alteration, or remodeling, the Owner shall obtain written approval from the Board, which approval shall not be unreasonably withheld.



- D. All fixtures and equipment installed within the Unit commencing at a point where the Utilities enter the Unit shall be maintained and kept in repair by the Owner thereof, including flues, fireplace boxes, and chimneys servicing such Unit.
- E. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the Improvements or impair any easement or Utility.

802. Association.

Except as may otherwise be provided herein, the Association shall keep and maintain all Common Elements in a good and proper state of repair and in a clean, sanitary, and attractive condition. The Association shall not be required to obtain the prior approval of the Owners to cause such maintenance or repairs to be accomplished, regardless of the cost thereof.

ARTICLE 9: ASSESSMENTS

901. Assessment for Common Expenses.

Each Owner, by the acceptance of a deed for a Condominium Unit, shall be deemed to covenant and agree to pay, and shall be obligated to pay, to the Association all Assessments made by the Association for the purposes provided in this Declaration.

902. Apportionment.

Except as provided Section 905:

- A. The Assessments and Common Expenses pertaining to the Project shall be apportioned equally to each Condominium Unit in accordance with its fractional interest in the Common Elements, as set forth in Exhibit B; provided, however, that the denominator of such fraction shall be reduced by the number of Units owned by the Association contemporaneously with such apportionment, and the Association shall not be allocated any portion of the Common Expenses.
- B. The Limited Common Elements shall be maintained as General Common Elements, and the Owners having exclusive use thereof shall not be subject to any separate charge or Assessment therefor.

903. Annual Assessments.

- A. The Annual Assessments made for Common Expenses shall be based upon the advance estimate of the cash requirements by the Association to provide for the payment of all Common Expenses growing out of or connected with the maintenance and operation of the Common Elements, which sums may include expenses of management; premiums for insurance that the Association is required or permitted to maintain; landscaping and care of grounds; common lighting and heating; repairs and renovations; trash collection; water and sewer charges; snow removal; legal and accounting fees; expenses and liabilities incurred by the Association under or by reason of the Governing Documents or to resolutions, decisions, or policies made pursuant thereto; any deficit remaining from a previous Assessment; the creation of a reasonable contingency or other reserve or surplus fund; and any other expenses and liabilities that may be incurred by the Association for the benefit of the Owners.
- B. The omission or failure of the Association to fix such Annual Assessment for any period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. In the event that the Association fails to pay any charges imposed by service provider, each Owner shall be personally responsible and liable for the required payments to such service provider, and the fact that the Owner has already paid the Association therefor shall not exempt the Owner from liability.



- C. Each Owner shall be obligated to pay all charges for any separately metered utilities servicing its Condominium Unit. In the event that any utility is master metered to the Association, then such utility service shall be a part of the Annual Assessments as provided above.
- D. The Association shall be obligated to establish a reserve fund for the maintenance, repair, and replacement of the Common Elements. The amount of such fund shall be determined by the Association and shall be funded through the Annual Assessments and shall be held by the Association in a separate account, which may be an interest-bearing account.

904. Special Assessments.

In addition to Annual Assessments, the Association may at any time and from time to time determine, levy, and assess any Special Assessment for the purpose of paying, in whole or in part, the costs, fees, or expenses of any construction, reconstruction, repair, replacement, or maintenance of the Common Elements or the Project or any facilities located thereon.

905. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Condominium Unit to cover costs incurred in bringing the Condominium Unit into compliance with the terms of the Governing Documents; costs incurred as a consequence of the conduct of an Owner or its invitees, guests, agents, or renters; or fees or fines imposed as permitted by the Act. Such Specific Assessment shall be due and payable in the manner set forth in the notice of such Specific Assessment.

906. Time of Payments.

- A. The Assessments of the Association shall be computed and determined on a fiscal year basis.
- B. Annual and Special Assessments shall be payable monthly in advance on or before the last day of each month by the Owners.
- C. The Association shall give written notice to the Owners of the Annual Assessment and shall prepare and deliver to each Owner itemized monthly statements pertaining thereto.
- D. If any statement for Assessments is not paid by the date that it becomes due and payable, the Association may assess a late charge (one-time or recurring) and interest thereon, as such amounts may be fixed in the Bylaws or Rules and Regulations.

907. Lien for Non-Payment.

- A. All sums assessed to any Condominium Unit and not paid within thirty (30) days from the date of the Assessment, together with late charges and interest thereon and attorney fees and costs as provided in this Article, shall constitute a lien on such Condominium Unit in favor of the Association.
- B. Except as otherwise provided by law and by Section 907.C, such lien shall be superior to all other liens and encumbrances on such Condominium Unit except only:
 - B.1. Tax and assessment liens on the Condominium Unit by any governmental authority; and
 - B.2. All sums unpaid on a First Mortgage of record, including all unpaid obligatory advances made pursuant to such Mortgage.
- C. A lien under this Section 907 is also prior to the security interests described in Sections 907.B.1 and 907.B.2 to the extent of an amount equal to the Annual Assessments which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section 907 of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.



- D. To evidence such lien, the Association may prepare a written notice of lien setting forth the amount of the Assessment, the amount remaining unpaid, the name of the Owner of the Condominium Unit, and a description thereof. Such notice shall be signed by the Association and may be recorded in the records of Gunnison County, Colorado. Such lien shall attach from the date of the failure of payment of the Assessment and shall continue as a lien until all sums with interest and other charges thereon have been fully paid, and such lien shall not be extinguished or annulled by the foreclosure of any other lien.
- E. Such lien may be enforced by foreclosure by the Association in the same manner as a foreclosure of a Mortgage. In such foreclosure, the Owner shall be required to pay the costs and expenses for such proceedings, the costs and expenses for filing the notice of claim of lien, and all reasonable attorney fees. The Owner shall also be required to pay to the Association the monthly Assessments for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid on the Condominium Unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.
- F. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association in the following order:
- F.1. For payment of the balance of the lien of any First Mortgage;
 - F.2. For payment of taxes and special assessments liens in favor of any assessing entity and the customary expenses of sale;
 - F.3. For payment of unpaid Assessments and all costs, expenses, and fees incurred by the Association;
 - F.4. For payment of Junior liens and encumbrances in the order of and to the extent of their priority; and
 - F.5. The balance remaining, if any, shall be paid to the Owner.
- G. Any Mortgagee may pay, but shall not be required to pay, the amount secured by the Association's lien, and upon such payment said Mortgagee shall have a lien on the Condominium Unit for the amounts paid at the same rank as said Mortgagee's Mortgage.
- H. Upon a written request by any Mortgagee, the Association shall report to such Mortgagee any and all unpaid Assessments remaining unpaid for more than thirty (30) days after the date of Assessment.

908. Owners' Obligation.

Each Assessment against each Condominium Unit shall be the personal and individual debt of the Owner thereof at the time each Assessment is made. Suit to recover a money judgment for such unpaid debt shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may exempt itself from the liability for its contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of its Condominium Unit.

909. Statement of Account.

- A. Upon the written request of any Owner, prospective Owner, Mortgagee, or prospective Mortgagee, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to the subject Condominium Unit, the amount of the current monthly Assessment, and the date that such Assessments become due, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement shall be fulfilled within fourteen (14) days of such request, then such requesting party shall not be liable for, nor shall the Condominium



Unit be conveyed subject to, a lien for any unpaid Assessments against the subject Condominium Unit.

- B. Upon any change in the record ownership of a Condominium Unit, all unpaid Assessments shall immediately become due and payable and shall be paid to the Association. In the event that the requirements of the foregoing sentence are not fulfilled, the grantee of a Condominium Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter for all unpaid Assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

ARTICLE 10: MECHANIC'S LIENS

1001. Limitations on Mechanic's Liens.

No labor performed or materials furnished and incorporated into a Unit with the consent or at the request of the Unit Owner or its agent, contractor, or subcontractor shall be the basis for the filing of a lien against the Unit of another Owner not expressly consenting to or requesting the same, or against the Common Elements, except as to the undivided fractional interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished. The provisions of this Section 1001 are subject to the rights of the Association, as set forth in this Declaration.

1002. Indemnity.

Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against the Condominium Unit, or any part thereof, of any other Owner for labor performed or for materials furnished for the first Owner's Unit. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed or to which materials were furnished the amount necessary to discharge any such lien, including all costs incidental thereto, and by obtaining a discharge of the lien. Such collection shall be made by a Specific Assessment.

ARTICLE 11: MORTGAGES

1101. Right to Mortgage.

Each Owner shall have the right from time to time to Mortgage its interest in a Condominium Unit. The Owner of a Condominium Unit may create Junior Mortgages on the following conditions:

- A. Each Junior Mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, liens for Assessments, and other obligations created by the Governing Documents.
- B. In accordance with Section 1201.C, upon a decision to Repair made pursuant to this Declaration and upon a written request from the Association, each Junior Mortgagee shall release in writing all of its right, title, and interest in and to the proceeds under applicable insurance policies wherein the Association is a named insured.

1102. Additional Rights of First Mortgagees.

In addition to any other rights provided in this Declaration, any First Mortgagee, who shall make a request in writing to the Association, shall have the following additional rights:



- A. To be furnished by the Association, at the time the same is furnished to the Owners, a copy of the annual financial statement and audit of the Association.
- B. To be given written notice by the Association of any meeting of the Association called for the purpose of considering any amendment, revocation, or change to the Declaration or Articles. Such notice shall state the nature of any such change being proposed.
- C. To be given written notice by the Association of any default by an Owner of a Condominium Unit encumbered by the First Mortgagee in the performance of any duty or obligation required hereunder, if the same is not cured within thirty (30) days.
- D. Upon reasonable notice, to examine the books and records of the Association during normal business hours.

1103. First Mortgagee Consent.

Whenever the consent of a First Mortgagee is required or permitted herein, the following shall apply:

- A. The Association shall send a dated, written notice to each First Mortgagee in accordance with Section 1601.B.
- B. If a First Mortgagee has not registered its address or other contact information with the Association, the Association shall send a dated, written notice by either registered or certified mail postage prepaid to each First Mortgagee at its most recent address as shown on the recorded Mortgage or recorded assignment thereof.
- C. Such notice shall include, as applicable:
 - C.1. A copy of the proposed amendment to or revocation of the Declaration;
 - C.2. A copy of the plan of Repair, obsolescence, or renewal and reconstruction;
 - C.3. A copy of the proposed decision not to rebuild; or
 - C.4. Instructions regarding how such information can be obtained, which methods shall be reasonable and without cost to the First Mortgagee.
- D. A First Mortgagee that does not deliver to the Association a negative response within sixty (60) days after the date of such notice shall be deemed to have given its consent to the proposed amendment, revocation, plan, or decision contained or referred to therein.
- E. In determining the appropriate percentage approval of the First Mortgagees pursuant to this Declaration, each First Mortgagee shall have one vote for each First Mortgage owned by it.

ARTICLE 12: ATTORNEY-IN-FACT

1201. Association as Attorney-in-Fact.

- A. The Association is hereby irrevocably appointed as attorney-in-fact for every Owner for the purposes expressly set forth in this Declaration, including for all purposes with respect to the Project upon the Project's damage, destruction, or obsolescence.
- B. With respect to the interest of every Owner, the Association, as attorney-in-fact, shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other document that may be necessary and appropriate to exercise the powers herein granted.
- C. The proceeds of any insurance collected shall be available to the Association for the purpose of Repair unless the Owners and all First Mortgagees agree not to rebuild in accordance with the provisions of Article 13.



- D. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after such event. At such meeting a new attorney-in-fact shall be appointed to administer the Project upon its destruction, damage, obsolescence, or condemnation. Said appointment shall require the approval of the Owners representing an aggregate interest in at least sixty-seven percent (67%) of the Common Elements and at least sixty-seven percent (67%) of the First Mortgagees.

ARTICLE 13: INSURANCE

1301. Insurance Required.

- A. The Association shall obtain and maintain at all times, to the extent obtainable, policies involving standard premium rates and written with companies licensed to do business in Colorado and having a Best's Financial Size Category of Class VI or higher, covering the risks set forth below.
- B. The Association shall not obtain any policy where:
- B.1. Under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or Mortgagee's designee;
 - B.2. By the terms of carrier's charter, bylaws, or policy, loss payments are contingent upon action by the company's board of directors, policyholders, or members; or
 - B.3. The policy includes any limiting clauses (other than insurance conditions) which could prevent Mortgagees or the mortgagor from collecting insurance proceeds.
- C. The types of coverages to be obtained and risks to be covered are as follows, all in the manner in which an owner of a similar structure in the vicinity of the Project would, in the exercise of prudent judgment, obtain such insurance:
- C.1. Insurance on the Improvements in such amounts as shall provide for full replacement thereof in the event of damage or destruction from the casualty against which such insurance is obtained. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other insurance the Association shall deem appropriate. The Association may comply with the above requirements by the purchase of coverage and may elect such deductible provisions as in the Association's opinion are consistent with good business practice. All policies shall contain a standard non-contributory Mortgage clause in favor of each Mortgagee of a Condominium Unit, which shall provide that the loss thereunder, if any, shall be payable to the Association for the use and benefit of Mortgagees as their interests may appear.
 - C.2. Public liability and property damage insurance in such limits as the Association may from time to time determine, but not in an amount less than \$500,000 per injury, per person, per occurrence and umbrella liability limits of \$1,000,000 per occurrence, covering claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance, and other use of the Project. Said policy shall also contain a "severability of interest" endorsement.
 - C.3. Worker's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.
 - C.4. The Association shall purchase adequate fidelity coverage against dishonesty of employees, destruction, or disappearance of money or securities, and forgery. Said



policy shall also contain endorsements thereto covering any persons who serve the Association without compensation.

- D. All policies of insurance to the extent obtainable may not be cancelled or modified without at least ten (10) days prior written notice to all of the insureds, including Mortgagees. If requested in writing by one or more of the Mortgagees, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all Mortgagees at least ten (10) days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured and as attorney-in-fact for all of the Owners, which policy or policies shall identify the interest of each Owner and First Mortgagee. Further, the Association shall require the insurance company or companies providing the insurance coverages described herein to provide each Owner and Mortgagee a certificate of insurance in regard to such Owner's individual Condominium Unit.
- E. Owners shall carry other insurance for their benefit and at their expense as the Association may require, and such insurance shall not affect or diminish the liability of the carriers issuing insurance obtained by the Association.
- F. Insurance coverage on furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper, disposal, and other items of personalty or other property belonging to an Owner and public liability coverage within each Unit shall be the sole and direct responsibility of the Owner thereof, and the Association shall have no responsibility therefor.
- G. In the event that there shall be any damage or destruction to, or loss of, or taking of a Condominium Unit or of the Common Elements which exceeds \$10,000, then notice of such damage or loss or taking shall be given by the Association to each First Mortgagee of the affected Condominium Units within ten (10) days after the occurrence of such event and the cost of Repair is determined.

1302. Repair.

If seventy-five percent (75%) or fewer of the Improvements are destroyed or damaged, such damage or destruction shall be promptly Repaired by the Association, as attorney-in-fact, using the proceeds of the insurance.

1303. Decision Not to Rebuild.

- A. If more than seventy-five percent (75%) of the Improvements are destroyed or damaged, and if the Owners representing an aggregate interest in at least seventy-five percent (75%) of the Common Elements, do not voluntarily, within one hundred (100) days thereafter, make provisions for Repair, which plan shall require the approval of at least seventy-five percent (75%) of the First Mortgagees, the Association shall forthwith record a notice setting forth the fact or facts, and upon the recording of such notice by the Association, the remaining Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in the Governing Documents.
- B. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Owner's interest. Such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each account shall be in the name of the Association and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each such account, without contribution from one account to another, toward the partial or full payment of the lien of any First Mortgage against the Condominium Unit represented by such separate account.
- C. Thereafter, each such account shall be supplemented by the appropriate amount of the proceeds derived from the sale of the Project. Such apportionment shall be based upon each Owner's fractional interest in the Common Elements. The total funds of each account shall be



used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purpose and in the same order as is provided in Section 907.F.

1304. Insurance Proceeds Insufficient.

If the Association is required to make Repairs hereunder and the insurance proceeds are insufficient for such purpose, the Association, as attorney-in-fact, shall make such Repairs using the proceeds of the insurance and the proceeds of a Special Assessment.

ARTICLE 14: OBSOLESCENCE

1401. Adoption of Obsolescence Plan.

- A. The Owners representing an aggregate interest in at least seventy-five percent (75%) of the Common Elements may agree that the Condominium Units are obsolete and adopt a plan for the renewal and reconstruction of the Project, which plan shall require the approval of at least eighty percent (80%) of the First Mortgagees.
- B. If a plan for the renewal or reconstruction is adopted, then the expense thereof shall be payable by all of the Owners as Common Expenses; provided, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association that such Condominium Unit shall be purchased by the Association for the fair and reasonable market value thereof. The Association shall then have fifteen (15) days within which to cancel such plan. If such plan is not cancelled, then the Condominium Unit shall be purchased according to the following procedures. If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within sixty (60) days thereafter.
- C. If the Owner and the Association are unable to agree as to the determination of the fair and reasonable market value of the Condominium Unit the matter shall be submitted to arbitration as follows. The Board of Arbitration shall be appointed in the following manner:
 - C.1. Within ten (10) days after the failure to agree on the fair and reasonable market value, the Owner shall nominate and appoint in writing, with written notice to the Association, its arbitrator who shall be a licensed real estate broker residing in Gunnison County, Colorado.
 - C.2. Within ten (10) days after the failure to agree on the fair and reasonable market value, the Association shall nominate and appoint in writing, with written notice to the Owner, its arbitrator who shall be a licensed real estate broker residing in Gunnison County, Colorado.
 - C.3. Within ten (10) days after the appointment, the arbitrator for the Owner and the arbitrator for the Association shall jointly nominate and appoint a third arbitrator who shall be a licensed real estate broker residing in Gunnison County, Colorado.
 - C.4. If the Owner or the Association fails to nominate and appoint its arbitrator within the time provided or if the arbitrators appointed fail to nominate and appoint a third arbitrator, then and in that event the arbitrator or arbitrators not so nominated and appointed shall be nominated and appointed by a judge of the District Court of Gunnison County, Colorado, upon the application of the party or parties that have properly nominated and appointed their arbitrator.
- D. The decision of a majority of the Board of Arbitration shall be the decision of the Board of Arbitration as to the fair and reasonable market value of the Condominium Unit.
- E. The Board of Arbitration shall render its decision in writing within thirty (30) days from the date the Board of Arbitration is constituted.



- F. The Owner and the Association agree that they shall be bound and will abide by said decision and that said decision and award may be filed with the Clerk of the District Court of Gunnison County, Colorado, as the basis of a judgment.
- G. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds in the same order as provided in Section 907.F.

1402. Sale Upon Obsolescence.

- A. The Owners representing an aggregate interest in at least seventy-five percent (75%) of the Common Elements may agree that the Units are obsolete and that the same should be sold. Such plan shall require the approval of at least eighty percent (80%) of the First Mortgagees.
- B. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association the entire Project shall be sold by the Association, as attorney-in-fact, for all of the Owners free and clear of the provisions contained in the Governing Documents.
- C. The sale proceeds shall be apportioned among the Owners on the basis of each Owner's fractional interest in the Common Elements and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each such account shall be in the name of the Association and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account, the Association as attorney-in-fact, shall use and disburse the total of such accounts, without contribution from one account to the other, for the same purposes and in the same order as provided in Section 907.F.

ARTICLE 15: AMENDMENT AND CONFLICT

1501. Amendment.

- A. This Declaration shall not be amended or revoked except upon the agreement of:
 - A.1. The Owners representing an aggregate interest in at least sixty-seven percent (67%) of the Common Elements; and
 - A.2. The First Mortgagees representing an aggregate of at least eighty percent (80%) of the First Mortgages encumbering the Units.
- B. Notwithstanding Section 1501.A, the fraction of the undivided interest in the Common Elements appurtenant to each Condominium Unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of all of the Owners and all of the First Mortgagees.
- C. The consent(s) of Junior Mortgagees shall not be required under the provisions of Sections 1501.A.
- D. No action to challenge the validity of an amendment or revocation adopted by the Association pursuant to this Article may be brought more than one (1) year after the amendment or revocation is recorded.
- E. Every amendment to or revocation of the Declaration shall be recorded by the Association in the office of the Clerk and Recorder of Gunnison County, Colorado, and may be indexed in the grantee's index in the name of Eagle's Nest Townhouses of Mt. Crested Butte, the Association, or both, and may be indexed in the grantor's index in the name of each Owner at the time of the amendment or revocation.



- F. Any amendment to or revocation of the Declaration shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

1502. Conflict.

In the event of a conflict among the Governing Documents:

- A. The Declaration shall control over the Articles, Bylaws, and Rules and Regulations;
- B. The Articles shall control over the Bylaws and Rules and Regulations; and
- C. The Bylaws shall control over the Rules and Regulations.

ARTICLE 16: MISCELLANEOUS

1601. Notices.

- A. Except as may otherwise be provided in the Articles, Bylaws, or Rules and Regulations:
 - A.1. Each Owner shall register its mailing address with the Association, and except for monthly statements and other routine notices, all other policies or demands intended to be served upon an Owner shall be sent by registered or certified mail, postage prepaid, or by a commercial carrier with a signed receipt required, addressed in the name of the Owner at such registered mailing address.
 - A.2. All notices, demands, or other notices intended to be served upon the Association shall be sent by certified mail, postage prepaid, or by a commercial carrier with a signed receipt required to the address of the Association.
- B. Each Mortgagee may, and is encouraged to, register its mailing address with the Association, and, except as otherwise mutually agreed by the Association and a particular Mortgagee, all matters intended to be served upon a Mortgagee shall be sent by registered or certified mail, postage prepaid, or by a commercial carrier with a signed receipt required addressed in the name of the Mortgagee at such registered mailing address.

1602. Employee Housing.

Notwithstanding Section 502.A, Condominium Units A and B are hereby dedicated as employee housing under the following conditions:

- A. Such Condominium Units shall be dedicated and used solely for the purpose of housing a resident manager or employees whose services are utilized in the operation and management of Eagle's Nest, and to the extent that the Condominium Units are not utilized by such employees, the Condominium Units shall be dedicated and used by any other persons employed within the Town of Mt. Crested Butte, Colorado.
- B. Such Condominium Units are dedicated solely for the purpose of such resident manager or employee housing so long as the same are required to be kept and maintained as employee housing by any ordinance of the Town of Mt. Crested Butte, Colorado.
- C. The Association shall keep and maintain the Condominium Units for such resident manager or employee as above required, provided that upon the same no longer being required or needed for such purpose may utilize, sell, or dispose of the Condominium Units in the same manner and method as any other property owned by the Association.
- D. Eagle's Nest hereby ratifies the prior dedication, sale, and conveyance of said Condominium Units to the Association, which prior dedication, sale, and conveyance shall be deemed to be in accordance with the terms and conditions of this Section 1602.



1603. Supplemental to Law.

The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law.

1604. Late Payments.

Any and all sums, amounts, expenses, Assessments, or any funds due and payable as provided in this Declaration that are not paid within thirty (30) days of the date that the same are due and payable may bear interest and be subject to other penalties and fees, as determined by the Association.

1605. Severability.

If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

1606. Headings, Pronouns, Etc.

Headings contained in this Declaration are not to be considered in construing this Declaration. The words "herein," "hereby," etc. refer to this Declaration in its entirety. The word "include" and its derivatives are not intended to exclude or limit. Words in the singular include the plural, words in the plural include the singular, and words importing a gender include all genders, as the context requires.

1607. Remedies.

Each remedy provided herein is distinct from and cumulative to all other rights or remedies herein or afforded by law or equity, and may be exercised concurrently, independently, or successively.

1608. Applicable Law and Jurisdiction.

This Declaration shall be governed by the laws of the State of Colorado. Any judicial action or proceeding relating to this Declaration shall be brought in the District Court of Gunnison County, Colorado. All parties consent to the personal jurisdiction of such court and waive any right to object to such jurisdiction.

1609. Attorney Fees.

In the event there is any litigation or arbitration arising out of this Declaration, the court or arbitrator shall award to the substantially prevailing party its reasonable costs and expenses, including attorney fees.

1610. Addenda.

All exhibits, schedules, and addenda included with this Declaration are hereby incorporated into this Declaration. In the event there is a conflict between or among the body of this Declaration, the exhibits hereto, and any addenda, later executed addenda shall govern over previously executed addenda, all addenda shall govern over the exhibits and the body, and the exhibits shall govern over the body.



CERTIFICATE

The undersigned President of the Association, hereby certifies that, as of the date the President has signed below:

- A. In accordance with the Original Declaration and the First Supplement and with applicable law, the current Owners as shown in Exhibit C, by a properly conducted and tallied vote, have amended the Original Declaration and the First Supplement via this Revised Condominium Declaration for Eagle's Nest Townhouses of Mt. Crested Butte;
- B. At least eighty percent (80%) of the First Mortgagees have given their consent to the amendment of the Original Declaration and the First Supplement and the approval of the Revised Condominium Declaration for Eagle's Nest Townhouses of Mt. Crested Butte, pursuant to applicable law; and
- C. All information required by Colorado Revised Statutes § 38-33.3-209 is contained in the Declaration or the Condominium Map, or in some combination thereof.

President:

Signature: Richard Grivas

Date

12/24/13

NOTARY PUBLIC

STATE OF

COLORADO

County of

Gunnison

) ss.

Notary Public

The foregoing instrument was acknowledged before me on 12/24/2013, by Richard Grivas.
Witness my hand and official seal.
My commission expires: 05/18/18.

Attest:

Secretary

Signature: Dan Goetz

Date

12/30/13

NOTARY PUBLIC

STATE OF

COLORADO

County of

Gunnison

) ss.

Notary Public

The foregoing instrument was acknowledged before me on 12/30/2013 by Dan Goetz.
Witness my hand and official seal.
My commission expires: 05/18/18.



EXHIBIT A: REAL PROPERTY

Parcel A

Eagle's Nest Townhouses of Mt. Crested Butte, Units B and 17 through 40, inclusive, according to the Condominium Plat thereof recorded 27 March 1981, bearing Reception No. 357917,

Also known as a 1.358 acre± tract of land being part of Lot A of SUNLIGHT RIDGE ESTATES, according to the Plat thereof recorded 14 August 1979, bearing Reception No. 341954, described as follows:

Beginning at the most northerly corner of said Lot A; thence along the easterly boundary of Morning Glory Way on a curve to the left 404.81 feet, said curve having a radius of 945.0 feet and a chord which bears South 20°25'22" East 401.81 feet; thence on a curve to the left 75.08 feet, said curve having a radius of 729.0 feet and a chord which bears South 35°57'00" East 75.05 feet; thence on a curve to the right 93.40 feet to the, most southwesterly corner of said Lot A, said curve having a radius of 176.0 feet and a chord which bears South 23°41'49" East 92.31 feet; thence North 74°40' East 131.25 feet to an angle point corner on the southerly boundary of said Lot A; thence North 26°21'30" West 318.88 feet to the southwesterly boundary of Marcellina Lane; thence along said Lane boundary along a curve to the right 290.26 feet to the point of beginning, said curve having a radius of 732.0 feet and a chord which bears North 45°41'52" West 288.36 feet,

TOWN OF MT. CRESTED BUTTE,
COUNTY OF GUNNISON,
STATE OF COLORADO.

Parcels B and C

Eagle's Nest Townhouses of Mt. Crested Butte, Units A and 1 through 16, inclusive, according to the Condominium Plat thereof recorded 17 June 1981, bearing Reception No. 359735,

Also known as Lots B and C, SUNLIGHT RIDGE ESTATES, according to the Plat thereof recorded 14 August 1979, bearing Reception No. 341954,

TOWN OF MT. CRESTED BUTTE,
COUNTY OF GUNNISON,
STATE OF COLORADO.



EXHIBIT B: OWNERSHIP APPORTIONMENT

<u>Condominium Unit Number</u>	<u>Appurtenant Undivided Fractional Interest in and to the Common Elements</u>
Unit A	1/42
Unit B	1/42
Unit 1	1/42
Unit 2	1/42
Unit 3	1/42
Unit 4	1/42
Unit 5	1/42
Unit 6	1/42
Unit 7	1/42
Unit 8	1/42
Unit 9	1/42
Unit 10	1/42
Unit 11	1/42
Unit 12	1/42
Unit 13	1/42
Unit 14	1/42
Unit 15	1/42
Unit 16	1/42
Unit 17	1/42
Unit 18	1/42
Unit 19	1/42
Unit 20	1/42
Unit 21	1/42
Unit 22	1/42
Unit 23	1/42
Unit 24	1/42
Unit 25	1/42
Unit 26	1/42
Unit 27	1/42
Unit 28	1/42
Unit 29	1/42
Unit 30	1/42
Unit 31	1/42
Unit 32	1/42
Unit 33	1/42
Unit 34	1/42
Unit 35	1/42
Unit 36	1/42
Unit 37	1/42
Unit 38	1/42
Unit 39	1/42
Unit 40	1/42

**EXHIBIT C: CURRENT OWNERS**

<u>Condominium Unit Number</u>	<u>Owner</u>	<u>Assessor's Schedule Number</u>
Unit A	Eagle's Nest Townhouses of Mt. Crested Butte Condominium, Inc.	R005893
Unit B	Eagle's Nest Townhouses of Mt. Crested Butte Condominium, Inc.	R005868
Unit 1	Randy Ewing and Rosemary Ewing	R017767
Unit 2	James A. Gibbs and Judith W. Gibbs	R005907
Unit 3	Sammy T. Nagem and Mary Therese Nagem	R005909
Unit 4	CBD Capital Investments, LLC, a Louisiana limited liability company	R005905
Unit 5	Alfred W. Pinkerton, Jr., M.D., Trustee, The Alfred W. Pinkerton, Jr., Revocable Trust U/T/A dated 2-17-98	R005904
Unit 6	Turner Golf Group, Inc., an Iowa corporation	R005911
Unit 7	Joseph Charles Jennett and Linda Ellis Jennett, co-trustees Jennett Revocable Trust	R005903
Unit 8	Sylvia L. Mitchell	R005902
Unit 9	Robert I. Patton and Monique B. Patton	R026817
Unit 10	EN10, LLC, a Colorado limited liability company	R005900
Unit 11	Milisa K. Rizer	R005899
Unit 12	Michael Loewenthal and Dorothy Loewenthal	R005898
Unit 13	James Dean McVaugh	R005897
Unit 14	Ann B. Cook and Richard J. Cook	R005896
Unit 15	Richard Morrison	R005895
Unit 16	Jay S. Maltby and Carolyn T. Maltby	R005894
Unit 17	Beaut View, LLC, a Tennessee limited liability company	R005869
Unit 18	Eagle Venture, a Texas general partnership	R005870
Unit 19	Jane Arledge (1/3 interest); Adam White (1/3 interest); and Samuel Gregory Clonts and Kim Elaine Clonts (1/3 interest)	R005871
Unit 20	John Ferguson and Zenia Tata	R005872
Unit 21	James S. Breen and Frank Poeschel	R030667
Unit 22	Cole Investment Properties, LLC, a Colorado limited liability company	R005874
Unit 23	Polly N. Keller, Trustee of the Polly N. Keller Trust, dated November 26, 2001	R026261
Unit 24	Fredric F. Balgooyen and Marilyn M. Balgooyen	R005876
Unit 25	Christine Diane Neroni and Albert Michael Neroni	R005877
Unit 26	Ann T. Sharkey and Brian B. Sharkey	R005878
Unit 27	Dan B. Goetz and Laurie J. Goetz	R005879
Unit 28	Richard J. Grivas and Elsa Alcala Grivas	R005880
Unit 29	Nicole Blagden and Michael Blagden	R030701
Unit 30	Patrick W. Johnson and Loretta C. Johnson	R005882
Unit 31	Susan K. Baber and Robert D. Baber	R005883
Unit 32	Kari E. Sewell	R005884
Unit 33	Steven M. Murphy and Susan J. Murphy	R005885
Unit 34	William E. Ignatow and Nancy L. Ignatow	R005886
Unit 35	Gary Dunn and Emily Dunn	R005887



<u>Condominium</u>		<u>Assessor's</u>
<u>Unit Number</u>	<u>Owner</u>	<u>Schedule</u>
Unit 36	Steves Brothers, a Texas general partnership	R005888
Unit 37	John J. Jacobs, IV and Sharon J. Jacobs	R005889
Unit 38	John R. Clark and Janice M. Clark	R005890
Unit 39	Andrew R. Gall and Laura W. Gall	R005891
Unit 40	William Clark	R005892



EXHIBIT D: EASEMENTS AND LICENSES

The recording data for recorded easements and licenses appurtenant to, or included in, Eagle's Nest or to which any portion of Eagle's Nest is or may become subject includes the following:

The following reservations as contained in the United States Patent recorded May 26, 1906, in Book 101 at Page 373:

- a) The right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law.
- b) A right of way for ditches or canals constructed by the authority of the United States.

Covenants, conditions, restrictions, reservations and lien rights, which do not contain a forfeiture or reverter clause, set forth in the Declaration recorded August 14, 1979, in Book 537 at Page 202.

Covenants, conditions, restrictions, reservations and lien rights as contained in the Condominium Declaration recorded March 27, 1981, in Book 564 at Page 157 and in the First Supplement to the Condominium Declaration recorded June 17, 1981, in Book 567 at Page 409.

Covenants, conditions, restrictions, easements and right of way as reserved on the official plat of Eagle's Nest Townhouses of Mt. Crested Butte recorded March 27, 1981, at Reception No. 357917.

Covenants, conditions, restrictions, easements and right of way as reserved on the Condominium Map of Eagle's Nest Townhouses of Mt. Crested Butte recorded June 17, 1981, at Reception No. 359735.

Terms, agreements, provisions, conditions and obligations as evidenced by Notice of Adoption of Land Use Regulations and Mapping of Avalanche Zone Districts within the Town of Mt. Crested Butte recorded December 15, 1997, at Reception No. 480427.



**FIRST AMENDMENT TO THE REVISED CONDOMINIUM DECLARATION FOR
EAGLE'S NEST TOWNHOUSES OF MT. CRESTED BUTTE**

THIS FIRST AMENDMENT TO THE REVISED CONDOMINIUM DECLARATION FOR EAGLE'S NEST TOWNHOUSES OF MT. CRESTED BUTTE ("First Amendment") shall be effective upon recordation and is made by Eagle's Nest Townhouses of Mt. Crested Butte Condominium Association, a Colorado nonprofit corporation ("Association"). The Association hereby makes the following amendments to the Revised Condominium Declaration for Eagle's Nest Townhouses of Mt. Crested Butte recorded on January 2, 2014 at Reception No. 625011 in the office of the Gunnison County, Colorado Clerk and Recorder ("Declaration"):

1. **Section 1103.C.1 of the Declaration is hereby amended by removing said Section 1103.C.1 from the Declaration.**

2. **Section 1501 of the Declaration entitled Amendment is hereby amended by deleting Section 1501 in its entirety and restating Section 1501 as follows:**

1501. Amendment.

A. This Declaration shall not be amended or revoked except upon the agreement of the Owners representing an aggregate interest of at least sixty-seven percent (67%) of the Common Elements.

B. Notwithstanding Section 1501.A above, the fraction of the undivided interest in the Common Elements appurtenant to each Condominium Unit, as expressed in this Declaration, shall have a permanent character and shall not be altered without the consent of the Owners of all Condominium Units.

C. No action to challenge the validity of an amendment or revocation of this Declaration may be brought more than one (1) year after the amendment or revocation is recorded.

D. Every amendment or revocation of the Declaration shall be recorded by the Association in the office of the Clerk and Recorder of Gunnison County, Colorado, and must be indexed in the grantee's index in the name of Eagle's Nest Townhouses of Mt. Crested Butte and the Association and in the grantor's index in the name of each Owner executing the amendment, if any.

E. Any amendment to or revocation of the Declaration shall be prepared, executed, and recorded by the Association and certified on behalf of the Association by the President of the Association.

3. **Article 13 of the Declaration entitled Insurance is hereby amended by deleting Article 13 in its entirety and restating Article 13 as follows:**

ARTICLE 13: INSURANCE

1301. Association's Property Insurance.

A. The Association must obtain and maintain at all times, as a Common Expense, property insurance as required in this Declaration.



B. The Association must use reasonable efforts to secure a blanket hazard insurance policy providing "special form" coverage in an amount equal to full replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from property policies, before application of deductibles. If "special form" coverage is not reasonably available at reasonable cost, the Association must obtain, at a minimum, broad form covered causes of loss in like amounts.

C. The Association's insurance must cover the Common Elements.

D. As to the Units, the Association's insurance policy is a bare walls policy that is to rebuild the building structures. The Association's insurance policy excludes the finished surfaces of perimeter and partition walls, floors, and ceilings within the Unit (i.e., paint, wallpaper, paneling, other wall coverings and window coverings, tile, carpet and any floor covering). The Association's policy also excludes appliances and improvements and betterments made by Owners to the Units.

E. All property insurance purchased by the Association runs to the benefit of the Association, its Board of Directors, officers, all agents and employees of the Association, the Owners and their respective Mortgagees, and all other persons entitled to occupy any Unit as their interests may appear.

F. All insurance coverage for the Association is to be written in the name of the Association as first named insured and each of the Owners as additional insureds. The Association is to periodically review the insurance to determine if the policy in force is adequate to meet its needs.

1302. Other Association Insurance. In addition to the insurance required above, the Association must obtain as a Common Expense:

A. Workers' compensation insurance if and to the extent necessary to meet the requirements of law;

B. General liability insurance in amounts no less than \$1,000,000. The general liability insurance policy is to contain a cross liability endorsement;

C. Directors' and officers' liability insurance in such amounts as the Board may determine;

D. Fidelity insurance covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds in an amount as required by law, or if no such requirements, consistent with the Board of Directors' best business judgment; and

E. Other insurance as the Board of Directors may determine to be necessary or desirable.

1303. Standards for Association Policies.

A. The Association must use reasonable efforts to obtain policies that provide the following:



A.1. Each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;

A.2. The insurer's waiver of subrogation of claims against directors, officers, the managing agent, the individual Owners and their respective household members;

A.3. No act or omission by any Owner not under the Association's control voids the policy or is a condition to recovery under the policy;

A.4. Ordinance or law coverage, demolition cost coverage and increased cost of construction coverage;

A.5. Any "other insurance" clause contained in the master policy must expressly exclude individual Owners' policies from its operation;

A.6. The master policy may not be canceled, substantially modified, or subjected to non-renewal without at least 30 days prior notice in writing to the Association and all Mortgagees, except in instances of nonpayment of premiums, which must require at least ten (10) days prior written notice;

A.7. The casualty insurance may not contain a "co-insurance" provision;

A.8. All insurance policies of the Association are primary over other insurance in an Owner's name; and

A.9. An inflation guard endorsement.

B. All insurance policies are to be written with a company licensed to do business in Colorado. The company is to provide insurance certificates to each Owner and Mortgagee upon request. The Association's Board of Directors has the exclusive authority to adjust losses under the Association's policies. However, no Mortgagee having an interest in any losses may be prohibited from participating in the settlement negotiations, if any.

C. The Association's insurance is not required to include liability insurance for individual Owners for liability arising within the Units.

1304. Insurance Deductibles. Unless otherwise specified in written guidelines or a written Board resolution, any required deductible on the Association's policy is a maintenance expense to be paid by the person(s) who would be responsible for the repair or maintenance of the loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the Board may equitably apportion the cost of the deductible among the parties suffering loss in proportion to the total cost of repair. However, if the insurance policy provides that the deductible applies to each Unit separately or to each occurrence, each Owner is responsible for paying the deductible pertaining to their Unit, if any. If any Owner(s) fails to pay the deductible when required under this Section, then the Association may pay the deductible and assess the cost to the Owner as a Specific Assessment pursuant to Section 905 of the Declaration.

1305. Owners' Insurance.



- A. Every Owner is obligated to obtain and maintain at all times insurance covering those portions of the Unit to the extent not insured by the Association's policies, including, but not limited to, finished surfaces of walls, floors and ceilings, flooring, cabinetry, fixtures, and appliances, betterments and improvements within the Unit.
- B. Each Owner is also responsible for obtaining insurance covering their personal property and coverage for liability arising within the Unit.
- C. The Association has no liability for any failure to maintain the insurance required by this Declaration.
- D. Upon request, an Owner must furnish a copy of such Owner's insurance policies to the Association.

1306. Owner's Right to Review Association Insurance Policies. The Association must make a copy of its insurance policies available for review by Owners to assess their personal insurance needs. Each Owner has the right to obtain additional coverage at the Owner's expense.

1307. Source and Allocation of Proceeds. If insurance proceeds are not sufficient to defray the costs of reconstruction and repair (due to failure of the Association to maintain coverage as provided in this Declaration, or due to the insurance policy's deductible), the additional cost is a Common Expense. If, for any other reason, the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by the Association, the additional costs are assessed against the Owners of the Unit(s) damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. These Assessments are considered Specific Assessments as provided in Section 905 of the Declaration. If there are surplus funds after repair and reconstruction is completed, those funds are common funds of the Association to be used as directed by the Association.

1308. Repair and Reconstruction Requirements. In the event of damage to or destruction of all or any part of the Eagle's Nest community as a result of fire or other casualty, the Association must arrange for and supervise the prompt repair and restoration of the structure(s), unless Owners holding at least 67% of the total Association vote, including the Owner(s) of any damaged Unit(s) and Mortgagees that represent at least 51% of the votes of Units that are subject to mortgages held by Mortgagees, vote not to proceed with the reconstruction and repair of the structure(s). In the event of substantial damage or destruction, each Mortgagee is entitled to written notice of the damage, and nothing in these documents is construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Unit.

1309. Claims and Adjustments by the Association. Any loss covered by an Association insurance policy is to be adjusted by the Association. The insurance proceeds for a loss are payable to the Association and not to any Mortgagee. The Association must hold any insurance proceeds for the repair or restoration of the damaged property. The Association is not entitled to use insurance proceeds for other purposes unless there is a surplus after the damaged property has been completely repaired or restored.



13.10 Construction Fund. The net insurance proceeds collected on account of a casualty and the funds collected by the Association from Assessments against Owners on account of the casualty constitute a construction fund. The Association is to disburse the funds to pay the cost of reconstruction and repair in appropriate progress payments to the contractor(s), supplier(s), and personnel performing the work or supplying materials or services.

13.11 Condemnation and Property Insurance Allocations and Distributions. In the event condemnation proceeds or property insurance proceeds are distributed to the Owners, the distributions must be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

13.12 Managing Agent's Insurance. The Association's managing agent must maintain insurance for the benefit of the Association and must maintain and submit evidence of its insurance coverage to the Association. Such managing agent insurance must include professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage.

Signed this 12th day of March, 2019.

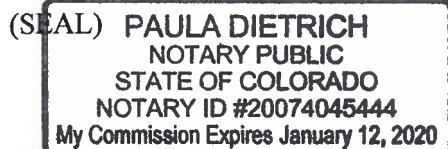
**Eagle's Nest Townhouses of Mt. Crested Butte Condominium Association,
a Colorado nonprofit corporation**

By: 
Richard J. Cook, President

STATE OF Colorado)
) ss.
COUNTY OF Gunnison)

The foregoing FIRST AMENDMENT TO THE REVISED CONDOMINIUM DECLARATION FOR EAGLE'S NEST TOWNHOUSES OF MT. CRESTED BUTTE was acknowledged before me, this 12th day of March, 2019 by Richard Cook, as President of Eagle's Nest Townhouses of Mt. Crested Butte Condominium Association, a Colorado nonprofit corporation.

WITNESS my hand and official seal.




Notary Public



CERTIFICATION

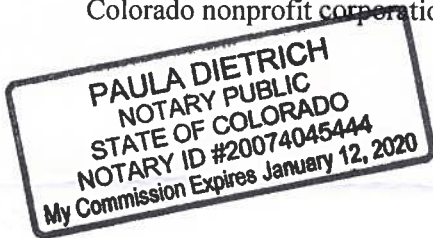
I, Richard J. Cook, serve as the President of Eagle's Nest Townhouses of Mt. Crested Butte Condominium Association, a Colorado nonprofit corporation, and hereby certify that pursuant to § 38-33.3-217 of the Act, and Section 1501 of the Declaration, as such Declaration existed prior to adoption of this First Amendment, Owners representing at least 67% of the aggregate interest in the Common Elements and First Mortgagees representing an aggregate of at least 80% of the First Mortgages encumbering the Units have approved the foregoing First Amendment to the Declaration, and such First Amendment was properly voted on and adopted.

**Eagle's Nest Townhouses of Mt. Crested Butte Condominium Association,
a Colorado nonprofit corporation**

By: [Signature]
Richard J. Cook, President

STATE OF Colorado)
) ss.
County of Gunnison)

The foregoing certification to the FIRST AMENDMENT TO THE REVISED CONDOMINIUM DECLARATION FOR EAGLE'S NEST TOWNHOUSES OF MT. CRESTED BUTTE was acknowledged before me this 12th day of March, 2019 by Richard Cook, as President of Eagle's Nest Townhouses of Mt. Crested Butte Condominium Association, a Colorado nonprofit corporation.



[Signature]