

**PARTY WALL DECLARATION
(BELDEN PLACE)**

This PARTY WALL DECLARATION (BELDEN PLACE) (the “**Declaration**”) is made and entered into this _____ day of _____, 20__ by Miners Base Camp LLC, a Colorado limited liability company (the “**Declarant**”).

RECITALS

A. The Declarant is the owner of the real property located in Eagle County, Colorado, as described on **Exhibit A**, attached hereto and incorporated herein (the “**Property**”).

B. The Property is or will be subject to the covenants, conditions, restrictions and easements contained in the Declaration of Covenants, Conditions and Restrictions for Belden Place, recorded in the real property records of Eagle County, Colorado on _____, at Reception No. _____ (the “**HOA Declaration**”).

D. The Declarant desires to subject the Property to the covenants, conditions, easements, and restrictions as more fully set forth in this Declaration.

E. This Declaration does not create a common interest community as defined in the Colorado Common Interest Ownership Act (§38-33.3-101, et. seq., C.R.S., as may be amended).

DECLARATION

The Declarant declares that the Property is subject to this Declaration and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied, enjoyed, sold, transferred, hypothecated, maintained, and altered subject to the terms contained in this Declaration. The terms of this Declaration touch and concern the Property, and (a) run with the land, (b) benefit and burden the Property as an equitable servitude, (c) bind all Persons having or acquiring any interest in the Property or any part of the Property, (d) inure to the benefit of and bind every part of the Property and every interest in the Property, and (e) inure to the benefit of and are enforceable by the Owners.

ARTICLE 1. DEFINITIONS

Section 1.1 Attached Residential Unit

“Attached Residential Unit” shall mean an individual residential dwelling unit constructed on a Lot, and which is within a Multi-Family Building, each of which are separated from at least one other residential dwelling unit by a Party Wall.

Section 1.2 Lot.

“Lot” shall mean each platted lot shown on any recorded plat of the Property, as the same may be resubdivided or replatted from time to time, and including the Attached Residential Unit and all other improvements constructed or installed thereon.

Section 1.3 Multi-Family Building.

“Multi-Family Building” shall mean each building constructed on any of the Lots containing Attached Residential Units, and shall include the Party Walls and other related improvements constructed and located upon such Lots.

Section 1.4 Owner.

“Owner” shall mean the fee simple title holder of a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. If there is more than one fee simple holder of title, “Owner” includes each such person jointly and severally.

Section 1.5 Party Wall.

“Party Wall” shall mean an interior wall, including the foundation wall, within a Multi-Family Building that separates two adjoining Attached Residential Units and that is located substantially along the shared interior Lot line that bounds the Attached Residential Units.

Section 1.6 Person.

“Person” shall mean a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, an unincorporated association, or any other legal entity or any combination thereof.

ARTICLE 2. PARTY WALLS

Section 2.1 General Rules of Law to Apply.

To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

Section 2.2 Sharing of Repair and Maintenance.

The cost of reasonable repair, replacement, and maintenance of a Party Wall shall be shared by the Owners of the Attached Residential Units who make use of the Party Wall in equal proportions. If the Owner of either one of the Attached Residential Units which shares the Party Wall undertakes reasonable repair, replacement, or maintenance of the Party Wall, the other Owner shall have a personal obligation to contribute to the cost of such reasonable repair, replacement, or maintenance in equal proportions without prejudice. If an Owner fails to reimburse the Owner

who performed such repair, replacement, or maintenance within thirty (30) days after the date of written demand accompanied by invoices showing the cost incurred by the Owner performing such repair, replacement, or maintenance, then the Owner who performed such repair, replacement, or maintenance shall be entitled to pursue any legal or equitable rights available, and such Owner shall be entitled file and record a lien in the in the Office of the Clerk and Recorder of Eagle County, Colorado encumbering the defaulting Owner's Lot, and to judicially foreclose such lien, as a mortgage, in accordance with the applicable laws of the State of Colorado.

Section 2.3 Protection of Party Walls.

No Party Wall shall be materially altered or changed. No Owner shall have the right to destroy, remove, or make any structural changes to a Party Wall which would jeopardize the structural improvements in or on any Attached Residential Unit sharing the Party Wall or on the Lots on which such Attached Residential Units are constructed. No Owner shall subject a Party Wall to the insertion or placement of timbers, beams, or other materials in such a way as to adversely affect the Party Wall's structural integrity or sound insulating qualities. No Owner shall subject a Party Wall to any use which in any manner whatsoever may interfere with the equal use and enjoyment of the Party Wall by the Owner of the adjacent Attached Residential Unit. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and damages as a result of failure to do so, to the extent that such damage is not covered and paid by insurance.

Section 2.4 Destruction by Fire or Other Casualty.

If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, the Owner of either Attached Residential Unit which shares the Party Wall may restore it, and if the other Owner thereafter makes use of the Party Wall, such other Owner shall have a personal obligation to contribute to the cost of restoration thereof in equal proportions without prejudice, however, subject to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions. If an Owner fails to reimburse the Owner who performed restoration within thirty (30) days after the date of written demand accompanied by invoices showing the cost incurred by the Owner performing such restoration, then the Owner who performed such restoration shall be entitled to pursue any legal or equitable rights available, and such Owner shall be entitled file and record a lien in the in the Office of the Clerk and Recorder of Eagle County, Colorado encumbering the defaulting Owner's Lot, and to judicially foreclose such lien, as a mortgage, in accordance with the applicable laws of the State of Colorado.

Section 2.5 Liability for Negligence.

Notwithstanding anything to the contrary contained in this Declaration, if the need for maintenance, repair, restoration, and/or reconstruction of a Party Wall is caused by the act or omission of any Owner, any member of such Owner's family, or by a tenant, guest, or invitee of such Owner, the costs of the necessary maintenance, repair, restoration, and/or reconstruction shall

be the personal obligation of such Owner. If such Owner fails to reimburse the Owner of the Attached Residential Unit who incurs the cost for such maintenance, repair, restoration, and/or construction within thirty (30) days after the date of written demand accompanied by invoices showing the cost incurred by the Owner performing such maintenance, repair, restoration and/or reconstruction, then the Owner who performed such maintenance, repair, restoration, and/or reconstruction shall be entitled to pursue any legal or equitable rights available, and such Owner shall be entitled file and record a lien in the in the Office of the Clerk and Recorder of Eagle County, Colorado encumbering the defaulting Owner's Lot, and to judicially foreclose such lien, as a mortgage, in accordance with the applicable laws of the State of Colorado.

Section 2.6 Right to Contribution Runs with Land.

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE 3. INSURANCE

Section 3.1 Insurance Requirements.

Each Owner shall obtain and continuously maintain in effect insurance that, at a minimum, complies with the following requirements:

3.1.1 *Property Insurance.* Insurance against loss or damage by fire and such other hazards as are normally covered under "standard" coverage that is in no event less than the full insurable replacement cost (with appropriate coverage for the costs of inflation) of the Attached Residential Unit and other improvements constructed on the Lot that provides for (i) loss or damage by fire and other hazards covered by standard extended coverage endorsements and (ii) debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage.

3.1.2 *Liability Insurance.* Comprehensive liability insurance insuring against liability due to bodily injury and property damage, written on an occurrence basis with policy limits of not less than \$250,000 per occurrence, covering all claims for bodily injury and/or property damage, including contractual coverage for the Owner's agreement to indemnify the Owners of the other Attached Residential Units in the Multi-Family Building.

3.1.3 *Personal Property and Other Insurance.* Each Owner may obtain additional insurance, at their own expense, insuring personal property, loss of rents, personal liability, and such other risks, and in such amounts, as an Owner deems necessary or desirable.

3.1.4 *Requirements for Liability and Property Insurance.* Each Owner in a Multi-Family Building shall (i) cause its liability insurance policy to name the Owners of the other Attached Residential Units in such Multi-Family Building as additional insureds, (ii) obtain a provision in their respective insurance policies to provide for thirty (30) days' prior notice to the Owners of the other Attached Residential Units in the Multi-Family

Building before cancellation or modification of such policy, (iii) within thirty (30) days of written request by any Owner of an Attached Residential Unit in the Multi-Family Building, the Owners of the other Attached Residential Units in the Multi-Family Building shall provide the requesting Owner with evidence of the insurance required to be carried by the Owners pursuant to this Article 3, and (iv) to the extent available at a commercially reasonable price, each Owner shall cause its insurer to issue appropriate endorsements to all policies of insurance carried in connection with the Owner's Lot reflecting the waiver of subrogation rights set forth in Section 7.3 of this Declaration.

3.1.5 *Jointly Acquired Insurance.* Nothing contained in this Article 3 shall prevent two or more Owners from jointly acquiring a single "master" or "blanket" policy to cover two or more adjoining Attached Residential Units owned by such Owners as to any one or more of the hazards required to be covered by this Article, or prevent any Owner from cooperating with other Owners in an attempt to acquire such policies, acquire coverage from the same carriers, or otherwise coordinating their efforts to minimize costs of coverage, deductibles, administrative difficulties, or other matters.

ARTICLE 4. MAINTENANCE

Section 4.1 General Maintenance Obligation.

Each Lot and all improvements constructed or installed thereon, including without limitation the Attached Residential Unit constructed thereon, the portion of the common roof of the Multi-Family Building covering the Attached Residential Unit on the Lot, and all landscaping on the Lot, shall at all times be well kept in a clean condition and good state of repair by the Owner of such Lot. Exterior maintenance of each Lot and the Attached Residential Unit constructed thereon, including but not limited to, painting, repairing, replacing, and maintaining roofs, gutters, fences, sprinkler systems, down spouts, exterior building surfaces, decks, porches, trees, shrubs, grass, walks, stairways, and driveways, shall be the obligation of the Owner of such Lot. Each Owner shall maintain the exterior of his respective Lot and Attached Residential Unit in a manner representative of a property of the value of the Lot and the Property. Because the Attached Residential Units in each Multi-Family Building are attached via Party Walls, and the exterior materials and colors used on each individual Attached Residential Unit within a Multi-Family Building were designed to coordinate and complement one another, careful consideration must be given by the Owners of each Attached Residential Unit in each Multi-Family Building to maintaining the overall appearance of any particular Multi-Family Building. The Owners of each Attached Residential Unit in each Multi-Family Building shall endeavor to coordinate the maintenance, repair and/or replacement of the exterior building surfaces of such Attached Residential Units in order to maintain a consistent and uniform exterior appearance.

Section 4.2 Cooperation.

The Owners of all Attached Residential Units in a Multi-Family Building shall endeavor to reasonably cooperate with each other with respect to the decisions and the costs and expenses of the periodic reasonable repair, maintenance, reconstruction, and replacement of exterior improvements to the extent such activities affect more than one Attached Residential Unit in the Multi-Family Building.

Section 4.3 Remedies.

If an Owner fails to perform its maintenance obligations under this Article, then after thirty (30) days' prior written notice signed by the Owner(s) the other Attached Residential Units within the Multi-Family Building, which notice specifies the needed maintenance or repairs, the Owner(s) giving notice is/are entitled, but not obligated, to enter upon the Lot of the defaulting Owner and to undertake such specified repairs or have such maintenance performed, and the defaulting Owner shall be personally liable for the cost of such maintenance or repairs. If the defaulting Owner fails to reimburse the Owner(s) who performed such maintenance or repairs within thirty (30) days after the date of written demand accompanied by invoices showing the cost incurred by the Owner(s) performing such maintenance or repairs, then the Owner(s) who performed such maintenance or repairs shall be entitled to pursue any legal or equitable rights available, and each such Owner shall be entitled file and record a lien in the in the Office of the Clerk and Recorder of Eagle County, Colorado encumbering the defaulting Owner's Lot, and to judicially foreclose such lien, as a mortgage, in accordance with the applicable laws of the State of Colorado.

Section 4.4 Compliance.

All repair, maintenance, reconstruction, and/or replacement work completed under this Article 4 must conform with and meet applicable governmental building and safety codes, and it is the obligation of the Owner performing such work, or causing such work to be performed, to assure conformance. Further, all Owners acknowledge that the HOA Declaration may require that Owners obtain the approval of the design review committee established thereunder prior to the making certain improvements to Lots. It is the obligation of the Owner performing any work or causing any work to be performed on his Lot to obtain any required approvals from any such design review committee as required by the HOA Declaration.

Section 4.5 Mechanic's Liens.

No labor performed and/or materials furnished for use and incorporated on any Lot or in any Attached Residential Unit with the consent or at the request of the Owner thereof, or for use and incorporated in any Party Wall with the consent of or at the request of the Owner of an Attached Residential Unit, or any such Owner's tenant, agent, contractor or subcontractor, shall be the basis for filing a lien against the Lot and/or Attached Residential Unit of any other Owner not expressly consenting to or requesting the same. All such costs and expenses associated with the filing of any such lien shall be the responsibility and liability of the Owner causing such labor, services and/or materials to be performed and/or furnished. Each Owner shall indemnify and hold harmless each of the other Owners from and against any liability or loss arising from the claim of any mechanic's lien against the Lot or Attached Residential Unit of any other Owner for labor performed and/or materials furnished in the work on the first Owner's Lot and/or Attached Residential Unit.

Notice is hereby given that the right and power to charge any Lot or Attached Residential Unit with a lien or encumbrance of any kind against one Lot or Attached Residential Unit for

construction, labor, or materials performed or furnished or incorporated into another Lot or Attached Residential Unit is hereby denied.

ARTICLE 5. EASEMENTS

Section 5.1 Easement for Support.

The Owner of each Attached Residential Unit within each Multi-Family Building shall have an easement on, over and across the Lots on which the other Attached Residential Units within that Multi-Family Building are constructed for horizontal and lateral support of the Owner's Attached Residential Unit.

Section 5.2 Easement for Encroachments.

Each Lot and Attached Residential Unit shall be subject to an easement for encroachments created by the original construction of the Attached Residential Units, settling and overhangs. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event any Multi-Family Building is partially or totally destroyed, and then rebuilt, the Owners of the Attached Residential Units so affected agree that minor encroachments of parts of the adjacent Attached Residential Unit(s) due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist. Nothing herein shall modify the obligation of the Declarant or an Owner to obtain from the Town of Minturn approval of a plat amendment for any portion of an Attached Residential Unit that is located over or across a Lot line as depicted and/or described on the governing subdivision plat.

Section 5.3 Easement for Party Walls.

Each Owner, his agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon the adjacent Lot(s) and in and upon the adjacent Attached Residential Unit(s) for purposes of Party Wall maintenance and repair, in accordance with Article 2 of this Declaration, upon reasonable notice to the affected Owners of the adjacent Lots(s) and Attached Residential Unit(s). Any damage occasioned to the adjacent Lot(s) or improvements thereon, including the Attached Residential Unit(s) thereon, in exercising this easement, shall be the responsibility of the Owner whose negligent or wrongful acts or omissions caused the damage.

Section 5.4 Easement for Maintenance.

An easement is hereby granted to each Owner, including its agents, employees and contractors, to enter in or cross over the exterior portion of any adjacent Lot to perform the maintenance obligations of such Owner as set forth in Article 4 of this Declaration. For the purpose of performing such maintenance obligations each Owner, through its duly authorized agents, contractors, employees, shall have the right, after reasonable notice to the Owner or occupants of the affected adjacent Lots, and during regular business hours, to enter upon the exterior portions of such adjacent Lots, and such entry shall not be deemed a trespass. In emergency situations, the Owner, or its agents, contractors or employees, may enter without notice at any time, but the Owner

or occupants of the affected adjacent Lots shall be notified as soon as reasonably possible thereafter.

Section 5.5 Easement for Utilities.

Additionally, each Attached Residential Unit within a Multi-Family Building may be serviced by utility lines which are installed or located on or over the other Lots on which such Multi-Family Building is constructed (each Lot serviced by such utility lines is referred to herein as a “**Benefitted Lot**” and each other Lot over which such lines are installed or located is referred to herein as a “**Burdened Lot**”). Each Owner of a Benefitted Lot, his agents and contractors, are granted a non-exclusive easement in, over, under and upon the Burdened Lot(s) upon which such utility lines are located or installed for the purposes of maintenance, repair and replacement of any utility lines exclusively serving the Benefitted Lot which are installed or located on such Benefitted Lot(s), upon reasonable notice to the Owners of the Burdened Lot(s). Any damage occasioned to any Burdened Lot or improvements thereon in exercising the easements granted in this Section 5.5 shall be the responsibility of the Owner whose negligent or wrongful acts or omissions caused the damage.

ARTICLE 6. CASUALTY

Section 6.1 Loss Affecting a Single Attached Residential Unit.

If a single Lot or Attached Residential Unit suffers damage or loss as the result of fire, natural disaster, weather, or other casualty, which does not affect any Party Wall or any adjacent Attached Residential Unit(s) or Lot(s), then the Owner of such damaged Lot or Attached Residential Unit shall promptly commence, and diligently prosecute to completion, the work necessary to restore such damaged Lot or Attached Residential Unit to substantially the same condition as existed before the loss, and pay the cost of such work from the proceeds of insurance or otherwise.

Section 6.2 Loss Affecting More than One Attached Residential Unit.

If more than one Attached Residential Unit in a Multi-Family Building suffers damage or loss as the result of fire, natural disaster, weather, or other casualty, then the Owners of the affected Attached Residential Units shall jointly and promptly commence, and diligently prosecute to completion, the work necessary to restore the damaged Attached Residential Units to substantially the same condition as existed before the loss. The affected Owners shall cooperate and work with each other in scheduling work necessary to restore the Attached Residential Units, and each Owner shall be responsible for the costs related to the work on each Owner’s Attached Residential Unit from the proceeds of insurance or otherwise.

ARTICLE 7. GENERAL PROVISIONS

Section 7.1 Amendment.

Except as otherwise provided in this Declaration, the terms, provisions, covenants, and restrictions of this Declaration may be amended, modified, or terminated by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots (which each Lot having one “vote”); provided, however, that at all times that the Declarant owns any Lots, no such amendment, modification, or termination shall be effective unless also signed by the Declarant. Any amendment shall be recorded in the office of the Clerk and Recorder of Eagle County, Colorado.

Section 7.2 Right of Withdrawal.

The Declarant reserves the right to withdraw the Property, or any portion thereof, including one or more Lots, from this Declaration, so long as the Declarant owns the portion of the Property to be withdrawn. Each withdrawal, if any, may be affected by the Declarant recording a withdrawal document in the records of the Clerk and Recorder of Eagle County, Colorado. A withdrawal pursuant to this Section constitutes a divestiture, withdrawal, and deannexation of the withdrawn property from this Declaration so that, from and after the date of recording of a withdrawal document, the property so withdrawn shall not be part of the Property.

Section 7.3 Indemnification; Waiver of Subrogation Rights.

Each Owner shall defend and indemnify each of the other Owners and their respective assigns, heirs, representatives, and successors from and against all claims arising out of, or based upon, or resulting from (i) a mechanic’s lien or other claim based on work performed on the Lot of, or at the request of, an Owner, or (ii) the negligence or willful misconduct of an Owner, or such Owner’s family, or by a tenant, guest, or invitee of such Owner. Notwithstanding the foregoing, the obligation of an Owner to defend or indemnify shall not include any claim to the extent such claim results from, or is caused by, the negligence or willful misconduct of the Owner or Person claiming indemnification. To the fullest extent permitted without voiding any insurance required to be carried by any Owner, each Owner waives any and all rights of indemnification from, or recovery against, the other Owners for any claim arising from any cause covered by any insurance required to be carried by the Owners pursuant to this Declaration or any other insurance actually carried by an Owner.

Section 7.4 Attorneys Fees.

In a legal proceeding in any way related to the enforcement of any of the covenants, conditions, easements, or restrictions contained in this Declaration, the court shall award to the party prevailing on each claim the prevailing party’s reasonable attorney fees and costs incurred in asserting or defending the claim.

Section 7.5 Notices.

Any notice or demand intended to be served upon an Owner shall be sent by registered or certified mail, postage prepaid, addressed in the name of the Owner at such address as maintained by the assessor of Eagle County, Colorado for the purpose of property tax notices. In the alternative, notices may be delivered, if in writing, personally to an Owner.

Section 7.6 Severability.

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

Section 7.7 Use of Singular and Plural.

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

Section 7.8 Covenants Run with the Land.

The covenants and restrictions of this Declaration shall run with and bind the Lots and shall inure to the benefit of and be enforceable by the Owners of the Lots, their respective legal representatives, heirs, successors, and assigns in perpetuity from the date this Declaration is recorded.

Section 7.9 No Merger.

Notwithstanding that the Declarant currently holds title to all of the Lots and to any easements which the Declarant has herein declared, created, reserved, granted and acknowledged for the benefit the Lots and the successors in interest to the Lots, any such commonality of interest shall not result in or cause any merger, extinguishment or termination, in whole or in part, of any provisions of this Declaration or the easements herein declared, created, reserved and granted; it being intended by Declarant, for the benefit of the Lots, that the terms of this Declaration not be merged by virtue of common ownership interests to any extent, but instead that such terms be and remain in full force and effect upon and following the making and recording of this Declaration.

Section 7.10 Governing Law.

This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 7.11 Headings and Construction.

All article, section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of the terms of this Declaration or any of the provisions hereof.

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EXHIBIT A
THE PROPERTY

Lots 2, 3, 5, 6, 8, 9, 10, 11, 21, 22, 23, 24, and 25
Belden Place, P.U.D.
Town of Minturn,
County of Eagle,
State of Colorado,

As shown on the Final Plat thereof recorded in the real property records of the Clerk and Recorder
of Eagle County, Colorado on _____, 20__, at Reception Number
_____.