

**AFTER RECORDING RETURN TO:**  
Altitude Community Law P.C.  
555 Zang St., Suite 100  
Lakewood, CO 80228

**AMENDMENT  
TO THE  
AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
THE PINNACLE AT UTE CREEK HOMEOWNERS ASSOCIATION**

THIS AMENDMENT is made this 15<sup>th</sup> day of September, 2022.

**RECITALS**

A. Sonoma & Pinnacle, LLC, a Colorado limited liability company, created The Pinnacle at Ute Creek community ("Community") by recording a Declaration of Covenants, Conditions and Restrictions of The Pinnacle at Ute Creek Homeowners Association dated April 18, 2003 and recorded on September 9, 2003 at Reception No. 2500059 in the records of the Clerk and Recorder of the County of Boulder, State of Colorado, which was amended and restated in its entirety by that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Pinnacle at Ute Creek Homeowners Association recorded on November 17, 2004 at Reception No. 2643368 in the records of the Clerk and Recorder of the County of Boulder, State of Colorado, as amended further by documents of record (collectively, referred to as the "Original Declaration").

B. The Original Declaration provides for and allows for this Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Pinnacle at Ute Creek Homeowners Association (the "Amendment") in Article 14, Section 14.5, which provides as follows:

Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least sixty-seven percent (67%) of the votes in the Association and with the written consent of the Association.

C. Article 10, Sections 10.2 and 10.3 of the Original Declaration also provide certain rights to Eligible Holder with respect to proposed amendments. The undersigned, being the President and Secretary of the Association, hereby certify that there are no "Eligible Holders" as such term is defined in the Original Declaration.

D. All Unit Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means.

E. This Amendment has been prepared and determined by the Association and by the Unit Owners that have approved this Amendment to be reasonable and not burdensome.

F. The purpose of this Amendment is to clarify, expand, and revise insurance obligations of the Unit Owners and the Association.

G. The undersigned, being the President and Secretary of the Association, hereby certify that the Association and the requisite number of Unit Owners have approved this Amendment. Alternatively, the Association has obtained approval for this proposed Amendment pursuant to the terms and conditions of the Colorado Common Interest Ownership Act.

H. As amended by this Amendment, the Original Declaration is referred to as the "Declaration."

NOW THEREFORE,

I. Amendments. The Original Declaration is hereby amended as follows:

(a) **Repeal and Restatement**. Article 9 is hereby repealed in its entirety and the following Article 9 is substituted:

#### **ARTICLE 9 INSURANCE/CONDEMNATION**

Section 9.1 Insurance to be Carried by the Association.

The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth in this Declaration, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

Section 9.2 Real Property Insurance on the Units and Common Elements.

(a) The Association shall obtain insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements located on the Common Elements (if any), those portions of the Units insured by the Association, and the other property of the Association.

(b) The Association's insurance policy shall cover that property within the Community, including portions of the Units, as set forth on **Exhibit E** of this

Declaration which is attached hereto and incorporated herein, regardless of ownership.

(c) If the Executive Board changes policies so that a lesser level of coverage is provided, the Executive Board shall notify all Unit Owners in writing at least 10 days prior to the commencement of the policy with reduced coverage.

(d) All policies shall contain a standard non-contributory mortgage clause in favor of each first mortgagee, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such first mortgagee, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of Boulder County, Colorado.

(e) The Association may also obtain any additional endorsements which it deems advisable and in the best interests of the Community by the Executive Board.

(f) The insurance described in this Section shall be inflation coverage insurance, if such insurance is available, which shall at all times represent 100% of the replacement value of all facilities in the Common Elements (if any) except land, foundation, excavation and other items normally excluded from coverage and except for any deductible.

(g) The Association may periodically obtain an appraisal for insurance purposes in order to ensure adequate coverage amounts.

(h) The Association's insurance policy may contain a reasonable deductible.

### Section 9.3 Association Flood Insurance.

The Association shall obtain flood insurance to the extent required by the Federal Emergency Management Agency (FEMA) or any other governmental agency.

### Section 9.4 Liability Insurance.

The Association shall obtain a comprehensive policy of public liability and property damage liability insurance covering all of the Units (excluding liability within each Unit) and the Common Elements, including structural coverage of the Units, in such limits as the Executive Board may from time to time determine, but not in any amount less than a combined single limit of \$1,000,000.00, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Units and the Common Elements (if any). The foregoing liability insurance shall name the Association as the insured.

Section 9.5 Fidelity Insurance.

The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees, volunteers and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees, as required by law. If the Association retains a managing agent, the managing agent shall be required to provide such fidelity insurance covering itself and its employees and naming the Association as the loss payee.

Section 9.6 Workers Compensation.

The Association shall obtain and maintain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in forms now or hereafter required by law.

Section 9.7 Director and Officer Liability Insurance.

The Association shall purchase directors' and officers' insurance in an amount reasonably necessary to protect the directors and officers.

Section 9.8 Other Insurance.

The Association may obtain insurance against such other risks, of similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 9.9 Miscellaneous Terms Governing Insurance Carried by the Association.

The Association shall maintain, to the extent reasonably available and necessary, policies with the following terms or provisions:

- (a) All policies of insurance shall provide that each Unit Owner is an insured under the policy with respect to liability arising out of such Unit Owner's membership in the Association.
- (b) All policies of insurance shall contain waivers of subrogation against any Unit Owner or member of his or her household.
- (c) All policies of insurance shall contain waivers of any defense based on invalidity arising from any acts of a Unit Owner and shall provide that such policies may not be canceled or modified without at least 45 days prior written notice to all of the Unit Owners and the Association.

(d) All liability insurance shall be carried in blanket form naming the Association, the Executive Board, the manager or managing agent, if any, and the officers of the Association, as insureds.

(e) In no event shall any casualty insurance policy contain a co-insurance clause.

(f) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Unit Owner.

(g) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Unit Owner.

#### Section 9.10 Insurance Obtained by Unit Owners.

Each Unit Owner shall be responsible for maintaining insurance which covers his or her Unit and all improvements thereon to the extent not covered by policies maintained by the Association and as set forth in Exhibit E of this Declaration. Such Unit Owner insurance shall include, but is not be limited to, interior finishes, fixtures, equipment, utilities, appliances, interior walls/floors/ceilings, plumbing, wiring, furnishings and personal or other property in the Unit and liability insurance for injury, death or damage in or upon the Unit. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

#### Section 9.11 Insurance Premium.

Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

#### Section 9.12 Managing Agent Insurance.

The manager or managing agent, if any, shall be insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage, as set forth in the managing agent agreement.

#### Section 9.13 Waiver of Claims Against Association.

As to all policies of insurance maintained by or for the benefit of the Association and Unit Owners, the Association and the Unit Owners hereby waive and release all claims against one another and the Executive Board, to the extent of the insurance

proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by these persons.

Section 9.14 Adjustments by the Association.

Any loss covered by an Association insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any first mortgagee. The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and first mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Unit Owners and first mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 9.15 Duty to Repair.

Any portion of the Real Estate and Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Unit Owner.

Section 9.16 Condemnation and Casualty Insurance Allocations and Distributions.

In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Unit Owners, the distribution shall be to the parties as their interests and rights are determined or allocated by record or as set forth in the Act.

Section 9.17 Responsibility for Payment of Deductible Amount.

Policies of insurance maintained by the Association shall include a deductible in an amount determined by the Executive Board considering the cost and availability of such coverage. Whether the Executive Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb the deductible amount (or any loss falling within the deductible amount) for any work, repairs or reconstruction for damage to Common Elements (if any) unless the damage is caused by the negligence or willful act or omission of a Unit Owner or the Unit Owner's tenants, guests, or invitees, in which case the Association shall assess the deductible amount (or any loss falling within the deductible amount) exclusively against the relevant Unit Owner. Prior to making any determination and imposing any such assessment, the Association shall provide the relevant Unit Owner notice and an opportunity for hearing with the Executive Board.

(b) The Unit Owner shall pay or absorb the deductible (or any loss falling within the deductible amount) for any loss to his/her Unit including the improvements thereon that would be the responsibility of the Unit Owner in the

absence of insurance (i.e. the Unit Owner has the underlying maintenance and repair responsibility for the damaged property). In the event multiple Units are damaged, the Association may allocate any deductible amount among the damaged Units in a manner reasonably determined by the Executive Board. Prior to making any such allocations, the Association shall provide the relevant Unit Owners notice and an opportunity for hearing with the Executive Board.

(c) Notwithstanding anything in this Declaration to the contrary, any deductible amount (or any loss falling within the deductible amount) for which the Association is responsible may be assessed to the Unit Owners as provided in Section 9.18 below.

(d) Unit Owners are encouraged to, on a not less than annual basis, review the Association's insurance policies and deductible amounts with their personal insurance provider and to obtain loss assessment or other personal coverage with respect to property and liability coverage, deductibles, and amounts falling within the Association's deductible amount that may be assessed to, or otherwise be the responsibility of the Unit Owner.

#### Section 9.18 Insurance Assessments.

If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance and repair responsibility of the Association, the deductible or additional cost shall be a Common Expense. Notwithstanding any Assessment procedures in this Declaration to the contrary, the insurance Assessment adopted by the shall be ratified by the members unless vetoed by members holding at least 90% of the total votes entitled to be cast in the Association pursuant to Section 303(4) of the Act.

#### Section 9.19 Association as Attorney-in-Fact.

Each Unit Owner hereby irrevocably appoints the Association as the Unit Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to this Article upon their damage or destruction as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance conveying any portion of the Real Estate shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, or other instrument with respect to the interest of any Unit Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Furthermore, if so requested, a Unit Owner shall execute a separate instrument specifically setting forth this appointment.

II. No Other Amendments. Except as amended by the terms of this Amendment, the Original Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment is executed by the undersigned.

**Pinnacle at Ute Creek  
Homeowners Association, Inc.,  
a Colorado nonprofit corporation**

D. Bruce Bennett  
President

Joy E. Knutsen  
Secretary

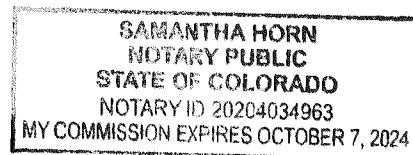
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Boulder )

The foregoing was acknowledged before me this 15 day of September, 2022, by David Bennett, as President of Pinnacle at Ute Creek Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.  
My commission expires: Oct 7 2024

Samantha H  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Boulder )



The foregoing was acknowledged before me this 15 day of September, 2022, by Joy Knutsen, as Secretary of Pinnacle at Ute Creek Homeowners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.  
My commission expires: Oct 7 2024

Samantha H  
Notary Public



**EXHIBIT E**  
**INSURANCE OBLIGATIONS**

“A” = Association insurance obligation

“O” = Owner insurance obligation

“NA” = not applicable

	INSURANCE
<b>BUILDING EXTERIORS</b>	
Residence structure, including foundation, columns, girders, beams and supports	A
Residence siding, stucco, brick, masonry, soffits, exterior vents, and fascia	A
Driveways	A
Garage floors	A
Concrete sidewalks, walkways, patios, porches, and steps	A
Patios including structure, railings, and steps	A
Roofs including shingles, roof underlayment, chimney caps, and roof vents	A
Gutters and downspouts	A
Windows, window screens, and frames	A
Skylights	A
Window shutters, trim, and caulking	A
Window wells	A
Window well covers	O
Garage doors and exterior doors – painting or staining only	A
Garage doors and exterior doors – all except painting/staining including, but not limited to: springs, opening mechanism, tracts, glass, locks, hardware, and all structural components	A
Storm doors installed by homeowners	O
Exterior lighting and light fixtures	A
Homeowner installed satellite dishes and antenna	O

	<b>INSURANCE</b>
<b>UTILITIES</b>	
Unit fixtures, equipment and utilities including but not limited to: <ul style="list-style-type: none"> <li>• Furnaces</li> <li>• Heating equipment</li> <li>• Water heaters</li> <li>• Thermostats</li> <li>• Heating and cooling ducts</li> <li>• Conduits</li> <li>• Water/sewer pipes (excluding landscape irrigation)</li> <li>• Meters</li> <li>• Electrical wiring</li> <li>• Electrical outlets</li> <li>• Telephone wiring</li> <li>• Telephone outlets</li> <li>• Light switches</li> <li>• Cable wiring</li> <li>• Compressors</li> <li>• Sump pumps</li> <li>• Circuit and breaker box</li> <li>• Air Conditioners</li> <li>• Radon mitigation systems</li> <li>• Other utility lines</li> </ul>	0
<b>RESIDENCE INTERIORS</b>	
Furnishings, including all personal property such as furniture, electronics, jewelry, and clothing	0
Window coverings	0
Permanent fixtures including but not limited to: <ul style="list-style-type: none"> <li>• ceiling fans</li> <li>• hand rails</li> <li>• cabinets</li> <li>• countertops</li> <li>• bathtubs and showers</li> <li>• sinks</li> <li>• toilets</li> </ul>	0
Appliances including: <ul style="list-style-type: none"> <li>• oven</li> <li>• range</li> <li>• refrigerator</li> <li>• dishwasher</li> <li>• washer/dryer</li> <li>• countertop microwave</li> </ul>	0

	INSURANCE
Fireplaces (including facade, screen, chimney, flue, and damper)	O
Unit walls, floors, and ceilings—including finished and unfinished surfaces, interior doors, drywall, paint, wallpaper, paneling, texture, hardware, tile, vinyl, hardwood, carpeting, and other material lying within such floors, ceilings, and interior walls.	O
Components lying <u>between the perimeter siding and residence exterior wall</u> , including: <ul style="list-style-type: none"> <li>• insulation</li> <li>• girders</li> <li>• beams</li> </ul>	A
Components lying <u>between the perimeter siding and residence exterior wall</u> , including: <ul style="list-style-type: none"> <li>• pipes</li> <li>• wiring</li> <li>• plumbing</li> </ul>	O
Subflooring	O
Party walls (walls dividing residences and shared by owners/residents on each side)	A – only to the extent load bearing and unfinished portions only  O – all if not load bearing. If load bearing owner shall insure all finished surfaces such as drywall, paint, texture, wallpaper and other finished surfaces
Basements	A – foundation only  O – all except foundation including all finishing
<b>GROUNDS</b>	
Landscaping on the Lots including irrigation systems, equipment, time clocks, lawns, trees, shrubs, and bushes but excluding flowers planted by homeowners	O (if insurable)
Retaining Walls on Lots	O (if insurable)
Flowers on Lots planted by homeowners	O
Mailboxes	A

	<b>INSURANCE</b>
Monument signage	A
Underdrain systems and storm drainage on Lots	O
<b>OTHER</b>	
Any personal property of owners not otherwise listed	O