

405595

Page 1 of 45

SAN MIGUEL COUNTY, CO

PEGGY MERLIN CLERK-RECORDER

02-05-2009 01:20 PM Recording Fee \$226.00

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**CASTELLINA CONDOMINIUMS**

**COUNTY OF SAN MIGUEL**

**STATE OF COLORADO**

**DECLARANT:**

Retreat at Mountain Village IV, LLC,  
a Colorado limited liability company.

**TABLE OF CONTENTS:**

<b>Article I</b>	<b>DEFINITIONS</b>
<b>Article II.</b>	<b>MAP</b>
<b>Article III.</b>	<b>SUBMISSION; NAMES; REAL PROPERTY</b>
<b>Article IV.</b>	<b>DIVISION OF PROPERTY INTO CONDOMIUM UNITS; USE AND OCCUPANCY OF UNITS</b>
<b>Article V.</b>	<b>DESCRIPTION OF UNIT</b>
<b>Article VI</b>	<b>OWNERSHIP AND USE OF COMMON ELEMENTS</b>
<b>Article VII.</b>	<b>LIMITED COMMON ELEMENTS</b>
<b>Article VIII.</b>	<b>SEPARATE ASSESSMENT AND TAXATION NOTICE TO ASSESSOR</b>
<b>Article IX</b>	<b>INSEPARABILITY OF A UNIT</b>
<b>Article X.</b>	<b>TITLE TO A UNIT</b>
<b>Article XI.</b>	<b>RIGHT TO COMBINE UNITS AND SUBDIVIDE UNITS</b>
<b>Article XII.</b>	<b>CERTAIN WORK PROHIBITED</b>
<b>Article XIII.</b>	<b>MECHANIC'S LIEN AGAINST UNITS</b>
<b>Article XIV.</b>	<b>RIGHTS, LICENSES AND EASEMENTS</b>
<b>Article XV.</b>	<b>COMPLIANCE WITH RULES</b>
<b>Article XVI.</b>	<b>RESPONSIBILITY FOR MAINTENANCE, REPAIR, ALTERATION AND REMODELING</b>
<b>Article XVII.</b>	<b>THE ASSOCIATION</b>
<b>Article XVIII.</b>	<b>RIGHTS AND OBLIGATIONS OF THE ASSOCIATION</b>
<b>Article XIX</b>	<b>RULES AND REGULATIONS</b>
<b>Article XX.</b>	<b>ALLOCATED INTERESTS</b>
<b>Article XXI.</b>	<b>ASSESSMENTS</b>
<b>Article XXII</b>	<b>NONPAYMENT OF ASSESSMENTS</b>
<b>Article XXIII.</b>	<b>WORKING CAPITAL</b>
<b>Article XXIV.</b>	<b>INSURANCE, ADDITIONS, ALTERATIONS AND IMPROVEMENTS</b>
<b>Article XXV.</b>	<b>SUCCESSION TO OWNER'S LIABILITY</b>
<b>Article XXVI.</b>	<b>OWNER'S RIGHTS TO MORTGAGE UNITS</b>
<b>Article XXVII.</b>	<b>RESTRICTIVE COVENANTS AND OWNER'S OBLIGATIONS</b>
<b>Article XXVIII.</b>	<b>OBSOLESCENCE</b>
<b>Article XXIX.</b>	<b>CONDEMNATION</b>
<b>Article XXX.</b>	<b>SPECIAL DECLARANT RIGHT AND DEVELOPMENT RIGHTS</b>
<b>Article XXXI.</b>	<b>AMENDMENT AND TERMINATION OF COMMUNITY</b>
<b>Article XXXII.</b>	<b>EFFECT OF PROVISIONS OF DECLARATION</b>
<b>Article XXXIII.</b>	<b>RIGHTS OF MORTGAGEE</b>
<b>Article XXXIV.</b>	<b>CONSTRUCTION OF NEW COMMON ELEMENTS</b>
<b>Article XXXV.</b>	<b>CONSENT OF FIRST MORTGAGEES</b>
<b>Article XXXVI.</b>	<b>INTEREST</b>
<b>Article XXXVII.</b>	<b>ATTORNEYS' FEES</b>
<b>Article XXXVIII.</b>	<b>MISCELLANEOUS</b>
<b>Exhibit A</b>	<b>LEGAL DESCRIPTION</b>
<b>Exhibit B</b>	<b>ALLOCATION OF INTEREST</b>

THIS DECLARATION is made as of this 23<sup>rd</sup> day of January, 2009 (“Effective Date”) by Retreat at Mountain Village IV, LLC, a Colorado limited liability company, whose address is: 109 Lyon Street, McMinnville, TN 37110 (the “Declarant”).

### RECITALS

A. Declarant is the owner of certain real estate (“Property”) located in the County of San Miguel, State of Colorado, which is more particularly described as set forth on attached Exhibit “A”.

B. This is the Declaration that is referred to in that certain Map of Castellina Condominiums, a Colorado common interest ownership community, which was recorded on February 5 2009 in Plat Book 1, Page 4053 (“Map”).

C. Declarant has applied for and has met all requirements for Final Planned Unit Development Plan approval by the Town of Mountain Village (“Town”) as set forth in that certain Resolution of the Town Council of the Town of Mountain Village, Approval of Final Planned Unit Development Application Lot 20, Corrected, Resolution No. 2006-1010-18 (“Resolution”), and that certain Development Agreement for Retreat at Mountain Village IV Planned Unit Development recorded April 12, 2007 in the office of the Clerk and Recorder, San Miguel County, Colorado at Reception No. 391937 (“Development Agreement”) (the Resolution, Development Agreement and any other documents granting approval by the Town are sometimes collectively referred to herein as the “Town Approvals”), to develop the Property as 5 Units, including one Employee Deed Restricted Condominium housing unit (“Employee Unit”).

D. Declarant desires to create a Community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes § 38-33.3-101, *et seq.* (the “Act”) on the Property, consistent with the Town Approvals, the name of which is Castellina Condominiums, a Colorado common interest ownership community (the “Community”), in which Units are designated for separate ownership and uses of a residential nature, and in which portions of the Property are to become co-owned by the Owners as Common Elements.

E. Declarant has caused the “Castellina Condominiums Owners Association, Inc., a Colorado nonprofit corporation” (“Association”), to be incorporated under the laws of the State of Colorado, as an owners association, for the purpose of exercising the functions as herein set forth.

F. Declarant desires to establish covenants, conditions and restrictions upon the Community and certain mutually beneficial restrictions and limitations with respect to the proper use, occupancy, improvement and enjoyment thereof, all for the purposes of enhancing and protecting the value, desirability and attractiveness of the Community and enhancing the quality of life within the Community.

G. Declarant desires and intends that the Owners, Mortgagees, Occupants and all other Persons hereafter acquiring any interest in the Community shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements contained in this Declaration, as it may be amended from time to time.

### **DECLARATION**

**NOW, THEREFORE**, for the purposes set forth above and herein, Declarant for itself and its successors and assigns hereby declares that the Community and any other property, if any, which becomes subject to this Declaration in the manner hereinafter provided, and each part thereof, shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, maintained and enjoyed subject to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, exceptions, easements, privileges, rights and other provisions hereinafter set forth, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, use, occupancy and enjoyment of the Community, and all of which shall run with the land and be binding upon and inure to the benefit of (i) the Community and every part thereof, (ii) Declarant and its successors and assigns, (iii) the Association and its successors and assigns, (iv) every Member of the Association, and (v) all Owners, Occupants and other Persons having or acquiring any right, title or interest in or to the Community or any part thereof, or any Improvements thereon, and their respective heirs, personal representatives, successors and assigns. Provided always, that to the extent this Declaration provides that Declarant shall not be bound by or is exempt from the application of certain covenants, conditions and restrictions contained herein, Declarant shall not be considered subject to such covenants, conditions or restrictions.

This Declaration shall be recorded in the Official Records and shall be indexed in the Grantee's index in the names of Castellina Condominiums and the Association and in the Grantor's Index in the name of Retreat at Mountain Village IV, LLC, a Colorado limited liability company.

### **ARTICLE I**

#### **DEFINITIONS**

The following definitions shall apply in this Condominium Declaration and the Exhibits attached hereto unless the context shall expressly provide otherwise:

1.1 Act. Shall mean the Colorado Common Interest Ownership Act, Title 38, Article 33.3, Colorado Revised Statutes, as they may be amended from time to time.

1.2 **Allocated Interest.** Shall mean the undivided interest in the Common Elements, the Common Expense Liability, and the votes in the Association, appurtenant to each Unit, as set forth in Exhibit B.

1.3 **Articles of Incorporation.** Shall mean the Articles of Incorporation for the Association filed with the Colorado Secretary of State, as amended from time to time.

1.4 **Association.** Shall mean the Castellina Condominiums Owners Association, Inc., a Colorado nonprofit corporation without stock, its successors and assigns, of which all Owners of Units shall be Members as provided in Article XVII hereof, and which Association shall be charged with the management and maintenance of the Project. The Association shall be governed by its Board (the "Board") pursuant to the Colorado Nonprofit Corporation Act.

1.5 **Authority.** This Declaration, as defined below is executed to submit the Land and all Improvements constructed thereon to condominium ownership and use in the manner provided in the Act, and in the manner provided in the applicable sections of the Town of Mountain Village Land Use Ordinance (the "LUO") (the Act and the LUO sometimes collectively referred to herein as the "Condominium Laws").

1.6 **Board.** Shall mean the executive board of the Association, designated pursuant to this Declaration, the Articles and the Bylaws to act on behalf of the Association.

1.7 **Buildings.** Shall mean the two (2) buildings as depicted on the Condominium Map.

1.8 **Bylaws.** Shall mean the Bylaws of the Association, as adopted by the Association and amended from time to time.

1.9 **Common Elements.** Any reference to "Common Elements" herein shall mean and include all General Common Elements as defined in section 1.21 below, and Limited Common Elements as defined in section 1.26 below.

1.10 **Common Expense Liability.** Shall mean the liability for Common Expenses allocated to each Unit, as more fully described below and in Exhibit B hereto.

1.11 **Common Expenses.** Shall mean and include any expenditures made or liabilities incurred by or on behalf of the Association for Common Elements or otherwise including without limitation, maintenance, operation, repair, landscaping and irrigation, snow removal and snow melt systems, electricity for common systems, insurance, management and administration, and any reserves, as more fully described herein.

1.12 **Community.** Shall mean and refer to Castellina Condominiums, a Colorado common interest ownership community.

1.13 **Condominium Laws.** Shall mean the Colorado Common Interest Ownership Act, Title 38, Article 33.3, Colorado Revised Statutes, 1992, as amended, and the applicable provisions of the Town of Mountain Village Land Use Ordinance.

1.14 **Condominium Map.** Shall mean that certain Condominium Map for Castellina Condominiums recorded February 5, 2009 in the official records of the Clerk and Recorder on Book 1, Page 4053, as the same may be supplemented or amended as provided herein, and includes the engineering survey or surveys of the Land, locating thereon, the improvements, the floor plans and other drawing or diagrammatic plans, including, without limitation, charts or schedules depicting all or part of the Improvements on the Land. The Condominium Map may be filed for record in parts or sections.

1.15 **Condominium Property.** Shall mean the Land and all Improvements and future Improvements, if any, and all appurtenant rights thereto, created by this Declaration.

1.16 **Declarant.** Shall mean Retreat at Mountain Village IV, LLC, a Colorado limited liability company, and to the extent any rights or powers reserved to Declarant are sought to be transferred or assigned, any successor and/or assignee designated by written notice or assignment executed by the Declarant and the assignee/transferee and recorded.

1.17 **Declaration.** Shall mean this Declaration, including the Condominium Map which is incorporated herein, and any other recorded instruments that create Castellina Condominiums, a Colorado common interest ownership community and any supplements or amendments thereto recorded in the office of the Clerk and Recorder of San Miguel County, Colorado.

1.18 **Development Rights.** Shall mean any right or combination of rights including any and all "special declarant rights" and "development rights" as created herein and/or set forth in the Act and any other rights as set forth herein, including without limitation the right to: (a) add real estate to the Community; (b) create Units, Common Elements, or Limited Common Elements within the Community; (c) subdivide Units or convert Units into Common Elements or Common Elements into Units; or (d) withdraw a portion of the Real Estate from the Community.

1.19 **First Mortgage.** Shall mean and refer to a Mortgagor which has paramount priority, excepting the lien of taxes and the lien of the Common Expense Liability, but only to the extent set forth in Paragraph 22.2 herein.

1.20 **First Mortgagee.** Shall mean the holder of any recorded Mortgage under which the interest of any Owner is encumbered and which Mortgage has first and paramount security interest priority. Only first mortgagees that have registered with the Association pursuant to section 18.7 of this Declaration their current contact information with the Association in writing and have been sent a written confirmation of receipt of same by the Association shall be included in the definition of "First Mortgagee" for purposes of

any consent or approval provisions of the Act or this Declaration including Article XXXI and XXXV.

1.21 **General Common Elements.** Shall mean and include all of the Community, except (a) portions of the Community Property contained entirely within a Unit, and/or (b) portions of the Community, which are designated as Limited Common Elements. The General Common Elements include, without limitation, and except as otherwise indicated herein or on the Community Map, the following: (1) the Land; (2) the Parking Space P-HOA, the Concrete Driveway G.C.E.; (3) the stone retaining walls and stone drainage; (4) the irrigation and snowmelt systems; (5) Building One and Building Two except for those portions of such Buildings contained within a Unit or designated as L.C.E.s; (6) the Mechanical Room G.C.E. portion of Building Two; (7) Any installations consisting of equipment and materials making up any common utility and communication services, including but not limited to such services as power, gas, water, and phone lines; (8) in general, all apparatus and installations existing or provided for common use; and (9) all other parts of the Community, Property and Improvements necessary or convenient to the existence, maintenance and safety of the Community, or normally in common use.

1.22 **Governing Documents.** Shall mean the Declaration, the Map, the Articles of Incorporation, the Bylaws, the Design Guidelines, if any, and any rules and regulations of the Association, as all of the foregoing may be amended from time-to-time.

1.23 **Identifying Unit Designation.** Shall mean the number and/or letter that identifies only one Unit in the Project. As more fully shown on Exhibit B hereto, and the Condominium Map.

1.24 **Improvement(s).** Shall mean all structures and improvements located above, on or below the surface of the Land, including the Buildings and structural components thereof and all sidewalks, landscaping, and utility installations.

1.25 **Land.** Shall mean that certain fee simple Real Property comprising the underlying ground situated in the Town of Mountain Village, San Miguel County, Colorado, described on attached Exhibit A.

1.26 **Limited Common Elements.** Shall mean those Common Elements designated and reserved for the exclusive use by the Owner or Owners of a particular Unit or Units, but less than all of the Units, which Limited Common Elements are deemed to be inseparable appurtenance to such Unit or Units. By way of illustration, but not limitation, parking space P-E, and any deck (only the horizontal surface thereof) or sidewalk which is identified on the Map by legend, symbol or word as a Limited Common Element of a specified Unit or Units, shall, without further reference thereto, be used in connection with such Unit or Units to the exclusion of other Owners of Units, except, by invitation. In describing a Unit, no separate reference to Limited Common Elements need be made in any lease, assignment of lease, sublease, deed, Mortgage, or other instrument.

1.27 **Managing Agent.** Shall mean such agent, agents or employees of the Association who may be appointed by the Board, pursuant to the governing provisions thereof.

1.28 **Map.** Shall mean and refer to the surveyed Condominium Map (hereafter "Condominium Map" or "Map") for Castellina Condominiums, described in Article II hereof, and all amendments and supplements thereto, which shall be recorded in the records of the County Clerk and Recorder for San Miguel County, Colorado.

1.29 **Member(s).** Shall mean and refer to every person or entity that holds membership in the Association by virtue of being an Owner, and may include the Declarant.

1.30 **Mortgage.** Shall mean any real estate mortgage, deed of trust, or security instrument by which a Unit is encumbered.

1.31 **Owner.** Shall mean any person, firm, corporation, partnership, association, or other entity, including Declarant, or any number of combinations thereof (hereinafter "Persons") who own(s) one or more Unit(s). The term "Owner" shall not refer to any mortgagee as defined herein, unless such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.32 **Owner Control Date.** Shall mean and refer to a date which is no later than sixty (60) days after conveyance of seventy-five percent (75%) of the Units to Unit Owners other than Declarant, or two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business, whichever first occurs.

1.33 **Parking Space.** Shall mean the Parking Space(s) located within the Community for permitted vehicle parking use, as more particularly described herein. Initially the Community contains ten (10) Parking Spaces as follows:

a. Two (2) Parking Spaces are located in each of the respective garages of the four free market Units and are part of such Unit description.

b. One (1) Parking Space is designated as a Limited Common Element and is allocated to the Employee Unit.

c. One (1) Parking Space is designated as a General Common Element for use by the Association.

The location of the Parking Spaces described in paragraph 1.33(a) above are identified generally on the Map for each of the respective Units A through D as "P1-(Unit Letter)" and "P2-(Unit Letter) (e.g. "P1-A"). The Parking Space described in paragraph 1.33(b) above is identified on the Map as "P-E". The Parking Space described in paragraph 1.33(c) above is identified on the Map as "P-HOA".



1.34 **Person.** Shall mean a natural person, corporation, limited liability company, partnership, association, trust or any other legal entity recognized in the State of Colorado.

1.35 **Project.** Shall mean and refer to the Community referred to herein, and all of its constituent parts including the Real Property, the Units, the Building, and the management and administration thereof, as vested in the Association, all as provided in the Governing Documents and any rules and regulations duly adopted.

1.36 **Real Property.** Shall mean the Real Property described in Exhibit A, attached hereto and incorporated herein by this reference, and depicted on the Map, including structures, fixtures, and other improvements and interests that, by custom, use, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance.

1.37 **Residential Use or Usage.** Shall mean and include use for dwelling or lodging purposes, as defined and permitted in the Zone District, except that a home office may be maintained within a Unit subject to compliance with all zoning and building requirements of the Town of Mountain Village, at the time such office use is instituted.

1.38 **Special Declarant Rights.** Shall mean the rights reserved, if any, for the benefit of the Declarant, as created or set forth in the Act, including those specifically set forth and reserved in Article XXX or otherwise herein.

1.39 **Unit(s).** Shall mean a physical portion of the Community, designated for separate ownership, shown as a Unit on the recorded Map for the Community, the boundaries of which are defined in the Map and in this Declaration, and the fee simple interest and title in and to such Unit, together with the undivided percentage interest in the General Common Elements and Limited Common Elements appurtenant thereto, and all other rights and burdens created by this Declaration. The term "Units" includes the one free standing deed restricted residential employee Unit that is referred to separately and specifically herein as the "Employee Unit."

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the meaning specified or used on the Act.

## **ARTICLE II**

### **MAP**

2.1 **General.** The Map shall be recorded in the office of the County Clerk and Recorder of San Miguel County, Colorado, and may be supplemented or amended, as necessary and permitted herein, to show all Units and Common Elements then subject hereto, and shall contain all of the information required, pursuant to C.R.S. 38-33.3-209.

2.2 Contents and Purpose. The Map, and all supplements thereto, shall contain the certificate of an architect, engineer or registered land surveyor certifying that the Map fully and accurately depicts the layout, measurements and location of the Building and improvements, the designations and dimensions of all Units, the elevations of the floors and ceilings and the dimensions, location and designation of all Common Elements, both General and Limited, as required in the Act. Declarant hereby reserves unto itself and the Board, the right, from time to time, without the consent of any Owner, to amend the Map and supplements thereto, to conform the Map to the actual location and dimensions of any of the constructed improvements, to establish, vacate and relocate utility easements, access easements, relocate parking spaces, and to establish certain General Common Elements as Limited Common Elements, as provided herein, subject to compliance with all applicable requirements and review standards of the Town of Mountain Village. In interpreting any and all provisions of this Declaration, the actual location of a Unit shall be conclusively deemed the property intended to be conveyed, reserved or encumbered in any deed or deed of trust, notwithstanding any minor deviations from the location of such Unit indicated on the Map.

### **ARTICLE III**

#### **SUBMISSION; NAMES; REAL PROPERTY**

3.1 Submission. Declarant hereby submits the Real Property to the provisions of the Act. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

3.2 Names. The name of the Community is "Castellina Condominiums, a Colorado common interest ownership community," and the name of the Association is the "Castellina Condominiums Owners Association, Inc."

3.3 Real Property. This Community is located in the Town of Mountain Village, San Miguel County, State of Colorado. The initial Property of the Community is as more fully described on Exhibit A. All easements and licenses to which the Community is presently subject are recited in Exhibit A and are as established in the Act. The Community may be subject to other easements or licenses granted pursuant to this Declaration, or granted by authority reserved in any recorded document or established by the Act.

### **ARTICLE IV**

#### **DIVISION OF REAL PROPERTY INTO UNITS; USE AND OCCUPANCY OF UNITS**

4.1 Units. The Real Property is hereby divided into Units, as follows:

- a. Four (4) free market residential Units located in Building One identified as Unit A, Unit B, Unit C, and Unit D;

- b. One (1) residential Employee Unit located in Building Two identified as Unit E and deed restricted pursuant to that certain Town of Mountain Village Deed Restriction recorded February 5, 2009 in the official records of the Clerk and Recorder, San Miguel County, Colorado at Reception No. 405596 ;

The undivided interest in the General Common Elements appurtenant to each Unit and the other Allocated Interests of the respective Owners thereof, are set forth in Exhibit B, subject to revision pursuant to specific provisions of this Declaration. The Declarant reserves certain rights to create additional Units to the maximum number of Units for the properties subject to this Declaration, as allowed by any governmental entity having jurisdiction.

4.2 Use and Occupancy of Units. Each Unit, including the Employee Unit, designated as Units A through E, shall be used and occupied only for Residential Uses permitted in the Zone District, except that a home office may be maintained within a Unit subject to compliance with all zoning and building requirements of the Town, at the time such office use is instituted, and only if such office use is in compliance with parking requirements in effect at the time of such use. No Unit shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate. The Parking Spaces identified as P-E and P-HOA shall be used for vehicular parking only pursuant to the restrictions set forth herein. Each Owner shall be entitled to the exclusive ownership and possession of his Unit

4.3 Use and Occupancy of Employee Unit. In addition to the restrictions in paragraph 4.2 above and otherwise in the Governing Documents, use and occupancy of the Employee Unit is restricted by the Town of Mountain Village Ordinance No. 2006-07. This paragraph 4.3 may not be modified or amended without the prior written consent of the Town of Mountain Village.

4.4 Leasing of Units. An Owner of a Unit, except the Owner of the Employee Unit, may lease or rent his respective Unit in compliance with the Zone District regulations for residential or short term residential occupancy, and for home office use, subject to the provisions of Paragraph 27.10 hereof. The Owner of the Employee Unit may not lease her Employee Unit except as may be permitted by the Town of Mountain Village Ordinance No. 2006-7 or as otherwise permitted by the Town of Mountain Village, San Miguel County or other relevant governing authority, and the Governing Documents.

4.5 Declarant's Use and Designation. Declarant or its nominee or agents may use any Unit owned by Declarant as a model or sales office.

4.6 Declarant's Designation of Parking Spaces. Declarant has designated all the Parking Spaces as follows:

- a. P1-A, P2-A, P1-B, P2-B, P1-C, P2-C, P1-D, and P2-D are part of the respective Units A, B, C, and D, and shall not be severable from the fee title to such Units
- b. P-E is designated as a Limited Common Element allocated to the Employee Unit E, is appurtenant to such Unit and shall not be severable from the fee title to such Unit E.
- c. P-HOA is designated as a General Common Element for use by the Association

## ARTICLE V

### DESCRIPTION OF UNIT

5.1 Recording the Declaration and Map. Upon recordation of the Map in the Office of the County Clerk and Recorder for San Miguel County, Colorado, every contract, deed, lease, Mortgage, deed of trust, will or other instrument, may legally describe a Unit by its Identifying Unit Designation, followed by the name of the Community, with reference to the Map and the Declaration. Reference to the Declaration and Map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration and Map, without specific references thereto. An illustrative description is as follows:

Unit \_\_\_\_, Castellina Condominiums (located on Lot 20, Telluride Mountain Village, Filing 1, according to the Replat recorded August 21, 1989, in Plat Book 1 at page 925), according to the Condominium Map for the Castellina Condominiums recorded February 5, 2009 in Plat Book 1 at page 4053 and according to the Declaration of Covenants, Conditions and Restrictions for the Castellina Condominiums recorded February 5, 2009 at Reception No. 405595 in the records of the Clerk and Recorder of San Miguel County, Colorado.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, lease, encumber, or otherwise affect not only the Unit, but also the undivided interest in the General Common Elements and Limited Common Elements appurtenant to said Unit, and shall incorporate all of the rights, limitations, and burdens incident to Ownership of a Unit, as described in this Declaration and the Map. Each such description shall be construed to include a non-exclusive easement, for ingress and egress, to and from an Owner's Unit, as well as, the use of all the General Common Elements and all the Limited Common Elements appurtenant to said Unit.

## ARTICLE VI

### **OWNERSHIP AND USE OF COMMON ELEMENTS**

6.1 **Ownership.** The General Common Elements shall be owned in common by all of the Owners of the Units and shall remain undivided. By the acceptance of his deed or other instrument or conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the General Common Elements and each Owner specifically agrees not to institute any action therefore. Further, such Owner agrees that this Article may be pled as a bar to the maintenance of such action. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the Association incurs in connection therewith. Notwithstanding the foregoing, any co-Owner of a Unit may sue for partition among the Owners of such Unit, provided, such partition shall take the form of a sale of the entire Unit, and a subsequent division of the proceeds of the sale among such Owners; partition by subdivision of the actual Real Property shall not be allowed, and each Owner expressly waives any and all rights of such partition by subdivision of the Real Property.

6.2 **Use.** Each Owner may use the General Common Elements and any appurtenant Limited Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners, subject to the provisions herein, and such reasonable rules and regulations as may, from time to time, be established by the Association.

## ARTICLE VII

### **LIMITED COMMON ELEMENTS**

7.1 **Limited Common Elements.** The Limited Common Elements shall be as identified on the Map and within this Declaration. Such identification shall give rise to the designation as a Limited Common Element appurtenant to the respective Unit, or Units, so identified. Any such Limited Common Element which is associated with, or which adjoins a Unit or Units, or which is identified on the Map as appurtenant to a Unit or Units, shall without further reference thereto, be used in connection with the Unit or Units to which it is appurtenant, to the exclusion and the use thereof, by any other Owners, except by invitation except when the terms of such Limited Common Elements identify its use as non-exclusive.

7.2 **Reallocation of Limited Common Elements.** The reallocation of Limited Common Elements, except in the instance of the Parking Space P-E designated as a Limited Common Element to the Employee Unit E, may be accomplished by application for approval of the proposed reallocation to the Board, which application shall be executed by the Owners and First Mortgagees of the Units affected by such reallocation of the Limited Common Elements, the application shall include:

- a. The proposed form for an amendment to the Declaration and Map, as may be necessary to show the reallocation of Limited Common Elements between or among Units;
- b. A deposit against attorneys' fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board; and
- c. Such other information as may be reasonably requested by the Board.

No reallocation of Limited Common Elements will be effective without the approval of the Board. The reallocation shall be effectuated by an amendment to the Declaration and Map executed by the Association, the Owners that have Units and interests that will be affected by the reallocation, and the First Mortgagees thereof, which amendment shall be recorded as provided in Article XXXI. All costs and attorneys' fees incurred by the Association as a result of the application shall be the sole obligation of the applicant(s).

## **ARTICLE VIII**

### **SEPARATE ASSESSMENT AND TAXATION** **NOTICE TO ASSESSOR**

Declarant shall give written notice to the Assessor of San Miguel County, Colorado, of the creation of this Community in the Real Property. Each Unit shall be deemed to be a separate assessment and taxation entity by each taxing sovereign, to whom it is subject, for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the Buildings, nor the Common Elements shall be deemed to be an independent entity or parcel. The lien for taxes, assessed to any Unit, shall be confined to that Unit, and no forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest, or in any way affect the title to any other Unit or the Common Elements. In the event such taxes or assessments for any year are not separately assessed to each Owner, but are assessed on the Project as a whole, each Owner shall pay to the Association a portion thereof equal to his Allocated Interest thereof.

## **ARTICLE IX**

### **INSEPARABILITY OF A UNIT**

An Owner's undivided interest in the Common Elements (General and Limited) shall not be separated from the Unit to which it is appurtenant, and shall be deemed to be conveyed or encumbered with the Unit, even though such interest is not expressly mentioned or described in the instrument of conveyance. Any purported conveyance, encumbrance, judicial sale, other voluntary or involuntary transfer, of an undivided

interest in the Common Elements (General or Limited), made without the Unit to which the interest is allocated is void.

## ARTICLE X

### TITLE TO A UNIT

A Unit may be held and owned by more than one person or other entity, as defined in Paragraph 1.39 above, as joint tenants, as tenants in common, by the entirety, or in any form and/or tenancy relationship recognized under the laws of the State of Colorado.

## ARTICLE XI

### RIGHT TO COMBINE UNITS AND SUBDIVIDE UNITS

11.1 Right to Combine Units. Except for the Owner of the Employee Unit, any Owner may physically combine the area or space of one Unit with the area or space of one or more adjoining Units, by removing or altering any intervening partition, or creating apertures therein, when all of such Units are owned by the same Owner, with the written consent of any First Mortgagee having an interest in said Units. For the duration of any such combination, any walls, floors, or other structural separations between the Units, so combined, or any space which would be occupied by such structural separations, but for the combination of such Units, shall be deemed to be Limited Common Elements, provided, however, that such walls, floors, or other structural separations, creating such space, shall automatically revert to their original status, if the combined Units thereafter become subject to separate ownership. Any combination of Units, as provided for herein, and for the duration thereof, shall entitle the Owner of the combined Units to cast the allocated votes for each Unit included in the combined Units. Such Owner shall be personally obligated for each of the separate assessments and obligations of each such combined Unit. Removal of partitions or creation of apertures under this Paragraph is not an alteration of boundaries. Nothing herein shall be construed to allow the subdivision of any single Unit, or result in a remaining portion of a Unit after combination.

11.2 No Subdivision of Units. No Unit may be subdivided into two (2) or more Units, except as may be reserved by Declarant.

## ARTICLE XII

### CERTAIN WORK PROHIBITED

12.1 Certain Work Prohibited. Without the approval of the Association, which approval shall not be reasonably withheld or as otherwise specifically provided in this Declaration:

a. No Owner shall undertake any work in his Unit which may jeopardize the structural integrity, soundness or safety of the Building, reduce the value of the Project or impair an easement thereon or thereto; and

b. No Owner of a Unit shall make alternations to the exterior portions of his Unit, roof, Building, in the water or gas pipes, electric conduits, plumbing or other fixtures connected therewith.

12.2 Approved Work. Notwithstanding the foregoing, an Owner, without the approval of the Association, may alter, remove or add partitions which are located entirely within the walls, ceilings and floors forming and constituting the perimeter boundaries of his Unit, unless the same would impair the structural integrity, electrical systems or mechanical systems or lessen the support of any portion of the Building, or otherwise change the appearance of the Common Elements not contained within a Unit. In connection with such work, the Association may require, in its sole and absolute discretion, the delivery by such Owner, to the Association, a corporate surety bond providing assurance that: (a) any damage to Common Elements, any Unit, or the contents thereof, as a consequence of such work will be repaired and restored to the satisfaction of the Association, and (b) the Common Elements and all Units shall be adequately protected against the assertion of any mechanic's lien, as a consequences of such work, and (c) all requirements of this Paragraph are satisfactorily met.

### ARTICLE XIII

#### MECHANIC'S LIEN AGAINST UNITS

13.1 Mechanic's Lien. No labor performed or materials furnished for any Unit, with the consent or at the request of the Owner thereof, or his agent, contractor or subcontractor, shall be the basis for a mechanic's lien against a Unit, or any other Owner, not expressly consenting to or requesting the same, or against any interest in the Common Elements, except as to the undivided interest therein, appurtenant to the Unit, for the Owner for whom such labor has been performed or such materials furnished. Labor performed or materials furnished for the Common Elements, if duly authorized by the Board, shall be deemed to be performed or furnished with the express consent of each Owner, and may be the basis of a mechanic's lien against all of the Units.

13.2 Indemnity. Each Owner shall indemnify and hold harmless, each of the other Owners and the Association, from and against liability or loss arising from the claim of any lien against the Unit of any other Owner, or against Common Elements, or any part thereof, for labor performed, or materials furnished, for such Owner's Unit. At the written request of any affected Owner, the Association shall enforce said indemnity, by collecting from the offending Owner the amount necessary to discharge any such lien(s), and all costs incidental thereto, including reasonable attorneys' fees, and obtaining a discharge of such lien(s). If any such sum is not promptly paid, the Association may collect the same in the manner provided herein for collection of assessments.



## ARTICLE XIV

### **RIGHTS, LICENSES AND EASEMENTS**

14.1 **Declarant and Association Rights.** The Declarant and Association, shall have a non-exclusive right and easement to make such use of, and to enter into, or upon, the General Common Elements, Limited Common Elements and/or the Units, as may be necessary, or appropriate, for the performance of the duties and functions, which they may be obligated or permitted to perform under this Declaration or the Act.

14.2 **Easements for Access, Support and Utilities.** Each Owner shall have a non-exclusive easement for access to his Unit and any Limited Common Elements allocated to such Unit, from the streets adjacent to the Project, over and on the pathways, bridges, streets, driveways, stairs, walks, exterior accesses, and other easements which are part of the General Common Elements. Each Owner shall have a non-exclusive easement in, on and over the General Common Elements, including the perimeter and load-bearing walls of or within each and every Unit, and the General Common Elements within the Units of other Owners, for horizontal and lateral support of his Unit and other General Common Elements, including but not limited to, transmission for water, sewer, gas, electricity, telephone and television service and for the discharge of exhaust from any fireplace or other exhaust producing device within a Unit, through any flue extending therefrom.

14.3 **Easements for Encroachments.** If any part of the General Common Elements (including without limitation, pipes, conduits, wires, ducts, vents, flues and the like for transmission of water, air, smoke, exhaust, electricity, sewage, natural gas, telephone and television signals) shall encroach upon or be located within an Unit, an easement therefore and for the maintenance thereof, shall and does exist. If any part of a Unit encroaches, or shall hereafter encroach upon the General Common Elements, an easement for such encroachment and for the maintenance thereof, shall and does exist. Such encroachments shall not be considered to be encumbrances either on the General Common Elements or on any Unit, for purposes of marketability of title or otherwise. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction or remodeling of the Building, error in the Map, settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

14.4 **Easement for Repairs, Maintenance and Emergencies.** Some of the Common Elements (General and Limited) including without limitation certain utilities, are, or may be, located within a Unit, or may be conveniently accessible only through a Unit. The Association shall have an easement for access through each Unit to all Common Elements (General and Limited), from time to time, during such reasonable hours as may be necessary, for the maintenance, repair or replacement of any of the Common Elements (General and Limited) located therein. Non-emergency repairs shall be made only during regular business hours, after at least twenty-four (24) hours notice to the occupants of the Unit, wherein such repairs are to be made, unless such occupants have no objection to earlier entry. In emergencies, the occupants of an affected Unit shall be warned of

impending entry as early as is reasonably possible. The cost of repairing damage to 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, shall be a Common Expense, except in the instance of a Limited Common Element, in which case the cost is allocated to the appurtenant Unit. No diminution or abatement of 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.

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

14.6 Easements for Drainage. An easement is hereby granted to the Association to enter upon, across, over, in and under any portion of any Unit, or the Common Elements for the purpose of improving, changing, correcting or otherwise modifying the drainage of surface water.

14.7 Certain Limited Common Element Easements of Use. Certain easements may be designated Limited Common Elements on the Condominium Map and, in such event, are hereby incorporated herein, and created, as Limited Common Element easement(s).

14.8 Easements Deemed Appurtenant. The easements, uses and rights herein created for the Owners, shall be appurtenant to the Units of such respective Owners, and all conveyances and other instruments affecting title to a Unit shall be deemed to grant and reserve said easements, uses and rights, without specific reference thereto.

## ARTICLE XV

### COMPLIANCE WITH RULES

Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws of the Association, any rules and regulations adopted by the Association, and the decisions and resolutions of the Association, adopted pursuant thereto, as the same may be amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, and for reimbursement of all costs and attorneys' fees incurred in connection therewith, which action shall be maintainable by the Association, the Owners or, in a proper case, by an aggrieved Owner or the Declarant.

## ARTICLE XVI

### **RESPONSIBILITY FOR MAINTENANCE, REPAIR, ALTERATION AND REMODELING**

16.1 **Owner's Responsibility.** For the purposes of maintenance, repair, alteration and remodeling of a Unit, an Owner shall be deemed to own the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum drywall, paneling, wallpaper, paint, wall and flooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit, including any non-exterior doors and non-exterior windows. The Owner shall not be deemed to own lines, pipes, wires, conduits, or systems (hereafter referred to as "Utilities") and which serve one or more other Units, except as a tenant in common with the other Owners. Such Utilities shall not be disturbed or relocated by an Owner, without the written consent and approval of the Board. Such right to repair, alter and remodel, is coupled with the obligation to replace any finished or other materials. An Owner shall maintain and keep in repair the interior of his Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit, commencing at a point where the Utilities enter the Unit, shall be maintained and kept in repair by the Owner thereof. An Owner shall commit no act, nor any work, that will or may impair the structural soundness or integrity of the building, or impair any easement, nor violate any laws, ordinances, regulations and codes of the United States of America, the State of Colorado, the Town of Mountain Village, or any other agency or entity which may have jurisdiction over said Unit; and without first proving to the satisfaction of the Board, that compliance with this Article's requirements will be maintained during and after any such act or work. Any expense to the Board for investigation under this Article shall be borne by the appropriate Owner. However, nothing herein contained shall be construed to permit structural modification and any decision relating thereto shall be in the absolute discretion of the Board, including, but not limited to, the engaging of a structural engineer at the Owner's expense for the purpose of obtaining his opinion. The Owner of a Unit, at their own expense, shall maintain, replace, improve and keep in good repair each Limited Common Element assigned to that particular Unit, including without limitation the horizontal floor surface, and snow-melting system, if any, for the Unit's decks/terraces. Should the Owner fail to properly maintain any such Limited Common Elements, then the Association may maintain, replace, improve and keep in good repair any such Limited Common Elements and shall assess the Unit the costs and expenses for such undertakings as Limited Common Expenses. An Owner shall be obligated to reimburse the Association promptly, upon receipt of a statement of any expenditures incurred in repairing or replacing any Unit elements for which the Owner is responsible, or for the repairs of another's Unit, or any Common Element, damaged by any act or failure to act, of a respective Unit Owner, his tenants, guests, invitees or agents.

16.2 **Association's Responsibility.** The Association shall, without specific limitation, provide for the care, operation, management, maintenance, repair and replacement of the Common Elements, Utilities, Limited Common Element Parking Space designated as P-E, General Common Element Parking Space designated as P-HOA, and other parking

areas, the snowmelt system, landscaping, the irrigation system, outside walkways, driveways, roads, stone retaining walls, structural components of the decks, outside walls, roofs, and exterior window dressings. Without limiting the generality of the foregoing, said obligations shall include the keeping of the Common Elements and those specifically listed Limited Common Elements in good, clean, attractive, sanitary condition, order and repair, including removing snow and any other materials from the Common Elements and such Limited Common Elements, which might impair access to the Community or the Units. The Association is further charged with keeping the Project safe, attractive and desirable and making necessary or desirable alterations, additions, betterment or improvements to or on the Common Elements and such Limited Common Elements. In each instance that the Association discharges such responsibilities on any Limited Common Element, the charge or assessment for such, shall be borne by the Unit(s) benefiting from such Limited Common Element, except that Unit E shall not be separately charged for the discharge of such Association responsibilities as they relate to Parking Space P-E and such expenses shall be allocated in the same manner as a general common element expense.

## **ARTICLE XVII**

### **THE ASSOCIATION**

17.1 **General Purposes and Powers.** The Association, acting through its Board or the Managing Agent, shall perform its functions, and hold and manage the Project, as provided in this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations duly promulgated, so as to further the interest of the Owners. It shall have all powers necessary or desirable to effectuate the same.

17.2 **Membership.** All Owners shall automatically be Members of the Association. Such Memberships are appurtenant to the Units of the respective Owners, and shall automatically pass with fee simple title thereto. Each Owner shall automatically be entitled to the benefits, and be subject to the burdens, relating to such membership. If fee simple title to a Unit is held by more than one (1) Person, each such Owner of a Unit shall designate one (1) Person, or agent, to act for the membership. Memberships in the Association shall be limited to Owners of Units, except that, in the period of Declarant control, non-owners may be designated by Declarant as Members of the Association.

17.3 **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 amplified by provisions of the Articles of Incorporation, Bylaws and duly adopted rules and regulations of the Association.

17.4 **The Board.** The affairs of the Association shall be managed by the Board, which may by resolution, delegate any portion of its authority, but not its ultimate responsibility, to a Managing Agent. There shall be an odd numbered Board of not less than three (3), nor more than five (5), Members of the Board, as set forth from time to time in the Bylaws, all of whom shall be Owners, except during the period of Declarant control, and shall be elected by the Owners as specifically provided in the Bylaws. Notwithstanding

anything to the contrary herein, until the Owner Control Date, the officers and Members of the Board shall be appointed and removed as follows:

a. From the date the Project is created, to a date sixty (60) days after conveyance of twenty-five percent (25%) of the ownership interest in all Units to Owners other than Declarant, or Persons designated by it, Declarant may appoint and remove the officers and Members of the Board;

b. Thereafter, to a date sixty (60) days after conveyance of fifty percent (50%) of the ownership interest in all Units to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the Members of the Board must be elected by Owners other than Declarant;

c. Thereafter, to the Owner Control Date, not less than thirty-three and one-third percent (33 1/3%) of the Members of the Board must be elected by Owners other than Declarant;

d. Not later than the Owner Control Date, the Owners shall elect to the Board at least three (3) Members, with at least a majority of whom, must be Owners other than Declarant or designated representatives of Owners other than Declarant.

e. The Owners, by a two-thirds (2/3) vote of all Persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any Members of the Board, other than a member appointed by Declarant.

Declarant may voluntarily surrender the right to appoint and remove officers and Members of the Board before the Owner Control Date, but, in that event, the Declarant shall have the right, until the Owner Control Date, to require certain actions of the Association or the Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before such actions become effective.

17.5 Voting Rights of Owners. Except in the event of the combination of Units, the Owner or Owners of each Unit shall be entitled to the number of votes allocated to each such Unit owned, as set forth in Exhibit B hereto.

## **ARTICLE XVIII**

### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

18.1 Association as Attorney-in-Fact for Owners. The Association is hereby irrevocably appointed attorney-in-fact for the Owners and each of them, to manage, control and deal with the interest of each Owner in the Common Elements, so as to further the interest of each Owner in the Common Elements and to permit the Association to fulfill all of its duties and obligations, and to exercise all of its rights hereunder; to deal with the Project upon its destruction or obsolescence as hereinafter provided; and to grant utility easements or licenses through any portion of the Common Elements. 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 its duties assigned to it hereunder.

**18.2 Association Functions.** In addition to its maintenance responsibilities, the Association may undertake any activity, function or service which benefits and/or furthers the interests of a respective Owner or all Owners. Such activities, functions or services may include the providing of security services, garbage and trash collection services and snow and ice removal.

**18.3 Association – Architectural/Aesthetic Control.** The aesthetic nature and quality of the Project shall at all times be maintained and upheld by the Association acting on behalf of the Owners. To fulfill this obligation, the Association, whenever considering any exterior alterations or changes to any Unit, Common Element or Limited Common Element, including any structural changes to the Project (alterations, changes and structural changes are referred to hereinafter as “Proposed Improvements”), shall, at all times consider the suitable and aesthetic desirability of the Proposed Improvement, the materials of which it is to be built, its harmony with the surroundings, and any effect on the view from the adjacent or neighboring property or otherwise from within or of the Project.

**18.4 Labor and Services.**

The Association:

18.4.1 May engage 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 employed directly by the Association, or by any Person with whom or which it contracts.

18.4.2 May obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project, the enforcement of this Declaration or to represent the Association in any litigation in which the Association is named party plaintiff or defendant; and

18.4.3 May arrange with others to furnish lighting, heating, water, trash collections, snow and ice removal, landscaping, sewer service and other common services.

Any contract between the Association and the Managing Agent shall be terminable for cause without penalty to the Association, and shall be subject to renegotiation.

**18.5 Property of Association.** The Association may purchase, acquire, hold or lease real property and tangible and intangible personal property, and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Association, each Owner

and each Owner's family and guests may use such property. Upon termination of condominium ownership of the Project, and dissolution of the Association, if ever, the beneficial interest in any such property shall be distributed as provided in the Articles. The conveyance of a Unit shall convey to the grantee thereof, ownership of the grantor's beneficial interest in such property, without any reference thereto.

**18.6 Power to Grant Interests in General Common Elements.** The Association shall have the power to lease and grant easements, licenses or permits over any portion of the Common Elements, or any Unit owned by the Association for placement of Utilities, and other purposes reasonably necessary, or useful, for the proper maintenance or operation of the Project, as well as pursuant to Article XIV.

**18.7 Notice to Registered Mortgagees.** Any First Mortgagee may register with the Association by transmitting to the Association, by registered or certified U.S. Mail, return receipt requested, a notice setting forth its name and mailing address, the Identifying Unit Designation encumbered by its Mortgage, the name of its mortgagor, and enclosing a recorded copy of its Mortgage. The Association shall transmit to each such First Mortgagee:

- a. notice of any change in the Managing Agent at least ten (10) days before the effective date thereof;
- b. a copy of the Association's financial statements, as they become available (which may be audited at the request and expense of the requesting mortgagee);
- c. notice of all meetings of the Members of the Association, which any mortgagee may attend in person or by representative;
- d. notice of any condemnation proceeding or casualty loss that affects either a material portion of the Project or the Unit securing its Mortgage;
- e. notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- f. notice of any proposed action that requires the consent of a specified percentage of mortgagees; and
- g. notice that assessment installments pertaining to the Unit encumbered by Mortgage, are delinquent by more than sixty (60) days, if such is the case.

**18.8 Enforcement by the Association.** The Board may suspend any Owner's voting rights in the Association during any period in which such Owner fails to comply with the Association's rules and regulations or with any other obligations of such Owner under this Declaration or the Bylaws. Such suspension of voting rights shall not occur, however, if any Owner and the Association dispute the amount of any sum owed by such Owner to the Association, provided the Owner timely pays to the Association such sum

as he, in good faith, believes is owed. The Association or any aggrieved Owner may also take judicial action against any other Owner or the Association, to enforce compliance with such rules and regulations, or other obligations herein or in the Bylaws or enacted by the Board, or to recover damages for violation thereof.

18.9 Limitations on Powers of the Association. The Association may not assign its future income, including its right to receive Common Expense assessments.

18.10 Implied Rights. The Association may exercise any right or privilege given expressly by this Declaration, the Articles or Bylaws, or which are reasonably implied by law and which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

## ARTICLE XIX

### RULES AND REGULATIONS

The Association may make and adopt reasonable rules and regulations governing the use of the Units, the Common Elements and the Limited Common Elements for which the Association is charged with responsibility. Such rules and regulations shall be substantially consistent with the right and duties established in this Declaration or the Bylaws and must be uniform and non-discriminatory, but may allow and account for differences of design, parking, deed restriction, and otherwise within the Project. The Association, Declarant or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such rules and regulations and with the provisions of this Declaration, the Articles of Incorporation and Bylaws and may obtain damages for non-compliance or sue for injunctive relief, or both, all to the extent permitted by law. The Association and any aggrieved Owner, if the prevailing party shall also be entitled to recover all costs and attorney's fees incurred with any such enforcement action.

## ARTICLE XX

### ALLOCATED INTERESTS

20.1 Allocated Interests. The undivided interest in the Common Elements, the Common Expense Liability and the votes in the Association, allocated to each Unit, are set forth in Exhibit B. In the event of a discrepancy between the method of determination of Allocated Interests, as described below and in Exhibit B, Exhibit B shall control.

20.2 Determination of Allocated Interests. The Allocated Interests of each Unit have been calculated as follows:

a. The undivided interest in the General Common Elements, on the basis of square feet contained in an Unit, which is a percentage interest calculated by dividing the square feet of the Unit by the approximate total number of square feet of all Units within the Project, as shown on the Map.



- b. The percentage of liability for Common Expenses on the basis of:
- 1) Allocation of Common Expenses to a Unit or group of Units, based upon identified Limited Common Element(s) for costs and expenses attributable to each such Unit or Units, shall be determined by multiplying the cost or expense by a fraction, the numerator of which is the square feet contained in the Unit, and the denominator of which is the total square feet contained in all Units. The cost of Utilities attributable to a Unit and its appurtenant Limited Common Elements will be separately metered or allocated pursuant to this subparagraph 20.2(b)(1). (See Exhibit B)
  - 2) The Common Expense Liability attributable to each Unit shall be determined by multiplying the expense or cost by a fraction, the numerator of which is the square feet contained in the Unit, and the denominator of which is the total square feet contained in all the Units assessed. (See Exhibit B). In addition to their respective share of the Common Expense Liability as noted above, the Owner of each Unit shall be obligated to pay all charges for any separately metered Utilities servicing such Unit(s), all Common Expenses allocated based on a per Unit charge including without limitation bulk cable and internet expenses and management fees, and all allocated Common Expense Reserves.
- c. The number of votes in the Association allocated to each Unit shall be based upon the proportion of square feet contained in a particular Unit, in proportion to the total square feet contained in all Units. (See Exhibit B)

## **ARTICLE XXI**

### **ASSESSMENTS**

21.1 **Assessment for Common Expense.** Until the Association makes an assessment for Common Expenses, Declarant shall be responsible for all Common Expenses. After an assessment for Common Expenses has been made by the Association, such assessment shall be made not less frequently than annually.

21.2 **Personal Obligation.** Each Owner, by acceptance of a deed or other instrument of conveyance of his Unit (whether or not it shall be so expressed in such deed or other instrument), shall be personally obligated, and is deemed to personally covenant and agree with all other Owners and with the Association, and hereby does so covenant and agree, to pay the assessments, regular and special, imposed by the Association during the duration of his Ownership of a Unit, established and collected as hereinafter provided. Assessment installments shall be prorated if the ownership of a Unit commences on a day other than the first day of a month. Each Owner shall be obligated to pay all charges for any separately metered Utilities servicing his Unit. The cost of any Utilities which are master metered or billed at a flat rate for the entire Project, shall be a Common Expense hereunder.

21.3 **Determination of Assessments.** The assessments shall be based upon a budget, adopted by the Board, not less frequently than annually, reflecting the sums determined,

from time to time, by the Board required for payment of each estimated expense, arising from or connected with the maintenance and operation of the Project, and the performance of other obligations and functions of the Association. Such sums may include, among other things, expenses of management, taxes and special assessments, premiums for insurance, replacement and other reserve funds, landscaping and care of Common Elements, common lighting and heating, repairs and renovations, trash collections, snow removal, wages, water and sewer charges, legal and accounting fees, capital expenditures, expenses and liabilities incurred by the Managing Agent or the Board under or by reason of this Declaration, including deficits remaining from a previous period. Within ninety (90) after adoption of the proposed budget, the Board shall mail, by ordinary first-class mail, e-mail, or otherwise deliver a summary of the budget to all Owners, together with notice of the date, time and location of a meeting of the Owners to consider such budget, which meeting shall be not less than ten (10) days nor greater than fifty (50) days from the date such summary was mailed or otherwise delivered. If the budget proposed by the Board is less than or equal to fifteen percent (15%) greater than the last approved budget, then it shall be deemed approved by the Owners in the absence of a veto at the noticed meeting of one hundred percent (100%) of voting interest, whether or not a quorum is present. If the budget proposed by the Board is more than fifteen percent (15%) greater than the last approved budget, then it shall be deemed approved by the Owners in the absence of a veto at the noticed meeting of sixty-seven percent (67%) of the voting interest, whether or not a quorum is present. In the event the budget proposed by the Board is vetoed, the periodic budget last proposed by the Board and not vetoed by the Unit Owners shall be continued until a subsequent budget proposed by the Board is not vetoed by the Unit Owners.

21.4 Reserve Fund. The Board shall establish, out of such assessments, a reserve fund for the repair, replacement and maintenance of improvements to the Common Elements and certain Limited Common Elements, if any, that the Association is obligated to maintain. Such reserve may also include an operating reserve fund that the Board is authorized to use in order to cover any operating overage in any given month, including without limitation, snow removal expenses over budgeted amounts. The omission or failure of the Board of Directors to fix any assessment shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay the same.

21.5 Payment of Assessments. Each Owner shall be obligated to pay the total annual assessment (the "Regular Assessment") within thirty (30) days of notice thereof, or, in the sole discretion of the Board, a portion of each assessment calculated in accordance with his Allocated Interest thereof, in twelve (12) equal and consecutive installments, on the first (1<sup>st</sup>) day of each calendar month of the Association's fiscal year for which such assessment is imposed.

21.6 Special Assessments. The Board shall have the power at any time to levy and impose against all of the Owners and Units, special assessments for such purpose or purposes, in accordance with this Declaration, the Articles or Bylaws, as the Board deems necessary to keep the Project a first-class property. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the

Allocated Interests of each Unit in the Common Interest Community, and shall be due and payable to the Association on the due date fixed by the Board in the notice given to the Owners of such Special Assessment. Any Special Assessment for an expenditure which will benefit fewer than all of the Units shall only be levied against the Units benefited; provided, however, that expenditures in connection with the Land and Real Property (excepting Limited Common Elements, but including the Limited Common Element Parking Space P-E and the General Common Element Parking Space P-HOA) shall be deemed for the general benefit of all Units, wherever located. If fewer than all of the Units will be subject to the Special Assessment, then such Special Assessment shall be allocated equally amongst those Units.

Owners having at least sixty-seven percent (67%) of the voting interest may revoke or modify any special assessment at any annual or special meeting of the Owners, by a petition to the Board signed by such Owners.

21.7 Other Sums Due the Association. Any sums owed by an Owner to the Association under or pursuant to any provision of this Declaration, the Articles, the Bylaws or the rules and regulations, shall be deemed to have matured and the Association shall have all corresponding rights and remedies with respect to the collection thereof, as provided in Article XXII hereof.

## **ARTICLE XXII**

### **NONPAYMENT OF ASSESSMENTS**

22.1 Late Charges. If any assessment or installment which is due, shall remain unpaid for ten (10) days or more after the due date thereof, the Association may impose a late charge on such delinquent Owner in an amount to be determined by the Board to cover the extra cost and expense involved in handling such delinquent assessment or installment plus any fees charged to the Association by the Association's bank or other applicable fees charged to the Association by any third party. This late charge is in addition to interest provided for in Article XXXVII.

22.2 Assessment Lien. All assessments shall be secured by a perpetual and continuing lien (hereinafter referred to as "the Lien") on each Unit, and this Declaration shall serve as record notice of the Lien, which shall be superior and prior to all other liens and encumbrances, excepting only:

- a. tax and special assessment liens on the Units in favor of any governmental taxing entity; and
- b. the lien of any First Mortgage which was recorded before the recording of this Declaration.

The Lien shall be prior to a security interest on the Unit, which has priority over all other security interests in the Unit, and which was recorded before the date on which the assessments sought to be enforced became delinquent, to the extent of an amount equal to the common expense assessments based on a periodic budget adopted by the Association

under the Act, which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association, or any party holding a lien senior to any part of the Association Lien, created under the Act of an action or a non-judicial foreclosure either to enforce or to extinguish the Lien.

The sale or conveyance of any Unit shall not affect the Lien, except that the conveyance of any Unit pursuant to foreclosure of any First Mortgage or any conveyance in lieu of foreclosure thereof, shall, except to the extent provided above, extinguish the Lien for assessment installments, which may have been due prior to such foreclosure, but shall not affect the Lien or liability for any assessment installments thereafter maturing.

**22.3 Enforcement of Lien.** To further evidence the Lien, the Association may prepare a written notice thereof, setting forth the present amount of delinquent assessments and other sums owed by an Owner, the name of the delinquent Owner and a designation of the Unit. Such notice shall be executed by an officer of the Association or by the Managing Agent and shall be recorded in the office of the Clerk and Recorded of San Miguel County, Colorado. The Lien may be enforced by foreclosure of the defaulting Owner's Unit in the same manner as a Mortgage on Real Property under Colorado law. In any such foreclosure action, the delinquent Owner shall be required to pay the costs and expenses of such proceedings, including the costs and expenses for recording the notice of lien and all reasonable attorneys' fees, as provided for in the Act. Such Owner shall also be required to pay the Association the monthly assessment installments for the Unit during the period of foreclosure. The Association shall have the power to bid on the Unit at foreclosure sale and to acquire and hold, lease, Mortgage and convey the same.

**22.4 Release of Lien.** Any recorded notice of the Lien may be released by recording a Release of Lien executed by an officer of the Association or by the Managing Agent.

**22.5 Payment by Mortgagee.** The First Mortgagee or any other holder of a Mortgage on a Unit may pay, but shall not be required to pay, any unpaid assessment installments pertaining to such Unit and, upon such payment, shall have a lien on such Unit for the amount so paid of the same rank as the Lien of his Mortgage.

**22.6 Homestead Waiver.** By acceptance of a deed or other instrument of conveyance of a Unit, each Owner is deemed to agree that the Lien shall be superior to the homestead, exemption, provided by Section 38-41-201, C.R.S. 1973, as amended, and each Owner hereby agrees that the recording of the deed or other instrument conveying to him any Unit, shall effectuate the foregoing.

**22.7 Collection Action.** The Association may maintain an action to recover a money judgment for unpaid assessments without foreclosing or waiving the Lien, and shall be entitled to recover therein all costs and expenses, including attorney's fees, recoverable under Paragraph 22.3.

**22.8 Personal Obligation.** The amount of each assessment and any installment against each Unit shall be the personal and individual debt of the Owner or Owners thereof, at the time such installment becomes due and payable. No Owner may exempt himself

from liability for any assessment installment by waiver of the use or enjoyment of any of the Common Elements.

22.9 Statement of Account. Upon payment of a reasonable fee determined by the Board, and upon fourteen (14) business days prior written notice from any Owner or any mortgagee or prospective mortgagee of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessment, if any, with respect to the subject Unit, the amount of the current assessment installment, the date such assessment installment becomes due, the amount of the balance of such Owner's working capital reserve account or other reserve on deposit with the Association and any credit for advanced payments for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all Persons who rely thereon in good faith. Unless a request for such a statement shall be fulfilled in writing in accordance with this Paragraph, within fourteen (14) business days from the receipt thereof, all unpaid assessment installments which become due prior to the date of making such request, shall be subordinate to the interest of the Person requesting such statement.

22.10 Attorney Fees and Expenses. Notwithstanding anything herein to the contrary, the Association is entitled to recover reasonable attorney fees and other legal costs and expenses for collection of any Regular Assessments and Special Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated.

## **ARTICLE XXIII**

### **WORKING CAPITAL**

Upon the initial conveyance of a Unit, if an assessment has been actually made, the grantee thereof shall deposit with the Association an amount, as fixed by the Board in such Assessment, equal to not less than two (2) times and not greater than six (6) times the amount of such current assessment installment, which sum shall be held, without interest, by the Association as a reserve to be used for working capital. Such payment shall not relieve an Owner from the regular monthly payment of other assessment installments, as the same come due. Declarant shall not convert to its own use or otherwise utilize for its own benefit, any funds in said reserve or any other monies of the Association.

## **ARTICLE XXIV**

### **INSURANCE, ADDITIONS, ALTERATIONS AND IMPROVEMENTS**

24.1 Association Duty for Insurance. Commencing not later than the time of the first conveyance of a Unit to a person other than Declarant, the Association shall maintain, to the extent reasonably available, policies of insurance written with financially responsible and able companies licensed to do business in Colorado, having a rating in Best's Insurance Reports, of B-II or better, pursuant to the Act and covering the risks set forth below. The types of coverage to be obtained are set forth in this Article XXIV.

**24.2 Casualty Insurance.** The Association shall obtain insurance against loss or damage by fire and such other hazards as are customarily covered in condominium projects in the Telluride region, under extended coverage and all risk endorsements. Said casualty insurance shall insure the entire Project, including all Common Elements, all of the Units and the fixtures therein initially installed or conveyed by Declarant, but not including improvements, fixtures, decorating, furniture, furnishings, appliances or other personal property supplied by or installed by Owners; in an amount equal to the full replacement value thereof, above foundations, without deduction for depreciation, and with inflation guard and construction code endorsements, if available; further, in regard to the Employee Unit, without deduction for any amount between the full replacement value and the price imposed by the deed restriction. Such policies shall contain a standard non-contributory Mortgage clause in favor of each First Mortgagee, which shall provide that any loss payable thereunder shall be paid to the Association for the use and benefit of such First Mortgagees, as their interests may appear. In no event shall such policy contain a co-insurance clause for less than eighty percent (80%) of the full replacement cost.

**24.3 Flood Insurance.** In the event the Project is ever designated as located in an area identified by the Secretary of Housing and Urban Development as a Special Flood Hazard Area and the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, a blanket policy of flood insurance on the Project, including any machinery or equipment which is part of the Building in an amount equal to the lesser of the maximum amount of insurance available under said Act or the full insurable value of the property so insured shall be purchased by the Association.

**24.4 Liability Insurance.** The Association shall obtain public liability and property damage insurance in such limits as the Board may, from time to time determine, but not less than One Million Dollars (\$1,000,000.00) per injury, per person, per occurrence and covering all claims for death, bodily injury or property damage. Coverage shall include, without limitation, liability for operation of automobiles on behalf of the Association, and activities in connection with the administration, ownership, operation, maintenance and other use of the Common Elements, specifically including Limited Common Elements. All liability insurance shall name the Association, any Managing Agent, Members of the Board, the Owners and the officers of the Association as insured thereunder. The Declarant shall be included as an additional insured, in such Declarant's capacity as an Owner, officer or member of the Board.

**24.5 Workmen's Compensation.** The Association shall obtain Workmen's Compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, in at least the minimum amounts and on the terms now or hereafter required by law.

**24.6 Employee Bonds.** The Association shall obtain blanket fidelity bonds for employees or any other person who handles or is responsible for funds held or administered by the Association, regardless whether such persons are compensated for their services. Such fidelity bonds shall name the Association as obligee and be written in an amount equal to the lesser of (a) \$250,000.00 or (b) the estimated annual Common

Expenses of the Association, including contributions to reserves. All such bonds shall provide that they may not be canceled or substantially modified for any reason, until after at least ten (10) days written notice thereof to the Association.

**24.7 Managing Agent Bonds.** The Association shall obtain a fidelity bond, dishonesty coverage, or similar insurance for any Managing Agent and its officers and employees, naming the Association as an obligee and having the same coverage as required under Paragraph 24.6 hereof.

**24.8 Other Risks.** The Association may obtain coverage for such other risks of a similar or dissimilar nature as the Board may deem appropriate with respect to the Project, including insurance for plate glass and any personal property of the Association.

**24.9 Policy Provisions.** All such policies of insurance, to the extent obtainable, shall contain waivers of subrogation and waivers of any defense arising from any acts or omissions of any Owner and shall provide that such policies (as well as bonds issued pursuant to this Article) may not be canceled or modified without at least thirty (30) days prior written notice to all of the Owners, eligible mortgagees and the Association. All casualty insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners and First Mortgagees, as their interests may appear, which policy or policies shall identify the interest of each Owner by name and Identifying Unit Number and First Mortgagee. In addition, all policies shall contain a severability of interest clause precluding the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

**24.10 Insurance Appraisals.** Prior to obtaining any policy of casualty insurance or renewal thereof after the Owner Control Date, the Board may obtain an annual appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall estimate the full replacement value of the entire Project without deduction for depreciation, for the purpose of determining the amount of the casualty insurance to be effected pursuant hereto. The limits of such casualty insurance shall be adjusted annually in accordance with currently determined full replacement value.

**24.11 Owner's Insurance.** The insurance policy issued to the Association does not obviate the need for Unit Owners to obtain insurance for their own benefit. Accordingly, Unit Owners may carry other insurance for their benefit, at their own expense, provided that the liability of the carriers issuing insurance to the Association shall not be affected or diminished by reason of any such additional insurance carried by Owners.

**24.12 Contents Insurance.** Insurance coverage on improvements and fixtures installed by an Owner and furnishings, including carpet, draperies, oven, range, refrigerator, wallpaper, disposal and other items of personal property belong to an Owner, and public liability coverage upon each Unit, shall be the sole and direct responsibility of the Owner thereof and neither the Board, the Association, nor the Managing Agent shall have responsibility therefore.

**24.13 Owner Negligence.** All such policies of insurance may provide that the insurance thereunder shall be invalidated or suspended, only in respect to the interest of any Owner guilty of negligence, or failure to comply with any provision of such policy, or who permits or fails to prevent the happening of any event, either before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners who are not guilty of any such conduct, shall not be invalidated or suspended and shall remain in full force and effect.

**24.14 Deductibles.** If and to the extent economically feasible, no policy of insurance required hereby shall contain a deductible clause in an amount greater than Five Thousand Dollars (\$5,000.00) or One Thousand Dollars (\$1,000.00) in the case of flood insurance, or one percent (1%) of the face amount of such policy, whichever is less.

**24.15 Additions, Alterations and Improvements.** The Association shall make no capital expenditures for additions, alterations or improvements of or to the Common Elements in excess of thirty percent (30%) of the operating budget in any one (1) fiscal year, without prior approval by the Owners having a majority of the voting interest, except in the event of an emergency. Said limitation shall not apply to any expenditure made by the Association for ordinary maintenance and repair of the Common Elements nor repair or reconstruction thereof in the event of damage, destruction or condemnation.

## **ARTICLE XXV**

### **SUCCESSION TO OWNER'S LIABILITY**

The personal obligation of an Owner for delinquent assessments levied against a particular Unit shall pass to such Owner's successors as a lien against the acquired Unit, and otherwise as may be provided by applicable law.

## **ARTICLE XXVI**

### **OWNER'S RIGHTS TO MORTGAGE UNITS**

Any Owner shall have the right, from time to time, to encumber his Unit with a Mortgage, and may create Mortgages junior to the lien of a First Mortgage on his Unit, on the following conditions: (a) that any such junior Mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, the Lien and other obligations created by this Declaration, the Articles and the Bylaws; and (b) that the mortgagee under any such junior Mortgage shall release, for the purpose of restoration of any improvements upon the Project, all of his right, title and interest in and to the proceeds of any insurance policies obtained by the Association. Such release shall be furnished forthwith by a junior Mortgage upon written request of the Managing Agent or any member of the Board, and if not so furnished, the same may be executed by the Association, as attorney-in-fact for such junior mortgagee.



## ARTICLE XXVII

### **RESTRICTIVE COVENANTS AND OWNER'S OBLIGATIONS**

27.1 **No Imperiling of Insurance.** No Person shall do anything or cause anything to be kept in or on the Project, which might result in an increase in the premiums, or cause the cancellation of insurance covering the Project.

27.2 **No Violation of Law.** No Person shall do anything or keep anything in or on the Project, which would be a nuisance, either public or private, or in violation of any statute, rule, ordinance, regulation, permit or other requirement of any governmental body.

27.3 **No Noxious, Offensive, Hazardous or Annoying Activities.** No noxious, or offensive activity shall be exercised upon 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, disturbance or annoyance to others. 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.

27.4 **No Unsightliness.** No unsightliness, laundry or waste shall be permitted on or in any part of the Project. No Person shall keep or store anything in, or on, any of the Common Elements, nor shall any Person hang, erect, affix, or place anything upon any of the Common Elements, windows or doors in the Units which create an unsightly appearance.

27.5 **Restrictions on Vehicles, Parking and Storage.** Except as specifically authorized by the Board, no part of the Property, including but not limited to the Limited Common Element or General Common Element Parking Spaces or other parking areas, public or private streets, or drives, and no part of the streets adjoining the Property shall be used as a parking, storage, display, or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, truck larger than  $\frac{3}{4}$  ton, bus, self-contained motorized recreational vehicle, or any aged, rusted, damaged, excessively weathered, or otherwise dilapidated vehicle, except as a temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Property which are necessary for construction, or maintenance of the Common Area, or making deliveries or performing services. No rusted, damaged, excessively weathered or otherwise dilapidated or abandoned vehicles shall be parked or stored upon any part of the Property, including without limitation any Limited Common Element or General Common Element Parking Spaces or other parking area, or any street adjoining the Property. In the event that the Board shall determine in its sole discretion that a vehicle is aged, rusted, damaged, excessively weathered or otherwise dilapidated, or abandoned, then a written notice describing the vehicle will be personally delivered to the Owner thereof (if such Owner can be reasonably ascertained and personally served), or will be conspicuously placed on

such vehicle (if the Owner thereof cannot be reasonably ascertained or personally served), and if such vehicle is not removed within seventy-two (72) hours thereafter, the Board shall have the right to remove the vehicle at the sole expense of the Owner thereof. The Board may make rules and restrictions regarding parking and vehicular traffic on the Property, and the Board may also designate any parking spaces as solely for the use of visitors or others, unless such spaces have been previously assigned by Declarant to an Owner, and requiring that all Owners park their vehicles inside their assigned spaces, rather than in driveways, streets or other parts of the Property. Neither Owners, tenants, guests, family nor other invitees shall park within or obstruct any prohibited area, including without limitation, any fire lane. Any vehicle or other item which is parked or stored in violation of any rules or restrictions shall be subject to immediate removal by the Board or its agents at the sole expense of the Owner of such vehicle or item. Notwithstanding any other provision contained herein, no vehicles or any type shall be parked on any street within the Property.

**27.6 Restrictions on Animals.** With the exception of indoor dogs, cats, and other small domesticated pets, no animals, including, livestock, reptiles or birds are permitted in the Project. Any permitted pets may be regulated pursuant to all governmental animal ordinances and laws, rules and regulations as may be promulgated by the Association in regard thereto, provided however, that in no case may animals be kept on any part of the Project for any commercial purpose. Any Person is responsible for any damage caused by his pets and shall be obligated to clean up after his pets. No pets shall be allowed to remain tied or chained to any balconies, patios, decks or other parts of the Project and any such pets so tied or chained may be removed by the Association or its agents.

**27.7 Restrictions on Signs.** With the exception of the Declarant's directional, promotional and advertising 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 Association. Any signs erected pursuant to this Paragraph must be in compliance with all local ordinances regulating same.

**27.8 No Violation of Rules.** No Person shall violate the rules and regulations adopted from time to time by the Association, whether relating to the use of Units, the use of the Common Elements or otherwise.

**27.9 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 Common Elements or any Unit, such Owner shall be liable and responsible therefore, except to the extent 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.

**27.10 Zoning Compliance.** Units shall not be used for any purpose(s) which is in violation of any pertinent zoning ordinance. It is intended that Units be used solely for residential purposes, except that a home office may be maintained within a Unit subject to compliance with all zoning and building requirements of the Town, at the time such

office use is instituted, and only if such office use is in compliance with parking requirements in effect at the time of such use.

27.11 Determination of Violation. Any determination as to whether or not a particular activity or condition constitutes a violation of the provisions of this Paragraph, shall be made by the Board and shall be subject to notice to the offending Owner and due process before such determination is deemed final.

27.12 Exterior Windows and Doors. No Unit windows and doors located in the exterior walls of the Building, shall be replaced, altered or repainted by any Person without the prior written consent of the Board, nor shall any Person cause any window air conditioner, other device or article to protrude outside the sash of any such window.

## **ARTICLE XXVIII**

### **OBSOLESCENCE**

28.1 Obsolescence – Renovation. The Owners of all Units representing seventy-five percent (75%) of the Allocated Interest in the Common Elements, may agree that the Project is obsolete, and adopt a written plan for renovation of the Project. Such plan must also have the approval of First Mortgagees representing fifty-one percent (51%) of the total allocated vote for the Units that are subject to First Mortgages. If such plan is so adopted, all of the Owners and mortgagees shall be bound thereby, and the cost of such renovation shall be payable pro rata by all of the Owners, pursuant to a special assessment. The Association shall have the right and power to effect such renovation in accordance with such plan, and to use the proceeds therefore generated by such special assessment. Any special assessment made in connection with such plan shall be due and payable as provided by the terms of such plan, but not sooner than thirty (30) days after written notice thereof to the Owners.

28.2 Obsolescence – Sale. The Owners of all Units representing seventy-five percent (75%) of the Allocated Interest in the Common Elements, may agree, in writing, that the Project is obsolete and should be sold. Such agreement must also have the approval of First Mortgagees representing sixty-seven percent (67%) of the total allocated vote for the Units that are subject to First Mortgages. In such instance, the Association shall forthwith record a notice, and 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 the Declaration, the Map, the Articles and the Bylaws. Upon such sale, the proceeds thereof shall be apportioned and disbursed by the Association in the manner prescribed in the Act.

28.3 Other Mortgagees. The consent of any mortgagee, other than First Mortgagees, shall not be required as a condition to the implementation of any provision of this Article XXVIII.

## ARTICLE XXIX

### CONDEMNATION

29.1 Consequences of Condemnation. If all or any part of the Project shall be taken by condemnation or under threat thereof, the provisions of this Article XXIX shall apply.

29.2 Proceeds. All compensation, damages or other proceeds from any such taking (the sum of which is hereinafter called "the Award") shall be payable to the Association.

29.3 Complete Taking. In the event the entire Project is so taken, condominium ownership pursuant to this Declaration shall terminate as of the date possession of any part of the Project is taken by the condemning authority and the Award shall be apportioned and disbursed by the Association on the basis of each Owners Allocated Interest in the Project, in the manner prescribed in Paragraph 29.4 hereof.

29.4 Partial Taking. In the event less than the entire Project is so taken, each Owner shall be entitled to share of the Award determined in the following manner. As soon as practicable after receipt of the Award, the Association shall, utilizing reasonable good faith judgment, apportion and disburse the Award among the Owners as follows: (a) the total amount attributable to the taking of or damage to the Common Elements shall be apportioned among the Owners in proportion to their respective Allocated Interests; (b) the total amount attributable to severance damages shall be apportioned among the Owners of the Units which were not taken; (c) the amount attributable to the taking of or damage to a particular Unit and Improvements made by the Owner thereof within such Unit, shall be apportioned to such Owner, and (d) the amount attributable to consequential damages and any other taking or damage shall be apportioned as the Association determines to be equitable in the circumstances. If any allocation of the Award is previously established by agreement or judicial decree, the Association shall employ such allocation to the extent it is relevant and rational. All disbursements of the Award made pursuant to this Paragraph shall be made by checks payable jointly to the Owners and their respective First Mortgagees.

29.5 Reorganization. In the event a partial taking results in the taking of an entire Unit or a part of a Unit leaving the Owner with a remaining portion which may not practically or lawfully be used for the purposes set forth herein, the Owner thereof automatically shall cease to be a member of the Association and such Owner's interest in the Common Elements shall thereupon terminate and the Association, as attorney-in-fact for such Owner, may take such action and execute such documents as are necessary to reflect such termination, provided however, for purposes of Paragraph 29.4 hereof, such Owner shall be deemed to continue to own such Unit. Thereafter, the Association shall promptly reallocate the Allocated Interests according to the principles set forth. Any remnant of a Unit remaining after part of a Unit is taken as provided herein shall thereafter become a Common Element (or Limited Common Element for the benefit of the Units if necessary given the design of the Building). In the event a partial taking results in the taking of a

part of a Unit, upon acquisition, the Association shall promptly reallocate the Allocated Interests in accordance with the principles set forth in Paragraph 20.2.

29.6 Recording of Decree. The Court Decree shall be recorded in the office of the Clerk and Recorder, San Miguel County, State of Colorado.

29.7 Reallocations Are Amendments to Declaration. The reallocations of Allocated Interest pursuant to this Article XXIX shall be confirmed by an Amendment to the Map and this Declaration prepared, executed and recorded by the Association.

## **ARTICLE XXX**

### **SPECIAL DECLARANT RIGHT AND DEVELOPMENT RIGHTS**

Declarant hereby reserves the following Development Rights and other Special Declarant Rights:

30.1 Management Contracts. Declarant shall have the right to enter into professional management contracts which bind the Association prior to the Owner Control Date and which are terminable for cause without penalty to the Association. These provisions apply only to professional management contracts and not to any other types of services contracts.

30.2 Subdivision of Units. Declarant, alone, but subject to review for compliance with all applicable requirements of the Mountain Village LUO, hereby reserves the right to subdivide or convert any Unit(s) into additional Units, General Common Elements, Limited Common Elements or all of the preceding. In such instance, Declarant shall prepare, execute and record an amendment to the Declaration in compliance with the provisions of Article II herein. If Declarant converts a Unit entirely into Common Elements (Limited or General), the Amendment to the Declaration must reallocate all the Allocated Interests of the Unit among the other units in accordance with the provisions of Article XXIX. If the Declarant subdivides a Unit into two or more Units, whether or not any part of the Unit is converted to Common Elements the amendment to the Declaration must reallocate all the Allocated Interests of such Unit among the Units subsequently created in any reasonable manner described by Declarant. The Declarant is the Owner of each new Unit created and the Amendment to the Declaration must assign an Identifying Unit Designation for each new Unit created. This development right shall be vested in Declarant for that period of time the Declarant remains an Owner of a Unit or any part thereof, but not to exceed ten (10) years from the date this Declaration is recorded.

30.3 Declarant Easement. Declarant shall have an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights and Development Rights, whether reserved herein or arising under the Act.

## ARTICLE XXXI

### AMENDMENT AND TERMINATION OF CONDOMINIUM

#### COMMUNITY

31.1 Amendments. Except as set forth in Paragraph 31.2, any provision of this Declaration may be amended or additional provisions may be added to this Declaration, by the recording of a written instrument or instruments specifying the amendment or addition, executed by the Declarant or Association and recorded in the records of the Clerk and Recorder of San Miguel County, Colorado, certifying that on the thirtieth (30<sup>th</sup>) day prior to such recording, sixty-seven percent (67%), of the total allocated votes in the Association relating to all Units, and with the approval of two thirds (2/3) by First Mortgagees (based upon one vote for each First Mortgage held), have duly approved such amendment or addition representing fifty-one percent (51%) of the votes of Units that are subject to First Mortgages. Notwithstanding the foregoing, the requirements of Paragraph 31.1 with respect to the votes of First Mortgagees shall apply with respect to termination of the Community by reason of condemnation or substantial destruction.

31.2 Termination. This Declaration, and condominium ownership of the Project, may be revoked only by the recording of a written instrument to that effect, executed by the Owners, as shown by the records in the Office of the Clerk and Recorder of San Miguel County, Colorado, certifying that on the thirtieth (30<sup>th</sup>) day prior to such recording, sixty-seven percent (67%) or more of the total allocated votes in the Association relating to all Units, and by First Mortgages representing fifty-one percent (51%) of the votes of Units that are subject to First Mortgages. Notwithstanding the foregoing, the requirements of Paragraph 31.1 with respect to the votes of First Mortgagees shall apply with respect to termination of the Community by reason of condemnation or substantial destruction.

31.3 Other Mortgagees. The consent of any mortgagee, other than First Mortgagees, shall not be required as a condition to implementation of any provision of this Article XXXI.

31.4 Declarant Amendments. Notwithstanding anything herein to the contrary, Declarant may make any amendments provided for by the Act, including without limitation any amendment to allocate as a Limited Common Element, a Common Element not previously so allocated, provided such Common Elements have been designated on the Map, and provided such allocations are made by amendments to the Declaration prepared, executed and recorded by Declarant pursuant to the Act.

## ARTICLE XXXII

### EFFECT OF PROVISIONS OF DECLARATION

Each provision of this Declaration and each agreement, promise, covenant or undertaking, to comply or be bound by the provisions of this Declaration, shall:

a. Be deemed incorporated in each deed or other instrument, by which any right, title or interest in any Unit is granted, devised or conveyed, whether or not set forth or referred to in such deed or instrument; and

b. By virtue of acceptance of any right, title or interest in any Unit by an Owner, such Owner shall be deemed to have accepted, ratified, adopted and declared said agreements, promises, covenants and undertakings as personal covenants of such Owner and such Owner's heirs, personal representatives, successors and assigns to, with and for the benefit of the Association.

### **ARTICLE XXXIII**

#### **RIGHTS OF MORTGAGEE**

No violation, breach or failure to comply with, any provisions of this Declaration, and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any First Mortgage, taken in good faith and for value; nor shall such violation, breach, failure or action to enforce, affect, defeat, render invalid or impair the title or interest of the holder of any such First Mortgage, result in any liability, personal or otherwise, of any First Mortgagee. Any purchaser at foreclosure, under a First Mortgage shall, take subject to this Declaration, provided, however, violations, breaches or failures to comply with any provisions of this Declaration, which occurred prior to the vesting of fee simple title in such purchaser, shall not be deemed the breaches, violations or failures to comply of such purchaser, his heirs, personal representatives, successors or assigns.

Notwithstanding any provisions to the contrary contained herein, Declarant, its agents, employees and contractors, shall be permitted to maintain, during the periods of construction and sale of the Units, upon such portion of the Project (except Units owned by Owners) as Declarant may choose, such facilities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction, sale or rental of Units, including without limitation, a business office, storage area, construction yards, signs, model Units, sales office, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants and purchasers of Units. In addition, Declarant, its agents, employees and contractors shall have the right, during reasonable business hours and upon reasonable notice of ingress and egress in and through all Units during the period of construction and sale of the Units, for the purpose of any required refurbishment, construction, maintenance or repair to such Units or the Projects of any part thereof.

**ARTICLE XXXIV**

**CONSTRUCTION OF NEW COMMON ELEMENTS**

Subject to the other provisions of this Declaration, the Association shall have the right and power to construct new additions to the Common Elements. Ownership of and the cost of constructing and maintaining any such additions shall be apportioned among all Owners according to their respective Percentage Interests. The Construction of new additions to the Common Elements shall not modify or alter the Allocated Interests of the Owners nor their voting rights in the Association.

**ARTICLE XXXV**

**CONSENT OF FIRST MORTGAGEES**

Any First Mortgagee who fails to submit a response to any written request for its consent or approval of any matter for which the consent or approval of a prescribed number of First Mortgagees is required hereunder, within thirty (30) days after receipt thereof, by registered or certified U.S. Mail, return receipt requested, shall be conclusively deemed to consent and to approve such matter.

**ARTICLE XXXVI**

**INTEREST**

Any sum owed by an Owner to the Association, which is not paid within ten (10) days after the due date thereof, shall bear interest after such due date, in the discretion of the Association, at any per annum rate specified by the Association, but not greater than twenty-one percent (21%) per year.

**ARTICLE XXXVII**

**ATTORNEYS' FEES**

In any action or proceeding involving the interpretation or enforcement of any provision of this Declaration, the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred in connection therewith.



## **ARTICLE XXXVIII**

### **MISCELLANEOUS**

38.1 **Duration of Declaration.** All of the provisions contained in this Declaration shall continue and remain in full force and effect until this Declaration and condominium ownership of the Project are terminated or revoked.

38.2 **Supplemental to Law.** The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of the Act and other relevant laws.

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

38.4 **Owners Addresses.** Unless an Owner shall notify the Association by registered or certified mail of a different address, any notice required or permitted to be given by the Association under this Declaration to any Owner, or any other written communication to any Owner, may be mailed to such Owner, in a postage prepaid envelope by first class, registered or certified mail, to the address of the Unit, shown upon the Association's records as owned by such Owner. If more than one Owner owns a Unit, any notice or other written instrument may be addressed to all of such Owners and may be mailed in one envelope in accordance with the foregoing. Any notice or other written instrument given to any Person by the Association in accordance herewith, shall be deemed to be given on the date mailed.

38.5 **Subordination.** The holders of deeds of trust recording their instruments subsequent to the recording of this Declaration, or otherwise consenting hereto, subordinate their liens to the liens and provisions of this Declaration and consent to its terms.

38.6 **Severability.** The invalidity or enforceability of any provision of this Declaration shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

38.7 **Captions.** The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provisions of this Declaration.

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

38.9 **Interpretation and Conflict.** The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a common and general plan for the development, improvement, enhancement, protection and enjoyment of the Community, and to the extent possible, shall be construed so as to be consistent with the Act. In the

event that any of the terms and conditions of this Declaration are determined to be inconsistent with the Act, the Act shall control. Notwithstanding anything to the contrary in this Declaration, no rights or powers reserved to Declarant hereunder shall exceed the time limitations upon or the permissible extent of such rights or powers under the Act, and in the event any of such reserved rights or powers are determined to be inconsistent with the Act, the related provisions shall not be invalidated but shall be modified to the extent required to comply with the Act. In the event of any conflict between the terms and conditions of this Declaration and the terms and conditions of either the Articles or the Bylaws, the terms and conditions of this Declaration shall prevail. In the event of any conflict or inconsistency between the provisions of this Declaration and the Map, the provisions of the Map shall govern and control and this Declaration shall automatically be amended, but only to the extent necessary to confirm the conflicting provisions hereof to the provisions of the Map.

**38.10 Governing Law; Jurisdiction.** The laws of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Declaration. Any legal action brought in connection with this Declaration shall be commenced in the District Court for San Miguel County, Colorado, and by acceptance of a deed to a Unit, each Unit Owner voluntarily submits to the jurisdiction of such court.

**38.11 Declarant's Disclaimer of Representations and Warranties.** No representations or warranties of any kind, express or implied, have been given or made or shall be deemed to have been given or made by Declarant or its agents or employees in connection with the Community or any portion thereof or any Improvements thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use or operation, adequacy or availability of utilities, or in connection with the subdivision, sale, improvement, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing herein, in any registration statement or purchase and sale agreement executed by Declarant, or in any closing document related thereto. Furthermore, no such representations or warranties have been given or made or shall be deemed to have been given or made by Declarant or its agents or employees that the plans presently envisioned for the complete development of the Community, can or will be carried out, or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration or that any such land (whether or not it is subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect, unless and except as shall be specifically set forth in writing herein, in any registration statement or purchase and sale agreement executed by Declarant, or in any closing document related thereto.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the 23 day of January, 2009.

**DECLARANT:**

RETREAT AT MOUNTAIN VILLAGE IV, LLC,  
a Colorado limited liability company

By:

[Signature]  
Donald J. Meeks, Manager

STATE OF Texas }  
COUNTY OF Fort Bend } ss.

Acknowledged before me this 23<sup>rd</sup> day of January, 2009, by Donald J. Meeks as Manager of Retreat at Mountain Village IV, LLC, a Colorado limited liability company.

Witness my hand and seal.  
My commission expires:



[Signature]  
Notary Public

**EXHIBIT A**  
**Legal Description**

Lot 20, Telluride Mountain Village, Filing 1, according to the Replat recorded August 21, 1989, in Plat Book 1 at page 925,

Together With those rights under Easement Agreement (Lot 10/Tract OS1-C) recorded September 3, 1999 at Reception No. 329024 in the records of the Clerk and Recorder, San Miguel County, Colorado;

Together With the covenants according to the General Easement Encroachment Agreement recorded February 4, 2009 at Reception No. 405579 in the records of the Clerk and Recorder San Miguel County, Colorado,

County of San Miguel, State of Colorado.

**EXHIBIT B**  
**ALLOCATION OF INTERESTS**

UNIT	TYPE	SQ FEET	VOTES/Common EXPENSE LIABILITY/ INTEREST IN G.C.E.s
A	Residential/ Free Market	6,111	26%
B	Residential/ Free Market	5,345	22%
C	Residential/ Free Market	5,359	23%
D	Residential/ Free Market	6,262	26%
E	Residential/ Deed Restricted - Employee Unit	702	3%
<b>Total</b>		<u>23,779</u>	<u>100%</u>

\* In addition to their respective share of the Common Expense Liability as noted above, the Owner of each Unit shall be obligated to pay all charges for any separately metered Utilities servicing such Unit(s), all Common Expenses allocated based on a per Unit charge including without limitation bulk cable and internet expenses and management fees, and all allocated Common Expense Reserves.