

**DECLARATION OF
TRAIL'S EDGE CONDOMINIUMS
SAN MIGUEL COUNTY
STATE OF COLORADO**

This Declaration ("Declaration") is entered into and made effective as of _____ [date], by LuxWest Lodge Partners, LLC, a Colorado limited liability company ("Declarant").

WHEREAS, the Declarant is the owner of Lot 600-BR-12, Trail's Edge at Double Cabins, Town of Mountain Village, San Miguel County, Colorado, (hereinafter referred to as the "Property"); and

WHEREAS, the Property is part of a mixed-use subdivision described as:

Lots 600BR-1 through 600BR-12, inclusive, according to the Plat for Trail's Edge at Double Cabins, an Amendment to the Final Plat of Lot 600B, Town of Mountain Village, San Miguel County, Colorado recorded in the office of the San Miguel County Clerk and Recorder on November 11, 2004, in Plat Book 1 at pages 3385-3386, Reception No. 370419; and

WHEREAS, Lots 600BR-1 through 600BR-12, inclusive, are subject to that certain Amended and Restated Declaration of Common Interest Community ("Master Association Declaration"), recorded April 19, 2005, at reception no. 374181 in the real property records of the Office of the Clerk and Recorder of San Miguel County, Colorado, establishing the Trail's Edge at Double Cabins Owners Association, Inc. ("Master Association"); and

WHEREAS, as the owner of Lot 600BR-12, and as the owner of a one hundred percent (100%) ownership interest in the Trail's Edge Condominiums Owners Association ("Association"), Declarant is empowered and authorized to establish this Declaration pursuant to the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, *et seq.* (the "Act"), as amended; and

WHEREAS, this Declaration is executed in furtherance of a common plan to protect and enhance the quality, value, desirability, and attractiveness of the Property; and

WHEREAS, Declarant shall, by recording this Declaration, together with the Map for Trail's Edge Condominiums in San Miguel County, Colorado, create and submit the Property to the provisions of the Act as a "condominium" and impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the Property and Owners thereof; and

WHEREAS, this Declaration is executed to create the Association to provide certain functions for the benefit of the Owners of the Property subject to this Declaration and to define the duties, powers and rights of the Association as well as the duties, powers and rights of

Owners of the Property.

NOW, THEREFORE, Declarant states and sets forth as follows:

I. GENERAL PROVISIONS; DEFINITIONS.

1.1. Declaration. The Declarant, for itself, its successors and assigns hereby publishes and declares that the Property shall from the date of this Declaration become subject to this Declaration; be owned, held, transferred, conveyed, sold, leased, rented, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exemptions, assessments, charges, equitable servitudes, liens, easements, and other provisions set forth in this Declaration for the duration thereof, all of which are declared and agreed, to be in the furtherance of a plan of condominium as described in the Act, and all of which shall run with the title to the Property and shall be binding upon all parties having the right, title or interest in the Property and upon their heirs, personal representatives, successors, and assigns and shall inure to the benefit of each party having such right, title or interest in the Property.

1.2. Name. The name of the condominiums is “Trail’s Edge Condominiums,” aka “12 Trails Edge,” which is located in the Town of Mountain Village, San Miguel County, Colorado. The Association and Condominiums are a sub-association of the Master Association.

1.3. Definitions. The following words, phrases or terms used in this Declaration shall have the following meanings:

1.3.1 “Access Tract” shall mean Tract A-7A, Filing 1, Town of Mountain Village, according to the Plat recorded September 8, 1994, in Plat Book 1 at page 1739; County of San Miguel, State of Colorado.

1.3.2. “Trail’s Edge Condominiums” or the “Project” shall mean the residential and/or commercial development on the Property.

1.3.3. “Allocated Interests” shall mean the percentage of the Common Expense of the Association and the number of votes in the Association allocated to each Unit. As set forth herein, some Common Expenses shall be allocated based upon number of Units (ten units / 1/10 allocation); and other Common Expenses shall be allocated based upon Unit square footage (including Parking Units).

1.3.4. “Annual Assessment” or “Annual Common Assessment” shall mean the charge levied or assessed each year against each Unit and the Owner thereof. Such Assessments shall be invoiced on a monthly or quarterly basis, in advance, as determined by the Board.

1.3.5. The “Articles” shall mean the Articles of Incorporation of the Association as the same may be amended or supplemented from time to time.

1.3.6. “Assessment” shall mean an Annual Assessment or Special Assessment for the payment of common expenses, maintenance charge and or any costs, interest, attorneys’ fees or charge imposed on a Unit and the Owner thereof in accordance with this Declaration and made subject to the assessment lien by this Declaration. Assessment shall also include any penalties, fines or attorneys fees imposed by the Board against a Unit Owner for violation of the provisions of this Declaration. Again, such Assessments shall be invoiced on a monthly or quarterly basis, in advance, as determined by the Board.

1.3.7. “Association” shall mean the Trail’s Edge Condominiums Owners Association, a Colorado not-for-profit corporation organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration. The Association shall be organized in accordance with the provisions of C.R.S. Sections 38-33.3-101 *et. seq.*

1.3.8. “Board” shall mean the Board of Directors of the Association, which is the governing body of the Association.

1.3.9. “Bylaws” shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

1.3.10. “Common Elements” shall mean all portions of the Property not within a Unit, all General Common Elements and all Limited Common Elements.

1.3.11. “Common Expenses” shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves. For purposes of assessments attributable to the Declarant’s or the Association’s liability for a portion of the maintenance and repair expenses of the Access Tract, which provides access to the Property, those expenses shall be treated as Common Expenses. Common Expenses also may include expenses attributable to maintenance and repair of machinery or equipment used for the benefit of the Property, but which may not be located on the Property.

1.3.12. “Common Expense Liability” shall mean the liability for Common Expenses allocated to each Unit pursuant to C.R.S. Section 38-33.3-207 (1)(c). “Common Expense Liability” shall also mean the liability for Common Expenses allocated to the Property, Lot 600BR-12, pursuant to C.R.S. Section 38-33.3-207 (1)(c) and pursuant to Common Expenses levied by the Master Association to the Property, Lot 600BR-12, according to the Master Association Declaration.

1.3.13. “Condominium Lot” shall mean the Property, Lot 600BR-12, Trail’s Edge at Double Cabins.

1.3.14. “Condominium Unit” or “Unit” shall mean each of the multiple residential condominium units constructed on the Condominium Lot pursuant to the development plan submitted by the Declarant, as more fully described in the Condominium Map (the “Map”) filed concurrently herewith in the Office of the Clerk and Recorder of San Miguel County, Colorado.

1.3.15. “General Common Elements” shall mean all parts of the Property not identified as Units on the Map except for portions which are identified as reserved for the exclusive use of an Owner of a Particular Unit or Units to the exclusion of all others (Limited Common Elements).

1.3.16. “Common Utility Facilities” shall mean all lines, mains, conduits, transformers, vaults, and all other related surface and below ground appurtenances thereto now or hereafter located within those areas delineated as such for the purpose of providing utility service, including, but not limited to, water, sewer, snowmelt, electricity, gas, telephone, and cable television services, but excluding any service lines intended to service only a single Unit. Such Common Utility Facilities may be located outside of the Property.

1.3.17. “Covenants” shall mean the covenants, conditions, restrictions, limitations, reservations, exceptions, assessments, charges, equitable servitudes, liens, easements and other provisions set forth herein.

1.3.18. “Declarant” shall mean LuxWest Lodge Partners, LLC, a Colorado limited liability company, and such successors or assigns as maybe hereafter designated by Declarant by duly recorded written notice.

1.3.19. “Declaration” shall mean this Declaration as amended or supplemented from time to time, and including but not limited to the Map and any supplemental or amended Maps or maps recorded in the office of the San Miguel County Clerk and Recorder.

1.3.20. “Household” shall mean one or more natural persons who maintain a common household in a Unit.

1.3.21. “Limited Common Elements” shall mean a portion of the Common Elements allocated by this Declaration and/or the Map for the exclusive use of one or more Units but fewer than all of the Units. Limited Common Elements shall include, but not be limited to, that portion of any utility line, drainage facility or deck serving only one or more Unit but less than all Units. Elevators and their individual mechanical rooms will be Limited Common Elements for the specific Units they serve.

1.3.22. “Managing Agent” shall mean the person or entity declared by the Board to perform the management or operational functions of the Association.

1.3.23. “Mortgage” means any duly recorded mortgage, deed of trust or other similar security instrument comprising a lien or encumbrance on any Unit. “Mortgagee” means any grantee, beneficiary or assignee of a Mortgage. “First Mortgage” means the Mortgagee under the Mortgage which is the first and most senior of any duly recorded Mortgages or other liens except real property taxes encumbering a Unit.

1.3.24. “Owner” shall mean a person (including an entity), including Declarant, or if more than one, all persons collectively, who hold fee simple title of record to any Unit including

contract sellers, but excluding record title holders who hold such title merely as security. If technical legal title is vested of record in a trustee to create a security interest, legal title shall be deemed to be in the trustor.

1.3.25. “Map” shall mean the Map of Trail’s Edge Condominiums, recorded concurrently herewith in the Office of the Clerk and Recorder of San Miguel County Colorado.

1.3.26. “Parking Unit” shall mean the two (2) Parking Units as identified on the Map as Parking Unit 11 and Parking Unit 12. Such Parking Units may be owned by Unit Owners or third parties. Parking shall only be allowed in the designated Parking Units or the designated Limited and/or General Common Element parking spaces. The three General Common Element parking spaces (first labeled HOA/Common GCE, second labeled Maintenance Parking GCE, and third labeled GCE Handicap) shall be for the use of the Association, as determined by the Association Board.

1.3.27. “Project” shall mean the Trail’s Edge Condominiums development project on the Property.

1.3.28. “Residence” shall mean a Unit, situated upon the Property designed and intended for use and occupancy as a residence by a Household.

1.3.29. “Resident” shall mean the Owner or each Tenant actually residing in a Unit and each member of the Household of such Owner or Tenant.

1.3.30. “Special Assessment” shall mean any charge levied and assessed against an Owner for costs including Common Expenses or other authorized charges.

1.3.31. “Special Declarant Rights” shall mean rights reserved for the benefit of Declarant to perform the following acts: To complete improvements indicated on the Map and other instruments filed with the Declaration or otherwise as necessary or advisable for the proper development of the Property in the sole discretion of Declarant; to exercise any development right, to maintain sales and management offices and signs advertising Trail’s Edge Condominiums, to establish and use easements through the Common Elements for the making improvements within the Property, or to appoint or remove any officer of the Association or any Board member during any period of Declarant control; and for such other rights as may be reserved as set forth herein.

1.3.32. “Tenant” shall mean any person who occupies a Residence under any type of rental or letting arrangement.

1.3.33. “Turnover Date” shall mean the specific point in time at which Declarant must turn over control of the Association to other Owners.

1.3.34. “Unit” shall mean each area of the Property designated as a Unit on the Map, but not including the Common Elements. Attached hereto as Exhibit “A” is a list of each of the ten

(10) Units and the two (2) Parking Units, together with a description of each Unit and a square footage designation for each Unit and Parking Unit. Central utility expenses (including water, sewer and common area gas) shall be allocated based upon Unit square footage. Charges for gas for each Unit shall be allocated and charged to each Unit based upon Unit square footage. Electricity, cable TV and phone for each Unit shall be charged directly to each Unit by the supplier. The Parking Units shall each pay their share of such Common Expenses as are allocated based upon square footage. The Parking Units shall also pay one-one hundredth (1/100th) of all other Common Expenses. Parking Units shall not have votes. Votes and all other Common Expense Assessments shall be according to number of Units (i.e. each Unit has one (1) of ten (10) votes in the Association, and each Unit shall pay one-tenth (1/10th) of the remaining Common Expense Assessments). The snow melt that is in the concrete bottom of each window well shall be part of a common assessment.

II. MUTUALITY OF BENEFIT AND OBLIGATION.

This Declaration, unless specifically stated otherwise herein, shall apply to all of the Property. The Covenants set forth herein are made for the mutual and reciprocal benefit of each and every Unit, and are intended to create mutual equitable servitudes upon each Unit in favor of each and all of the other Units; to create reciprocal rights between the respective Owners; to create a privity of contract and estate between the Owners of Units, their heirs, successors and assigns, and shall, as to the Owner of each Unit, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other Units and their respective Owners. The grantee of any Unit subject to this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Unit, shall accept such deed or contract upon and subject to each and all of these covenants and the agreements herein contained, and also the jurisdiction, rights and powers of the Association, and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree, with the Association, and with the grantees and subsequent Owners of each of the Units within the Project, to perform said covenants and agreements. This Declaration also shall be binding upon and shall inure to the benefit of the Association.

III. OWNERSHIP OF UNITS.

3.1. Division of Units. Declarant, by this Declaration has divided the Property into a “condominium” pursuant to the Act, by creating the Condominium Units and Common Elements, each identified on the Map and throughout this Declaration. Each Unit consists of a separate fee simple estate.

3.2. Condominium Map. Declarant has caused the Map to be filed in the San Miguel County real estate records. The Map depicts:

- A. The legal description of the Property and a survey thereof;
- B. The name and general location of the Property;

- C. The measurements, location and general description with reference to the exterior boundaries of each Unit;
- D. The location and legal description of Common Elements, including easements, common stairways, lobby, mechanical rooms, walkways, sidewalks and rights of way;
- E. Any other Map inclusions required by C.R.S. Section 38-33.3-209 *et seq.* and Section 38-33.3-205(1)(e) of the Act.

The Map and any supplements thereto contain the statements of: (1) Declarant submitting the Property to the provisions of the Declaration, and (2) an engineer and a registered surveyor certifying that the Map fully and accurately depicts the layout, measurements and location of any improvements located upon the Property, the Unit designations, the dimensions of each Unit and any other existing improvement. Declarant hereby reserves unto itself and to the Board, the right from time to time, without the consent of any Owner being required, to amend the Map and supplements which may be identified as consecutive filings thereto, to conform the Map to the actual location of any of the constructed improvements including Common Elements and roads, and to establish and correct any minor deviations or errors therein. In interpreting any and all provisions of this Declaration or the Bylaws, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations from the location of said Unit indicated on the Map.

3.3. Description of Units. The separate physical portions of the Project, each of which is designated for separate ownership, is identified on the Map as a particularly enumerated Unit. Every contract for sale, deed, lease, mortgage or other interest, shall legally describe a Unit by its identifying number as shown on the Map, followed by the words “Trail’s Edge Condominiums, according to the recorded Map thereof, subject to the Declaration for Trail’s Edge Condominiums, San Miguel County, Colorado,” along with actual recordation identification and data as recorded in the county in which the subject Unit is located.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the respective Unit, but also the appurtenant easement rights in and to the Common Elements of the Association, and any exclusive easement right or use of particular Limited Common Elements, if any. Each such description shall be construed to include a non-exclusive easement for ingress and egress over the Common Elements; nonexclusive use of Common Elements which are not Limited Common Elements, and any other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration or on the Map.

3.4. Inseparability. An Owner’s easements and other use rights in the Common Elements, obligations for Common Expenses liabilities and votes in the Association shall not be separated from the Unit to which they are appurtenant.

3.5. No Partition. The Common Elements shall remain entitled in the Association and

no Owner or any other person shall bring any action for partition or division of the Common Elements. Similarly, no action shall be brought for partition of a Unit between or among the Owners thereof. Each Owner expressly waives any and all such right of partition he may have by virtue of his ownership of a Unit.

3.6. No Subdivision of Units by Owners. Except as reserved by Declarant herein, no Owner may subdivide or effect a subdivision of any Units into two or more Units.

3.7. Separate Titles and Taxation. Each Unit that has been created, together with its interest in the Common Elements, constitutes for all purposes a separate parcel of real estate and shall be separately assessed and taxed. Declarant shall give written notice to the Assessor of San Miguel County, Colorado of the creating of condominium ownership of the Property as is provided by law. The lien for taxes assessed to any Unit shall be confined to that Unit for delinquent taxes, assessments or other governmental charges and shall not divest or in any way affect the title to any other Unit. The taxes for the Common Elements assessed by San Miguel County for payment by the Association shall be reserved by the Association as proportionate assessments for Common Expenses allocated to each Condominium Unit.

3.8. Limited Common Elements. Any part of the Common Elements used by fewer than all of the Unit Owners, with the expenses therefor allocated specifically to those users, shall be Limited Common Elements.

3.9. Unit Boundaries. As reflected on the Map, the Unit walls, floors, and ceilings are designated as boundaries of a Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors, or ceilings are a part of the Common Elements.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and/or partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. All finished flooring, paint, plaster, tiles wallpaper and any other materials constituting any part of the finished surfaces of a Unit are part of the Unit. All wallboard in walls and ceilings, gypcrete sub-flooring and/or deck surface material are Common Elements. Unit Owners may not modify any Common Elements without the express written approval of the Association Board.

IV. THE ASSOCIATION; MEMBERS AND VOTING.

4.1. The Association; Rights and Powers. The Association shall be a Colorado non-profit corporation charged with the duties and invested with the rights and powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. A copy of the Articles and Bylaws shall be available for inspection by Owners and Tenants at the offices of the Association during reasonable business hours. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If any provision of the Bylaws shall be deemed inconsistent with the provisions of this Declaration, the provisions of the Declaration shall control. The Association shall have all power necessary or advisable to effectuate such purposes as said powers are more specifically enumerated in the Articles of Incorporation and the provisions of C.R.S. Section 38-33.3-302(1).

4.2. Membership of Unit Owners in Association. The Owners of record of each Unit shall be members of the Association. Each Owner shall have one membership for each Unit owned by an Owner. Membership shall be appurtenant to and may be cast by the party so designated pursuant to the Bylaws of the Association. If title to a Unit is held by more than one person, the membership related to the Unit shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Unit is held, except that only one person is eligible to vote, as set forth below. Membership shall be appurtenant to and may not be separated from ownership of any Unit. No person or entity other than an Owner may be a member of the Association, except that members of the Board may be non-Owners until turnover of control by Declarant. Unit Owners shall be treated for membership purposes as Unit Owners, subject to the allocation of votes set forth below.

4.3. Meetings. Meetings of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by a majority of the Board of Directors, or by Owners having twenty percent (20%) of the votes in the Association. No less than ten (10) nor more than fifty (50) days in advance of any meeting, the secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board.

4.4. Quorums. A quorum is deemed present throughout any meeting of the Association, if persons entitled (including any rights of the Declarant) to cast twenty percent (20%) of the votes which may be cast for election of the Board are present, in person or by proxy, at the beginning of the meeting.

4.5. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board in accordance with the Articles and the Bylaws. The Board shall be composed of three members. Cumulative voting for Board members is prohibited. The Board may appoint various committees in its discretion. The Board may delegate any portion of its

duties and authority to a Managing Agent in its discretion. The Board shall determine the compensation to be paid any employee of the Association. The term of any Board Member who is an Owner, and his right to serve shall automatically expire upon sale or conveyance of his or her interest in a Condominium Unit. The term of Board Members who are not Owners, if any, shall be as prescribed by the Board. The Board may fill vacancies in its membership for the unexpired portion of any term. Board Members shall serve without compensation.

4.6. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no agent or employee of the Association shall be personally liable to any Owner, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct. No diminution or abatement of assessments shall be claimed or allowed for inconvenience or discomfort arising from the construction, repair, improvement or maintenance of the Common Elements or any easement, or from any action taken to comply with any law, ordinance or order of governmental authority.

4.7. Indemnification. To the full extent permitted by law, each officer, director and Board member of the Association shall be and hereby is indemnified by the Owners and the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director or Board member of the Association, or any settlements thereof, whether or not they are an officer, director or Board member of the Association at the time such expenses are incurred; except in such cases wherein such officer, director or Board member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Association.

4.8. Right to Vote.

A. General. No change in the ownership of a membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such membership must be cast as a unit, and fractional or divided votes shall not be allowed. In the event that a membership is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same membership unless objection thereto is made at the time the vote is cast. In the event more than one voting unit is cast for the particular membership, none of the said votes shall be counted and all said votes shall be deemed void.

B. Number of Votes per Condominium Unit. The method for allocating votes to Owners of Condominium Units is designed to provide appropriate representation to all Owners. Every Owner of a Condominium Unit receives one vote associated with such Owner's Unit.

Master Association Voting. Pursuant to the Master Association Declaration, every Owner of a single-family Lot or a Condominium Unit receives one vote associated with such Owner's Residence. In addition, Owners of single-family Lots receive a second vote appurtenant to their Lot ownership, and the Association receives three additional votes, collectively, appurtenant to the Condominium Lot. These three additional Association votes shall be voted according to majority vote of the Association. The following example and details are provided to clarify (but not limit) the voting allocation described for such Master Association voting: Because there is a total of eleven single family Lots, a total of twenty-two votes may be cast if all single-family Lot Owners vote. Since there are ten Condominium Units, a total of thirteen votes may be cast by the Condominium Unit Owners. Ten of those votes may be cast directly by the Owners, and three votes may be cast by the Association. The three Association votes shall be cast according to the majority vote of the Owners.

In the event that the vote of the Owners is tied with respect to how to cast the three Association votes, then the Association Executive Board shall vote on how to cast the three Association votes. The vote of the Executive Board shall be final.

4.9. Transfer of Membership. Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of a Unit. A transfer of ownership to a Unit may be effected by a deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record, or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Colorado. Any transfer of ownership of a Condominium Unit shall operate to transfer automatically the membership appurtenant to said Unit to the new Owner thereof, whether or not specific reference to such membership is made.

4.10. Declarant Control Turnover Date. Notwithstanding anything to the contrary provided herein, until the Turnover Date defined below, the members of the Board shall be appointed by Declarant, its successors or assigns, unless such right is relinquished earlier. After Turnover Date, all Board members shall be Owners elected by Owners, which may include Declarant as an Owner.

Declarant control of the Board shall terminate no later than the earlier of sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Owners other than the Declarant; or two years after the last conveyance of a Unit by the Declarant in the ordinary course of business; or two years after any right to add new Units was exercised. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before the Turnover Date, but, in that event, the Declarant may require for the duration of the period of Declarant control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Not later than sixty days after conveyance of twenty-five percent of the units that may be created to Unit Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board must be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than the Declarant, not less than thirty-three and one-third percent (33 1/3 %) of the members of the Board must be elected by Unit Owners other than the Declarant.

Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Unit Owners, by a vote of at least sixty-seven percent (67%) of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

After the Turnover Date, the Owners shall elect a Board of three members, at least a majority of whom must be Owners other than the Declarant. The Board shall elect the officers. The Board members and officers shall take office upon the termination of Declarant control.

4.11. Transfer of Records to Association by Declarant. Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Board, Declarant shall deliver to the Association all property of the Owners and of the Association held by the Declarant, including without limitation, the following:

A. A copy of the recorded Declaration and amendments or supplements thereto, if any, the Association's Articles of Incorporation, Bylaws, minute books, other books and records, and any rules and regulations which may have been promulgated;

B. An accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the period of Declarant control ends;

C. The Association funds or control thereof;

D. All of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in the operation and enjoyment of the Common Elements, provided, however, that the Declarant may be reasonably compensated or reimbursed therefore by the Association;

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

F. Copies of any certificates of occupancy that may have been issued with respect to any improvements;

G. Any other permits issued by governmental bodies applicable to the Property and which are currently in force or which were issued within one year prior to the date on which

Owners other than the Declarant took control of the Association;

H. Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

I. Roster of Owners and Mortgagees and their addresses and telephone numbers;

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

K. 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 persons performing services.

V. ASSESSMENTS.

5.1. Agreement to Pay Assessments. Each Owner, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) shall be deemed to covenant and agree with each Owner and with the Association to pay to the Association Annual Assessments made by the Association for the purposes provided in this Declaration, and Special Assessments for capital improvements and other matters as provided in this Declaration. Such Assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

5.2. Assessment for Common Expenses. Until the Association makes a Common Expense Assessment, the Declarant shall be responsible for payment of Common Expenses, if any. After any Assessment has been made by the Association, Assessments shall be made no less frequently than annually by the Association.

5.3. Common Assessments and Limited Common Elements. The total Annual Common Assessments against all Units shall be calculated according to a budget based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated Common Expenses, as such expenses may arise out of, or be connected, with the performance of the Association's functions under this Declaration and applicable law. Such Common Expenses may include, among other things, the Property's share of Common Expenses in the Master Association; expenses of administration and management; taxes and special assessments until the Units are separately assessed as provided herein; property taxes on common elements, if any, and on the Access Tract, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; common utility services; repairs, renovations landscaping and maintenance to the General Common Elements, including snowmelt systems and maintenance and plowing of roads and other easements and rights of way; security services; wages for Association employees; legal, accounting landscaping and engineering fees; expenses of performance of the functions of the Board or any committee or subcommittee established by the Board, expenses related to requiring an Owner's compliance with the Association's rules and regulations; any deficits remaining from a previous period; the creating of reasonable contingency and reserve funds; reasonable funds for betterments as set forth in the Bylaws; and any other expense and liability which may be incurred by the

Association for the benefit of the Owners under or by reason of this Declaration. Any past due Common Expense assessment, or installment thereof, shall bear interest at the rate established by the Board, not to exceed twenty-one percent (21%) per annum.

A. At the reasonable discretion of the Board, consistently applied to all Owners, the Board shall have the right to exclude from the Common Expenses and assess directly to a particular Owner or Owners, the cost and expense of maintaining, repairing and replacing a specific portion of the General Common Elements, if the necessity for such repair, maintenance or replacement is directly attributable to the negligence or intentional act or misconduct of such Owner or Owners. Maintenance, repair and replacement of the Limited Common Elements, if any, solely appurtenant to a Unit, are the responsibility of the Owner of the Unit to which the use of such Limited Common Elements is appurtenant. Any costs associated with such maintenance is therefore not subject to inclusion as a Common Expense, unless the Owner fails to maintain, in which case the Association shall be entitled to perform such maintenance and charge the Owner with the costs of such work. The Association shall have an easement to enter upon a Unit to undertake this work. To clarify, however, although window wells are Limited Common Elements, the snow melt that is in the concrete bottom of each window well shall be part of a common assessment.

B. All the repairs of internal installations of the Unit such as water, light, gas, power, sewage, telephones, sanitary installations, doors, windows, electrical fixtures including any air conditioning equipment belonging to the Unit and including appurtenant Limited Common Elements shall be at the Owner's expense. An Owner shall be responsible for maintaining and repairing each of those Limited Common Elements which constitute an external deck assigned to the Owner's Unit, and the Owner's expense. This maintenance obligation shall be limited to the deck surface. The Association shall maintain, repair and replace the external snowmelt system embedded in any such decks, at the expense of the Owner to which the Limited Common Element is assigned. The Owner of the Unit is responsible for monitoring and ensuring that the snowmelt system is operating correctly, and notifying the Association if the snowmelt system is not operating correctly. The Owner shall shovel snow if necessary and appropriate. The Owner will be responsible for any damage to other Units or Common Elements that result from leakage or other failure of the snowmelt system due to Owner's failure to properly monitor the snowmelt system, or due to damage caused by Owner's maintenance activities.

C. An Owner shall be obligated to reimburse the Association or another Owner upon receipt of a statement for any reasonable expenditures incurred by the Association or other Owner or both in repairing, replacing or restoring any Common Elements, Limited Common Elements or the interior or any part of a Unit damaged as a result of negligent or other tortious conduct of such Owner, a member of his family, his agent, employee, invitee, licensee or tenant, including due to such Owner's failure to maintain such Owner's Unit and Limited Common Elements.

D. Any maintenance, repair, or replacement of a Limited Common Element that benefits more than one Unit shall be performed by the Association. The costs for such work

shall be a Common Expense assessed against the Units to which that Limited Common Element is assigned, proportionally, based on number of Units benefitted, or in any other proportion that the Board in its reasonable discretion fixes. Any Common Expense, or portion thereof, benefitting fewer than all of the Units may be assessed exclusively against those benefitted.

5.4. Notice and Payment of Common Assessments. Common Assessments shall be made as specified by the Board and shall be based on the annual budget. Within ninety (90) days after adoption of any proposed budget, the Board shall mail by ordinary first-class mail or otherwise deliver a summary of the budget to all the Owners which includes a date for a meeting of Owners to consider ratification of the budget not less than ten (10) nor more than fifty (50) days after mailing or other delivery of the summary. Such notice may include a resolution adopting such budget and a ballot to be submitted by mail to the Association for voting purposes at the meeting. Unless at that meeting a majority of all Owners reject the budget, by mailed ballot or by person present and voting, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

A copy of the Notice of Assessment approved or provided above shall be mailed to each Owner. Such Assessment shall be due and payable within thirty (30) days of the mailing. Each annual Common Assessment shall bear interest at the rate of twenty-one percent (21%) per annum from the date it becomes due and payable, if not then paid. In addition to interest on any late payment, a late charge shall be assessed in an amount not exceeding fifty (\$50.00) dollars for each past due Common Assessment.

5.5. Special Assessments. In addition to the annual Common Assessments for Common Expenses authorized by this Article, the Association, through its Board of Directors, may levy at any time a Special Assessment payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of construction or reconstruction, repair or replacement of any capital improvements located or to be located upon the General Common Elements of the Property or otherwise benefitting or affecting the Property, such as utilities or hardware located within easements benefitting the Property (including any easement areas). Any amount assessed pursuant hereto shall be assessed to all Owners and may only be assessed after approval by a majority of the votes of Owners called for such purpose. A Special Assessment also may be assessed, without Owner vote, against any individual Owner who fails to maintain a Unit in accordance with the requirements of this Declaration, the Bylaws, Design Covenants or rules and regulations promulgated hereunder. The Association may give notice to such non-complying Owner demanding that such Owner cure such failure on default within thirty (30) days. If such Owner fails or refuses to do so, the Association may repair or maintain said Unit at the Owner's expense. The cost of said repair or maintenance, together with a fifteen percent (15%) administrative charge, shall equal the amount of the Special Assessment.

Subject to the foregoing provisions, the Board of Directors of the Association shall have the power and authority to determine all matters in connection with the Special Assessments, including the power to determine where, when and how Special Assessments shall be paid to the

Association, and each Owner shall be required to comply with any such determinations.

5.6. Contingency Fund. Each year the Board shall establish and segregate, out of the annual Common Assessment funds received, a contingency or reserve fund for the deferred maintenance and replacement of those General Common Elements requiring such deferred maintenance and periodic replacement.

5.7. Common Surplus. At the end of any calendar year, the Board of Directors may, but shall not be required to, refund to each Owner his proportionate share of funds, then held by the Association, which were not earmarked for betterments and are not necessary to meet the Common Expense and maintain an adequate reserve.

5.8. Working Capital and Common Element Reserves. The Association may require an Owner, other than Declarant, to deposit with the Association upon the initial conveyance of a Unit by Declarant, an amount not exceeding the originally estimated annual Common Assessment, which sum shall be held by the Association for working capital. Such an advance payment shall be a credit to any Owner's obligation to pay Common Assessments, but shall not relieve an Owner from making the next regular payment of the Common Assessments or any Special Assessments, as the same come due. Upon the transfer of a Unit an Owner shall be entitled to a credit for the payment of assessments from the transferee. Obtaining such credit shall be the responsibility of the selling Unit Owner, and not the Association. The Association may also establish a Common Element Reserve fund to provide for Project capital repairs.

5.9. Assessments and Establishment of Lien. The Assessments, together with interest, costs and reasonable attorneys' fees and such other charges, all as provided for in this Declaration, shall be a charge against the Unit and shall be a continuing servitude and lien upon the Unit against which each such Assessment is made. Each such Annual and Special Assessment, together with interest, costs and reasonable attorneys' fees and such other charges shall also be the personal obligation of the person who was the Owner of the Unit at the time when the Assessment fell due. Suit to recover a money judgment for unpaid Assessments and costs of suit and attorneys' fees, shall be maintainable with or without foreclosure or waiving the lien hereunder securing same. No Owner shall be exempted from liability for contribution toward the aforementioned by waiver of the use or enjoyment of any Common Elements or by abandonment of the Unit.

Pursuant to § 38-33.3-316 of the Act, the Association (and the Declarant before the Turnover Date), shall have a statutory lien against a Unit for any Assessment (including penalties, fines and attorneys fees levied by the Board for violations of this Declaration) levied against a Unit and unpaid past its due date, or fines imposed against its Owner from the time the Assessment or fine becomes due. In addition, fees, charges, late charges, attorneys' fees, collection costs, fines and interest charged pursuant to this Declaration or as allowed by the provisions of the Act are enforceable as an Assessment. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due and is not paid. The lien for unpaid Assessments shall be prior to all other liens and encumbrances on a Unit except:

A. Liens and encumbrances recorded before recordation of the Declaration;

B. A security interest on the Unit which has priority over all other security interests on the Unit and which was recorded before the date on which the assessment sought to be enforced became delinquent;

C. Liens for real estate taxes and other governmental assessments or charges against the Unit.

The lien for unpaid assessments is also prior to the security interest described in paragraph (B) above, to the extent of:

(i) An amount equal to the Common Expense Assessments based on a periodic budget adopted by the Association under C.R.S. § 38-33.3-315 (1), which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created hereunder of an action or a non-judicial foreclosure either to enforce or extinguish the lien; and

(ii) Attorneys' and legal fees and costs incurred by the Association in an action to enforce the Assessment Lien.

D. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon a Unit. The sale or transfer of any Unit shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Unit free of the Assessment Lien for all Assessments that have accrued up to the date of the issuance of a sheriff's or trustee's deed or a deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien, with respect to Assessments accruing from and after such date, immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Assessments and the Assessment Lien thereof, accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

5.10 Notice of Lien. The Association shall prepare a written notice setting forth: (i) the amount of such unpaid indebtedness, including accrued interest, fees and late charges, and (ii) the name of the nonpaying Owner and a description of said Owner's Unit. Such notice shall be signed and acknowledged on behalf of the Association and may be recorded in the office of the Clerk and Recorder of San Miguel, County, Colorado. Pursuant to C.R.S. § 38-33.3-316, recording of this Declaration constitutes record notice and perfection of the lien. No further

recordation of any claim of lien for assessment is required. Such lien may be enforced by foreclosure of the defaulting Owner's Unit by the Association in like manner as a mortgage on real estate. The Association shall be entitled to costs and reasonable attorneys' fees incurred in a judgment or decree in any action or suit brought by the Association. The Association shall be entitled to all other remedies allowed by law or at equity. The Owner shall be required to pay to the Association the Annual Common Assessment for a Unit as the same becomes due, during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same.

5.11 Homestead Exemption. Each Owner hereby agrees that the Association's lien on a Unit for Annual Common Assessments, as hereinbefore described shall be superior to the homestead exemption provided by C.R.S. § 38-41-201, *et seq.* Each Owner hereby agrees that the acceptance of a deed or other instrument of conveyance to any Unit shall signify such grantee's waiver of such homestead right.

5.12 Release of Lien. An Assessment Lien shall be released, upon full payment of all sums secured thereby, by recording in the appropriate County records a Release of Lien executed by at least two members of the Board of Directors; except that a Director cannot release a lien on a Unit owned by that Director.

5.13. Liability for Assessments Upon Transfer of Unit is Joint and Several. Upon payment of a reasonable fee not to exceed Fifty Dollars (\$50.00), and within fourteen (14) business days following receipt of a request in writing from any Owner or any First Mortgagee or prospective First Mortgagee of a Unit, the Association, by the Board or its duly authorized representative, shall issue a written statement setting forth that all Assessments have been paid with respect to any specified Unit as of the date of such statement, or the amount of the unpaid Assessments with respect to the subject Unit, the amount of the current periodic Assessment and the date that such Assessment becomes due, and any credit for advance payments for prepaid items or insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

Unless such statement of indebtedness shall be furnished by the Association within fourteen (14) days from receipt of such request by the Association, then the grantee or First Mortgagee of a Unit who shall have made such unfulfilled request shall not be liable for, nor shall the Unit conveyed be subject to, any lien for any unpaid Assessments accruing prior to the date that an answer to such request was due. The provisions contained in this Section shall not apply to sales of Units by the Declarant.

The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the Unit up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor any amounts paid by the grantee therefor.

Any Owner who disputes the amount of any Assessment or the power of the Association to levy it may challenge such Assessment in any court of appropriate jurisdiction but only after having made full and timely payment thereof. Failure to make such payment within 60 days of

the due date thereof shall be deemed an irrevocable waiver of the right to challenge such amount or power.

5.14. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making, billing and collecting the Assessments provided for herein, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to an Owner shall not relieve any Owner of his liability for any Assessment under this Declaration, but no such Assessment shall be deemed due and payable or delinquent until the Owner has been given not less than thirty (30) days written notice thereof, at the address of the Owner on the records of the Association, and furthermore the Assessment Lien for any Assessment or other charge shall not be foreclosed or otherwise enforced until the expiration of one hundred and twenty (120) days from and after the date the Assessment or other charge giving rise to the Assessment Lien becomes due and payable. The Association shall be under no duty to refund any payments received by it even though the ownership of a Unit changes during an Assessment period; successor Owners of Units shall be given credit for prepayments, on a prorated basis, made by prior Owners.

5.15. Collection Costs and Interest on Delinquent Assessments. Any penalty, fine, imposition of attorneys fees or Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from the due date until paid at an interest rate established by the Board, not to exceed twenty-one percent (21%) per annum compounded monthly. An Owner also shall be liable for all costs, including, without limitation, attorneys' fees and costs incurred by the Association in collecting the same. The Board may also record a notice of delinquency against any Unit as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording such notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

5.16. Property Exempted from Assessments and Assessment Lien. Common Elements shall be exempted from Assessments and the Assessment Lien; provided, however, that in the event any change of ownership of Common Elements results in all or any part thereof becoming assessable property in any year, the same thereupon shall be subject to Assessments (prorated as of the date it became assessable property) and the Assessment Lien.

5.17. Association's Remedies. If any Owner violates this Declaration and is levied a fine and attorneys fees, and/or fails to pay an Assessment or installment thereof when due, the Association may enforce the payment thereof by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise any other remedy available to it at law or equity):

A. Bring an action at law and recover judgment against the Owner personally obligated to pay the Assessment and other charges; or

B. Foreclose the Assessment Lien against the Unit in accordance with the then prevailing Colorado law relating to the foreclosure of realty mortgages and/or deeds of trust (including the right to recover any deficiency). The Declarant or the Association may purchase the Unit at a public sale held pursuant to the foreclosure.

5.18. Costs to be Borne by Owner in Connection with Enforcement of Payment of Assessments or Enforcement of Declaration. In any action taken by the Association pursuant to this Declaration, to enforce this Declaration, including collection of Assessments, the Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Assessments together with interest and the Association's collection costs and attorneys' fees, including without limitation those costs and fees specified in this Article.

5.19. Purposes for which Association's Funds may be Used. The Association shall apply all funds and property collected and received by it (including Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Owners by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, security, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Residents. The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Colorado.

5.20. Association's Rights in Spending Funds from Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

VI. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION.

6.1. Association as Attorney in Fact for Owners. The Association is hereby irrevocably appointed attorney in fact for the Owners, and each of them, to manage, control and deal with the Project, and the beneficial use an interest of each Owner in the Common Elements, so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to represent the Project and the interest of any Owner or Owners in any litigation, in the name of any or all Owners as a representative party, to deal with the Property upon its destruction or obsolescence as hereinafter provided and to grant easements through any portion of the Common Elements. The acceptance by a person of any interest in a Unit shall constitute an appointment of the Association as attorney in fact as provided above and hereinafter. The Association is hereby granted all of the powers necessary to own the Common Elements, govern, manage, maintain, repair build, administer and regulate the Project and to

perform all of the duties required of it.

6.2. General Common Elements. The Association shall own and provide for the care, operation, management, maintenance, repair and replacement of the General Common Elements. Without limiting the generality of the foregoing, said obligations shall include the keeping of such General Common Elements in good, clean, attractive and sanitary condition, order and repair; removing dead or diseased vegetation, clearing snow and any other debris or materials from any portion of such General Common Elements which might impair access to or within the Property or Units, or which may create a fire or other hazard; keeping the property safe, attractive and desirable; erecting and maintaining lighting, signs or other identification, and making necessary or desirable alterations, additions, betterments or improvements to or on the General Common Elements. The Association also shall be responsible for repair and maintenance of access tracts and easement areas benefitting the entire Property.

Except as set forth above, the Association, through the Board, shall be the sole judge as to the appropriate maintenance of all Common Elements and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

6.3. Other Association Functions. The Association may undertake any activity, function or service for the benefit of or to further, the interests of all, some or any Owners on a self-supporting Special Assessment(s), or Common Assessment basis. Such activities, functions or services may include but are not limited to the providing of security services, road and sidewalk maintenance, lighting and landscape maintenance service, and garbage and trash collection services.

6.4. Labor and Services. The Association: (i) may obtain and pay for the services of a Managing Agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper maintenance of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it contracts; (ii) may obtain and pay for legal and accounting services necessary or desirable in connection with the maintenance of the Property or enforcement of this Declaration or the rights of any Owner(s); and (iii) may arrange with others to furnish trash collection, landscape and sidewalk maintenance and other common services. The Association is specifically authorized to contract with, employ, retain and hire any affiliates of, companies controlled by, or persons employed by Declarant or any of its affiliates. Such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more Board members or officers of the Association or members of any committee is employed by or otherwise connected with Declarant or its affiliates, provided that the fact of interest shall be disclosed or known to the other Board members acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such Board member, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliates or any competitor thereof and may vote to

authorize any such contract, transaction or approval with like force and effect as if he were not so interested. The first Board, appointed as provided herein, shall ratify and approve an initial management agreement between the Declarant, on behalf of the Association, and a manager, which may be a corporation related to the Declarant, to act as Managing Agent for the Property.

6.5. Property of Association. The Association may pay for, acquire, own, hold, or lease real property, and tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Association, each Owner and each Owner's family and guests may use such property. Upon termination of condominium ownership of the Project and dissolution of the Association, if ever, the beneficial interest in any such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their votes in the Association. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed Unit, subject to the terms of this Declaration.

6.6. Association Right to Lease and License General Common Elements. The Association shall have the right to lease or license or permit the use of, by less than all Owners or by non-Owners, on either a short term or long term basis, and with or without charge, as the Association may deem desirable, any portion of the General Common Elements or any Unit owned by the Association, provided that the rights granted to the Association in this section shall only be used in accordance with the collective best interest of the Owners or not contrary to the interests of the Owners as a whole. The Association shall have the right to grant easements under, through or over the General Common Elements which are reasonably necessary to the ongoing development, operation and best interest of the Project, or as may be reasonably requested by any public or quasi-public authority. Except as set forth in this Declaration, no General Common Elements may be conveyed to any person or entity other than the Owners.

6.7. Change and Use of Common Elements. Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then-current use of a designated part of the Common Elements is no longer in the best interests of the Owners and the Project and (b) the approval of such resolution by at least three-quarters (3/4) of the votes of the Owners present in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners, and (ii) shall be consistent with any deed or similar restrictions or zoning regulations restricting or limiting the use of the Common Elements.

6.8. Review of Records. The Association shall keep detailed and accurate financial records in accordance with Generally Accepted Accounting Principles. Said financial records shall include, but not be limited to, records as to paid and unpaid Assessments. All financial records shall be made reasonably available for examination by any Owner and such Owner's

authorized agents.

6.9. Enforcement by Association. The Owners subject to these Covenants hereby grant to the Association the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, charges, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. This right shall be in addition to the right of any Owner subject to this Declaration to enforce the same. The Board's obligation to enforce any term or condition of this Declaration is optional whether or not enforcement is requested by any Owner. Failure by the Association or any Owner to enforce any Covenant shall not be deemed a waiver of the right to do so thereafter.

The Board may suspend any voting rights in the Association or the right of an Owner to use any Common Elements of the Property during any period or periods during which such Owner fails to comply with the Association's rules and regulations, any other obligations under this Declaration or the Bylaws. The Association shall also have the right to perform such Owner's obligations at the Owner's expense after providing to such non-complying Owner 30 days' notice and opportunity to cure. Any expense therefor may be collected by Special Assessment against such Owner. The Association's good faith judgment shall be conclusive: (a) as to whether any Owner shall have failed to comply with any provisions of this Declaration, the rules and regulations, and Bylaws; and (b) as to the amount of any Special Assessment levied pursuant to this Declaration.

The Association may take judicial action against any Owner to enforce compliance with such rules and regulations, obligations of the Declaration or Bylaws, and to obtain damages for noncompliance thereof, all to the extent permitted by law. The Board may impose a fine, not to exceed \$50.00 per day, levied on any Owner for each violation or act of non-compliance as above, by any such Owner. In the event of judicial action, the prevailing party shall be awarded, in addition to such other relief, its reasonable attorneys' fees and costs.

6.10. Rules and Regulations. The design and construction requirements which must be observed and met for each Residence are described in the Design Covenants. The Design Covenants shall be enforced by the Board. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Association Rules. The Association Rules may restrict and govern the use of any area of the Project by any Owner or Resident; provided, however, that the Association Rules shall not unfairly discriminate among members and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

6.11. Implied Rights. The Association shall have and may exercise any right or privilege given to it expressly by this Declaration, the Articles, Bylaws, or Design Covenants,

Association Rules, or reasonably implied from the provisions of said documents, or given or implied by law, or obligations, rights or privileges hereunder.

6.12. Improper Maintenance and Use of Units. In the event any portion of any Unit is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Units or Common Elements which are substantially affected thereby or related thereto, or in any event any portion of a Unit is being used in a manner which violates this Declaration or in the event the Owner of any Unit fails to perform any of his obligations under this Declaration or the Association Rules, the Board may give notice to the offending Owner of the particular condition or conditions which exist, and unless corrective action is taken within 14 days, the Board may cause such action to be taken at said Owner's cost and expense. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Unit is subject and shall be secured by the Assessment Lien.

6.13. Mechanic's Liens. Each Owner agrees to indemnify and to hold the Association, the Board, and each of the other Owners harmless from any and all claims of mechanic lien filed against other Units and the appurtenant general common elements for labor, materials, services or other products incorporated in the Owner's Unit. In the event such a mechanic's lien is filed against the other Units and the appurtenant general common elements for labor, materials, services or other products incorporated in the Owner's Unit, the Owner of such Unit shall within thirty (30) days of the date the lien is recorded, remove such lien from the other Units and the appurtenant general common elements (i.e., by initiating legal action to substitute security for the lien), and shall defend and hold the other Unit Owners and the Association harmless from and against all costs and expenses incurred in relation to such lien, including payment of legal fees and costs incurred.

VII. DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS.

7.1. Development Rights and Special Declarant Rights. The Declarant reserves, through ten (10) years from the date of recording of this Declaration, the following Development Rights and Special Declarant Rights with respect to the Units and the easements reflected on the Map benefitting the Project.:

A. The right to relocate boundaries between adjoining Units owned by Declarant or affiliates of Declarant, enlarge Units, enlarge the Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements, subdivide Units or complete or make improvements indicated on Maps filed of record or filed with the Declaration;

B. The right to exercise any development rights reserved below or allowed in the Act;

C. The right to use, and to permit others to use, easements through the Common

Elements as may be reasonably necessary for construction and for the purpose of discharging the Declarant's obligations under this Declaration;

D. The right to make the condominiums subject to an additional master association and master declaration or to establish a sub-association and sub-declaration;

E. The right to merge or consolidate the condominiums with an another common interest community;

F. The right to appoint or remove any officer of the Association or any Board Member during the Declarant Control period;

G. The right to amend the Declaration in connection with the exercise of any development right;

H. The right to amend the Map in connection with the exercise of any development right;

I. Subject to Section 7.4, the right unilaterally to amend this Declaration to grant additional or different voting, Association membership or other rights in the Condominium Lot.

7.2. Additional Reserved Rights. In addition to the Special Declarant Rights set forth above, Declarant also reserves the following additional rights (the "Additional Reserved Rights") through the same time period set forth above:

A. Sales. The right to maintain sales offices, management offices and models in Units or on the Common Elements.

B. Signs. The right to maintain signs and advertising on Property to advertise the Project or Units therein.

C. Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, ski ways, drainage, recreation areas, parking areas, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners.

D. Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of parking and/or recreational facilities, which may or may not be a part of the condominiums for the benefit of the Owners and/or the Association.

E. Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

7.3. Rights Transferable/Rights Transferred. Any Special Declarant Right, any of the

Additional Reserved Rights, any expansion rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person or entity by an instrument describing the rights transferred and recorded in the real property records of San Miguel County. Such instrument shall be executed by the transferor/Declarant and the transferee.

VIII. INSURANCE/CONDEMNATION.

8.1. Insurance Carried. 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 herein and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. Commencing not later than the time of the first conveyance by sale of a Unit to a person other than a Declarant, the Association shall maintain, to the extent reasonably available, policies with the following terms or provisions:

(a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least 20 days prior written notice to all of the Owners, holders of First Mortgages and the Association.

(b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of First Mortgages at least ten (10) days prior to expiration of the then current policies.

(c) All liability insurance, to the extent reasonably possible without undue cost shall be carried in blanket form naming the Association, the Board, Managing Agent, if any, the officers of the Association, the Declarant, their successors and assigns as insureds.

(d) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Units and the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full insurable replacement cost.

(e) Owners may carry other insurance for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if an Owner has other insurance that covers the same loss or losses as covered by policies of the Association. In this regard, Declarant discloses that the Association's insurance coverage, as specified hereunder and under the Act, does not obviate the need for Owners to obtain insurance for their own benefit.

(f) All policies of insurance shall provide that the insurance thereunder shall be

invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect. All coverages shall be increased a minimum of every five (5) years pursuant to the United States Consumer Price Index.

8.2. Hazard Insurance on the Units and Common Elements. The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the Common Elements, the other property of the Association and the Units (but not the finished interior surfaces of the walls, floors and ceilings of the Units), to the extent required by the Act. All policies shall contain a standard non-contributory mortgage clause in favor of each holder of First Mortgages, 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 holders of First Mortgages, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of San Miguel County, Colorado. If obtainable, and to the extent reasonably possible without undue cost, the Association also shall obtain the following and any additional endorsements deemed advisable by the Board: (a) an inflation guard endorsement, (b) a construction code endorsement, (c) a demolition cost endorsement, (d) a contingent liability from operation of building laws endorsement, (e) an increased cost of construction endorsement, and/or (f) any special subdivision/condominium endorsements.

8.3. Liability Insurance. The Association shall obtain adequate comprehensive policy of public liability and property damage liability insurance covering all of the Units (but not the finished interior surfaces of the walls, floors and ceilings of the Units) and the Common Elements, in such limits as the Board may from time to time determine, but not in any amount less than Two Million Dollars (\$2,000,000.00) per injury, per person, and per occurrence, 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 Project. All liability insurance shall name the Association as the insured. The Association shall also carry a liability umbrella policy in the amount not less than Five Million Dollars (\$5,000,000.00).

8.4. Fidelity Insurance. The Association may obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, Board members, trustees 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 clause "officers, directors, Board members, trustees and employees" shall not include any officer, director, agent, trustee or employee of Declarant or any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. 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.

8.5. Worker's Compensation and Employer's Liability Insurance. In the event that the Association engages employees, the Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

8.6. Officers' and Directors' Personal Liability Insurance. The Association may obtain officers' and directors' personal liability insurance to protect the officers, directors and Board members from personal liability in relation to their duties and responsibilities in acting as officers, directors and Board members on behalf of the Association.

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

8.8. Insurance Premium. Except as assessed in proportion to risk, if permitted under the terms of this Declaration, 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.

8.9. Managing Agent Insurance. The Managing Agent, if any, shall be insured to the same extent as the Association, as herein provided, and as provided in the Act, for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association.

8.10. Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another, the Board and Declarant, 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 and of said persons.

8.11. Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

8.12. Adjustments by the Association. Any loss covered by an 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 holder of a First Mortgage. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of a First Mortgage as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners and holders of First Mortgage 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.

8.13. Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the

distribution shall be as the parties with interests and rights are determined or allocated by record, and pursuant to the Act.

IX. SPECIAL RIGHTS OF HOLDERS OF FIRST MORTGAGES.

9.1. General Provisions. The provisions of this Article are for the benefit of holders, insurers, or guarantors of holders of First Mortgages recorded within the Project. To the extent applicable, necessary or proper, the provisions of this Article apply both to this Declaration and to the Articles and Bylaws of the Association. A holder, insurer or guarantor of a First Mortgage who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a Security Interest, shall be considered an “Eligible Holder.” Eligible insurers and guarantors of a First Mortgage shall have the same rights as an Eligible Holder.

9.2. Special Rights. Eligible Holders shall be entitled to: (a) timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor’s obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within 60 days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association, including any annual audited financial statement; (d) receive written notice of all meetings of the Board or the Association; (e) designate a representative to attend any such meetings; (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (g) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration; (h) 30 days written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; (i) 30 days written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Project or by an Eligible Holder; and (j) immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or a Unit if the cost of reconstruction exceeds \$20,000.00 and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Units.

9.3. Special Approvals. Unless at least two-thirds of the Eligible Holders of First Mortgages (based on one vote for each mortgage owned) of Units in the Association and requisite Owners have given their written approval, neither the Association nor any Owner shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Owners (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such real estate by the Association shall not be deemed within the meaning of this provision); (b) change the method of determining the obligations, Assessments or other charges which may be levied against Owners or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided

in this Declaration; and (d) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed; If an Eligible Holder of a First Mortgage receives written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within 30 days, it shall be deemed to have approved such request.

9.4. Right to Pay Taxes and Insurance Premiums. Any holder of a First Mortgage shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Unit, and the holder of a First Mortgage making such payments shall be entitled to immediate reimbursement therefor from the Association.

X. COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO UNITS, OWNERS AND RESIDENTS.

THE FOLLOWING COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS OF EASEMENTS AND RIGHTS SHALL APPLY TO ALL UNITS AND TO THE OWNERS AND RESIDENTS THEREOF, AND WHERE AN OWNER IS REQUIRED TO PERFORM ANY OF THE FOLLOWING OBLIGATIONS, IT SHALL DO SO AT ITS SOLE EXPENSE:

10.1. Exclusive Residential Use and Improvement. Each Unit shall be used solely for residential purposes and shall not be used for business, manufacturing or commercial purposes.

10.2. Timely Completion. Any Unit remodel or other improvement, the construction or placement of which is begun with respect to any Unit, shall proceed apace once commenced, and shall be completed not later than eight (8) months after the beginning of such construction, subject only to *force majeure*.

10.3. Animals. Each Unit may contain a reasonable number of house pets for domestic use and pleasure but not for commercial purposes. No other animal, bird (except birds or fish kept permanently indoors) shall be maintained in or about any Unit without prior written approval of the Board. No animal shall be allowed to make an unreasonable amount of noise or to become a nuisance. Upon the written request of any Owner or Resident, the Board shall conclusively determine, in its sole and absolute discretion, for the purposes of this section, whether such pet is a nuisance, or whether the type or number of animals in or about any such Unit is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other covenants contained herein. Owners will take precaution as required to prevent the alteration of native fauna by insuring that pet food, garbage, and refuse are properly stored or covered.

10.4. Firearms. No firearms shall be discharged within the Project.

10.5. Repair. No Unit shall be permitted to fall into disrepair or to remain otherwise than

in a good, sanitary and well maintained condition and each such Unit shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Unit is damaged or destroyed, then, within 180 days after such event, but subject to the approvals required by this Declaration, such Unit shall immediately be repaired. Any expansion, modification or other alteration of a Unit shall be subject to the prior approval of the Board, except for minor repairs.

10.6. Mineral Exploration. No mining is allowed at the Property in any manner, at or below surface, to explore for or to remove any oil or other hydrocarbons, or a mining operation for minerals, gravel, earth or any earth substance of any kind.

10.7. Trash Containers and Collection. No garbage or trash shall be placed or kept or our about the Property or any Unit except in covered bear-proof containers in the area specified for trash receptacles in the garage. In no event shall such containers be maintained so as to be visible except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Units and shall not be allowed to accumulate at the Property.

10.8. Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are visible shall be erected or maintained on or about any Unit except signs required by legal proceedings.

10.9. Property Restrictions. No portion less than all of any Unit, nor any easement or other interest therein, shall be conveyed or transferred by any Owner (otherwise than by the lease of a Residence and its appurtenances), without the prior written approval of the Board, which approval must be evidenced on the survey, Map or other instrument creating the easement or other interest. No further covenants, conditions, restrictions or easements shall be conveyed by any Owner or other person against any Unit without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements conveyed without such approval being evidenced therein shall be null and void. No applications for variances or special use permits, shall be filed with any government authority unless the proposed use of the Unit has been approved by the Board and the proposed use otherwise complies with this Declaration.

10.10. Fire Protection. The Units shall contain such number of smoke alarms adequate to cover the entire residence.

10.11. Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained on any deck, balcony or other exterior portion of any Unit, unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. Any such installations shall require prior written approval of the Board.

10.12. Fuel Tanks or Other Hazards. Installation of and maintenance of any and all fuel tanks or other hazardous substances on the Property or Units is prohibited.

10.13. Motor Vehicles, Trucks, Trailers, Campers and Boats. No motor vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle which is inoperable may be parked, maintained, reconstructed or repaired on the Property. Nor shall such vehicles be parked except temporarily on or about the Project.

10.14. Offensive Conduct/Nuisance. No noxious or offensive activities, including but not limited to, the repair of automobiles or other motorized vehicles, shall be carried on, upon or within the Project. Nor shall anything be done thereon which may be or become an annoyance or nuisance to the residents of the Project or which shall in any way interfere with the quiet enjoyment of occupants of the Project. Unit Owners (other than Units 4, 5 & 10) are prohibited from burying stereo speakers in the walls or installing any system or item which causes noise or other nuisance to other Unit Owners.

10.15. Hazardous Activities. No activities shall be conducted on or in any Unit and no improvements shall be constructed in any Unit which are or may be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no fires shall be ignited upon any portion of the Project except in a contained barbecue unit, while attended and in use for cooking purposes.

10.16. Satellite Dishes. Satellite dishes shall not be permitted at the Property absent prior written approval of the Board.

10.17. Health, Safety and Welfare. In the event any use, activity or facility is deemed by the Board to be a nuisance, or to adversely effect the health, safety or welfare of Owners, the Board may make additional rules restricting or regulating said use, activity and facility in accordance with this Declaration and the Bylaws of the Association.

10.18. Indemnification. Each Owner shall be liable to the remaining Owners and/or the Association for any damage to the Common Elements which may be sustained due to the intentional conduct or negligence of such Owner or members of the Owner's family, the Owner's contract purchasers, contractors, lessees, renters, guests or invitees. Each Owner does further, by acceptance of the deed, agree for the Owner, and for the members of the Owner's family, the Owner's contract purchasers, contractors, lessees, renter, guests or invitees, to indemnify each and every other Owner, and the Association, and to hold him, her or it harmless from and to defend him, her or it against, any claim of any person or persons for personal injury or property damages occurring within the Unit of that particular Owner and any Limited Common Elements appurtenant thereto.

XI. EASEMENTS, LICENSES AND USE OF EASEMENT RIGHTS.

11.1. Owners' Easements. Each of the Owners has an easement over, under and across the Common Elements, or any appropriate portion thereof, for the purpose of access (ingress and egress) to their Unit, and for all other appropriate and designated purposes; and such easements, in and to the Common Elements, is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be substantially amended or revoked, in such a way as to

unreasonably interfere with its proper and intended use and purpose.

11.2. Association Grant. The Association hereby creates and grants easements to all Owners and members of the Association, their immediate families, guest and invitees, for ingress, egress, utilities, including but not limited to those necessary to provide electricity, telephone, cable television, sewer, natural gas, water, lighting facilities, snowmelt systems and for all purposes set forth specifically in this Article and described in this Declaration. Declarant for itself, its successors, assigns, nominees and for the Association reserves the right to impose upon the Common Elements and easements granted herein, henceforth and from time to time, reasonable use regulations, maintenance operations, repair, replacement and modifications in the Project.

11.4. Easements Granted by and to Association. The Association shall have the power and be required to grant and convey to any third party, on behalf of any Owner(s) of a Unit, easements and rights of way in, on, over and under the Common Elements for the purpose of constructing, erecting, operating or maintaining thereon, therein, or thereunder, underground lines, cables, wires, conduits, or other devices for electricity (on the surface), or other utilities, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, snowmelt systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and each purchaser, in accepting a deed to a Unit expressly consents hereto; provided, however, that no such easements may be granted if the same would materially interfere with the use, occupancy or enjoyment by any Owner of his Unit. The Association shall have an easement through each and every Unit, Common Element and Limited Common Element to perform maintenance and repair of Common Elements, Limited Common Elements, and, in the event of an emergency, Units.

11.5. Easements Deemed Appurtenant. The easements, uses and rights herein created for an Owner, shall be appurtenant to the Unit of that Owner, and all conveyances or any other instruments affecting title to a Unit shall be deemed to grant and reserve the easement, uses and rights as are provided for herein, even though no specific reference to such easements, uses and rights appears in any such conveyance.

11.6. Emergency Easement. A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or person, now or hereafter servicing the Property to enter upon all driveways and other Common Elements located in the Property in the lawful performance of their duties.

11.7. Recorded Easements and Easements on Map. All recorded easements currently affecting Units are set forth on the Map or contained herein or are otherwise recorded in the San Miguel County records. Any easement designated on the Map shall be deemed a grant of easement by Declarant burdening the land so indicated and benefitting the Property or such persons or entities that may be indicated.

11.8. Use and Enjoyment of Common Elements. Any Common Elements are private property to be used for the benefit of Owners and their guests only. They and every other easement, facility and amenity constituting a Common Element within the Project is a private easement,

facility or amenity. Neither Declarant's execution or recording of this or any similar instrument nor any other act of Declarant with respect to such filings is, or is intended to be, or shall be construed as a dedication to the public of any said private street, park, easement, facility or amenity.

An easement for the use of the Common Elements of the Project and of the easements and rights-of-way reserved by Declarant herein is hereby reserved, granted and conveyed to the Association in order that the Association may exercise its rights and fulfill its obligations under this Declaration. An easement for the use and enjoyment of the Common Elements of the Project is hereby reserved, granted and conveyed to the persons who are, from time to time, members of the Association, which easement shall pass with the title to every Unit. Each member may, subject to the Association Rules and this Declaration and to the limitations contained therein and herein use and enjoy the Common Elements for the purposes for which they are intended on a non-exclusive basis in common with the other Owners, and their guests and invitees, and delegate such right to use and enjoy the Common Areas to his guests and invitees.

XII. AMENDMENT AND TERMINATION.

12.1. Amendment of General Terms of Declaration. Except as provided for by the provisions of C.R.S. § 38-33.3-101, *et. seq.*, and in this Declaration, the Declaration, including the Map, may be amended only by vote or agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Except as permitted by Colorado statute and as reserved and set forth herein, no amendment may create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Units or the uses to which any Unit is restricted, in the absence of unanimous consent of the Owners. Any provision contained in this Declaration that may be amended or additional provisions added to this Declaration shall be by the recordation of a written instrument or instruments.

12.2. Termination. Except in the case of a taking of all the Units by eminent domain, the Project may be terminated only by agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated. An agreement of Owners to terminate must be evidenced by their execution of a termination agreement or ratification thereof in the same manner as a deed, by the requisite number of Owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in the appropriate county and will be effective only upon recordation. The terms of the termination agreement shall comply with the provisions of C.R.S. § 38-33.3-218 with respect to termination and disposition of assets and proceeds of sale.

XIII. MISCELLANEOUS.

13.1. Duration. This Declaration shall remain in full force and effect until ownership of the Project and this Declaration are terminated, revoked or amended as herein provided.

13.2. Interpretation. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's

construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the covenants and provisions hereof.

13.3. Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

13.4. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

13.5. Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's right, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

13.6. Gender Neutral. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders, words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

13.7. Captions and Titles. All captions, titles or headings of the sections and subsection in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

13.8. Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

13.9. Statement of Development Rights of Declarant. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractors, shall be permitted to maintain during the period of any construction upon the Property, such facilities as in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to such construction office, parking areas, lighting and temporary parking facilities. In addition, Declarant, its agents, employees and contractors shall have the right to ingress and egress in and through all Units during the period of any construction and/or sale of the Units.

13.10. No Waiver. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

13.11. Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one years after the death of the last

survivor of the living descendants of the President of the United States in office as of the date this Declaration is recorded.

13.12. Violation as Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth may be abated or enjoined by any Owner, the Association, any member of the Board or the Managing Agent of the Association.

13.13. Written Notice of Holder's, Insurer's and Guarantors' Address. Wherever the Association is required to give notice to any holder, insurer or guarantor of a Mortgage on any Unit in the Project, such requirement shall be effective only after the Association has received written notice of the name and address of such holder, insurer or guarantor.

13.14. Notices. Each Owner shall register his address with the Association. Any notice permitted or required to be given under this Declaration shall be in writing and may be given via U.S. Mail, certified, postage prepaid, return receipt requested, addressed to such Owner at the address of record for such Owner's Unit with the San Miguel County Treasurer's Office, and shall be deemed given when postmarked.

13.15. Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of a Unit or any other property within the Project is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

13.16. Dispute Resolution. Venue for any dispute between the Association and or among the Unit Owners shall be in the courts of San Miguel County, Colorado. Colorado law shall govern. The prevailing party to any such dispute shall be awarded reasonable attorneys fees and costs incurred.

13.17. General Declaration/Mountain Village. The provisions of this Declaration, the Articles of Incorporation of the Association, the By-laws of the Association and the rules and regulations of the Association are subject and subordinate to Master Association Declaration and the Amended and Restated General Declaration for the Mountain Village recorded December 11, 2002 at Reception No 353668 of the records of the San Miguel County Clerk and Recorder, as amended and supplemented from time to time, as well as any and all other encumbrances, covenants and other documents of record.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized agent.

DECLARANT:
LuxWest Lodge Partners, LLC, a Colorado limited liability company
By: LuxWest Properties, Inc., a Colorado corporation, Manager

By: [Signature]
Kevin Randal Jones, President

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

The foregoing instrument was acknowledged before me this 10th day of December, 2009 by Kevin Randal Jones, President, LuxWest Properties, Inc., a Colorado corporation, Manager, LuxWest Lodge Partners, LLC, a Colorado limited liability company.

Witness my hand and official seal/
My commission expires: 12/18/12

[Signature]
Notary Public

