

DECLARATION  
FOR  
TELLURIDE SPRING CREEK  
(a Planned Unit Community)

THIS DECLARATION is made on this 4<sup>th</sup> day of June, 1998 by John J. Horn and Dirk A. dePagter whose address is P.O. Box 482 Telluride, Colorado, 81435 (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Telluride Spring Creek is located on the following described real property located in the Town of Mountain Village, San Miguel County, Colorado:

Lot 640DR, according to the plat recorded in Plat Book 1 at page 2398, Reception # 319891 ("Property");

WHEREAS, the Colorado Common Interest Ownership Act was enacted and made effective as of July 1, 1992, and applies to this planned unit development; and

WHEREAS, the Declarant desires and intends by recording this Declaration in San Miguel County, the County in which this common interest community is located, to submit the Property to the provisions of the Colorado Common Interest Ownership Act as a planned unit development and to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the Property and Owners thereof.

NOW, THEREFORE, Declarant does hereby publish and declare that the Property is, and shall be conveyed, hypothecated, encumbered, leased, used and occupied subject to the following terms, limitations, restrictions, easements, covenants, conditions, obligations, liens and charges, all of which are declared and agreed to be in furtherance of a plan of ownership as described in Colorado Common Interest Ownership Act for the subdivision, improvement, protection, maintenance and sale of Lots within the Property. All of the following provisions are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property. The terms, limitations, restrictions, easements, covenants, conditions, obligations, and liens and charges hereafter described shall be a burden and benefit to the Declarant, its grantees, successors and assigns and shall, from the original date of recording in the records of the Office of the Clerk and Recorder for San Miguel County, Colorado, constitute covenants running with the land, binding upon and inuring to the benefit of all those who hereafter obtain any interest in the Property.

ARTICLE I

NAME AND DEFINITIONS

The name of this common interest community shall be Telluride Spring Creek which shall be located in the Town of Mountain Village, San Miguel County, State of Colorado.

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

- 1.1 Act means the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, et seq., as it may be amended from time to time.
- 1.2 Allocated Interests. "Allocated Interests" shall mean the following interests allocated to each Lot: common expense liability, and votes in the Association.
- 1.3 Articles. "Articles" shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time according to their terms.
- 1.4 Association. "Association" shall mean and refer to Telluride Spring Creek Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and assigns, whose purpose shall be to govern the administration of Telluride Spring Creek. The Association shall be organized in accordance with the provisions of Section 38-33.3-301, C.R.S.
- 1.5 Board of Directors. "Board of Directors" or "Board", shall mean the governing body of the Association.
- 1.6 Bylaws. "Bylaws" shall mean the Bylaws of the Association, which are adopted by the Association for the regulation and management of the Association, as the same may be amended from time to time,

according to their terms.

1.7 Common Assessments. "Common Assessments" shall mean the sums assessed against Owners for the payment of Common Expenses of Telluride Spring Creek .

1.8 Common Elements. "Common Elements" shall mean all portions of the Property not within a Lot , including all General Common Elements and Limited Common Elements. All Common Elements shall be owned by the Association.

1.9 Common Expenses. "Common Expenses" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves.

1.10 Common Expense Liability. "Common Expense Liability" shall mean the liability for common expenses allocated to each Lot pursuant to Section 38-33.3-207, C.R.S.

1.11 Declarant. "Declarant" shall mean Dirk A. dePagter and John J. Horn, and such successor or successors as may hereafter be designated by Declarant by written notice duly recorded in the records of the County of San Miguel, Colorado.

1.12 Declaration. "Declaration" shall mean this Declaration, together with any supplement or amendment hereto and also including, but not limited to, plats and maps, recorded in the office of the Clerk and Recorder of San Miguel County, Colorado.

1.13 Design and Building Requirements. "Design and Building Requirements" shall mean those rules and regulations promulgated by the Telluride Mountain Village Design Board ("Town DRB") to ensure that any improvements constructed by an Owner within the Project preserve and promote the interest of the Owners.

1.14 Dwelling. "Dwelling" shall mean any residential structure constructed within the envelope defined as a Lot.

1.15 General Common Elements. "General Common Elements" shall mean all of the Common Elements, except the portions thereof which are reserved for the use of an Owner of one or more Lots to the exclusion of all others (the Limited Common Elements). Without limiting the generality of the foregoing, the following shall constitute General Common Elements: all drives, driveways, sidewalks, public walkways; and all other lands lying outside of each numbered Lot as reflected on the Map and any and all easements benefiting the Property. General Common Elements shall also include those improvements designated as such on the Map.

1.16 Limited Common Elements. "Limited Common Elements" shall mean a portion of the common elements allocated by this Declaration or by operation of Section 38-33.3-202 C.R.S., for the exclusive use of one or more Lots but fewer than all of the Lots. Limited Common Elements shall include, by way of example and not limitation, that portion of any utility line, drainage facility, access drive or walkway serving only one or more Lots but less than all Lots. Limited Common Element shall also be deemed to include all elements designated as such and set forth on Exhibit 640D-1 that is attached hereto and incorporated herein by this reference

1.17 Lot. "Lot" shall mean one of the fourteen (14) Units located on the Property as shown on the Map. The terms "Lot" and "Unit" shall be used interchangeably.

1.18 Map. "Map" shall mean the plat recorded in Plat Book 1 at page 2310, Reception # 39894, together with Exhibit 640D-1 attached to this Declaration. The term Map hereafter shall mean the original Map together with any supplemental maps or amendments hereafter filed.

1.19 Managing Agent. "Managing Agent" shall mean the person declared by the Board to perform the management and operational functions of the Association.

1.20 Mortgage. "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.

1.21 Mortgagee. "Mortgagee" shall mean any person named as the Mortgagee or beneficiary under any Mortgage or Deed of Trust, or any successor to the interest of such person under such mortgage.

1.22 Owner. "Owner" shall mean the person holding fee title to a Lot. Any Owner that is not a natural person may be represented on the Board of Directors of the Association by an individual specified by the Owner in writing and duly elected by the members of the Association. Any Owner that is not a natural person may be represented on the Board by an individual specified by the Owner and duly appointed by the Association.

1.23 Person. "Person" shall mean any individual, corporation, partnership, limited partnership, Association, trust or any other legal entity.

1.24 Project. "Project" shall mean the Property, including the Lots, Dwellings and Common Elements and other improvements existing from time to time on the Property.

1.25 Property. "Property" shall mean Lot 640DR, according to the plat recorded in Plat Book 1 at page 2398, Reception # 319891.

1.26 Residence. "Residence" shall mean the principal or primary home or place of abode of a person, meaning that home or place of abode in which a person's habitation is fixed and to which he or she, whenever absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of such absence. A residence is a permanent building, or part thereof, including a house, , apartment, room in a house, or mobile home. No vacant Lot shall be considered a residence.

1.27 Special Assessment. "Special Assessment" shall mean the sums assessed against an Owner for other than payment of Common Expenses.

1.28 Special Declarant Rights. "Special Declarant Rights" shall mean rights hereby reserved for the benefit of the Declarant to perform the following acts: to complete improvements indicated in maps and other instruments filed with the Declaration; to exercise any development right contained in this Declaration; to maintain sales offices, management offices, signs advertising the Declarant's real estate projects and developments; to use easements through the common elements for the purpose of making improvements within the Project; to create easements and rights of way, parking areas or spaces within the project or cross easements or reciprocal easements, either within or without the Project for all purposes set forth in Article III of this Declaration; or to appoint or remove any officer of the Association or any Board member during any period of Declarant control.

1.29 Unit. "Unit" shall mean the real property legally described on the Map recorded in Plat Book 1 at page 2398, Reception # 319891. The terms "Lot" and "Unit" shall be used interchangeably.

## ARTICLE II

### OWNERSHIP OF UNITS

2.1 Division into Lots. Declarant, by this Declaration, has submitted the Property to ownership pursuant to the Colorado Common Interest Ownership Act, Section 38-33.3-101, C.R.S., et seq. The Property is hereby divided into fourteen (14) Lots, each consisting of a separate fee simple estate in a particular Lot.

2.2 Map. The Map has been filed in the records of San Miguel County, Colorado, depicting therein:

- A. The legal description of the Property and a survey thereof;
- B. The name and general location of the Project;
- C. The measurements and location, with reference to the exterior boundary of the Property and each Lot;
- D. Location of any other improvement located upon the Property.

The Map, and any supplements thereto, shall contain the statements of (1) Declarant submitting the Property to the provisions of the Declaration, and (2) an engineer and a registered land surveyor certifying that the Map fully and accurately depicts the layout, measurements and location of any improvements located upon the Property, the Lot designations, the dimensions of each Lot. Declarant hereby reserves unto itself and to the Board, the right from time to time, without the consent of any Owner being required, to amend the Map and supplements thereto, to conform the Map to the actual location of any of the constructed improvements and to establish, vacate and relocate utility easements, access road easements, pedestrian access and all other easements, which, in the sole discretion of the Declarant, are advisable and to correct any minor deviations or errors therein.

In interpreting any and all provisions of this Declaration or the Bylaws, the actual location of the Lot or Dwelling shall be deemed conclusively to be the Property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations from the location of said Lot or Dwelling indicated on the Map.

2.3 Description of Units.

- A. Every contract for the sale of a Lot may legally describe a Lot by identifying its Lot designation followed by the words "Telluride Spring Creek ", with further reference to the Map thereof filed for record and this Declaration. Upon recordation of the Map and this Declaration in the records of the Clerk and Recorder of San Miguel County, Colorado, such description shall be conclusively presumed to relate to the therein described Unit.

- B. Every Deed, Lease, Mortgage or other instrument shall legally describe a Lot by the following words:

Lot (or Unit) \_\_\_\_, Telluride Spring Creek, according to the plat recorded in Plat Book 1 at page 2398 and according to the Declaration for Telluride Spring Creek, recorded in Book \_\_\_\_ commencing at page \_\_\_\_ at Reception No. 319898

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

- C. The reference to the Map and Declaration in any instrument shall be deemed to include any supplement or amendments to the Map or Declaration without specific reference thereto.

2.4 Inseparability. An Owner's undivided 1/14th ownership interest in the Common Elements, and 1/14th of the Common Expense Liability and one vote of the Association shall not be separated from the Lots or Dwelling to which they are appurtenant.

2.5 Separate Titles and Taxation. Each Lot that has been created constitutes for all purposes a separate parcel of real estate and shall be separately assessed and taxed. The valuation of the common elements shall be separately taxed or assessed. Declarant shall give written notice to the Assessor of San Miguel County of the creation of ownership of the project, as is provided by law. The lien for taxes assessed to any Lot shall be confined to that Lot. No forfeiture or sale of any Lot for delinquent taxes, assessments or other governmental charges shall divest or in any way effect the title to any other Lot.

2.6 Limited Common Elements. Limited Common Elements shall be those common elements designated for the use of one or more Owners to the exclusion of all other Owners. Limited Common Elements shall include that portion of any utility line, drainage facility, access drive or walkway serving one or more Lots to the exclusion of all others. Exhibit 640D-1 shall set forth all Limited Common Elements allocated to each particular Lot. The allocation of Limited Common Elements contained in Exhibit 640D-1 may not be altered without the consent of the Owners whose Lots are effected. Declarant reserves the right to alter, create or amend easements within the Project, as set forth in paragraph 1.28. This reservation by Declarant may alter Limited Common Elements. In such event, Exhibit 640D-1 shall be amended to reflect such changes to the Limited Common Elements.

2.7 Membership in Association. The Owners of record of each Lot shall be members of the Association. There shall be one vote for each Lot. If there is more than one record Owner of each Lot, then the vote for said Lot may be cast by the party so designated pursuant to the Bylaws of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

### ARTICLE III

#### EASEMENTS

Each of the following easements over, under and across the Common Elements, or any portion thereof is a covenant running with the land, and, notwithstanding any of the other provision of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with its proper and intended use and purpose. Easements are subject to Declarant's modification, at its discretion as set forth in paragraph 3.5 and 1.28 hereof.

3.1 Utilities. Any and all easements as may be required for utility services to adequately serve the Project shall be covenants running with the land.

3.2 Pedestrian and Vehicular Traffic. There shall exist easements for pedestrian traffic over, upon, through and across sidewalks, paths, lanes and walks, as the same may from time to time exist upon the Common Elements; and for vehicular traffic over, upon, through and across such portions of the Common Elements as may from time to time be paved and intended for such purposes, the same being for the use and benefit of the Owners, their respective successors, guests and invitees, for access and related purposes.

3.3 Perpetual Non-Exclusive Easement in General Common Elements. The General Common Elements shall be, and the same are hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the Owners of Lots in the common interest community, Telluride Spring Creek, for their use and enjoyment and the use and enjoyment of their immediate families, guests, and invitees for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, subject to rules and



easement and maintenance agreement which the Declarant and/or Association is hereby authorized to negotiate and execute on behalf of the Owners. The Declarant and/or Association shall have a Power of Attorney to negotiate, execute and convey, on behalf of any owner or owners of Lots, such easements or rights-of-way in, on, over and under the Common Elements as are necessary and desirable. The easement and maintenance agreement shall be recorded in the real property records of San Miguel County.

3.4 Easements for Encroachments. Pursuant to the provisions of Section 38-33.3-214, C.R.S., if any part of the Common Elements encroaches or shall hereafter encroach upon a Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot or Dwelling encroaches or shall hereafter encroach upon the Common Elements, or upon another Lot or Dwelling, the Owner of that Lot or Dwelling shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either on the Common Elements or on a Lot 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 of a Dwelling, by error in the Map or map survey, by settling, rising or shifting, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

3.5 Easements. There are hereby created easements in favor of the Owners and the Association, for ingress, egress and utilities, including but not limited to those necessary to provide power, electricity, heat telephone, communications, sewer, water, cable, lighting facilities, irrigation, drainage, television transmission facilities, security services, electronic and other facilities in connection therewith, gas service and the like. Declarant, for itself, its successors, nominees, and assigns, and the Association reserves the right to impose upon the Common Elements, henceforth and from time to time, such easements and cross-easements for any of the foregoing purposes as it deems to be in the best interest of, and necessary and proper for this Project.

3.6 Association. Easements are reserved in favor of the Association, its agents and employees, successors and assigns to enter upon the Lots for the purpose of conducting inspections and carrying out the responsibilities of the Association as set forth herein and as may be authorized from time to time by the Association.

3.7 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 performance of their duties.

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

3.9 Easements Granted by Association. The Association shall have a power of attorney to grant and convey to any third party, on behalf of any Owner, easements and rights-of-way in, on, over and under the Common Elements for the purpose of constructing, erecting, operating or maintaining thereon, therein, or thereunder, overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, as well as easements for vehicular and pedestrian access, ingress, egress and passage, and the other easements set forth in this Article III, and each purchaser, in accepting a deed to his or her Lot, expressly consents hereto; provided, however, that no such easements may be granted if same would unreasonably interfere with the use, occupancy or enjoyment by any Owner of his or her Lot.

#### ARTICLE IV

##### RIGHTS AND OBLIGATIONS OF OWNERS

4.1 Maintenance of Lot/Limited Common Elements. Each Owner of a Lot shall be responsible for maintaining his Lot and Dwelling at his sole cost and expense, including the structural elements, all interior and exterior walls, roofs, floors, windows, doors, porches and fixtures of the Lot, utility lines, drainage areas, driveways and other access ways serving his Lot exclusively.

4.2 Improvement of Limited Common Elements. An Owner may landscape within his limited common elements. However, no material landscaping shall be done until approval of the Town DRB has been received. Each Owner shall be required to replace or repair any portion of the General or Limited Common Elements damaged or disturbed as the result of any landscaping or other improvement made by him. If such Owner fails to do so, the Association may assess against said Owner the cost to do so and any such unpaid assessment shall constitute a lien, as set forth herein.

4.3 Expansion/Alteration of Dwelling. Any expansion or exterior renovation or modification of a

Dwelling shall be subject to the prior written approval of the Town DRB.

4.4 Liens Against Lots. No labor performed or materials furnished, with the consent of or at the request of an Owner of a particular Lot, or his agent, shall be the basis for the filing of a lien pursuant to law against the Lot or other property of another Owner not expressly consenting to or requesting the same. Each Owner shall indemnify and hold each of the other Owners harmless from and against liability or loss arising from any claim of lien against any Lot for labor performed or materials furnished. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Lot on which the labor was performed or materials furnished the amount necessary to discharge any lien affecting the Lot of another Owner, and all costs incidental thereto, including costs of collection, costs of litigation and reasonable attorney's fees. If not promptly paid, the Association may proceed to collect the same in the manner provided herein for collection of assessments for the purpose of discharging the lien.

4.5 Use of Common Elements. Subject to the other provisions of this Declaration, each Owner shall have the nonexclusive use in common with other Owners to the use and enjoyment of the General Common Elements, and the exclusive use and enjoyment of the Limited Common Elements appurtenant to his or her Lot.

4.6 Utilities. Each Owner shall be required to pay all charges for any separately metered utilities servicing his or her Unit.

#### ARTICLE V

##### Design Review

5.1 Architectural Control. (i) No dwelling, fence, wall, improvement or other structure shall be erected or maintained upon the Property, (ii) nor shall any exterior addition, change or alteration be made to any Lot, structure or improvement or General or Limited Common Element, (iii) nor shall any landscaping be commenced on the Property, (iv) nor shall any alterations be made to the interior of any Lot which impacts the exterior appearance of the Lot (items (i) thru (iv) collectively referred to hereafter as "Changes") until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Town DRB.

#### ARTICLE VI

##### OWNERSHIP USE AND OCCUPANCY RESTRICTIONS

6.1 Hazardous Substances. No environmentally hazardous substances shall be stored, buried or otherwise placed within the Project.

6.2 Trees/Landscaping. No tree of two inches or greater diameter or six feet or greater heights may be removed from any portion of the Property without the prior written approval of the Board. Vegetation on all Property must be maintained to minimize erosion and encourage growth of ground cover and all tree and shrub planting must be consistent with the Association's general landscaping plan. All landscaping must be approved by the Board.

6.3 Hunting. No hunting of mammals, reptiles or birds within the Project shall be permitted otherwise than with the approval of the Board to eliminate a nuisance or to protect the health, safety and welfare of Owners. No weapon shall be discharged within the project, including, without limitation, pellet guns, slingshots, BBs, arrows or projectiles of any type.

6.4 No Mining or Drilling. No portion of the planned Lot development shall be used for the purpose of mining, quarrying, drilling, boring or exploring for oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

6.5 Offensive Conduct/Nuisance. No noxious or offensive activities, including but not limited to, the repair of automobiles or other motorized vehicles, shall be carried on, upon or within the Project, except that minor repairs to automobiles or other objects may be performed within the confines of a parking area if completed within 12 hours. Nothing shall be done within the Project which may be or become an annoyance or nuisance to the residents of the Project or which shall in any way interfere with the quiet enjoyment and dignity of occupants of the Lots. Unless otherwise permitted by the Association, no Owner shall serve food or beverages, cook, barbecue, or engage in similar activities except within such Owner's Dwelling or upon the limited Common Elements appurtenant to such Owner's Dwelling Unit. No light shall be emitted from any Lot or placed anywhere within or without a Dwelling which is unreasonably bright or causes unreasonable glare, no sound shall be emitted from any Lot which is unreasonably loud or annoying, and no odor shall be emitted from any Lot which is noxious or offensive to others and no signs shall be posted within or upon a Lot which is visible from the exterior of the Lot, other than numbers or letters identifying the Lot, and seasonal decoration.

6.6 Hazardous Activities. No activities shall be conducted in any Lot and no improvements shall be constructed in any Lot which are or might 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 Property, and no open fires shall be lighted or permitted on any portion of the Property except in a contained barbecue facility while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or woodstove if permitted. No barbecues other than those permitted by applicable codes may be placed upon decks or patios.

6.7 Unsigntliness. No unsightliness shall be permitted on any portion of the Property. In accordance with said restriction, (a) all unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure; (b) refuse, garbage and trash shall be kept in a covered container at all times and any such container shall be kept within an enclosed structure; (c) there shall be no hanging, drying or airing clothing or fabrics outside of a Dwelling; (d) pipes for water, gas, sewer, drainage or other purposes, wires, poles, antennas, and other facilities for the transmission or reception of audio or visual signals or electricity, utility meters or other utility facilities, gas, oil, water or other tanks, excluding propane gas tanks, and sewage disposal systems or devices shall be kept and maintained within an enclosed structure or below the surface of the ground; and (e) no lumber (except for split and stacked firewood), grass, shrub or tree clippings or plant waste, compost, metals, bulk materials, scrap, refuse, trash or unused items of any kind shall be kept, stored or allowed to accumulate on any portion of the Property. All enclosed structures shall comply with the rules and regulations of the Board, the Telluride Mountain Village Design Board regulations or the regulations of the applicable governmental authority.

6.8 Parking/Use of Garages. Unless specifically approved by the Association, (i) no automobile shall be parked or left on any property subject to this Declaration other than within an approved garage or assigned or appurtenant parking stall or space; and (ii) no boat, trailer, recreational vehicle, mobile home, tractor, camper, motorcycle, snowmobile, truck or commercial vehicle shall be parked or left on any part of the Project (other than within an approved garage, if any) except in such areas as may be approved by the Association. Parking by commercial vehicles for the purpose of making deliveries shall be permitted in accordance with the Association rules. Garages, if any, shall not be converted for living or recreational activities. Garage doors, if any, shall remain closed at all times excepting when entering or exiting or when performing temporary repairs or other activities of short duration. Parking spaces shall not be used for storage of any material or object.

The Association shall promulgate appropriate rules and regulations concerning the parking of vehicles, including, but not limited to, the authority to (i) institute a parking pass system (ii) limit or prohibit the parking of specified types of vehicles or trailers and (iii) limit or prohibit the location and duration of parking.

6.9 Signs. No sign or advertising device of any kind shall be displayed to the public view on or from any Lot or on or from the Common Elements without the prior written approval of the Association, excepting such signs as may be used by the Declarant or its designees for the purpose of developing, selling and improving Lots within the Project. All of Declarant's signs are to be removed when the last Lot closes escrow or three years after the date the Declaration is recorded, whichever occurs first.

6.10 Antennae, External Fixtures. No television or radio poles, satellite dishes, antennae, or flag poles other than those approved by the Board shall be constructed, erected or maintained on or within the General or Limited Common Elements or on or within any Lot.

6.11 Fences. No fences, awnings, sunshades, walls or barriers of any nature shall be erected or maintained on or around any portion of any Dwelling or on any Lot within the Project except such as are installed in accordance with the original construction of the Project, or as are authorized and approved by the Board.

6.12 Restriction of Animals. No animals shall be kept on the Property which unreasonably bother or constitute a nuisance to others. In any event, the Association shall have the absolute right to prohibit the maintenance of any animals or pets which constitute, in the sole and exclusive opinion of the Board, a nuisance to any Owner or occupant of Lot. Each person bringing or keeping a pet shall be absolutely liable to each and all other Owners, their family members, guests, invitees, lessees, renters and contract purchasers, and their respective family members, guests and invitees for any damages resulting from the maintenance of such animal or animals. Animals shall not be permitted to roam the area, and shall be kept on a leash at all times when outside of a Dwelling. Anything to the contrary notwithstanding, the keeping of animals within the Project shall comply with applicable municipal or other governmental regulations. Any prohibition of animals by a governmental authority may be observed and enforced by the Association. Telluride Mountain Village regulations concerning animals shall be observed. The owner of any animal residing in or visiting any Lot shall immediately remove all droppings to a proper receptacle located in said Lot.

6.13 Restricted Use of Recreational Vehicles and Structures. No boat, truck, trailer, camper, recreational vehicles, temporary structures, tent or mobile home shall be maintained or used as a living area while located on any portion of the Property, provided, however, trailers or temporary structures for use incidental to the initial construction of the Project or the initial sales of Lots therein may be maintained within the Project but shall be promptly removed upon completion of all such initial construction and all such initial sales. No motorcycle, motorbike, snowmobile or other motorized vehicle shall be stored or operated within or on the Property except as



promptly removed upon completion of all such initial construction and all such initial sales. No motorcycle, motorbike, snowmobile or other motorized vehicle shall be stored or operated within or on the Property except as otherwise specifically permitted by rules and regulations of the Association.

6.14 Solid Fuel Burning Devices. Solid fuel burning devices shall be allowed only upon receipt of approval from the Association and subject to Telluride Mountain Village, San Miguel County or other applicable governmental, duly promulgated, rules and regulations. Solid fuel burning devices shall not be used as a primary source of heat but shall be only for the purposes of ambiance or decoration.

6.15 Insurance. Nothing shall be done or kept in any Lot or on the Common Elements which might increase the rate of, or cause the cancellation of, insurance on the Project, or any portion thereof, without the prior written consent of the Association.

6.16 Compliance with Law. No portion of the Property shall be used, occupied, altered, changed, improved or repaired except in compliance with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of all local, state and federal governmental or lawful authority whatsoever, effecting the Property or the improvements thereon or any part thereof, and of all their departments, bureaus and officials.

6.17 Health, Safety and Welfare. In the event additional uses, activities and facilities are deemed by the Board to be a nuisance(s) or to adversely effect the health, safety or welfare of Owners, the Board may make rules prohibiting, restricting or regulating said uses, activities and facilities in accordance with Article 8.9 hereof.

6.18 Indemnification. Each Owner shall be liable to the remaining Owners for any damage to the Common Elements which may be sustained by reason of the construction of said Owner's Dwelling or the negligence of said Owner, members of his family, his contract purchasers, contractors, lessees, renters, guests, licensees or invitees. Each Owner does further, by acceptance of his deed, agree for himself, and for the members of his family, his contract purchasers, contractors, lessees, renters, guests or invitees, to indemnify each and every other Owner, and to hold him or her harmless from and to defend him or her against, any claim of any person or persons for personal injury or property damages occurring within the Lot of that particular Owner and any Limited Common Elements appurtenant thereto.

## ARTICLE VII

### THE ASSOCIATION

7.1 General Purposes and Powers. The Association, through the Board of Directors or the Managing Agent, shall perform functions and hold and manage property as provided in this Declaration so as to further the interests of Owners of Lots in Telluride Spring Creek. It shall have all power necessary or desirable to effectuate such purposes, as said powers are more specifically enumerated in the Articles of Incorporation and the provisions of Section 38-33.3-302 (1), C.R.S. Said powers shall also include, without limitation, the following:

- (a) Adopt and amend bylaws and rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from Owners;
- (c) Hire and terminate managing agents and other employees, agents and independent contractors;
- (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters directly or indirectly affecting the common interest community, Telluride Spring Creek ;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;
- (i) Grant easements, leases, licenses, and concessions through or over the common elements;
- (j) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in Section 38-33.3-202 (1) (b) and (1) (d);



- (k) Impose charges for late payment of assessments, recover reasonable attorney fees and other legal costs for collection of assessments and other actions to enforce the power of the association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the Association;
- (l) Impose reasonable charges for the preparation and recordation of amendments to the declaration or statements of unpaid assessments;
- (m) Provide for the indemnification of its Officers and Board of Directors and maintain Directors' and Officers' liability insurance;
- (n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;
- (o) Exercise any other powers conferred by the declaration or bylaws;
- (p) Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;
- (q) Exercise any other powers necessary and proper for the governance and operation of the Association; and
- (r) Maintenance, repair or replacement of any drainage structure or facilities, or other utility or public improvements required by the local governmental entity as a condition of development of the Project or any portion thereof.

7.2 Membership. Pursuant to the provisions of Section 38-33.3-301, every record Owner of a Lot at Telluride Spring Creek shall be entitled and required to be a member of the Association. If title to a Lot is held by more than one person, the membership related to that Lot shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which the title to the Lot is held. An Owner shall be entitled to one membership for each Lot owned by him. Each such membership shall be appurtenant to the Lot upon which it is based and shall be transferred automatically by conveyance of that Lot. No person or entity other than an Owner may be a member of the Association except that members of the Board of Directors may be non-owners until turnover of control by Declarant. A membership in the Association may not be transferred except in connection with the transfer of a Lot.

7.3 Meetings. Meetings of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by a majority of the Board of Directors, or by Owners having thirty percent (30%), or any lower percentage as may be specified in the bylaws, of the votes in the Association. Not less than five nor more than fifty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove an officer or member of the Board.

7.4 Quorums. Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the Association if persons entitled to cast twenty percent of the votes which may be cast for election of the Board are present, in person or by proxy at the beginning of the meeting. Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the Board if a majority of the members of the Board of Directors are present at the beginning of the meeting.

7.5 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate any portion of its authority to an executive committee, or to a Managing Agent for the Association. There shall be not less than three nor more than seven members of the Board of Directors, the specific number to be set forth from time to time in accordance with the Bylaws. The terms of the members of the Board shall expire as set forth in the bylaws. The Board of Directors may not act on behalf of the Association to amend the declaration, to terminate the common interest community, or to elect members of the Board of Directors or determine the qualifications, powers and duties, or terms of office of Board members, unless otherwise specifically set forth in this Declaration. The Board of Directors may by appointment fill vacancies in its membership for the unexpired portion of any term.

7.6 Transfer of Records to Association by Declarant. Within thirty days after the Owners other than the Declarant elect the members of the Board, or the Date the Declarant relinquishes its rights prior to such time, Declarant shall deliver to the Association all property of the Owners and of the Association held by the Declarant, including without limitation, the following:

- (a) Copy of the recorded declaration as amended, the Association's articles of incorporation, bylaws,

minute books, other books and records, and any rules and regulations which may have been promulgated;

- (b) An accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the period of Declarant control ends;
- (c) The Association funds or control thereof;
- (d) All of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in the operation and enjoyment of the common elements, and inventories of these properties;
- (e) Copy of any plans and specifications used in the construction of improvement in Telluride Spring Creek, which were completed within two years before the declaration was recorded;
- (f) All insurance policies then in force, in which the Owners, the Association, or its directors and officers are named as insured persons;
- (g) Copies of any certificates of occupancy that may have been issued with respect to any improvements;
- (h) Any other permits issued by governmental bodies applicable to Telluride Spring Creek and which are currently in force or which were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;
- (i) Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;
- (j) Roster of Owners and mortgagees and their addresses and telephone numbers;
- (k) Employment contracts in which the association is a contracting party; and
- (l) Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing services.

7.7 Voting of Owners. Each Lot in the Association shall be entitled to one vote.

7.8 Amplification. The provisions of this Article are to be amplified by the Articles of Incorporation and the Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

#### ARTICLE VIII

##### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

8.1 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 permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Project upon its destruction or obsolescence as hereinafter provided and to grant easements through any portion of the Common Elements. The acceptance by any Person of any interest in a Lot shall constitute an appointment of the Association as attorney-in-fact as provided above and hereinafter. The Association is hereby granted all of the powers necessary to govern, manage, maintain, repair, build, administer and regulate the Project and to perform all of the duties required of it.

8.2 General Common Elements. The Association shall provide for the care, operation, management, maintenance, repair and replacement of the General Common Elements. Without limiting the generality of the foregoing, said obligations shall include the keeping of such General Common Elements in good, clean, attractive and sanitary condition, order and repair; removing dead vegetation, snow and any other materials from any portion of such General Common Elements which might impair access to the Project or the Lots or which may create a fire or other hazard; keeping the Project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the General Common Elements.

- (a) Management of Open Space as a General Common Element. The Association shall provide for the management of open space (areas without building improvements) as a General Common Element. Open space shall be used for access, or for scenic and recreational purposes and amenities. Any trade or exchange of open space for comparable property shall not require the approval of the owners or the first position mortgage holders.

required to implement the uses of all open space within the Project.

8.3 Other Association Functions. The Association may undertake any activity, function or service for the benefit of or to further the interests of all, some or any owners on a self-supporting special assessments or common assessments basis. Such activities, functions or services may include, but are not limited to, the providing of security services, road maintenance, landscape maintenance service, and garbage and trash collection services.

8.4 Labor and Services. The Association (i) may obtain and pay for the services of a Managing Agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person with whom or which it contracts; (ii) may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or enforcement of this Declaration; and (iii) may arrange with others to furnish lighting, heating, water, trash collection, sewer service, road maintenance and other common services. The Association is specifically authorized to contract with, employ, retain and hire any affiliates of, companies controlled by, or persons employed by Declarant or any of its affiliates.

8.5 Property of Association. The Association may pay for, acquire and 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 ownership of the Project and dissolution of the Association, if ever, the beneficial interest in any such property shall be deemed to be owned by the then Owners as equal tenants in common. A transfer of a Lot shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Lot under foreclosure shall entitle the purchaser to the beneficial interest in such property associated with the foreclosed Lot.

8.6 Association Right to Lease and License General Common Elements and Grant Easements. The Association shall have the right to lease or license or permit the use of, by less than all Owners or by non-owners, on either a short-term basis or long-term basis and with or without charge as the Association may deem desirable, any portion of the General Common Elements or any Lot owned by the Association, provided that the rights granted to the Association in this sentence shall only be used in the promotion of the collective best interests of the Owners. Further, the Association shall have the right to grant easements under, through or over the General Common Elements which are reasonably necessary to the ongoing development and operation of the Project, or as may be reasonably requested by any public or quasi-public authority or adjacent property owners or utility providers. Any interests or rights to be granted or conveyed pursuant to this paragraph shall be granted or conveyed by the Board acting on behalf of the Association.

8.7 Review of Records. The Association shall keep detailed and accurate financial records according to Generally Accepted Accounting standards. Said financial records shall include, but not be limited to, records as to paid and unpaid assessments. All financial records shall be made reasonably available for examination by any Owner and such Owner's authorized agents.

8.8 Enforcement by Association. The Board may suspend any Owner's voting rights in the Association or the right of an Owner to use any recreational facilities of the Project during any period or periods during which such Owner fails to comply with the Association's rules and regulations, or with any other obligations of such Owner under this Declaration or the Bylaws. The Association shall also have the right, after providing to such non-complying Owner thirty days' notice and opportunity to cure such default, to perform such Owner's obligations at the Owner's expense. Such expense may be collected by Special Assessment against such Owner. The Association's good faith judgment shall be conclusive as to whether any Owner shall have failed to comply with any provisions of this Declaration, the rules and regulations and Bylaws, and as to the amount of any Special Assessment levied pursuant to this Article 8.8. The Association may also take judicial action against any Owner to enforce compliance with such rules, regulations, the obligations herein or in the Bylaws, to obtain damages for noncompliance thereof, all to the extent permitted by law. The Board may impose a fine, not to exceed \$100.00 per day per occurrence, on any Owner for each violation or act of non-compliance by any such Owner. In the event of judicial action, the prevailing party shall be awarded in addition to such other relief its reasonable fees, attorneys fees and costs.

8.9 Rules and Regulations. The Association, by majority vote of the Board, may make reasonable rules and regulations governing the use of the Lots, Dwellings, Limited Common Elements and General Common Elements, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations shall be for the purposes of promoting safety, improving the quality and dignity of the living environment within the Project, and regulating use of common facilities in an equitable manner. The Design and Building Requirements described in Article 5 shall be considered rules and regulations of Association and shall be promulgated and amended pursuant to the authority granted herein.

8.10 Additions of General Common Elements and Limited Common Elements. Declarant does not intend to make any material additions of General or Limited Common Elements, and does not intend any expansion



of the Project. If the Association would make any such additions, however, (a) each Owner would be responsible for his percentage of any increase in Common Expenses created thereby and (b) each Owner's voting powers in the Association would be unaffected by such additions.

8.11 Implied Rights. The Association shall exercise any right or privilege given to it expressly by this Declaration or the Articles or Bylaws, or reasonably implied from the provisions of said documents, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges hereunder.

#### ARTICLE IX ASSESSMENTS

9.1 Agreement to Pay Assessments. Declarant, for each Lot owned by it, and each Owner that has approved this Declaration or is otherwise subject to this Declaration, hereby covenant, and each Person that hereafter becomes an Owner of any Lot and each Owner of any Lot by the acceptance of a deed therefor, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association annual Common Assessments made by the Association for the purposes provided in this Declaration, and Special Assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

9.2 Assessment for Common Assessments. Regular assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the Association. The assessment schedule and budget shall be adopted by the Board in accordance with the Act.

9.3 Amount of Annual Common Assessments. The total annual Common Assessments against all Lots shall be according to a budget based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated Common Expenses, as such expenses may grow out of or be connected with the performance of the Association's functions under this Declaration. Such Common Expenses may include, among other things, expenses of administration and management; taxes and special assessments until the Lots are separately assessed as provided herein; premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; common utility services; repairs, renovations and maintenance to the General Common Elements, including road repair and maintenance; security service; promotion services; wages for Association employees; legal and accounting fees; expenses of performance of the functions of the Association Board pursuant hereto; any deficits remaining from a previous period; the creation of reasonable contingency and reserve funds; reasonable funds for betterments as set forth in the Bylaws; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Each Owner's Common Assessment shall be 1/14th of the total estimated annual Common Assessment as established by the annual budget. Any past due common expense assessment or installment thereof shall bear interest at the rate established by the Board not to exceed twenty-one percent per year; initially and unless subsequently modified by the Board, the rate shall be eighteen percent (18%) simple interest, compounded annually.

Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the Lots to which that limited common element is assigned, equally, or in any other proportion that the Board in its reasonable discretion finds reasonable. Any common expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefited. The costs of insurance shall be assessed in proportion to the risk, and the costs of utilities shall be assessed in proportion to usage. If any common expense is caused by the misconduct of any Lot owner, the Association may assess that expense exclusively against such Owner's Lot.

At the reasonable discretion of the Board, consistently applied to all Owners, the Board shall have the right to exclude from the Common Expenses and assess directly to a particular Owner or Owners, the cost and expense of maintaining, repairing and replacing a specific portion of the General Common Elements, if the necessity for such repair, maintenance or replacement is directly attributable to the negligence or intentional act of such Owner or members of his family, his contract purchasers, contractors, lessees, renters, guests, licensees or invitees. As provided in Article 4.2 hereof, maintenance, repair and replacement of the Limited Common Elements is the responsibility of the Owner of the Lot or Dwelling to which the use of such Limited Common Elements is appurtenant. Any costs associated with such maintenance is therefore not subject to inclusion as a Common Expense.

Access drives have been designated a General Common Elements. The Association shall be responsible for the maintenance, repair and upgrading of all access drives.

9.4 Notice and Payment of Annual Common Assessments. Common Assessments shall be made on an annual basis and shall be based on the annual budget approved by the Board at the annual meeting in accordance with the Act. Within thirty days after adoption of any budget, the Board shall mail, by ordinary first-class mail, or otherwise deliver a copy of the budget to all the Owners as required by the Act.

A copy of the Notice of Assessment shall accompany the budget upon which the assessment is based.



Such assessment shall be due and payable in periodic installments on January 1, April 1, July 1 and October 1 of each year. Each annual Common Assessment shall bear interest at a rate established by the Board not to exceed twenty one percent per year, from the date it becomes due and payable, if not then paid; initially and unless subsequently modified by the Board, the rate shall be eighteen percent (18%) simple interest, compounded annually.. In addition to interest on any late payment, a late charge shall be assessed in an amount not exceeding twenty dollars for each periodic installment of the Common Assessment. Failure of the Association to give timely notice of any assessment as provided herein shall not effect the liability of the Owner of any Lot for such assessment, but the date when payment of any incremental increase shall become due in such case shall be deferred to a date thirty days after such notice shall have been given.

9.5 Special Assessments. In addition to the annual Common Assessments for Common Expenses authorized by this Article, the Association, through its Board of Directors, may levy at any time a Special Assessment payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part, the cost of construction or reconstruction, repair or replacement of any capital improvements located or to be located upon the General Common Elements of the Project or for any reasonable purpose determined by the Board in accordance with the Act. A Special Assessment may also be assessed, without Owner vote, against any individual Owner who fails to maintain, in accordance with the requirements of this Declaration, the Bylaws or rules and regulations promulgated hereunder, his Lot, Dwelling or the Limited Common Elements appurtenant thereto. The Association may, pursuant to Article 8.8 hereof, give notice to such non-complying Owner demanding that such Owner cure its default within thirty days. If such Owner fails or refuses to do so, the Association may, pursuant to said Article 8.8, repair or maintain said Lot, Dwelling or Limited Common Elements at the Owner's expense. The cost of said repair or maintenance, together with a fifteen percent administrative charge, shall equal the amount of the Special Assessment.

Subject to the foregoing provisions, the Board of Directors of the Association shall have the power and authority to determine all matters in connection with Special Assessments, including the power to determine where, when and how Special Assessments shall be paid to the Association, and each Owner shall be required to comply with any such determinations.

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

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

9.8 Assessment Reserves. The Association may require an Owner, other than Declarant, to deposit with the Association upon the initial conveyance of a Lot by Declarant, an amount not exceeding twice the original estimated periodic payments of an annual Common Assessment, which sum shall be held by the Association as a reserve and for working capital. Such an advance payment shall not relieve an Owner from making the regular payments of the Common Assessment or any Special Assessment, as the same come due. Upon the transfer of his Lot, an Owner shall be entitled to a credit from his transferee for the amount originally deposited. Such reserves shall at all times remain as capital of the Association.

## ARTICLE X

### LIEN FOR NONPAYMENT OF ASSESSMENTS

10.1 Establishment of Lien. Pursuant to Section 38-33.3-316 of the Colorado Common Interest Ownership Act, the Association, as incorporated, has a statutory lien on a Lot for any assessment levied against a Lot or fines imposed against its owner from the time the assessment or fine becomes due. In addition, fees, charges, late charges, attorney fees, collection costs, fines and interest charged pursuant to this Declaration or as allowed by the provisions of the Colorado Common Interest Ownership Act are enforceable as an assessment. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

The lien for unpaid assessments shall be prior to all other liens and encumbrances on a Lot except:

- (a) Liens and encumbrances recorded before recordation of the Declaration;
- (b) A security interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the assessment sought to be enforced became delinquent;
- (c) Liens for real estate taxes and other governmental assessments or charges against the Lot.

(d) The lien for unpaid assessments is also prior to the security interests described in paragraph (b) above to the extent of:

(i) An amount equal to the common expense assessments based on a periodic budget adopted by the Association under Section 38-33.3-315 (1), which would have become due, in the absence of any acceleration, during the six months immediately preceding institution of an action to enforce the lien, but in no event shall the priority accorded to such lien exceed one hundred fifty percent of the average monthly assessment during the immediately preceding fiscal year multiplied by six; and

(ii) Attorney fees and costs being incurred in an action to enforce the lien.

10.2 Notice of Lien. The Association shall prepare a written notice setting forth the amount of such unpaid indebtedness including accrued interest, fees, and late charges, the name of the non-paying Owner and a description of said Owner's Lot. Such a notice shall be signed on behalf of the Association and may be recorded in the office of the Clerk and Recorder of San Miguel County, Colorado. Pursuant to Section 38-33.3-316 C.R.S., recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment is required. Such lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real estate. The Association shall be entitled to costs and reasonable attorney fees incurred in obtaining a judgment or decree in any action or suit brought by the Association. The Association shall be entitled to all other remedies allowed by law or at equity. The Owner shall also be required to pay to the Association the periodic installments of the Common Assessment for his Lot, as same becomes due, during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect same. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

10.3 Other Liens. It is possible that liens other than mechanic's liens, assessments liens and tax liens may be obtained against the Common Elements, including judgment liens and Mortgage liens.

10.4 Homestead Exemption. Each Owner hereby agrees that the Association's lien on a Lot for assessments as hereinbefore described shall be superior to the homestead exemption provided by §38-41-201 C.R.S. et. seq. (1973, as amended) and each Owner hereby agrees that the acceptance of a deed or other instrument of conveyance to any Lot within the Project shall signify such grantee's waiver of such homestead right.

10.5 Release of Lien. Any lien for non-payment of Common or Special Assessments shall be released, upon full payment of all sums secured thereby, by recording in the San Miguel County Records a Release of Lien executed by a member of the Board of Directors.

10.6 Personal Obligation of Owner. The amount of the Common Assessment and/or any Special Assessment and interest and penalties assessed against each Lot shall be the personal and individual debt of the Owner or Owners at the time the assessment is made. Suit to recover a money judgment for unpaid Common Assessments and Special Assessments, and costs of suit and attorney's fees, shall be maintainable without foreclosing or waiving the lien securing same. No Owner may exempt himself from liability for his share of the Common Assessment and any Special Assessment by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Lot. Further, notwithstanding anything to the contrary set forth herein, the annual Common Assessment may be payable by an Owner in periodic installments only so long as such Owner is current in his payments to the Association. In the event an Owner fails to pay two consecutive periodic installments, the Board shall have the right to declare the entire remaining unpaid annual Common Assessment to be immediately due and payable, any lien for nonpayment, or suit for collection may include a claim for such accelerated amounts.

10.7 Certificate of Unpaid Assessments. Upon payment of a reasonable fee to the Association not to exceed \$25, the Association shall furnish to a Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen business days after receipt of the request and is binding on the Association, the Board and every Owner. If no statement is furnished to the Owner or holder of a security interest or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a priority lien upon the Lot for unpaid assessments which are due as of the date of the request. Such statement shall be conclusive in favor of persons who rely thereon in good faith.

10.8 Liability for Common Expenses Upon Transfer of Lot is Joint. The grantee of a Lot, except a first Mortgagee who acquires a Lot by foreclosure or a deed in lieu of foreclosure, shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the annual Common Assessment and for any Special Assessment up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment of a reasonable fee, and upon written request, any such prospective grantee shall be entitled to a statement

of account as set forth in Section 10.7 above.

## ARTICLE XI

### INSURANCE

11.1 Association's Obligations. The Association shall obtain and maintain at all times, to the extent obtainable, policies of insurance, written with financially responsible and able companies licensed to do business in Colorado, covering the risks set forth below. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to the insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time. The types of coverages to be obtained and risks to be covered are as follows, to-wit:

(a) Property Insurance. Property insurance on the common elements and on property that must become common elements, for 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 insured property 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. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, war risk insurance, if available and if deemed appropriate by the Association, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such deductible provisions as in the Association's opinion are consistent with good business practice

(b) Commercial General Liability Insurance. The Association shall obtain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the common elements, in an amount, if any, specified by the common interest community instruments or otherwise deemed sufficient in the judgment of the Board but not less than \$1,000,000 per occurrence for personal injury, bodily injury or property damage, insuring the Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a Lot Owner and Board member. The Owners shall be included as additional insured but only for claims and liabilities arising in connection with the ownership, existence, use or management of the common elements. The insurance shall cover claims of one or more insured parties against other named insureds. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Project.

(c) Flood Insurance. The Property is located and has been designed to avoid as much as possible all geological hazards especially regarding dwelling locations. The Property has not been designated as being in a flood plain and therefore flood insurance is not available under the National Flood Insurance Act of 1968.

(d) Worker's Compensation and Employer's Liability Insurance. The Association shall purchase worker's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(e) Fidelity Insurance. The Association shall, from time to time, determine the necessity, and if deemed necessary, purchase adequate fidelity coverage against dishonesty of employees or any other Person handling funds of the Association, destruction or disappearance of money or securities and forgery. Said policy shall also contain endorsements thereto covering any persons who serve the Association without compensation.

(f) Other. The Association may obtain insurance against such other risks as it shall deem appropriate with respect to the Project, including any personal property of the Association.

11.2 Form. All policies of insurance, to the extent obtainable, shall contain waivers of subrogation and waivers of any defenses based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least thirty days' prior written notice to the Association. If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all first Mortgagees at least ten days prior to expiration of the then current policies. All casualty insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the Owners, as their interest may appears, which policy or policies shall identify the interest of each Owner (Owner's name and Lot number designation). Insurance policies carried by the Association must provide that:

(a) each Lot Owner is an insured person under the policy with respect to liability arising out of such Lot Owner's membership in the Association;

(b) The insurer waives its rights to subrogation under the policy against any Owner or member of his household;



(c) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or by a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a Owner covering the same risk covered by the policy, the Associations policy provides primary insurance.

11.3 Owner's Insurance. Casualty insurance, liability insurance and any other type of insurance coverage on any Dwelling or other improvement constructed within a Lot, and on an Owner's personal property may be obtained by an Owner at his own expense. Should any Owner desire to obtain insurance, any policy obtained shall provide that the liability of the carriers issuing insurance obtained by the Association shall not be effected or diminished by reason of any such additional insurance carried by any Owner.

Notwithstanding the paragraph above, each Owner shall maintain a homeowner's insurance policy on his Dwelling, at his sole cost and expense, which insures the Dwelling for not less than its replacement value. At the Association request, the Owner shall provide a copy of such homeowner's insurance binder to the Association, for its records.

11.4 Notice of Unavailability or Cancellation. If the insurance described herein is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

11.5 Repair or Replacement. Any portion of the Common Elements for which insurance is required which is damaged or destroyed must be repaired or replace promptly by the Association unless:

- (a) Spring Creek Project is terminated;
- (b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (c) Eighty percent of the Owners vote not to rebuild; or
- (d) Prior to the conveyance of any Lot to a person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the common interest community rightfully demands all or a substantial portion of the insurance proceeds.

The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

## ARTICLE XII

### CONDEMNATION

12.1 Consequences of Condemnation. If at any time or times during the continuance of ownership of the Project pursuant to this Declaration, all or any part of the Common Elements shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

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

12.3 Complete Taking. In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the ownership pursuant hereto shall terminate. The condemnation award shall be apportioned among the Owners pursuant to applicable principles of law. Any distribution of the condemnation award made pursuant to this subparagraph shall be made by checks payable jointly to the Owners and their first Mortgagees.

12.4 Partial Taking. In the event that less than all Common Elements are taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the ownership hereunder shall not terminate. The Association shall be entitled to the entire condemnation award.

12.5 Reorganization. In the event a partial taking results in the taking of a complete Lot, the Owner thereof automatically shall cease to be a member of the Association, and the Association, as attorney-in-fact for such Owner, may take whatever action is necessary and execute such documents as are necessary to reflect such termination. Thereafter the Association shall reallocate the assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Lots for amendment of this Declaration as provided in Article 14.1 hereof.



12.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be accomplished by the Owners of the damaged Lots, Dwelling and Limited Common Elements appurtenant thereto, at their own expense, and by the Association, at its expense, as to general Common Elements.

#### ARTICLE XIII

##### CASUALTY DAMAGE OR DESTRUCTION

13.1 Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with any improvements constituting General Common Elements upon damage or destruction of said improvements as hereinafter provided. Acceptance by any grantee of a deed to a Lot from the Declarant or from any Owner shall constitute appointment of the Association as attorney in fact for such purpose.

13.2 General Authority of Association. As attorney in fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the General Common Elements means restoring the improvements to substantially the same condition in which they existed prior to damage. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction unless a vote of Seventy-five percent of the total membership votes agree not to rebuild the General Common Elements in accordance with the provisions set forth hereinafter.

13.3 Damage to or Destruction of General Common Elements. As soon as practicable after an event causing damage to, or destruction of, any part of the General Common Elements, the Association shall obtain complete and reliable estimates of the costs of repair or reconstruction of that part of the General Common Elements damaged or destroyed. As soon as practicable after receiving these estimates the Association shall diligently pursue to completion the repair or reconstruction of the part of the General Common Elements damage or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith.

13.4 Funds for Reconstruction or Repair of General Common Elements. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction of the General Common Elements subject to the provisions of Article 13.2. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

13.5 Disbursement of Funds for Repair or Reconstruction of General Common Elements. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Section 13.4 constitute a fund for the payment of cost of repair and reconstruction of the General Common Elements after casualty. It shall be deemed that the first money disbursed in payment for cost of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed equally to the Owners.

13.6 Damage to or Destruction of Dwelling or Limited Common Elements Appurtenant Thereto. In the event of damage to or destruction of a Dwelling, and/or the Limited Common Elements appurtenant to any Lot or Dwelling, the Owner shall reconstruct his Dwelling and the Limited Common Elements so damaged, within one year from the date of damage or destruction, in accordance with the requirements of this Declaration, and the Design and Building Requirements promulgated hereunder. In the event he fails to do so, the Association may do so and levy a Special Assessment against said Owner's Lot in accordance with Article 9.4 hereof.

#### ARTICLE XIV

##### AMENDMENT AND TERMINATION

14.1 Amendment of General Terms of Declaration. Except as provided for in the provisions of Section 38-33.3-101, C.R.S., et seq, and those provisions pertaining to the rights of the Declarant, this Declaration, including the plats and maps, may be amended only by vote or agreement of Owners of Lots to which at least sixty-seven percent of the votes in the Association are allocated. Except as permitted by statute or those provisions pertaining to the rights of the Declarant, no amendment may create or increase special Declarant rights, increase the number of Lots, or change the boundaries of any Lot or the allocated interests of a Lot, or the uses to which any Lot is restricted, in the absence of consent of at least 75% of the Owners. Any provision contained in this Declaration that may be amended or additional provisions added to this Declaration shall be by the recording of a written instrument or instruments.

Anything to the contrary notwithstanding, if this Declaration is in conflict with any law, statute, or duly promulgated rule or regulation of a governmental body, then this Declaration shall be amended by the Board of Directors, by resolution duly passed at a duly scheduled meeting.

14.2 Termination. Except in the case of a taking of all the Lots by eminent domain, the Project may be terminated only by agreement of Owners of Lots to which at least two-thirds of the votes in the Association are allocated. An agreement of Owners to terminate must be evidenced by their execution of a termination agreement or ratifications thereof in the same manner as a deed, by the requisite number of Owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in San Miguel County and is effective only upon recordation. The terms of the termination agreement shall comply with the provisions of Section 38-33.3-218 with respect to termination and disposition of assets and proceeds of sale.

14.3 Redesignations. Portions of any Common Elements may be designated by Declarant as a part of a Lot or as a Limited Common Element to a Lot and portions of the Common Elements may be withdrawn from the Community by Declarant. Portions of Lots may become Common Elements or Limited Common Elements and portions of Common Elements or Limited Common Elements may become portions of Lots pursuant to this right hereby reserved to Declarant. Portions of the Common Elements may be deeded to the Mountain Village Metro Services, Inc., Inc. or the Mountain Village Metropolitan District, or their successors, pursuant to this right hereby reserved to Declarant.

## ARTICLE XV

### PROTECTION OF MORTGAGEES

15.1 Mortgagees Permitted. Any Owner may encumber his Lot with a mortgage, deed of trust, or other security instrument.

15.2 Subordination. Except as provided in Article X herein, and the provisions of Section 38-33.3-316, C.R.S., any lien created or claimed by the Association under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first Mortgagee encumbering a Lot herein, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such first Mortgage unless the Mortgagee thereunder shall expressly subordinate his interest, in writing, to such lien.

15.3 Amendment. Amendment to this Declaration shall be only in accordance with the terms of Article XIV above.

15.4 Effect of Breach Hereof. No Breach of any provision of this Declaration shall invalidate the lien of any first Mortgage made in good faith and for value, but all of the terms of this Declaration shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise.

15.5 Foreclosure. The transfer of a Lot as the result of the exercise of a power of sale or a judicial foreclosure involving a default under a first Mortgage shall extinguish the lien for unpaid assessments which were due and payable prior to the transfer of title to the Lot, except liens provided by C.R.S.38-33.3-316 for the preceding six months. No transfer of a Lot as the result of a foreclosure or exercise of a power of a sale shall relieve the new Owner, whether it be the beneficiary of the foreclosing Mortgage or another person, from liability for any assessments thereafter becoming due or from the lien thereof.

15.6 Non-Curable Breach/Curable Breach. Any Mortgagee who acquires title to a Lot by foreclosure or by deed in lieu thereof shall not be obligated to cure any breach of this Declaration which is non-curable or of a type which is not practical or feasible to cure. Any Mortgagee shall, however, have the right to pay taxes or other charges that are in default and that may or have become charges against any Common Elements, and shall be entitled to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage for any Common Elements in case of a lapse of coverage.

15.7 Loan to Facilitate. Any Mortgage given to secure a loan to facilitate the re-sale of a Lot after acquisition by foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protection of this Article.

15.8 Appearance at Meetings. Because of its financial interest in the Project, any institutional first Mortgagee, upon request, may appear at meetings of the Association members and Board, or designate a representative to attend all such meetings. Said Mortgagee shall upon request receive written notice of all meetings of the members and Board of the Association.

15.9 Mortgagee Protection. Notwithstanding any and all provisions hereof to the contrary, in order to induce the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA") to participate in the financing of the sale of Lots and the construction of Dwellings within Lots, if the following provisions conflict with any other provisions of this Declaration, these added provisions shall control:

("FNMA") to participate in the financing of the sale of Lots and the construction of Dwellings within Lots, if the following provisions conflict with any other provisions of this Declaration, these added provisions shall control:

a) A first Mortgagee at his request is entitled to written notification from the Association of any default by an Owner of a Lot in the performance of such Owner's obligations under this Declaration, Bylaws, and the rules and regulations promulgated hereunder, which is not cured within sixty days.

b) Any holder of a first Mortgage on a Lot shall have the right to examine the books and records of the Association.

#### ARTICLE XVI

#### MISCELLANEOUS

16.1 Duration of Declaration. All of the provisions contained in this Declaration shall continue and remain in full force and effect until ownership of the Project and this Declaration are terminated, revoked or amended as herein provided.

16.2 Supplemental to Law. The provisions of this Declaration shall be in addition to and supplemental to the Colorado Common Interest Ownership Act and to all other applicable provisions of law.

16.3 Number and Gender. 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.

16.4 Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association and all notices or demands intended to be served upon an Owner shall be delivered personally or sent by regular first class mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent to Telluride Spring Creek Homeowners Association at such address designated from time to time by the Association at its annual meetings.

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

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

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

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

16.9 Statement of Development Rights of Declarant. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractors shall be permitted to maintain during the period of any construction and/or sale of the Lots in the Project, upon such portion of the Project as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of Lots, including without limitation, a business office, storage area, construction yards, signs, model Lots or Dwelling Lots, sales office, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of Lots. In addition, Declarant, its agents, employees and contractors shall have the right to ingress and egress over the Common Elements, including the Limited Common Elements, as in Declarant's discretion may be necessary with regard to the foregoing. Further, Declarant, its agents, employees and contractors shall have the right to ingress and egress in and through all Lots during the period of the construction and/or sale of the Lots.

16.10 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one years after the death of the survivor or the now living descendants of John J. Horn and Dirk A. dePagter.

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


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

16.13 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may have leased or rented an interest in his Lot as permitted herein, but the Owner of a Lot shall have no obligation for expenses or other obligations accruing after he conveys such Lot.

16.14 Transfer of Declarant's Rights. Any right or any interest reserved hereby to the Declarant may be transferred or assigned by the Declarant, either separately or with one or more of such rights or interest to any person or entity. A special Declarant right created or reserved herein or by statute, may be transferred only by an instrument evidencing the transfer recorded in San Miguel County. The instrument is not effective unless executed by the transferee. The terms and conditions of the transfer shall in all ways comply with the provisions of Section 38-33.3-304, C.R.S. and the general provisions of the Colorado Common Interest Ownership Act.

16.15 Lessees. Every lessee of a Lot shall take subject to and shall comply with the provisions of this Declaration.

IN WITNESS WHEREOF, Declarant has executed this instrument as of this 4<sup>th</sup> day of June, 1998.

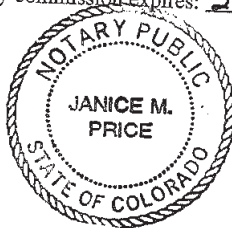
  
John J. Horn

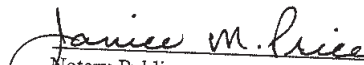
  
Dirk A. dePagter

State of Colorado  
County of San Miguel

Subscribed to and acknowledged before me this 4<sup>th</sup> day of June, 1998 by John J. Horn and Dirk A. dePagter.

Witness my hand and official seal.  
My commission expires: 2-10-2001



  
Notary Public