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POA DECLARATION  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CHRISTMAS MOUNTAIN VILLAGE

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONSFORCHRISTMAS MOUNTAIN VILLAGE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as the "Declaration") is made this 30<sup>th</sup> day of July, 1991, by DELLONA ENTERPRISES, INC., a Wisconsin corporation, (hereinafter referred to as "Declarant").

RECITALS

WHEREAS, Declarant is the owner in fee simple and developer of certain real property located at Wisconsin Dells, Sauk County, Wisconsin, which real property is more particularly described in Exhibit A attached hereto and made a part hereof (said real property, together with riparian and littoral rights as may be applicable and appurtenant thereto and together with all improvements now or hereafter located thereon, including the recreational facilities and amenities, and all appurtenances thereunto belonging, hereinafter referred to as the "Development"); and

WHEREAS, the Development is a part of the resort development known as Christmas Mountain Village (herein after referred to as the "Resort"); and

WHEREAS, the Resort includes or will include certain recreational facilities and amenities as more particularly described in Exhibit B attached hereto and made a part hereof (the "Resort Recreational Facilities") which Declarant desires to make available for use to all owners of interests in real property within the Development ("Interests"); and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the Development, Declarant desires to impose upon the Development mutual and beneficial restrictions, covenants, equitable servitudes and charges under a general plan of improvement to apply uniformly to the transfer and encumbrance of the real property within the Development for the mutual benefit of the Development and all owners and future owners of an Interest therein; and to provide for creation of an owners' association to which shall be delegated and assigned the powers of enforcing the covenants and restrictions of this Declaration and of collecting and disbursing the assessments and charges levied by the association.

NOW, THEREFORE, Declarant declares that all of the property in the Development is held and shall be held, sold, conveyed, mortgaged, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for the Development, sale or lease of said Development and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon each Interest in the Development in favor of each and all other such Interests; to create reciprocal rights between the respective owners of such Interests; to create a privity of contract and estate between the grantees thereof, their heirs, successors and assigns; and shall, as to any owner of an Interest, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other such owners of such Interests, present and future.

1. DEFINITIONS.

The following terms as used in this Declaration, unless the context otherwise expressly provides or requires, are defined as follows:

1.1 "Advisory Board" means an Advisory Board composed of one executive officer of each of the Existing Associations. The Advisory Board shall be formed to meet from time to time to resolve issues arising between the Declarant or any committee formed by the Declarant and any Existing Association and/or any member or members thereof.

1.2 "Articles of Incorporation" means the Articles of Incorporation of the Christmas Mountain Village Property Owners' Association, Inc., as they may lawfully be amended from time to time.

1.3 "Assessment" means any amount which, from time to time, is levied by the Declarant or the Board of Directors upon any Existing Association or any Owner including but not limited to:

(a) "Annual Assessment" means the amount levied upon each Existing Association or its members, and upon Owners who do not pay such Annual Assessment through an Existing Association, which entitles Owners to the right to use and enjoy the Resort Recreational Facilities made available from time to time by the Declarant. The Annual Assessment includes, but is not limited to a Resort Recreational Facilities Assessment and an assessment to pay the Common Expenses of the Association.

The Annual Assessment is and shall be separate and apart from any individual recreational facility use fee or charge which may be payable by individual Owners or any other Resort user upon their personal use of any specific facility, or consumption or rental of any equipment used therewith.

(b) "Special Assessment" means an Assessment levied by the Board upon each Existing Association, and upon any Owner who is not a member of an Existing Association, in the event that the total of all Annual Assessments is inadequate to meet the Common Expenses of the Association.

1.4 "Association" or "Property Owners' Association" or "POA" means the Christmas Mountain Village Property Owners' Association, Inc., which is or will be a Wisconsin nonprofit corporation, its successors and assigns, which will be charged with enforcing this Declaration and collecting and disbursing the assessments and charges of the Association.

1.5 "Association Instruments" means this Declaration, the Articles of Incorporation and By-Laws of the Association and any rules and regulations adopted by the Association, as each may be amended from time to time.

1.6 "Board" or "Board of Directors" means the duly elected or appointed Board of Directors of the Association.

1.7 "By-Laws" means the By-Laws of the Christmas Mountain Village Property Owners' Association, Inc., as they may lawfully be amended from time to time.

1.8 "Campground" means any such land and improvements which has been platted as a campground on a recorded Plat and intended for camping use as described in a declaration of covenants, and restrictions for such campground recorded in the Register's Office, Sauk County, Wisconsin.

1.9 "Campsite" means an area designated and marked for identification on the general plan of a Campground, which is intended for occupancy and use for camping purposes in accordance with the recorded covenants and restrictions for the Campground.

1.10 "Common Expenses" means and includes all expenses incurred by the Association or its duly authorized agent for the operation and administration of the Association.

1.11 "Common Surplus" means the excess of all amounts received by the Association, including but not limited to Assessments and rents, profits, and revenues, if any, over the Common Expenses.

1.12 "Declarant" means Dellona Enterprises, Inc., a Wisconsin corporation, or any assigns of Declarant or successor in title, who comes to stand in the same relation to the Development as Declarant, including, without limitation, any party that acquires ownership of all Declarant's then remaining Interests in the Development.

1.13 "Declaration" means this Declaration of Covenants, Conditions and Restriction for Christmas Mountain Village, as it may be amended from time to time.

1.14 "Delegate" means an executive officer of an Existing Association who, prior to the Turnover Date, shall be a member of the Advisory Board and after the Turnover Date, shall be entitled to vote at meetings of the members of the Master Association on behalf of the members of such Existing Association, as more fully provided in Section 5.5.

1.15 "Development" means all that real property situated in Sauk County, Wisconsin, described in Exhibit A hereto, and all other real property which may be annexed thereto, as provided herein including the property specified on such Exhibit A which, prior to the recordation of this Declaration, may have been conveyed to Owners and/or Existing Associations, which property is being made subject to this Declaration by the joinder in execution by all such Owners or Existing Associations, on their own behalf and/or in behalf of their members.

1.16 "Exchange User" means any person who occupies a Residential Dwelling Unit committed to timesharing or a Campsite pursuant to a reciprocal exchange program approved by the Board of Directors of the relevant Existing Association.

1.17 "Existing Associations" means the Christmas Mountain Condominium Association, the Christmas Mountain Residential Owners' Association, the Christmas Mountain Campground Association, and the Villas at Christmas Mountain Association, all of which are or will be duly formed under the laws of the State of Wisconsin, and including any other association which may be formed from time to time for purposes of administering any condominium, campground, subdivision or planned development described upon the Master Plan or upon recorded Plats in the Register's Office, Sauk County, Wisconsin, as being a part of the Development, whose members shall be Owners of Interests in the Development.

1.18 "Improvements" means all buildings, outbuildings, streets, roads, driveways, parking areas, fences, retaining and other walls, docks, piers, hedges, poles, antennas and any other structures of any type or kind located on real property within the Development.

1.19 "Interest" means any ownership interest in the real property of the Development as described in Exhibit A hereto, and all other real property which may be annexed thereto, which has been recorded in the Register's Office, Sauk County, Wisconsin.

1.20 "Management Agreement" means the then-effective agreement between the owner of a Resort Recreational Facility and a Manager which provides for the management of a Resort Recreational Facility.

1.21 "Manager" means the person or entity, its successors and assigns, engaged by the owner of a Resort Recreational Facility to undertake the duties, responsibilities, and obligations of managing a Resort Recreational Facility, pursuant to the then effective Management Agreement.

1.22 "Master Plan" means an unrecorded map of the Development designating the location of the condominiums, campgrounds, subdivisions, planned development, common areas and facilities within the Development.

1.23 "Mortgagee of Record" means any person or entity which has a mortgage or an Interest in the Development, including but not limited to the holder of a deed of trust or a purchase money mortgage and its successors and assigns, provided that such mortgage is evidenced by a written instrument which has been recorded in the Register's Office, Sauk County, Wisconsin.

1.24 "Owner" means any person or legal entity, including Declarant, who holds fee simple title to an Interest in the Development. Owner shall not mean or refer to a mortgagee, its successors or assigns, unless or until such mortgagee has acquired title pursuant to foreclosure proceedings or by deed in lieu of foreclosure. Declarant shall be deemed to be the Owner of any portion of the Development in which title has not been transferred to another party. All benefits, obligations, restrictions, or requirements imposed hereby upon an Owner shall also be imposed upon any person using the Development or occupying any Residential Dwelling Unit or Campsite in the Development pursuant to a contract, lease, or agreement of any form or other arrangement with any Owner, including Exchange Users and the guests, agents, licensees, or invitees of any person owning, using, or occupying any portion of the Development.

1.25 "Plat" means a final condominium, campground, subdivision or planned development map with respect to the Development, duly recorded in the Register's Office, Sauk County, Wisconsin, including any and all lawful additions or revisions to said Plat.

1.26 "Property Owners' Association" or "POA" means the Christmas Mountain Village Property Owners' Association, Inc., which is or will be a Wisconsin nonprofit corporation, its successors and assigns, which will be charged with enforcing this Declaration and collecting and disbursing the Assessments and charges of the Association.

1.27 "Public or Commercial Unit" means any improved parcel of land owned by Declarant or an Owner located within the Development which is designated by Declarant as a Public or Commercial Unit in the Master Plan and is designed to accommodate public, commercial, or business enterprises to serve the Development including but not limited to: business and professional offices; facilities for the retail sale of goods and services; social clubs; restaurants; theaters; lounges; and recreational facilities; provided, however, that Public or Commercial Units shall not include any of the areas within the legally described boundaries of a condominium, campground, subdivision or planned development within the Development. A parcel shall not be deemed to be improved as a Public or Commercial Unit until such time as the Improvements being constructed on said parcel are sufficiently completed in accordance with plans and specifications.

1.28 "Residential Dwelling Unit" means any Improvement intended for use as a single family or multi-family residential dwelling, including without limitation, any single family detached dwelling, garden home, patio dwelling, condominium unit or townhouse unit, which Improvement constructed thereon is sufficiently completed in accordance with the plans and specifications therefore.

1.29 "Residential Lot" means any unimproved parcel of land located within the Development which has been platted into lots intended for use as sites for single family detached dwellings, condominium units, townhouse units, garden home or patio dwelling as described on a recorded Plat. A parcel of land meeting the above criteria shall be deemed to be unimproved as a Residential Lot until the Improvements being constructed thereon are sufficiently completed for occupancy so as to be defined as a Residential Dwelling Unit.

1.30 "Resort Recreational Facilities" means those recreational facilities which are identified and designated as such by the Declarant, who may add to or subtract from such recreational facilities at any time without the consent of the Association. All Resort Recreational Facilities shall be available to Owners, their families, guests, invitees and licensees, subject to payment of the Assessments described herein, any individual use or user fees and rules and regulations affecting each Resort Recreational Facility which may be established or promulgated from time to time by the owner of a Resort Recreational Facility and any further restrictions or limitations contained therein or herein.

1.31 "Rules and Regulations" means written conditions established by the owner of a Resort Recreational Facility governing use of the Resort Recreational Facilities, as may be amended from time to time, which shall be binding on all Owners.

1.32 "Turnover Date" means the date on which the rights of the Declarant to designate the members of the Master Association Board are terminated under Section 5.8.

1.33 "Unimproved Land" means unimproved and developable land owned by Declarant located within the Development which has not been subdivided or platted of record as a Residential Lot, Public or Commercial Lot or Campground or which has not been improved as a Public or Commercial Unit, Residential Dwelling Unit or Campground and which is designated by Developer for residential, commercial or camping development. Property shall be deemed Unimproved Land until such time as such property is platted of record so as to constitute Residential Lots or a Campground or until such time as Public or Commercial Units, Residential Dwelling Units and Campgrounds are sufficiently completed for occupancy and use so as to be defined as a Public or Commercial Unit, Residential Dwelling Unit or Campground.

1.34 "Warranty Deed" means that certain instrument by which Declarant conveys one (1) or more Interests in the Development together with any subsequent assignments thereof.

## 2. SCOPE OF DECLARATION.

### 2.1 Property Subject to Declaration.

2.1.1 Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration consists of that land situated in Wisconsin Dells, Sauk County, Wisconsin as more particularly described in Exhibit A attached hereto, sometimes referred to herein as the "Existing Property." The Declarant intends to develop the Existing Property substantially in accordance with its current Master Plan and reserves the right to review and modify the Master Plan at its sole discretion at any time based upon its continuing development plan.

2.1.2 Additional Property. The Declarant shall have the right, within its sole discretion, to annex to the Existing Property and to submit to this Declaration as "Added Property" additional properties, including (i) properties now or hereafter acquired by it, which property is included within its current Master Plan and, (ii) property of others which is either abutting the



Existing Property (including additions thereto) or which is so situated that its addition will be reasonably consistent with the uniform scheme for development set forth in this Declaration and in the Master Plan. In addition to the Added Property described above, and upon recordation of this Declaration, Declarant shall have the right, at any time to submit to this Declaration the property, or any portion of the property, subject to the jurisdiction of the Existing Associations without the consent or joinder of any party, except to the extent such Existing Associations which are, already formed prior to the date this Declaration is recorded in the Register's Office, Sauk County, Wisconsin have joined in the execution of this Declaration and, by such joinder, will have agreed on behalf of itself and its members to be bound by the provisions hereof.

In the event that any Added Property is annexed to the Existing Property pursuant to the provisions of this Section 2.1.2, then such Added Property shall be considered within the definition of the Development for all purposes of this Declaration.

**2.2 Supplemental Declarations.** Any such addition as authorized in Section 2.1.2 above may be made by the filing of record of one or more Supplemental Declarations with respect to the Added Property. A Supplemental Declaration shall contain a statement that the real property which is the subject of the Supplemental Declaration constitutes Added Property which is to become a part of the Development subject to this Declaration. In addition, a Supplemental Declaration may contain such additions to or modifications of the provisions hereof applicable to any Added Property as may be necessary to reflect the different character, if any, of the Added Property that is the subject of the Supplemental Declaration, including modifications in the basis of assessments or amounts thereof. Such Supplemental Declaration shall become effective upon being recorded in the Register's Office, Sauk County, Wisconsin; provided that, in the event of any conflict between such additional provisions and the provisions in the Declaration, the provisions of this Declaration shall control.

**2.2.1 Effect of Supplemental Declaration.** Upon the recording of a Supplemental Declaration by Declarant which annexes and subjects Added Property to this Declaration, as provided in this Section, then:

(a) The easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added Property and inure to the benefit of and be binding on any Owner having any Interest in the Added Property in the same manner, to the same extent and with the same force and effect that this Declaration applies to the Existing Owners having an Interest in the Property subjected to this Declaration prior to the date of the recording of the Supplemental Declaration.

(b) In all other respects, all of the provisions of this Declaration shall include and apply to the Added Property made subject to this Declaration by any such Supplemental Declaration and the Owners, Mortgagees of Record, and lessees thereof, with equal meaning and of like force and effect and the same as if such Added Property were subjected to this Declaration at the time of the recording hereof.

(c) With respect to the Added Property, the Declarant shall have and enjoy all rights, powers and easements reserved by the Declarant in this Declaration, plus any additional rights, powers and easements set forth in the Supplemental Declaration.

**2.3 Additional Declarations.** Declarant intends, as the Development is developed and offered for sale, to subject portions thereof to specific covenants and restrictions which apply only

to each portion as defined and described in each such set of covenants and restrictions. Such additional covenants and restrictions shall be subject to the provisions hereof so that the Development remains an integrated development.

2.4 Conveyances Subject to Declaration. All covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant to and running with the land and shall at all times inure to the benefit of and be binding on any Owner of any Interest in the Development. Reference in any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document.

### 3. EASEMENTS.

(a) Each Owner, his family, guests, invitees, and licensees shall have the non-exclusive right and easement to use and enjoy the Resort Recreational Facilities. Such right and easement shall run with the land, be appurtenant to and pass with title to every Interest, subject to and governed by the provisions of this Declaration, the By-Laws, and the Rules and Regulations from time to time established by the Declarant or the owner of a Resort Recreational Facility. Non-Owners may use and enjoy the Resort Recreational Facilities only to the extent permitted under Rules and Regulations established by the Declarant or the owner of a Resort Recreational Facility and such Rules and Regulations may require that any such individual be a guest of an Owner who has the right to use such areas and/or pay a use fee set by the Association.

(b) Each Owner, his family, guests, invitees and licensees of an Interest in the Development shall have a non-exclusive perpetual easement for ingress to and egress from the Resort Recreational Facilities over and across all walkways, private roads and driveways located on the Resort Recreational Facilities, which easement shall run with the land, be appurtenant to and pass with the title to every such Interest. The owners of the Resort Recreational Facilities, their employees, agents and contractors, shall have the right of ingress to, egress from the Resort Recreational Facilities, including but not limited to parking and security patrolling and the right to store equipment in the Resort Recreational Facilities for the purposes of furnishing any maintenance, repairs or replacements of the Resort Recreational Facilities, as required or permitted hereunder.

In the event that said easements for ingress and egress shall be encumbered by any mortgage, leasehold or other lien, other than those on the Resort Recreational Facilities or any portion thereof which have been recorded in the Register's Office, Sauk County, Wisconsin prior to the date of recordation of this Declaration, such mortgages, leaseholds or other liens shall hereby be subordinate to the use rights of any Owner or Owners whose ownership interest is not also encumbered by said mortgage, leasehold or other lien.

(c) The owner of each Resort Recreational Facility shall be entitled to such construction easements over such Resort Recreational Facility in order to conduct and complete the construction and improvements as may be reasonably required, convenient or incidental to the completion, renovation, improvement or development of the Resort Recreational Facility.

(d) Declarant shall have and hereby retains for itself, an easement to maintain business and sales offices in the Resort Recreational Facilities, which easement shall include, but not be limited to, the right to erect and maintain signs, a sales office, a business office and promotional facilities within the Resort Recreational Facilities.

(e) The owner of each Resort Recreational Facility shall have the right, at its expense and for the benefit of the Development to utilize and to grant easements over, across, and under such Resort Recreational Facility for utilities, sanitary and storm sewers, security or other types of monitors, walkways, roadways, and rights-of-way, and to relocate or to realign any existing easements or rights-of-way over, across, and under such Resort Recreational Facility including without limitation, any existing utilities, sanitary lines, or sewer lines. In addition, the owner of each Resort Recreational Facility is authorized to give, convey, transfer, cancel, relocate, and otherwise deal with any and all utility and other easements now or hereafter located on or affecting such Resort Recreational Facility.

(f) The owner of a Resort Recreational Facility shall have the right to establish such easements, reservations, exceptions and exclusions consistent with the ownership of a Resort Recreational Facility, and not materially affecting the financial expense imposed upon the Owners and the Existing Associations, and which serve the best interests of the Development.

#### 4. RESORT RECREATIONAL FACILITIES.

4.1 Designation of Resort Recreational Facilities. Declarant intends to construct, operate and maintain certain recreational facilities within the Development from time to time (the "Resort Recreational Facilities"). The Resort Recreational Facilities shall be identified and designated by Declarant, who may add to or subtract from the Resort Recreational Facilities at any time without the consent of the Association. Declarant may sell, convey, mortgage, hypothecate or encumber, lease, rent, use, occupy and improve the Resort Recreational Facilities in its sole discretion. The Resort Recreational Facilities shall be available to Owners, their families, guests, invitees and licensees, subject to payment of the Assessments described herein, individual use or user fees and Rules and Regulations affecting each Resort Recreational Facility and any further restrictions or limitations contained therein or herein.

4.2 Operation and Management. The owner of a Resort Recreational Facility shall operate and maintain the Resort Recreational Facility for the use and enjoyment of Owners, their families, guests, invitees and licensees and any guests, invitees or licensees of such owner, subject to payment of the Assessments described herein, individual use or user fees and Rules and Regulations affecting each Resort Recreational Facility and any further restrictions or limitations contained therein or herein and may promulgate Rules and Regulations for such Resort Recreational Facility which shall regulate the use of such facility and, if applicable, establish a use or user fee schedule for each such facility. Nothing contained herein shall be deemed to preclude an owner of a Resort Recreational Facility from allowing members of the general public to use the Resort Recreational Facilities to the extent Declarant determines, in its sole discretion, to allow for such use, and to charge such members of the general public such use fees or rental fees it may establish from time to time.

The owner of each Resort Recreational Facility shall have the sole and exclusive right and duty to manage and operate such Resort Recreational Facility including without limiting the generality of the foregoing, the right:

(a) to maintain, repair, replace or restore all of the improvements and landscaping within the Resort Recreational Facility;

(b) to promulgate, amend and rescind from time to time general policies and guidelines governing the use of the Resort Recreational Facility;

(c) to receive all notices, claims and demands relating to taxes and Assessments affecting the Resort Recreational Facility; and

(d) to contract with others for the management, maintenance, operation, construction or restoration of the Resort Recreational Facility or any portion thereof.

4.3 Commercial Use. The Declarant or his assigns shall retain the right to operate or enter into agreements with third parties which permit such parties to operate commercial ventures, including, but not limited to, food concessions within the Resort Recreational Facility.

4.4 Protection of Declarant. Notwithstanding any provision of the Association Instruments to the contrary, for so long as Declarant continues to hold title to one (1) or more Interest, none of the following actions may be taken by the Board, the Association, or any Owner other than Declarant, without the prior written approval of Declarant:

(a) levying any Assessment against Declarant for any capital improvements to the Development; and

(b) taking any action which would be detrimental to the sale by Declarant of Interests; provided, however, that an increase in the Annual Assessments without discriminating against Declarant shall not be deemed to be detrimental to the sale of Interests.

#### 5. CHRISTMAS MOUNTAIN VILLAGE PROPERTY OWNERS' ASSOCIATION, INC.

5.1 Property Owners' Association. The Development is the subject of a multi-tiered association format, of which the Association is a part. All Owners in the Development must become members of two (2) associations, being (i) the Christmas Village Property Owners' Association, Inc., which is or will be a Wisconsin nonprofit corporation empowered with the rights, powers and duties set forth herein and in its Articles of Incorporation and its By-Laws, as the same may be amended from time to time, which Association is responsible for enforcing this Declaration and collecting and disbursing the Assessments and charges of the Association and (ii) the Existing Association which is responsible for the operation and maintenance of the condominium, campground, subdivision or planned development in which the Owner has an Interest. By taking title to an Interest, each purchaser of an Interest becomes a member of two (2) associations. On the primary level, the Association has the power to levy Assessments on each Existing Association or its members and upon Owners who do not pay an Assessment through an Existing Association, in accordance with the Association Documents. On the second and subordinate level, the Existing Associations are responsible for administering those affairs related to the individual condominiums, campgrounds, subdivisions or planned developments and may levy assessments against their individual members in accordance with the provisions of their respective covenants and restrictions.

5.2 Association Superior to Existing Associations. The Association is the organization with the sole responsibility to make and collect Assessments from the Existing Associations in accordance with the provisions of the Association Documents, which Assessments will be used for the purposes as more particu-

larly set forth in the Association Documents. The Assessments levied by the Association will be paid by each Existing Association on behalf of its members. By acceptance of conveyance or other transfer of title to an Interest, each Owner expressly assumes the personal obligation to make payment of all Assessments and other charges allocable to his Interest for which title is so conveyed or otherwise transferred as may be, or become, due and payable to the Association. This obligation to pay is secured by a lien or lien right in favor of the Association as to each and every Interest which relates back to the date of the initial recordation of this Declaration in the Register's Office, Sauk County, Wisconsin, with said lien or lien right being superior in all respects to all rights of homestead which may arise in favor of any Owner. Any Owner's failure to timely make these payments may result in foreclosure of the lien or lien right against the Owner's Interest.

The Existing Associations shall be subordinate in all respects to the Association, but shall retain all the rights and privileges as more particularly described in their respective covenants and restrictions including, without limitation, the right to levy assessments.

5.3 Membership in Association. By recording a Warranty Deed to an Interest in the name of the Owner, each Owner of an Interest, including the Declarant, so long as the Declarant owns any Interest in the Development, becomes a member of the Association until he ceases to be an Owner. If any person or entity other than the Declarant owns more than one Interest, such person or entity shall have one membership in the Association for each Interest owned.

5.4 Transfer of Membership. The membership of each Owner in the Association is appurtenant to and inseparable from his ownership of his Interest and shall automatically be transferred upon any valid transfer or conveyance of his Interest to any transferee or grantee. Membership in the Association is transferable only in connection with the conveyance of the Interest giving rise to such membership, and any other transfer or assignment of membership shall be null and void.

The transfer of any Interest shall operate to transfer to the new Owner the interest of the prior Owner, if any, in all funds held by the Association, even though not expressly mentioned or described in the instrument of transfer and without further instrument of transfer.

5.5 Delegates. Subject to rights retained by the Declarant herein, voting rights of the members of the Association shall be vested exclusively in delegates ("Delegates"). Each Existing Association shall have one (1) Delegate who shall be an executive officer of such Existing Association, appointed by the Board of Directors for each Existing Association.

5.6 Voting Rights. Prior to the Turnover Date, all of the voting rights at each meeting of the Association shall be vested exclusively in the Declarant and the Owners shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Master Association shall be vested in the Delegates and each Delegate shall have one vote.

5.7 Powers of the Association. Without limiting the generality of the foregoing, the Association shall have the right:

- (a) to levy and collect fees, duties and Assessments from its members as contemplated by Section 6 of this Declaration;
- (b) to establish and maintain one (1) or more reserve funds to provide monies to the Association to pay any expenses

incurred by the Association in the exercise of its powers or the performance of its duties;

(c) to pay taxes and Assessments, if any, levied by any governmental authority on any real or personal property owned by the Association, or on any transactions entered into by the Association which are subject to tax in the normal course of business including the right to reimburse the Declarant for any taxes, or portions thereof, paid by Declarant on behalf of the Association or any member thereof;

(d) to enforce the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, any general policies and guidelines from time to time promulgated by the Association, and any other decisions of the Association, and to pay all expenses incidental to such enforcement, including reasonable attorneys' fees, including, without limiting the foregoing, the right to reimburse Declarant for all costs and expenses incurred or paid by it in connection with the enforcement of any of the conditions, covenants, restrictions, charges or Assessments or terms contained herein;

(e) to obtain and maintain in force all policies of insurance required to be maintained by the Association by Section 8 of this Declaration;

(f) to expend monies collected by the Association from Assessments or charges and other sums received by the Association for the payment of all proper costs, expenses and obligations incurred by the Association in carrying out any or all of the purposes for which the Association is formed;

(g) after the Turnover Date and upon the affirmative vote of a majority of the Board, to borrow money and to mortgage, pledge, convey by deed to secure debt or deed of trust, to hypothecate any or all of its property as security for money borrowed or debts incurred; provided, however, that during such time as Declarant owns one (1) or more Interest in the Development, any such decision to borrow money or to mortgage, pledge, convey by deed to secure debt or deed of trust, or hypothecate any or all of the Association's property as security for money borrowed or debts incurred shall require a majority vote of the Board and the affirmative vote of the Declarant;

(h) to acquire by gift, purchase or otherwise and to hold, enjoy and operate real or personal property in connection with the business of the Association; provided, however, that after the Turnover Date the Association shall not acquire real property by purchase, lease, or otherwise unless such acquisition is approved by a majority vote of the Board and the affirmative vote of the Declarant;

(i) to do and perform any and all other acts which may be either necessary for, or proper or incidental to, the exercise of any of the foregoing powers.

**5.8 Control by Declarant.** Notwithstanding any provisions to the contrary contained in this Declaration, the Articles of Incorporation or the By-Laws of the Association, Declarant shall have the right to appoint or remove any director or directors of the Association or any officer or officers of the Association until the first of the following occurs:

(a) the date as of which ninety percent (90%) of the Interests in the Development have been conveyed to Owners other than the Declarant; or

(b) the surrender by Declarant of the authority to appoint and remove directors of the Association and officers of the Association by notice in writing by Declarant to the Board of Directors to this effect.

The date on which the Declarant's rights under this Section shall terminate shall be referred to as the "Turnover Date." From and after the Turnover Date, the Board shall be constituted and elected as provided in the By-Laws. Prior to the Turnover Date all of the voting rights at any meeting of the Association shall be vested exclusively in the Declarant and neither the Owners nor the Delegates shall have any voting rights.

**5.9 Advisory Board.** Prior to the Turnover Date, an Advisory Board composed of the Delegates shall be formed to meet from time to time to resolve issues arising between the Declarant and any Existing Association and/or any member or members thereof.

**6. ASSESSMENTS AND FEES.**

**6.1 Purpose of Assessments.** The Annual Assessment and any other applicable assessments or charges shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners, for the reimbursement of expenses incurred by the Association or its assigns, and for other expenses incurred in the performance of the duties of the Association or its assigns as set forth in this Declaration.

**6.2 Annual Assessment.** Each Owner (except the Declarant who agrees to pay the Association the amount of any monetary deficiencies between the Annual Assessments collected from the Owners and the expenses of the Association until the Turnover Date) shall be required to pay an Annual Assessment for each Interest owned. The amount of each Owner's Annual Assessment shall be determined as follows:

(a) **Resort Recreational Facilities Assessment:** The Association shall levy a fee upon each Existing Association and/or its members, or upon Owners who do not pay an Annual Assessment through an Existing Association, to fund the operation and maintenance of the Resort Recreational Facilities. Said fee which shall be referred to as the "Resort Recreational Facilities Assessment," shall be established by the Association pursuant to Section 6.3 herein and shall entitle Owners within the Development to the right to use and enjoy the Resort Recreational Facilities.

(b) **Common Expense Assessment:** The Association shall levy a fee upon each Existing Association and/or its members, or upon Owners who do not pay an Annual Assessment through an Existing Association, to fund the Common Expenses of the Association. Said fee shall be referred to as the "Common Expense Assessment."

The Association shall provide each Existing Association or Owner that may not pay the Annual Assessment through an Existing Association with an annual operating budget for the Association.

Notwithstanding any provision of this Section 6 to the contrary, after the Turnover Date, or earlier at Declarant's sole discretion, the Declarant shall pay the same Annual Assessment for each Interest owned as any other Owner in the Development.

**6.3 Resort Recreational Facilities Assessment.** The Resort Recreational Facilities Assessment shall be based on a usage fee for each Resort Recreational Facility established by the owner of each such facility. This usage fee shall be determined by one of the methods described below or by a combination of two or more of the methods.

(a) The usage fee may be based upon reasonable cost allocations for the Resort Recreational Facility to be allocated and assessed against the Existing Associations, and/or its members, or upon Owners not a member of an Existing Association, as determined

by generally accepted accounting principles, based upon industry standards for such facilities as applied against the cost associated with such facilities, including the general and administrative expenses incurred by the owner of the Resort Recreational Facility based upon the preceding twelve month period, and a reasonable profit to the owner of the Resort Recreational Facility for the operation of such Resort Recreational Facility.

(b) The usage fee may be determined by establishing a formula based upon the recreational facilities available to the Development, and the total number of Owners, occupants, or any other lawful users of the facilities, as applied to the costs of operations of such facilities, including general and administrative expenses incurred by the owner of the Resort Recreational Facility for the operation and maintenance of the facility based on the preceding twelve-month period, including a reasonable profit to the owner of the Resort Recreational Facility.

(c) The usage fee may be determined based upon the intensity of use per Public or Commercial Unit, Residential Dwelling Unit, Residential Lot or Campsite, such as the total number of Owners and occupants permitted upon each Public or Commercial Unit, Residential Dwelling Unit, Residential Lot or Campsite, plus the average number of days per year each unit, lot or Campsite is occupied. For example, Residential Dwelling Units committed to timeshared ownership may be construed to have a higher intensity of use than a Residential Dwelling Unit which is limited year round to single family use.

(d) Notwithstanding anything to the contrary herein, in the event the Resort Recreational Facilities Assessment or usage fee in any fiscal or calendar year exceeds **one hundred fifteen percent (115%)** of such assessments or fee for the preceding year, upon written application of ten percent (10%) of the Owners, a special meeting of the Owners shall be held upon no less than ten (10) days written notice to each Owner, but within thirty (30) days of the delivery of such application to the Board of Directors or any member thereof, at which special meeting Owners may submit the issue to arbitration as provided in Section 11 hereof.

**6.4 Common Expenses.** The Common Expenses which shall be payable by the Association from Annual Assessments collected shall consist of, but not be limited to, costs of the following items:

(a) Personal property taxes, real estate taxes, and any other fees or Assessments levied by a governmental authority against any property owned by the Association and not billed directly to the Owners;

(b) Insurance coverage purchased for the benefit of all Owners and the Association as permitted by this Declaration;

(c) Administrative costs;

(d) Such other expenses as may be determined from time to time by the Board of Directors to be Common Expenses; and

(e) The establishment and maintenance of a reasonable reserve fund or funds to cover operating contingencies or deficiencies arising from unpaid Assessments or liens, emergency expenditures and other matters as may be authorized from time to time by the Board of Directors.

**6.5 Special Assessments.** If the Annual Assessments collected from the Owners are at any time inadequate to meet the costs and expenses incurred by or imposed upon the Association for any reason, including, but not limited to, the non-payment by



any Owner of any Assessment, the Association may levy a Special Assessment on the Owners in such amount as the Association determines to be necessary to pay the Association's costs and expenses, which all Owners, with the exception of Declarant, shall be obligated to pay.

**6.6 Liability for Assessments.** No Owner may exempt himself, his successors or assigns, from his obligation to pay any Assessments by his waiver of the use and enjoyment of any of the Resort Recreational Facilities or by the abandonment of his Interest.

**6.7 Surplus Funds.** The Association, through its Board of Directors, shall, from time to time, fix and determine the sum or sums which are necessary and adequate to provide for the Common Expenses and such other Assessments as are specified herein. The procedure for determining all such Assessments shall be as set forth in the By-Laws and this Declaration. In the event that the Board determines at any time during the Association's fiscal year that the aggregate amount of Assessments is, or will be, in excess of the amounts needed to meet the Common Expenses, such excess amount shall appear as a line item on the Association's budget for the immediately succeeding fiscal year, and shall be applied to reduce the amount assessed to meet the Common Expenses for such fiscal year. Any such excess shall not relieve any Owner from his obligation to pay any delinquent amounts which he owes the Association, nor shall any Owner be entitled to a refund of all or any portion of any Assessment previously paid on account of such excess.

**6.8 Creation of Personal Liability and Priority of Lien.** Each Owner, by acceptance of a deed or other conveyance of an Interest (whether it is so expressed in any such deed or other conveyance), covenants and agrees to pay to the Association the Assessments or charges, together with any interest thereon, against his Interest during his ownership thereof as shall be fixed or assessed by the Association in accordance with the terms and provisions of this Declaration, the Articles of Incorporation and the By-Laws of the Association. Each Assessment and any late fees, interest and costs of collection, including reasonable attorneys' fees shall also be a personal obligation of the Owner against whom they are assessed. The obligation to pay any Assessment, late fees, interest, and costs of collection thereof, including reasonable attorneys' fees, is secured by a lien or lien right in favor of the Association which, as to each and every Interest, relates back to the date of recordation of this Declaration in the Register's Office, Sauk County, Wisconsin. Such lien shall be superior in all respects to all rights of homestead which may arise in favor of any Owner.

Any lien arising hereunder shall continue in full force and effect until fully paid or otherwise discharged. The Association's lien against an Interest for unpaid Assessments may be foreclosed in the same manner as is authorized by the laws of the State of Wisconsin for the foreclosure of mortgages on real property. The Association shall have the right to bid on the Interest at any foreclosure sale and may acquire, hold, lease, mortgage, and convey the Interest acquired at such sale.

**6.9 Subrogation.** For purposes of enforcing any provision of this Declaration and particularly for the purpose of collecting unpaid Assessments due hereunder from Owners who are personally liable for any debt or violation of any provision of this Declaration, if Declarant so desires, the Existing Associations hereby agree to subrogate their rights to collect such Assessment from any Existing Association's membership or Owner under any other set of recorded restrictions, covenants or other rights such Existing Association may have to such collection to the Declarant. Declarant shall have such rights and remedies as those of the Existing Association for purposes of collecting said Assessments from Owners or Association members.

**6.10 Effect of Transfer of Interest.** The sale or transfer of any Interest shall not affect the lien set forth in Section 5.8, above, and any grantee shall be jointly and severally liable for the portion of any Assessment or charge assessed against such Interest as may be due and payable at the time of conveyance, but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor; provided, however, that if such grantor or grantee shall request and receive a statement of Assessments payable with respect to the Interest, such grantee, his successors, successors-in-title and assigns, shall not be liable for, nor shall the Interest conveyed be subject to a lien for, any unpaid Assessments against such Interest in excess of the amount set forth in such statement.

**6.11 Mortgagee Protection.** Notwithstanding any other provision of this Section 6, the lien which may be created upon any Interest shall be subordinate to the lien of any Mortgagee of Record upon such Interest. If such a Mortgagee of Record obtains title to an Interest as a result of a foreclosure, deed in lieu of foreclosure or otherwise, such Mortgagee of Record shall not be liable for any Assessments due and owing on such Interest prior to the date such Mortgagee of Record obtained title thereto. Said Assessments, unless collected from the prior owner, shall be deemed a Common Expense paid by the Association from fees collected. The Association shall remain entitled to recover any unpaid Assessments from the Owner whose Interest was foreclosed upon.

**6.12 Non-Payment of Assessments.** In addition to all other remedies provided by law, the Association may enforce collection of all delinquent Assessments, together with such other amounts as may be owing the Association, as provided in this Section 6.12. Any Assessment, or portion thereof, not paid when due shall be deemed delinquent.

**6.12.1 Interest and Late Charge.** Any delinquent Assessment or installment not paid when due shall bear interest from the date of delinquency until paid at **eighteen percent (18%)** per annum. In addition, any Assessment or installment which is more than thirty (30) days delinquent will be charged a late fee of **\$25.00**.

**6.12.2 Additional Remedies.** If any delinquent Assessment or portion thereof is not paid within ten (10) days after written notice is given to the Owner to make such payment, the Board of Directors shall have the right to invoke any or all of the following remedies:

- (i) The entire unpaid balance of the Assessment may be accelerated at the option of the Board of Directors and may be declared due and payable in full, and foreclosure proceedings may be instituted to enforce the lien of the Association;
- (ii) The rights of the Owner to use the Resort Recreational Facilities may be suspended;
- (iii) The Association may bring an action at law against the Owner personally obligated to pay the same; and
- (iv) The Association may foreclose its lien against such Owner's Interest, in which event interest and costs of collection shall be included in such lien, with such costs of collection to include court costs, the expenses of sale, any expenses required for the protection and preservation of the Interest and reasonable attorneys' fees actually incurred.

Any such notice shall be sent by certified mail, return receipt requested, to the Owner at such Owner's last known address as contained in the records of the Association and shall specify the amount of the Assessments then due and payable, including any interest accrued thereon.

6.12.3 Collection. All payments on account shall be applied first to the aforesaid costs of collection, then to interest, and then to the Assessment lien first due. All interest collected shall be credited to the common fund of the Association to be applied against the Common Expenses. Each Owner vests in the Board of Directors the right and power to bring all actions against him personally for the collection of such Assessments as a debt and to foreclose the aforesaid lien in the manner set forth herein.

## 7. RULES AND REGULATIONS.

7.1 Promulgation. The owner of each Resort Recreational Facility shall have the right from time to time to promulgate Rules and Regulations governing the use of the Resort Recreational Facilities, which may include, but not be limited to, rules governing the conduct of Owners in such Resort Recreational Facilities. These Rules and Regulations will be binding on all Owners. All grantees of an Interest accepting a Warranty Deed or otherwise acquiring title to an Interest agree to be bound by any such Rules and Regulations. All guests and invitees of Owners and all Exchange Users shall also be bound by the Rules and Regulations. The owner of each Resort Recreational Facility shall also have the right to amend any existing Rules and Regulations, to enforce any such Rules and Regulations and to establish penalties for the violation of any such Rules and Regulations. The penalties for the violation of any Rules and Regulations may include the suspension of the right to use the Resort Recreational Facilities, during the period of any continuing violation of the Rules and Regulations. A copy of the Rules and Regulations shall be posted in a conspicuous place within the Resort Recreational Facilities and/or copies of same shall be furnished to Owners.

## 8. INSURANCE.

The Association shall obtain and maintain at all times the types of insurance policies set forth in this Section 8 containing the provisions, without limitation, and in the amounts set forth herein. The premiums for such insurance policies shall be a Common Expense of the Association. The Board of Directors, at its discretion, may enter into an agreement with any institutional trustee to supervise the distribution of any insurance proceeds paid under policies of insurance maintained by the Association:

(a) A liability insurance policy or policies, in amounts determined by the Board of Directors, covering the Association, the Board of Directors and the officers of the Association, all agents and employees of the Association, and all Owners.

(b) Such worker's compensation and other insurance coverage as is required by law, upon each of the employees of the Association, if any.

(c) Such other insurance policies, including, without limitation, fidelity insurance policies, in the amounts of coverage as may be required by law or authorized by the Board of Directors from time to time.

## 9. MAINTENANCE, REPAIR AND RECONSTRUCTION.

9.1 Administration of the Resort Recreational Facilities. Responsibility for the maintenance, repair, replacement, restoration, improvement, operation, and administration of the Resort Recreational Facilities shall be vested solely in the owner of each Resort Recreational Facility. The determination whether to repair, reconstruct or rebuild a Resort Recreational Facility following any damage or destruction to any portion of a Resort Recreational Facility shall be the determination of the owner of each Resort Recreational Facility alone. The owner of each Resort Recreational Facility is under no obligation to repair, reconstruct or rebuild any Resort Recreational Facility or portion thereof.

9.2 Liability of the Association. The Association shall not be liable for injury or damage to a person or property caused by the elements, by any Owner or by any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Resort Recreational Facilities or from any pipe, drain, conduit, appliance, equipment, the responsibility for the maintenance of which is that of the owner of a Resort Recreational Facility nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property which may be located within the Resort Recreational Facilities. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the owner of a Resort Recreational Facility to take some action or perform some function required to be taken or performed under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the owner of a Resort Recreational Facility, or from any action taken by such owner to comply with any law, ordinance, order or directive of any municipal or other governmental authority.

9.3 Owners' Responsibility for Damage. Owners, Exchange Users, members of their families and their guests assume all risk of loss or damage to person or property in using the Resort Recreational Facilities. Owners agree to indemnify and hold the owner of a Resort Recreational Facility and the Association harmless from and against any claim for injury, loss, or damage by any guest or member of an Owner's family.

Each Owner and Exchange User shall be liable for the uninsured cost and expense of any maintenance, repair, or replacement of any portion of the Resort Recreational Facilities or property of the Association, necessitated by his negligent or intentional act or omission. The negligent or intentional act or omission of an Owner's or Exchanger User's family members, guests, tenants, licensees, or invitees shall be deemed to be the act of the Owner or Exchange User, and such persons shall be held jointly and severally liable with such Owner or Exchange User.

The Manager shall submit a bill to the responsible Owner or Exchange User for all amounts payable to the Association under this Section 9.3, which amounts shall be enforceable as a claim for money damages against such Owner or Exchange User.

Any loss, damage, or destruction caused by an Exchange User to any Resort Recreational Facility or any property of the Association, or any violation of the Association Instruments by the Exchange User, shall be remedied by the Association, and the cost thereof, to the extent not covered by insurance or recovered from the Exchange User, shall be a Common Expense and shall be shared by all Owners as a part of their Annual Assessment.

9.4 Condemnation or Eminent Domain. In the event that all or part of the Resort Recreational Facilities shall be taken

by any authority having the power of condemnation or eminent domain, the award therefor shall be allocated to the owner of the Resort Recreational Facility which is condemned or taken.

#### 10. REMEDIES.

**10.1 Enforcement of Association Instruments.** The violation of any provision of the Association Instruments by an Owner or an Exchange User, members of his family, his guests, licensees, or invitees shall be grounds for an action to recover sums due and/or damages, for injunctive relief, or both, and the reimbursement of all costs and attorneys' fees incurred in connection therewith, as well as late fees and interest on any delinquent amounts, which action shall be maintainable by the Board or the Manager, in the name of the Association, by Declarant, or, in a proper case, by an aggrieved Owner or owner of a Resort Recreational Facility. All such amounts, along with any other costs incurred by the Association to obtain the services of an attorney to enforce any provision of the Association Instruments, shall promptly be reimbursed by the Owner or Exchange User who committed or who is responsible for such violation or who caused the Association to take such action, to the Association, upon demand therefor. Unless otherwise prohibited by law, the violation of any provision of the Association Instruments shall give the Association, the Board, the Manager, and Declarant (to extent of its rights hereunder) the right, in addition to any other rights set forth in Section 6.12 hereof and in the Association Instruments:

(a) to engage the services of an attorney to initiate such action as is deemed necessary by the Board, the Manager, or Declarant, to enforce such provision, including the initiation of a suit for damages and/or to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach;

(b) to impose a reasonable monetary penalty upon such Owner in an amount to be determined by the Board of Directors; and

(c) to the extent permitted by law, to suspend some or all of such Owner's rights and privileges, including but not limited to any right to vote and the right to use (or allow others to use) any Resort Recreational Facility during the period of any continuing violation of the provisions of the Association Instruments.

**10.2 Remedies are Cumulative.** All of the remedies granted by the Association Instruments are cumulative, and the exercise of one right or remedy shall not impair the right to exercise any other remedy. The Association, the Board, the Manager, and Declarant shall not be limited to the remedies set forth in this Declaration, and may invoke any other or additional remedies provided for or allowed by law or in equity.

**10.3 Preservation of Remedies.** The failure of the Association, the Board, the Manager, or Declarant to enforce any provision of the Association Instruments shall not be construed as a waiver of any such provision or right. Rather, such provision shall continue and remain in full force and effect.

#### 11. ARBITRATION.

In the event of a dispute between any Existing Association and the Declarant or an owner of a Resort Recreational Facility regarding the allocation of usage fees or for any other reason which may arise due to any provision contained in this Declaration, the Association may request in writing that the Declarant or owner of a Resort Recreational Facility provide sufficient information and documentation to support the said usage fee in dispute, or, to provide such other information the Existing Association

may desire to resolve a dispute regarding other provisions contained herein.

If no resolution can be reached by the Existing Association and the Declarant or owner of a Resort Recreational Facility, the Existing Association may, at its sole expense, arrange for arbitration with the American Arbitration Association. Said arbitration and all expenses thereof shall be paid by the Existing Association. The arbitration committee shall consist of seven fact finders selected by the Declarant or owner of the Resort Recreational Facility, except that the Existing Association shall have the right to select three of the seven fact finders, as arbiters, to render a decision in the arbitration. The decision of the arbiters shall be binding upon the Existing Association and the Declarant or owner of the Resort Recreational Facility. By acceptance of this Declaration, the Existing Associations waive all rights to utilize any other forum by which, absent this provision, further proceedings by the Existing Association could be instituted.

#### 12. THIRD PARTY LIENS.

Any liens against an Owner's Interest shall be limited to the interest of such Owner in his Interest only, and shall not entitle any lienholder to assert any claim against the Interest of any other Owner, the Resort Recreational Facilities or any property of the Association.

#### 13. TERMINATION.

This Declaration shall continue to be effective for a period of forty (40) years from the date of the recording of this Declaration and for each successive ten (10) year period that this Declaration is extended as provided in Section 13 or until such time as termination is authorized at a duly convened meeting of the Association by (i) an affirmative vote of all Owners owning no less than seventy-five percent (75%) of the Interests in the Development; and (ii) upon the consent of Mortgagees of Record holding mortgages on Interests representing an aggregate undivided ownership interest of seventy-five percent (75%) of the Development property submitted to this Declaration; and (iii) by the prior written approval of the Association; and (iv) the Declarant for as long as it owns one (1) or more Interest.

In the event the Owners vote to terminate the plan implemented by this Declaration, the Board of Directors shall file an amendment in the Register's Office, Sauk County, Wisconsin terminating this Declaration and certifying that such termination has been approved by all parties designated in the paragraph above.

The provisions of this Section 13 shall not be subject to amendment without prior written consent of the Declarant for as long as it owns one (1) or more Interest in the Development.

#### 14. TERM AND AMENDMENT.

14.1 Term. The provisions of this Declaration shall become effective when recorded in the Register's Office, Sauk County, Wisconsin. This Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an Interest in the Development for forty (40) years from date of recording, after which time the same shall be extended for successive periods of ten (10) years each if an instrument signed by the Board of Directors certifying that such extension has been approved by an affirmative vote of two-thirds (2/3) of the then record Owners of the total Interests in the Development and has been recorded in the Register's Office, Sauk County, Wisconsin, agreeing to extend this Declaration, in whole or in part, whereupon this Declaration and the other Association Instruments shall continue to apply to such Interests for an additional period of ten (10)

years. This same procedure shall be followed prior to the termination of said ten (10) year period and each succeeding ten (10) year period.

**14.2 Amendment by Owners.** This Declaration may be amended at any time after December 31, 1985, by the affirmative vote of the then record Owners of two-thirds (2/3) of the total Interests in the Development as long as such amendment does not operate to annul any material part hereof. Notwithstanding the above, Section 13 of this Declaration shall not be amended without the consent of the Declarant.

Each such amendment of this Declaration shall be evidenced by an instrument in writing, signed and acknowledged by any two (2) officers of the Association, setting forth in full the text of such amendment, the appropriate recording data for this Declaration, and certifying that such amendment has been approved by the affirmative vote of the then record Owners of two-thirds (2/3) of the total Interests in the Development. Said amendment shall become effective upon the recording of said instrument in the Register's Office, Sauk County, Wisconsin.

No amendment which materially affects the rights and privileges of Declarant shall become effective unless and until approved, in writing, by Declarant. Notwithstanding any provision to the contrary contained herein, the Owners shall have no power to enact an amendment to this Declaration which materially affects the rights or security interests of any Mortgagee of Record, without first obtaining the written consent of such affected Mortgagee of Record.

**14.3 Amendment by Declarant.** Declarant reserves the right to amend this Declaration, without the approval of any other Owners or the Association or Mortgagees of Record, for whatever reason, at any time prior to December 31, 1985. Declarant further reserves the right, so long as it owns one (1) or more Interest, to the extent permitted by law, to unilaterally amend this Declaration as may be required by any lending institution, title insurance company, or public body, or as may be necessary to conform the same to the requirements of law. Declarant further reserves the right, as long as it is deemed the Owner of any Interest, to change the arrangement of the Resort Recreational Facilities, to construct additional Resort Recreational Facilities, to remove any Resort Recreational Facility from the scope of this Declaration and to unilaterally effectuate any such amendments to this Declaration and/or the By-Laws as may be necessary or required in Declarant's sole discretion, to effectuate such actions provided that such Amendment shall not increase the proportion of Common Expenses borne by Owners, decrease an Owner's voting rights or decrease the size of an Owner's Interest. Any such amendments to this Declaration shall become effective upon the recording in the Register's Office, Sauk County, Wisconsin, of an instrument executed by Declarant, setting forth the text of such amendment in full, together with the appropriate recording data for this Declaration. Such amendment need only be executed and acknowledged by Declarant, and need not be consented to by any Owners, Existing Association, the Association, any Mortgagees of Record, lienholders or any other parties.

## **15. MISCELLANEOUS.**

**15.1 Captions.** Section captions in this Declaration and the Association Instruments and in any exhibits annexed thereto are for convenience only and do not in any way limit or amplify the terms or provisions hereof.

**15.2 Plural, Gender.** As the individual application of the provisions of this Declaration requires: the singular forms of words shall be deemed to include the plural; the plural forms

shall be deemed to include the singular; and the terms referring to one gender shall be deemed to refer to the other gender as well.

15.3 Successors and Assigns. As used in the provisions of this Declaration, the reference to "Declarant" is deemed also to include the successors or assigns of DELLONA ENTERPRISES, INC.

15.4 Interpretation. The provisions of the Association Instruments shall be liberally construed to effectuate the purpose of ensuring that the Development shall at all times be operated and maintained in a manner so as to optimize and maximize its enjoyment and utilization by each Owner as a vacation resort.

15.5 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in nowise affect any other provisions, which shall remain in full force and effect.

15.6 Waiver. No restriction, condition, obligation, or provision contained in the Association Instruments shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

15.7 Binding Effect. The provisions of the Association Instruments shall be binding upon all parties having or acquiring any interest or any right, title, or interest therein, and shall be for the benefit of each Owner, his heirs, successors, and assigns. Each Owner (including Declarant) shall be fully discharged and relieved of liability on the covenants contained therein, in his capacity as Owner, insofar as such covenants relate to each interest, upon ceasing to own such interest and upon paying all sums and performing all obligations thereunder, up to the time his ownership interest terminates, as provided herein.

15.8 Notices. Any notice required to be sent to any Owner or Existing Association under the provisions of this Declaration shall be deemed to have been properly sent when (i) mailed, postage prepaid, to the Owner's last known address or to the Existing Association's Secretary as same appears on the records of the Association provided to the Declarant at the time of such mailing or (ii) when delivered personally to the Owner or Secretary of the Existing Association.

15.9 Choice of Law. This Declaration shall be construed in accordance with the laws of the State of Wisconsin.

#### 16. JOINDER BY EXISTING ASSOCIATIONS.

16.1 Christmas Mountain Condominium Association. The Christmas Mountain Condominium Association joins in this Declaration on behalf of all its members for the purpose of subjecting all Owners of Interests in the Christmas Mountain Condominium to the provisions of this Declaration.

16.2 The Villas at Christmas Mountain Association. The Villas at Christmas Mountain Condominium Association joins in this Declaration on behalf of all its members for the purpose of subjecting all Owners of Interests in The Villas at Christmas Mountain Condominium to the provisions of this Declaration.

16.3 Christmas Mountain Campground Association. The Christmas Mountain Campground Association joins in this Declaration on behalf of all its members for the purpose of subjecting all Owners of Interests in the Christmas Mountain Campground to the provisions of this Declaration.

16.4 Christmas Mountain Residential Owners' Association. The Christmas Mountain Residential Owners' Association joins



in this Declaration on behalf of all its members for the purpose of subjecting all Owners of Interests in the Christmas Mountain Residents to the provisions of this Declaration.

17. GRANTEE'S ACCEPTANCE.

Each grantee or purchaser of any Interest shall, by acceptance of a Warranty Deed conveying title thereto, whether from Declarant or from any subsequent Owner of such Interest, accept such deed subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges and immunities of Declarant. By such acceptance such grantee or purchaser shall for himself, his heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with Declarant and the grantee or purchaser of each Interest to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.

Witnesses

*Handwritten Signature*  
Paul A. Brullin

DELLONA ENTERPRISES, INC.

BY: *K R K*  
President

Witnesses

*Handwritten Signature*  
Paul A. Brullin

THE VILLAS AT CHRISTMAS MOUNTAIN  
ASSOCIATION

BY: *K R K*  
President

Witnesses

*Handwritten Signature*  
Paul A. Brullin

CHRISTMAS MOUNTAIN CAMPGROUND  
ASSOCIATION

BY: *K R K*  
President

Witnesses

*Handwritten Signature*  
Paul A. Brullin

CHRISTMAS MOUNTAIN RESIDENTIAL  
OWNER'S ASSOCIATION

BY: *K R K*  
President

*Handwritten Signature*

FLORIDA  
STATE OF ~~WISCONSIN~~:  
~~LEE~~  
COUNTY OF ~~SAUK~~:

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State, Kenn R. Keim, who upon oath, acknowledged himself to be President of DELLONA ENTERPRISES, INC., a corporation, the within-named person with whom I am personally acquainted, and who acknowledged that he executed the within and foregoing instrument for the purposes therein contained, he being authorized so to do as President of said Corporation.

Witness my hand and official seal of office on this the 30th day of July, 1991.

Carrie Braullere  
Notary Public

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP JUNE 29, 1994  
BONDED THRU GENERAL INS. UND.

FLORIDA  
STATE OF ~~WISCONSIN~~:  
~~LEE~~  
COUNTY OF ~~SAUK~~:

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State, Kenn R. Keim, who upon oath, acknowledged himself to be President of CHRISTMAS MOUNTAIN CONDOMINIUM ASSOCIATION, an association, the within-named person with whom I am personally acquainted, and who acknowledged that he executed the within and foregoing instrument for the purposes therein contained, he being authorized so to do as President of said Association.

Witness my hand and official seal of office on this the 30th day of July, 1991.

Carrie Braullere  
Notary Public

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP JUNE 29, 1994  
BONDED THRU GENERAL INS. UND.

FLORIDA  
STATE OF ~~WISCONSIN~~:  
~~LEE~~  
COUNTY OF ~~SAUK~~:

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State, Kenn R. Keim, who upon oath, acknowledged himself to be President of THE VILLAS AT CHRISTMAS MOUNTAIN ASSOCIATION, an association the within-named person with whom I am personally acquainted, and who acknowledged that he executed the within and foregoing instrument for the purposes therein contained, he being authorized so to do as President of said Association.

Witness my hand and official seal of office on this the 30th day of July, 1991.

Carrie Braullere  
Notary Public

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP JUNE 29, 1994  
BONDED THRU GENERAL INS. UND.

FLORIDA  
STATE OF ~~WISCONSIN~~:  
LEE  
COUNTY OF ~~SAUK~~:

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State, Kenn R. Keim, who upon oath, acknowledged himself to be President of CHRISTMAS MOUNTAIN CAMPGROUND ASSOCIATION, an association the within-named person with whom I am personally acquainted, and who acknowledged that he executed the within and foregoing instrument for the purposes therein contained, he being authorized so to do as President of said Association.

Witness my hand and official seal of office on this the 30th day of July, 1991.

Carrie Broullier  
Notary Public

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP JUNE 29, 1994  
BONDED THRU GENERAL INS. UND.

FLORIDA  
STATE OF ~~WISCONSIN~~:  
LEE  
COUNTY OF ~~SAUK~~:

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State, Kenn R. Keim, who upon oath, acknowledged himself to be President of CHRISTMAS MOUNTAIN RESIDENTIAL OWNERS' ASSOCIATION, an association the within-named person with whom I am personally acquainted, and who acknowledged that he executed the within and foregoing instrument for the purposes therein contained, he being authorized so to do as President of said Association.

Witness my hand and official seal of office on this the 30th day of July, 1991.

Carrie Broullier  
Notary Public

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP JUNE 29, 1994  
BONDED THRU GENERAL INS. UND.

EXHIBIT A  
TO  
POA DECLARATION

Parcel One: Christmas Mountain Villas

A parcel of land located in the SW 1/4-SE 1/4 Section 11 and the NW 1/4-NE 1/4 Section 14, T13N, R5E, Town of Dellona, Sauk County, Wisconsin, which is bounded by a line described as follows:

Commencing at the southwest corner of Lot 32 of the plat of Christmas Mountain; thence North 467.88 feet along the east right-of-way of Coon Bluff Road; thence S63°00'E, 224.49 feet to the point of beginning;

thence S73°00'E, 436.00 feet; thence S40°00'E, 619.51 feet; thence S58°32'W, 284.53 feet to the northeast right-of-way line of Christmas Lane; thence along said right-of-way on a curve concave to the southwest, radius 1868.03 feet, the long chord of which bears N38°58'W, 203.88 feet; thence N40°28'W, 156 feet along said right-of-way; thence along said right-of-way on a curve concave to the southwest, radius 267.60 feet, the long chord of which bears N84°28'W, 209.55 feet; thence North 32.78 feet; thence N48°00'W, 244.53 feet; thence North 179.78 feet to the point of beginning.

The above parcel is subject to easements of record and contains 5.41 acres, more or less.

Parcel Two: Christmas Mountain Campground

The SW 1/4 of the SW 1/4, Section 12, T13N, R5E  
The South 5 acres of the SE 1/4 of the SW 1/4, Section 12, T13N, R5E  
The NW 1/4 of the NW 1/4, Section 13, T13N, R5E  
The NE 1/4 of the NW 1/4, Section 13, T13N, R5E  
Town of Dellona, Sauk County, Wisconsin  
Consisting of 125 acres more or less

TOGETHER WITH:

A parcel of land located in the NW 1/4-NW 1/4 and NE 1/4-NW 1/4 of Section 13, T13N, R5E, Town of Dellona, Sauk Co. Wis. described as follows: Commencing at the N.W. corner of said Section 13; thence S83°20'09"E 1041.08' to the point of beginning.

Thence N87°02'55"E, 181.46'; thence S88°59'47"E, 231.05'; thence S05°37'18"E 351.15'; thence S08°34'05"W, 138.31'; thence S88°09'37"W, 253.38'; thence S64°59'27"W, 271.37'; thence N05°07'08"E, 14.42'; thence S55°29'50"W, 43.12'; thence S48°54'54"W, 93.06'; thence North, 53.07'; thence N48°54'54"E 80.83'; thence N55°29'50"E, 77.67'; thence N05°04'43"E, 95.58'; thence N15°11'08"E, 238.22'; thence N03°05'20"W, 301.47' to the point of beginning.

The above parcel contains 5.58 acres of land more or less and is subject to easements of record.

EXCEPTING:

A parcel of land located in the SW 1/4-SW 1/4 and SE 1/4-SW 1/4 of Section 12, T13N, R5E, Town of Dellona, Sauk County Wisconsin, being a part of Sauk County Certified Survey Map No. 1554.

Commencing at the S.W. corner of said Section 12; thence N00°07'24"E 316.70' to the N.W. corner of the SW 1/4-SW 1/4 of said Sec. 12; thence S88°22'52"E 426.16' along the North line of said forty to the point of beginning.

Thence S88°22'52"E, 952.28' along the N. line of said forty and the N. line of the SE 1/4-SW 1/4 of said Sec. 12; thence S00°58'E 852.47'; thence N87°57'W, 172.78'; thence along the arc of a curve to the right, radius = 36', chord of which bears N50°28'30"W 42.59', a distance of 46.78'; thence N13°00'W, 76.42'; thence N18°00'W, 229.43'; thence along the arc of a curve to the left, radius = 20', chord of which bears N58°30'W 149.40', a distance of 161.27'; thence S85°00'W 550.18'; thence North, 518.80' to the point of beginning.

EXHIBIT B

Resort Recreational Facilities

Clubhouse  
Swimming Pool  
Tennis Courts