



516451 12/11/2001 11:34A 043  
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**ASSIGNMENT OF DECLARANT RIGHTS**  
("Assignment")

dated as of August 17, 2001

between

**COBURN DEVELOPMENT, INC.,**  
a Colorado corporation  
("Assignor")

and

**PITCHFORK, LLC,**  
a Colorado limited liability company  
("Assignee")

regarding

**PITCHFORK**



**RECITALS**

**WHEREAS**, Assignor is the developer of Pitchfork, a common interest community (the "Project") located on the Gothic County Road, Gunnison County, Colorado. The Project consists of 65 lots.

**WHEREAS**, Assignor is the Declarant under that certain Declaration of Protective Covenants for Pitchfork recorded in the office of the County Clerk, County of Gunnison, Colorado on May 02, 2001 as Reception No. 510378 as amended (the "Declaration"). Under the Declaration, Assignor has retained certain rights as Declarant.

**WHEREAS**, Assignee is now the owner of those lots in the Project described on attached **Exhibit A** ("Conveyed Property").

**WHEREAS**, in order to facilitate the development by Assignee of the Project, Assignor now wishes to assign to Assignee Declarant's rights under the Declaration, and under the terms of the Declaration and in accordance with Colorado Revised Statutes, Section 38-33.3-304, Assignor is authorized and empowered to assign such rights to Assignee.

**NOW, THEREFORE**, with reference to the foregoing Recitals, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor hereby covenants and agrees as follows:

**AGREEMENT**

1. **Construction**. All capitalized terms not defined in this Assignment shall have the meanings given to them in the Declaration.
2. **Assignment**. Assignor does hereby presently convey, assign, transfer and set over unto Assignee all of Assignor's right, title and interest as Declarant under the Declaration regarding the Conveyed Property, including without limitation all of the rights of Declarant under Article 10 of the Declaration (the "Declarant Rights").
3. **Covenants, Rights, Representations and Warranties**. With respect to the assigned Declarant Rights, Assignor hereby covenants, represents and warrants to Assignee, its successors and assigns, as of the date hereof, that:

a. Assignor is the sole owner of the Declarant Rights, and the Declarant Rights are assigned to Assignee hereunder free and clear of all liens and encumbrances;

b. This Assignment and all other documents executed by the Assignor which may be delivered to Assignee in connection with this Assignment are duly authorized, executed, and when delivered by Assignor, are legal, valid, and binding obligations of Assignor, and are sufficient to transfer the Declarant Rights;

c. The execution, delivery and performance of this Assignment and related documents, and the consummation of the transactions contemplated hereby, does not and will not (i) require the approval of any parties other than Assignor (or if any approval is required, it has been obtained); (ii) result in a breach of any of the provisions of, or constitute a default or a condition which on giving of notice or lapse of time or both would ripen into a default under any indenture, agreement, instrument or obligation to which the Assignor is party; or (iii) constitute a violation of any order, rule or regulation applicable to the Assignor or any portion of the Declarant Rights of any court or any administrative agency or other governmental body having jurisdiction over the Assignor;

d. None of the Declarant Rights have been assigned or terminated.

4. **Compliance with Declaration and the Act.** Assignee agrees that in exercising its respective Declarant Rights under this Assignment and under the Declaration, it will fully comply with and exercise such rights in accordance with the terms of the Declaration and the Act.

5. **Indemnity.**

a. Assignor hereby undertakes to defend, indemnify and hold harmless Assignee, its agents and employees, from and against any and all losses, liabilities, obligations, damages, penalties, claims, suits, proceedings, costs, and expenses, including, without limitation, the fees and expenses of attorneys, receivers, agents and brokers, howsoever and by whomever asserted, arising out of or in any way connected with the exercise by Assignor of the Declarant Rights prior to the date of this Assignment, except to the extent such liabilities arise from the gross negligence or willful misconduct of Assignee, its agents and employees.

b. Assignee hereby undertakes to defend, indemnify and hold harmless Assignor, its agents and employees, from and against any and all losses, liabilities, obligations, damages, penalties, claims, suits, proceedings, costs, and expenses, including, without limitation, the fees and expenses of attorneys, receivers, agents and brokers, howsoever and by whomever asserted, arising out of or in any way connected with the exercise by Assignee of the Declarant Rights assigned hereunder, except to the extent such liabilities arise from the gross negligence or willful misconduct of Assignor, its agents and employees.

6. **Assignor and Assignee Liability.** In accordance with C.R.S. section 38-33.3-304(2), Assignor shall have no liability for any act or omission or any breach of a contractual or warranty obligation by Assignee in connection with the exercise by Assignee of the Declarant Rights assigned hereunder, and Assignee shall have no liability for any act or omission or any breach of a contractual or warranty obligation by Assignor in connection with the exercise by Assignor of the Declarant Rights prior to the Effective Date (as defined below).

7. **Construction with Declaration.** Except as specifically set forth herein, the rights of Declarant under the Declaration shall not be limited, modified or amended, it being the intent of the parties that such rights be transferred to Assignee, but that the rights themselves shall not otherwise be limited, modified or amended in any way.

8. **Successors and Assigns.** The terms and provisions of this Assignment shall be binding upon and inure to the benefit of Assignor, its representatives, successors and assigns, and shall be binding upon and inure to the benefit of the Assignee, its representatives, successors and assigns.

9. **Severability.** Every provision of this Agreement is intended to be severable. In the event any term or provision thereof is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such illegality, invalidity or unenforceability shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain valid and enforceable.

10. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.



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11. **Attorney Fees.** In the event of litigation of any dispute or controversy arising from, in, under or concerning this Assignment and any amendment hereof, including, without limiting the generality of the foregoing, any claimed breach hereof, the prevailing party in such action shall be entitled to recover from the other party in such action, such sum as the court shall fix as reasonable attorneys' fees incurred by such prevailing party.

12. **Effective Date.** This Assignment shall be effective as of August 17, 2001 (the "Effective Date").

**IN WITNESS WHEREOF**, this Assignment is executed as of the date first written above.

**ASSIGNOR**

Coburn Development, Inc., a  
Colorado corporation

By: William E. Coburn, II  
William E. Coburn, II, President

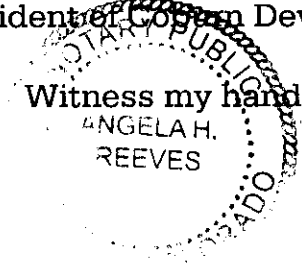
**ASSIGNEE**

Pitchfork, LLC, a Colorado limited  
liability company

By: William E. Coburn, II  
William E. Coburn, II, Managing Member

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON )

The foregoing Assignment of Declarant Rights was acknowledged before me this 7<sup>th</sup> day of DECEMBER, 2001 by William E. Coburn, II as President of Coburn Development, Inc., a Colorado corporation.



Witness my hand and official seal. My commission expires: 07/07/04

Angela H. Reeves  
Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON )

The foregoing Assignment of Declarant Rights was acknowledged before me this 7<sup>th</sup> day of DECEMBER, 2001 by William E. Coburn, II as Managing Member of Pitchfork, LLC, a Colorado limited liability company.



Witness my hand and official seal. My commission expires: 07/07/04

Angela H. Reeves  
Notary Public

## **EXHIBIT A**

### **TO ASSIGNMENT OF DECLARANT RIGHTS (PITCHFORK)**

Units A, B, C, D, E and F, LAZY S CONDOMINIUMS, according to the plat thereof recorded August 1, 2001, bearing Reception No. 512983, and the Declaration Establishing Lazy S Condominiums recorded August 1, 2001, bearing Reception No. 512983,

Unit B-2, PITCHFORK TOWNHOMES, Double W Building, according to the Plat thereof recorded June 20, 2001, bearing Reception No. 511706, and the Declaration of Covenants, Conditions and Restrictions for Pitchfork Townhomes recorded May 16, 2001, bearing Reception No. 510711, and Declaration of Annexation and Amendment to the Declaration and Plat recorded June 20, 2001 bearing Reception No. 511707, and

Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 and Outlots A and B, PITCHFORK SUBDIVISION, according to the Plat recorded August 21, 2000, bearing Reception No. 504415,

all in the Town of Mt. Crested Butte,  
County of Gunnison,  
State of Colorado.