

**FIRST AMENDED AND RESTATED DECLARATION FOR
LULU CITY CONDOMINIUM ASSOCIATION**

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1. **Recitals: Adoption**

- A. Lulu City Condominiums is a condominium community originally created by the following instruments recorded in the Office of the Clerk and Recorder of San Miguel County, Colorado: instrument titled "Condominium Declarations for Lulu City Condominium (A Condominium)" recorded on February 6, 1981, in Book 391, at Pages 546-564 ("**Original Declaration**"), and map titled "," recorded on February 6, 1981, in Plat Book 1, at Pages 314-624 ("**Original Map**").
- B. The Original Declaration as amended and/or restated by the instruments listed in Exhibit D are collectively referred to herein as the "**Prior Declarations.**"
- C. The Original Map as amended by other maps of record are collectively referred to herein as the "**Map**":
- D. The property subject to this First Amended and Restated Declaration is described in Exhibit A, attached hereto and incorporated herein ("**Property**").
- E. The Lulu City Condominium Association, Inc., a Colorado nonprofit corporation, is the association of Owners authorized to administer, manage, operate and maintain the Community.
- F. The Owners desire to amend and restate in their entirety the Prior Declarations as set forth in this First Amended and Restated Declaration. This First Amended and Restated Declaration supersedes all Prior Declarations.
- G. Pursuant to Section 17 of the Original Declaration, the Prior Declarations may be amended by owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the General Common Elements and the consent and agreement of seventy-five percent (75%) of the holders of any First Mortgage or First Deed of Trust (based upon one vote for each First Mortgage or Deed of Trust). Pursuant to Senate Bill 05-100, which amends C.R.S. 38-33.3-217 (1)(a) effective as of January 1, 2006, "Any provision in the declaration that purports to specify a percentage larger than sixty-seven percent is hereby declared void as contrary to public policy, and until amended, such provision shall be deemed to specify a percentage of sixty-seven percent."
- H. The Association has complied with C.R.S. § 38-33.3-217(1)(b) and has obtained the approval to amend the Prior Declarations as set forth in this First Amended and Restated Declaration of holders of a first mortgage or deed of trust representing at least seventy-five percent (75%) of the General Common Elements.

2. **Election to Adopt CCIOA**

- A. Pursuant to C.R.S. 38-33.3-118, the Association elected to accept the provisions of C.R.S. 38-33.3-101 *et. seq.*, as certified at the end of this document.

3. **Statement of Intent and Purpose**

- A. This Declaration is executed to submit the Property and Improvements to condominium ownership and use in accordance with the Act. To the extent this

Declaration conflicts with the Act, the terms of this Declaration shall control. In the event the Act is repealed, the Act in effect through the date of repeal shall remain applicable.

- B. All of the terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations herein stated shall run with the land and shall be binding upon and accrue to the benefit of all persons and entities acquiring and holding an interest in the Community, and their respective grantees, successors, heirs, personal representatives, and assigns. The covenants, conditions and restrictions contained in this Declaration are subject to those exceptions to title stated on Exhibit C, attached hereto and incorporated herein.

4. **Parties Bound**

- A. The Governing Documents are binding upon all present and future Owners. The act of merely acquiring an interest in a Unit constitutes acceptance of, and ratification of, the Governing Documents.
- B. The obligations contained in the Governing Documents are also binding upon present and future tenants, guests, licensees and invitees of every Owner, and their respective subtenants, guests, licensees and invitees as if each such person is an Owner, and all such persons shall be deemed an Owner for purposes of enforcing the Governing Documents.

5. **Definitions** Each capitalized term in this Declaration and in the Map shall have the meaning specified in the Act, unless otherwise defined in this Declaration or as set forth below.

- A. **Act** means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as amended, the Condominium Ownership Act, C.R.S. § 38-33-101, *et seq.*, as amended, and the Revised Colorado Nonprofit Corporation Act, C.R.S. § 20-29-101, *et seq.*, as amended.
- B. **Ownership Interest** means the undivided interest in the Common Elements allocated to each Unit as set forth herein and on Exhibit B, attached hereto and incorporated herein.
- C. **Articles of Incorporation** means the articles of incorporation for the Association, as filed with the Colorado Secretary of State, as same may be amended, supplemented or restated.
- D. **Association** means The Lulu City Condominium Association, Inc., a Colorado nonprofit corporation, its successors and assigns, of which all Owners shall be members, and which Association shall be charged with the administration, management, operation, and maintenance of the Community.
- E. **Board of Directors** means the Association Board of Directors, designated as the body governing the affairs of the Association.
- F. **Bylaws** means the Bylaws of the Association, as same may be amended, supplemented or restated.

- G. **Common Elements** means all of the Property and Improvements thereon, except Units and Limited Common Elements. Common Elements include, but are not limited to:
- i. Common Elements that are depicted on the Map, including areas noted as "General Common Elements," "G.C.E." or "C.E."
 - ii. the Property; and
 - iii. the structural components of the Improvements (except for Decks), including but not limited to the foundations, columns, girders, beams, supports, floors, perimeter and supporting walls, roofs, stairways, and sidewalks; and
 - iv. the yards, gardens, driveways, fire lanes, water and sewer service lines, and service roads, and those areas of the Building #6 parking garage that are not Limited Common Elements; and
 - v. any chute, flu, duct, wire, gas line, electric line, telephone line, utility line, conduit, bearing wall, bearing column, or other fixture, whether it lies outside or partially within and partially outside the designated boundary of a Unit, that serves all of the Units or that serves a portion of the Common Elements;
 - vi. tanks, pumps, motors, fans, compressors, ducts, elevators and in general all apparatus that serve all of the Units or that serves a portion of the Common Elements; and
 - vii. utility rooms and storage areas that serve all of the Units or that serve a portion of the Common Elements, including the boiler room of Building #6; and
 - viii. all hallways and access areas labeled "G.C.E." or "General Common Element" on the Map, and all doors and doorways within them; and
 - ix. outside trim of exterior Unit windows and the outside trim and paint of exterior Unit doors (exterior doors to include doors that open onto common building hallways); and
 - x. all parts of a building that are in common use for that building, such as the building roof, siding, utilities, pipes, and water meters, except that the boiler system in Building #6 is a Limited Common Element designated to Building #6; and
 - xi. all other parts of the Property and not heretofore mentioned installed for the benefit and necessary or convenient use of all Units or a portion of the Common Elements.

If there is a conflict between whether an Improvement is a Common Element of a Limited Common Element, then the Improvement shall be deemed a Common Element.

- H. **Common Expense** means expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves.
- I. **Community** means the condominium community submitted to condominium ownership by this Declaration, including the Property and Improvements, and all rights, easements and appurtenances belonging thereto. The name of the Community is "Lulu City Condominiums"
- J. **Declaration** means this document, as same may be amended, supplemented or restated.
- K. **Eligible Holder** means the holder of a recorded first priority Mortgage encumbering a Unit that has delivered written notice to the Association via certified mail containing its name, address, and the legal description and the address of the Unit upon which it holds a first priority Mortgage. There can be no more than one Eligible Holder per Unit.
- L. **Governing Documents** means this Declaration, the Map, the Articles of Incorporation, the Bylaws, the Design Guidelines and the Rules and Regulations of the Association, as same may be amended, supplemented, or restated.
- M. **Improvements** means the physical improvements, buildings, structures and appurtenant components constructed on the Property, whether located above or below the surface, and including all sidewalks and utility installations, and including all those improvements described on the Map.
- N. **Limited Common Elements** mean those portions of the Common Elements that are limited to and reserved for the exclusive use of one Unit or less than all Units. Limited Common Elements include, but are not limited to:
- i. Limited Common Elements that are depicted on the Map, including areas noted as "Limited Common Elements," or "L.C.E."; and
 - ii. Parking Spaces that are depicted as Limited Common Elements; and
 - iii. Storage Units that are depicted as Limited Common Elements; and
 - iv. Decks, deck posts, balconies and patios (collectively, "Decks"); and
 - v. Shutters, awnings, window boxes, doorsteps, stoops, porches, exterior doors (except exterior trim and paint) and windows (except exterior trim); and
 - vi. Interior hallways that are labeled "L.C.E." or "Limited Common Element" on the Map, and all doors and doorways within them; and
 - vii. Any chute, flu, duct, wire, gas line, electric line, telephone line, utility line, conduit, bearing wall, bearing column, or other fixture, whether it lies outside or partially within and partially outside the designated boundary of a Unit, that serves one Unit or less than all Units; and
 - viii. Tanks, pumps, motors, fans, compressors, ducts, elevators and in general all

apparatus that serve one Unit or less than all Units; and

- ix. Utility rooms that serve one Unit or less than all Units, such as the boiler room that serves Building # 6; and
 - x. All other parts of the Property and not heretofore mentioned, installed for the benefit of only one Unit or less than all Units.
- O. **Map** means the recorded condominium maps of the Property locating thereon all of the Improvements, the floor and elevation plans, and any other drawing or diagram depicting a part of or all of the Improvements, as same may be amended, supplemented or restated.
- P. **Mortgage** means any real estate mortgage, deed of trust, or security instrument by which a Unit is encumbered.
- Q. **Owner** means the person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who is the record owner of a Unit, and who is, therefore, automatically a member of the Association.
- R. **Property** means the fee simple real property situate in San Miguel County, Colorado, described in Exhibit A, attached hereto, together with all easements, rights, and appurtenances thereto.
- S. **Rules and Regulations** means reasonable rules, regulations, policies and guidelines adopted by the Board of Directors to govern the day-to-day use and operation of the Community, as same may amended, supplemented or restated. Copies of the Rules and Regulations shall be mailed to the Owners prior to the date they become effective.
- T. **Unit** means a physical portion of the Community, designated for separate ownership, shown as a Unit on the Map and identified on Exhibit B, together with the interest in the Common Elements and Limited Common Elements appurtenant to such Unit. The boundaries of each Unit are defined in the Map and in this Declaration.

6. **Division into Units and Common Elements**

- A. **Designation of Units** The Community consists of a total of thirty-nine (39) Units, all of which are designated for separate fee simple ownership, plus each Unit has an undivided percentage interest in the Common Elements as set forth on Exhibit B, attached hereto. Each Unit is designated on the Map.
- B. **Boundaries of Unit** Each Unit shall consist of an individual air space within the walls, floors and ceilings designated on the Map, including the interior finished surfaces of the walls, ceilings and floors (such as lath, furring, wallboard, plasterboard, plaster, drywall, paneling, wallpaper, paint, carpeting, finished flooring, tiles, and any other materials constituting any part of the finished surfaces thereof), but not exterior windows and doors, which are Limited Common Elements appurtenant to that Unit. In interpreting the Map, the existing physical boundaries of each Unit as constructed shall be presumed to be its boundaries. All other portions of the walls, floors and ceilings are part of the Common Elements or are Limited Common Elements.

- C. **Common Elements** The Common Elements are owned as tenants-in-common by all of the Owners. Each Owner has an undivided Ownership Interest in the Common Elements as set forth herein and in Exhibit B, attached hereto. The Common Elements are not subject to partition. Any purported conveyance, encumbrance, judicial sale, or other voluntary or other involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.
- D. **Easement for Encroachments of Common Elements, Units and Utilities** If any portion of the Common Elements or Limited Common Elements now encroaches upon any other Unit or upon any portion of the Common Elements or Limited Common Elements, as a result of the construction of a building, or if any such encroachment shall occur hereafter as a result of settling or shifting of a building, or for any other reason, a valid easement for the encroachment, and for the maintenance of the same so long as a building stands, shall exist. Similar easements are also hereby declared to exist for lines, pipes, wires, ducts, conduits or systems extending through a Unit, to serve the Common Elements or Limited Common Elements, or to serve one or more other Units.
- In the event an Improvement, a Unit, any adjoining Unit, or any adjoining General Common Element shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and then rebuilt, encroachments of the rebuilt Common Elements, Limited Common Elements, Units and Utilities shall exist as set forth above.
- E. **Description of Units** Every contract of sale, deed, lease, mortgage, trust deed or other instrument may legally describe the Unit by its identifying Unit number followed by any of the following words "Lulu City Condominiums" or such other name as approved by the Board of Directors, with, in each case, further reference to this Declaration and the Map. Every such description shall be deemed good and sufficient for all purposes to convey, transfer, encumber or otherwise affect not only the Unit, but also the Limited Common Elements, if any, appurtenant thereto, and the designated interest of the Unit in the Common Elements, as the case may be.
- F. **Period of Condominium Ownership** The separate condominium estates created by this Declaration and the Map, and under the authority created hereby, shall continue until the Community and this Declaration are terminated.
- G. **Title** The title to any Unit may be held and owned by one or more persons, business entities, trusts, or partnerships, or any combination thereof. By acceptance by any grantee of a deed or other instrument of conveyance from any prior Owner, each Owner specifically waives his or her right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Each Owner specifically agrees not to institute any action therefore. A violation of this provision shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the Association incurs in connection therewith.

7. **Ownership Interests**

- A. The Ownership Interest of each Unit in the Common Elements is determined in accordance with the following formula and set forth in Exhibit B, attached hereto and incorporated herein.

$$\text{Ownership Interest of Unit} = \frac{\text{(Platted Square Foot Area of Unit)}}{\text{(Total Platted Square Foot Area of all Units)}} \times 100\%$$

For these purposes, the Square Foot Area does not include Limited Common Elements such as decks or parking.

- B. If Units are added to, or subtracted from, the Community as a result of the addition or deletion of Units, subdivision, or combination of Units, or if the size of one or more Units is increased or decreased, then the Ownership Interests shall be recalculated in accordance with the foregoing formulas and reflected in an amendment to Exhibit B.

8. **Association Rights**

- A. **Reserved Rights of Association** Subject to the Act and other provisions of this Declaration, the Association reserves and creates the following development rights: (a) the right to relocate boundaries between adjoining Units and between Units and Common Elements, b) the right to change the size of Units and Common Elements, c) the right to subdivide Units, d) the right to complete or make Improvements, e) the right to create or construct additional Units or Common Elements, f) the right to convert Common Elements into Units, and to convert Units into Common Elements, g) the right to exercise any development rights reserved or allowed in the Act, h) the right to use, and to permit others to use, easements through the Common Elements, as may be reasonably necessary, i) the right to amend the Declaration and Map in connection with the exercise of any development right. The Association must obtain the written consent of each Unit involved in, and affected by, its exercise of the foregoing development rights.
- B. **Additions to Common Elements** The Board of Directors shall have the discretion, right and power to add to the Common Elements and construct additional recreational and other common facilities. The Ownership Interests with respect to any additional Common Elements shall be apportioned among the Owners in the manner set forth in this Declaration.
- C. **Subdivision** Owners may not subdivide Units.
- D. **Amendment of the Declaration and Map** All of the following changes must be memorialized in an amendment to the Map and an amendment to the Declaration approved by the Board of Directors and in accordance with the requirements of the Governing Documents and the Act.
- i. Relocation of the boundaries between Units, and between Units and Common Elements or Limited Common Elements.

- ii. Changes in the size of Units, Common Elements and Limited Common Elements.
 - iii. Adding or deleting Improvements, Units, Common Elements and Limited Common Elements.
 - iv. Converting Common Elements or Limited Common Elements into Units, and converting Units into Common Elements or Limited Common Elements.
- E. **Procedure** The Owner of a Unit who seeks to amend the Declaration and/or Map shall, as the applicant, comply with the following:
- i. The applicant shall prepare, at his or her own expense, and submit to the Board of Directors for review 1) the proposed amendment to the Declaration, including to Exhibit B, that shows the reallocated square footage, Ownership Interests, share of Common Expenses, and votes, and 2) the proposed amendment to the Map.
 - ii. The amendment to the Map shall 1) comply with the Act and other applicable statutes, 2) comply with this Declaration, 3) reflect the elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plane, 4) include linear measurements showing the thickness and location of the perimeter walls of the Unit and Limited Common Elements; 5) include linear measurements showing the thickness and location of the perimeter walls of the Unit in relation to adjacent Units, Limited Common Elements and Common Elements; 6) include floor plans of the Unit and Limited Common Elements, which shall depict the boundaries (perimeter), Unit designation, and the linear measurements; 7) designate new Common Elements and Limited Common Elements.
 - iii. The applicant shall submit evidence that his or her application complies with the Governing Documents, restrictions of record, building codes, fire codes, zoning codes, planned unit development requirements, master plans, and other applicable ordinances and resolutions adopted and enforced by the local governing body and that the application does not violate the terms of any document evidencing a security interest encumbering the Unit.
 - iv. The applicant shall pay all costs of the Association to review and respond to the application, including but not limited to, a reasonable application fee as determined by the Board of Directors, and all costs of professionals such as attorneys, surveyors and engineers. When making application, the applicant shall deposit with the Board of Directors a sum determined by the Board of Directors to be a reasonable estimate of such costs and attorneys fees.
 - v. The applicant shall provide any other information reasonably requested by the Board of Directors.
 - vi. The applicant shall, after approval, timely provide the Board of Directors a copy of any applicable building permit or certificate of occupancy related to the application.

The Board of Directors shall timely approve amendments to the Declaration and to the Map that comply with all of the foregoing requirements.

Recording amendments to the Declaration and to the Map pursuant to reserved rights shall automatically effectuate the terms and provisions of that amendment. Each such amendment shall automatically: (i) vest in each existing Owner the reallocated Ownership Interests appurtenant to that Owner's Unit; and (ii) vest in each existing Security Interest a perfected security interest in the reallocated Ownership Interests appurtenant to the encumbered Unit. Upon recording an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any amendment of the Declaration or of the Map. Reference to the Declaration and the Map in any instrument shall be deemed to include all amendments to the Declaration, and the Map without specific reference thereto.

9. **Buildings # 5 and # 6 Parking**

- A. **Community Parking** Each Parking Space in the Building #5 and #6 parking garages are a Limited Common Element that is designated to a specific Unit. Parking Spaces are not assignable or transferable by an Owner, tenant or guest, except in connection with the sale of the Unit to which it is designated. Notwithstanding anything to the contrary herein, the Association shall be responsible for administering, operating, managing, cleaning, maintaining, repairing, improving, replacing and insuring all Limited Common Element parking spaces in Building #6, and all costs thereof are a Common Expense. Further, the Board may, in its discretion, provide cleaning to the Building #5 parking garages and charge same as a Common Expense.
- B. **Use of Parking Spaces** The parking areas in Buildings #5 and #6 (collectively, "**Parking Areas**") are subject to the following:
- i. Only Permitted Vehicles may be parked in the Parking Areas. A "**Permitted Vehicle**" means a motor vehicle or motorcycle licensed under applicable state laws as an automobile or motorcycle. The following are not Permitted Vehicles: trailers of any kind (including but not limited to boat, motorcycle trailers, hauling trailers, storage trailers), unlicensed off-road vehicles, campers, motor homes, recreational vehicles, boats, and accessories thereto, plows, bobcats, and any other oversized vehicle or equipment, abandoned and inoperable vehicles of any kind. Notwithstanding, any vehicle owned or used by the Association, its manager, or contractors may park in the Parking Areas.
 - ii. A vehicle or equipment that is not a Permitted Vehicle that is parked in the Parking Areas is subject to removal without notice and at the expense of the Owner, tenant or guest who owns or is responsible for such vehicle or equipment.
 - iii. Notwithstanding the foregoing, vehicles that are not a Permitted Vehicle may be temporarily located within the Community as necessary for construction or for the maintenance of the Common Elements, Limited Common Elements,

and Units.

- iv. Storage of personal property in the Parking Areas other than a Permitted Vehicle are subject to the Rules and Regulations.
- v. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted within the Community.

10. **Use of Property** The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors if, in the Board's sole discretion, such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing and shall not constitute a waiver by the Board or the Association of strict compliance with other of these provisions by all other Owners.

- A. **Exclusive Possession and Use** Each Owner shall be entitled to exclusive ownership, possession, and quiet enjoyment of his or her Unit.
- B. **Common Elements** Each Owner may use the Common Elements in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other Owners. Use of the Common Elements shall be governed by the Rules and Regulations. No Owner shall make any alterations to, or construct anything upon, or remove anything from, the Common Elements. No waste shall be committed upon the Common Elements.
- C. **Recreational Facilities** The pool and hot tub are the only common recreational facilities that are available to the Owners, use of which are subject to the Rules and Regulations.
- D. **Use/Occupancy of Units** No Unit or Limited Common Element may be used for any purpose other than as allowed by restrictions of record and local zoning ordinances. Day care, child care, and group home uses or other similar uses or facilities (licensed or unlicensed) are expressly prohibited in any Unit or Limited Common Element. No charcoal grills of any kind are permitted on the Decks and patios of the Community.
- E. **No Unreasonable Interference** The use and maintenance of Units, Limited Common Elements, and Common Elements, shall not unreasonably interfere with the use of other Units, Limited Common Elements and the Common Elements.
- F. **Rental of Units** Owners have the right to lease their Units. All short and long-term occupancies, leases and rental agreements of Units shall state, and shall be deemed to state, that the failure of the tenant or guest to comply with the Governing Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration, and that such default shall be enforceable by either the Association or the Owner, or by both of them. All tenants and guests of Units shall be subject to the right of the Association to remove and/or evict such tenant or guest for failure to comply with the Governing Documents. Further, the Association may impose an additional Common Expense on Owners who lease their Units as set forth herein.

- G. **Right to Mortgage** Each Owner has the right to mortgage or encumber his or her Unit by deed of trust, mortgage or other security instrument. All Mortgages shall be subordinate to the Governing Documents.
- H. **Exterior and Visible Displays** Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Improvements, and no awning, canopy, shutter, or radio or television antennas, shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior written consent of the Board of Directors. The use of and the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the building, shall be subject to the Rules and Regulations. Further, radio, television and other antennas, and satellite dishes, may be placed on the exterior walls and roofs of the Improvements, except that the location, number per Unit, and size of such dishes and antennas shall be subject to the written consent of the Board of Directors subject to its reasonable discretion regarding the exterior appearance of the Improvements.
- I. **Animal Restriction** Owners, and tenants who have a written lease with an Owner for six (6) months or longer, may keep a) up to three (3) dogs and three (3) cats in a Unit that is 700 square feet or greater, or b) up to one (1) dog and one (1) cat in a unit that is less than 700 square feet. No rabbits, livestock, fowl, or poultry of any kind shall be raised, bred, or kept in the Community, including within a Unit. Owners and tenants must register with the Association or its Manager any dog kept in a Unit, even if temporarily. All animals in the Community are subject to the Rules and Regulations. Notwithstanding anything to the contrary, no animal may unreasonably disturb other occupants of the Community or otherwise be a nuisance, and no animal may be kept, bred or maintained for any commercial purpose.
- J. **No Obstruction of Common Elements** There shall be no obstruction of the Common Elements, nor shall anything be stored outside of the Units, except that deck furniture, consisting of all-weather chairs and tables, will be allowed on the Decks, provided that such furniture remains in good condition and repair.
- K. **Nuisances** No nuisance shall be permitted within the Community, nor any use, activity or practice that is the source of unreasonable annoyance or embarrassment to, or that unreasonably offends or disturbs, any Owner, or that unreasonably interferes with the peaceful enjoyment or possession of the proper use of a Unit or Common Element, or any portion of the Community by Owners. Further, no unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community shall be observed.
- L. **No Annoying Lights, Sounds or Odors.** No light shall be emitted from any portion of the Community that is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community that would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located, or used on, any portion of the Community, except for Community alarm and emergency systems.

- M. **No Hazardous Activities** No activity shall be conducted on any portion of the Community that is, or is likely to be, unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Community and no open fires shall be lighted or permitted on any portion of the Community. Storage of combustible, dangerous or hazardous materials is not permitted in the Community, except in areas constructed to safely accommodate such materials, if any.
- N. **Compliance with Insurance Requirements** Owners may not use their Units or the Common Elements in a manner that is likely to result in a material increase in the rates of insurance or to result in the cancellation of any insurance maintained by the Association, unless the Board of Directors, in its sole discretion, consents in writing, and such consent may be withheld for any reasonable reason.
- O. **No Unsightliness** All unsightly conditions, structures, facilities, equipment, objects and conditions in the Community shall be enclosed within a structure approved by the Board of Directors. Playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches, chairs or other personal property on any part of the Common Elements shall be subject to regulation by the Board of Directors.
- P. **Signs** No Owner may place signs on any part of the Community without the prior written consent of the Board of Directors, and then only in locations where the Board of Directors specifically permits and subject to local zoning and other applicable laws and ordinances. All Owner signs shall be consistent with the Community character, architecture, style, design and coloring and with each other. All Owner signs shall be kept in good repair by the Owner.
- Q. **Restrictions on Loads** No Owner may place a load on any Community floor that exceeds the floor load for which the floor was designed to support. No Owner shall install, operate or maintain any item of heavy equipment or other installation in the Community, except in a manner designed to achieve a proper distribution of weight.
- R. **Restrictions on Community Systems Use** No Owner shall overload the Community electric, plumbing or other Community systems, or operate any machines, appliances, accessories or equipment in such manner as to cause an unreasonable disturbance to others.
- S. **No Restrictions on Sale of a Unit** The right of an Owner to sell, transfer or otherwise convey a Unit shall not be subject to any right of first refusal or similar restriction and such Unit may be sold free of any such restrictions.
- T. **No Time Shares** A Unit may not be conveyed pursuant to a time-sharing arrangement described in C.R.S. §§ 38-33-110 to 113.
- U. **Compliance with Laws** All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community shall be observed.
11. **Association**
- A. **Membership** All Owners are automatically members of the Association, including contract sellers. Membership shall be appurtenant to, and may not be separated from,

ownership of a Unit. Where more than one (1) person holds a record fee simple interest in a Unit, all such persons are Owners.

- B. **Membership Voting** There shall be one (1) vote per Unit.
- C. **Authority** The Association, through its Board of Directors, shall, and has the authority to, operate, administer, manage and maintain the Community as provided in the Governing Documents and the Act, so as to protect the value and desirability of the Community and to further the interests of the Owners and their respective tenants and guests. The Association shall have all powers necessary or desirable to effectuate such purposes.
- D. **Liens** The Association may not incur liens or encumber the Common Elements except as provided in the Act.
- E. **Manager** Subject to the Governing Documents, the Board of Directors, may by written resolution delegate authority to any person or entity to act as Manager for the Association as provided in the bylaws. No such delegation shall relieve the Board of Directors of final responsibility for the acts of such manager or managing agent. All agreements for professional management of the Community shall be in writing, may not exceed one (1) year and must, and shall be deemed to, provide for i) termination by either party without cause and without payment of a termination fee or penalty upon sixty (60) days' written notice, and ii) termination for cause without penalty to the Association. Any such management contract shall be subject to renegotiation, as required by the Act.
- F. **Right to Assign Future Income** The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but any such new assignment that in the aggregate exceeds twenty-five percent (25%) of the total expenses in the current approved annual operating budget (exclusive of reserve funding and Furnishing Fund funding) must be approved in advance by a Majority Vote of the Owners except that in the event of an emergency that does not allow sufficient time for an Owner vote, the Board of Directors may borrow assign future income exceeding such amount.
- G. **Indemnification** The officers, directors, and managers of the Association shall be, and are hereby, indemnified by the Association as set forth in the Bylaws.
- H. **Attorney-in-Fact** By accepting title to a Unit, every Owner appoints the Association as the Owner's attorney-in-fact for the purposes expressly set forth in this Declaration. The Association, as attorney-in-fact, shall have full and complete authorization, right and power to (i) make, execute and deliver any contract, deed or other document with respect to the interest of the Owner for the purposes expressly set forth in this Declaration; and (ii) unless expressly limited by the Act, execute, deliver and file of record with the office of the Clerk and Recorder of San Miguel County, Colorado, such instruments, deeds, Community Maps and Declaration amendments and supplements and restatements as are necessary or desirable for the purposes expressly set forth in this Declaration. This Declaration does hereby specifically make the irrevocable appointment of the Association as attorney-in-fact for all Owners to deal with the Community upon its destruction, obsolescence, repair or reconstruction or condemnation.

12. **Separate Taxes** Written notice has been given to the Assessor of San Miguel County, Colorado, of the creation of condominium ownership of the Community, as provided by the Act, so that each Unit, together with its undivided interest in the Common Elements and its interest in the Limited Common Elements appurtenant thereto, shall be deemed a separate parcel and subject to separate real estate assessment and taxation. Each Unit shall be separately assessed for all taxes and assessments of the State of Colorado, San Miguel County, and any other political subdivision or district having authority to tax. For the purpose of such assessment, the valuation of the Common Elements shall be apportioned among the Units according to each Unit's Ownership Interest.

13. **Common Expenses**

A. **Common Expenses** means and includes I) expenditures and liabilities arising out of administration, operation, management, repair, maintenance or replacement of the Common Elements and those Limited Common Elements for which the Association is responsible; ii) expenses declared Common Expenses by the provisions of this Declaration or by the Bylaws; iii) expenses agreed upon as Common Expenses by a majority vote of the Unit Owners. Common Expenses may be assessed either as Regular Assessments or Special Assessments.

B. **Share of Common Expenses** Subject to other provisions of this Declaration and the Act:

Each Owner's share of Common Expenses shall be calculated as follows:

$$\text{Share of CE} = \frac{\text{(Platted Square Foot Area of Unit)}}{\text{(Total Platted Square Foot Area of all Units)}} \times 100\%$$

For these purposes, Square Foot Area does not include Limited Common Elements such as Decks and Parking Spaces. If Units are subtracted from or added to the Community as a result of combination of Units or of the subdivision of Units, or adding Units, or if the size of one or more Units is increased or decreased, then the share of Common Expenses shall be recalculated in accordance with the foregoing formula and reflected in an amendment to Exhibit B.

C. **Common Expense Assessment** The Association shall assess each Owner, in advance or in arrears i) not less than four times per year for payment of estimated Common Expenses based upon an approved annual budget ("**Regular Common Expenses Assessment**"), and ii) for additional Special Assessments from time to time as authorized herein (both types of assessments are collectively "**Common Expense Assessments**"). Every Owner is obligated to pay Common Expense Assessments without right of setoff. The amount of the Common Expense Assessment is a personal obligation of the Owner, and the Association may bring suit against a defaulting Owner to recover a money judgment for unpaid Common Expense Assessments without foreclosing or waiving the Association's lien or right to foreclose against the Unit.

- D. **Budget** At least annually, the Association budget shall be adopted as set forth in the Act. If there is no process set forth in the Act, then the process for adopting the budget shall be as follows. Within ninety (90) days after adopting a proposed budget for the Community, the Board of Directors shall mail, by postage prepaid first-class mail, or otherwise deliver (including via email) a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing, or other delivery of the summary, or as provided in the Bylaws. The Board of Directors shall give notice to the Owners of the meeting as provided in the Bylaws. The budget proposed by the Board of Directors does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority vote of the Owners present in person or by proxy, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board of Directors and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.
- E. **Special Assessments** means all assessments levied upon all or a certain class of Units for special purposes such as capital improvements, reserve funding, amenities, and such other assessments for special purposes. Special Assessments shall be made at the discretion of the Board of Directors, and may be made in advance or in arrears. Special Assessments exceeding twenty five percent (25%) of the total expenses in the current approved annual operating budget (exclusive of reserve funding and Furnishing Fund funding) shall be subject to an Owner vote in the same manner as required for the budget, except that in the event of an emergency that does not allow sufficient time for an Owner vote, the Board of Directors may authorize Special Assessments exceeding such amount.
- F. **Services Provided and Paid Out of Regular Common Expense Assessments** The following services shall be provided by the Association and shall be paid for by Regular Common Expense Assessments.
- i. Expenses of administration, operation, management, maintenance, improvements, repair and replacement of the Common Elements and those Limited Common Elements for which the Association is responsible.
 - ii. Insurance premiums for insurance required hereunder.
 - iii. Landscaping, grounds maintenance, and snow removal for the Common Elements.
 - iv. Utilities, water, sewer, lighting and heating servicing the Common Elements.
 - v. Trash and garbage collection.
 - vi. Association legal, accounting fees, and management fees.
 - vii. Payment of any deficit remaining from a previous assessment period.
 - viii. An adequate reserve fund for repair, improvement and replacement of Common Elements and those Limited Common Elements for which the Association is responsible.

Owners shall be responsible for all costs, expenses, liabilities, debts and obligations associated with their individual Units and Limited Common Elements for which Owners are responsible.

- G. **Expenses of Limited Common Elements** Except as provided herein for parking spaces, exterior Unit windows and exterior Unit doors (including doors that open onto common building hallways), Decks, and the boiler system in Building #6, all expenses of operating, repairing, maintaining, improving, replacing and insuring a Limited Common Element shall be borne by the Unit or Units to which that Limited Common Element is assigned, *pro rata* according to each Unit's square footage. No such expenses shall be a Common Expense.
- H. **Expenses that Benefit One or a Few Units** Notwithstanding anything to the contrary herein, any Common Expense, or portion thereof, that benefits only one Unit or fewer than all Units, may be assessed solely to the Unit or Units so benefitted as determined by the Board of Directors.
- I. **Expenses Caused by One or a Few Units** Notwithstanding anything to the contrary herein, any Common Expense, or portion thereof, caused by only one Unit or fewer than all Units, including causes such as the rental of such Unit or Units, may be assessed solely to the Unit or Units so causing the Common Expense as determined by the Board of Directors.
- J. **Insurance and Utilities** Notwithstanding anything to the contrary herein, the costs of insurance may be assessed to Units in proportion to risk, and the costs of common utilities may be assessed to Units *pro rata* according to each Unit's square footage as determined by the Board of Directors.
- K. **Misconduct** Notwithstanding anything to the contrary herein, Common Expenses caused by the misconduct or violation of the Governing Documents by an Owner, or an Owner's tenants, or their respective guests, licensees or invitees, shall be assessed against such Owner, including all fines, damages, costs, attorneys fees, interest, and penalties arising out of such misconduct or violation as determined by the Board of Directors.
- L. **Surplus Funds** Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be either applied against and shall reduce the subsequent year's Common Expense Assessments or shall be credited to the Owners to reduce their future Common Expense Assessments, as determined by the Board of Directors.
- M. **No Waiver**
- i. No Owner shall be exempt from liability for payment of Common Expense Assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made.

- ii. The omission or failure of the Board of Directors to fix the Common Expense Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay same.

N. **Nonpayment of Common Expense Assessments and Lien** All unpaid Common Expense Assessments shall constitute a statutory lien on such Unit as set forth in C.R.S. 38-33.3-316, and the Association shall have all statutory lien rights therein set forth. Collection of unpaid assessments shall be subject to interest, late fees, and other collection policies as published in the Collection Policy adopted by the Board of Directors.

O. **Liability of Purchasers** The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Common Expense Assessments against the latter for his or her proportionate share of the Common Expense Assessment up to the date of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

14. **Maintenance, Repair and Replacement**

A. **Association Responsibility** The Association is responsible for maintenance, repair, improvement and replacement of the Common Elements. In addition, the Association is responsible for maintenance, repair, improvement and replacement of the following Limited Common Elements, but shall assess the cost of same to the respective Owners of the Limited Common Elements: exterior Unit windows (except the outside window trim), exterior Unit doors including those that open onto common building hallway (except the outside door paint and outside trim), Decks, and the boiler system in Building #6.

The Association is responsible for damage to a Unit or a Limited Common Element caused by its maintenance, repair, improvement or replacement hereunder, the costs of which shall be a Common Expense. The Association shall reconstruct Common Elements and Limited Common Element for which it is responsible that are damaged or destroyed by casualty as provided herein. The Association is not responsible for the maintenance, repair, improvement or replacement of Limited Common Elements except as specifically set forth herein, rather, these are the responsibility of the Unit or Units to which those Limited Common Elements are assigned.

B. **Owner Responsibility.** Owners shall be responsible for, and shall bear all costs of, the maintenance, repair, improvement and replacement of their respective Units and all Limited Common Elements (except as set forth above for parking spaces, exterior windows and doors, Decks, and the boiler system in Building #6) assigned to their Units as follows.

- i. Owners shall maintain and keep their respective Units and Limited Common Elements in good condition and repair.
- ii. Owners are responsible for, and shall pay the costs of, damage to the Common Elements or to another Unit resulting from the maintenance, repair, or replacement of their Unit and Limited Common Elements.

- iii. Owners shall reconstruct their Units and Limited Common Elements if same are damaged or destroyed by casualty.

15. **Alterations, Improvements and Changes to Units and Limited Common Elements**

- A. The following alterations, improvements and changes to a Unit, or to the Limited Common Elements assigned to a Unit (collectively "Alterations"), require written approval of the Board of Directors:
 - i. those that are structural or in any way affect or modify the structure of the Improvements;
 - ii. those that change the appearance of the exterior of a Unit or Limited Common Element that are visible from outside the Unit (such as windows, vents, Decks, and doors).
 - iii. those that change the square feet of a Unit, Limited Common Element or Common Element.
- B. The Owner who applies to the Board of Directors for approval of an Alteration shall, as the applicant, comply with the following:
 - i. If an amendment to the Declaration, including to Exhibit B, and/or an amendment to the Map, are required, then the applicant shall submit same to the Board of Directors for review as required in the Declaration.
 - ii. The applicant shall submit written plans and specifications to the Board of Directors describing the Alteration.
 - iii. The applicant shall submit evidence that his or her application complies with the Design Guidelines, the Governing Documents, the Act, restrictions of record, building codes, fire codes, zoning codes, planned unit development requirements, master plans, and other applicable ordinances or resolutions adopted and enforced by the local governing body and that the application does not violate the terms of any document evidencing a security interest encumbering the Unit.
 - iv. The applicant shall pay all costs of the Association to review and respond to the application, including but not limited to, a reasonable application fee as determined by the Board of Directors, and all costs of professionals such as attorneys, surveyors and engineers. When making application, the applicant shall deposit with the Board of Directors a sum determined by the Board of Directors to be a reasonable estimate of such costs and attorneys fees.
 - v. The applicant shall provide any other information reasonably requested by the Board of Directors.
 - vi. The Board of Directors shall timely approve an application for a proposed Alteration that complies with the foregoing requirements.

vii. The applicant shall, after approval, timely provide the Board of Directors a copy of any applicable building permit or certificate of occupancy related to the application.

- C. An Owner shall not permit mechanics' liens to be recorded against any part of the Community other than the Owner's Unit and the Owner's interest in Limited Common Elements appurtenant thereto. Each Owner shall indemnify and hold harmless the other Owners and the Association against mechanics' liens recorded in violation of this paragraph, including all damages, settlements, judgments, costs and attorneys fees. In the event such a mechanics' lien is recorded, then the indemnifying Owner shall within ten (10) days of recording deposit with the Association cash or negotiable securities in the amount of 150% of the amount of the mechanics' lien, which may be used by the Association to, at its sole discretion, pay, settle or bond over the mechanics' lien, plus the Owner shall deposit with the Association an additional \$5,000 in cash that the Association may use for costs and attorneys fees in connection with the mechanics' lien. All unused funds shall be returned to the Owner upon release of the lien or other resolution satisfactory to the Association. All sums owed to the Association hereunder shall be a personal obligation of the Owner and shall also be a Common Expense assessed against the Unit.

16. **Access to Community**

- A. **Association Right of Access** The Association, its officers, independent contractors, agents and employees, shall have the irrevocable right to access to each Unit, Limited Common Element, and Common Elements during reasonable hours and upon reasonable notice (at least twelve hours) as may be necessary to:
- i. maintain, repair, improve or replace of the Common Elements and those Limited Common Elements for which the Association is responsible.
 - ii. prevent damage to the Common Elements, Limited Common Elements, or another Unit.
 - iii. access mechanical areas.
- B. **Emergencies** The Association, its officers, Manager, independent contractors, agents and employees, shall have the irrevocable right to access to each Unit, Limited Common Element, and all Common Elements at any time as may be necessary to respond to an emergency and/or make emergency repairs. Emergencies include, but are not limited to, a situation in which an immediate or swift response will lessen damage to Common Elements, Limited Common Elements, or another Unit, or make such damage less likely. Owners shall cooperate by i) providing keys to their Units and Limited Common Elements to be kept in a locked box accessible by the Telluride Fire Department and by the Manager, and ii) providing emergency contact information to the Manager. An Owner who fails to cooperate as provided herein waives his or her right to make a claim against the Association for costs or damages that are caused by the Owner's failure to cooperate.

17. Insurance

- A. **Coverage** The Board of Directors shall obtain and maintain at all times, to the extent reasonably available, the following insurance coverage. Premiums for such insurance, and other expenses connected with acquiring such insurance, are Common Expenses.
- i. Property insurance on the Common Elements and the following Limited Common Elements: parking spaces, exterior windows and doors, Decks, and the boiler system in Building #6. Such insurance shall not cover the Units or any other Limited Common Elements, or improvements thereto, or any personal property of Owners. Such insurance shall be broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the covered improvements less applicable deductibles at the time the insurance is purchased, and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.
 - ii. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements and the following Limited Common Elements: parking spaces, exterior windows and doors, Decks, and the boiler system in Building #6. Such insurance shall be in an amount deemed sufficient in the judgment of the Board of Directors, but not less than \$1,000,000.00 per injury, per person, per occurrence and umbrella liability limits of \$2,000,000.00 per occurrence, insuring the Board of Directors, the Association, the Manager, and their respective employees, agents, and all persons acting as agents. The Owners shall be included as additional insureds. Such insurance shall cover claims of one or more insured parties against other insured parties.
 - iii. If any Owner or employee of the Association controls or disburses funds of the Association, then the Association must obtain and maintain, to the extent reasonably available, fidelity insurance. Coverage shall not be less than the aggregate of two months' current Common Expense Assessments plus reserves, as calculated from the current budget of the Association.
 - iv. The Manager must obtain and maintain fidelity insurance in an amount not less than the aggregate of two months' current Common Expense Assessments plus reserves, as calculated from the current budget of the Association, unless the Association names the Manager as an insured employee under its fidelity insurance.
 - v. The Association may carry fidelity insurance in amounts greater than required above and may require any independent contractor employed for the purposes of managing the Association to carry more fidelity insurance coverage than required above.
 - vi. Insurance covering the acts of the Board of Directors, the Officers, and the Manager.

vii. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Community, including plate or other glass insurance and any personal property of the Association located thereon.

B. Policies The foregoing policies of insurance shall conform with the following requirements.

- i. The policies shall be written with companies licensed to do business in Colorado and have a Best's Insurance Report rating of A or better, if possible.
- ii. If the foregoing insurance is not reasonably available, or if any policy is cancelled or not renewed without a replacement policy having been obtained, the Association shall promptly cause notice of that fact to be delivered to all Owners.
- iii. The policies shall provide that the loss, if any, thereunder, shall be payable to the Association.
- iv. The policies shall provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association.
- v. The policies shall provide that the insurer waives its rights to subrogation against, and waives any defense based on invalidity arising from any acts of, any Owner, member of his or her household, tenants, subtenants, and their respective guests, licensees and invitees.
- vi. No act or omission of any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.
- vii. If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the Association's policy, the Association's policy shall provide primary coverage.
- viii. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners.
- ix. An insurer that has issued an Association insurance policy shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Eligible Holder. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and Eligible Holder.

C. Insurance Carried by Owners

- i. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Owners are responsible for obtaining and paying for their own insurance coverage on their Units,

including interior finishes, furnishings and personal property, and on the Limited Common Elements appurtenant to their respective Units except for parking spaces, exterior windows and doors, Decks, and the boiler system in Building #6.

- ii. Owners are responsible for obtaining and paying for their own public liability coverage.
- iii. Owners may carry other insurance for their benefit and at their expense.
- iv. All such insurance obtained by the Owner shall contain waivers of subrogation against the Association, and shall not affect or diminish insurance carried by the Association.

D. Loss Adjustment

- i. Any loss covered by the Association's property insurance policy must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee of the Association shall hold any insurance proceeds in trust for the Owners and lienholders as their interests may appear. Subject to the provisions of hereof, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and lienholders are not entitled to receive payment of any portion of proceeds unless there is a surplus of proceeds after the Improvements have been completely repaired or restored, or the Community is terminated.
- ii. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibilities for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. In the event that more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Owner a *pro rata* share of deductible paid by the Association.
- iii. Any portion of the Community for which insurance is required under this section that is damaged or destroyed must be repaired or replaced promptly by the Association unless:
 - 1. The common interest community is terminated, in which case C.R.S. § 38-33.3-218 applies, or
 - 2. Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or
 - 3. Written agreement of at least sixty-seven percent (67%) of the Total Votes, including every Owner of a Unit or Limited Common Element that will not be rebuilt, vote not to rebuild; or

- iv. The cost of repair or replacement of the Improvements in excess of insurance proceeds and reserves shall be a Special Assessment. The Association shall cause the damaged or destroyed Common Elements, and Limited Common Elements for which the Association is responsible, to be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance, reserves, and a Special Assessment, if any. If all of the Common Elements, and Limited Common Elements for which the Association is responsible, are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements and Limited Common Elements for which the Association is responsible must be used to restore the damaged area to a condition compatible with the remainder of the Community, and except, to the extent that other persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements for which the Association is not responsible that are not rebuilt must be distributed to the Owners of those Units and Limited Common Elements were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Common Element interests of all the Units.
18. **Obsolescence** Upon a written agreement of at least eighty-five percent (85%) of the Total Votes of the Owners, the Association may declare the Improvements obsolete and adopt a plan for renewal and reconstruction of the Improvements. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, and the expense thereof shall be a Common Expense.
19. **Condemnation** If all or any part of the Community is condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions apply.
- A. **Proceeds** All compensation, damages or other proceeds ("**Condemnation Award**") shall be payable to the Association.
- B. **Complete Taking** In the event that the entire Community is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners on the same basis of each Owner's interest in the Common Elements; provided, however, that if a standard different from the value of the property as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.
- C. **Partial Taking** In the event that less than the entire Community is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award determined in the following manner: As soon as practicable, the Association shall reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners as follows: (a) the total amount allocated to taking or to injury to the Common Elements, shall be apportioned among the Owners on the basis of each Owner's interest respectively in the Common

Elements; (b) the total amount allocated to severance damages shall be apportioned to those Units that were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular Unit and to the improvements an Owner has made within his or her own Unit shall be apportioned to the particular Unit involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Board of Directors determines to be equitable under the circumstances. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable.

- D. **Reorganization** In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to hold any right, title or interest in the remaining Common Elements and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the Ownership Interests and record an amendment to the Governing Documents reflecting such reallocated Ownership Interests.

20. **Enforcement of Governing Documents**

- A. All persons bound by the Governing Documents shall strictly comply with the provisions of the Governing Documents.
- B. The Board of Directors shall interpret the Governing Documents in good faith using reasonable judgment.
- C. The Association acting through its board of directors, and/or an Owner who has made written demand on the Association and thirty (30) days have elapsed without the Association taking action, may enforce the Governing Documents. Within sixty (60) days of written notice of a dispute, violation, or request for enforcement, parties must engage in nonbinding mediation in person in San Miguel County, Colorado, before a mediator that the parties shall in good faith agree upon, with the costs to be shared one-half by the Association and one-half jointly by the other involved parties.
- D. The Governing Documents may be enforced by proceedings at law or in equity against any person, including but not limited to Owners, their tenants and guests, to recover damages, fines, penalties, interest, costs and attorneys fees, and/or to restrain a violation of the Governing Documents or attempted violation. The prevailing party in such action shall be entitled to all of its reasonable costs and attorneys fees.
- E. Regardless of whether or not the Association files a formal legal action, the Association is entitled to require reimbursement for its reasonable costs and attorneys fees incurred to collect Common Expenses and other sums due under the Governing Documents. Such costs and attorneys fees shall be a Common Expense that may be assessed against the involved Owner and Unit.
- F. Regardless of whether or not the Association files a formal legal action, the Association is entitled to its reasonable costs and attorneys fees incurred to enforce nonmonetary obligations under the Governing Documents. The Association and/or enforcing owner may seek reimbursement of such costs and attorneys fees from the involved Owner and Unit and such obligation for reimbursement shall be a Common

Expense that may be assessed against the involved Owner and Unit.

- G. Upon notice and hearing, all violations of the Governing Documents shall be subject to reasonable fines as shall be determined from time to time by the Board of Directors and published in the Rules and Regulations.
 - H. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
 - I. All fines, damages, penalties, interest, costs and attorneys fees resulting from a violation of the Governing Documents, and judgments therefore, shall be the personal obligation of the person violating the Governing Documents, and shall be the personal obligation of, and payable as a Common Expense Assessment by, the Owner who violated or whose tenant, or guest (including their respective subtenants and guests) violated the Governing Documents. All such persons shall be jointly and severally liable with the Owner.
21. **Notices** Each Owner shall register his or her mailing address and other contact information with the Association or its Manager. If an Owner wishes not to receive invoices, notices and/or other official association business via email, then the Owner must deliver to the Association or its Manager a request in writing that notices not be emailed. All notices of matters affecting the Community, including monthly statements, notices of meetings, and mail ballots, may be sent either:
- A. Via postage prepaid first class United States mail, addressed to the Owner at his or her registered mailing address, or
 - B. Via email to the Owner at his or her registered email address if the Owner, unless the Owner delivered a written request not to receive email notices.

In addition, all notices shall, if required by statute, be posted in a conspicuous place on the premises, if feasible and practicable. Notices and agendas shall be posted on an Association website, if there is one. All notices and demands intended to be served upon the Board of Directors of the Association, or the Association, shall be sent by postage prepaid United States mail to the registered agent and office of the Association as maintained with the Colorado Secretary of State and to the Association's Managing Agent, if any. Notices shall be deemed delivered three (3) days after mailing.

22. **Amendment** Except as otherwise provided herein, this Declaration and the Map may be amended, supplemented, and restated, in whole or in part, as follows.
- A. **Amendments by the Association** The Board of Directors, on behalf of the Association, shall have the right and power to make the following amendments and supplements to the Declaration and the Map without obtaining the approval of, or notice to, the Owners or Eligible Holders:
 - i. The amendment is to make a non-material change (such as for the correction of a technical, clerical or typographical error, or clarification of a statement).
 - ii. The amendment is to correct any matter of record that fails to comply with the Governing Documents.

- iii. The amendment is required by, or requested by, a first Mortgage holder, or by FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans.
- iv. The purpose of the amendment is to conform to the actual physical location of the Improvements and to any approved changes, modifications or alterations. Such right is also reserved for the benefit of the Association for all Owners to conform the Map to any changes, modifications, or alterations, subject to the provisions of this Declaration.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Association, by and through the Board of Directors, to make or consent to an amendment under this section on behalf of each Owner and Eligible Holder. Each deed, Mortgage, other evidence of obligation or other instrument affecting a Unit, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of the Association to make, execute and record an amendment under this Section.

B. All Other Amendments The Declaration and the Map may be amended, supplemented, or restated upon the written approval of Owners representing at least sixty-seven percent (67%) of the Total Votes.

C. Amendments Requiring Notice to Eligible Holders Notwithstanding anything to the contrary, the following amendments to, supplements of, and restatements of this Declaration and the Map require thirty (30) day's written notice to the Eligible Holders.

- i. Changing the formula for calculating each Unit's interest in the Common Elements.
- ii. Expansion or contraction of the Community, or the addition, annexation, or withdrawal of property to or from the Community;
- iii. Changing the insurance provisions;
- iv. Imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;
- v. Restoration or repair of the Community (after hazard damage or condemnation) in a manner other than that specified in this Declaration;
- vi. Any action to terminate the Community;
- vii. Any change in a provision that expressly benefits Eligible Holders.

23. **Eligible Holder Provisions** Upon written request to the Association, Eligible Holders shall be entitled to: (a) timely written notice from the Association of any default by its mortgagor under the Governing Documents, which default is not cured within ninety (90) days; (b) examine the books and records of the Association during normal business hours and upon reasonable notice; (c) receive a copy of financial statements of the Association; (d) receive

written notice of damage to the Common Elements, Limited Common Elements, or Unit on which the Eligible Holder holds a Mortgage, if the estimated cost of reconstruction exceeds One Hundred Thousand Dollars (\$100,000.00), and (e) receive written notice of any condemnation or eminent domain proceedings affecting the Community.

24. **General Provisions**

- A. **Validity** If any of the provisions of the Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance be invalidated, then such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.
- B. **Context** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
- C. **Severability** Each of the provisions of the Declaration shall be deemed independent and severable. If any provision of the Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.
- D. **Term of Declaration** The covenants and restrictions of the Declaration shall run with and bind the land in perpetuity.
- E. **Interpretation** The provisions of the Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. The Declaration shall be construed and governed under the laws of the State of Colorado.
- F. **Captions** All captions and titles used in the Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.
25. **Ratification of Prior Actions; Retroactive Effect** Any action taken by the Association and/or the Board of Directors prior to the effective date hereof shall hereby be ratified so long as such action was in conformance with either the Prior Declarations or this First Amended and Restated Declaration.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

CERTIFICATION OF ACCEPTANCE OF CCIOA

The undersigned hereby certify that the Association has given all Owners written notice in accordance with the Prior Declarations that the Association would be considering electing to be treated as a common interest community organized after June 30, 1992, and thereby accepting the provisions of C.R.S. 38-33.3-101 *et. seq.*, together with a copy of such article. Further, each owner entitled was provided an opportunity to vote on such election by mail ballot mailed via first class postage prepaid U.S. mail to all owners at their registered addresses on February 24, 2006, and with a deadline of March 28, 2006, all in accordance with the Association's articles, bylaws and Prior Declarations. A quorum of at least twenty-five percent (25%) of the votes returned a valid mail ballot. At least sixty-seven percent (67%) of the owners who voted via the mail ballot voted to accept the provisions of C.R.S. 38-33.3-101 *et. seq.*

The names and addresses of the Association's officers and directors are as follows:

Sid Brotman, Director and Presiding Board Member
P.O. Box 2965
Telluride, CO 81435

Calvert Collins, Alternative Presiding Board Member
4500 Roland Ave. #701
Dallas, Texas 75219

Paul (Mike) Pippin, Second Alternative Presiding Board Member
3104 N. Sullivan Avenue
Farmington, NM 87401

Peter McGinty, Secretary
PO Box 3653
Telluride, CO 81435

David Murphy, Treasurer
2341 Promitory Court
Grand Junction, CO 81503

CERTIFICATION OF ADOPTION OF FIRST AMENDED AND RESTATED DECLARATION

The undersigned hereby certify that the Association has complied with C.R.S. § 38-33.3-217 (1)(a), effective January 1, 2006, and Paragraph 17 of the Original Declaration by obtaining via mail ballot dated February 24, 2006, the consent and agreement to this First Amended and Restated Declaration of the owners representing an aggregate ownership interest of at least sixty-seven percent (67%) of the Common Elements.

The undersigned hereby further certify that the Association has complied with C.R.S. § 38-33.3-217(b), and that this First Amended and Restated Declaration has the approval of holders of a first mortgage or first deed of trust representing at least seventy-five percent (75%) of the General Common Elements.

**Lulu City Condominium Association, Inc.,
a Colorado nonprofit corporation,**

By: [Signature]
Sid Brotman, Presiding Board Member

By: [Signature]
Peter McGinty, Secretary

STATE OF COLORADO)
COUNTY OF San Miguel) ss.

The foregoing was acknowledged before me this 21 day of September, 2006, by Sid Brotman, as the presiding officer of Lulu City Condominium Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: My Commission Expires 9/23/2008

[Signature]
Notary Public



STATE OF COLORADO)
COUNTY OF San Miguel) ss.

The foregoing was acknowledged before me this 2nd day of October, 2006, by Peter McGinty, as the secretary of Lulu City Condominium Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

MY COMMISSION EXPIRES
My commission expires: MAY 4, 2009

[Signature]
Notary Public

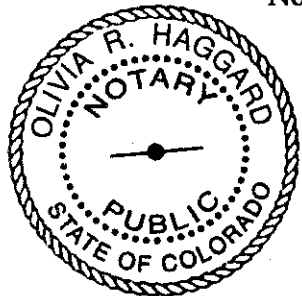


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The following property located in the Town of Telluride, County of San Miguel, State of Colorado:

Lots 43 and 44, Backman Village Subdivision, according to the plat thereof on file in the office of the Clerk and Recorder for San Miguel County, CO.

EXHIBIT B
TABLE OF INTERESTS
TO FIRST AMENDED AND RESTATED DECLARATION FOR
LULU CITY CONDOMINIUM ASSOCIATION

Type of Unit	Unit	Platted Square Footage	Interest in Common Elements	Share of Common Expenses	Vote
Residential	3A	480.00	1.0920%	1.0920%	1
Residential	3B	480.00	1.0920%	1.0920%	1
Residential	3C	1,290.01	2.9347%	2.9347%	1
Residential	3D	1,267.47	2.8834%	2.8834%	1
Residential	3E	1,295.56	2.9473%	2.9473%	1
Residential	3F	1,266.09	2.8803%	2.8803%	1
Residential	3G	1,511.26	3.4380%	3.4380%	1
Residential	4A	1,276.41	2.9037%	2.9037%	1
Residential	4B	1,295.18	2.9464%	2.9464%	1
Residential	4C	1,276.51	2.9040%	2.9040%	1
Residential	4D	1,296.69	2.9499%	2.9499%	1
Residential	4E	1,172.28	2.6668%	2.6668%	1
Residential	4H	877.48	1.9962%	1.9962%	1
Residential	5A	913.19	2.0774%	2.0774%	1
Residential	5B	1,202.08	2.7346%	2.7346%	1
Residential	5C	909.84	2.0698%	2.0698%	1
Residential	5D	1,227.88	2.7933%	2.7933%	1
Residential	5E	659.35	1.5000%	1.5000%	1
Residential	5F	995.10	2.2638%	2.2638%	1
Residential	5G	991.07	2.2546%	2.2546%	1
Residential	5H	837.15	1.9045%	1.9045%	1
Residential	6A	1,062.40	2.4169%	2.4169%	1
Residential	6B	1,219.49	2.7742%	2.7742%	1
Residential	6C	1,216.85	2.7682%	2.7682%	1
Residential	6D	1,216.79	2.7681%	2.7681%	1
Residential	6E	1,350.04	3.0712%	3.0712%	1
Residential	6F	1,189.75	2.7066%	2.7066%	1
Residential	6G	1,215.01	2.7641%	2.7641%	1
Residential	6H	1,220.21	2.7759%	2.7759%	1
Residential	6I	1,222.27	2.7806%	2.7806%	1
Residential	6J	1,233.56	2.8063%	2.8063%	1
Residential	6K	1,064.83	2.4224%	2.4224%	1
Residential	6L	1,058.97	2.4091%	2.4091%	1
Residential	6M	1,222.08	2.7801%	2.7801%	1
Residential	6N	1,222.13	2.7802%	2.7802%	1
Residential	6O	1,218.84	2.7728%	2.7728%	1
Residential	6P	1,217.84	2.7705%	2.7705%	1
Residential	6Q	1,221.61	2.7791%	2.7791%	1
Residential	6R	1,064.29	2.4212%	2.4212%	1
Subtotals	39	43,957.56	100.0000%	100.0000%	39

Exhibit C

Easements, restrictions, reservations, rights of way and all other matters as disclosed on plat of said subdivision.

Reservations, conditions, assessments, easements, options, covenants, agreements and limitations on title, and all other provisions contained in, or incorporated by reference into the Condominium Declaration for Lulu City Condominiums, recorded February 6, 1981 in Book 391 at page 546, as amended or supplemented.

Easements, and reservations as disclosed by plat of Backman Village as recorded June 29, 1979 in Plat Book 2 under Reception No. 212301.

Protective Covenants, Conditions and Reservations for Backman Village Subdivision as recorded in Book 380 at page 377, as amended or supplemented; subject to the terms, conditions, provisions and obligations as contained therein.

EXHIBIT D
TO FIRST AMENDED AND RESTATED DECLARATION FOR
LULU CITY CONDOMINIUM ASSOCIATION

The following instruments recorded in the Office of the Clerk and Recorder for San Miguel County, Colorado, have amended and/or restated the Original Declaration and are collectively referred to as the **"Prior Declarations"**:

Amendment Book 411 page 208
Amendment Book 411 page 841
Amendment Book 423 page 541
Declarations Reception No. 329882
Amendment Reception No. 340803