



**DECLARATION OF PROTECTIVE COVENANTS**  
**OF**  
**FOXTROT SUBDIVISION**

**THIS DECLARATION AND AGREEMENT** is executed the 24th day of August, 2016, by Moon Ridge Ranch LLC, a Colorado limited liability company, ("Declarant").

**ARTICLE 1.**

**STATEMENT OF PURPOSE OF DECLARATION**

**Section 1.1 Ownership of Property.** Declarant is the owner of real property described on attached **Exhibit A** ("Property").

**Section 1.2 Declaration of Covenants.** Declarant hereby makes, declares and establishes the following covenants, restrictions and easements which shall affect the Property. This Declaration of Protective Covenants shall run with the Property and shall be binding upon all persons and entities having any right, title or interest in and to the Property or any Lots, tracts or parts thereof, their heirs, successors and assigns and their tenants, employees, guests and invitees and shall inure to and be for the benefit of each Owner of a Lot within the Property.

**Section 1.3 Statement of Purpose.** This Declaration of Protective Covenants is imposed for the benefit of all Owners and future Owners of Lots, parcels and areas located within the Property and to provide for the preservation of values of the Property and to provide and to establish the covenants, easements, restrictions, assessments and liens hereafter set forth, all of which are for the benefit of the Owners of Lots.

**Section 1.4 Waiver of Development Rights.** Notwithstanding any other provision of this Declaration and the Plat, Declarant shall not have any development rights as defined by the Colorado Common Interest Ownership Act, C.R.S. Sections 38-33.3-101, et seq. (the "Act"), nor the right to:

- A. Add real estate to Foxtrot Subdivision;



- B. Create Lots, common elements or limited common elements within Foxtrot Subdivision;
- C. Subdivide Lots or convert Lots into common elements; or
- D. Withdraw real estate from Foxtrot Subdivision.

**Section 1.5 Small Planned Community.** Because Foxtrot Subdivision contains only four lots and is not subject to any development rights, as defined in Section 103(14) of the Act, Foxtrot Subdivision is declared to be subject only to Sections 105, 106 and 107 of the Act, as provided in Section 116(2) of the Act. Any provision of this Declaration or Plat which is inconsistent with the preceding sentence shall be deemed to be modified for consistency with the declaration set forth in the preceding sentence.

## ARTICLE 2.

### DEFINITIONS

The following terms and words shall have the following definitions:

**Section 2.1 "Association"** shall mean Foxtrot Subdivision Association, a Colorado non-profit corporation, or any successor thereof charged with the duties and obligations set forth herein.

**Section 2.2 "Association Documents"** shall mean this Declaration of Protective Covenants, the Plat, the Articles of Incorporation and Bylaws of the Association, any amendments thereto, and any future design guidelines, rules and regulations or policies adopted by the Association.

**Section 2.3 "Assessments"** shall mean annual, periodic, special or default assessments levied pursuant to this Declaration to provide the funds required to meet the obligations of the Association.

**Section 2.4 "Building"** shall mean a building or structure, or any similar type of improvement situate and located on a lot or parcel of land within the Property.

**Section 2.5 "Building Site"** shall mean the envelope or area within a Lot where a Building or other improvement shall be located, always subject to the prior written approval of the Executive Board. The location of a Building Site



constitutes no warranty or assurance that the Building Site is free of building constraints.

**Section 2.6 "Carport"** shall mean an open sided shelter for motor vehicles formed by a roof projecting from the side of a Building.

**Section 2.7 "Collector Sewer Line"** shall mean a sewer main, generally 8" or 10" in diameter, constructed in a public street, alley or easement, to receive waste discharged from individual building service laterals.

**Section 2.8 "Common Area"** shall mean all of the Property, except for the Lots, which the Association owns for the common use and enjoyment of its members, as designated on the recorded plat. Common Areas shall be used for walking, exercising dogs, picnicking, playing and other activities approved by the Association. The Association's interest may include, without limitation, estates in fee, estates for a term of years, leasehold estates, or easements. Each and every Common Area may have a restricted use or enjoyment and may be designated for a specific use for such Common Area. Common Area includes the entire Property, except the Lots.

**Section 2.9 "Executive Board", "Board of Directors" or "Board"** shall mean the Board of Directors of the Association duly elected and acting according to the Articles of Incorporation and Bylaws of the Association.

**Section 2.10 "Family Residence"** shall mean the residence on any Lot designed for occupancy by the owner of the Lot.

**Section 2.11 "Garage"** shall mean an accessory building or an accessory portion of a residence designed for the storage of two or more motor vehicles.

**Section 2.12 "Home Occupation"** shall mean any commercial use carried on within a residence which is:

- A. Customarily conducted entirely within a residence by the occupants of the residence;
- B. Incidental and secondary to the use of the subject Lot for residential purposes;
- C. Conducted in such a fashion that the residential character of use of the residence is not changed;



D. Conducted in such a fashion that any noises and activities do not interfere with the quiet of the neighborhood; and

E. Conducted without the employment of individuals other than the occupants of the residence.

**Section 2.13 "Improvement"** shall mean all buildings, structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, recreational facilities, signs, decks, enclosures, changes in exterior color or shape, excavation, and all other site work including without limitation grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement constructed or completed on the Property.

**Section 2.14 "Long Term Rental"** shall mean bona fide rental of a Lot or the improvements thereon for single-family residential use for a fixed term of not less than one full year, or for a periodic tenancy with a periodic term of not less than one full year.

**Section 2.15 "Lot"** shall mean a Lot as shown on the Plat of Foxtrot Subdivision and any subsequent Plat, but not including common areas. Foxtrot Subdivision shall have four (4) Lots.

**Section 2.16 "Maintenance Fund"** shall mean the fund created by assessments and fees levied pursuant to this Declaration to provide the Association with funds it requires to carry out its duties hereunder.

**Section 2.17 "Member"** shall mean any person holding membership in the Association whose land is subject to all of the terms and provisions of this Declaration.

**Section 2.18 "Mortgage"** shall mean any mortgage, deed of trust or other document pledging a Lot or interest therein as security for the payment of any indebtedness. **"First Mortgage"** shall mean any mortgage which is not subject to or junior to any lien or encumbrance, except liens for taxes and other liens which are given priority by statute.

**Section 2.19 "Owner"** shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot; provided, however, that prior to the first conveyance of any Lot for value under this Declaration, the Owner shall mean the Declarant.



**Section 2.20 "Plat"** shall mean the plat of Foxtrot Subdivision and all subsequent plats as filed in the records of Gunnison County, Colorado, which are subject to this Declaration, and as the same may be amended or revised from time to time and affecting the Property.

**Section 2.21 "Property"** shall mean and include all of the land described on attached **Exhibit A**.

**Section 2.22. "Short Term Rental"** shall mean rental of a Lot or the improvements thereon for single family use for a fixed term of less than one full year, or for a periodic tenancy with a periodic term of less than one full year.

**Section 2.23. "Xeriscaping"** shall mean landscaping and gardening that reduces or eliminates the need for supplemental water from irrigation.

### **ARTICLE 3.**

#### **USE OF LOTS**

##### **Section 3.1 Residential Use.**

A. All Lots shall be used exclusively for residential purposes and Home Occupations approved by the Association to ensure that the peace, quiet, neatness and residential character of Foxtrot Subdivision are not diminished.

B. Each Lot shall have one Family Residence and one attached or detached Garage. Carports are prohibited within Foxtrot Subdivision. No additional Buildings shall be permitted.

C. No time-sharing shall be allowed.

D. No Short Term Rentals shall be allowed.

**Section 3.2 Building Site.** The Family Residence and other Improvements shall be located entirely within the Building Site.

**Section 3.3 Approval of Use.** No Improvement shall be constructed on any Lot except only as approved by the Executive Board.

**Section 3.4 No Commercial Use.** No commercial or business enterprise of any nature shall be allowed or permitted on any Lot or Common Area; provided, however, that the Owner of the Lot may be permitted to enter into a



Long Term Rental of the Family Residence or, upon the prior approval by the Executive Board, to conduct a Home Occupation, artistic or literary activity on any Lot. No such Home Occupation or artistic or literary activity shall diminish the residential character of the subdivision or employ any persons who do not reside in the Family Residence. No Home Occupation involving more than four client or customer visits to a Lot per day shall be allowed.

**Section 3.5 Snowmobiles.** Snowmobiles, snowcats, snowtractors or other similar motorized vehicles for travel over snow shall not be operated upon the Property.

**Section 3.6 Motorcycles and All Terrain Vehicles.** Motorcycles, all terrain vehicles and other similar or noisy vehicles shall not be operated upon the Property, except to access a Lot.

**Section 3.7 Parking and Outside Storage.** Parking is prohibited on Foxtrot Lane. All motor vehicle parking shall be in designated parking areas approved by the Executive Board. No Owner shall have or allow more than two motor vehicles to be parked outside for longer than seven days. The following are absolutely prohibited from Foxtrot Subdivision, unless parked or stored within a fully enclosed garage:

- A. Motor homes, recreational vehicles (RVs) and campers mounted on pickups;
- B. Pick-up campers not mounted on a pickup;
- C. Motorcycles;
- D. All terrain vehicles (ATVs);
- E. Trailers of any kind;
- F. Snowmobiles;
- G. Boats, kayaks and inflatable rafts;
- H. Inoperable vehicles (a vehicle which has not been driven under its own power for a period of one week, or longer);
- I. Bicycles, skis, snowboards, sleds and other recreation equipment;



J. Construction equipment, tools, snowblowers and other equipment;  
and

K. Trucks larger than 1 ton trucks.

**Section 3.8 Rules and Regulations.** The Executive Board shall have the authority to promulgate and enforce Rules and Regulations and/or design guidelines regarding the Property and its use on condition that such rules and regulations and/or design guidelines are not inconsistent with this Declaration.

**Section 3.9 Partition of Lots.** No part of a Lot may be partitioned, separated or subdivided from any other part thereof.

#### **ARTICLE 4.**

##### **ARCHITECTURAL REVIEW AND APPROVAL**

**Section 4.1 Architectural Review Board.** The Executive Board shall be the Architectural Review Board.

**Section 4.2 Review and Approval.** No Family Residence, Garage, Building or other Improvement shall be commenced, constructed, erected, altered, taken apart or maintained upon any Lot, nor shall any landscaping, excavation or tree clearing be done, nor shall any exterior addition, change, painting, decoration or alteration be made, until the plans and specifications thereof have been submitted to and approved in writing by the Executive Board in the manner hereafter set forth.

**Section 4.3 Submittal Procedure.** Prior to the commencement of any such work, complete plans shall be submitted to the Executive Board for approval. The Executive Board shall determine when a submission is complete. The submittal for approval shall include, at a minimum, the following documents:

A. A plot plan showing the location of any Building(s) or Improvements, landscaping, fences, driveway, parking area, snow storage areas, and any terrain or structure features, such as large rocks, trees, ponds, patios, fences, utility lines, storage areas or decks.

B. Complete plans and specifications for the Building(s), and including a roof plan, in sufficient detail to verify and confirm the size, type and dimensions of the Building(s), mass and height of the Building(s), all design features thereof, all exterior elevations showing all sides of the Building(s), all



floor plans and the types of construction and materials. All foundations shall be designed by a licensed engineer or architect.

C. Samples of the exterior materials and color schemes for the Building(s).

D. A detailed landscape, drainage and grading plan, including topography and contour lines.

**Section 4.4 Purpose of Review.** The Executive Board shall consider the suitability of the proposed Building(s) and in particular the harmony of the Building(s) with the environment, the effect of the Building(s) on the utilization and view of the Lot and other Lots and the placement of the Building(s) with respect to topography, drainage, snow removal, ground elevations, and existing natural and terrain features.

**Section 4.5 Hearing.** The Executive Board shall, within sixty days of receiving an application for approval with all accompanying data, hold a hearing on such request. The Executive Board may approve, disapprove or approve with conditions any request submitted to it. The decision of the Executive Board shall be in writing.

**Section 4.6 Notice of Hearing.** The Applicant, and any person on his behalf, may attend the hearing on the application for approval and submit information in support of the application. Notice of the hearing shall be given in writing to all members of the Association and all members shall have the right to be present at the hearing or to submit written comments.

**Section 4.7 Quorum.** A majority of the Executive Board shall constitute a quorum and all decisions of the Executive Board shall be by a majority vote of the directors present.

**Section 4.8 Final Decision.** The decision of the Executive Board shall be final, subject only to the right of judicial review as provided by the laws of the State of Colorado. The Executive Board shall indicate in the event of denial, the reasons why the application was denied and grant to the applicant an opportunity to resubmit with the revisions and corrections that would bring the application into conformity with the requirements of the Executive Board and Association Documents.

**Section 4.9 Rules and Regulations.** The Executive Board may adopt such design guidelines and rules and regulations which are not inconsistent with this Declaration as it deems appropriate to govern its proceedings and the use of Lots, easements and Foxtrot Subdivision.





**Section 4.10 Application Fee.** A reasonable application fee may be required for any approval request. If the Executive Board deems it appropriate to incur any professional or other expense in connection with an application, the Owner of the Lot to which the application pertains shall be obligated to pay such expense prior to the Executive Board's decision on the Owner's application.

**Section 4.11 Building and Other Permits.** In addition to the requirement for approval by the Executive Board, each owner is responsible for obtaining all approvals, licenses and permits as may be required by Gunnison County, Colorado and any other entity or district having jurisdiction over the Lot prior to the commencement of construction. An application to Gunnison County for a residential building permit must comply with all applicable building codes adopted and amended by Gunnison County, and with any applicable energy and resource conservation standards currently required by Gunnison County. In addition, construction on and use of Lots are subject to the terms, provisions and restrictions of Board of County Commissioners Resolution No. 36 Series 2016, recorded as Reception No. 641740 of the Gunnison County records. Prospective purchasers of Lots in Foxtrot Subdivision are advised to contact Gunnison County's planning and building departments to ascertain what permits are needed and how to obtain approval of such permits.

## ARTICLE 5.

### DESIGN REQUIREMENTS

**Section 5.1 Design Requirements.** Any Family Residence, Garage, Building or Improvement on any Lot shall comply with the design requirements of this Declaration and of all design guidelines which may be adopted by the Executive Board.

**Section 5.2 Building Site.** Any Building or Improvement shall be constructed entirely within the designated Building Site for the Lot.

**Section 5.3 International Residential Code.** All Buildings and Improvements shall meet all of the requirements, including fire protection standards of the International Residential Code, and all other applicable codes, rules and regulations.

**Section 5.4 Minimum Floor Area.** The floor area of a Family Residence shall be not less than 2,500 square feet with at least 1,500 square feet on one level, plus a Garage of at least 500 square feet or 20% of the floor area of the Family



Residence, whichever is greater. Floor area shall be determined in accordance with the regulations of Gunnison County.

**Section 5.5 Maximum Floor Area.** The maximum floor area of all Buildings on a Lot shall not exceed 5,000 square feet in the aggregate.

**Section 5.6 Height.** No Building shall be higher than 2 stories above grade. The maximum height of any Building shall be 30 feet. The height of a Building for the purpose of this Section shall be determined in accordance with the regulations of Gunnison County.

**Section 5.7 Roofs.** Roof material and design shall be approved by the Executive Board. Any metal roof must have a dark, non-reflective color finish approved by the Executive Board.

**Section 5.8 Exterior Building Materials and Style.**

A. All Buildings shall have muted, unobtrusive, primarily earth tone colors and materials that blend with the surrounding natural terrain and environment. Native stone, board and batten, lap siding, plank and chink, log and rusted metal are preferred exterior materials. No exterior walls shall consist of T-111 or any similar material, composition shingles or unplastered cement, aluminum, vinyl or block.

B. No whites, light beiges or bright colors shall be allowed for siding. No excessive glass shall be allowed. No bright colors, materials or construction techniques which would unnecessarily call attention to the Building shall be permitted.

C. A-frames or geodesic domes shall not be permitted.

D. At least 25% of the exterior of each Building shall be finished in an architecturally appropriate material different from the primary exterior material, unless the Architectural Review Board waives this requirement for good cause.

**Section 5.9 Service or Utility Areas.** All service or utility areas or yards and garbage cans and trash storage areas shall be screened from view on all sides and protected from bears, wildlife and other animals.

**Section 5.10 Exterior Lighting.** All exterior lighting fixtures, including those used to illuminate roadways, parking areas, walkways and buildings, shall be fixtures that are full cutoff/fully-shielded or shielded by a roof element that



produces the same effect as full cutoff/fully shielded light fixtures. Exterior lighting shall be kept to a minimum and shall comply with Section 13-114 of the Gunnison County Land Use Resolution.

**Section 5.11 Antennae.** No exterior radio, television, microwave or other antennae or antennae dish or signal capture or distribution device shall be permitted or installed on any Lot unless it is 18" or less in diameter and designed and located to be as unobtrusive as possible. The design and location of all antennae shall be approved by the Executive Board.

**Section 5.12 Solid Fuel Burning Devices.** All solid fuel burning devices shall be designed to reduce polluting emissions and shall comply with all applicable rules and regulations of Gunnison County. The maximum number of solid fuel burning devices per Lot shall be one.

**Section 5.13 Energy and Resource Conservation.** All construction in Foxtrot Subdivision shall comply with Section 13-106: ENERGY AND RESOURCE CONSERVATION of the Gunnison County Land Use Resolution, as amended.

**Section 5.14 Xeriscaping.** Landscaping plans, which must be approved by the Association, shall include Xeriscaping. Owners who plant trees and/or foliage that requires supplemental water from irrigation shall import water to irrigate all new landscaping to ensure that it survives and thrives. In-house domestic water cannot be used for irrigation.

**Section 5.15 Fire Safety.** Each Family Residence shall include a sprinkler or other fire suppression system approved by the Crested Butte Fire Protection District.

**Section 5.16 Snow Storage.** Each Owner shall provide adequate snow storage on his or her Lot, which shall be shown on plans submitted for approval. No Owner shall store snow from such Owner's Lot in Foxtrot Lane or in common area snow storage facilities.

## **ARTICLE 6.**

### **CONSTRUCTION AND MAINTENANCE REQUIREMENTS**

**Section 6.1 Excavation, Reclamation and Noxious Weed Control.** No excavation shall be made on any Lot (a) except in connection with a Building approved by the Executive Board in accordance with this Declaration of



Protective Covenants, and (b) prior to issuance of a building permit by Gunnison County. Each Lot Owner shall comply with the reclamation and noxious weed control requirements of the Gunnison County Land Use Resolution and other applicable regulations regarding any excavation and/or ground disturbance on the Owner's Lot. The Declarant and/or the Association shall comply with the reclamation and noxious weed control requirements of Section 13-115 of the Gunnison County Land Use Resolution and other applicable regulations regarding any excavation and/or ground disturbance on Common Areas.

**Section 6.2 Electrical and Telephone Service.** All new electrical, telephone and internet service shall be installed underground.

**Section 6.3 Water Supply and On-Site Wastewater Treatment Systems.**

All Buildings designed for human occupancy shall be connected to a water main line supplying water from the Saddle Ridge Ranch Estates Water Company and on-site wastewater treatment systems approved by Gunnison County.

A. All Buildings within Foxtrot Subdivision shall be connected to and utilize the Saddle Ridge Ranch Estates central water system in accordance with the final decree in Case No. 97CW92, recorded at Reception No. 523455 of the records of Gunnison County, Colorado, and are subject to the policies, rules and regulations established thereunder, including a restriction to in-house domestic use only. Each Owner of a Lot shall be responsible for and shall be required to pay costs of installation within such Owner's Lot, for the connection and use of such water service.

B. Each Building designed for human occupancy shall initially be connected to a state of the art on-site wastewater treatment system. All on-site wastewater treatment systems shall be engineered systems constructed, installed and maintained in compliance with all applicable rules and regulations of Gunnison County and the State of Colorado. Every on-site wastewater treatment system shall comply with the following:

1. Every on-site wastewater treatment system in Foxtrot Subdivision shall be designed and located as approved by the Association and Gunnison County.

2. Every on-site wastewater treatment system shall meet all applicable rules and regulations of Gunnison County and the State of Colorado.



3. The Owner of the Lot upon which an on-site wastewater treatment system is located shall be responsible at all times to maintain and operate such system in accordance with all applicable rules and regulations of Gunnison County and the State of Colorado. The Association shall have the responsibility and authority at all times to confirm that all on-site wastewater treatment systems are being adequately maintained and operated.

C. At such time as the statutes, rules and regulations of Gunnison County and the State of Colorado require that the Lots within Foxtrot Subdivision be connected to the Town of Crested Butte wastewater treatment system or another sanitation district central system capable of providing sewer service to Foxtrot Subdivision, the Owners of all Lots within Foxtrot Subdivision shall be compelled and required to connect any building designed for human occupancy to such Collector Sewer Line, subject to compliance with all of the following conditions:

1. The Town of Crested Butte or other central system operator has sufficient capacity and is ready, willing and able to provide sewer service to Foxtrot Subdivision and an existing available Collector Sewer Line is located within 400 feet of Foxtrot Subdivision; and

2. At the time an existing available central sewer Collector Sewer Line becomes located within 400 feet of the Foxtrot Subdivision, the Owners of all Lots within Foxtrot Subdivision shall be compelled and required to connect any building designed for human occupancy to such central sewer Collector Sewer Line pursuant to then existing requirements of Gunnison County, if in the reasonable discretion of Gunnison County, connecting Foxtrot Subdivision to such central sewer system is technically and economically feasible and will materially improve both treatment of Foxtrot Subdivision wastewater and stream water quality protection at a reasonable cost, compared to the existing and/or available on-site wastewater treatment systems. Gunnison County's determination shall include, but not be limited to, consideration of the following criteria:

- a. the remaining expected life span of existing on-site wastewater treatment systems, if any;
- b. the cost of connection;
- c. the permits (e.g. USACE 404) required for connection;
- d. the availability of physical and legal access between Foxtrot Subdivision and the Collector Sewer Line on reasonable terms;
- e. any requirements to modify water rights decrees associated with the existing discharges;
- f. the technical feasibility of connection; and



- g. the cost of permitting and constructing any required pump station, compared to gravity flow.

In evaluating and applying the foregoing criteria, Gunnison County may consider, but shall not have authority to modify, the tap and/or service fees charged by the central sewer system operator, which are only required to be just, reasonable and necessary pursuant to Colorado Revised Statutes Section 31-35-701

D. Each Owner of a Lot shall be responsible for and shall be required to pay any cost, including tap fees, user fees, and costs of installation to serve such Owner's Lot, for the connection and use of such sewer services, on condition that the tap fees and user fees are just, reasonable and necessary, as required by Colorado Revised Statutes Section 31-35-701. The Association shall have the power to assess and collect such fees and costs against the Owners of the Lots in the same manner as is provided for other assessments of the Association.

E. The Association shall be responsible and required to install any main or Collector Sewer Line within Foxtrot Subdivision to the existing available Collector Sewer Line of the Town of Crested Butte or other sanitation district as may be required to provide a sewer service connection to each Lot. The Association shall assess and collect such costs of installation and connection as an assessment against the Owners of the Lots in the same manner as is provided for other assessments of the Association.

F. In addition to the foregoing, the Association shall have the power at any future time to require that all Lots within Foxtrot Subdivision be connected to and be a part of an existing available central sewer system and/or water system, whether owned and operated by the Association or owned and operated by any special district or other governmental or legal entity, which is capable of providing sewer and/or water services to all Lots within Foxtrot Subdivision. The Association shall assess and collect such costs to accomplish connection as an assessment against the Owners of the Lots in the same manner as is provided for other assessments of the Association.

**Section 6.4 Signs.** No sign of any kind shall be displayed on any Lot, except only a sign approved by the Architectural Review Board not to exceed four square feet identifying the Owner and/or address of the Lot or a sign, not to exceed four square feet, advertising the property for sale. Installation of signs requires compliance with the Gunnison County Land Use Resolution and may require a sign permit pursuant to Section 13-109 of the Gunnison County Land Use Resolution.



**Section 6.5 Drainage, Grading and Erosion Control.** No Owner shall do or permit any work, construct any improvements or do any landscaping which shall alter or interfere with the natural drainage for the Property, except as approved by the Executive Board and as authorized by any surface water discharge easement. All grading and excavation shall be performed in compliance with Sections 13-116 and 13-117 of the Gunnison County Land Use Resolution, as amended.

**Section 6.6 Temporary Structures.** No temporary structure, mobile home, modular home, trailer house, travel trailer or R.V. vehicle shall be permitted on any Lot, except only as may be determined to be necessary during the period of construction of the Family Residence and as specifically approved by the Executive Board.

**Section 6.7 Continuity of Construction.** All construction, reconstruction, alterations or improvements shall be prosecuted diligently to completion and shall be completed within twenty-four months of the commencement, unless an exception is granted by the Executive Board for good cause.

**Section 6.8 Landscaping.**

A. The Lot and all landscaping and foliage thereon shall be maintained in its natural condition to the extent possible. No foliage shall be cut or removed from any Lot except only (1) as required to permit ingress and egress to and from the Building Site, (2) to clear the actual construction site for any Family Residence or Garage, (3) to remove any diseased or dead foliage, (4) to remove any foliage that poses a danger to any Building, and (5) as required for Wildfire Safety. Owners shall install and maintain landscaping on Lots in compliance with Section 13-111 of the Gunnison County Land Use Resolution.

B. An Owner who plants trees and/or foliage that requires supplemental water from irrigation shall import water to irrigate all new landscaping to ensure that it survives and thrives. In-house domestic water cannot be used for irrigation.

**Section 6.9 Trash.**

A. No trash, ashes, garbage or other refuse shall be allowed to accumulate or be placed on any Lot or area within the Property. There shall be no burning, burying or other disposal of refuse out of doors. Each Owner shall provide suitable bear-proof receptacles approved by the Association for the temporary storage and collection of such refuse and all such receptacles shall be screened from the public view and from the wind and protected from bears,



wildlife and other animals and other disturbance. No trash shall be placed curb-side or in a location visible from the street until the morning of the day on which trash is collected. All empty trash receptacles shall be removed from view by the evening of the day on which trash is collected.

B. All Lots shall at all times, including during construction, be maintained in a neat and attractive condition.

C. All construction debris shall be stored within a dumpster or other comparable container or receptacle.

**Section 6.10 Abandoned or Inoperable Vehicles.** Abandoned or inoperable automobiles or motor vehicles of any kind, except as hereinafter provided, shall not be stored or parked on any Lot, except in a fully enclosed garage. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own power for a period of one (1) week or longer. A written notice describing the "abandoned or inoperable vehicle" and requesting removal thereof may be personally served upon the Lot Owner or posted on the unused vehicle; and if such vehicle has not been removed within seventy-two (72) hours thereafter, the Association shall have the right to remove the same without liability to it, and the expense thereof shall be charged against the Lot Owner.

**Section 6.11 Noise.**

A. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the improvements on any Lot, shall be placed or used on any Lot.

B. Except for a brief warning bark when a person approaches the Lot, no dogs shall be allowed to bark, whine or otherwise make noise which is audible on nearby Lots.

**Section 6.12 Nuisance.** No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted upon the Property which is offensive or detrimental to any other part of the Property or its Owners or occupants; provided, however, that this Section shall not apply to any reasonable, usual noise or other activity involving construction of any improvements approved by the Executive Board. No motor vehicles of any kind shall be operated within Foxtrot Subdivision except on platted roadways and on driveways and parking areas.

**Section 6.13 Hazardous Activities.** No activities shall be allowed or conducted on the Property which are or might be unsafe or hazardous to any





person or property. Such hazardous activities include, but are not limited to hunting, setting off fireworks and discharging firearms, bows and arrows, explosives, air or pellet guns or any similar devices. No outside open fires shall be permitted on any Lot unless contained within a cooking or barbecue unit or grill.

**Section 6.14 Fences.** No fences, walls or barriers shall be constructed, erected or maintained on any Lot. The Association shall maintain a perimeter fence around Foxtrot Subdivision in compliance with Section 13-113 of the Gunnison County Land Use Resolution.

**Section 6.15 Wetlands.** All driveways, Buildings and other Improvements shall be located, designed and constructed in compliance with the provisions of Section 11-107: PROTECTION OF WATER QUALITY of the Gunnison County Land Use Resolution, as amended. Lot Owners shall comply with all terms and provisions of any 404 Permit issued by the United States Army Corps of Engineers for construction of Improvements at Foxtrot Subdivision. The Association is responsible and empowered to enforce strict compliance with the provisions of this Section 6.15.

**Section 6.16 Tree Removal.** Removal of trees and other foliage shall be strictly limited. The Executive Board shall have broad discretion to restrict removal of trees and other foliage and to require replacement of trees and other foliage.

**Section 6.17 Hours of Construction.** No construction activities of any kind shall be allowed except on Monday through Friday between the hours of 7 am and 7 pm and on Saturday between the hours of 9 am and 5 pm.

## **ARTICLE 7.**

### **ANIMALS**

**Section 7.1 Dogs and Cats.** The Owner of a Lot may keep and maintain no more than 2 domestic pets within the Lot, subject to the following conditions:

A. To protect birds, no cats are allowed outside at Foxtrot Subdivision. Cats must be confined to the inside of the Family Residence at all times.

B. All dogs shall be confined by kenneling, leashing, fencing or other physical restraint at all times. This restriction may be enforced by Gunnison County at the expense of the Owner.



C. The Lot Owner shall at all times be personally liable and responsible for all actions of any dog or cat owned by or visiting the Lot of the Owner and any damage caused by the dog or cat.

D. No dog may be left leashed or chained on a Lot for more than fifteen minutes at one time. Dogs left alone on a Lot for more than fifteen minutes must be confined by a fence or kennel.

E. No dog or cat shall create a nuisance or noise problem within Foxtrot Subdivision.

F. The owner of any dog shall immediately clean up any excrement left by such dog within Foxtrot Subdivision.

**Section 7.2 Other Animals and Pets.** No other animals or pets may be kept or maintained by any Owner except upon the prior written permission of the Executive Board, provided, however, that in no event may livestock be kept or maintained on any Lot. For purposes of this Section 7.2, livestock shall include, but not be limited to, horses, cattle, llamas, goats, sheep and hogs.

**Section 7.3 Wildlife Protection Requirements.** The following requirements shall apply to Foxtrot Subdivision in order to protect wildlife:

A. Pet food and bird feeders shall not be placed outside in a location accessible by bears and other wildlife. In no event shall pet food and bird feeders be placed at or near ground level.

B. Residents shall not chase, scare, disturb or otherwise harass elk in an attempt to move them off adjacent open space areas, nor shall they allow their pets to chase, scare, disturb or otherwise harass elk.

**Section 7.4 Rules and Regulations.** The Executive Board shall adopt suitable rules and regulations regarding animals and pets within Foxtrot Subdivision. The Executive Board shall have the authority to determine that any such animal has created a noise, odor or nuisance problem within Foxtrot Subdivision and to require removal of such animal from Foxtrot Subdivision.

**Section 7.5 Impoundment of Animals.** The Association is specifically empowered to impound any animal running at large within the Property. The Owners shall be notified that any adjacent landowner engaging in agricultural operations has the right to destroy any dogs which are harassing livestock. Upon impoundment, the owner of the animal, if known, shall be immediately



notified and the animal taken to the nearest facility which 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 facility, any other Owner or the Association.

## **ARTICLE 8.**

### **FOXTROT SUBDIVISION ASSOCIATION**

**Section 8.1 Management By Association.** The operation and management of Foxtrot Subdivision shall be undertaken by Foxtrot Subdivision Association, a Colorado non-profit corporation, which has been formed and will be operated as a Lot Owners' association on behalf of all Owners of Lots in Foxtrot Subdivision. The Association shall have all of the powers, authority and duties necessary or convenient to manage the business and affairs of Foxtrot Subdivision, as authorized by Colorado law. An Owner of a Lot shall automatically become a member of the Association and shall remain a member for the period of his ownership. The Executive Board shall have three (3) members. Except for members of the Executive Board appointed by Declarant during the period of Declarant control, all Executive Board members shall be elected by Owners of Lots in Foxtrot Subdivision.

**Section 8.2 Declarant Control.** Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association during the term of Declarant Control. "Declarant Control" begins with the appointment of the initial Executive Board and continues until the earlier of: (a) five (5) years from the date of recording the Declaration, (b) sixty (60) days after Declarant conveys seventy-five percent (75%) of the Lots that may be created to Owners other than Declarant; (c) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business, or (d) two (2) years after the right to add new Lots 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 Declarant and recorded with the Gunnison County Clerk and Recorder but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective. Declarant Control is further extinguished, to the extent stated, sixty (60) days after the following events: (a) Declarant conveys twenty-five percent (25%) of the Lots that may be created to owners other than Declarant, to the extent of twentyfive



percent (25%) of the members of the Executive Board (minimum of one), and (b) Declarant conveys fifty percent (50%) of the Lots that may be created to Owners other than a Declarant, to the extent of thirty-three and one third percent (33⅓%) of the members of the Executive Board.

**Section 8.3 Association Management.** The Association shall conduct the general management, operation and maintenance of Foxtrot Subdivision and the enforcement of the provisions of this Declaration and of the Articles and Bylaws of the Association, any Design Guidelines and rules and regulations adopted thereunder. The Association may assign its future income, including its rights to receive Common Expense assessments, only by the affirmative vote of the Owners of Lots to which at least 51 percent of the votes in the Association are allocated, at a meeting called for that purpose.

**Section 8.4 Representative of Owner(s).** If any Lot is owned by more than one person or by a partnership, joint venture, corporation, limited liability company or other entity, the Owner(s) shall designate to the Association in writing the name and address of the representative to whom all legal or official assessments, liens, levies or other notices may be mailed. Upon failure to so designate a representative, the Association shall be deemed to be the agent for receipt of notices to such Owner(s).

**Section 8.5 Notice to Lot Owners.** Notice of matters affecting the Association, the Common Area or other aspects of Foxtrot Subdivision shall be given to Lot Owners by the Association or other Lot Owners in writing addressed to each Lot Owner at the address provided to the Association by each Lot Owner. If a Lot Owner has failed to provide an address, the Association shall use the address set forth in the deed or other instrument of conveyance recorded in the Gunnison County records by which the Lot Owner acquired title.

**Section 8.6 Delivery of Documents by Declarant.** Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Executive Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including, without limitation, the following items:

A. The original or a certified copy of the recorded Declaration, as it may be amended, the Articles of Incorporation, Bylaws, Design Guidelines, minute books, other books and records, and any rules and regulations which may have been promulgated;



B. An accounting for Association funds and audited financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends;

C. The Association funds, books and records;

D. All of the tangible personal property that has been represented by the Declarant to be the property of the Association or that is necessary for and has been used exclusively in the operation and enjoyment of the Common Areas;

E. A copy, for the nonexclusive use of the Association, of any plans and specifications used in the construction of Improvements in Foxtrot Subdivision;

F. All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;

G. Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Common Area;

H. Any other permits issued by governmental bodies applicable to Foxtrot Subdivision and which are currently in force or which were issued within one (1) year prior to the date on which Owners other than the Declarant took control of the Association;

I. Written warranties of any contractor, subcontractors, suppliers and manufacturers that are still effective;

J. A roster of Owners and their addresses and telephone numbers, if known, as shown on the Declarant's records and facilities, including water facilities;

K. Employment contracts in which the Association is a contracting party; and

L. Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the person performing the services.

**Section 8.7 Executive Board.** Except as otherwise provided in this Declaration or the Bylaws, the Executive Board may act in all instances on



behalf of the Association. Except for members of the Executive Board appointed by the Declarant during the Period of Declarant Control, all members of the Executive Board shall be Members of the Association, or in the event that a Member is an entity other than a natural person, such member of the Executive Board shall be an authorized representative of such entity Member.

**Section 8.8 Powers of the Executive Board.** Except as provided in the Bylaws and Colorado law, the Executive Board may act in all instances on behalf of the Association, to:

- A. Adopt and amend bylaws and rules and regulations;
- B. Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;
- C. Hire and terminate management agents and other employees, agents and independent contractors and hire or require that all Lot Owners use one specific trash hauling company.
- D. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Foxtrot Subdivision;
- E. Make contracts and incur liabilities, except that any contract providing for the services of Declarant may not exceed three years and must provide for termination by either party without cause and without payment of a termination fee on ninety days or less written notice;
- F. Regulate the use, maintenance, repair, replacement and modification of Common Areas;
- G. Cause additional improvements to be made as a part of the Common Areas;
- H. Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that Common Areas may be conveyed or subjected to a security interest only if all Owners agree to that action;
- I. Grant easements, leases, licenses and concessions through or over the Common Areas;



J. Impose and receive any payments, fees or charges for the use, rental or operation of the Common Areas and facilities, including water facilities;

K. Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents.

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

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

N. Assign its right to future income, including the right to receive Assessments;

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

P. Exercise all other powers that may be exercised in this state by legal entitles of the same type as the Association; and

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

**Section 8.9 Books and Records.** The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required by Colorado law.

**Section 8.10 Maintenance Accounts: Accounting.** If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a manager, then such other persons or manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or manager, (b) maintain all reserve accounts of the Association separate from the operational accounts of the Association, and (c) provide to the Association no less than once per month an



accounting for the previous month. In addition, the Association shall obtain an annual accounting and financial statement of Association funds (on either a review or audit basis, at the Association's discretion) and annual tax returns prepared by a certified public accountant.

**Section 8.11 Manager.** The Association may employ or contract for the services of a manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The manager shall not have the authority to make expenditures except as directed by the Executive Board.

**Section 8.12 Rights of Action.** The Association on behalf of itself and any aggrieved Owner shall be granted a right of action against any and all 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. The Owners shall have a right of action against the Association for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this Section, the Association or any 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 reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorneys' 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.

**Section 8.13 Implied Rights and Obligations.** The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Colorado Nonprofit Corporation Act and by any other provision or doctrine of Colorado law.

**Section 8.14 Road Maintenance.** All roads within the Property shall be constructed in accordance with the land use change permit issued by Gunnison County, Colorado. Upon completion of construction of the roads, all maintenance, repairs and snow plowing and supervision shall be the duty of and vested in the Association. The Association shall keep in good repair all roads within the Property and maintain the same in suitable condition for use by the members of the Association and drivers of fire trucks and other emergency vehicles.





**Section 8.15 Water Rights and Water System Tap Fee.** The Association shall be responsible for compliance with the terms of any decree and any plan of augmentation regarding water rights owned or obtained by the Association, the maintenance of all records and other reporting requirements imposed by any decree and the maintenance, repair and replacement of all ditches, pipes, flumes, dams, outlet works, and other physical components required for the proper implementation of any plan of augmentation.

**Section 8.16 Lawn and Garden Irrigation.** Except as provided in Section 6.8, the Owner or occupant of any Lot within the Property shall not irrigate, by sprinkler, flood irrigation or otherwise (except by importing water), any lawn or garden on any Lot; nor shall any Owner or occupant of any Lot take any action which contravenes the provisions and limitations contained in any decree of the Water Court in any case affecting water rights, if any, owned or obtained by the Declarant and/or Association.

## ARTICLE 9

### COMMON EXPENSES

**Section 9.1 Personal Obligation.** Each Owner, including Declarant while an Owner of any Lot, is obligated to pay to the Association: (1) the annual assessments; (2) special assessments; and (3) default assessments. Each assessment against a Lot is the personal obligation, jointly and severally, of the Owner(s) at the time the assessment became due and shall pass to successors in title, regardless of whether or not they agree to assume the obligation. No Owner may exempt himself from liability for the assessment by abandonment of his Lot or by waiver of the use or enjoyment of all or any part of the Common Area. Suit to recover a money judgment for unpaid assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the assessment lien provided in this Declaration. All assessments shall be payable in accordance with the levy thereof, and no offsets or deductions thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under the Association Documents.

**Section 9.2 Association Budget.** The budget shall be submitted to the Owners at least 30 days prior to adoption. Common expense Assessments shall be due and payable annually or in periodic installments, or in any other manner. Common expense Assessments may begin on the first day of the month in which conveyance of the first Lot to an Owner other than the



Declarant occurs. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

**Section 9.3 Creation of Lien.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any deed, is deemed to covenant and agree to pay to the Association all regular, special and default Assessments or charges, all of which shall be fixed, established and collected as determined by the Association. The annual, special and default Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which each such Assessment is made until paid. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment became due.

All such Assessments shall be adopted and assessed in the manner set forth in this Article 9.

**Section 9.4 Purpose of Assessments.** The Assessments levied by the Association shall be used for the following:

- A. The improvement, maintenance and repair of and snow removal from any road serving the Property.
- B. The maintenance, repair or other improvement required to be made by any Owner to any Improvement on any Lot which the Owner fails to do.
- C. The operation of the Association in the performance of its duties.
- D. The operation and maintenance of Common Areas and water supply and sewage collection facilities.
- E. The payment of trash hauling for all Lots in Foxtrot.
- F. Any other purpose approved by a majority vote of the members of the Association or by a two-thirds vote of the Executive Board.

**Section 9.5 Types of Assessments.** The Board of Directors shall have the authority to levy the following types of Assessments for the Association:

- A. Initially, common expenses shall be estimated by the Association for the period from the date that Foxtrot Subdivision was created to the end of the then calendar year and each Owner shall be assessed his pro rata share



thereof at such date. Thereafter common expenses shall be estimated by the Association annually for the ensuing calendar year and each Owner shall be assessed for his pro rata share thereof in advance of the commencement of each such year. The annual Assessments shall be paid equally by the Owners. The Association may establish any reasonable system for periodic collection of Assessments, in advance or arrears, as deemed desirable. At the end of each calendar year the Association shall determine actual expenses and either assess each Owner or credit him against the Assessment for the next ensuing calendar year, as the case may be, for his share of the difference between estimated and actual expenses. Alternatively, the Association may credit any unused portion of Assessments toward a reserve fund. The failure of the Association to fix the Assessment for any Assessment period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay the common expenses.

B. In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Areas or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners equally, subject to the right of the Association to assess only against the Owners of affected Lots any extraordinary maintenance, repair or restoration work on fewer than all of the Lots which shall be borne by the Owners of those affected Lots only, and any extraordinary insurance costs incurred as a result of the actions of a particular Owner or Owner's Agents which shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than ten (10) days after such notice shall have been given.

C. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot which 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 ten (10) days prior to the due date.



**Section 9.6 Nonpayment of Assessments.** Any Assessment, whether regular, special, or default Assessment, which is not paid within thirty days of its due date shall be deemed delinquent. In the event that any Assessment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

A. Assess a late charge of at least 10% of the amount due and owing per delinquency.

B. Assess an interest rate charge from the date of delinquency at 18% per year, or such other rate not contrary to law as shall be established by the Executive Board.

C. Suspend the voting rights of the Owner during any period of delinquency.

D. Bring an action against any Owner personally obligated to pay the delinquent Assessment.

E. Prohibit a defaulting Owner from using Common Areas and facilities.

F. File a Statement of Lien with respect to the Lot, which lien may be foreclosed in the manner hereafter set forth. The Association may file a Statement of Lien by recording with the Clerk and Recorder of Gunnison County, Colorado, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association and the amount of the delinquent Assessments then owing, which Statement shall be signed and acknowledged by the President, Vice President, Secretary, attorney, manager or other representative of the Association, and which shall be sent by certified mail, postage prepaid, to the Owner of the Lot at such address as the Association may have in its records as to the Owner. Ten days following the mailing of such Notice, the Association may proceed to record and foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Such Statement of Lien shall secure all Assessments accruing or assessed subsequent to the date of recording of such Statement of Lien until the same has been satisfied and released, together with the Association's attorneys' fees and costs incurred in the preparation and recording of such Statement of Lien and any release thereof. In any action for the payment or foreclosure of such Assessment, the Association shall be awarded as part of the action, the interest, costs and reasonable attorneys' fees with respect to the action.



G. The Statement of Lien shall be superior to all other liens (except government tax liens) and encumbrances on such Lot, including, for one year's regular Assessment, the lien of any Mortgage.

**Section 9.7 Successor's Liability for Assessment.** In addition to the personal obligation of each Owner of a Lot to pay all Assessments and the Association's lien on a Lot for such Assessments, all successors to the ownership of a Lot shall be jointly and severally liable with the prior Owner for any and all unpaid Assessments, interest, costs, expenses and attorneys' fees against such Lot.

**Section 9.8 Association Power.** The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Lot or the Common Areas. No Owner shall make any addition or other alteration to any portion of the Common Areas, no matter how minor, without the express written consent of the Executive Board.

**Section 9.9 Payment by Holder of Security Interest.** Any holder of a security interest on a Lot may pay any unpaid amount payable with respect to such Lot, together with any and all costs and expenses incurred with respect to the lien and upon such payment that holder of a security interest shall have a lien on the Lot for the amounts paid with the same priority as the lien of the security interest.

**Section 9.10 Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, holder of a security interest or its designee shall be furnished with a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request.

**Section 9.11 Voting Rights and Assessment Allocation.** The common expense liability and votes in the Association are allocated equally to each Lot and have been calculated as follows:

- A. The common expense liability is based on the number of Lots; and



B. The number of votes in the association is based on the number of Lots.

## ARTICLE 10

### INSURANCE

**Section 10.1 General Insurance Provisions.** The Association shall acquire and pay for, out of the assessments, at least the following insurance policies carried with reputable insurance companies authorized to do business in Colorado:

A. **Hazard Insurance Coverage.** Insurance for fire, with extended coverage, vandalism, malicious mischief and all-risks endorsements, in amounts determined by the Executive Board to represent not less than the full then current insurable replacement cost of any Common Area(s) located on the Property, including all fixtures. Maximum deductible amounts for such policies shall be determined by the Executive Board.

B. **Comprehensive Liability.** Comprehensive general public liability and property damage insurance for Foxtrot Subdivision in such amounts as the Executive Board deems desirable, provided that such coverage shall be for at least \$2,000,000 for bodily injury, including death and property damage arising out of a single occurrence insuring the Association, the Executive Board, the manager and their respective agents and employees, and the Lot Owners from liability in connection with the operation, maintenance and use of Common Areas. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to developments similar to Foxtrot Subdivision in the Gunnison County area, including automobile liability insurance if appropriate. The Executive Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as Certificate of Insurance) to the Executive Board that such party has current and satisfactory insurance, including workers compensation insurance, commercial general liability and automobile insurance on all of which the Association is named as an additional insured.

**Section 10.2 Fidelity Insurance.** Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others, including any manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount determined by the Executive Board.



**Section 10.3 Workers' Compensation Insurance.** The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

**Section 10.4 Directors and Officers Liability Insurance.** The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of the Executive Board against any liability asserted against a member of the Executive Board or incurred by him in his capacity of or arising out of his status as a member of the Architectural Review Board.

**Section 10.5 Proof of Insurance.** The Association shall furnish proof of such insurance coverage to any Owner upon request.

**Section 10.6 Owner's Insurance.** In addition, an Owner shall at his own expense, carry:

A. Insurance for fire, with extended coverage, vandalism, malicious mischief and all risk and replacement cost endorsements attached for the full current insurable replacement cost of all Improvements on the Lot; and

B. Insurance for homeowner's liability, theft, and other insurance covering personal property damage or loss.

## ARTICLE 11

### EASEMENTS

**Section 11.1 Easements and Licenses.** Foxtrot Subdivision is presently subject to easements and licenses as recited in **Exhibit A**. In addition, Foxtrot Subdivision may be subject to other easements granted by the Declarant as shown on the Plat and/or as described in this Declaration.

**Section 11.2 Private Walking and Skiing Easements.** Private walking easements for Foxtrot Subdivision Lot Owners and their guests, are hereby dedicated over the Common Area, excepting wetlands, subject to such rules and regulations as the Executive Board may adopt.

**Section 11.3 Declarant's Rights Incident to Construction.** Declarant, for itself and its successors and assigns, hereby reserves an easement for



construction, utilities, drainage, ingress and egress over, in, upon, under and across the Lots and Common Areas, together with the right to store materials on the Lots and Common Areas, to build and maintain temporary walls, and to make such other use of the Lots and Common Areas as may be reasonably necessary or incident to any construction of the roads, utilities, projects, or Improvements on the Property, or other properties abutting and contiguous to the Property, or to perform warranty work and repairs and construction work on the Lots and Common Areas, to store materials in secure areas and to control and have the right of access to work and repair until completion. Such rights may be exercised by Declarant from time to time, and at different times until completion of the project by Declarant or a Successor Declarant, and no failure to exercise such rights at any time or for a period of time shall constitute a waiver of the rights contained herein.

**Section 11.4 Blanket Easements.** There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Area and the Lots and the structures and improvements situated on the Property for ingress and egress, parking, installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable television and electricity, and such other purposes as deemed appropriate by the Executive Board, except that such easements may not be utilized by the utility providers until after receiving written approval from the Executive Board. The Executive Board may condition its approval on such matters as it deems appropriate, including without limitation, the location, design, alterations to existing structures and impact on the Common Areas and the project. Said blanket easement includes future utility services not presently available to the Lots which may reasonably be required in the future. By virtue of this easement, after receiving approval of the Executive Board, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Lots and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the Lots, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as provided above. Upon exercise of the rights contained in this Section, the utility providers, at their sole cost and expense, shall repair (or replace if necessary) the Property and all improvements thereon to their condition as they existed prior to the utility providers performing any work.

**Section 11.5 Reservation of Easements, Exceptions and Exclusions.** The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Lots and Common Areas for the best interest of the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Lot over and across the Foxtrot





Subdivision roads, which right shall be appurtenant to the Owner's Lot, and which right shall be subject to limited and reasonable restrictions on the use of Common Areas set forth in writing by the Association.

**Section 11.6 Emergency Access.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons and to Gunnison County's Building Inspector and Environmental Health Official to enter upon the Property, including all Lots and all Common Areas, in the proper performance of their duties. All Owners shall permit a right of entry to the Executive Board, or any other person authorized by the Executive Board, whether the Owner is present or not, for access through each Lot, from time to time, as may be necessary for the routine maintenance, repair, or replacement for any of the utilities or Common Areas located adjacent thereto or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Areas or to another Lot.

## **ARTICLE 12**

### **RESTRICTIONS ON ALIENATION**

**Section 12.1 Restrictions on Alienation.** A Lot may not be conveyed pursuant to any time-sharing arrangement, including time-sharing arrangements described in Sections 38-33-110 to 113, Colorado Revised Statutes.

## **ARTICLE 13**

### **MECHANIC'S LIENS**

**Section 13.1 No Liability.** If any Owner shall cause any material to be furnished to his Lot or any labor to be performed therein or thereon, no Owner of any other Lot, nor the Association, shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Lot.

**Section 13.2 Indemnification.** If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Areas or against any other Owner's Lot or an Owner



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

**Section 13.3 Association Action.** Labor performed or materials furnished for the Common Areas, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Areas. Any such lien shall be limited to the Common Areas and no lien may be affected against an individual Lot or Lots.

## **ARTICLE 14**

### **RIGHTS RESERVED TO DECLARANT**

**Section 14.1 Special Declarant Rights.** The Declarant specifically reserves the right to exercise in any order all Special Declarant Rights as set forth in this Declaration for the maximum time limit allowed by law, or for twenty (20) years following the recording hereof, whichever occurs first, including, without limitation, the following:

- A. The right to appoint or remove any officer of the Association or any Executive Board member of the Association during the Declarant Control period.
- B. The right to complete or make any improvements as set forth on the Plat, or as required by Gunnison County, Colorado.
- C. The right to maintain signs to identify the project.
- D. The right to dedicate a future public or private easement as shown on the Plat.
- E. The right to maintain a business office, construction facilities, construction equipment and other facilities as may be reasonably necessary,



appropriate or customary during the construction and development of all of the Lots within Foxtrot Subdivision.

F. The right, without consent of any Owner or mortgagee or lienholder being required, at any time and from time to time to: (a) complete improvements indicated on the Plat, (b) maintain signs advertising the project; (c) amend the Plat to (i) insure that the language and all particulars that are used on the Plat and contained in the Declaration are identical; and (ii) establish, vacate and relocate utility easements, access easements, and parking spaces; and (d) to exercise any other Special Declarant rights or other rights provided for herein.

## **ARTICLE 15**

### **MISCELLANEOUS PROVISIONS**

**Section 15.1 Separate Tax Assessment.** Declarant shall advise the Assessor of Gunnison County, Colorado, of the platting of the Lots so that each Lot shall be deemed a separate parcel of real property and subject to separate assessment and taxation.

**Section 15.2 Compliance with Plat and Declaration.**

A. Each Owner and Owner's Agent shall comply strictly with the provisions of the Plat, this Declaration, the Articles of Incorporation, Bylaws, rules, regulations and resolutions of the Association, all Association Documents and any management agreement entered into by the Association as the same may from time to time be in force and effect. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association in behalf of the Owners, by an aggrieved Owner and/or by Gunnison County.

B. No Owner or Owner's Agent shall initiate any litigation or other action to enforce or interpret this Declaration or any Association Documents without first in good faith submitting the matter to mediation. The disputants will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. In the event the entire dispute is not resolved within thirty (30) calendar days from the date written notice requesting mediation is sent by one disputant to the other(s), the mediation, unless otherwise agreed, shall terminate. Nothing herein shall be deemed to require the Association to submit any matter to mediation prior to initiating litigation or other enforcement action.



**Section 15.3 Severability.** If any provision of this Declaration or any paragraph, sentence, clause, phrase, word or section, or the application thereof in any circumstance shall be invalidated by any court, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, word or section in any other circumstances shall not be affected thereby.

**Section 15.4 Amendment.**

A. Except as otherwise provided herein, this Declaration and the Plat shall be amended only by vote or agreement of Lot Owners to which sixty-six percent (66%) of the votes in the Association are allocated, which instrument must be approved by Gunnison County and recorded in the office of the Gunnison County Clerk and Recorder; provided, however, that no amendment which affects the Association shall be effective without the written approval of the Executive Board. Lienholder or Mortgage holder approval shall not be required. No amendment which alters Lot Owners' proportional responsibility for common expenses or voting rights shall be effective except upon the written approval of the Owners of record of all Lots plus the holders of all deeds of trust and/or mortgages encumbering such Lots. Declarant reserves the right to amend the Association Documents without the consent of Owners before Declarant conveys the last Lot that may be created to a purchaser other than Declarant or a successor Declarant, whichever first occurs, as follows: (i) to make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement; or (ii) to comply with any requirements of Colorado law.

B. Notwithstanding any other provision in this Declaration to the contrary, Declarant reserves the right to amend the Plat until one year following completion of all Foxtrot Subdivision road and utility construction or until the expiration of the Declarant Control Period, whichever occurs later. Such Plat amendment(s) may include but shall not be limited to relocation of roads, trails and easements, Lot boundaries, Building Sites and driveways. No Lot Owner shall have any right to review and/or approve any such Plat amendment, except that no modification by Declarant of any Building Site shall be effective without the written approval of the Owner of the Lot on which such Building Site is located. Except as provided in the preceding sentence, all such Plat amendments shall be effective upon recording without approval by the Owner of any Lot or the holder of any Mortgage or other interests in any Lot.

C. No amendment to this Declaration or to the Plat shall be effective until approved by the Board of County Commissioners and placed of record in the office of the Clerk and Recorder of the County of Gunnison, Colorado.



**Section 15.5 Attorneys' Fees.** If any action is brought in a court of law to enforce, interpret or construe this Declaration or any Association Document, the prevailing party shall be awarded all reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action, including expert witness fees and costs.

**Section 15.6 Construction.** In interpreting words herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

**Section 15.7 Headings.** The headings on any section or article are included only for purposes of convenient reference and shall not affect the meaning or interpretation of this Declaration of Protective Covenants.

**Section 15.8 Written Notice.** All notices required under this Declaration shall be in writing. Notice to any Owner shall be considered delivered and effective upon personal delivery or five days after mailing by certified or registered mail, return receipt requested, to the address of such Owner on file in the records of the Association at the time of such mailing.

**Section 15.9 Limitation of Liability.** Neither the Association nor any officer or director, shall be liable to any party for any action or for any failure to take any action with respect to any matter arising by, through or under this Declaration if the action or failure to act was made in good faith. The Association shall indemnify, defend and hold harmless all officers and directors with respect to any action taken in their official capacity as provided in the Articles of Incorporation and Bylaws of the Association.

**Section 15.10 Applicable Law.** The exclusive proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of the Association Documents shall be the County Court or District Court of Gunnison County, Colorado, unless otherwise chosen by the Association.

**Section 15.11 Binding Agreement.** This Declaration shall bind and inure to the benefit of the parties hereto and their respective representatives, heirs, successors and assigns as a covenant running with the land.

**Section 15.12 Term.** The term of this Declaration of Protective Covenants, and any amendments or supplements thereto, shall be from the date of recording in the records of Gunnison County, Colorado until January 1, 2036. Thereafter, this Declaration of Protective Covenants shall be automatically





## EXHIBIT A

Commencing at the NW corner of the SE1/4 Section 35, Township 13 South, Range 86 West, of the 6th Principal Meridian; thence S22°05'29"E a distance of 218.62 feet to the POINT OF BEGINNING; thence along the right-of-way line of Moon Ridge Lane the following 3 courses: 1) S49°31'50"E a distance of 27.24 feet to a point of curve to the left; 2) along said curve 118.70 feet, said curve having a radius of 340.00 feet, a central angle of 20°00'10", and a chord of S59°31'55"E, 118.10 feet; 3) S69°32'00"E a distance of 160.01 feet; thence S00°18'00"W a distance of 152.00 feet; thence S32°50'00"E a distance of 40.00 feet; thence S69°00'00"E a distance of 80.00 feet; thence S47°04'00"E a distance of 169.55 feet; thence S06°55'01"E a distance of 185.75 feet; thence S02°32'00"W a distance of 283.78 feet; thence S24°56'30"W a distance of 301.40 feet; thence N86°29'47"W a distance of 283.80 feet; thence N29°35'03"W a distance of 73.79 feet; thence N02°27'38"W a distance of 158.51 feet to a point of a non-tangent curve to the right; thence along Said curve an arc length of 108.76 feet, said curve having a central angle of 89°01'09", a radius of 70.00 feet, a chord bearing of N53°48'38"W and a chord distance of 98.14 feet; thence N09°18'03"W a distance of 124.18 feet to a point of curve to the right; thence along said curve 82.84 feet, said curve having a radius of 540.00 feet, a central angle of 08°47'24", and a chord of N04°54'21"W, 82.76 feet; thence N00°30'39"W a distance of 554.28 feet to a point of curve to the right; thence along said curve 128.75 feet, said curve having a radius of 190.00 feet, a central angle of 38°49'33", and a chord of N18°54'07"E, 126.30 feet; thence N38°18'53"E a distance of 35.53 feet to the POINT OF BEGINNING.

containing 515,112 square feet or 11.825 acres, more or less,



### **EASEMENTS**

1. Easements, or claims of easement, not shown by the public records.
2. The following reservations as contained in the United States Patent of record affecting the subject property:
  - a) The right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted as provided by law.
  - b) A right of way thereon for ditches and canals constructed by the authority of the United States.
3. Water rights, claims or title to water, whether or not shown by the public records.

### **LICENSES**

None