

262912

Paid \$200.00

State of Colorado. )  
County of San Miguel.)<sup>SS</sup>

Filed for record: December 29, 1989.  
Time: 9:20 A.M. and duly recorded in  
Book 461 Pages 264-303.

Gay Capps-Recorder

by *Katherine C. Capps*

Deputy

CONDOMINIUM DECLARATION

FOR

CRYSTAL AT THE VILLAGE,  
a condominium

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, BoRiver Corp., a Colorado Corporation and Crystal Venture I, L.P., a California Limited Partnership, hereinafter collectively called the "Declarant" is the owner of the following described real property situated in the Telluride Mountain Village, County of San Miguel, State of Colorado:

Tract A of Combined Lots 133 and 89.1, Telluride Mountain Village according to the Replat thereof filed in Book 1 at Page 823 of the records of San Miguel County, Colorado (hereinafter "Real Property"); and

WHEREAS, Declarant desires to establish a condominium project under the Condominium Ownership Act of the State of Colorado; and

WHEREAS, there is currently constructed on said real property improvements consisting of separately designated residential condominium units and other improvements; and

WHEREAS, Declarant does hereby establish a plan for the ownership in fee simple of the condominium estates subject to the easements, restrictions, reservations, rights of way, conditions, taxes and assessments of record and reservations in this Declaration consisting of the area or space contained in each of the air space units located in the building improvements and the co-ownership by the individual and separate owners thereof as tenants in common of all of the remaining property (except such property as is otherwise reserved herein), which property is hereinafter defined and referred to as the general common elements.

NOW THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land, shall be a burden and benefit to Declarant, Declarant's heirs, personal representatives, successors and assigns and any persons acquiring or owning interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees or assigns.

DEFINITIONS

1. The following definitions shall apply unless the context expressly provides otherwise.

a. "Unit" means one (1) individual air space which is contained within the unfinished perimeter walls, floors, ceilings, windows and doors of each unit as shown on the Condominium Map to be filed for record, together with all fixtures and improvements therein contained and not including any structural components of the building or other general common elements, if any, located within the unit.

b. "Condominium Unit" means the fee simple interest title in and to a unit, together with the undivided interest in the general common elements and the appurtenant limited common elements thereto.

c. "Owner" means the person or persons, as hereinafter defined, owning a unit in fee simple together with an undivided interest in fee simple in the general common elements in the percentage specified and established in this Declaration, including the Declarant, as long as any condominium unit, as hereinafter defined, is owned by Declarant.

d. "General common elements" means all of the project, as hereinafter defined, except the portions thereof which constitute units and also means all parts of a building or any facilities, improvements and fixtures which may be within a unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of a building or any part thereof or any other unit therein.

Without limiting the generality of the foregoing, the following shall constitute general common elements:

(1) all of the land and easements which are part of the property and related facilities designated as general common elements on the Condominium Map, and any recreational facilities and building(s) which may be located on the property;

(2) all foundation, columns, girders, beams and supports of a building;

(3) all deck or yard areas, porches, storage lockers or areas, balconies, patios, fireplaces, doors, windows, and parking spaces (subject to specific designations for individual owner use as limited common elements, as may be hereinafter defined and provided);

(4) the exterior walls of a building, the main or bearing walls within a building, the main or bearing subflooring and the roofs of a building;

(5) all entrances, exits, vestibules, halls, corridors, lobbies, lounges, linen rooms, trash storage or disposal areas or structures, laundry rooms, kitchen facilities, stairs, swimming pools, stairways and fire escapes, if any, not within any unit;

(6) all offices, utility, service and maintenance rooms, space, fixtures, apparatus, installations and central facilities for power, light, gas, telephone, television, hot water, cold water, heating, refrigeration, air conditioning, trash, incineration or similar utility, service or maintenance purposes, including furnaces, tanks, pumps, motors, fans, compressors, flues, vents, similar fixtures, apparatus, installations and facilities, water and sewer service lines, mains and connections; and

(7) all other parts of the project used common by the owners or convenient to the project's existence, maintenance and safety.

e. "Mortgage" means any mortgage, deed of trust or other security instrument by which a condominium unit or any part thereof is encumbered.

f. "Mortgagee" means any person named as the mortgagee or beneficiary under any mortgage by which the interest of any owner is encumbered.

g. "Limited common elements" means those general common elements which are reserved for the use of certain owners to the exclusion of the others, including and not limited to certain balconies, porches, patios, fireplaces, deck or yard areas, parking spaces and storage lockers or areas.

h. "Person" means an individual, corporation, partnership, combination, association, trustee or any other legal entity.

i. "Project" means all of the real property, condominium units, building(s) fixtures, personal property and improvements submitted to this declaration.

j. "Common expenses" means and includes:

(1) all sums lawfully assessed against the owners by the board, as hereinafter defined;

(2) expenses of administration, maintenance, repair or

replacement of the general common elements, as hereinafter defined;

(3) expenses declared common expenses by provisions of this Declaration and the Bylaws; and

(4) expenses agreed on as common expenses by a vote of the owners representing an aggregate ownership interest of at least fifty-one percent (51%) of the general common elements.

k. "Map" means the Condominium Map referred to in paragraph two (2) below.

l. "Building" means the building improvement comprising a part of the project.

m. "Association" means The Crystal at the Village Homeowners Association, Inc., a nonprofit corporation organized under the laws of Colorado, of which all owners of units shall be members and which shall be charged with the management and maintenance of the project.

n. "Board of Directors" or "board" means the governing body of the association.

o. "Managing agent" means the person employed by the board to perform the management and operational functions of the project.

p. "Bylaws" means the bylaws of the association.

q. "Articles" means the articles of incorporation of the association.

r. "Guest" means any agent, employee, tenant, guest, licensee or invitee of an owner.

s. "Declarant" means the Declarant named herein and such successor or successors as may be designated hereafter by Declarant by written notice duly recorded.

t. "Declaration" means this Declaration together with any supplement or amendment hereto recorded in the office of the Clerk and Recorder of San Miguel County, Colorado.

2. Map. There shall be filed for record in the office of the Clerk and Recorder for San Miguel County, Colorado, a map, hereinafter referred to as the "map", which map may be filed in whole or in part, depicting thereon:

a. the legal description of the property and a survey thereof;

- b. the name and general location of the project;
- c. the linear measurements and location, with reference to the exterior boundaries of the land, of the building(s) and all improvements on the land;
- d. floor plans and elevation plans of the building(s) showing the location, the designation and the linear dimensions of each unit and the designation of the limited common elements;
- e. the elevations of the unfinished interior surfaces of the floor and ceilings as established from a datum plan and the linear measurements showing the thickness of the perimeter and common walls of the building.

The map and any supplement(s) thereto shall contain the statements of (1) the Declarant, submitting the property to the provisions of this Declaration and (2) a registered land surveyor certifying that the map fully and accurately depicts the layout, measurements and location of all of the building(s) and improvements, the unit designations, the dimensions of such units and the elevations of the floors and ceilings. Declarant hereby reserves unto itself and the board the right, from time to time, without the consent of any owner being required, to amend the map and supplement(s) thereto, to conform the map to the actual location of any of the constructed improvements, to establish, vacate and relocate utility easements, access road easements and parking spaces and to establish certain general common elements as limited common elements.

In interpreting any and all provisions of this Declaration or the articles, bylaws, subsequent deeds to and/or mortgages of condominium units, 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 such unit indicated on the map.

3. Division into Units. Declarant does hereby submit the project to condominium ownership pursuant to the Colorado Condominium Ownership Act, and the project is hereby divided into four (4) condominium units. Each condominium unit shall consist of a separate fee simple estate in a particular unit and an appurtenant undivided fee simple interest in the general common elements. Each unit shall have appurtenant to it an undivided interest in the general common elements as set forth on Exhibit A attached hereto and incorporated herein by this reference.

4. Right to Combine Units. Declarant hereby reserves the right to physically combine the area or space of one (1) unit with the area or space of one (1) or more adjoining units provided, however, that Declarant shall not exercise the right without the written consent of any first mortgagee having an

interest in the units. In the event of any such physical combining of units to create a combined unit, such combined unit shall also include the combining of the fixtures and improvements and of the undivided interests in general common elements appurtenant to the units so combined. Declarant hereby reserves the right to designate and convey to any purchaser any of the combined units, the additional limited common elements appurtenant thereto, any walls, floors or other structural separations between the units so combined or any space which would be occupied by such structural separations or such space shall automatically become general common elements and shall no longer be limited common elements if the combined units become subject to separate ownership in the future. This reserved right in Declarant shall terminate on the conveyance by Declarant of all of the condominium units within the project or December 31, 1995, whichever event first occurs.

5. Limited Common Elements. Subject to the definition thereof, the limited common elements shall be identified herein or on the map and designated as appurtenant to a particular condominium unit herein or on the map or in a deed from the Declarant. Any door, window, balcony, porch or patio which is accessible from, associated with and adjoins a unit, deck or yard areas, parking spaces and storage lockers or any other areas identified as limited common elements on the map and designated as appurtenant to a particular condominium unit shall, without further reference thereof, be used in connection with the unit to which it is appurtenant to the exclusion of the use thereof by the other owners, except by invitation.

6. Inseparability of a Condominium Unit. An owner's undivided interest in the general common elements and in any appurtenant limited common elements shall not be separated from the unit to which they are appurtenant and shall be deemed to be conveyed or encumbered with the unit even though the interest is not expressly mentioned or described in a deed or other instrument.

7. Description of a Condominium Unit. Every deed, lease, mortgage, trust deed, will or other instrument may legally describe a condominium unit by its identifying unit number followed by the words Crystal at the Village, a condominium, with reference to the recorded Declaration and map and the street address of the property, which legal description shall be in the following form:

Unit     , Crystal at the Village, a condominium, as defined and described in the Condominium Declaration for Crystal at the Village, a condominium, recorded in Book 461 at Page 264 of the records of the Clerk and Recorder of San Miguel County, Colorado, and the condominium map for Crystal at the Village, a condominium, recorded in plat book 1 at page 982 of the

records of the Clerk and Recorder of San Miguel County, Colorado.

SAN MIGUEL COUNTY, COLORADO

also known as Unit \_\_\_\_\_, Sunnyridge Place, Telluride, Colorado

This description shall be deemed good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the unit but also the common elements appurtenant to it. This description shall be construed to include a nonexclusive easement for ingress and egress throughout the common elements appurtenant thereto to the exclusion of all third parties not lawfully entitled to use the same.

8. Title. A condominium unit may be held and owned by more than (1) person as joint tenants or as tenants in common or in any real property tenancy relationship recognized under the laws of the State of Colorado.

9. No Partition. The common elements shall remain undivided 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 the partition of a unit or a condominium unit between or among the owners thereof. Each owner expressly waives any and all such rights of partition he may have by virtue of his ownership of a condominium unit. A violation of this provision shall entitle the association to personally collect, jointly or severally, from the parties violating the same the actual attorney's fees, costs and other damages the association incurs in connection therewith.

10. Separate Taxation. Each condominium unit shall be deemed to be a separate parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the building(s), the property nor any use of the general common elements shall be deemed to be a parcel. The lien for taxes assessed to any condominium unit shall be confined to that condominium unit. No forfeiture or sale of any condominium unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other condominium unit. In the event that such taxes or assessments for any year are not separately assessed to each owner and rather are assessed on the property as a whole, each owner shall pay his proportionate share thereof in accordance with his ownership interest in the general common elements; and, in such event, such taxes or assessment shall be a common expense. Without limiting the authority of the board provided for elsewhere herein, the board shall have the authority to collect from the owners their proportionate share of taxes or assessments for any year in which taxes are assessed on the

property as a whole.

11. Certain Work Prohibited. No owner shall undertake any work in his unit which would jeopardize the soundness or safety of the project, reduce the value thereof or impair an easement or hereditament thereon or thereto; nor shall any owner enclose, by means of screening or otherwise, any balcony, yard, deck, patio or porch which is accessible from, associated with and which adjoins a unit without having first obtained the prior written approval of the board (which approval may be withheld for any reason) for such enclosure and with respect to the materials, plans and specifications for such enclosure. Structural alterations shall not be made by an owner to the exterior portions of his unit or to the building(s) or in the water, gas or steam pipes, electric conduits, plumbing or other fixtures connected therewith; nor shall an owner remove any additions, improvements or fixtures from the building(s) without the prior written approval of the board (which approval may be withheld for any reason) first having been obtained.

12. Liens Against Condominium Units -- Removal from Lien-- Effect of Part Payment.

a. No labor performed or materials furnished with the consent or at the request of an owner of a particular condominium unit or his agent shall be the basis for the filing of a lien pursuant to law against the condominium unit or other property of another owner not expressly consenting to or requesting the same, in writing signed by the owner except that express consent shall be deemed to be given by the owner of any condominium unit to the managing agent or the board in the case of emergency repairs. Labor performed or materials furnished for the general common elements, if duly authorized by the managing agent or the board of directors in accordance with the Declaration or bylaws, shall be deemed to be performed or furnished with the express consent of each owner and shall be the basis for the filing of a lien pursuant to law against each of the condominium units in the project.

b. In the event a lien is effected against two (2) or more condominium units, the owners of the separate condominium units may remove their condominium units from the lien by payment of the fractional or proportional amount attributable to each of the condominium units affected. Individual payment shall be computed by reference to the percentages appearing in this Declaration. Subsequent to payment, discharge or other satisfaction, the condominium unit shall be released from the lien paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any condominium unit not so released or discharged.



c. Each owner shall indemnify and hold each of the other owners harmless from and against liability or loss arising from the claim of any lien against the condominium unit of the owner or any part thereof for labor performed or for materials furnished in work on such owner's condominium unit. At the written request of an owner, the association shall enforce such indemnity by collecting from the owner of the condominium unit on which the labor was performed or materials furnished the amount necessary to discharge any such lien and all costs incidental thereto, including reasonable attorney's fees and costs. If not promptly paid, the association may proceed to collect the same in the manner provided herein for collection of assessments for the purpose of discharging the lien.

13. Use and Occupancy of Units. Each owner shall be entitled to the exclusive ownership and possession of his unit subject to the restrictions and reservations contained in this Declaration.

14. Use of General and Limited Common Elements. Each owner may use the general common elements and his appurtenant limited common elements in accordance with the purpose for which they are intended without hindering or encroaching on the lawful rights of the other owners. The association and/or the board may, from time to time, adopt rules and regulations governing the use of general and limited common elements and such rules and regulations shall be uniform and nondiscriminatory. Each owner, by the acceptance of his deed or other instrument of conveyance or assignment, agrees to accept and be bound by any such adopted rules and regulations.

15. Various Right and Easements.

a. Owner's Rights in Limited Common Elements. Subject to the other provisions of this Declaration, each owner, his family and guests shall have an exclusive right to use and enjoy the limited common elements designated herein in the map or in the initial deed from Declarant as appurtenant to the condominium unit owned by such owner.

b. Association Rights. The association, the board and the managing agent shall have a nonexclusive right and easement to make such use of and enter into or on the general common elements, the limited common elements and the units as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Declaration, the Articles, the Bylaws and/or rules and regulations as adopted or amended hereafter.

c. Owner's Easements for Access, Support and Utilities. Each owner shall have a nonexclusive easement for access between his unit and the roads and street adjacent to the project and the roads, streets and driveways in the project, over and on the lobby, halls, corridors, stairs, walks, bridges and exterior access and other easements which are part of the general common elements. Each owner shall have a nonexclusive easement in, on and over the general common elements, including the general common elements within the unit of another owner, for horizontal and lateral support of the unit which is part of this condominium unit, for utility service to that unit, including and not limited to water, sewer, gas, electricity, telephone and television service and for the release of smoke arising from any fireplace within a unit through the flue leading therefrom.

d. Easements for Encroachments. If any part of the general common elements encroaches or shall hereafter encroach on a unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a unit encroaches or shall hereafter encroach on the general common elements or on another unit, the owner of that unit shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either on the general common elements or on a condominium unit for purposes of marketability of title or otherwise. Encroachments referred to herein include and are not limited to encroachments caused by error in the original construction of the building(s), by error in the map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the project or any part thereof.

e. Easements in Units for Repair, Maintenance and Emergencies. Some of the general common elements are or may be located within a unit or may be conveniently accessible only through a particular unit. The association, board and managing agent and each owner shall have an easement, which may be exercised for any owner by the association, the board or the managing agent, as his agent, for access through each unit and to all general common elements, from time to time, during such reasonable hours as may be necessary for the location, placement, existence, maintenance, repair or replacement of any of the general common elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the general common elements or to another unit or for making repairs or replacements pursuant to paragraph sixteen (16) hereafter. Damage to the interior of any part of a unit resulting from the maintenance, repair, emergency repair or replacement of any of the general common elements or as a result of emergency repairs within another unit, at the instance of the association, the board or the managing agent, shall be a common expense of all of the owners. No diminution or abatement of

common expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any owner, such owner shall be solely responsible for the costs and expenses of repairing such damage.

f. Easements Deemed Appurtenant. The easements, uses and rights herein created for an owner shall be appurtenant to the condominium unit of that owner; and all conveyances of an other instruments affecting title to a condominium unit shall be deemed to grant and reserve the easements, uses and rights as are provided for herein, even though no specific reference to such easements, uses and rights appear in any such conveyance.

g. Emergency Easement. A nonexclusive easement for ingress and egress is hereby granted to the managing agent and its employees and to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons now or hereafter servicing the project to enter on all streets, roads and driveways located in the project and on the property in the performance of their duties.

16. Owners' Maintenance Responsibility. For purposes of maintenance, repair, alteration and remodeling, an owner shall be deemed to own and shall have the right and obligation to maintain, repair, alter and remodel the interior nonsupporting walls, the materials (such as and not limited to plaster, gypsum drywall, paneling, wallpaper, paint, wall and floor tile and flooring, not including the subflooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the unit and the unit's doors and windows and any and all new additions to a unit made by the owner thereof including, without limitation, any new fence or other structure enclosing a patio, balcony, yard or deck area. The obligation to maintain any fence or other structure enclosing a patio, balcony, yard or deck area originally conveyed by Declarant shall be that of the association. No owner shall, however, make any changes or alterations of any type or kind to the exterior surfaces of the doors or windows to his unit or to any general common elements (including and not limited to the exterior portions of his unit or any interior portions of the unit which may be visible from the outside of the unit). The owner shall not be deemed to own lines, pipes, wires, conduits or systems (which, for brevity, are hereinafter referred to as "utilities") running through his unit which serve one (1) or more other units, except as a tenant in common with the other owners. Each owner shall have the obligation to replace any finishing or other materials removed

with similar or other types or kinds or materials. An owner shall maintain and keep in good repair and in a clean, safe, attractive and sightly condition the interior of his unit, including the fixtures, doors and windows thereof and the improvements affixed thereto and such other items and areas as may be required in the bylaws. Also, an owner shall maintain, clean and keep in a neat and clean condition the fireplace, if any, within his unit and keep in a neat and clean condition and free and clear of snow, ice and any accumulation of water the deck, yard, porch, balcony and/or patio area adjoining and/or leading to a unit, if any, which areas are limited common elements appurtenant to such owner's condominium unit. All fixtures, appliances and equipment installed within a unit commencing at a point where the utilities enter the unit shall be maintained and kept in repair by the owner thereof. If any owner fails to carry out or neglects the responsibilities set forth in this paragraph, the board or the managing agent may fulfill the same and charge such owner therefor. Any expense incurred by an owner under this paragraph shall be the sole expense of the owner. An owners ability to modify or alter his unit shall be governed by the provisions of the by-laws.

17. Compliance with Provisions of Declaration, Articles and Bylaws of the Association. Each owner shall comply strictly with and shall cause each of his guests to comply strictly with all of the provisions of this Declaration and the articles and bylaws and the decisions, rules, regulations and resolutions of the association or the board adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit and reasonable attorney's fees, maintainable by the managing agent or board of directors in the name of the association on behalf of the owners or, in a proper case, by an aggrieved owner.

18. The Association.

a. General Purposes and Power. The association, through the board or the managing agent, shall perform functions and hold and manage property as provided in this Declaration so as to further the interests of owners of condominium units in the project. It shall have all powers necessary or desirable to effectuate such purposes.

b. Membership. The owner of a condominium unit shall automatically become a member of the association. The membership is appurtenant to the condominium unit of the owner and the ownership of the membership for a condominium unit shall automatically pass with fee simple title to the condominium unit. Each owner shall automatically be entitled to the benefits and subject to the burdens relating to the membership for his

condominium unit. If the fee simple title to a condominium unit is held by more than one (1) person, each owner of a condominium unit shall be a member of the association. Memberships in the association shall be limited to owners of condominium units in the project.

c. Board of Directors. The affairs of the association shall be managed by a board of directors which may by resolution delegate any portion of its authority to an executive committee or to a director or managing agent for the association. There shall be not less than three (3) or more than seven (7) members of the board of directors, the specific number to be set forth from time to time in the bylaws, all of whom shall be owners elected by owners. Regardless of the number of members of the board of directors, the terms of at least one-third (1/3) of such board shall expire annually. Notwithstanding anything to the contrary provided for herein however, until Declarant has conveyed one hundred percent (100%) of the condominium units in the project or until December 31, 1999, whichever event shall first occur, the members of the board of directors shall be appointed by Declarant or its successors or assigns and such members of the Board so appointed need not be owners.

d. Voting of Owners. The owner or owners of each condominium unit shall be entitled to one (1) vote for each such condominium unit owned by the owner or owners. In certain instances an owner's vote may be counted or weighed according to an owner's percentage interest in the general common elements, as is provided herein.

e. Bylaws and Articles. The purposes and powers of the association and the rights and obligations with respect to owners set forth in this Declaration may be supplemented or amplified by provisions of the articles and bylaws of the association but in the event of any inconsistency the provisions of this Declaration shall control.

#### 19. Certain Rights and Obligations of the Association.

a. 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 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 deal with the project on its destruction or obsolescence as hereinafter provided and to grant utility easements through any portion of the common elements. The acceptance by any person of any interest in any condominium 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 govern, manage, maintain, repair, rebuild, administer and regulate the project and to perform all of the duties required of it. Notwithstanding the above and subject to the provisions contained in this Declaration, unless at least three-fourths (3/4) of the first mortgagees of condominium units (based on one (1) vote for each first mortgage owned) and at least three fourths (3/4) of the owners (excluding Declarant) have given their prior written approval, the association shall not be empowered or entitled to:

(1) by act or omission seek to abandon or terminate the project;

(2) change the pro rata interest or obligations of any individual condominium unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(3) partition or subdivide any condominium unit;

(4) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer (excluding the granting of easements for public utilities or other public purposes consistent with the intended use of the general common elements) any of the general or limited common elements; and

(5) use hazard insurance proceeds for loss to the project (whether units or general common elements) for other than repair, replacement or reconstruction thereof.

Provided, however, no action set forth in paragraphs nineteen (19)(a)(1-5) above may be taken without the prior written approval of the owner and first mortgagee of the specific unit or units being affected.

b. General Common Elements. The association shall provide for the care, operation, management, maintenance, repair and replacement of the general common elements except as is provided for in paragraph sixteen (16) herein. Without limiting the generality of the foregoing, the obligations shall include the keeping of such general common elements in a good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from such general common elements which might impair access to the project or the units; keeping the project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the general common elements.

c. 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 or common-assessment basis. Such

activities, functions or services may include the providing of maid and cleaning service for individual units and those services reasonable and necessary to operate a first class resort residential facility. In addition, the association shall have the right to designate an exclusive rental manager for all short-term rentals.

d. Labor and Services. The association (1) 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 operation of the project, whether such personnel are furnished or employed directly by the association or by any person with whom or which it contracts; (2) may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the project or the enforcement of this Declaration; and (3) may arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services necessary and proper for the operation of a first class resort residential facility.

e. Property of Association. The association may pay for, acquire and hold or lease real property for the purposes set forth within this Declaration and tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to the provisions of this Declaration and rules and regulations of the association, each owner and each owner's family and guests may use such property. On 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 respective interests in the general common elements. A transfer of a condominium 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 purposes for which it is intended, without hindering or encroaching on the lawful rights of the other owners. The transfer of title to a condominium unit under foreclosure shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed condominium unit.

f. 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 nonowners on either a short-term basis or long-term basis and with or without charge as the association may deem desirable any portion of the general common elements or any condominium unit owned by the association. The rights granted to the association in this subparagraph shall only be used in the promotion of the

collective best interests of the owners. Further, the association shall have the right to grant utility easements under, through or over the general common elements which are reasonably necessary to the ongoing development and operation of the project.

g. Mortgagee Notification. The association shall notify each first mortgagee of any proposed material amendment of the association's articles or bylaws at least ten (10) days prior to the effective date of such amendment or change. Further, on the written request of any first mortgagee, such first mortgagee shall be entitled to receive the most recent annual financial statement of the association and written notice of all meetings of the association and such first mortgagee shall have the right to designate a representative to attend any such meeting. The cost of any notice shall be paid by the owner of the unit encumbered by said mortgage.

h. Enforcement by Association. The board may suspend any owner's voting rights in the association or the right of an owner to use the recreational facilities of the project during any period or periods during which such owner fails to comply with the association's rules and regulations or with any other obligations of such owner under this Declaration. The association may also take judicial action against any owner to enforce compliance with such rules, regulations or other obligations hereunder or in the bylaws contained or to obtain damages for noncompliance, all to the extent permitted by law. The board may impose a fine, not to exceed fifty dollars (\$50.00), on any owner for each violation or act of noncompliance by any such owner or his guest which charges shall constitute a lien on the owner's unit as per the provisions of paragraph 24, below.

i. Certificate. The board of directors may, from time to time, record a certificate of the identity and the mailing addresses of the persons then comprising the board of directors, together with the identity and address of the managing agent, if any there be. Such certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith regardless of the time elapsed since the date thereof.

j. Implied Rights. The association and its managing agent shall have and may exercise any right or privilege given to it expressly by this Declaration or the articles or bylaws or reasonably to be implied from the provisions of those documents or given or implied by law or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.



## 20. Assessment for Common Expenses.

a. Each owner, except Declarant, shall be obligated to pay the assessments imposed by the board of directors to meet the estimated common expenses. The assessments shall be made pro rata according to each owner's interest in and to the general common elements. Declarant shall have no obligation to pay the estimated common expense assessment on condominium units owned by Declarant imposed by the board to meet the common expenses, and Declarant agrees to pay to the association a sum equal to the difference between the quarterly cost of operating and maintaining the general common elements, exclusive of reserves, and the amount of funds payable by the other owners to the association. This obligation of Declarant to subsidize the operations of the association shall terminate when Declarant relinquishes its right to appoint the association's board or December 31, 1999, whichever event first occurs. Subsequent to the occurrence of either of the aforesaid events, Declarant shall be obligated as any owner in reference to condominium units then owned by Declarant to pay the estimated common expense assessments imposed by the board to meet the common expenses. Except as hereinbefore provided, the limited common elements shall be maintained as general common elements and owners having the exclusive use thereof shall not be subject to any special charges or assessments. Assessments for the estimated common expenses shall be due quarterly, in advance, on the first day of each quarter. The managing agent or board of directors shall prepare and deliver or mail to each owner an itemized annual budget showing the various estimated or actual expenses for which the assessments are made. Contribution for quarterly assessments shall be prorated if the ownership of a condominium unit commences on a day other than the first day of a quarter. The assessments made for common expenses shall be based on the requirements deemed to be such aggregate sum as the board of directors shall from time to time determine is to be paid or accrued to be paid to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the common elements, which sum may include, among other things, expenses of management; taxes and special assessments, until separately assessed; premiums for insurance of the types and kinds provided for in paragraph twenty-three (23) hereafter; landscaping and care of grounds; common lighting and heating; repairs and renovations; trash collections; firewood; cable television service; wages; water and sewer charges; all other utility charges associated with the common elements; all costs of snow removal, maintenance, repairs and replacement of any private roadway serving the project and utility costs therefor; legal and accounting fees; capital expenditures made by the board not exceeding five thousand dollars (\$5,000.00), in any one (1) calendar year (unless a greater amount is approved by a majority of the votes of the association); expenses and liabilities incurred by the managing agent or board of directors

under or by reason of this Declaration; deficits remaining from a previous period; and other costs and expenses relating to the general common elements. Further, it shall be mandatory for the board to establish and segregate, out of such quarterly assessments, a contingency or reserve fund for the repair, replacement and maintenance of those general common elements that must be replaced periodically. The omission or failure of the board of directors to fix the assessment for any quarter shall not be deemed a waiver, modification or a release of the owners from their obligation to pay same. Any owner or first mortgagee may, pursuant to C.R.S. Section 38-33-107 (1973, as amended), inspect the association's records of receipts and expenditures at any reasonable time during convenient weekday business hours; and, on ten (10) days' notice to the board of directors or managing agent, if any, and on payment of a reasonable fee, not to exceed twenty dollars (\$20.00), any owner or first mortgagee of such owner shall be furnished a statement of account setting forth the amount of any unpaid assessments or other charges due and owing from such owner. 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 are not deemed to be necessary to meet the common expenses. Each owner shall be obligated to pay all charges for any separately metered utilities servicing his unit. All utilities that are master metered shall be a common expense hereunder.

b. The board of directors shall have the right during any calendar year to levy and assess against all of the owners a special assessment for such purpose or purposes, in accordance with this Declaration, the articles or bylaws, as may be necessary to keep the project as a first-class resort residential condominium. Such special assessment shall be borne by the owners in accordance with each owner's interest in the general common elements and shall be due and payable as determined by the board of directors.

21. Assessment Reserves. The association may require an owner, other than Declarant, to deposit with the association an amount not exceeding three (3) times the amount of the original estimated quarterly common assessment, which sum shall be held by the association as a reserve to be used for paying such owner's quarterly common assessment and for working capital. This deposit shall not accrue any interest for the benefit of the owner. Such an advance payment shall not relieve an owner from making the regular quarterly payment of the quarterly common assessment as the same comes due. On the transfer of his condominium unit, an owner shall be entitled to a credit from his transferee for any unused portion thereof. Such reserves shall, at all times, remain as capital of the association.

22. Additions, Alterations and Improvement - General and Limited Common Elements. There shall be no special assessments in excess of five thousand dollars (\$5,000.00), levied by the board of directors in any one (1) calendar year or any capital additions, alterations or improvements of or to the general or limited common elements by the association requiring expenditure(s) in excess of five thousand dollars (\$5,000.00), in any one (1) calendar year without, in each case, prior approval by a majority of the votes in the association, except in the event of an emergency; the limitations set forth above shall not apply to any expenditures made by the association for maintenance and repair of the general common elements as set forth in paragraph nineteen (19) hereof or for repair in the event of damage, destruction or condemnation as provided in paragraph twenty-nine (29) and paragraph thirty (30) hereof.

23. Insurance.

a. Insurance Requirements Generally. The association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do insurance business in the State of Colorado. All such insurance shall name as insureds the association, the board of directors of the association, the association's officers, employees and agents, and, if practicable, the owners. All such insurance shall protect each of the insureds as if each were separately insured under separate policies. To the extent possible, such casualty insurance shall: (a) provide for a waiver of subrogation of the insurer as to claims against Declarants, the association, its directors, officers, employees and agents and against each owner and each owner's employees and guest; (b) provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of the association, its officers, directors, employees and agents or of any owner or such owner's employees or guests; (c) provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any owner or mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any owner or mortgagee; (d) contain a standard mortgage clause endorsement in favor of the mortgagee of any condominium unit or part of the project except a mortgagee of a condominium unit or part of the project who is covered by other and separate insurance; (e) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least ten (10) days prior written notice to the association and to each owner and to each mortgagee covered by any standard mortgage clause endorsement; and (f) provide that the insurer shall not have the option to restore the premises if condominium ownership of the project is to be terminated in accordance with the terms of this Declaration or the project is

to be sold in its entirety in accordance with the destruction, condemnation and obsolescence provisions of this Declaration. To the extent possible, public liability and property damage insurance shall provide for coverage of any cross liability claims of owners against the association or other owners and of the association against owners without the right of subrogation. Any insurance policy may contain such deductible provisions as the board of directors of the association deems consistent with good business practice.

The association shall obtain an independent appraisal of the project at least every three (3) years or more often if the board of directors deems it advisable; provided, however, that said appraisal may be performed by an appraiser employed by an insurance company.

Certificates of insurance coverage or copies of insurance policies shall be issued to each owner and each mortgagee who makes written request to the association for any such certificate or copy of an insurance policy.

The cost and expense of all insurance obtained by the association, except insurance covering additions, alterations or improvements made to a condominium unit by an owner or other insurance obtained at the request of and specifically benefiting any particular owner, shall be an expense of the association.

b. Casualty Insurance. The association shall obtain and maintain casualty insurance covering the project and each condominium unit covering loss or damage by fire and such other hazards as are covered under standard extended coverage policies, with vandalism and malicious mischief endorsements, and if available and if deemed appropriate by the association, other casualty risks, for the full insurable replacement cost of the project, including each condominium unit with an inflation guard endorsement that automatically increases the amount of coverage by a fixed percentage at least quarterly. At the option of the association such insurance may also cover additions, alterations or improvements to a condominium unit made by an owner if the owner reimburses the association for any additional premiums attributable to such coverage. The association shall not be obligated to apply any insurance proceeds to restore a condominium unit to a condition better than the conditions existing prior to the making of additions, alterations or improvements by an owner in the absence of insurance covering such additions, alterations or improvements as aforesaid.

c. Public Liability and Property Damage Insurance. The association shall obtain and maintain comprehensive public liability and property damage insurance covering personal liability, property damage liability and automobile personal and property damage liability of the association, its officers,

managers, employees and agents and of each owner and each owner's employees and guests, arising in conjunction with ownership, operation, maintenance, occupancy or use of the project or of any condominium unit in the project with limits of no less than \$1,000,000 for each occurrence involving bodily injury liability and/or property damage liability.

d. Workmen's Compensation and Employer's Liability Insurance. The association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

e. Insurance by Owners. Insurance coverage on contents, merchandise, furnishings, including cabinets, counters, carpet and the floor coverings, draperies, oven range, refrigerator, wallpaper, disposal, plumbing fixtures such as tubs and sinks and other items of personal or other property belonging to an owner and public liability coverage within each unit shall be the sole and direct responsibility of the unit owner thereof, and the board of directors, the association and the managing agent shall have no responsibility therefor.

Any insurance policy obtained by an owner shall be such that it will not diminish or adversely affect or invalidate any insurance or insurance recovery under policies carried by the association and shall, to the extent possible, contain a waiver of the right of subrogation by the insurer as to any claim against the association, its officers, managers, agents and employees and against the owners and their employees and guests. A copy of any insurance policy obtained by an owner shall be furnished to the association on the written request of the association.

f. Receipt and Application of Insurance Proceeds. Except as some particular person has a legal right to receive insurance proceeds directly, all insurance proceeds and recoveries shall be paid to and received by the association. All insurance proceeds or recoveries received by the association shall be applied by the association; first, as expressly provided elsewhere in this Declaration; second, to the owners or persons whom the association may determine are legally or equitably entitled thereto; and third, the balance, if any, to owners in proportion to their respective interests in common elements.

g. Other Insurance by Association. The association shall have the power and authority to obtain and maintain other and additional insurance coverage, including casualty insurance covering personal property of the association, fidelity bonds or insurance covering employees and agents of the association and insurance indemnifying officers, managers, employees and guests of the association.

h. Owner-Increased Premiums. In the event that, as a consequence of the hazardous use of any condominium unit, or of any owner installed improvements to any condominium unit, the premiums of any policy of insurance purchased by the association are increased, or special policy is required, the cost of such increase or specific policy shall be payable by the owner of such condominium unit.

24. Lien for Nonpayment of Common Expenses, Penalties and Fines. All sums assessed by the board pursuant to any provisions of this Declaration, including, without limitation, the share of common expenses chargeable to any condominium unit, attorney's fees, costs and fines, shall constitute a lien on such condominium unit superior (prior) to all other liens and encumbrances, except (1) tax and special assessment liens on the condominium unit in favor of any governmental assessing unit and (2) all sums unpaid on a first mortgage of record recorded prior to the lien for assessments, including all unpaid obligatory sums as may be provided by such encumbrance.

a. If any assessment shall remain unpaid after twenty (20) days after the due date thereof, such unpaid sums shall bear interest from and after the due date thereof at the rate of eighteen percent (18%) per annum; and the board of directors may impose a late charge on such defaulting owner in an amount not to exceed twenty five dollars (\$25.00) to cover the extra cost and expenses involved in handling such delinquent assessments.

b. The association may evidence its lien by recording in the office of the Clerk and Recorder of the County of San Miguel, Colorado, written notice which shall set forth the amount of such unpaid indebtedness, the name of the owner of the condominium unit, a description of the condominium unit and be signed by one (1) of the board of directors or the managing agent. Such lien may be enforced by foreclosure of the defaulting owner's condominium unit by the association in like manner as a mortgage on real property on the recording of a notice or claim thereof. In any such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees and court costs. The owner shall also be required to pay to the association the quarterly assessment for the condominium unit during the period of foreclosure, and the association shall be entitled to the appointment of a receiver to collect the same. The board of directors shall have the power to bid on the condominium unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

c. Any encumbrancers holding a lien on a condominium unit may pay but shall not be required to pay any unpaid common expenses payable with respect to such condominium unit; and, on

such payment, such encumbrances shall have a lien on such condominium unit for the amounts paid of the same rank as the lien of his encumbrance, provided any first mortgagee who acquires a condominium unit by foreclosure or by a deed in lieu thereof shall acquire title to such condominium unit free and clear of any lien for unpaid common expenses and shall only be responsible for common expenses arising after the date on which such first mortgagee acquires title to the condominium unit.

d. The association shall, on request and on the payment of \$25.00 to the association, deliver written notice to the first mortgagee of a condominium unit of any assessments remaining unpaid for longer than thirty (30) days after the same are due as well as of any other default of an owner hereunder known to the association which is not cured within sixty (60) days.

e. Declarant states, in accordance with the requirements of the Colorado Condominium Ownership Act, that it is possible that liens other than mechanic's liens, assessment liens and tax liens may be obtained against the general common elements, including judgment liens and mortgage liens.

f. Each owner hereby agrees that the association's lien on a condominium unit for assessments as hereinbefore described shall be superior to the Homestead Exemption provided by C.R.S. Section 38-41-201, et seq. (1973, as amended) and each owner hereby agrees that the acceptance of the deed or other instrument of conveyance in regard to any condominium unit within the project shall signify such grantee's waiver of the Homestead right granted in that section of the Colorado statutes.

g. Any recorded lien for nonpayment of the common expenses may be released by recording a release of lien executed by a member of the board of directors, the managing agent or an attorney representing the association.

25. Owners' Obligations for Payment of Assessments, Penalties or Fines. The amount of the common expenses and any penalties or fines provided for herein or any special assessment assessed against each condominium unit shall be the personal and individual debt of the owner or owners thereof at the time the assessment is made. Suit to recover a money judgment for unpaid common expenses or special assessments and costs of suit and attorney's fees shall be maintainable without foreclosing or waiving the lien securing same. No owner may exempt himself from liability for his contribution towards the common expenses or any special assessment by waiver of the use or enjoyment of the general common elements or by abandonment of his condominium unit.

26. Liability for Common Expenses on Transfer of Condominium Unit.

a. On payment of a reasonable fee not to exceed twenty-five dollars (\$25.00), and on fourteen (14) days prior written notice from any owner or any mortgagee or prospective mortgagee of a condominium unit, the association, by its managing agent or board of directors, shall issue a written statement setting forth the amount of the unpaid common expenses, if any, with respect to the subject condominium unit, the amount of the current quarterly assessment, the date such assessment becomes due, the amount of any assessment reserve on deposit with the association and any credit for advanced payments for prepaid items, which statement shall be conclusive on the association in favor of all persons who rely thereon in good faith. Unless such request for such a statement shall be complied with within thirty (30) days from receipt thereof, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

b. The grantee of a condominium unit, except a first mortgagee who acquires a condominium unit by foreclosure or a deed in lieu of foreclosure, shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his proportionate share of the common expenses up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor provided, however, that on payment of a reasonable fee not to exceed twenty-five dollars (\$25.00), on written request, any such prospective grantee shall be entitled to a statement from the managing agent or board of directors setting forth the amount of the unpaid common expenses, if any, with respect to the subject condominium unit, the amount of the current quarterly assessment, the date that such assessment becomes due, the amount of any assessment reserve on deposit with the association and any credit for advanced payments for prepaid items, which statement shall be conclusive on the association in favor of all persons who rely thereon in good faith. Unless such request for such a statement shall be complied with within thirty (30) days from the receipt thereof, such requesting grantee shall not be liable for and the condominium unit conveyed shall not be subject to a lien for any unpaid assessments against the subject condominium unit. The provisions contained in this paragraph shall not apply on initial transfer of the condominium units by Declarant.

27. Mortgaging a Condominium Unit - Priority. Any owner shall have the right from time to time to mortgage or encumber his condominium unit by deed of trust, mortgage or other security instrument. The owner of a condominium unit may create junior mortgages (junior to the lien, deed of trust or other encumbrance of the first mortgagee) on his condominium unit on the following



conditions: (1) that any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, liens for common expenses and other obligations created by this Declaration, the articles, the bylaws and rules and regulations promulgated thereunder, and (2) that the mortgagee under any junior mortgage shall release for the purpose of restoration of any improvements on the mortgaged premises all of his right, title and interest in and to the proceeds under all insurance policies effected and placed on the project by the association. Such release shall be furnished forthwith by a junior mortgagee on written request of the managing agent or one (1) or more of the board of directors of the association, and if not furnished, may be executed by the association as attorney in fact for such junior mortgagee.

28. Restrictive Covenants and Obligations.

a. No Imperiling of Insurance. No owner and no owner's guests shall do anything or cause anything to be kept in or on the project which might cause cancellation of any insurance effected and placed on the project by the association.

b. No Violation of Law. No owner and no owner's guests shall do anything or keep anything in or on the project which would be immoral, improper, offensive or in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

c. No Noxious, Offensive, Hazardous or Annoying Activities. No noxious or offensive activity shall be carried on or any part of the project; nor shall anything be done or placed on or in any part of the project which is or may become a nuisance or cause embarrassment, disturbance or annoyance to other owners or their guests. No activity shall be conducted on any part of the project and no improvements shall be made or constructed on any part of the project which are or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the project which is unreasonably loud or annoying. No odor shall be emitted on any part of the project which is noxious or offensive to others. No light shall be emitted from any part of the project which is unreasonably bright or causes unreasonable glare.

d. No Unsightliness. No unsightliness or waste shall be permitted on or in any part of the project. Without limiting the generality of the foregoing; no owner shall keep or store anything (except in designated storage areas) on or in any of the decks or general common elements; no owner shall hang, erect, affix or place anything on any of the decks or general common elements; and, nothing shall be placed on or in windows or doors of units or the decks, which would or might create an unsightly appearance.

e. Restriction on Animals. No animals of any kind, including domesticated dogs or cats, livestock, reptiles and birds, shall be kept on any part of the project unless such is expressly permitted by the bylaws of the association and regulated by rules and regulations promulgated by the association.

f. Restriction on Signs. No signs or advertising devices of any nature shall be erected or maintained on any part of the project without the prior written consent of the board. The board shall permit the placing of at least (1) sign of reasonable size and dignified form to identify the project and the condominium units therein. So long as any condominium unit owned by Declarant in the projects remains unsold, no owner shall be permitted to place any sign on the project or on his unit or on any building advertising his condominium unit for sale or lease.

g. No Violation of Rules. No owner and no owner's guests shall violate the rules and regulations adopted from time to time by the association, whether relating to the use of units, the use of general or limited common elements or otherwise.

h. Owner Caused Damages. If, due to the act or neglect of an owner or such owner's guests or family, loss or damage shall be caused to any person or property, including the project or any unit therein, such owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the association and the carrier of the insurance has waived its rights of subrogation against such owner. The amount of such loss or damage may be collected by the association from such owner as an assessment against such owner by legal proceedings or otherwise, and such amount (including reasonable attorney's fees) shall be secured by a lien on the condominium unit of such owner as provided hereinabove for assessments or other charges.

i. Parking of Vehicles. Parking of any and all vehicles on the project shall be subject to the rules and regulations of the association.

j. Restrictions on Parking and Storage. No part of the project, including the public streets and private streets, drives or parking areas, unless specifically designated by the association therefor, shall be used as a parking, storage, display or accommodation area for any type of trailer, camping trailer, boat trailer, hauling trailer, running gear, boat or accessories thereto, truck or recreational vehicle, except as a temporary expedience for loading, delivery, emergency, etc. (provided this restriction shall not restrict trucks or other commercial vehicles with the project which are necessary for the

construction or maintenance of the project).

Determination with respect to whether a particular activity or occurrence shall constitute a violation of this paragraph twenty-eight (28) shall be made by the board of directors and shall be final.

29. Association as Attorney-in-Fact - Damage and Destruction - Obsolescence. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the project on its destruction, repair or obsolescence.

Title to any condominium unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any owner shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint the association their attorney-in-fact for the purpose of dealing with the project on its destruction, repair or obsolescence as is hereinafter provided. As attorney-in-fact, the association, by its president and secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of an owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvements to substantially the same condition in which the improvements existed prior to the damage with each unit and the general common elements and limited common elements having substantially the same vertical and horizontal boundaries as before. Except as is otherwise herein provided, the proceeds of any insurance collected shall be available to the association for the purpose of repair, restoration or replacement unless the owners and first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction.

a. In the event of damage or destruction to the project to the extent of not more than sixty-six and two-thirds percent (66 2/3%) of the total replacement cost thereof, not including land, due to fire or other disaster, the insurance proceeds if sufficient to reconstruct the improvements shall be applied by the association, as attorney-in-fact, to such reconstruction; and the improvements shall be promptly repaired and reconstructed. The association shall have full authority, right and power, at attorney-in-fact, to cause the repair and restoration of the improvements.

b. If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is to the extent of not more than sixty-six and two-thirds percent (66 2/3%) of the total replacement cost of the project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the owners and their condominium units. Such deficiency assessment shall be a common expense and made pro rata according to each owner's interest in the general common elements and shall be due and payable within thirty (30) days after written notice thereof. The association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds and such assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided hereinbefore. In addition thereto, the association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided; and, if not so paid, the association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the association, as attorney-in-fact. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the association, as attorney-in-fact, in the following order.

- (1) For payment of taxes and special assessment liens in favor of any assessing entity.
- (2) For payment of the balance of the lien of any first mortgage.
- (3) For payment of unpaid common expenses, including the pro rata share of the deficiency assessment.
- (4) For payment of junior mortgages and encumbrances in the order of and to the extent of their priority.
- (5) The balance remaining, if any, shall be paid to the owner.

c. If the project is destroyed or damaged to the extent of more than sixty-six and two-thirds percent (66 2/3%) of the total replacement cost thereof, not including land, the board shall adopt a plan for the repair and reconstruction of the project; and all owners shall be bound by the terms and provisions of such plan unless the owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements and at least seventy-five percent (75%) of the first mortgagees (based on one (1) vote for each first mortgage owned) vote not to adopt such plan within one

hundred (100) days after the damage or destruction. The association shall have the right to use, in accordance with such plan, all proceeds of insurance for such destruction or damages as well as the proceeds of an assessment to be made against all of the owners and their condominium units. Any assessment made in connection with such plan shall be a common expense and made pro rata according to each owner's percentage interest in the general common elements and shall be due and payable as provided by the terms of such plan and not sooner than thirty (30) days after written notice thereof. The association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an owner to pay the assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided hereinabove. In addition thereto, the association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such assessment within the time provided; and, if not so paid, the association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the association. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph b. (1) through (5) of this paragraph.

d. If the project is damaged or destroyed to the extent of more than sixty-six and two-thirds percent (66 2/3%) of the total replacement cost thereof, not including land, and if the owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements and at least seventy-five percent (75%) of the first mortgagees (based on one (1) vote for each first mortgage owned) vote not to adopt a plan for repair and reconstruction, the association shall forthwith record a notice setting forth such fact or facts; and, on the recording of such notice by the association's president and secretary, the entire remaining project shall be sold by the association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the map and the articles and bylaws. The insurance settlement proceeds shall be collected by the association, and such proceeds shall be divided by the association according to each owner's interest (as such interests appear on the policy or policies); and such divided proceeds shall be paid into separate accounts, each such account representing one (1) of the condominium units. Each such account shall be in the name of the association and shall be further identified by the condominium unit designation and the name of the owner. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the entire project. Such apportionment shall be

based on each owner's percentage interest in the general common elements. The total funds of each account shall be used and disbursed, without contribution from one (1) account to another by the association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph b. (1) through (5) of this paragraph. The provisions contained in this subparagraph shall not hinder the protection given to a first mortgagee under a mortgagee endorsement.

e. The owners representing an aggregate ownership interest of seventy five percent (75%) or more of the general common elements may agree that the general common elements are obsolete and adopt a plan for the renewal and reconstruction provided the plan shall have the approval of seventy-five percent (75%) or more of the first mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded; and the expense of renewal and reconstruction shall be payable by all of the owners as a common expense, whether or not they have previously consented to the plan or renewal and reconstruction. The association, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such assessment within the time provided; and, if not so paid, the association shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be sold by the association. The delinquent owner shall be required to pay to the association the costs and expenses for filing the notices, interest at the rate of eighteen percent (18%) per annum on the amount of the assessment and all reasonable attorney's fees and costs. The proceeds derived from the sale of the condominium unit shall be used and disbursed by the association, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph b. (1) through (5) of this paragraph.

f. The owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements may agree that the condominium units are obsolete and the same should be sold. Such plan (agreement) must have the unanimous approval or consent of every first mortgagee. In such instance, the association shall forthwith record a notice setting forth such fact or facts; and, on the recording of such notice by the association's president and secretary, the entire project shall be sold by the association, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration, the map, the articles and the bylaws. The sales proceeds shall be apportioned between the owners on the basis of each owner's percentage interest in the general common elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one (1) condominium unit. Each such account shall be in the name of the association and shall be further identified by the condominium designation

and the name of the owner. From each separate account, the association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts without contribution from one (1) account to another for the same purposes and in the same order as is provided in subparagraphs b. (1) through (5) of this paragraph.

### 30. Condemnation.

a. Consequences of Condemnation. If, at any time or times during the continuance of condominium ownership pursuant to this Declaration, all or any part of the project shall be taken condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this paragraph thirty (30) shall apply.

b. Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "condemnation award", shall be payable to the association.

c. Complete Taking. In the event the entire project is taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, condominium ownership pursuant to this Declaration shall terminate. The condemnation award shall be apportioned among the owners in proportion to their respective undivided interests in the general common elements, provided that, if a standard different from the value of the project as a whole is employed to measure the condemnation award in the negotiation, judicial decree or otherwise, in determining such share the same standard shall be employed to the extent it is relevant and applicable.

d. Partial Taking. In the event less than the entire project is taken or condemned or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each owner shall be entitled to a share of the condemnation award to be determined in the following manner. As soon as practicable, the association shall reasonably and in good faith allocate the condemnation award among compensation, damages and other proceeds and shall apportion the amounts so allocated among the owners as follows:

(1) The total amount allocated to taking of or injury to the general common elements shall be apportioned among the owners in proportion to their respective undivided interests in the general common elements.

(2) The total amount allocated to severance damages shall be apportioned to those condominium units which were not taken or condemned.

(3) The respective amounts allocated to the taking of or injury to a particular unit and/or improvements an owner had made within his own unit shall be apportioned to the particular condominium unit involved.

(4) The amount allocated to consequential damages and any other takings or injuries shall be apportioned as the association determines to be equitable in the circumstances.

If an allocation of the condemnation award is already established in negotiation, judicial decree or otherwise, in allocating the condemnation award, the association shall employ such allocation to the extent it is relevant and applicable. Any distribution of the condemnation award made pursuant to this subparagraph shall be made by checks payable jointly to the owners and their first mortgagees.

e. Distribution. The association shall, as soon as practicable, determine the share of the condemnation award to which each owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable, provided, in the event of a complete taking, such distribution shall be made in the same manner as is provided in paragraph twenty-nine (29)b. of this Declaration.

f. Mortgagee Notice. The association shall give timely written notice to each first mortgagee of the commencement of any condemnation or eminent domain proceedings and shall notify the first mortgagees in the event of the taking of all or any part of the general common elements.

g. Reorganization. In the event a partial taking results in the taking of a complete unit, the owner thereof automatically shall cease to be a member of the association; and such owner's interest in the general common elements shall thereupon terminate and the association, as attorney-in-fact for such owner, may take whatever action is necessary and execute such documents as are necessary to reflect such termination. Thereafter the association shall reallocate the ownership and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the owners of remaining condominium units for amendment of this Declaration as provided in paragraph thirty-one (31)b. hereof.

### 31. Miscellaneous.

a. Duration of Declaration. All of the provisions contained in this Declaration shall continue and remain in full force and effect until condominium ownership of the project and this Declaration are terminated, revoked or amended as hereinafter provided.



b. Amendment and Termination. Any provision contained in this Declaration may be amended or additional provisions may be added to this Declaration and condominium ownership of the project may be terminated or revoked by the recording of a written instrument or instruments specifying the amendment or addition or the fact of termination and of the Clerk and Recorder of the County of San Miguel, Colorado, of condominium units representing an aggregate ownership interest of seventy-five percent (75%), or more, of the general common elements and first mortgagees whose liens encumber an aggregate ownership interest of seventy-five percent (75%) or more of the general common elements (except no provision of this Declaration requiring the approval or consent of more than seventy-five percent (75%) of such first mortgagees may be amended without the consent of at least the minimum number of first mortgagees whose approval or consent is required under such provision) provided, however, in no event shall the undivided interest of an owner in the general common elements be decreased without the unanimous consent of each owner and each first mortgagee and provided, further, so long as Declarant continues to own one (1) or more condominium units, which he is holding for rental or sale, no right of Declarant contained in this Declaration may be amended or modified without the consent of Declarant. The consent of any junior mortgagees shall not be required under the provisions of this paragraph. The association shall, at least ten (10) days prior to the effective date of any amendment to this Declaration, notify all first mortgagees of record of such amendment.

c. Effect of Provisions of Declaration. Each provision of this Declaration and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration shall:

(1) be deemed incorporated in each deed or other instrument by which right, title or interest in the project or in any condominium unit is granted, devised or conveyed, whether or not set forth or referred to in such deed or instrument;

(2) by virtue of acceptance of any right, title or interest in the project or in any condominium unit by an owner be deemed accepted, ratified, adopted and declared as a personal covenant of such owner and, as a personal covenant, shall be binding on such owner and such owner's heirs, personal representatives, successors and assigns and shall be deemed a personal covenant to, with and for the benefit of the association and not to, with or for the benefit of any other non-aggrieved owner;

(3) be deemed a real covenant by Declarant, for itself, its successors and assigns and also an equitable servitude running, in each case, as a burden with and on the title to the project and each condominium unit and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the project and each condominium unit; and

(4) be deemed a covenant, obligation and restriction secured by a lien in favor of the association burdening and encumbering the title to the project and each condominium unit in favor of the association.

d. Protection of Encumbrancer. Subject to the provisions of paragraph twenty-seven (27) above, no violation or breach of or failure to comply with any provision shall affect, defeat, render invalid or impair the lien of any first mortgage or other lien on any condominium unit taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of the County of San Miguel, Colorado, prior to the time of recording in such office an instrument describing the condominium unit and listing the name or names of the owner or owners of fee simple title to the condominium unit and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce, affect, defeat, render invalid or impair the title or interest of the holder of any such first mortgage or other lien or the title or interest acquired by any purchaser on foreclosure of any such first mortgage or other lien result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser on foreclosure shall, however, take subject to this Declaration provided, however, that violation or breaches of or failure to comply with any provision of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

e. Supplemental to Law. The provisions of this Declaration shall be in addition and supplement to the Condominium Ownership Act of the State of Colorado and to all other provisions of law.

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

g. Registration by Owner of Mailing Address. Each owner shall register his mailing address with the association and except for quarterly statements and other routine notices which shall be personally delivered or sent by regular mail, all other

notices or demands intended to be served on an owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the owner at such registered mailing address. All notices, demands or other notices intended to be served on the board of directors of the association or the association shall be sent certified mail, postage prepaid, to:

BoRiver Corp.  
Attn: Rosemary Spurling  
2091 E. Valley Pkwy., #2B  
Escondido, CA 92027

Crystal Venture I, L.P.  
c/o Julie Dillon  
309 Laurel Street  
San Diego, CA 92101

agent for service, until such address is changed by a notice of address duly recorded with the office of the Secretary of State of Colorado.

h. Successors in Interest. This Declaration shall be binding on 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.

i. Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

j. Caption. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

k. 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.

l. Sales and Construction Facilities and Activities 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 and/or sale of the condominium units in the project, on such portion of the project as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of condominium units, including without limitation, a business office, storage area, construction yards, signs, flags, model units, sales office, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of condominium units. 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 the construction and/or sale of the condominium units for the purpose of any required or desired

sale of the condominium units for the purpose of any required or desired refurbishment, construction, maintenance or repair to such units or the building or any part thereof.

m. 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, such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States, Ronald Reagan and Governor of Colorado, Roy Romer.

32. Recreational Facilities. The recreational facilities of the project, shall be subject to any rules and regulations promulgated by the association; and same shall be available for the use of all owners and their guests.

33. New Additions of General Common Elements and Limited Common Elements. The Declarant does not intend to make any major additions of general or limited common elements other than is contemplated in paragraph 36, below, regarding expansion of the project. If the association subsequently would make any additions, however,

a. each owner would be responsible for his percentage of any increase in common expenses created thereby,

b. each owner would own, as a tenant in common with the other owners, an undivided percentage interest in the new additions in accordance with the interest set forth in paragraph 3, above,

c. each owner's relative percentage interest in the existing general and limited common elements would be unaffected by such additions, and

d. each owner's voting interest in the association would be unaffected by the additions.

34. Certificate of Identity. There shall be recorded in the real property records of San Miguel County, Colorado from time to time a certificate of identity which shall include the addresses of the persons then comprising the management body (directors and officers) together with the identity and address of the managing agent. Such certificate shall be conclusive evidence of the information contained therein in favor of any person relying thereon in good faith regardless of the time elapsed since the date thereof.

35. Time Sharing. Subject to applicable governmental regulations, timesharing or other similar, legally recognized time span or fractional fee ownership interests shall be

permitted in Crystal at the Village, a condominium.

36. Expansion of Project - Reservation of Right to Expand. Declarant reserves the right to expand this condominium ownership project to include additional condominium units and or any other improvements within any area lying on lands within or adjacent to the project although unit type may be different and density may be greater or less than existing in the project. Any additional units or other improvements shall be of the same general quality or better than the units presently existing in the project. The additional units or other improvements, if constructed, may be located on all or part of said adjacent lands or within the common elements of the project.

a. Supplemental Declarations and Supplemental Condominium maps. The expansion may be accomplished by filing for record by Declarant in the San Miguel County, Colorado, real estate records no later than fifteen (15) years from the date of the Declaration a supplement to this Declaration describing the additional units, improvements and those matters provided for in subparagraph d. of this paragraph 36 together with a supplemental condominium map containing the same information with respect to the additional units and/or improvements as was required on the original condominium map with respect to the presently existing buildings and improvements or as otherwise required by law.

b. Expansion of Definitions. In the event of expansion, the definitions used in this Declaration automatically shall encompass and refer to the project as so expanded. All conveyances of condominium units after an expansion shall be effective to transfer rights in the project as expanded by use of the form of description set forth in paragraph 7 hereof.

The recordation in the San Miguel County, Colorado, real estate records of a supplemental condominium map incident to any expansion shall operate automatically to grant, transfer and convey to the owners of condominium units in the project as it existed before the expansion an undivided interest in the new common elements added to the project as the result of the expansion. The recordation shall also operate to expand the security interest of any then mortgagee of a condominium in the project as it existed before the expansion to include the undivided interest acquired by the owner of the condominium unit in the common elements so added to the project. The recordation shall also operate automatically to grant, transfer and convey to the owners of condominium units on the real property described in the supplemental declaration an undivided interest in the previously existing common elements of the project.

c. Declaration Operative on New Units. Any such additional units and improvements shall be subject to all the terms and conditions of this Declaration and of any supplemental

declaration or declarations, and shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein on placing the supplemental condominium map and supplemental condominium declaration of public record in the San Miguel County, Colorado, real estate records.

d. Computation of Fractional Undivided Interest in Common Elements. For the purpose of computing the undivided interest of owners in common elements, each of the condominium units has been assigned an undivided percentage interest determined by Declarant, as is set forth in paragraph 3, above, which determination has been made on an equal "per unit" basis without comparing the square foot area within a unit to the total square foot area of all units in the project. The undivided interest in common elements constituting part of any existing or newly added condominium unit shall be recomputed by comparing the square foot area within a unit to the total square foot area of all units in the project when and if the expansion provided for herein is completed. Thereupon, this Declaration shall be accordingly amended to reflect these adjusted interests and to allocate among all units these interests in common elements created as the result of the addition to the project of the new condominium units.

e. Reservation of Easement. Declarant reserves for fifteen (15) years an easement over the Real Property of the Project to the extent necessary for the construction of the additional buildings and improvements.

f. Expiration of Right to Expand. In the event the construction of the expansion is not accomplished within fifteen (15) years from the date of execution of this Declaration, this reservation of the right to expand by the Declarant shall be null and void.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration this 6<sup>th</sup> day of December, 1989.

CRYSTAL VENTURE I, L.P.,  
a California Limited Partnership

By \_\_\_\_\_  
General Partner

BORIVER CORP., a Colorado  
Corporation

By \_\_\_\_\_  
(President)

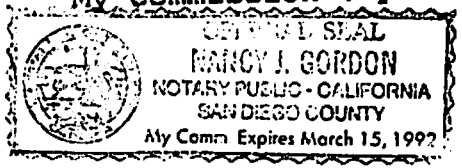
By \_\_\_\_\_  
(Secretary)

STATE OF CALIFORNIA )  
COUNTY OF San Diego ) ss.

The foregoing instrument was acknowledged before me this 6 day of December, 1989, by John Bogaert as General Partner of Crystal Venture I, L.P.

Witness my hand and official seal.

My commission expires: 3-15-92



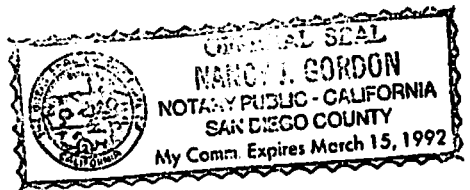
Nancy J. Gordon  
Notary Public

STATE OF California )  
COUNTY OF San Diego ) ss.

The foregoing instrument was acknowledged before me this 6 day of December, 1989, by John Bogaert, as President, and Rosemary Spurling, as Secretary of BoRiver Corp., a Colorado Corporation.

Witness my hand and official seal.

My commission expires: March 15 1992



Nancy J. Gordon  
Notary Public

HSK/1193

EXHIBIT A  
TO THE DECLARATIONS  
OF CRYSTAL AT THE VILLAGE, A CONDOMINIUM

<u>Unit Number</u>	<u>Percentage Interest in the Common Elements</u>
10	25.0
12	25.0
14	25.0
18	25.0
	<hr/>
TOTAL	100.00

HSK/1197