# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**Agenda Item:** Request for Real Estate Purchase; GVH

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:** Wade Baker

**Term Begins:** **Term Ends:** **Grant Contract #:**

**Summary:**

Draft Contract Attached, prepared by Marcus Locke; Law of the Rockies. Elk Crest Units consist of 10 units total east of hospital main campus. GVH currently owns 2/10 units and is asking to purchase 7 of the remaining 10 units to be used for employee housing.

**Fiscal Impact:**

**Submitted by:** Lauren Hibbard **Submitter's Email Address:** lhibbard@gunnisoncounty.org

**Finance Review:** (●) Required ( ) Not Required

Comments:
No concerns, GVH assets not carried on County books. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 6/13/2019

**County Attorney Review:** (●) Required ( ) Not Required

Comments:
ok db 6/13/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 6/13/2019 Certificate of Insurance Required

Yes ( ) No (●)

**County Manager Review:**

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 6/13/2019

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 10

Agenda Date: 6/18/2019

*Revised April 2015*

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(CBS2-6-18) (Mandatory 1-19)

**THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.**

# CONTRACT TO BUY AND SELL REAL ESTATE (INCOME – RESIDENTIAL)

## (☐ 1-4 Units ■ Larger than 1-4 Units)

Date: June 18, 2019

## AGREEMENT

**1. AGREEMENT.** Buyer agrees to buy and Seller agrees to sell the Property described below on the terms and conditions set forth in this contract (Contract).

**2. PARTIES AND PROPERTY.**

**2.1. Buyer.** Board of County Commissioners of the County of Gunnison, Colorado (Buyer) will take title to the Property described below as ☐ **Joint Tenants** ☐ **Tenants In Common** ■ **Other** Severalty.

**2.2. No Assignability.** This Contract **IS NOT** assignable by Buyer unless otherwise specified in **Additional Provisions**.

**2.3. Seller.** Elk Crest Properties, LLC and TJ Cable, See Exhibit A (Seller) is the current owner of the Property described below.

**2.4. Property.** The Property is the following legally described real estate in the County of Gunnison, Colorado:

See Exhibit A

known as No. 711 North Colorado Street, Gunnison, Colorado 81230,
Street Address City State Zip

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

**2.5. Inclusions.** The Purchase Price includes the following items (Inclusions):

**2.5.1. Inclusions – Attached.** If attached to the Property on the date of this Contract, the following items are included unless excluded under **Exclusions**: lighting, heating, plumbing, ventilating and air conditioning units, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories) and garage door openers (including _____ remote controls). If checked, the following are owned by the Seller and included (leased items should be listed under **Due Diligence Documents**): ☐ **None** ☐ **Solar Panels** ☐ **Water Softeners** ☐ **Security Systems** ☐ **Satellite Systems** (including satellite dishes). If any additional items are attached to the Property after the date of this Contract, such additional items are also included in the Purchase Price.

**2.5.2. Inclusions – Not Attached.** If on the Property, whether attached or not, on the date of this Contract, the following items are included unless excluded under **Exclusions**: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings and treatments, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, carbon monoxide alarms, smoke/fire detectors and all keys.

**2.5.3. Personal Property – Conveyance.** Any personal property must be conveyed at Closing by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except N/A. Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

**2.5.4. Other Inclusions.** The following items, whether fixtures or personal property, are also included in the Purchase Price**:**

Fixtures and personal property at the Property at the date of Closing.

**2.5.5. Parking and Storage Facilities.** The use or ownership of the following parking facilities: appurtenant, if any; and the use or ownership of the following storage facilities: appurtenant, if any.

Note to Buyer: If exact rights to the parking and storage facilities is a concern to Buyer, Buyer should investigate.

**2.6. Exclusions.** The following items are excluded (Exclusions):

N/A

~~**2.7. Water Rights/Well Rights.**~~

☐ ~~**2.7.1. Deeded Water Rights.** The following legally described water rights:~~

~~Any deeded water rights will be conveyed by a good and sufficient _____ deed at Closing.~~

☐ ~~**2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in §§ 2.7.1, 2.7.3 and 2.7.4, will be transferred to Buyer at Closing:~~

☐ ~~**2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well. Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water Well" used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permit # is _____.~~

☐ **2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing are as follows:

~~**2.7.5. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other Rights Relating to Water), § 2.7.3 (Well Rights), or § 2.7.4 (Water Stock Certificates), Seller agrees to convey such rights to Buyer by executing the applicable legal instrument at Closing.~~

## 3. DATES, DEADLINES AND APPLICABILITY.

### 3.1. Dates and Deadlines.

| Item No. | Reference | Event | Date or Deadline |
|---|---|---|---|
| 1 | § 4.3 | Alternative Earnest Money Deadline | N/A |
| | | **Title** | |
| 2 | § 8.1, 8.4 | Record Title Deadline | June 28, 2019 |
| 3 | § 8.2, 8.4 | Record Title Objection Deadline | See Exhibit B |
| 4 | § 8.3 | Off-Record Title Deadline | June 28, 2019 |
| 5 | § 8.3 | Off-Record Title Objection Deadline | See Exhibit B |
| 6 | § 8.5 | Title Resolution Deadline | See Exhibit B |
| 7 | § 8.6 | Right of First Refusal Deadline | N/A |
| | | **Owners' Association** | |
| 8 | § 7.2 | Association Documents Deadline | June 28, 2019 |
| 9 | § 7.4 | Association Documents Termination Deadline | See Exhibit B |
| | | **Seller's Disclosures** | |
| 10 | § 10.1 | Seller's Property Disclosure Deadline | June 28, 2019 |
| 11 | § 10.10 | Lead-Based Paint Disclosure Deadline | June 28, 2019 |
| | | **Loan and Credit** | |
| 12 | § 5.1 | New Loan Application Deadline | N/A |
| 13 | § 5.2 | New Loan Termination Deadline | N/A |
| 14 | § 5.3 | Buyer's Credit Information Deadline | N/A |
| 15 | § 5.3 | Disapproval of Buyer's Credit Information Deadline | N/A |
| 16 | § 5.4 | Existing Loan Deadline | N/A |
| 17 | § 5.4 | Existing Loan Termination Deadline | N/A |

| | | | |
|---|---|---|---|
| 18 | § 5.4 | Loan Transfer Approval Deadline | N/A |
| 19 | § 4.7 | Seller or Private Financing Deadline | N/A |
| | | **Appraisal** | |
| 20 | § 6.2 | Appraisal Deadline | July 5, 2019 |
| 21 | § 6.2 | Appraisal Objection Deadline | See Exhibit B |
| 22 | § 6.2 | Appraisal Resolution Deadline | See Exhibit B |
| | | **Survey** | |
| 23 | § 9.1 | New ILC or New Survey Deadline | July 12, 2019 |
| 24 | § 9.3 | New ILC or New Survey Objection Deadline | See Exhibit B |
| 25 | § 9.3 | New ILC or New Survey Resolution Deadline | See Exhibit B |
| | | **Inspection and Due Diligence** | |
| 26 | § 10.3 | Inspection Objection Deadline | See Exhibit B |
| 27 | § 10.3 | Inspection Termination Deadline | See Exhibit B |
| 28 | § 10.3 | Inspection Resolution Deadline | See Exhibit B |
| 29 | § 10.5 | Property Insurance Termination Deadline | See Exhibit B |
| 30 | § 10.6 | Due Diligence Documents Delivery Deadline | June 28, 2019 |
| 31 | § 10.6 | Due Diligence Documents Objection Deadline | See Exhibit B |
| 32 | § 10.6 | Due Diligence Documents Resolution Deadline | See Exhibit B |
| 33 | § 10.6 | Environmental Inspection Termination Deadline | See Exhibit B |
| 34 | § 10.6 | ADA Evaluation Termination Deadline | See Exhibit B |
| 35 | § 10.7 | Conditional Sale Deadline | N/A |
| 36 | § 10.10 | Lead-Based Paint Termination Deadline | See Exhibit B |
| 37 | § 11.1, 11.2 | Estoppel Statements Deadline | June 28, 2019 |
| 38 | § 11.3 | Estoppel Statements Termination Deadline | See Exhibit B |
| | | **Closing and Possession** | |
| 39 | § 12.3 | Closing Date | See Exhibit B |
| 40 | § 17 | Possession Date | See Exhibit B |
| 41 | § 17 | Possession Time | See Exhibit B |
| 42 | § 28 | **Acceptance Deadline Date** | June 21, 2019 |
| 43 | § 28 | **Acceptance Deadline Time** | 5:00pm MST |
| | | | |
| | | | |

**Note:** If **FHA** or **VA** loan boxes are checked in § 4.5.3 (Loan Limitations), the **Appraisal** deadlines **DO NOT** apply to **FHA** insured or **VA** guaranteed loans.

**3.2. Applicability of Terms.** Any box checked in this Contract means the corresponding provision applies. If any deadline blank in § 3.1 (Dates and Deadlines) is left blank or completed with the abbreviation "N/A", or the word "Deleted," such deadline is not applicable and the corresponding provision containing the deadline is deleted. If no box is checked in a provision that contains a selection of "None", such provision means that "None" applies.

The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

## 4. PURCHASE PRICE AND TERMS.

**4.1. Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

| Item No. | Reference | Item | Amount | Amount |
|---|---|---|---|---|
| 1 | § 4.1 | Purchase Price | $ See Exhibit B | |
| 2 | § 4.3 | Earnest Money | | $ N/A |
| 3 | § 4.5 | New Loan | | $ N/A |
| 4 | § 4.6 | Assumption Balance | | $ N/A |
| 5 | § 4.7 | Private Financing | | $ N/A |
| 6 | § 4.7 | Seller Financing | | $ N/A |
| 7 | | | | |
| 8 | | | | |
| 9 | § 4.4 | Cash at Closing | | $ See Exhibit B |
| 10 | | **TOTAL** | $ See Exhibit B | $ See Exhibit B |

**4.2. Seller Concession.** At Closing, Seller will credit to Buyer $_____ (Seller Concession). The Seller Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed by the Buyer's lender and is included in the Closing Statement or Closing Disclosure at Closing. Examples of allowable items to be paid for by the Seller Concession include, but are not limited to: Buyer's closing costs, loan discount points, loan origination fees, prepaid items and any other fee, cost, charge, expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract.

**4.3. Earnest Money.** The Earnest Money set forth in this Section, in the form of a _____, will be payable to and held by _____ (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** for its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction will be transferred to such fund.

**4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest Money, if other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money Deadline**.

**4.3.2. Return of Earnest Money.** If Buyer has a Right to Terminate and timely terminates, Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and, except as provided in § 24 (Earnest Money Dispute), if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three days of Seller's receipt of such form.

**4.4. Form of Funds; Time of Payment; Available Funds.**

**4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

**4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be paid by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT**. Buyer represents that Buyer, as of the date of this Contract, ☒ **Does** ☐ **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

**4.5. New Loan.**

**4.5.1. Buyer to Pay Loan Costs.** Buyer, except as otherwise permitted in § 4.2 (Seller Concession), if applicable, must timely pay Buyer's loan costs, loan discount points, prepaid items and loan origination fees as required by lender.

**4.5.2. Buyer May Select Financing.** Buyer may pay in cash or select financing appropriate and acceptable to Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 (Loan Limitations) or § 30 (Additional Provisions).

**4.5.3. Loan Limitations.** Buyer may purchase the Property using any of the following types of loans: ☐ **Conventional** ☐ **FHA** ☐ **VA** ☐ **Bond** ☐ **Other** _____.

**4.5.4. Loan Estimate – Monthly Payment and Loan Costs.** Buyer is advised to review the terms, conditions and costs of Buyer's New Loan carefully. If Buyer is applying for a residential loan, the lender generally must provide Buyer with a Loan Estimate within three days after Buyer completes a loan application. Buyer also should obtain an estimate of the amount of Buyer's monthly mortgage payment.

**4.6. Assumption.** Buyer agrees to assume and pay an existing loan in the approximate amount of the Assumption Balance set forth in § 4.1 (Price and Terms), presently payable at $_____ per _____ including principal and interest presently at the rate of _____% per annum and also including escrow for the following as indicated: ☐ **Real Estate Taxes** ☐ **Property Insurance Premium** ☐ **Mortgage Insurance Premium** and ☐ _____.

Buyer agrees to pay a loan transfer fee not to exceed $_____. At the time of assumption, the new interest rate will not exceed _____% per annum and the new payment will not exceed $_____ per _____ principal and interest, plus escrow, if any. If the actual principal balance of the existing loan at Closing is less than the Assumption Balance, which causes the amount of cash required from Buyer at Closing to be increased by more than $_____, or if any other terms or provisions of the loan change, Buyer has the Right to Terminate under § 25.1 on or before **Closing Date**.

Seller ☐ **Will** ☐ **Will Not** be released from liability on said loan. If applicable, compliance with the requirements for release from liability will be evidenced by delivery ☐ on or before **Loan Transfer Approval Deadline** ☐ at **Closing** of an appropriate letter of commitment from lender. Any cost payable for release of liability will be paid by _____ in an amount not to exceed $_____.

**4.7. Seller or Private Financing.**

**WARNING:** Unless the transaction is exempt, federal and state laws impose licensing, other requirements and restrictions on sellers and private financiers. Contract provisions on financing and financing documents, unless exempt, should be prepared by a

~~licensed Colorado attorney or licensed mortgage loan originator. Brokers should not prepare or advise the parties on the specifics of financing, including whether or not a party is exempt from the law.~~

~~**4.7.1. Seller Financing.** If Buyer is to pay all or any portion of the Purchase Price with Seller financing, ☐ **Buyer** ☐ **Seller** will deliver the proposed Seller financing documents to the other party on or before _____ days before **Seller or Private Financing Deadline**.~~

~~**4.7.1.1. Seller May Terminate.** If Seller is to provide Seller financing, this Contract is conditional upon Seller determining whether such financing is satisfactory to Seller, including its payments, interest rate, terms, conditions, cost and compliance with the law. Seller has the Right to Terminate under § 25.1, on or before **Seller or Private Financing Deadline**, if such Seller financing is not satisfactory to Seller, in Seller's sole subjective discretion.~~

~~**4.7.2. Buyer May Terminate.** If Buyer is to pay all or any portion of the Purchase Price with Seller or private financing, this Contract is conditional upon Buyer determining whether such financing is satisfactory to Buyer, including its availability, payments, interest rate, terms, conditions and cost. Buyer has the Right to Terminate under § 25.1, on or before **Seller or Private Financing Deadline**, if such Seller or private financing is not satisfactory to Buyer, in Buyer's sole subjective discretion.~~

## TRANSACTION PROVISIONS

~~**5. FINANCING CONDITIONS AND OBLIGATIONS.**~~

~~**5.1. New Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining one or more new loans (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, must make an application verifiable by such lender, on or before **New Loan Application Deadline** and exercise reasonable efforts to obtain such loan or approval.~~

~~**5.2. New Loan Review.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is satisfactory to Buyer, including its availability, payments, interest rate, terms, conditions and cost. This condition is for the sole benefit of Buyer. Buyer has the Right to Terminate under § 25.1, on or before **New Loan Termination Deadline**, if the New Loan is not satisfactory to Buyer, in Buyer's sole subjective discretion. Buyer does not have a Right to Terminate based on the New Loan if the objection is based on the Appraised Value (defined below) or the Lender Requirements (defined below). **IF SELLER IS NOT IN DEFAULT AND DOES NOT TIMELY RECEIVE BUYER'S WRITTEN NOTICE TO TERMINATE, BUYER'S EARNEST MONEY WILL BE NONREFUNDABLE,** except as otherwise provided in this Contract (e.g., Appraisal, Title, Survey).~~

~~**5.3. Credit Information.** If an existing loan is not to be released at Closing, this Contract is conditional (for the sole benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval will be in Seller's sole subjective discretion. Accordingly: (1) Buyer must supply to Seller by **Buyer's Credit Information Deadline**, at Buyer's expense, information and documents (including a current credit report) concerning Buyer's financial, employment and credit condition; (2) Buyer consents that Seller may verify Buyer's financial ability and creditworthiness; and (3) any such information and documents received by Seller must be held by Seller in confidence and not released to others except to protect Seller's interest in this transaction. If the Cash at Closing is less than as set forth in § 4.1 of this Contract, Seller has the Right to Terminate under § 25.1, on or before Closing. If Seller disapproves of Buyer's financial ability or creditworthiness, in Seller's sole subjective discretion, Seller has the Right to Terminate under § 25.1, on or before **Disapproval of Buyer's Credit Information Deadline**.~~

~~**5.4. Existing Loan Review.** If an existing loan is not to be released at Closing, Seller must deliver copies of the loan documents (including note, deed of trust and any modifications) to Buyer by **Existing Loan Deadline**. For the sole benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan documents. Buyer has the Right to Terminate under § 25.1, on or before **Existing Loan Termination Deadline**, based on any unsatisfactory provision of such loan documents, in Buyer's sole subjective discretion. If the lender's approval of a transfer of the Property is required, this Contract is conditional upon Buyer obtaining such approval without change in the terms of such loan, except as set forth in § 4.6. If lender's approval is not obtained by **Loan Transfer Approval Deadline**, this Contract will terminate on such deadline. Seller has the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective discretion, if Seller is to be released from liability under such existing loan and Buyer does not obtain such compliance as set forth in § 4.6.~~

**6. APPRAISAL PROVISIONS.**

**6.1. Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.

**6.2. Appraisal Condition.** The applicable appraisal provision set forth below applies to the respective loan type set forth in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.

**6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline** Buyer may, on or before **Appraisal Objection Deadline**:

**6.2.1.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

**6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by either a copy of the Appraisal or written notice from lender that confirms the Appraised Value is less than the Purchase Price (Lender Verification).

**6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or before **Appraisal Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Appraisal Resolution Deadline**, this Contract will terminate on the **Appraisal Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such termination, i.e., on or before expiration of **Appraisal Resolution Deadline**.

~~**6.2.2. FHA.** It is expressly agreed that, notwithstanding any other provisions of this Contract, the purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money deposits or otherwise unless the purchaser (Buyer) has been given, in accordance with HUD/FHA or VA requirements, a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender, setting forth the appraised value of the Property of not less than $_____. The purchaser (Buyer) shall have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. The purchaser (Buyer) should satisfy himself/herself that the price and condition of the Property are acceptable.~~

~~**6.2.3. VA.** It is expressly agreed that, notwithstanding any other provisions of this Contract, the purchaser (Buyer) shall not incur any penalty by forfeiture of Earnest Money or otherwise or be obligated to complete the purchase of the Property described herein, if the Contract Purchase Price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The purchaser (Buyer) shall, however, have the privilege and option of proceeding with the consummation of this Contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.~~

~~**6.3. Lender Property Requirements.** If the lender imposes any written requirements, replacements, removals or repairs, including any specified in the Appraisal (Lender Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, this Contract terminates on the earlier of three days following Seller's receipt of the Lender Requirements, or Closing, unless prior to termination: (1) the parties enter into a written agreement to satisfy the Lender Requirements; (2) the Lender Requirements have been completed; or (3) the satisfaction of the Lender Requirements is waived in writing by Buyer.~~

**6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be timely paid by ■ **Buyer** ☐ **Seller**. The cost of the Appraisal may include any and all fees paid to the appraiser, appraisal management company, lender's agent or all three.

**7. OWNERS' ASSOCIATION.** This Section is applicable if the Property is located within a Common Interest Community and subject to the declaration (Association).

**7.1. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS' ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.**

**7.2. Association Documents to Buyer.** Seller is obligated to provide to Buyer the Association Documents (defined below), at Seller's expense, on or before **Association Documents Deadline**. Seller authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association Documents, regardless of who provides such documents.

**7.3. Association Documents.** Association documents (Association Documents) consist of the following:

**7.3.1.** All Association declarations, articles of incorporation, bylaws, articles of organization, operating agreements, rules and regulations, party wall agreements and the Association's responsible governance policies adopted under § 38-33.3-209.5, C.R.S.;

**7.3.2.** Minutes of: (1) the annual owners' or members' meeting and (2) any executive boards' or managers' meetings; such minutes include those provided under the most current annual disclosure required under § 38-33.3-209.4, C.R.S.

(Annual Disclosure) and minutes of meetings, if any, subsequent to the minutes disclosed in the Annual Disclosure. If none of the preceding minutes exist, then the most recent minutes, if any (§§ 7.3.1 and 7.3.2, collectively, Governing Documents); and

**7.3.3.** List of all Association insurance policies as provided in the Association's last Annual Disclosure, including, but not limited to, property, general liability, association director and officer professional liability and fidelity policies. The list must include the company names, policy limits, policy deductibles, additional named insureds and expiration dates of the policies listed (Association Insurance Documents);

**7.3.4.** A list by unit type of the Association's assessments, including both regular and special assessments as disclosed in the Association's last Annual Disclosure;

**7.3.5.** The Association's most recent financial documents which consist of: (1) the Association's operating budget for the current fiscal year, (2) the Association's most recent annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the Association's last Annual Disclosure, (3) the results of the Association's most recent available financial audit or review, (4) list of the fees and charges (regardless of name of title of such fees or charges) that the Association's community association manager or Association will charge in connection with the Closing including, but not limited to, any fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or update fee charged for the Status Letter, any record change fee or ownership record transfer fees (Record Change Fee), fees to access documents, (5) list of all assessments required to be paid in advance, reserves or working capital due at Closing and (6) reserve study, if any (§§ 7.3.4 and 7.3.5, collectively, Financial Documents);

**7.3.6.** Any written notice from the Association to Seller of a "construction defect action" under § 38-33.3-303.5, C.R.S. within the past six months and the result of whether the Association approved or disapproved such action (Construction Defect Documents). Nothing in this Section limits the Seller's obligation to disclose adverse material facts as required under § 10.2 (Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition) including any problems or defects in the common elements or limited common elements of the Association property.

**7.4. Conditional on Buyer's Review.** Buyer has the right to review the Association Documents. Buyer has the Right to Terminate under § 25.1, on or before **Association Documents Termination Deadline**, based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after **Association Documents Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory and Buyer waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.6 (Right of First Refusal or Contract Approval).

## 8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.

### 8.1. Evidence of Record Title.

☒ **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price, or if this box is checked, ☐ an **Abstract of Title** certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing.

☐ **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price.

If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

**8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment ■ **Will** ☐ **Will Not** contain Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time of commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by ☐ **Buyer** ■ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **Other**_____.

Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.5 (Right to Object to Title, Resolution).

**8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property and (2) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to Buyer (collectively, Title Documents).

**8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline**, copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of the clerk and recorder in the county

where the Property is located. The cost of furnishing copies of the documents required in this Section will be at the expense of the party or parties obligated to pay for the owner's title insurance policy.

**8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title Deadline**.

**8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title Commitment and any of the Title Documents as set forth in § 8.5 (Right to Object to Title, Resolution) on or before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.5 (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents as satisfactory.

**8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal and options) not shown by public records, of which Seller has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New Survey** governed under § 9 (New ILC, New Survey**)**. Buyer has the right to inspect the Property to investigate if any third party has any right in the Property not shown by public records (e.g., unrecorded easement, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2 (Record Title) and § 13 (Transfer of Title)), in Buyer's sole subjective discretion, must be received by Seller on or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after the **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3 (Off-Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.5 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts title subject to such Off-Record Matters and rights, if any, of third parties not shown by public records of which Buyer has actual knowledge.

**8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.**

A tax certificate from the respective county treasurer listing any special taxing districts that effect the Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the Property is located within a special taxing district and such inclusion is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may object, on or before **Record Title Objection Deadline**. If the Tax Certificate shows that the Property is included in a special taxing district and is received by Buyer after the **Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to the Property's inclusion in a special taxing district as unsatisfactory to Buyer.

**8.5. Right to Object to Title, Resolution.** Buyer's right to object, in Buyer's sole subjective discretion, to any title matters includes those matters set forth in § 8.2 (Record Title), § 8.3 (Off-Record Title), § 8.4 (Special Taxing District) and § 13 (Transfer of Title). If Buyer objects to any title matter, on or before the applicable deadline, Buyer has the following options:

**8.5.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any title matter (Notice of Title Objection) on or before the applicable deadline and if Buyer and Seller have not agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title Deadline or the Off-Record Title Deadline, or both, are extended pursuant to § 8.2 (Record Title), § 8.3 (Off-Record

Title) or § 8.4 (Special Taxing Districts), the Title Resolution Deadline also will be automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or

**8.5.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under § 25.1, on or before the applicable deadline, based on any title matter unsatisfactory to Buyer, in Buyer's sole subjective discretion.

**8.6. Right of First Refusal or Contract Approval.** If there is a right of first refusal on the Property or a right to approve this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract will terminate. If the right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this Contract has not occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.

**8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including, without limitation, boundary lines and encroachments, set-back requirements, area, zoning, building code violations, unrecorded easements and claims of easements, leases and other unrecorded agreements, water on or under the Property and various laws and governmental regulations concerning land use, development and environmental matters.

**8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE AND TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.**

**8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER.**

**8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS AND GAS GATHERING AND PROCESSING FACILITIES.**

**8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.**

**8.7.5. Title Insurance Exclusions.** Matters set forth in this Section and others, may be excepted, excluded from, or not covered by the owner's title insurance policy.

**8.8. Consult an Attorney.** Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract (e.g., **Record Title Objection Deadline** and **Off-Record Title Objection Deadline**).

## 9. NEW ILC, NEW SURVEY.

**9.1. New ILC or New Survey.** If the box is checked, a: 1) ☒ **New Improvement Location Certificate (New ILC)**; or, 2) ☐ **New Survey** in the form of _____; is required and the following will apply:

**9.1.1. Ordering of New ILC or New Survey.** ☒ **Seller** ☐ **Buyer** will order the New ILC or New Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form, certified and updated as of a date after the date of this Contract.

**9.1.2. Payment for New ILC or New Survey.** The cost of the New ILC or New Survey will be paid, on or before Closing, by: ☒ **Seller** ☐ **Buyer** or:

**9.1.3. Delivery of New ILC or New Survey.** Buyer, Seller, the issuer of the Title Commitment (or the provider of the opinion of title if an Abstract of Title) and N/A will receive a New ILC or New Survey on or before **New ILC or New Survey Deadline**.

**9.1.4. Certification of New ILC or New Survey.** The New ILC or New Survey will be certified by the surveyor to all those who are to receive the New ILC or New Survey.

**9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection.** Buyer may select a New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the **New ILC or New Survey Objection Deadline**. Buyer may, in Buyer's sole subjective discretion, waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.

**9.3. New ILC or New Survey Objection.** Buyer has the right to review and object to the New ILC or New Survey. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may, on or before **New ILC or New Survey Objection Deadline**, notwithstanding § 8.3 or § 13:

**9.3.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

**9.3.2. New ILC or New Survey Objection.** Deliver to Seller a written description of any matter that was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.

**9.3.3. New ILC or New Survey Resolution.** If a **New ILC or New Survey Objection** is received by Seller, on or before **New ILC or New Survey Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **New ILC or New Survey Resolution Deadline**, this Contract will terminate on expiration of the **New ILC or New Survey Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the New ILC or New Survey Objection before such termination, i.e., on or before expiration of **New ILC or New Survey Resolution Deadline**.

## DISCLOSURE, INSPECTION AND DUE DILIGENCE

**10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE, AND SOURCE OF WATER.**

**10.1. Seller's Property Disclosure.** On or before **Seller's Property Disclosure Deadline**, Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge and current as of the date of this Contract.

**10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition.** Seller must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract. Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer. Buyer has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing or five days after Buyer's receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "**As Is**" condition, "**Where Is**" and "**With All Faults**."

**10.3. Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole subjective discretion, Buyer may:

**10.3.1. Inspection Objection.** On or before the **Inspection Objection Deadline**, deliver to Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct; or

**10.3.2. Terminate.** On or before the **Inspection Termination Deadline**, notify Seller in writing, pursuant to § 25.1, that this Contract is terminated due to any unsatisfactory condition. **Inspection Termination Deadline will be on the earlier of Inspection Resolution Deadline or the date specified in § 3.1 for Inspection Termination Deadline.**

**10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before **Inspection Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline**.

**10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including Seller's reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection Resolution.

**10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before **Property Insurance Termination Deadline**, based on any unsatisfactory provision of the Property Insurance, in Buyer's sole subjective discretion.

**10.6. Due Diligence.**

**10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver copies of the following documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery Deadline**:

☒ **10.6.1.1.** All contracts relating to the operation, maintenance and management of the Property;
☒ **10.6.1.2.** Property tax bills for the last 5 years;
☒ **10.6.1.3.** As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical and structural systems; engineering reports; and permanent Certificates of Occupancy, to the extent now available;
☒ **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;
☒ **10.6.1.5.** Operating statements for the past 5 years;
☒ **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;
☒ **10.6.1.7.** All current leases, including any amendments or other occupancy agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as follows (Leases):

☒ **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete but has not yet completed and capital improvement work either scheduled or in process on the date of this Contract;
☒ **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims which have been made for the past 5 years;
☒ **10.6.1.10.** Soils reports, surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.3);
☒ **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances and/or underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to Seller;
☒ **10.6.1.12.** Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the Property with said Act;
☒ **10.6.1.13.** All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and
☐ **10.6.1.14.** Other documents and information:

**10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and object to Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents Objection Deadline**:

**10.6.2.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

**10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description of any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

**10.6.2.3. Due Diligence Documents Resolution.** If a Due Diligence Documents Objection is received by Seller, on or before **Due Diligence Documents Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution Deadline**, this Contract will terminate on **Due Diligence Documents Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Due Diligence Documents Objection before such termination, i.e., on or before expiration of **Due Diligence Documents Resolution Deadline**.

**10.6.3. Zoning.** Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence Documents Objection Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.

**10.6.4. Due Diligence – Environmental, ADA.** Buyer has the right to obtain environmental inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable. ☐ **Seller** ■ **Buyer** will order or provide ■ **Phase I Environmental Site Assessment**, ☐ **Phase II Environmental Site Assessment** (compliant with most current version of the applicable ASTM E1527 standard practices for Environmental Site Assessments) and/or ☐ _____, at the expense of ☐ **Seller** ■ **Buyer** (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation whether the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property, if any.

If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the **Environmental Inspection Termination Deadline** will be extended by 60 days (Extended Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such event, ☐ **Seller** ■ **Buyer** must pay the cost for such Phase II Environmental Site Assessment.

Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this § 10.6.4, Buyer has the Right to Terminate under § 25.1, on or before **Environmental Inspection Termination Deadline**, or if applicable, the Extended Environmental Inspection Objection Deadline, based on any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.

Buyer has the Right to Terminate under § 25.1, on or before **ADA Evaluation Termination Deadline**, based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

~~**10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of that certain property owned by Buyer and commonly known as _____. Buyer has the Right to Terminate under § 25.1 effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if such property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right to Terminate under this provision.~~

**10.8. Source of Potable Water (Residential Land and Residential Improvements Only).** Buyer ☐ **Does** ■ **Does Not** acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing the source of potable water for the Property. ■ There is **No Well**. Buyer ☐ **Does** ■ **Does Not** acknowledge receipt of a copy of the current well permit.

**Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.**

**10.9. Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller will not amend, alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the Property without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.

**10.10. Lead-Based Paint.**

**10.10.1. Lead-Based Paint Disclosure**. Unless exempt, if the Property includes one or more residential dwellings constructed or a building permit was issued prior to January 1, 1978, for the benefit of Buyer, Seller and all required real estate licensees must sign and deliver to Buyer a completed Lead-Based Paint Disclosure (Sales) form on or before the **Lead-Based Paint Disclosure Deadline**. If Buyer does not timely receive the Lead-Based Paint Disclosure, Buyer may waive the failure to timely receive the Lead-Based Paint Disclosure, or Buyer may exercise Buyer's Right to Terminate under § 25.1 by Seller's receipt of Buyer's Notice to Terminate on or before the expiration of the **Lead-Based Paint Termination Deadline.**

**10.10.2. Lead-Based Paint Assessment.** If Buyer elects to conduct or obtain a risk assessment or inspection of the Property for the presence of Lead-Based Paint or Lead-Based Paint hazards, Buyer has a Right to Terminate under § 25.1 by Seller's receipt of Buyer's Notice to Terminate on or before the expiration of the **Lead-Based Paint Termination Deadline.** If Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. Buyer may elect to waive Buyer's right to conduct or obtain a risk assessment or inspection of the Property for the presence of Lead-Based Paint or Lead-Based Paint hazards. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the condition of the Property relative to any Lead-Based Paint as satisfactory and Buyer waives any Right to Terminate under this provision.

**10.11. Carbon Monoxide Alarms. Note:** If the improvements on the Property have a fuel-fired heater or appliance, a fireplace, or an attached garage and include one or more rooms lawfully used for sleeping purposes (Bedroom), the parties acknowledge that Colorado law requires that Seller assure the Property has an operational carbon monoxide alarm installed within fifteen feet of the entrance to each Bedroom or in a location as required by the applicable building code.

**10.12. Methamphetamine Disclosure.** If Seller knows that methamphetamine was ever manufactured, processed, cooked, disposed of, used or stored at the Property, Seller is required to disclose such fact. No disclosure is required if the Property was remediated in accordance with state standards and other requirements are fulfilled pursuant to § 25-18.5-102, C.R.S. Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial hygienist to test whether the Property has ever been used as a methamphetamine laboratory. Buyer has the Right to Terminate under § 25.1, upon Seller's receipt of Buyer's written Notice to Terminate, notwithstanding any other provision of this Contract, based on Buyer's test results that indicate the Property has been contaminated with methamphetamine, but has not been remediated to meet the standards established by rules of the State Board of Health promulgated pursuant to § 25-18.5-102, C.R.S. Buyer must promptly give written notice to Seller of the results of the test.

## 11. ESTOPPEL STATEMENTS.

**11.1. Estoppel Statements Conditions.** Buyer has the right to review and object to any Estoppel Statements. Seller must request from all tenants of the Property and if received by Seller, deliver to Buyer on or before **Estoppel Statements Deadline**, statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of the Lease stating:

**11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;

**11.1.2.** That said Lease is in full force and effect and that there have been no subsequent modifications or amendments;

**11.1.3.** The amount of any advance rentals paid, rent concessions given and deposits paid to Seller;

**11.1.4.** The amount of monthly (or other applicable period) rental paid to Seller;

**11.1.5.** That there is no default under the terms of said Lease by landlord or occupant; and

**11.1.6.** That the Lease to which the Estoppel Statement is attached is a true, correct and complete copy of the Lease demising the premises it describes.

**11.2. Seller Estoppel Statement.** In the event Seller does not receive from all tenants of the Property a completed signed Estoppel Statement, Seller agrees to complete and execute an Estoppel Statement setting forth the information and documents required §11.1 above and deliver the same to Buyer on or before **Estoppel Statements Deadline.**

**11.3. Estoppel Statements Termination.** Buyer has the Right to Terminate under § 25.1, on or before **Estoppel Statements Termination Deadline**, based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before **Estoppel Statements Deadline**. Buyer also has the unilateral right to waive any unsatisfactory Estoppel Statement.

## CLOSING PROVISIONS

**12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.**

**12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is obtaining a loan to purchase the Property, Buyer acknowledges Buyer's lender is required to provide the Closing Company, in a timely manner, all required loan documents and financial information concerning Buyer's loan. Buyer and Seller will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller will sign and complete all customary or reasonably-required documents at or before Closing.

**12.2. Closing Instructions.** Colorado Real Estate Commission's Closing Instructions ☐ **Are** ☒ **Are Not** executed with this Contract.

**12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing will be as designated by mutual agreement of the Parties.

**12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

**13. TRANSFER OF TITLE.** Subject to Buyer's compliance with the terms and provisions of this Contract, including the tender of any payment due at Closing, Seller, provided another deed is not selected, must execute and deliver a good and sufficient special warranty deed to Buyer, at Closing. However, if the box is checked, the parties agree to use the corresponding deed instead:

☒ general warranty deed ☐ bargain and sale deed ☐ quit claim deed ☐ personal representative's deed ☐ _____ deed.

**13.1. Special Warranty Deed and General Warranty Deed Exceptions.** If title will be conveyed using a special warranty deed or a general warranty deed, title will be conveyed subject to:

**13.1.1.** General taxes for the year of Closing,

**13.1.2.** Distribution utility easements (including cable TV),

**13.1.3.** Those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with § 8.3 (Off-Record Title) and § 9 (New ILC or New Survey),

**13.1.4.** Inclusion of the Property within any special taxing district,

**13.1.5.** Any special assessment if the improvements were not installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing and

**13.1.6.** Other _____.

**13.2. Special Warranty Deed.** In addition to the requirements of § 13.1, if title will be conveyed by a special warranty deed, Seller will warrant title against all persons claiming by, through or under Seller subject to those specific recorded exceptions, if any, created during Seller's ownership of the Property and described by reference to recorded documents shown as Exceptions in the Title Documents that are accepted by Buyer in accordance with § 8.2 (Record Title) and described in the deed by reference to the specific recording information for each recorded document.

**13.3. General Warranty Deed.** In addition to the requirements of § 13.1, if title will be conveyed by a general warranty deed, Seller will warrant the title subject to those specific recorded exceptions described by reference to recorded documents shown as Exceptions in the Title Documents that are accepted by Buyer in accordance with § 8.2 (Record Title) and described in the deed by reference to the specific recording information for each recorded document.

**14. PAYMENT OF LIENS AND ENCUMBRANCES.** Unless agreed to by Buyer in writing, any amounts owed on any liens or encumbrances securing a monetary sum, including, but not limited to, any governmental liens for special improvements

installed as of the date of Buyer's signature hereon, whether assessed or not and previous years' taxes, will be paid at or before Closing by Seller from the proceeds of this transaction or from any other source.

**15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.**

**15.1. Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required to be paid at Closing, except as otherwise provided herein.

**15.2. Closing Services Fee.** The fee for real estate closing services must be paid at Closing by ☐ **Buyer** ☒ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **Other** _____.

**15.3. Status Letter and Record Change Fees.** At least fourteen days prior to **Closing Date**, Seller agrees to promptly request the Association to deliver to Buyer a current Status Letter. Any fees incident to the issuance of Association's Status Letter must be paid by ☐ **None** ☐ **Buyer** ☒ **Seller** ☐ **One-Half by Buyer and One-Half by Seller**. Any Record Change Fee must be paid by ☐ **None** ☐ **Buyer** ☒ **Seller** ☐ **One-Half by Buyer and One-Half by Seller**.

**15.4. Local Transfer Tax.** ☐ **The Local Transfer Tax** of _____% of the Purchase Price must be paid at Closing by ☒ **None** ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller**.

**15.5. Private Transfer Fee.** Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at Closing by ☐ **None** ☐ **Buyer** ☒ **Seller** ☐ **One-Half by Buyer and One-Half by Seller**. ~~The Private Transfer fee, whether one or more, is for the following association(s):~~ _____ ~~in the total amount of~~ _____~~% of the Purchase Price or $_____~~.

~~**15.6. Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed $_____ for:~~

~~☐ Water Stock/Certificates ☐ Water District~~

~~☐ Augmentation Membership ☐ Small Domestic Water Company ☐ _____~~

~~and must be paid at Closing by ☐ **None** ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller.**~~

**15.7. Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction must be paid when due by ☐ **None** ☐ **Buyer** ☒ **Seller** ☐ **One-Half by Buyer and One-Half by Seller**.

**15.8. FIRPTA and Colorado Withholding.**

**15.8.1. FIRPTA.** The Internal Revenue Service (IRS) may require a substantial portion of the Seller's proceeds be withheld after Closing when Seller is a foreign person. If required withholding does not occur, the Buyer could be held liable for the amount of the Seller's tax, interest and penalties. If the box in this Section is checked, Seller represents that Seller ☐ **IS** a foreign person for purposes of U.S. income taxation. If the box in this Section is not checked, Seller represents that Seller is not a foreign person for purposes of U.S. income taxation. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's foreign person status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

**15.8.2. Colorado Withholding.** The Colorado Department of Revenue may require a portion of the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after Closing, if not otherwise exempt. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

**16. PRORATIONS AND ASSOCIATION ASSESSMENTS.** The following will be prorated to the **Closing Date**, except as otherwise provided:

**16.1. Taxes.** Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of Closing, based on ☐ **Taxes for the Calendar Year Immediately Preceding Closing** ☐ **Most Recent Mill Levy and Most Recent Assessed Valuation**, adjusted by any applicable qualifying seniors property tax exemption, qualifying disabled veteran exemption or ☐ **Other** _____.

**16.2. Rents.** Rents based on ☐ **Rents Actually Received** ☒ **Accrued**. At Closing, Seller will transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions and notify all tenants in writing of such transfer and of the transferee's name and address. Seller must assign to Buyer all Leases in effect at Closing and Buyer must assume Seller's obligations under such Leases.

**16.3. Association Assessments.** Current regular Association assessments and dues (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to **Closing Date** by the Association will be the obligation of ☐ **Buyer** ☒ **Seller**. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller. Seller represents there are no unpaid regular or special assessments against the Property except the current regular assessments and _____. Association Assessments are subject to change as provided in the Governing Documents.

**16.4. Other Prorations.** Water and sewer charges, propane, interest on continuing loan and _____.

**16.5. Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

**17. POSSESSION.** Possession of the Property will be delivered to Buyer on **Possession Date** at **Possession Time**, subject to the Leases as set forth in § 10.6.1.7.

If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer for payment of $ See Exhibit B per day (or any part of a day notwithstanding § 18.1) from **Possession Date** and **Possession Time** until possession is delivered.

## GENERAL PROVISIONS

**18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.**

**18.1. Day.** As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings, as applicable).

**18.2. Computation of Period of Days, Deadline.** In computing a period of days (e.g., three days after MEC), when the ending date is not specified, the first day is excluded and the last day is included. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline ☒ **Will** ☐ **Will Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

**19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND WALK-THROUGH.** Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

**19.1. Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing (Property Damage) in an amount of not more than ten percent of the total Purchase Price and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

**19.2. Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive Closing.

**19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the Purchase Price.

**19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

**19.5. Home Warranty.** Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions.

**20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller acknowledge that the respective broker has advised that this Contract has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.

**21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as provided in this Contract or waived, the non-defaulting party has the following remedies:

**21.1. If Buyer is in Default:**

☐ **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money is not a penalty and the Parties agree the amount is fair and reasonable. Seller may recover such additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force and effect and Seller has the right to specific performance, or damages, or both.

**21.1.2. Liquidated Damages, Applicable. This § 21.1.2 applies <u>unless the box in § 21.1.1. is checked</u>.** Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

**21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder will be returned to Buyer and Buyer may recover such damages as may be proper. Alternatively, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to specific performance, or damages, or both.

**22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.

**23. MEDIATION.** If a dispute arises relating to this Contract (whether prior to or after Closing) and is not resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at that party's last known address (physical or electronic as provided in § 27). Nothing in this Section prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the date of written notice requesting mediation. This Section will not alter any date in this Contract, unless otherwise agreed.

**24. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder must release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit and has not interpled the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of § 23 (Mediation). This Section will survive cancellation or termination of this Contract.

**25. TERMINATION.**

**25.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to Terminate under such provision.

**25.2. Effect of Termination.** In the event this Contract is terminated, all Earnest Money received hereunder will be returned to Buyer and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

**26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS.** This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a party receives the predecessor's benefits and obligations of this Contract.

**27. NOTICE, DELIVERY AND CHOICE OF LAW.**

**27.1. Physical Delivery and Notice.** Any document, or notice to Buyer or Seller must be in writing, except as provided in § 27.2 and is effective when physically received by such party, any individual named in this Contract to receive documents or notices for such party, Broker, or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm).

**27.2. Electronic Notice.** As an alternative to physical delivery, any notice, may be delivered in electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for such party, Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm) at the electronic address of the recipient by facsimile, email or N/A.

**27.3. Electronic Delivery**. Electronic Delivery of documents and notice may be delivered by: (1) email at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the documents, or (3) facsimile at the facsimile number (Fax No.) of the recipient.

**27.4. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property located in Colorado.

**28. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal will expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below and the offering party receives notice of such acceptance pursuant to § 27 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be executed by each party, separately and when each party has executed a copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

**29. GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations**; **Title Insurance, Record Title and Off-Record Title**; **New ILC, New Survey;** and **Property Disclosure**, **Inspection**, **Indemnity**, **Insurability, Due Diligence, and Source of Water**.

## ADDITIONAL PROVISIONS AND ATTACHMENTS

**30. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

See Exhibit B

**31. OTHER DOCUMENTS.**

**31.1.** The following documents **are a part** of this Contract:

**31.2.** The following documents have been provided but are **not** a part of this Contract:

## SIGNATURES

Buyer's Name: Board of County Commissioners of the County of Gunnison, Colorado Buyer's Name: _____

| Buyer's Signature | Date | Buyer's Signature | Date |
|---|---|---|---|
| Address: | | Address: | |
| Phone No.: | | Phone No.: | |
| Fax No.: | | Fax No.: | |
| Email Address: | | Email Address: | |

**[NOTE: If this offer is being countered or rejected, do not sign this document.**

Seller's Name: Elk Crest Properties, LLC

Seller's Name: TJ Cable

| Seller's Signature | Date | Seller's Signature | Date |
|---|---|---|---|
| Address: | | Address: | |
| Phone No.: | | Phone No.: | |
| Fax No.: | | Fax No.: | |
| Email Address: | | Email Address: | |

**END OF CONTRACT TO BUY AND SELL REAL ESTATE**

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~~**32. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**~~
~~(To be completed by Broker working with Buyer)~~

~~Broker ☐ **Does** ☐ **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.~~

~~Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.~~

~~Broker is working with Buyer as a ☐ **Buyer's Agent** ☐ **Transaction-Broker** in this transaction. ☐ This is a **Change of Status**.~~

☐ ~~**Customer.** Broker has no brokerage relationship with Buyer. See § 33 for Broker's brokerage relationship with Seller.~~

~~Brokerage Firm's compensation or commission is to be paid by ☐ **Listing Brokerage Firm** ☐ **Buyer** ☐ **Other** _____.~~

~~Brokerage Firm's Name:~~
~~Brokerage Firm's License #:~~
~~Broker's Name:~~
~~Broker's License #:~~

~~Broker's Signature~~ ~~Date~~

~~Address:~~

~~Phone~~ No.:

Fax No.: _____
Email Address: _____

**33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**
(To be completed by Broker working with Seller)

Broker ☐ **Does** ☐ **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.

Broker is working with Seller as a ☐ **Seller's Agent** ☐ **Transaction-Broker** in this transaction. ☐ This is a **Change of Status**.

☐ **Customer.** Broker has no brokerage relationship with Seller. See § 32 for Broker's brokerage relationship with Buyer.

Brokerage Firm's compensation or commission is to be paid by ☐ **Seller** ☐ **Buyer** ☐ **Other** _____.

Brokerage Firm's Name: _____
Brokerage Firm's License #: _____
Broker's Name: _____
Broker's License #: _____

_____
Broker's Signature Date

Address: _____
_____
Phone No.: _____
Fax No.: _____
Email Address: _____

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# DECLARATION
# OF
# ELK CREST CONDOMINIUMS
## a planned community

This Declaration is executed this 16TH day of June, 2006 at Gunnison, Gunnison County, Colorado by BMJ, LLC, a Colorado limited liability company.

1. **CREATION OF ELK CREST CONDOMINIUMS.**

1.1 **Authority.** This Declaration is executed to submit the real property as described in paragraph 2.19 as a planned community in accordance with the provisions of the Colorado Common Interest Ownership Act.

1.2 **Ownership.** Declarant is the owner of the real property as described as follows:

**Lots 15 through 20, both inclusive, Block 50, City of Gunnison, according to the official plat of FIRST ADDITION TO GUNNISON, on file and of record in the office of the Clerk and Recorder, County of Gunnison, State of Colorado ("Property").**

and submits such Property to all of the terms, conditions, rights, duties, obligations, covenants, easements, restrictions and interests as set forth in this Declaration.

1.3 **Declaration.** The Declarant, for itself and its grantees, successors, heirs, personal representatives, assigns and any person acquiring and holding an interest in the Project shall be bound by all of the provisions of this Declaration.

1.4 **Small and Limited Expense Common Interest Community.** Pursuant to C.R.S. §38-33.3-116(3), Declarant further declares the Property to be subject only to C.R.S. §38-33.3-105 through 107 of the Colorado Common Interest Ownership Act as it is a planned community as that term is defined by C.R.S. § 38-33.3-103(22), and the annual average common expense liability of each Unit, exclusive of optional user fees and any insurance paid by the Association will not exceed four hundred dollars, as adjusted by C.R.S. §38-33.3-116(3).

2. **DEFINITIONS.** The following definitions shall apply in this Declaration and the exhibits attached hereto unless the context shall expressly provide otherwise.

2.1 "**Act**" - means the Colorado Common Interest Ownership Act, Article 33.3 of Title 38, Colorado Revised Statutes, as now in force and as may be amended from time to time.

2.2 "**Allocated Interests**" - means the interest allocated to each Unit in the Association, the common expense liability and votes in the Association.

The Allocated Interests are divided equally between the ten Unit Owners.

2.3 "**Association**" - means Elk Crest Condominiums Association, a Colorado nonprofit corporation.

2.4 "**Board**" - means the Board of Directors of Elk Crest Condominiums Association, which is designated to act on behalf of the Association.

2.5 "**Building**" - means a building or buildings within the Project.

2.6 "**Common Elements**" - means all of the Project except the Units, and those portions of the Project designated as Limited Common Elements.

2.7 "**Common Expenses**" - means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including but not limited to: (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) incurred for the benefit of more than one Owner; (iv) insurance premiums for the insurance carried under Section 32; and (v) all expenses lawfully determined to be common expenses by the Board. The Common Expenses may include, but shall not be limited to, snow removal, common wall maintenance and repairs, roof maintenance or repairs, or common utilities and common facilities, driveway/parking area maintenance and plowing, liability insurance, fire and extended coverage insurance, landscaping and care of grounds, common lighting, exterior decoration, painting, repairs and renovations, refuse collection, water and sewer charges, wages, legal and accounting fees, management fees and all Association dues and expenses and liabilities incurred under or by reason of this Declaration. The Association shall pay all water and sewer charges levied on the individual units and any Common Elements, in accordance with the ordinances, rules and regulations of the City of Gunnison.

2.8 "**Common Interest Community**" - means the "Project" as hereafter defined.

2.9 "**Condominium Map**" or "**Condominium Plat**" or "**Map**" or "**Plat**" - means the Condominium Map for Elk Crest Condominiums, a planned community, filed June 16, 2006, and bearing Reception No. 566088 of the records of Gunnison County, Colorado and any Supplemental Condominium Map filed in the records of Gunnison County, Colorado.

2.10 "**Declarant**" – means BMJ, LLC, a Colorado limited liability company, its successors and assigns.

2.11 "**Declaration**" - means this Declaration, and any and all duly executed amendments, supplements or additions to this Declaration.

2.12 "**Eligible Mortgage**" - means the holder of a First Security Interest in a Unit, when the holder has notified the Association, in writing, of its name and address and that it holds a First Security Interest in a Unit. The notice must include the address of the Unit on which it has a Security Interest. This notice shall include a request that the Eligible Mortgagee be given the notices and other rights described in Section 39.

2.13 "**First Security Interest**" - means a Security Interest on a Unit which has priority over all other Security Interests in the Unit.

2.14 "**Good Standing**" - means that an Owner is no more than thirty (30) days late in the payment of any Annual, Special or Default Assessments, and who has none of his, her or its membership privileges suspended.

2.15 "**Home Occupation**" - means any commercial use carried on within a dwelling which is:

2.15.1 Customarily conducted entirely within a dwelling unit or an accessory building by the occupants of the dwelling unit;

2.15.2 Incidental and secondary to the use of the subject parcel for residential purposes;

2.15.3 Conducted in such a fashion as not to change the manner or character of use of the dwelling;

2.15.4 Conducted in such a fashion that the commercial noises and activities do not interfere with the quiet and dignity of the neighborhood; and

2.15.5 Conducted without the employment of individuals other than the occupants of the dwelling unit.

2.16 **"Limited Common Elements"** - means a portion of the Common Elements allocated by this Declaration or the Condominium Map for the exclusive use of one or more Units but fewer than all of the Units.

2.17 **"Person"** - means a natural person, a corporation, a partnership, an association, a limited liability company, a trust or any other entity or any combination thereof.

2.18 **"Project"** - means Elk Crest Condominiums, a planned community, including all of the real property, buildings, improvements, and structures pertaining thereto, together with all rights, easements, and appurtenances belonging thereto, declared to be a part of Elk Crest Condominiums, a planned community, by this Declaration and which may be subsequently declared to be a part of Elk Crest Condominiums, a planned community, under the terms of any supplemental Declaration.

2.19 **"Real Property"** - means the Real Property described as **Lots 15 through 20, both inclusive, Block 50, City of Gunnison, according to the official plat of FIRST ADDITION TO GUNNISON, on file and of record in the office of the Clerk and Recorder, County of Gunnison, State of Colorado.**

2.20 **"Security Interest"** - means an interest in a Unit created by contract or conveyance which secures the payment or performance or an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association and any other consensual lien or title retention contract intended as security for an obligation.

2.21 **"Successor Declarant"** - means any Person to whom Declarant assigns any or all of its rights, obligations or interest as Declarant as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the office of the Clerk and Recorder in the County of Gunnison, State of Colorado.

2.22 **"Supplemental Declaration"** - means an instrument which amends this Declaration.

2.23 **"Supplemental Map"** - means a supplemental Map of the Project which depicts any change in the Project through a Supplemental Declaration.

2.24 **"Unit"** - means a physical portion of the Project which is designated for separate ownership and the boundaries of which are described in the Declaration and Condominium Map. The physical portion of the Unit is as contained within the unfinished interior surfaces of the perimeter walls, floors, ceilings, windows and doors of the unit, together with all fixtures and improvements therein contained except for common utility facilities.

All finished flooring and any other materials constituting any part of the finished surfaces within the Unit including plaster, paneling, tiles, wallpaper, paint and any other materials constituting any part of the finished surface thereof are a part of the Unit. All other portions of the walls, floors or ceilings are part of the Common Elements. If any chute, flue, duct, wire conduit, bearing wall, bearing column or other utility or fixture is within or partially within the designated boundaries of the Unit, any portion thereof serving only the Unit is a Limited Common Element allocated solely to the Unit and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Except only as above provided, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

Any porch, balcony, patio, steps, exterior doors, exterior windows, shutters, awnings, or other fixtures or improvements designed or designated to serve a single Unit, but located outside the boundaries of the Unit, and any fenced portion of yard as permitted by the Association, are Limited Common Elements allocated exclusively to the Unit.

2.25 **"Unit Owner"** - means the Declarant or Person who owns a Unit but does not include a Person having a Security Interest in a Unit.

3. **CREATION OF ELK CREST CONDOMINIUMS.** Elk Crest Condominiums is hereby created and declared to consist of Units as follows:

3.1 **Number of Units.** The Project shall consist of ten (10) Units together with the Allocated Interest in the Association as set forth on the attached Exhibit A and a non exclusive right to use the Common Elements and an exclusive use of the Limited Common Elements allocated to a Unit.

3.2 **Use and Enjoyment.** The Unit Owner shall have the non-exclusive right to use and enjoy all of the Common Elements and the exclusive use of any Limited Common Elements allocated to the Unit or the exclusive use in common of Limited Common Elements allocated to more than one Unit, subject to the limitations contained in this Declaration.

3.3 **Owners' Easement.** Every Owner shall have a non-exclusive right and easement for the purpose of access to their Unit and for use for all other purposes allowed by this Declaration, in and to the Common Elements, and such easement shall be appurtenant to and pass with the title to every Unit.

4. **INSEPARABILITY OF A CONDOMINIUM UNIT.** Each Unit and the Allocated Interest in the Association, and the Limited Common Elements allocated to the Unit, if any, and any easements appurtenant thereto shall together comprise one Unit which shall be inseparable and may be conveyed, devised or encumbered only as a Unit.

5. **CONDOMINIUM MAP.**

5.1 **Condominium Map.** The Condominium Map shall be filed for record in the records of Gunnison County, Colorado prior to the first conveyance of a Unit by the Declarant. The Condominium Map shall contain all of the required information pertaining to the Project as required by this Act.

5.2 **Amendments.** Declarant reserves the right to amend the Condominium Map from time to time, to conform the same according to the actual location of any of the improvements and to establish, relocate and vacate easements, access roads and parking areas. Declarant's right under this paragraph shall terminate upon the conveyance of all of the Units as set forth on the Condominium Map or within one year of the date of filing the Condominium Map, whichever event shall first occur.

5.3 **Interpretation.** In interpreting the Condominium Map or any part thereof, the existing physical boundaries of the Units shall be conclusively presumed to be its boundaries.

6. **DESCRIPTION OF UNIT.**

6.1 **Legal Description.** Every instrument affecting the title to a Unit shall be describe the Unit as follows:

Unit _____, Elk Crest Condominiums, according to the Condominium Map recorded bearing Reception No. 566088 and the Declaration pertaining thereto, recorded bearing Reception No. 566089 of the records of Gunnison County, Colorado, County of Gunnison, State of Colorado.

6.2 **Amendments.** The reference to the Condominium Map and the Declaration, as set forth in paragraph 6.1 above, shall be deemed to include any supplements or amendments to the same whether or not specific reference is made thereto.

6.3 **Sufficiency.** Such legal description shall be sufficient for all purposes to sell, convey, transfer, and encumber or otherwise affect the Unit and the Allocated Interest in the Association appurtenant to the Unit, including any Limited Common Elements, and all other appurtenant property and property rights of the Unit and to incorporate all of the rights, duties, limitations and burdens incident to the ownership of a Unit as described in this Declaration.

7. **TITLE.** A Unit may be held and owned by more than one Unit Owner as joint tenants or as tenants in common, or in any real property tenancy or estate recognized under the laws of the State of Colorado.

8. **TERM OF OWNERSHIP.** The separate estate of a Unit Owner created by this Declaration shall continue until revoked in the manner contained in this Declaration or by operation of law.

9. **NON-PARTITIONABILITY AND TRANSFER OF COMMON ELEMENTS.** The Common Elements shall be owned by the Association and shall remain undivided. By the acceptance of a deed or other instrument of conveyance or assignment, each Unit Owner specifically waives its rights to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Each Unit Owner specifically covenants and agrees not to institute nor maintain any action to partition or otherwise divide the Common Elements, except only as may be provided by this Declaration.

10. **USE.** Units shall be used and occupied solely for residential purposes as authorized by the then existing zoning or other applicable regulations of City of Gunnison, County of Gunnison, State of Colorado, and any covenants or agreements entered into with the City of Gunnison as to such use and occupancy. However, nothing in this Declaration shall prohibit Unit Owners from utilizing a Unit for a Home Occupation as that term is defined in paragraph 2.15 herein.

11. **EASEMENTS.**

11.1 **Easement For Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, an easement for the encroachment and the maintenance of the same exists so long as the Building is in existence or the encroachment exists.

11.2 **Recorded Easements.** The Property shall be subject to all easements as shown on any Map or plat of record.

12. **ALTERATION OF UNITS.** A Unit Owner:

12.1 May not make any structural improvements or alterations to the Unit that affect the appearance of the Unit from the street without the prior written consent of the Association.

12.2 May not change the appearance of the Common Elements without the prior written consent of the Association.

13. **RESERVATION FOR ACCESS - MAINTENANCE, REPAIR AND EMERGENCIES.**

13.1 **Right of Access.** The Association shall have the irrevocable right to have access to each Unit and all Common Elements from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements or utilities therein or accessible therefrom, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or to another Unit.

13.2 **Damages.** Damage to a Unit, except for Unit Owner installed or constructed improvements, resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit shall be an expense of the Association; provided, however, that if such maintenance, repair or replacement is caused by the negligence of the Unit Owner, his agents, employees, invitees or tenants, then such Unit Owner shall be responsible and liable for all of such damage and the cost thereof shall be the Unit Owner's obligation and shall be immediately paid to the Association upon demand therefor.

13.3 **Restoration.** Any damages to a Unit or the Common Elements that may be occasioned by the Association exercising its rights under this paragraph shall be immediately restored, to the extent reasonably practical, to the same condition in which the same existed prior to such damage.

13.4 **Common Expense.** All maintenance, repairs and replacement of the Common Elements, whether located inside or outside of any Unit (unless caused by the negligence, misuse or deliberate act of a Unit Owner, in which case such expense shall be charged to such Unit Owner), shall be an expense of the Association.

13.5 **Trash.** No trash, ashes, garbage, weeds or other refuse shall be allowed to accumulate or be placed on any Unit or area within the Project. There shall be no burning or other disposal of weeds or refuse out of doors. Each Unit Owner shall dispose of trash in the dumpster located on the Property.

13.6 **Noise.** No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of persons and Improvements in any Unit, shall be placed or used on any Unit. No animals shall be kept or maintained on any Unit that creates a nuisance by noise, including without limitation, barking dogs.

13.7 **Nuisance.** No obnoxious or offensive activity shall be carried on within the Project, nor shall anything be done or permitted that shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Project or its Owners or occupants; provided, however, that this Section shall not apply to any noise or other activity approved by the Board as to the construction or reconstruction of any Improvements.

13.8 **Hazardous Activities.** No activities shall be allowed or conducted on the Property that are or might be unsafe or hazardous to any person or property. Such hazardous activities include, but are not limited to, fireworks, firearms, bow and arrows, explosives, air or pellet guns or any similar type devices except only in approved areas in accordance with rules and regulations adopted by the Board. No outside open fires shall be permitted in any Unit unless contained within a cooking or barbecue type unit or grill.

14. **ANIMALS.**

**14.1 Dogs and Cats.** A Unit Owner may keep and maintain no more than a total of 1 pet, excluding birds and fish, within the Unit subject to the following conditions:

14.1.1 All dogs and cats shall be kept within the Unit, and if taken outside the Unit, leashed or otherwise controlled.

14.1.2 The Unit Owner shall at all times be personally liable and responsible for all actions of any dog or cat and any damage caused by the dog or cat.

14.1.3 No dog or cat shall create a nuisance or noise problem within Elk Crest Condominiums.

14.1.4 The Unit Owner and the owner of any dog or cat shall be personally responsible and liable for the cleanup of any excrement left by such dog or cat within Elk Crest Condominiums.

14.1.5 A Unit Owner may keep and maintain additional dogs and cats in excess of the limitations set forth above only upon the prior written permission of the Board.

**14.2 Other Animals and Pets.** No other animals or pets may be kept or maintained by any Unit Owner, excluding birds and fish, except upon the prior written permission of the Board.

**14.3 Impoundment of Animals.** The Association is specifically empowered to impound any animal running at large within the Project. Upon impoundment, the owner of the animal, if known, shall be immediately notified and the animal taken to the nearest facility that accepts impounded animals. It is the duty of the owner of such animal to recover the animal from such facility and to pay all costs and fees incurred in the impoundment of the animal. If the animal is not recovered by the owner in accordance with the rules and regulations of the impoundment facility, the facility may destroy the animal without liability to the owner by the facility, any Unit Owner or the Association.

15. **ASSESSMENTS AND TAXATION.** Each Unit shall be separately assessed for all taxes and assessments of the State of Colorado, the County of Gunnison, the City of Gunnison, and any other political subdivision or district having authority to tax. For the purpose of such assessment, the valuation of the Common Elements shall be allocated to the Association.

16. **ASSOCIATION AS ATTORNEY-IN-FACT.** The Declarant, for itself and its heirs, successors and assigns and any person acquiring and holding an interest in the Project, their grantees, successors, heirs, personal representatives or assigns do hereby irrevocably appoint the Association as attorney-in-fact for the Unit Owner within the Project with respect to the Project upon its damage, destruction, obsolescence or condemnation and any amendment to the Declaration or the termination of the Project as provided by the Act then in effect.

17. **AMENDMENT OF DECLARATION.**

**17.1 Amendment.** Except only as otherwise provided in the Act, the Declaration, including the Condominium Map, may be amended only by a vote or agreement of the Unit Owners to which 67% of the votes in the Association are allocated. Provided, however, that no amendment can change the requirements of paragraphs 23.5 or 38.2.

**17.2 Recording.** Any Amendment to the Declaration, including the Condominium Map, shall be effective upon recording in the same in the records of Gunnison County, Colorado.

**17.3 Execution of Amendment.** Any Amendment to the Declaration, or the Condominium Map, shall be prepared and executed by the Association and signed by the President of the Association or any other officer of the Association designated for such purpose. The Association shall certify that the Amendment was adopted and approved in accordance with the provisions of this paragraph 17 and such certification shall be conclusive proof that the Amendment was duly adopted in proper form.

**17.4 Reservation by Declarant.** Notwithstanding any other provision of this Declaration, Declarant reserves and is granted a special Declarant right until such time as all of the Units within the Project have been conveyed to third person purchasers, to amend this Declaration, and the Condominium Map, for the following purposes:

17.4.1 To correct a technical or typographical error and/or to clarify any existing provision.

17.4.2 To comply with applicable laws, ordinances or regulations of any governmental entities having jurisdiction over the Project.

17.4.3 To comply with the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or other lenders or insurers in the secondary mortgage market, or to include or change any provision so as to cause any such agency or entity to make, purchase, sell, insure or guarantee First Security Interests.

17.4.4 To comply with any requirements of the Act or amendments thereto.

The Declarant shall certify that such Amendment to the Declaration and the Condominium Map was amended by the Declarant in accordance with this paragraph 17.4 and shall be effective upon recording the Amendment in the records of Gunnison County, Colorado. Provided, however, no Amendment by the Declarant under this paragraph 17.4 shall in any manner effect or impair the lien of a First Security Interest upon a Unit or to modify, change, or amend the terms and conditions of such First Security Interest, or change the requirements of paragraphs 23.5 or 38.2.

18. **TERMINATION OF THE PROJECT.**

**18.1 Termination.** Except only in the case of taking of the entire Project, and all of the Units, by eminent domain, the Project may only be terminated by a unanimous vote or agreement of the Unit Owners and by all of the holders of any recorded First Security Interests unless otherwise specifically provided by the Act.

**18.2 Agreement.** The termination of the Project shall be evidenced by a Termination Agreement executed by all of the Unit Owners and by all of the holders of any recorded First Security Interests in the same manner as is required for a Deed. The Termination Agreement shall specify a date after which the termination agreement shall be void unless the same is recorded in the records of Gunnison County, Colorado on or before such date.

**18.3 Termination Agreement.** The Termination Agreement must contain provisions setting forth terms and conditions:

18.3.1 That all of the Common Elements and Units of Elk Crest Condominiums must be sold following termination and to include the terms and conditions of such sale, or

18.3.2 For the sale of the Common Elements, but not the Units, and the terms and conditions of such sale, or

18.3.3 That if the Common Elements or Units are not to be sold, then title thereto vests in the

Unit Owners, as tenants in common, in the same proportion that a Unit Owner had in the Allocated Interests in the Assocation.

18.4 **Powers of Association.** Following the termination of the Elk Crest Condominiums, the Association shall continue to exercise all of the powers, rights, duties and obligations as specified in the Act.

**19. ELK CREST CONDOMINIUMS ASSOCIATION.**

19.1 On or before the date that the first Unit in Elk Crest Condominiums is conveyed to a third person purchaser, Elk Crest Condominiums Association shall be organized and incorporated as a Colorado nonprofit corporation.

19.2 The membership of the Association shall at all times consist exclusively of all Unit Owners in the Project or, in the event of the termination, of the former Unit Owners in the Project.

**20. POWERS AND DUTIES OF ASSOCIATION.** The Association shall have the following powers and duties:

20.1 Adopt and amend Bylaws and rules and regulations, restrictions and policies.

20.2 Adopt and amend budgets for revenues, expenditures, and reserves and collect and determine assessments for Common Expenses from the Unit Owners.

20.3 Hire and terminate managing agents and other employees, agents and independent contractors.

20.4 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself and one or more of the Unit Owners on matters affecting Elk Crest Condominiums.

20.5 Make contracts and incur liabilities.

20.6 Regulate the use, maintenance, repair, replacement and modification of Common Elements.

20.7 Cause additional improvements to be made as a part of the Common Elements.

20.8 Acquire, hold, encumber and convey in its own name any right, title, or interest or real or personal property; provided, however, that the Association may not convey or subject to a security interest all or any portion of the Common Elements except upon the affirmative vote of all of the Unit Owners as provided by Section 38-33.3-312 of the Act.

20.9 Grant easements, leases, licenses and concessions through or over the Common Elements.

20.10 Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements, other than Limited Common Elements.

20.11 Impose charges (including without limitation, late charges and default interest) for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of assessments and other action to enforce the power of the Association, regardless of whether or not suit was initiated, and, after the notice and opportunity to be heard, levy reasonable fines for violations of the Condominium Declaration, the Bylaws and rules and regulations adopted by the Association, or otherwise suspend other membership privileges (except that notice and opportunity to be heard shall not be required before suspension of membership privileges for failure to pay assessments within 30 days after they become due).

20.12 Impose reasonable charges for the preparation and recordation of Amendments to the Condominium Declaration and the Condominium Map or statement of unpaid assessments.

20.13 Provide for the indemnification of its officers and the Board of the Association.

20.14 To maintain directors' and officers' liability insurance.

20.15 Exercise all of the powers conferred upon the Association by this Declaration and the Articles and Bylaws of the Association.

20.16 Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association.

20.17 Obtain and maintain all required insurance as provided by this Declaration.

20.18 Act as attorney-in-fact for the Unit Owners as provided by this Declaration.

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

**21. ADMINISTRATION AND MANAGEMENT BY THE ASSOCIATION.**

21.1 **Association as Attorney-In-Fact.** The title to every Unit is hereby declared and expressly made subject to the terms and conditions of the Declaration, and acceptance by grantee of a deed from the Declarant or any prior Unit Owner shall constitute the appointment of the Association as the Unit Owner's attorney-in-fact for the purposes expressly set forth in this Declaration.

21.2 **Unit Owner's Compliance.** Each Unit Owner shall comply strictly with the provisions of this Declaration, any supplement or amendment hereto, and all decisions, resolutions, rules and regulations of the Association adopted in accordance with this Declaration. Failure to comply with any of the same shall be grounds for an action to recover any amounts due, for damages or injunctive relief or both, together with reasonable attorney fees and costs, incurred in connection therewith, brought by the Association on behalf of the Unit Owners, or, in a proper case, by any aggrieved Unit Owner.

21.3 **Construction and Validity.** The administration and management of Elk Crest Condominiums shall be governed by this Declaration and the Articles of Incorporation and the Bylaws of the Association. In the event of any conflict between or among the provisions of the Declaration (including all supplements thereto), the Articles of Incorporation or Bylaws of the Association, the following shall control:

21.3.1 All provisions of this Declaration, the Articles of Incorporation and Bylaws are severable.

21.3.2 The rule against perpetuities does not apply to defeat any provision of this Declaration, the Articles of Incorporation and Bylaws of the Association or rules and regulations adopted by the Association.

21.3.3 In the event of a conflict between the provisions of this Declaration and the Articles of Incorporation and the Bylaws of the Association, this Declaration shall prevail.

21.4 **Membership.** The Unit Owner, upon becoming such Unit Owner, shall be entitled and required to be a member of the Association and shall remain a member for the period of ownership of the Unit.

21.5 **Appurtenant Right.** There shall be one membership in the Association for each Unit. Such membership shall be appurtenant to the Unit and shall be

transferred automatically by a conveyance of the Unit to a new Unit Owner.

21.6 **Voting.** Each membership shall be entitled to the allocated votes for that Unit as set forth in attached Exhibit A, and in the event the membership is held by more than one Unit Owner, the vote must be cast only as a single vote. Split or divided votes or membership shall not be allowed.

21.7 **Transfer.** No person other than a Unit Owner may be a member of the Association and a membership may not be transferred except in connection with the conveyance or transfer of the Unit; provided however, that such membership may be assigned to the holder of a Security Interest as further security for the loan secured by the lien of such holder upon the Unit.

21.8 **Rights of Declarant.** Notwithstanding any other provision of this Declaration or the Articles of Incorporation of the Association, Declarant, its successors and assigns, shall have the right to appoint the members of the Board of Directors (who need not be members of the Association or Unit Owners) during the period of Declarant control, which is the earlier of (i) 10 years after the date of the recording of this Declaration, (ii) sixty days after the Declarant conveys seventy-five percent (75%) of the Units that may be created to Owners other than Declarant, (iii) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business, or (iv) two (2) years after the right to add new Units was last exercised (if such right is reserved by Declarant in this Declaration). Declarant may voluntarily relinquish such power evidenced by a notice executed by the Declarant and recorded with the Clerk and Recorder of the County of Gunnison in the State of Colorado. Further, not later than 60 days after the conveyance of 25% of the Units that may be created to Owners other than Declarant, at least 25% of the members of the Board of Directors shall be elected by the Unit Owners other than Declarant, and not later than 60 days after the conveyance of 50% of the Units that may be created to Owners other than Declarant, not less than 33 1/3% of the members of the Board of Directors must be elected by Unit Owners other than Declarant.

## 22. ASSESSMENT FOR COMMON EXPENSES BY THE ASSOCIATION.

22.1 **Payment of Assessments.** Declarant, for each Unit owned by it, and each Unit Owner by the acceptance of a deed therefor shall be deemed to covenant and agree and shall be obligated to pay to the Association all assessments made by the Association for the purposes provided in this Declaration.

22.2 **Apportionment.** Assessments for Common Expenses shall be apportioned among all of the Unit Owners in accordance with their Allocated Interest in the Association.

22.3 **Special Apportionment of Certain Assessments and Expenses.** The following expenses shall be assessed and allocated as follows:

22.3.1 Any Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit(s) to which that Limited Common Element is assigned.

22.3.2 Any Common Expenses or portion thereof benefitting fewer than all of the Units shall be assessed exclusively against the Unit(s) so benefitted.

22.3.3 Insurance premiums and costs shall be assessed in proportion to the risk.

22.3.4 If any Common Expenses are caused by the misconduct of any Unit Owner, the Association may assess that expense exclusively against such Unit Owner.

## 23. AMOUNT OF ASSESSMENTS FOR COMMON EXPENSES.

23.1 **Determination of Assessments.** The annual assessments made for the Common Expenses shall be based upon the budget adopted by the Association.

23.2 **Budget.** The Board shall prepare a proposed budget for the Association. Within 30 days after the date of adoption of the proposed budget by the Board, the Association shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all of the Unit Owners and shall set a date for a meeting of the Unit Owners to consider the ratification of the budget not less than 14 nor more than 60 days after the mailing or other delivery of the summary of the budget. Unless at the meeting of the Unit Owners a vote by a majority of the Allocated Interests in the Association reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors.

23.3 **Liability for Assessments.** Each Unit Owner is liable for the assessments made against the Unit of that Unit Owner during the period of ownership of such Unit. No Unit Owners may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the assessments are made.

23.4 **No Waiver.** The omission or failure of the Association to fix such assessment for any period shall not be deemed a waiver, modification or release of the Unit Owners from their obligation to pay the same.

23.5 **Payment of Utilities.** Each Unit Owner shall be obligated to pay all charges for any separately metered utilities servicing his Unit. In the event that any utility is master metered to the Association, then such utility service shall be a part of the Common Expenses as above provided. In the event of the failure of any Unit Owner to pay all water and sewer and rubbish removal charges and any common element charges, the same shall be the obligation of and paid by the Association. Upon such payment, the Association shall then have the same rights of collection thereof from such Unit Owner as is provided for herein for the collection of unpaid assessments.

23.6 **Special Assessments.** In addition to assessments for Common Expenses as above set forth, 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, restoration or repair, replacement or maintenance of the Common Elements, or any other lawful purpose contemplated by this Declaration, or the Articles of Incorporation or Bylaws of the Association, or permitted by law. Such special assessment shall be assessed to each Unit Owner in accordance with his Allocated Interests in the Association as set forth in attached Exhibit A and shall be due and payable in the manner set forth in the notice of such special assessment. Notice in writing of the amount of such special assessment and time for payment of the special assessment shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

## 24. TIME OF PAYMENTS OR ASSESSMENTS FOR COMMON EXPENSES.

24.1 **Fiscal Year.** The assessments of the Association shall be computed and determined on a fiscal year basis.

24.2 **Payable Monthly.** Unless the Board of Directors of the Association otherwise determines, assessments shall be payable monthly in advance on or

before the tenth day of each month by the Unit Owners. Delinquent assessments shall bear interest as provided in this Declaration.

24.3 **Written Notice.** The Association shall give written notice to the Unit Owners of the annual assessment thirty (30) days prior to the institution and/or increase of same, and shall deliver to each Unit Owner itemized statements.

24.4 **Late Charges and Interest.** The Association may establish the rate of interest to be charged as to any past due assessment, not to exceed 21% per year. Until otherwise established by the Association, if any assessment is not paid within 10 days after the date that it becomes due and payable, a late charge of $20.00 to cover the extra costs and expenses involved in handling such delinquent payment shall be imposed and any past due assessment shall bear interest at the rate of 1.5% per month from the date the assessment was due until the date that such assessment is paid.

25. **LIEN FOR NONPAYMENT OF ASSESSMENTS.**

25.1 **Lien for Assessment.** The Association shall have a statutory lien on any Unit for any assessment levied against that Unit or fines imposed against that Unit Owner. All fees, charges, late charges, attorney fees, fines and interest as provided by this Declaration are enforceable as assessments.

25.2 **Priority of Lien.** The lien for assessments by the Association is prior to all other liens and encumbrances on a Unit except:

25.2.1 Liens and encumbrances of record prior to the date of the recording of this Declaration.

25.2.2 A First Security Interest on the Unit that was recorded before the date on which the assessment sought to be enforced by the lien became delinquent. Provided, however, a lien for assessments of Common Expenses based on the duly adopted budget of the Association that would have been due, in the absence of any acceleration, during the six months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien of an action or non-judicial foreclosure to enforce or extinguish the lien for Common Expenses shall have priority over the lien of the First Security Interest, or any greater priority for a lien for Common Expenses as may hereafter be provided by the Act.

25.2.3 Liens for real estate taxes and assessments or charges of any governmental entity against the Unit.

25.3 **Notice of Lien.** The recording of this Declaration constitutes record notice and perfection of any lien for assessments by the Association and no further recordation of any claim of lien for assessments is required. Provided, however, the Association may further record a lien for assessments in the records of Gunnison County, Colorado.

25.4 **Enforcement of Lien.** The lien for assessments of the Association may be enforced by foreclosure by the Association in the same manner as a foreclosure of a mortgage. In such foreclosure, the Unit Owner shall be required to pay the costs and expenses for such proceedings, the cost and expenses for filing the notice of claim of lien and all reasonable attorney fees. The Unit Owner shall also be required to pay to the Association the assessments for the 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 acquire the Unit at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. The Association's lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any homestead exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to any Unit subject to the Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

25.5 **Payment by Holder of Security Interest.** Any holder of a Security Interest on a Unit may pay, but shall not be required to pay the amount secured by such lien, and upon such payment the holder of such Security Interest shall have a lien on such Unit for the amounts paid of the same rank as the lien of its Security Interest.

26. **UNIT OWNER'S OBLIGATIONS FOR PAYMENT OF ASSESSMENTS.** The amount of any unpaid assessments against a Unit shall be the personal and individual debt of the Unit Owner. The Association shall have the right to maintain judicial proceedings to recover a money judgment for all unpaid assessments without foreclosing or waiving the lien for such assessments. In any legal action for a money judgment, the Association may recover all late charges and interest to the date of payment, all costs of collection and reasonable attorney fees.

27. **STATEMENT OF ASSESSMENTS.**

27.1 **Written Statement of Assessments.** The Association shall furnish to the Unit Owner, such Unit Owner's designee, or to the holder of a Security Interest in the Unit or its designee, upon written request delivered personally or by certified mail to the Association or the registered agent of the Association, a written statement setting forth the amount of unpaid assessments currently levied against that Unit. The statement of assessment shall be furnished within 14 calendar days after receipt of the request and shall be binding upon the Association. If no statement of assessments is furnished to the Unit Owner or the holder of a Security Interest in the Unit or their designee either by personal delivery or certified mail return receipt requested, then the Association shall have no right to assert a lien upon the unit for unpaid assessements that were due as of the date of the request.

27.2 **Joint Liability.** The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments due and owing by the grantor for the Common Expenses up to the time of the grant or conveyance of the Unit, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore, subject only to the limitations set forth in paragraph 27.1. The term "Grantee" as used in this section shall not apply to the holder of a First Security Interest on a Unit which First Security Interest was recorded prior to the date upon which any assessment against the Unit became a lien as provided in this Declaration.

28. **DEFAULT ASSESSMENTS.** All monetary fines and other enforcement costs assessed against an Owner pursuant to the Association documents, or any expense of the Association which is the obligation of any Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association documents, including without limitation attorney fees incurred by the Association, shall be a default assessment and shall become a lien against such Owner's Unit that may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default assessment shall be sent to the Owner subject to such assessment at least five (5) days prior to the due date.

29. **EFFECT OF NONPAYMENT: ASSESSMENT LIEN.** Any assessment installment, whether pertaining to any annual, special or default assessment, that is not paid when due shall be delinquent. If any Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

29.1 If the delinquency continues for a period of fifteen (15) days, assess a late charge for each delinquency in such amount as the Association deems appropriate;

29.2 If the delinquency continues for a period of thirty (30) days, assess an interest charge, in arrears, from the due date at the yearly rate of 18% per year;

29.3 Suspend the voting rights of the Owner during any period of delinquency;

29.4 Accelerate all remaining assessment installments so that unpaid assessments for the reminder of the fiscal year shall be due and payable at once;

29.5 Bring an action at law against any Owner personally obligated to pay the delinquent assessments;

29.6 Proceed with foreclosure as set forth in more detail below; and

29.7 Suspend any of the Owner's membership privileges during any period of delinquency and for up to sixty (60) days thereafter.

29.8 Assessments chargeable to any Unit shall constitute a lien on such Unit. Such lien will be subject to the provisions of Colorado Revised Statutes, Section 38-33.3-316. Such lien will be superior to all other liens, except (i) the lien of all taxes, bonds, assessments and other levies that by law should be superior and (ii) the lien or charge of any Security Interest having priority over all other security interests in the Unit made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent assessments will be prior to a Security Interest having priority over all other Security Interests in the Unit to the extent of an amount equal to the assessments that would have come due, in the absence of acceleration, during the six months immediately preceding institution of an action to enforce the lien. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease mortgage and convey the same. The Association's lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any homestead exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

**30. LIMITATION OF MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION.**

30.1 **No Lien on Common Elements.** Subsequent to the completion of the improvements described on the Condominium Map, or any supplement thereto, no labor performed or materials furnished and incorporated into a Unit with the consent of or at the request of the Unit Owner, or his agent, shall be the basis of a lien against any other Unit unless such other Unit Owner expressly consented to or requested the same, or against the Common Elements.

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

**31. SECURITY INTEREST IN UNIT.** The Unit Owner shall have the right to grant a Security Interest in a Unit. Any such Security Interest shall at all times be subject to the terms and conditions of this Declaration and the Act.

**32. INSURANCE.** The following provisions shall govern insurance on the Project:

32.1 **Required Insurance by Association.** The Association shall obtain and maintain at all times, to the extent reasonably available, insurance coverage as hereafter set forth. All such insurance shall be written and issued by insurance companies licensed to do business in the State of Colorado and with an acceptable insurance rating.

32.2 **Property Insurance.** The Association shall obtain and maintain property insurance for broad form covered causes of loss, including fire and extended coverage with standard risk endorsements including vandalism and malicious mischief. The property insurance shall insure the Common Elements and all property owned by the Association, and any interest therein, in an amount not less than the full insurable replacement cost of the insurable property, less applicable deductibles at the time such insurance is obtained. All policies shall contain a standard non-contributory mortgage clause in favor of the holder of each Security Interest of a Unit, which shall provide that the loss, if any, thereunder, shall be payable to the Association for the use and benefit of holders of such Security Interest as their interests may appear.

32.3 **General Liability Insurance.** The Association shall obtain and maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements in an amount deemed sufficient in the judgment of the Board of Directors of the Association but in any event not less than $1,000,000.00 per injury, per person, per occurrence and umbrella liability limits of $1,000,000.00 per occurrence, covering claims for bodily injury and 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 and shall provide insurance coverage insuring the Board of Directors, the Association, the managing agent and their respective employees, agents and all persons acting as agents. Unit Owners shall be included as additional insureds but only for claims and liability arising in connection with the ownership, existence, use or management of the Common Elements. Such insurance policies shall cover claims of one or more insured parties against other insured parties.

32.4 **Workman's Compensation Insurance.** Workman'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 form now or hereafter required by law.

32.5 **Flood Insurance.** If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Project in an amount which is the lesser of the maximum amount of insurance available under the Act or the aggregate of the unpaid

principal balances of the Security Interests on the Units comprising the Project.

32.6 **Fidelity Insurance.** The Association may 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.

32.7 **Additional Insurance.** The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including plate or other glass insurance and any personal property of the Association located thereon.

32.8 **Insurance Not Available.** In the event that the insurance as described in paragraphs 32.2 and 32.3 is not reasonably available or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association shall promptly give written notice of such fact to all Unit Owners by personal delivery or by United States mail, postage prepaid.

32.9 **Special Provisions.** As to the insurance coverage provided in paragraphs 32.2 and 32.3 above, all policies must provide that:

32.9.1 Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Association and as a member of the Association.

32.9.2 The insurance company waives its right to subrogation under the policies of insurance against any Unit Owner or members of the Unit Owner's household.

32.9.3 No act of omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void any insurance policy or be a condition to recovery under such insurance policy.

32.9.4 If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by such policy, the Association's insurance policy will provide primary insurance.

32.9.5 That such insurance policy may not be cancelled or modified without at least 30 days prior written notice to the Association.

32.10 **Payable to Association.** All property insurance policies as provided in paragraph 32.2 above shall provide that any loss covered by such insurance shall be adjusted with the Association and the insurance proceeds for such loss shall be payable to the Association and not to the holder of a Security Interest. The Association shall hold the insurance proceeds in trust for the Unit Owners and holders of Security Interests as their interest may appear. Except only as hereafter provided, the proceeds of such insurance must be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and the holders of Security Interests are not entitled to receive any payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Project is terminated.

32.11 **Insurance by Unit Owners.** Any insurance policy issued to the Association does not obviate the necessity for a Unit Owner to obtain insurance on their own behalf as to any and all losses not covered by the insurance of the Association. Provided, however, all policies of any such Unit Owner shall contain waivers of subrogation and provide that the liability of the insurance company issuing insurance obtained by the Association shall not be affected or diminished by reason of any such insurance carried by the Unit Owner.

32.12 **Insurance Responsibility of Unit Owner.** Insurance coverage on furnishings, including carpet, draperies, wallpaper, and any other items of personalty or other personal property belonging to a Unit Owner, and public liability coverage within each Unit shall be the sole and direct responsibility of the Unit Owner thereof, and the Board of Directors, the Association and/or the managing agent shall have no responsibility therefor.

32.13 **Certificate of Insurance.** Any insurance company issuing policies of insurance as provided in paragraphs 32.2 and 32.3 above shall issue Certificate of Insurance or Memorandums of Insurance to the Association and, upon request, to any Unit Owner or to the holder of a First Security Interest.

**33. DAMAGE OR DESTRUCTION TO ELK CREST CONDOMINIUMS.**

33.1 **Mandatory Repair or Replacement.** If all or any portion of the Unit, for which insurance is required to be maintained as provided in paragraphs 32, is damaged or destroyed, such damage or destruction must be promptly repaired and/or replaced by Unit Owner unless:

33.1.1 The Project is terminated in the manner provided in paragraph 18 of this Declaration.

33.1.2 The repair or replacement of the damaged or destroyed portions of the Project would be illegal under any state or local statute or ordinance governing health or safety.

33.1.3 All of the Unit Owners, being one vote for each Unit and including the Unit Owners of every Unit for which a Limited Common Element is allocated, that will be affected by such action, vote not to rebuild, repair or replace the Project.

33.2 **Rebuild and Replace.** Except only as otherwise provided in paragraph 33.1 above, the Association shall promptly repair and replace any damaged or destroyed portions of the Project.

33.3 **Insurance Proceeds.** The Association shall utilize all insurance proceeds payable as a result of such damage or destruction to the repair and replacement of such damaged portions of the Project.

33.4 **Insurance Proceeds Insufficient.** In the event that the cost of repair or replacement is in excess of the insurance proceeds and reserves payable as a result of such damage or destruction then any additional costs of such repair or replacement shall be a Common Expense of the Association and assessed in the manner provided by paragraph 23 of this Declaration. The Association shall levy and assess a special assessment for such repairs and replacement as provided in paragraph 23.6 of this Declaration. In the event that the Unit Owner refuses to pay such special assessment in the time and in the manner provided by the Association, the Association shall foreclose the lien of its special assessment as to such Unit in the manner provided in paragraph 25.4 and 29.8 of this Declaration and the proceeds derived from the foreclosure of such Unit shall be used and disbursed by the Association in the following order:

33.4.1 For the payment of any taxes and assessments to any governmental authority.

33.4.2 To the costs and expenses to foreclose the lien of the Association, including reasonable attorney fees.

33.4.3 The unpaid balance due to the holder of a First Security Interest, which First Security Interest was recorded in the records of

Gunnison County, Colorado prior to the date of the special assessment of the Association.

33.4.4 The payment of the special assessment due to the Association under this paragraph, and the payment of any unpaid assessments or costs, expenses and fees due the Association.

33.4.5 The payment of any Security Interest in the order of and to the extent of their priority.

33.4.6 The balance remaining, if any, shall be paid to the Unit Owner.

33.5 **Assessments Not Abated.** The assessments of the Association shall not be abated during the period of repair and replacement unless otherwise provided by the Association.

33.6 **Election Not to Repair.** In the event that an election is made not to repair or replace any portions of the Project which have been damaged or destroyed and for which insurance proceeds are available, then the insurance proceeds attributable to such damage or destruction shall be distributed and paid in the same order as set forth in paragraph 33.4 of this Declaration.

All such proceeds shall be payable and distributed in accordance with the Allocated Interests of each Unit in the Assocation.

**34. OWNER'S MAINTENANCE RESPONSIBILITY OF UNIT.**

34.1 The Unit Owner shall at all times keep and maintain his or her Unit, and the interior thereof in a good and proper state of repair and in a clean, sanitary and attractive condition.

34.2 The Unit Owner shall not be deemed to own any utilities running through his or her Unit that serve 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.

34.3 The Unit Owner's right to repair, alter, and remodel his or her Unit shall carry the obligation to replace any exterior materials removed or repaired with similar or other types of materials, unless the prior written approval of the Association is obtained.

34.4 In the event the Unit Owner fails or refuses to maintain his or her Unit as required by paragraph 34.1 above, the Association shall give immediate written notice to the Unit Owner as to such failure to maintain and set forth the repairs and maintenance required by the Unit Owner. If the Unit Owner fails to comply with such notice within 30 days of such notice, the Association may make and accomplish such repair and maintenance and levy a special assessment against the Unit as provided in paragraph 22.3.2.

**35. OBSOLESCENCE OF ELK CREST CONDOMINIUMS.**

35.1 **Obsolescence.** In the event of the obsolescence of the Project, the Project may be terminated in the manner provided by paragraph 18 of this Declaration.

35.2 **Plan of Renewal.** In the event such obsolescence, the Association may adopt a plan for the renewal and reconstruction of the Project and submit the same to the Unit Owners for approval. If all of the Unit Owners, being one vote for each Unit, vote to approve and adopt the plan of renewal, then such plan of renewal shall be binding upon the Association and all Unit Owners, whether or not the Unit Owners have previously consented to the plan of renewal. The cost of the plan of renewal shall be a Common Expense of the Association and the Association shall levy a special assessment for the payment of all costs of such plan of renewal. In the event that any Unit Owner fails or refuses to pay such special assessment in the time and in the manner provided by the Association, the Association shall foreclose the lien of its special assessment as to such Unit in the manner provided in paragraph 25.4 and 29.8 of this Declaration and the proceeds derived from the foreclosure of such Unit shall be distributed and paid by the Association in the same order as set forth in paragraph 33.4 of this Declaration.

**36. CONDEMNATION.** If all or any part of a Unit or the Common Elements is acquired by eminent domain or sold or otherwise disposed of in lieu of or avoidance of condemnation or eminent domain then the following conditions shall apply:

36.1 **Unit.** If a Unit is acquired by eminent domain or part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant that may not practically or lawfully be used for any purpose permitted by the Declaration or by the laws, ordinances, rules or regulations or any governmental entity having jurisdiction over the Unit, the eminent domain award must include compensation to the Unit Owner for that Unit and its Allocated Interests in the Association or any Limited Common Elements whether or not the same are acquired by eminent domain. Unless the eminent domain decree specifically otherwise provides, the Allocated Interests in the Association and Limited Common Elements of the Unit acquired by eminent domain are automatically reallocated to the Unit in the Project in proportion to the respective Allocated Interests of those Units in the Association before the eminent domain taking. Any remnant of a Unit remaining after a part of the Unit is taken in eminent domain under this paragraph is thereafter a Common Element.

36.2 **Part of a Unit.** If a part of a Unit is acquired by eminent domain the award must compensate the Unit Owner for the reduction in value of the Unit and that Unit's interest in the Association and any Limited Common Elements, whether or not any Common Elements or Limited Common Elements are acquired. Upon acquisition by eminent domain, unless the decree specifically otherwise provides, (1) the Allocated Interests of the Unit taken by eminent domain are reduced in proportion to the reduction in size of the Unit and (2) the portion of Allocated Interests divested from the partially acquired Unit in eminent domain is automatically reallocated to the Unit and to the remaining Units in proportion to the respective interests of those Units before the taking by eminent domain, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.

36.3 **Common Elements.** If any part of the Common Elements are acquired by eminent domain, that portion of any award attributable to the Common Elements taken must be paid to the Association. Any portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the Unit Owners to which that Limited Common Element was allocated at the time of acquisition by eminent domain. For the purposes of acquisition of a part of the Common Elements, other than the Limited Common Elements, service of process on the Association shall constitute sufficient notice to all Unit Owners and service of process on each individual Unit Owner shall not be necessary or required.

The reallocations of the Allocated Interests in the Association pursuant to this paragraph 36 shall be confirmed by an Amendment to the Declaration prepared, executed and recorded by the Association.

36.4 **Entire Project.** If all of the Units and all of the Common Elements are acquired by eminent domain then the Project shall terminate in the manner provided in paragraph 18 of this Declaration.

**37. PROPERTY FOR COMMON USE.** The Association may acquire and hold for the use and benefit

of all of the Unit Owners, real and personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be owned by the Unit Owners in the same proportion as their Allocated Interests in the Association and shall not be transferable except with a transfer or a Unit. A conveyance of a Unit shall transfer to the grantee ownership of the grantor's beneficial interest in all such property acquired and held by the Association.

**38. REGISTRATION BY UNIT OWNER OF MAILING ADDRESS.**

38.1 **Register Mailing Address.** Each Unit Owner shall register his mailing address with the Association, and except for assessments, statements and other routine notices, all other notices or demands intended to be served upon a Unit Owner shall be sent by certified mail return receipt requested, postage prepaid, addressed in the name of the Unit Owner at such registered mailing address or personally delivered. All notices, demands or other notices intended to be served upon the Association shall be sent by certified mail return receipt requested, postage prepaid, to the address of the Association.

38.2 **Single Address for Mailing.** In the event any Unit is owned by more than one person, or by a partnership, joint venture, corporation, or other such entity, the Unit Owners thereof shall designate to the Association in writing the name and address of the agent of the Unit Owner to whom all legal or official assessments, liens, levies or other such notices may be properly and lawfully mailed, and upon failure to so designate an agent, the Association shall be deemed to be the agent for receipt of notices to such Unit Owners.

**39. ADDITIONAL RIGHTS OF HOLDERS OF FIRST SECURITY INTEREST.**

39.1 **Annual Financial Statement.** To be furnished a copy of the annual financial statement of the Association, and to be further furnished an audit of the Association, if the same is performed, such documents to be furnished at the same time that they are furnished to the Unit Owners.

39.2 **Notice of Amendment.** To be given written notice by the Association of any meeting of the Association called for the purpose of considering any Amendment, change, revision or termination of the Declaration. Such notice shall state the nature of any such change being proposed.

39.3 **Notice of Default.** To be given written notice of any default by a Unit Owner of a Unit encumbered by a First Security Interest in the performance of any duty or obligation required hereunder or rules and regulations of the Association, which default remains incurred more than 30 days following notice to the defaulting Unit Owner.

39.4 **Action by Holder of Security Interests.** If this Declaration, any Association documents or agencies require the approval of any agency or holders of Security Interests then, if the holder of a security Interest or agency fails to respond to any written proposal for such approval within thirty (30) days after such holder of a Security Interest or agency receives proper notice of the proposal (or such longer time as may be set forth in the notice), such holder of a Security Interest or agency shall be deemed to have approved such proposal provided that the notice was delivered to the holder of the Security Interest or agency by certified or registered mail, return receipt requested.

**40. GENERAL USE RESTRICTIONS.** All of the Units shall be held, conveyed, used, improved, occupied, owned, resided upon and secured, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. These restrictions are general in nature and the Board shall have the power and duty to adopt, amend, repeal and enforce more specific and restrictive design and architectural guidelines, rules, regulations, restrictions and policies as the Board deems to be reasonable and necessary to carry out the intent of this Declaration. The Units are intended to be used for the purposes specified in, and use of the Units is limited by, this Declaration. Each Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit shall be used and occupied so long as such use is consistent with the ordinances, and rules and regulations of the City of Gunnison, Colorado, or other authority having jurisdiction thereof. Each Owner and Owner's agents may use the Limited Common Elements allocated to his or her Unit and the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Board may adopt rules, regulations, restrictions or policies governing or restricting the use of the Units and the Common Elements. Each Owner and Owner's agents, by the Owner's acceptance of a deed or other instrument of conveyance or assignment to his or her Unit, agrees to be bound by any such adopted rules, regulations, restrictions or policies.

40.1 **Violations Deemed a Nuisance.** Every violation of the Association documents shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof.

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

40.3 **Timesharing Prohibited.** A Unit may not be conveyed to a time-sharing arrangement described in Sections 38-33-110 to 113, Colorado Revised Statutes.

**41. GENERAL.**

41.1 **Validity.** If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or work 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 work in any other circumstances shall not be affected thereby.

41.2 **Context of Words.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

41.3 **Additional Provisions.** The provision of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law.

41.4 **Rate of Delinquent Interest.** Unless the Board of Directors of the Association determines otherwise, any and all sums, amounts, expenses, assessments or any funds due and payable as provided in this Declaration which are not paid within ten (10) days of the date that the same are due and payable shall bear interest at the rate of one and one-half percent (1½%) per month from the date that the same were first due and payable to the date until paid.

41.5 **Enforcement.** The Association, on behalf of itself and any aggrieved Unit Owner, shall be granted a right of action against any and all Unit Owners for failure to comply with the provisions of the Association documents or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association documents. In any action covered by this section, the Association or any Unit Owner shall have the right but not the obligation to enforce the Association documents by any proceeding at law or in equity, or as set forth in the Association documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be awarded all costs and expenses including attorney fees in connection with such arbitration or judicial relief. Failure

by the Association or by any Owner to enforce compliance with any provision of the Association documents shall not be deemed a waiver of the right to enforce any provision thereafter.

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

42. **APPLICABLE LAW.** This Declaration is filed in the records of Gunnison County, Colorado and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Declaration shall be in the District Court of Gunnison County, Colorado.

43. **ATTORNEY FEES.** It is agreed that if any action is brought in a court of law by either party to this Declaration as to the enforcement, interpretation or construction of this Declaration or any document provided for herein, the prevailing party in such action shall be awarded reasonable attorney fees as well as all costs incurred in the prosecution or defense of such action.

44. **BINDING AGREEMENT.** It is understood and agreed that this Declaration shall be binding upon the heirs, personal representatives, administrators and assigns of the parties hereto.

**IN WITNESS WHEREOF**, the Declarant has executed this Declaration the date first written above.

BMJ, LLC, a Colorado limited liability company

By: _____
Vern C. Moter, Manager

STATE OF COLORADO )
)ss.
County of Gunnison )

The foregoing Declaration has been acknowledged before me this 16th day of June, 2006, by Vern C. Moter, Manager of BMJ, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: 9/21/07

_____
Notary Public

ROBERT M. O'HAYRE
STATE OF COLORADO

S Dominguez Gunnison County, CO 566089
6/16/06 2:58 PM Pg: 12 of 13
133 R: $66.00 D: $0.00

**EXHIBIT A**

**Declaration**
**for**
**Elk Crest Condominiums,**
**a planned community**

| Unit | Allocated Interest in Elk Crest Condominiums Association by Percentage | Allocated Vote |
|---|---|---|
| 1 | 10% | 1 |
| 2 | 10% | 1 |
| 3 | 10% | 1 |
| 4 | 10% | 1 |
| 5 | 10% | 1 |
| 6 | 10% | 1 |
| 7 | 10% | 1 |
| 8 | 10% | 1 |
| 9 | 10% | 1 |
| 10 | 10% | 1 |

S Dominguez Gunnison County, CO 566089
6/16/06 2:58 PM Pg: 13 of 13
133 R: $66.00 D: $0.00

# BYLAWS
# OF
# ELK CREST CONDOMINIUMS ASSOCIATION

## ARTICLE I
## Function

1.1 Purposes and Objects. The purpose for which this nonprofit corporation is formed is to:

1.1.1 Govern Elk Crest Condominiums in accordance with the terms and conditions of the Declaration of Elk Crest Condominiums and the Articles of Incorporation and Bylaws of this corporation.

1.2 Compliance. All present or future owners, tenants, future tenants or any other person who might use the facilities of the Elk Crest Condominiums in any manner, are subject to the regulations set forth in these Bylaws. The mere acquisition or rental of any of the Units of the Elk Crest Condominiums or the mere act of occupancy of such Units will signify that these Bylaws are accepted, ratified and will be complied with.

## ARTICLE II
## Membership

2.1 Automatic Membership. The owner of a Unit, upon becoming such owner, shall be entitled and required to be a member of the corporation and shall remain a member for the period of his or her ownership.

2.2 One Membership. There shall be one membership in the corporation for each Unit. Such membership shall be appurtenant to the Unit and shall be transferred automatically by a conveyance of that Unit to any new owner. Each membership shall be entitled to one vote, and in the event the membership is held by more than one owner, the vote must be cast only as a single vote and split or divided votes of membership shall not be allowed.

2.3 Number of Memberships. There shall be ten (10) memberships in the corporation in the aggregate, being one membership for each Unit.

2.4 Transfer. No person other than an owner of a Unit may be a member of the corporation and a membership may not be transferred except in connection with the conveyance or transfer of the Unit; provided, however, that such membership may be assigned to the holder of a mortgage or Deed of Trust as further security for the loan secured by the lien of the mortgage holder upon the Unit.

2.5 Person. The term "person" for the purpose of membership shall include a corporation, partnership, limited liability company, trust, joint venture or other legal entity that has valid title to any Unit. Any officer, director, shareholder, partner, or trustee of such entity may exercise the membership rights of the entity and shall further be entitled to serve on the board of directors and as an officer of the Corporation.

2.6 Termination. Such membership shall terminate without any formal corporate action whenever such person ceases to own a Unit, but such termination shall not relieve or release any such former Unit owner from any liability or obligation incurred under or in any way connected with Elk Crest Condominiums during the period of such ownership and membership in this corporation, or impair any rights or remedies which the Board of Directors of the corporation or others may have against such former owner and member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

## ARTICLE III
## Meetings

3.1 Annual Meetings. The annual meeting of the membership shall be held in the month of January of each year, beginning in the year 2006, at a time and place set forth in the notice of said meeting. At the annual meeting the membership shall elect the board of directors and transact such other business a may properly come before it. Board Member elections shall be done through secret ballots.

3.2 Special Meetings. Special meetings may be called at any time by the board of directors, the president, or upon a written request signed by a majority of the members. No business shall be transacted at a special meeting except as stated in the notice unless by consent of three-fourths of the owners present, either in person or by proxy.

3.3 Notice of Meeting. Notice of the date, place and time of the annual meeting, or any special meeting, shall be given to each member either by delivering such notice to the member personally, by mailing the same to him or her by United States mail, or by mailing the same to him or her through electronic mail, which notice shall be given not later than ten days prior to the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his or her address as it appears on the membership register of the corporation, with postage prepaid thereon.

A member may waive notice of any meeting.

3.4 Quorum. A majority of the members of the corporation in good standing and in actual attendance in person or by proxy at any annual or special meeting of the corporation shall constitute a quorum at such meeting for the purpose of transacting business. If a quorum is present, the affirmative vote of a majority of the members present at such meeting in person or by proxy and entitled to vote on the subject matter shall be the act of the membership, unless the vote of a greater number is required by the Articles of Incorporation, the laws of the State of Colorado or the Declaration of Elk Crest Condominiums.

3.5 Voting of Proxies. At all meetings of the members, a member may vote by proxy executed in writing by the member or by his duly authorized attorney in fact. Such proxy shall be filed with the secretary of the corporation before or at the time of the meeting. No proxy shall be valid after eleven months from the date of this execution unless otherwise provided in the proxy. A proxy can be rejected if the secretary has a reasonable and good faith basis to doubt the signature's validity.

3.6 Order of Business. The order of business at the annual meeting, and as applicable at any special meeting, shall be as follows:

3.6.1 Roll call
3.6.2 Proof of notice of meeting
3.6.3 Reading and approval of any unapproved minutes
3.6.4 Reports of officers and committees
3.6.5 Election of directors
3.6.6 Unfinished business
3.6.7 New Business
3.6.8 Adjournment

3.7 Majority of Members. The term "majority of members" shall mean the owners of more than fifty percent of the Units.

## ARTICLE IV
## Board of Directors

4.1 Number of Directors. The initial number of directors shall be two (2). The number of directors may be increased or decreased to not less than two nor more than five by a majority vote of the board of directors or members.

4.2 Powers and Duties. The board of directors shall have the powers and duties necessary for the administration of the affairs of the corporation. Such powers and duties shall include, but shall not be limited to, the following:

4.2.1 Exercising all power, duty and authority vested in or delegated to the board of directors under the Articles of Incorporation and Bylaws of the corporation.

4.2.2 Exercising all power, duty and authority vested in or delegated to the board of directors under the Declaration of Elk Crest Condominiums.

4.2.3 To be the design review board for Elk Crest Condominiums in accordance with the Declaration of Elk Crest Condominiums.

4.2.4 Fixing, collecting and enforcing all assessments as provided for in the protective covenants of the Units.

4.2.5 Exercising any and all powers granted to the corporation by the Colorado Nonprofit Corporation Act and the Colorado Common Interest Ownership Act, as the same now exists or may hereafter be amended from time to time.

4.2.6 Exercising any other power permissible under applicable Colorado law.

4.2.7 Commencing and maintaining, in its own name, on its own behalf, or in the names and on behalf of Unit owners who consent thereto, suits and actions to restrain and enjoin any breach or threatened breach of the Rules and Regulations of the corporation.

4.3 Conflict of Interest. Directors should be alert and sensitive to any interest they may have that might be considered to conflict with the best interests of the Association.

4.3.1 if any contract, decision, or other action taken by or on behalf of the Board of Directors would financially benefit any member of the Board of Directors or any person who is a parent, grandparent, spouse, child, or sibling of a member of the Board of Directors or a parent or spouse of any of those persons, that member of the Board of Directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting, prior to any discussion or action on that issue. After making such declaration, the member may participate in the discussion but shall not vote on that issue.

4.4 Tenure. Each director shall hold office for a term of three years from the date of his election and until his successor shall have been elected and qualified to office, subject only to the provisions of Section 4.5.

4.5 Qualifications. All directors shall be members of the corporation.

4.6 Term of Office. Directors shall be elected at each annual meeting and shall serve for a term of three years; provided, however, that at the organizational meeting of the board of directors, at least one director shall be elected for a term of three years, at least one director shall be elected for a term of two years, and the remaining directors if any shall be elected for a term of one year. Thereafter a director shall be elected for a term of three years to fill the vacancy of a director whose term expires.

4.7 Elections. Elections for the board of directors shall be by secret ballot, with the person receiving the highest number of ballots cast for such director vacancy being declared elected. Ballots shall be counted by a neutral third party or by a unit owner who is not a candidate, who attends the meeting at which the vote is held, and who is selected at random from a pool of two or more such unit owners. The results of the vote shall be reported without reference to names, addresses, or other identifying information.

4.8 Vacancies. The board of directors is empowered to fill any vacancy that may occur in its own body, or among the officers of the corporation, and the person so appointed to such office shall hold that office until the expiration of the term of the person he or she succeeds.

4.9 Compensation. No director shall be entitled to receive any compensation as a director of the corporation; provided, however, that he may be reimbursed for any actual expenses incurred in the performance of his duties as a director.

4.10 Chairman and Secretary-Treasurer. The president of the corporation shall be the chairman of the board of directors and the secretary-treasurer of the corporation shall be the secretary-treasurer of the board of directors.

4.11 Regular Meetings. The regular meeting of the board of directors shall be held without other notice than this Bylaw immediately after and at the same place as the annual meeting of the members of the corporation. Additional regular meetings shall be held quarterly at a time and place to be designated in the notice of such meetings.

4.12 Special Meetings. Special meetings of the board of directors may be called by the president or any two directors. Any special meeting shall be held at a time and place designated in the notice of such meeting.

4.13 Telephonic Meetings. All members of the board of directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

4.14 Action by written ballot. Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.

4.15 Quorum. A majority of the board of directors, as provided in Section 4.1, shall constitute a quorum for the transaction of business at any meeting of the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number of directors is required by the Articles of Incorporation, the statutes of the State of Colorado, or the Declaration of Elk Crest Condominiums.

4.16 Notice. Notice of any meeting of the board of directors shall be given at least three days prior thereto by written notice delivered personally to a director or mailed to each director by United States mail at his address as shown on the membership roll of the corporation. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver

of notice of such meeting, except where a director attends a meeting for the expressed purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors must be specified in a waiver of notice of such meeting.

4.17 Removal. Directors may only be removed at a meeting of the membership called in accordance with the requirements of Article III. The entire board of directors or a lesser number may be removed, with or without cause, by a vote of a majority of the members in good standing present at such meeting in person or by proxy.

## ARTICLE V
## Officers

5.1 Number. The officers of the corporation shall be a president, secretary and treasurer. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the board of directors. Any two or more offices may be held by the same person, except that the office of president and secretary may not be held by the same person.

5.2 Tenure. The officers set forth in this Article shall be elected at the annual meeting of the board of directors of the corporation, shall hold office until the next annual meeting of the board of directors and until their successors have been elected and qualified.

5.3 Qualifications. The president, and secretary-treasurer shall be members of the board of directors. Any additional officers elected or appointed by the board of directors need not be members of the board of directors of the corporation.

5.4 Election. The officers of the corporation shall be elected by the board of directors by ballot, oral or written, with the person receiving the majority of the ballots cast for such office being declared elected.

5.5 Vacancy. A vacancy in any office because of the death, resignation, removal, disqualification or inability to act shall be filled by the board of directors for the unexpired portion of the term of that office.

5.6 President. The president shall be the Principal executive officer of the corporation and, subject to the control of the board of directors, shall in general supervise and control all of the business and affairs of the corporation. He or she shall, when present, preside at all meetings of the members and of the board of directors. He or she may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the board of directors, deeds, mortgages, contracts or other instruments, and in general, shall perform all duties incident to the office of the president and such other duties as may be prescribed by the board of directors from time to time.

5.7 Secretary. The secretary shall: (a) keep the minutes of the members' meetings and of the board of directors' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws; (c) be custodian of the corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized; and (d) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or by the board of directors.

5.8 Treasurer. The treasurer shall: (a) if required by the board of directors, give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the board of directors shall determine; (b) be responsible for all funds of the corporation; receive and give receipts for monies due and payable to the corporation from any source whatsoever; deposit all such monies in the name of the corporation in such banks as shall be selected by the board of directors; sign checks and drafts for the payment of corporate funds; and (c) in general, perform all of the duties as from time to time may be assigned to him by the president or by the board of directors.

5.9 Salaries. Officers of the corporation may receive salary or compensation for their services in such offices if, in the discretion of the board of directors, it is deemed necessary and reasonable.

5.10 Removal. Any officer may be removed by the board of directors whenever, in the board's judgment, the best interests of the corporation would be served thereby. Such removal can be accomplished at any special meeting of the board of directors called in accordance with the requirements of Article IV. Such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

## ARTICLE VI
## Distribution and Maintenance of the Records

6.1 Accounting. Maintain accounting records using generally accepted accounting principles

6.2 Budget. Within ninety days after adoption of any proposed budget the Board of Directors shall cause for a summary of the budget to be delivered to each member either by delivering such budget to the member personally, by mailing the same to him or her by United States mail, or by mailing the same to him or her through electronic mail and shall set a date for a meeting of the unit owners to consider the budget.

6.2.1 Notice of the meeting shall be pursuant to section 3.3.

6.2.2 The budget does not require approval by the unit owners, this is merely a meeting to discuss the proposed budget.

6.3 Record Retention. The association shall keep as permanent records minutes of all meetings of unit owners and the Board of Directors, a record of all actions taken by the unit owners or Board of Directors by written ballot or written consent in lieu of a meeting, a record of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the association, and a record of all waivers of notices of meetings of unit owners and of Board of Directors or any committee of the Board of Directors.

6.3.1 Maintain a record of unit owners in a form that permits preparation of a list of the names and addresses of all unit owners, showing the number of votes each unit owner is entitled to vote.

6.3.2 Maintain copies of all documents listed in section 6.4.

6.4 Inspection and copying of the records. All financial and other records shall be made reasonably available for examination and copying by any unit owner and such owner's authorized agents.

6.4.1 The association will have copies of the following at principal office for inspection by the Lot Owners:

6.4.1.1 Articles of Incorporation;

6.4.1.2 The declaration of protective covenants;

6.4.1.3 The bylaws;

6.4.1.4 Resolutions adopted by its Board of Directors relating to the characteristics, qualifications, rights, limitations, and obligations of unit owners of any class or category of unit owners;

6.4.1.5 The minutes of all unit owners' meetings, and records of all action taken by unit owners without a meeting, for the past three years;

6.4.1.6 A list of names and business or home addresses of its current directors and officers;

6.4.1.7 Its most recent annual report, if any; and

6.4.1.8 All financial audits or review conducted during the immediately preceding three (3) years.

6.4.2 Additional Records. For inspection and copies of any other records a written request which describes with reasonable particularity the records sought and the purpose of the request must be delivered to the Association;

6.4.3 If the request is made in good faith and for a proper purpose and the records are relevant to that purpose then the association shall provide a copy of those records within fifteen days of such request.

6.4.4 The association may charge a fee, not to exceed the association's cost per page.

## ARTICLE VII
## Contracts, Loans, Checks and Deposits

7.1 Contracts. The board of directors may authorize by resolution any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation. Such authority may be general or confined to specific instances.

7.2 Loans. No loans shall be contracted on behalf of the corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the board of directors.

Such authority may be general or confined to specific instances.

7.3 Checks, Drafts, etc. All checks, drafts or other orders for payment of money, notes, or other evidences of indebtedness issued in the name of the corporation shall be signed by any two of the following officers of the corporation:

President
Secretary
Treasurer

7.4 Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the board of directors may elect.

## ARTICLE VIII
## Fiscal Year

The fiscal year of the corporation shall begin on the 1st day of January and terminate on the 31st day of December of each year.

## ARTICLE IX
## Seal

The board of directors may, by resolution, provide a corporate seal that shall be circular in form and shall have inscribed thereon the name of the corporation, the state of incorporation and the word, "SEAL".

## ARTICLE X
## Waiver of Notice

Whenever any notice is required to be given to any member or director of the corporation under the provisions of these Bylaws or under the provisions of the laws of the State of Colorado, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## ARTICLE XI
## Indemnification of Officers and Directors

The corporation shall indemnify every officer or director and their heirs, executors and administrators against all loss, costs and expense, including attorney fees, reasonably incurred by them in connection with any action, suit or proceeding to which they may be made a party by reason of their being or having been an officer or director of the corporation, except as to matters as to which they shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the corporation is advised by counsel that the persons to be indemnified have not been guilty of gross negligence or willful misconduct in the performance of their duties as such officer or director in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such officer or director may be entitled. All liability, loss, damage, costs and expenses incurred or suffered by the corporation by reason of or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the corporation as common expenses; provided, however, that nothing in this Article shall be deemed to obligate the corporation to indemnify any member who is or has been an officer or director of the corporation with respect to any duties or obligations assumed or liabilities incurred by them under and by virtue of the Declaration of Elk Crest Condominiums as an individual owner of a Unit covered hereby and not as a director of the corporation.

## ARTICLE XII
## Obligation of the Unit Owners

12.1 Assessments. Except as is otherwise provided in the Declaration of Elk Crest Condominiums, all Unit owners shall be obligated to pay the regular and any special assessments imposed by the corporation to meet the common expenses of the corporation as set forth in the Declaration. A member in good standing is entitled to vote at any annual meeting or at a special meeting of members, within the meaning of these Bylaws . The corporation shall have the authority to impose liens for nonpayment as set forth in the Declaration of Elk Crest Condominiums.

12.2 Rules and Regulations. The board of directors shall have the power to establish, make and enforce compliance with such rules and regulations as may be necessary for the operation, use and occupancy of Elk Crest Condominiums with the right to amend the same from time to time.

## ARTICLE XIII
## Amendments

These Bylaws may be altered, amended or repealed and new bylaws adopted by the board of directors at any regular meeting upon an affirmative vote of not less than two-thirds of the entire membership of the board of directors.

_____

Secretary

Exhibit A

Elk Crest Properties, LLC is the owner of:

Units 1, 2, 3, 5, 6, & 8, Elk Crest Condominiums, according to the PLAT thereof recorded June 16, 2006 as reception No. 566088 and re-recorded June 19, 2006 as reception No. 566110 and the declaration of Elk Crest Condominiums pertaining thereto recorded June 16, 2006 as reception No. 566089,

County of Gunnison,

State of Colorado.

TJ Cable is the owner of:

Unit 7, Elk Crest Condominiums, according to the PLAT thereof recorded June 16, 2006 as reception No. 566088 and re-recorded June 19, 2006 as reception No. 566110 and the declaration of Elk Crest Condominiums pertaining thereto recorded June 16, 2006 as reception No. 566089,

County of Gunnison,

State of Colorado.

Exhibit B

1. In the event of any conflict between this Exhibit B and any other provision of the Contract, this Exhibit B shall supersede and control.

2. Gunnison County Abstract Company shall be the escrow agent and title company.

3. The purchase price for Units 1, 2, 3, 5, 7, & 8 shall be $95,000.00 per unit. The purchase price for Unit 6 shall be $90,000.00.

4. Closing for each unit shall proceed as follows:

    a. Closing for each unit shall occur upon the expiration of the lease for such unit. In the event closing does not occur upon the expiration of the lease for any unit without a Contract termination, Buyer shall pay rent for any such unit until closing. However, if the Contract is terminated, Buyer shall lease Units 2 and 8 from Seller for a period of one year. In the event such rent payments become necessary, monthly rent is as follows: $800.00 each for Units 1 and 3, $900.00 for Unit 2, $875.00 for Unit 5, $700.00 for Unit 6, $925.00 for Unit 7, and $950.00 for Unit 8.
    b. The current expiration dates for the leases are as follows: May 31, 2019 for Units 2 and 8, June 30, 2019 for Unit 5, August 30, 2019 for Unit 6, November 1, 2019 for Unit 1, December 1, 2019 for Unit 3, and December 31, 2019 for Unit 7. As the current expiration date of the leases was May 31, 2019 for Units 2 and 8 and is June 30, 2019 for Unit 5, closing for such units shall be on July 19, 2019, or another date upon the mutual agreement of the Parties.
    c. In the event a tenant of any unit does not vacate such unit prior to closing, Seller shall evict such tenant and bear the burden of such eviction proceedings and any related financial burden. Closing shall be delayed until Seller completes the eviction process, with Buyer not owing the rent obligations provided above.
    d. Prior to the closing on any unit, Seller shall professionally clean such unit. Subsequent to such cleaning, Buyer may inspect the unit and maintains a termination right as to each unit until closing relating to the physical condition of a unit.
    e. Prior to the closing on any unit, Seller shall provide a representation that upon closing, all security deposits and other obligations owed to a tenant by Seller have been fulfilled and satisfied in whole.
    f. Prior to the closing on any unit, Seller, Gunnison County Abstract Company, and Buyer’s surveyor shall represent that no earlier representation or information has changed between the date of such representation and the date of closing. In the event any such earlier representation or information has changed, Buyer shall have the right to terminate the Contract prior to closing.

5. Buyer shall have the right to terminate the Contract for any reason on or before July 12, 2019.