

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

FOR

ELKSTONE,

**A COLORADO COMMON INTEREST
COMMUNITY**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
ELKSTONE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ELKSTONE (as amended from time to time, this ("Declaration") is made as of 15th day of May, 2003, by ELK LAKE PROPERTIES, LLC, a Colorado limited liability company (together with its successors and assigns, "Declarant").

RECITALS

A. Declarant owns the real property located in the Town of Mountain Village, County of San Miguel, State of Colorado, that is more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property").

B. Declarant desires to create a condominium common interest community on the Property pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time.

C. Declarant deems it necessary and desirable to subject the Property to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration.

DECLARATION

In consideration of the foregoing, Declarant hereby declares as follows:

ARTICLE I - DECLARATION

1.1 Declaration. Declarant hereby creates a condominium named "Elkstone" on the Property (as defined below) and declares that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of this Declaration.

1.2 Covenants Running with the Land. All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of the Declarant, the Owners (as defined below), the Association (as defined below), all other parties having any right, title or interest in the Property or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

ARTICLE II - DEFINITIONS

2.1 Definitions. As used in this Declaration, the following terms shall have the meanings given in this Section 2.1.

(a) "Act" means the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time.

(b) "Allocated Interest" means the undivided interest in the General Common Elements appurtenant to each Unit, determined in accordance with the terms and conditions in Section 3.2 below.

(c) "Articles" means the articles of incorporation of the Association, as the same may be amended from time to time.

(d) "Assessment" means a General Assessment, a Special Assessment or a Default Assessment levied and assessed pursuant to Article VII below.

(e) "Assessment Lien" has the meaning given to that term in Section 7.8 below.

(f) "Association" means Elkstone Owners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

(g) "Association Documents" means this Declaration, the Articles, the Bylaws and the Rules and Regulations (if any), as the same may be amended from time to time.

(h) "Building" means any one of the structures now or hereafter constructed by Declarant on the Property in which one or more Units are located.

(i) "Bylaws" means the bylaws of the Association, as the same may be amended from time to time.

(j) "Common Elements" means the General Common Elements and the Limited Common Elements.

(k) "Common Expenses" means:

(i) any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Commons Elements; (B) providing facilities, services and other benefits to Owners; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting

and enforcing the Assessments, charges and liens imposed pursuant hereto; (E) regulating and managing the Community; and (F) operating the Association; and

(ii) reserves for any such costs, expenses and liability.

(l) "Community" means the common interest community created on the Property by this Declaration, consisting of the Units and the Common Elements.

(m) "Declarant" means Elk Lake Properties, a Colorado limited liability company, and its successors and assigns.

(n) "Declarant Control Period" has the meaning given to that term in Section 6.3 below.

(o) "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Elkstone, as the same may be amended from time to time.

(p) "Default Assessment" has the meaning given to that term in Section 7.6 below.

(q) "Director" means a duly elected or appointed member of the Executive Board.

(r) "Executive Board" means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Community.

(s) "Expansion Area" shall mean those portions of the Property as depicted and described on the Map being subject to development rights.

(t) "Expansion Property" shall mean the real property more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference.

(u) "First Mortgage" means any Mortgage which is not subordinate to any other lien or encumbrance, except liens for taxes or other liens which are given priority by statute.

(v) "First Mortgagee" means a Mortgagee under a First Mortgage.

(w) "General Assessment" has the meaning given to that term in Section 7.4 below.

(x) "General Common Elements" means all of the Community, other than the Units and the Limited Common Elements. Without limiting the generality of the preceding sentence, the General Common Elements include, without limitation:

(i) Improvements, including, without limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls (including, with respect to all perimeter or supporting walls), all exterior finishings, utility systems, mechanical systems, sprinkler systems, exhaust and ventilation systems, storage areas, roofs, chimneys, drainage facilities, courtyards, yards, common sidewalks, common walkways, common parking areas, common paths, grass, shrubbery, trees planters, roadways, landscaping, gardens and related facilities upon the Property, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations intended for common use, except for those Improvements that are designated by the Act, by this Declaration or by the Map as Units or Limited Common Elements; and

(ii) any parcels of real property and improvements and fixtures located thereon (A) that are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to this Declaration or a lease, license, easement or other agreement, and (B) that are used or possessed by the Association for the benefit of all Owners.

(y) "Guest" means any family member, employee, agent, independent contractor, lessee, customer or invitee of an Owner.

(z) "Improvement" means any Building, structure or other improvement (including, without limitation, all fixtures and improvements contained therein) located on the Property and within which one or more Units or Common Elements are located.

(aa) "Limited Common Elements" means those portions of the Common Elements allocated by this Declaration or by operation of the Act for the exclusive use of one or more Units, but fewer than all the Units. Without limiting the generality of the foregoing, "Limited Common Elements" include, without limitation,

(i) any shutters, awnings, window boxes, windows and doors located at the boundaries of Units, entries, exits, stoops, utility systems, mechanical systems, exhaust and ventilation systems (excluding ducts), fireplaces, patios, balconies, decks, porches, courtyards, dumbwaiters, storage spaces, entrances, and other areas and improvements that are designed to serve an individual Unit; and

(ii) any physical portion of the Community that is designated on the Map as "Limited Common Element" or if any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a mechanical system or any fixture lies partially within and partially outside of the designate boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the General Common Elements.

(bb) "Majority," regardless of whether capitalized, means any percentage greater than fifty percent (50%).

(cc) "Map" means the Condominium map for Elkstone recorded in the San Miguel County Records, as the same may be amended or supplemented from time to time.

(dd) "Member" means an Owner of a Unit entitled to Membership in the Association.

(ee) "Membership" means a membership in the Association and the rights granted to Owners pursuant to this Declaration and the other Association Documents to participate in the Association.

(ff) "Mortgage" means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

(gg) "Mortgagee" means any Person named as a mortgagee or beneficiary in any Mortgage and any successor to the interest of any such Person under a Mortgage.

(hh) "Mountain Village Documents" means the General Declaration for Telluride Mountain Village, recorded in the San Miguel County Records on March 9, 1984, under Reception No. 233116, Book 409 at Page 714, as the same has and may be amended from time to time.

(ii) "Officer" means a duly elected or appointed officer of the Association.

(jj) "Owner" means the record holder of legal title to the fee simple interest in any Unit or portion thereof. If there is more than one record holder of legal title to a Unit, each record holder shall be an Owner. The term "Owner" includes Declarant to the extent that Declarant is the record holder of the legal title to the fee simple interest in a Unit.

(kk) "Person" means any natural person, corporation, partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.

(ll) "Property" means:

(i) the real property located in the Town of Mountain Village, San Miguel County, Colorado, that is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference; and

(ii) any real property that is later made subject to this Declaration in accordance with the terms and conditions contained herein.

(mm) "Purchaser" means a Person, other than Declarant or a Successor Declarant, who acquires legal title to the fee simple interest in any Unit or portion thereof.

(nn) "Resort Company" shall mean the Telluride Mountain Village Resort Company, which is also commonly known as "Metro Service".

(oo) "Rules and Regulations" means any instruments adopted by the Association for the regulation and management of the Community, as the same may be amended from time to time.

(pp) "San Miguel County Records" means the real estate records maintained in the Office of the Clerk and Recorder for San Miguel County, Colorado.

(qq) "Share of Common Expenses" means the Share of Common Expenses allocated to each Unit in accordance with the terms and conditions of Section 7.2 below.

(rr) "Special Assessment" has the meaning given to that term in Section 7.5 below.

(ss) "Special Declarant Rights" means all "special declarant rights" and "development rights" (as such terms are defined in the Act) that Declarant reserves for itself in this Declaration.

(tt) "Successor Declarant" means any Person who succeeds to any Special Declarant Right.

(uu) "Unit" means a physical portion of the Community that is designated for separate ownership by an Owner depicted on the Map and consisting of enclosed rooms and bounded by the unfinished interior surface of all walls, by the unfinished ceilings and floors, and by the doors and windows thereof. A Unit shall include any drywall, plaster, paint, and stain on the interior surface of all walls, wallpaper, flooring materials such as tile and carpeting, or any other wall, ceiling, or floor covering, windows and window frames, shutters, awnings, doorsteps, stoops, doors and door frames. The Unit shall also include any fireplace or stove hearth, stone facing, tile or firebox. The Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings, and floors; provided, however, that a Unit shall not include any of the structural components of the Building or utility or service lines located within the individual Unit but serving more than one Unit.

2.2 Gender and Number. Wherever the context of this Declaration so requires:

- (a) words used in the masculine gender shall include the feminine and neuter genders;
- (b) words used in the neuter gender shall include the masculine and feminine genders;

- genders;
- (c) words used in the feminine gender shall include the masculine and neuter
 - (d) words used in the singular shall include the plural; and
 - (e) words used in the plural shall include the singular.

ARTICLE III - UNITS AND COMMON ELEMENTS

3.1 Units.

(a) Declarant hereby creates Units within the Community, the boundaries and identifying numbers of which are shown on the Map.

(b) Declarant reserves the right to construct new Buildings and other Improvements on the General Common Elements to create new Units. Declarant reserves the right to create up to the maximum amount of Units allowed by the Town of Mountain Village. As described in Section 16.3, Declarant reserves the right to amend the Map and this Declaration to add new Units as the same are constructed and, to the extent permitted by the Act, to add other real property to the Community at any time as more particularly addressed in Article XVI below.

(c) No Owner may alter its Unit, subdivide its Unit or relocate the boundaries between its Unit and an adjacent Unit, except as provided by this Declaration.

(d) Except as expressly provided to the contrary in this Declaration, the Allocated Interest, the right to use Limited Common Elements and the Membership in the Association appurtenant to the Unit may not be partitioned or separated from the Unit or any part thereof.

(e) Notwithstanding anything to the contrary contained in Section 3.1(c) above, Section 3.1(d) above or elsewhere in this Declaration:

(i) nothing shall prevent or limit Declarant's exercise or enjoyment of any Special Declarant Right; and

(ii) an Owner may grant its rights to use any General Common Element or any Limited Common Element appurtenant to the Owner's Unit to the Owner's Guests.

3.2 Allocated Interests.

(a) The Allocated Interests shall be allocated among the Units as set forth in this Section 3.2. The Allocated Interest appurtenant to a Unit shall be expressed as a percentage and calculated in accordance with the following formula:

The square footage of an individual Unit as set forth on the Map divided by the total square footage of all Units.

(b) The Allocated Interests appurtenant to each of the initial two (2) Units of the Community are set forth on Exhibit "C" attached hereto and made a part hereof.

(c) If any Units are added to or withdrawn from the Community, the Allocated Interests shall be reallocated and the recalculation of the Allocated Interests shall be made in accordance with the formula set forth in Section 3.2(a) above. Specifically, Declarant reserves the right, pursuant to 16.3, to amend the Map and Exhibit "C" of this Declaration to reflect the reallocation.

(d) Except as expressly provided to the contrary elsewhere in this Declaration, an Allocated Interest may not be partitioned from the Unit to which it is appurtenant, and any purported conveyance, encumbrance or transfer of an Allocated Interest made without the Unit to which the Allocated Interest is appurtenant shall be void.

(e) Every Owner and the family members, Guests, tenants, and licensees of each Owner shall have a perpetual right and easement of access over, across, and upon the General Common Elements for the purpose of entering and exiting such Owners respective Unit and the public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:

(i) the covenants, conditions, restrictions, easements, reservations, rights-of-ways, and other provisions contained in this Declaration and the Map;

(ii) the right of the Association to adopt, from time to time, any and all Rules and Regulations concerning the Community as the Association may determine are necessary or prudent, subject to the terms of this Declaration.

Notwithstanding the foregoing, the Association shall take no action which unreasonably restricts any Owner or its family members, Guests, tenants and licensees right and easement of access over, across an upon the General Common Elements to its Unit.

3.3 Limited Common Elements. Except as expressly provided to the contrary in this Declaration, the allocation of the Limited Common Elements shown on the Map or by operation of the Act may not be altered without the consent of all Owners whose Units would be affected by such reallocation and then, only in accordance with the terms and conditions of the Act. Subject to the provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to the Owner's Unit.

3.4 Separate Taxation of Units. Pursuant to the Act, each Unit constitutes a separate parcel of real estate and will be separately assessed and taxed.

3.5 Description of Units. To convey, encumber or otherwise affect legal title to a Unit an instrument must describe the Unit as follows:

Unit _____, Elkstone, San Miguel County, Colorado, according to the Declaration of Covenants, Conditions and Restrictions for Elkstone, recorded under Reception No. ___ of the records of the Clerk and Recorder for San Miguel County, Colorado, and the Condominium Map recorded in Plat Book ___, at page _____, under Reception No. _____ of the records of the Clerk and Recorder for San Miguel County, Colorado.

ARTICLE IV - THE ASSOCIATION

4.1 Formation of the Association. On or before the date on which Declarant conveys the first Unit to a Purchaser, Declarant shall form the Association.

4.2 Purposes and Powers.

(a) The Association's purposes are:

(i) to manage, operate, insure, construct, improve, repair, replace, alter and maintain the Common Elements;

(ii) to provide certain facilities, services and other benefits to the Owners;

(iii) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby;

(iv) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto;

(v) to enter into agreements with other Persons, including, without limitation, easements, licenses, leases and other agreements with one or more condominium associations which contemplate the sharing of expenses among the Association and the other condominium associations for facilities and services that serve the Association and the other condominium associations;

(vi) to take any action that it deems necessary or appropriate to protect the interests and general welfare of Owners; and

(vii) to regulate and manage the Community.

(b) Unless expressly prohibited by law or any of the Association Documents, the Association may:

(i) take any and all actions that it deems necessary or advisable to fulfill its purposes;

(ii) exercise any powers conferred on it by the Act or any Association Document; and

(iii) exercise all powers that may be exercised in Colorado by nonprofit corporations.

(c) Without in any way limiting the generality of Section 4.2(b) above, the Association may, but is not obligated to:

(i) provide certain facilities and services to the Owners, such as contracting for trash collection and disposal for all Units, snow plowing and removal for those portions of the Limited Common Elements that the Association may designate from time to time in its sole discretion, including without limitation individual driveways for the Units;

(ii) acquire, sell, lease and grant easements over, across and through Common Elements;

(iii) borrow monies and grant security interests in the Common Elements and in the assets of the Association as collateral therefor;

(iv) hire and terminate managing agents and other employees, agents and independent contractors.

(d) Without in any way limiting the generality of Section 4.2(b) above, the Association shall be obligated to:

(i) provide utility lines across the Common Elements for providing water, sewer, gas, electric, cable television, telephone and other utility services to each Unit and the Common Elements,

(ii) provide or arrange for the snow plowing and removal for the General Common Elements and roadways; and

(iii) make capital improvements, repairs and replacements to Common Elements; and

4.3 Association Documents.

(a) This Declaration creates the Community and sets forth certain covenants, conditions, restrictions, reservations, easements, Assessments, charges and liens applicable to the Property. The Articles create the Association. The Bylaws provide for the regulation and management of the Association, and the Rules and Regulations provide for the regulation and management of the Community.

(b) If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

4.4 Books and Records. Upon request, the Association shall allow Owners and Mortgagees and their respective agents to inspect current copies of the Association Documents and the books, records, budgets and financial statements of the Association during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials.

**ARTICLE V
MEMBERSHIP AND VOTING**

5.1 Membership.

(a) There shall be one Membership appurtenant to each Unit. The Membership appurtenant to a Unit shall be held by the Owners of that Unit and may not be separated from the Unit to which it is appurtenant. A Membership may be transferred or encumbered only in connection with the conveyance or encumbrance of a fee simple interest in the Unit to which the Membership is appurtenant. Any transfer or encumbrance of a Membership other than as permitted in this Section 5.1 shall be void and have no force or effect.

(b) Notwithstanding anything to the contrary in Section 5.1(a) above, an Owner may assign its voting rights to any Person by duly executed proxies timely delivered to the Association.

5.2 Voting.

(a) The total number of votes allocated to all Memberships shall be equal to the total number of Units in the Community and there shall be one vote for each Membership appurtenant to each Unit.

(b) If any Units are added to or withdrawn from the Community, the total number of votes shall increase or decrease proportionate to the number of Units added or withdrawn.

(c) Each Membership shall be entitled to the number of votes allocated to it in accordance with Sections 5.2(a) and (b) above, regardless of the number of Owners of the Unit to which the Membership is appurtenant. Fractional voting shall not be allowed. If the Owners of a Unit cannot agree among themselves as to how to cast their votes on a particular matter, they shall lose their right to vote on such matter. If any Owner casts a vote representing a Membership appurtenant to a particular Unit, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners with whom such Owner shares the Membership, unless objection thereto is made by an Owner of that Unit to the Person presiding over the meeting at the time the vote is cast. If more than the number of allocated votes are cast for any particular Membership, none of such votes shall be counted, and all of such votes shall be deemed null and void.

(d) Where a vote by only the Owners of Units is called for as set forth herein, only those votes attributable to such Owners of Units eligible to vote on the particular issue will be counted in determining whether the vote will constitute an act of the members of the Owners of Units.

(e) Notwithstanding any provision in this Declaration or in the Bylaws of the Association, no term pertaining to voting requirements in this Declaration or in the Bylaws shall be construed so as to violate the Act.

(f) The Association shall have no voting rights for any Membership appurtenant to any Unit owned by the Association.

ARTICLE VI - EXECUTIVE BOARD

6.1 Number and Election of Directors.

(a) The Executive Board shall initially consist of three (3) Directors who shall be appointed by the Declarant. The number of Directors may be increased in accordance with the provisions of the Articles and Bylaws.

(b) Subject to the terms and conditions of Sections 6.3 and 6.4 below, the Directors shall hold office until the election or appointment of their successors.

(c) In any election of Directors to the Executive Board, cumulative voting shall not be allowed.

6.2 Powers of the Executive Board.

(a) Except as provided in this Declaration, the Articles and the Bylaws, the Executive Board may act on behalf of the Association in all instances.

(b) The Executive Board may not act on behalf of the Association to:

- (i) amend this Declaration;
- (ii) terminate the Association, this Declaration or the Community; or
- (iii) determine the qualifications, powers and duties, or terms of office, of Directors.

(c) All members of the Executive Board shall be entitled to participate in Association affairs which affect the Community in its entirety and the General Common Elements.

6.3 Declarant Control Period.

(a) Subject to the terms and conditions of Sections 6.3(b) and (c) below, but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Directors and Officers during the Declarant Control Period. The phrase "Declarant Control Period" means the period commencing on the date on which Declarant forms the Association and ending on the earliest to occur of:

- (i) the date that is sixty (60) days after conveyance to Purchasers of seventy-five percent (75%) of the maximum number of Units that may be created by Declarant under this Declaration; or
- (ii) the date that is two (2) years after the last conveyance of a Unit by Declarant or a Successor Declarant in the ordinary course of business.

(b) Declarant may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Executive Board, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

(c) Notwithstanding anything to the contrary contained in Section 6.3(a) above, not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units that may be created under this Declaration to Purchasers, at least twenty-five percent (25%) of the Directors shall be elected by Owners other than Declarant, and not later than sixty (60) days after the conveyance of fifty percent (50%) of the Units that may be created under this

Declaration to Purchasers, at least thirty-three and one third percent (33 1/3%) of the Members of the Executive Board must be elected by Owners other than Declarant. Upon the expiration of the Declarant Control Period, the Unit Owners shall elect at least three (3) members of the Executive Board, at least a majority of whom must be Unit Owners other than Declarant.

(d) During the thirty (30) day period immediately preceding the date on which the Declarant Control Period expires, the Owners shall elect an Executive Board of Directors, at least a Majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant. Such Directors shall take office upon election.

6.4 Removal of Directors. Notwithstanding any provision of this Declaration or any other Association Document to the contrary, the Owners by a sixty-seven percent (67%) vote of all Owners represented and entitled to vote at any meeting at which a quorum is present, may remove any Director, with or without cause, other than a Director appointed by Declarant during the Declarant Control Period.

ARTICLE VII ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

7.1 Obligations for Assessments.

(a) Each Owner, by accepting a deed to a Unit shall be deemed to have covenanted and agreed, to pay to the Association all:

- (i) General Assessments;
- (ii) Special Assessments;
- (iii) Default Assessments; and
- (iv) other charges, that the Association is required or permitted to levy or impose on such Owner or such Owner's Unit pursuant to this Declaration or any other Association Document.

(b) No Owner shall be exempt from liability for any such Assessment or other charges by waiving the use or enjoyment of any Common Element or by abandoning a Unit against which such Assessments or other charges are made.

(c) Each Owner shall be personally liable for all Assessments and other charges levied on such Owner or such Owner's Unit during the period of such Owner's ownership of the Unit. If there is more than one Owner of a Unit, each Owner shall be jointly and severally liable with the other Owners of the Unit for all Assessments and other charges levied on the Unit or any Owner of the Unit.

(d) Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other amount, including all fees and disbursements to attorneys, accountants, appraisers, receivers and other professionals engaged by the Association in connection therewith, may be recovered by a suit for money judgment by the Association without foreclosing or waiving any Assessment Lien securing the same.

7.2 Share of Common Expenses.

(a) Except as otherwise set forth in this Declaration, the Association's Common Expenses shall be determined by the Executive Board and the Executive Board shall determine the percentage of Common Expenses relating specifically to General Common Elements.

(b) The Share of Common Expenses allocated to a Unit shall be an amount equal to the Unit's Allocated Interest multiplied by the total amount of Common Expenses allocated by the Executive Board to the General Common Elements.

(c) The expenses for General Common Elements shall include, but not be limited to, expenses incurred as follows:

(i) Maintenance of the common areas outside of and between each Building;

(ii) Maintenance and repair of the walkways, including any lighting serving such walkways, outside of and between each Building;

(iii) Maintenance of all structural walls and all structural repairs to any Improvements; and

(iv) Maintenance of the landscaping of the common areas and walkways around and between each Building.

(d) The Common Expenses shall include those certain expenses incurred by the Association in connection with the Limited Common Elements, including, without limitation, expenses incurred as follows: snow removal for all front driveways, or other portions of the Limited Common Elements designated by the Executive Board.

(e) Until the Association levies an Assessment, the Declarant shall pay all Common Expenses.

7.3 Budgets.

(a) Prior to the first levy of a General Assessment, and thereafter on or before October 1 of each calendar year, the Executive Board shall adopt a proposed annual budget for the Association for the following calendar year that sets forth:

(i) the Executive Board's estimates of Common Expenses for the next calendar year;

(ii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through General Assessments; and

(iii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Special Assessments.

(b) Within thirty (30) days after adopting a proposed annual budget, the Executive Board shall mail a summary of the proposed annual budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed annual budget. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the mailing of the summary of the proposed annual budget to the Owners. Unless at that meeting sixty-seven percent (67%) of the votes allocated to all Memberships, whether or not a quorum is present, rejects the proposed annual budget, the proposed annual budget shall be deemed ratified. If the proposed annual budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent annual budget proposed by the Executive Board.

(c) If the Executive Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under Section 7.3(b) above, the Executive Board may adopt a proposed amendment to the annual budget, mail a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the mailing of the summary of the proposed amendment. Unless at that meeting sixty-seven percent (67%) of the votes allocated to all Memberships, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

7.4 General Assessments.

(a) After the Owners ratify an annual budget pursuant to Section 7.3(b) above, the Association shall levy an Assessment for Common Expenses ("General Assessment") on each Unit. The amount of the General Assessment levied against a Unit shall be equal to the amount set forth in the annual budget ratified by the Owners as the amount of Common Expenses to be raised by General Assessments, multiplied by that Unit's Allocated Interest.

(b) The Owners shall pay the General Assessments levied against their respective Units in such periodic installments as may be required by the Association.

(c) If the Owners ratify an amendment to the General Assessment portion of an annual budget pursuant to Section 7.3(b) above, the amount of the General Assessment levied against each Unit shall be adjusted accordingly, as shall the amount of each Owners periodic installments.

(d) If the Owners fail to ratify an annual budget for any calendar year prior to January 1 of that calendar year, the Owners shall continue to pay periodic installments of the General Assessment to the Association at the rate payable during the prior calendar year until such time as the Owners ratify a new annual budget for the then current calendar year. Once the Owners ratify a new annual budget, the Association shall levy against each Unit the General Assessment for the then current calendar year, and each Owners periodic installments shall be adjusted as necessary to pay the new General Assessment in equal periodic installments over the remainder of such calendar year, giving the Owners credit, in such manner as the Executive Board deems necessary or appropriate, for any installments that the Owners have previously paid to the Association during such calendar year.

(e) The failure of the Association to levy a General Assessment for any calendar year shall not be deemed a waiver, modification or release of an Owners liability for the Share of the Common Expenses allocated to such Owner's Unit.

7.5 Special Assessments.

(a) The Assessments that the Association may levy pursuant to this Section 7.5 are referred to in this Declaration as "Special Assessments."

(b) Notwithstanding anything to the contrary contained in Section 7.4 above, if any Common Expense is attributable to the operation, maintenance, repair, replacement, alteration or improvement of a Limited Common Element, the Association may levy an Assessment for such Common Expense against the Units to which that Limited Common Element is assigned, equally, in proportion to those Units for which the expense is incurred, or in any other equitable proportion as the Association reasonably deems appropriate.

(c) Each Special Assessment levied against any Unit shall be shown on an annual budget, or an amendment to an annual budget, ratified by the Owners pursuant to Section 7.3 above and shall be paid as and when required by the Association.

7.6 Default Assessments.

(a) Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by:

(i) the negligence or misconduct of an Owner or an Owner's Guest;
or

(ii) a violation of any covenant or condition of an Association Document by an Owner or an Owner's Guest, the Association may levy an Assessment for such Common Expense against such Owner's Unit. Any such Assessment levied by the Association and each fine, penalty, fee or other charge imposed upon an Owner for the Owner's violation of any covenant or condition of any Association Document are each referred to herein as a "Default Assessment."

(b) Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget, ratified by the Owners pursuant to Section 7.3 above.

(c) With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner of the Unit against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard. Owners of Units against which Default Assessments have been levied shall pay such Default Assessments as and when required by the Association.

7.7 Assignment of Assessments.

(a) The Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise.

7.8 Assessment Lien.

(a) The Association shall have a lien on each Unit for any Assessment levied against that Unit and for any fines, late charges, penalties, interest and attorneys' fees, disbursements and costs of collection imposed against the Owner of such Unit under any Association Document (the "Assessment Lien"). The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien shall secure each installment from the time it becomes due, including the date set by any valid Association acceleration of installment obligations.

(b) An Assessment Lien is prior to all other liens and encumbrances on a Unit, except:

(i) liens and encumbrances recorded prior to the recordation of this Declaration;

(ii) liens for real estate taxes and other governmental assessments or charges against the Unit; and

(iii) a First Mortgage which was recorded before the date on which the Assessment sought to be enforced became delinquent, except as provided in (c) below.

(c) Notwithstanding the terms and conditions of Subsection 7.8(b)(iii) above, an Assessment Lien is prior to a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent to the extent permitted by the Act.

(d) The recording of this Declaration constitutes record notice and perfection of an Assessment Lien on each Unit. No further recordation of any claim of any Assessment Lien is required.

(e) An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within six (6) years after the full amount of the Assessment secured thereby becomes due.

(f) This Section 7.8 does not prohibit actions or suits to recover sums secured by an Assessment Lien or the Association from taking a deed-in-lieu of foreclosure.

(g) In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be owed by the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Assessments.

(h) An Assessment Lien may be foreclosed in like manner as a mortgage on real estate. Periodic Assessments shall be payable during the period of foreclosure of an Assessment Lien.

7.9 Waiver of Homestead Exemptions. By acceptance of the deed or other instrument of conveyance of a Unit, an Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended, as the same may apply to the Assessment Lien.

7.10 Estoppel Certificates: Notices to Mortgagees.

(a) The Association shall furnish to an Owner or such Owner's designee or to a Mortgagee or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association the Executive Board and every Owner. If no statement is furnished to the Owner, the Mortgagee 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 the priority of its Assessment Lien upon the Unit for unpaid Assessments which were due as of the date of the request.

(b) If a First Mortgagee delivers to the Association a written request for notice of unpaid Assessments levied against a Unit subject to a First Mortgage held by that First Mortgagee, the Association shall report to the First Mortgagee any unpaid Assessments levied against such Unit that remain unpaid for more than sixty days (60) after the same shall have become due. The First Mortgagee may pay any such unpaid Assessment, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such First Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as a lien of the First Mortgage held by such First Mortgagee.

7.11 Reserve Fund.

(a) The Association shall have the right to maintain a reserve fund for Common Expenses. The reserve fund will be funded as set forth herein. At the closing of the sale of a Unit by Declarant to a Purchaser, the Purchaser shall pay to the Association an amount equal to the Association's estimate of two (2) months of Common Expenses applicable to the Unit for the fiscal year in which the sale of the Unit occurs. Thereafter, the Association may increase the reserve fund or replace funds withdrawn from the reserve fund with funds collected through Assessments.

(b) Payments by Purchasers to the Association at closings under Section 7.11(a) above shall not be credited against, or relieve Purchasers from their obligation to pay other Assessments levied against Units by the Association.

(c) Upon the sale of a Unit from one Owner to another, the Association shall not be obligated to return to the transferor any funds held in reserve, but the transferor shall be entitled to an appropriate credit from its transferee.

ARTICLE VIII UTILITY AND OTHER SERVICES

8.1 Utility Services.

(a) The Association shall be responsible for obtaining water, sewer, gas, electric, telephone, and other similar utility services for all portions of the Common Elements and for providing utility lines and capacity for the same to each Unit. The Owner of a Unit shall be responsible for paying for the charges imposed by the provider of any water, sewer, gas, electric, telephone, cable television, and other similar utility services for the Unit thereto and shall pay all costs, expenses, fees, rates, deposits, and other charges incurred in connection therewith, including, without limitation, any connection fees, directly to the company providing the same.

(b) The Association shall allocate all utility service expenses for all Common Elements among all Units and charge the Owners of the Units in accordance with their Shares of Common Expenses.

8.2 Trash Removal.

(a) Each Owner shall obtain and maintain, at their own cost, trash storage bins, the style and type of which may be designated by the Association. Each Owner shall be responsible to comply with the Rules and Regulations of the Association regarding the storage and placement of trash bins.

(b) The Association shall be responsible for obtaining trash removal services for all portions of the Community.

(c) Expenses incurred by the Association for trash removal services shall be allocated amongst the Units as a Common Expense.

8.3 Other Utilities. If the Association incurs Common Expenses for any utility service not described above, or if the manner of providing or metering any utility service described above changes from the manner in which such service is provided or metered as of the date of this Declaration, the Association may allocate the Common Expenses incurred for such new utility service or changed utility service in any reasonable and equitable manner, unless at a meeting of Members, sixty-seven percent (67%) of the votes allocated to all Memberships, whether or not a quorum is present, rejects the proposed allocation.

ARTICLE IX
MAINTENANCE OF COMMON ELEMENTS AND UNITS

9.1 Maintenance of Common Elements. Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain the Common Elements and the other Association Improvements or property in good order and condition and shall otherwise manage and operate the Common Elements consistent with this Declaration and the Rules and Regulations as the Association deems necessary or appropriate. In addition, the Association shall ensure that all interior Common Elements (if any) are sufficiently heated to prevent the freezing of water and sewer lines serving the Community. In this regard, the Association may:

(a) construct, modify, add to, repair, replace or renovate any improvements that are located on or constitute a part of any Common Element;

(b) plant and replace or remove trees, shrubs and other vegetation on any Common Element;

(c) place, maintain and replace signs upon any Common Element;

(d) adopt and enforce Rules and Regulations regulating the use of Common Elements; and

(e) take any other actions as the Association deems necessary or advisable to protect, maintain, operate, manage or regulate the use of the Common Elements.

9.2 Maintenance of Units. Each Owner, at such Owners sole cost and expense, shall maintain in good order and repair the interior of its Unit, including the fixtures and utilities located in the Unit and the fixtures, equipment and spas, if any, located on any Limited Common Element appurtenant to the Unit. All fixtures, equipment and utilities installed and included in a Unit serving only that Unit, commencing at a point where the fixtures, equipment and utilities enter the individual Unit, shall be maintained and kept in repair by the Owner of that Unit. An Owner shall also maintain and keep in repair all windows and other glass items related to such Owner's Unit and any entry, door or doors serving such Unit. An Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of any Building. Each Owner, at such Owner's sole cost and expense, shall maintain in good order and repair the Limited Common Elements assigned solely to its Unit, other than those Limited Common Elements which the Association chooses to maintain for reasons of uniformity or structural integrity. Without limiting the generality of the preceding sentence, the Association may maintain all exterior driveways, spas, patios, roofs, decks, skylights and other such exterior portions of the Building, even if such portions are Limited Common Elements appurtenant to a single Unit, and all costs incurred by the Association in that regard shall be charged to the Owner of the Unit as a Special Assessments in accordance with Section 7.5 above. The Association shall not be responsible for snow removal from any driveways, sidewalks, patios or decks designated as Limited Common Elements; provided, however, that the Association may elect to undertake snow removal, subject to its Rules and Regulations for those portions of the Limited Common Elements designated by the Executive Board in its sole and absolute discretion (and the Association may revoke the election). Each Owner shall ensure that its Unit is sufficiently heated to prevent the freezing of water and sewer lines serving the Building in which the Unit is located and if any damages are incurred as a result of the failure of Owner to do so, then the Association may assess the costs of repair against such Owner as a Special Assessment.

9.3 Owner's Failure to Maintain or Repair. In the event that portions of a Unit or any of the Limited Common Elements appurtenant to the Unit are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained improvement lies with the Owner of the Unit, or in the event that such improvements or any Common Elements are damaged or destroyed by an event of casualty, and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after written notice to the Owner and the expiration of a thirty (30) day cure period, and with the approval of the Executive Board, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and other improvements to a condition of good order and repair; provided, however, if such repair and reconstruction due to an event of casualty cannot be reasonably performed within such thirty (30) day cure period, the

Owner shall have such time as reasonably required to perform such repair and reconstruction so long as the work has been commenced within such cure period and is continuously and diligently pursued to completion. All costs incurred by the Association in connection with the restoration of the Unit and/or Common Element shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with Article VII of this Declaration.

9.4 Mechanic's Liens and Indemnification. No labor performed or materials furnished and incorporated into a Unit with the consent or at the request of an Owner or an agent, contractor or subcontractor of an Owner shall be the basis either for filing a lien against the Unit of any other Owner not expressly requesting or consenting to the same in writing, or against the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and any Mortgagee from and against all liability arising from any claim or lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or supplies incorporated in the Owner's Unit at the Owner's request.

9.5 Limited Warranty.

(a) Declarant hereby warrants to the Association that the Improvements and landscaping made or to be made in the General Common Elements by Declarant will be free from defect in workmanship or material for a period beginning with the completion of such improvement and ending one (1) year after substantial completion of construction or installation of the particular improvement. For purposes of the warranty, each tree or shrub installed by Declarant is a separate improvement. Declarant's warranty with respect to landscaping shall not apply in cases of failure by the Association to properly irrigate or otherwise maintain such landscaping, but shall be applicable only to defective landscaping materials installed by Declarant. The warranty made to the Association in this Section 9.5 is the only warranty, express or implied, made by Declarant to the Association or to Owners with respect to such improvements. EXCEPT FOR SUCH WARRANTY, ANY AND ALL WARRANTIES WITH RESPECT TO SUCH IMPROVEMENTS, EXPRESS OR IMPLIED, WHETHER ARISING UNDER FEDERAL OR STATE LAW, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY SPECIFICALLY DISCLAIMED. The provisions of this Section 9.5 shall not limit any warranties made by third parties not affiliated with Declarant, such as nurserymen supplying landscaping materials.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS DECLARATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT DECLARANT'S LIABILITY, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE, IS LIMITED TO THE REMEDY PROVIDED IN DECLARANT'S WARRANTY ABOVE. UNDER NO CIRCUMSTANCES SHALL DECLARANT BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES BASED ON A CLAIMED DIMINUTION IN THE VALUE OF THE UNIT, EVEN IF DECLARANT HAS

BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE WARRANTY ABOVE MAY BE BROUGHT BY AN OWNER MORE THAN ONE YEAR AFTER SUBSTANTIAL COMPLETION OF CONSTRUCTION OR INSTALLATION OF THE PARTICULAR IMPROVEMENT, REGARDLESS OF WHEN THE CAUSE OF ACTION HAS ACCRUED OR IS DISCOVERED. ANY SUCH CLAIMS BY AN OWNER MAY ONLY BE BROUGHT AGAINST DECLARANT

(d) NO MEDIATION OR LITIGATION ARISING OUT OF OR RELATING TO ANY CLAIM THAT THE ASSOCIATION MAY ASSERT AGAINST DECLARANT WITH RESPECT TO THE WARRANTY ABOVE SHALL INCLUDE, BY CONSOLIDATION OR JOINDER OR CLASS CERTIFICATION OR IN ANY OTHER MANNER (INCLUDING WITHOUT LIMITATION, INCLUSION AS AN ORIGINAL OR ADDITIONAL THIRD PARTY TO ANY ARBITRATION OR LITIGATION), ANY PERSON OR ENTITY OTHER THAN THE ASSOCIATION ITSELF. DECLARANT HAS THE RIGHT TO SPECIFICALLY ENFORCE THIS SECTION.

ARTICLE X ARCHITECTURAL REVIEW

10.1 Physical or Cosmetic Alteration or Modification. No Owner may make any physical or cosmetic alteration or modification to the structural portions of their Unit or to the building systems contained within or associated with their Unit or construct any improvement or structure within their Unit and may not alter the exterior portion or change the exterior appearance of their Unit or any Common Element without the prior written approval of the Executive Board.

10.2 Monitoring of a Project. The Executive Board or its designated representative may monitor any approved project to the extent required to ensure that the construction or work on such project complies with any and all approved plans and construction procedures. The Executive Board or its designated representatives may enter any Unit at any reasonable time or times to inspect the progress, work status or completion of any project. In addition to the remedies described in Section 10.4 below, the Executive Board may withdraw approval of any project and require all activity at such project to be stopped, if deviations from the approved plan or approved construction practices are not corrected or reconciled within twenty-four (24) hours after written notification to the Owner specifying such deviations.

10.3 Completion and Payment Surety Bond. The Executive Board may, as a condition to any consent or approval, require an Owner to enter into a written agreement with the Association containing such covenants, conditions and restrictions as the Executive Board deems necessary or appropriate, including a requirement for a completion and payment surety bond for the benefit of the Association and/or penalties for failure to comply.

10.4 Enforcement of Restrictions.

(a) If an Owner violates any term or condition set forth in this Article X, the Rules and Regulations, and procedures of the Association, or any conditions set forth in the Executive Board's approval, the Executive Board shall have the following rights and remedies:

(i) The Executive Board may, by written notice to the Owner, revoke any approval previously granted to the Owner by the Executive Board, in which event the Owner shall, upon receipt of such notice, immediately cease any construction, alteration or landscaping covered by the approval so revoked.

(ii) The Executive Board or its designated representative may, but is not obligated to, enter upon the Owner's Unit and cure such violation on behalf of the Association at the Owner's sole cost and expense. If the Association cures any such violation, the Owner shall pay to the Association the amount of all costs and expenses incurred by the Association in connection therewith within thirty (30) days after the Owner receives an Assessment thereof from the Association.

(iii) The Association acting through the Executive Board may sue the Owner to enjoin such violation.

(iv) The Association acting through the Executive Board shall have all other rights and remedies available to it under this Declaration, at law or in equity. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

10.5 Fees. The Executive Board may establish reasonable processing and review fees for considering any requests for approvals submitted to it, which fees shall be paid at the time the request for approval is submitted. All of such fees shall be set annually and disclosed in the annual budget of the Association.

10.6 Lapse of Approval. Any approval issued by the Executive Board shall lapse and become void in accordance with the terms and conditions of any consents, approvals or permits issued by the Executive Board. In addition, an approval issued by the Executive Board for a project will lapse and become void if any building permit or approval issued by a governmental or quasi-governmental entity for the same project lapses or is revoked or suspended.

10.7 Liability. NEITHER DECLARANT, THE EXECUTIVE BOARD NOR THE ASSOCIATION NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS SHALL BE RESPONSIBLE OR LIABLE FOR (I) ANY DEFECTS, ERRORS OR OMISSIONS IN ANY PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED UNDER THIS ARTICLE X, (II) ANY DEFECTS, ERRORS OR OMISSIONS IN CONSTRUCTION PURSUANT TO SUCH PLANS AND SPECIFICATIONS, (III) ANY MISTAKE IN JUDGMENT, NEGLIGENCE, OR

NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE ANY SUCH PLANS OR SPECIFICATIONS, OR (IV) THE FAILURE TO ENFORCE THE COVENANTS AND RESTRICTIONS CONTAINED IN THE DECLARATION. A consent or approval issued by the Executive Board means only that the Executive Board believes that the construction, alteration, installation or other work for which the consent or approval was requested complies with the rules and procedures adopted by the Association. No such consent or approval shall be interpreted to mean that the construction, alteration, installation or other work covered thereby (a) complies with laws; rules, regulations, ordinances or other requirements of any governmental or quasi-governmental authority, (b) is free from defects, errors or omissions or (c) lies within the boundaries of the Unit. No consent, approval or permit issued by the Executive Board shall relieve Owners or other Persons of their obligations to comply with laws, rules, regulations, ordinances and other requirements of governmental or quasi-governmental authorities.

10.8 Declarant Exemption. Notwithstanding any provision to the contrary contained in this Article X, the Declarant shall be exempt from the limitations and prohibitions contained in this Article X.

ARTICLE XI COVENANTS, CONDITIONS AND RESTRICTIONS

11.1 Applicability of Covenants, Conditions and Restrictions. Except as otherwise provided in this Declaration, the covenants, conditions and restrictions set forth in this Article XI shall apply to all Units and Common Elements.

11.2 Association Documents. Each Owner shall comply with, and shall require its Guests to comply with, all provisions of the Association Documents that apply to such Owner or such Owner's Unit.

11.3 Mountain Village Documents. Each Owner shall comply with, and shall require each of its Guests to comply with, all covenants, easements and restrictions affecting the Property, including, without limitation, the Mountain Village Documents.

11.4 Notice of Conveyance, Assignment or Encumbrance.

(a) Promptly after a conveyance of a fee simply interest in a Unit or portion thereof, the grantee shall furnish a copy of the conveyance deed to the Association.

(b) Promptly after an encumbrance of a fee simply interest in a Unit or portion thereof, the Owner shall furnish the Association with a copy of the Mortgage creating the encumbrance.

11.5 Use of Units.

(a) Except as otherwise expressly permitted by this Declaration, an Owner of a Unit may use such Unit only as a permanent or vacation residence for itself and its Guests. No Owner shall lease its Unit for less than four (4) consecutive days. No Owner of a Unit shall conduct any business, profession, occupation or trade from its Unit, including, without limitation, the operation of a so-called "corporate suite," "short term suite," "bed and breakfast" or "chalet."

(b) Notwithstanding the restrictions set forth in Section 11.5(a) above:

(i) an Owner may use its Unit as its private office on the condition that such private office and the conduct of Owner's business therein does not generate additional traffic to the Unit;

(ii) the Association and, during the Declarant Control Period, Declarant may use up to one (1) Units owned or leased by the Declarant as a management office and/or model home.

11.6 Use of Common Elements. All Owners and their Guests may use the General Common Elements and the Limited Common Elements designed to serve their Units for the purposes for which such Common Elements are intended. Notwithstanding the preceding sentence, neither an Owner nor a Guest may use any Common Element in any manner that unreasonably interferes with the rights of other Owners in and to the Common Elements. Without limiting the generality of the foregoing, no Owner shall cause, or permit its Guests to cause waste to any Common Element. The Owners' rights to use the Common Elements are subordinate and subject to all of the rights and powers of the Association with respect to the Common Elements, including, without limitation, the Association's right and power to adopt rules regulating the use of the Common Elements.

11.7 Alterations.

(a) Except as otherwise expressly provided in this Declaration, an Owner of a Unit may not make any improvement or alteration to a Common Element or any improvement or alteration to its Unit that affects any Common Element or any other Unit, without the prior written consent of the Association in addition to the requirements under the Act.

(b) Except as permitted with respect to Special Declarant Rights, no new Improvement shall be constructed on the Property, and no construction, alterations, installations or other work to or affecting the exterior surface of any existing Improvement shall be made, except as required or approved by the Association or by the Town of Mountain Village and in strict accordance with the terms and conditions of the Mountain Village Documents.

(c) Without limiting the generality of Sections 11.7(a) and (b) above, an Owner of a Unit may not, without the prior written consent of the Association, install or erect any Improvement, mechanical system or fixture that either:

(i) protrudes beyond the boundaries of the Owner's Unit; or

(ii) is located wholly outside the Owner's Unit (even if located within a Limited Common Element that is assigned solely to the Owner's Unit, such as the addition of a satellite dish in the designated location).

(e) The Association shall perform or make, or cause to be performed or made, any Improvement, construction, alteration, installation or other work on, to or affecting the exterior of any Improvement on the Property which the Town of Mountain Village and/or the Resort Company lawfully requires, in writing, be performed or made.

11.8 Nuisances, Hazardous Activities and Unsightliness.

(a) No Person shall conduct any activity on the Property which creates a nuisance.

(b) No Person shall conduct any activity on the Property which is or might be hazardous to any Person or property.

(c) No unsightliness shall be permitted at the Property.

(d) Normal construction activities, during the days and hours approved by the Town of Mountain Village for construction activity, and the construction activities of Declarant during the Declarant Control Period, shall not be considered to violate the terms and conditions of this Section 11.8. By accepting a deed to a Unit, an Owner acknowledges that the Community is a part of Town of Mountain Village and is in close proximity to The Telluride Ski Resort, and that noises, lights and odors common to commercial activities, as well as construction activities may exist on or near the Property, at any time and from time to time.

(e) The operations of The Telluride Ski Resort may generate an unpredictable amount of visible, audible and odorous disturbances from activities relating to the construction, operation, use and maintenance thereof. The activities associated with The Telluride Ski Resort include, without limitation: (i) vehicular and residential traffic, including, without limitation, (A) buses which transport skiers and other passengers around the Town of Mountain Village and between the base of The Telluride Ski Resort and the parking lots, (B) buses, vans, snowcats, snowmobiles and other vehicles which transport residents and guests within the Town of Mountain Village over, around and through The Telluride Ski Resort, and (C) construction and maintenance vehicles and equipment; (ii) activities relating to the construction, operation and maintenance of ski trails, skyways and skier bridges and tunnels relating to The Telluride Ski Resort, including, without limitation, (A) tree cutting and clearing, grading and earth moving, and other construction activities, (B) construction, operation and maintenance of access roads,

snowmaking equipment and chair lifts, gondolas and other skier transportation systems, and (C) operation of snow grooming vehicles and equipment and safety and supervision vehicles; and (iii) activities relating to the use of The Telluride Ski Resort, including, without limitation, skiing, snowboarding, hiking, horseback riding, bicycling and other recreational activities and organized events and competitions relating to such activities. None of these activities shall be deemed to be a violation of this Section 11.8, and each Owner specifically accepts the disturbances occurring in relation to the activities above and hereby waives and holds Declarant and the Association, harmless from and against any and all claims or damages of Owner or the guests or invitees of such Owner in any way arising out of or relating to the activities described above.

11.9 Signs.

(a) No signs whatsoever shall be erected or maintained on the Property, except signs required by legal proceedings and such other signs as may be permitted or approved by the Town of Mountain Village and the Executive Board.

(b) Without limiting the generality of Section 11.9(a) above, no "For Sale" or "For Rent" signs shall be displayed on the exterior or interior of a Unit or anywhere on the Property.

11.10 Compliance with Laws. Nothing shall be done or kept at the Property in violation of any law, ordinance, rule, regulation or other requirement of any governmental or quasi-governmental authority.

11.11 Compliance with Insurance. Except as may be approved in writing by the Association, nothing shall be done or kept at the Property that may result in the cancellation of any insurance maintained by the Association or may result in an increase in the rates of any such insurance.

11.12 Subdivision, Rezoning and Timesharing.

(a) Except as provided in Section 16.3, no Unit may be subdivided, unless the subdivision has been approved by one hundred percent (100%) of the votes of the Unit Owners.

(b) Except with respect to the exercise of Special Declarant's Rights, no application for rezoning any portion of the Property, and no applications for variances or use permits, shall be filed by any Owner with any government or quasi-governmental authority, unless the proposed rezoning has been approved by one hundred percent (100%) of the votes of the Unit Owners and the uses that would be permitted under the rezoning comply with this Declaration and the other Association Documents.

(c) No Owner shall offer or sell any interest in any Unit under a "timesharing" or "interval ownership" plan or similar plan.

(d) The covenants, conditions and restrictions set forth in sections 11.12(a) through (c) above shall not apply to Declarant's development of the Property or to Declarant's exercise of any Special Declarant Right.

11.13 Vehicles and Parking.

(a) No motor vehicle classed by manufacturer rating as exceeding three-quarter ton, and no mobile home, trailer, snowmobile, motorcycle, bicycle, detached camper or camper shell, boat or other similar equipment or vehicle may be kept or parked at the Property unless it is stored and fully enclosed inside the Unit's garage.

(b) No motor vehicle shall be constructed, repaired, or serviced at the Property.

(c) Each Owner of a Unit may use the driveway of the Unit as a parking space during any period in which the Owner or one or more of its Guests are staying in the Owner's Unit. No Owner of a Unit or its Guest shall allow a vehicle to be parked in the driveway for such Unit for more than fourteen (14) consecutive days. At no time may an Owner of a Unit or its Guests use the driveway for parking when they are not staying in the Unit.

(d) PURSUANT TO THIS DECLARATION, DECLARANT HAS THE RIGHT TO EXPAND THE COMMUNITY CONSTRUCTING ADDITIONAL BUILDINGS AND CREATING ADDITIONAL UNITS AND COMMON ELEMENTS. BY ACCEPTING TITLE TO A UNIT, THE OWNER THEREOF ACKNOWLEDGES AND RECOGNIZES THAT THERE MAY BE CERTAIN INCONVENIENCES, NOISE AND DISRUPTION AS A RESULT OF SUCH CONSTRUCTION AND EXPANSION ACTIVITIES, INCLUDING, WITHOUT LIMITATION, TEMPORARY DISRUPTION OF VEHICULAR ACCESS AND PARKING UNTIL CONSTRUCTION OF THE ENTIRE EXPANDED COMMUNITY IS COMPLETED, AND WAIVES ALL CLAIMS WITH RESPECT THERETO OR IN ANY WAY ARISING THEREFROM.

11.14 Deliveries, Trash Removal and Other Services. Owners shall not and shall not permit their Guests to litter. No burning of trash, garbage or other waste materials will be permitted at the Property.

11.15 Exterior Storage. No Owner shall store any materials or items (such as skiing equipment or bicycles) on or in any Common Element, including without limitation exterior decks, other than those Common Elements designed specifically for storage, and then only in strict accordance with the terms and conditions of the Association Documents.

11.16 Animals. No animals of any kind shall be raised, bred or kept on the Property or within any Unit, except that an Owner may have household pets (i.e. dogs, cats, birds), provided that each Owner's right to have household pets shall be subject to the Rules and Regulations adopted by the Executive Board and, if the Owner violates the Rules and Regulations, such right shall be subject to revocation by the Executive Board.

11.17 Solid-Fuel Burning Devices. No solid-fuel burning devices shall, be used, kept or stored on the Property. No gas fireplaces shall be converted to solid-fuel burning devices.

11.18 Satellite Dishes. No satellite dish may be installed on the exterior of any Unit or Improvement, without the prior written consent of the Association. The Association may, in its discretion, designate the location of such satellite dishes.

11.19 Declarant's Exemption. Nothing contained in this Declaration or in any other Association Document shall be construed to prevent:

(a) Declarant's exercise and enjoyment of any Special Declarant Right or any other rights of Declarant under this Declaration or any other Association Document; or

(b) the conduct by Declarant or its employees or agents of any activity, including, without limitation, the erection or maintenance of temporary structures, improvements or signs, necessary or convenient to the development, construction, marketing or sale of property within or adjacent to the Property.

ARTICLE XII EASEMENTS AND RESERVATIONS

12.1 Declarant's Easements Over Common Elements.

(a) Declarant hereby reserves for itself, its successors and assigns a general easement over, across, through and under the Common Elements to:

(i) discharge Declarant's obligations under this Declaration;

(ii) exercise any of Declarant's rights under this Declaration; and

(iii) construct additional Buildings and to make other improvements on the Expansion Area or Expansion Property any other portion of the Property or on any real estate owned by Declarant.

(b) Declarant hereby reserves for itself, its successors and assigns, the right to:

(i) establish from time to time utility and other easements, permits or licenses over, across, through and under the Common Elements; and

(ii) create other reservations, exceptions and exclusions for the best interest of the Association.

12.2 Utility Easements.

(a) Subject to the terms and conditions of this Declaration and all other Association Documents, Declarant hereby creates a general easement over, across, through and under the Property for ingress to, egress from, and installation, replacement, repair and maintenance of, all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity and cable communication that service the Property. The Association may, but is not obligated to, authorize the release of portions of the general easement created pursuant to this Section 12.2 upon the request of any Owner showing good cause therefor.

(b) Pursuant to this easement, a utility or service company may, with the Association's prior approval, install and maintain facilities and equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Improvements to provide service to the Units or the Common Elements. Notwithstanding anything to the contrary contained in this Section 12.2, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated on any portion of the Property, except in accordance with terms and conditions of Sections 11.7 and 11.18 above. Any utility or service company using this general easement shall use its best efforts to install, repair, replace and maintain its lines and systems without disturbing the uses of Owners, the Association, Declarant and other utility and service companies.

(c) If any utility or service company furnishing utilities or services to the Property as permitted under Section 12.2(a) above requests a specific easement by separate recordable document, the Association shall have the right and authority, but not the obligation, to grant such easement over, across, through and under any portion of the Property.

12.3 Association's Easement.

(a) The Association shall have a general easement over, across, through and under each Unit and each Common Element to:

(i) exercise any right held by the Association under this Declaration or any other Association Document; and

(ii) perform any obligation imposed upon the Association by this Declaration or any other Association Document.

(b) Notwithstanding the foregoing, the Association shall not enter any Unit without reasonable prior notice to the Owner thereof, except in cases of emergency.

12.4 Easements for Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, an easement shall exist for that encroachment, but such easement shall not relieve an Owner of liability in the case of willful misconduct.

12.5 Emergency Access Easement. Declarant hereby grants a general easement to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

12.6 Metro District Easement. Declarant hereby grants a general easement to any metropolitan district or other special district providing services or facilities to the Property, including without limitation the Mountain Village Metropolitan District, to enter upon the Property in the proper performance of their duties.

12.7 Recorded Easements and Licenses. The Property shall be subject to all easements and licenses as shown on any recorded plat affecting the Property and to any other easements or licenses of record or of use as of the date of recordation of this Declaration. The recording date for all presently recorded easements and licenses appurtenant to or included in the Community have been set forth on Exhibit "D" attached hereto. In addition, the Property is subject to all easements created or permitted by this Declaration.

**ARTICLE XIII
INSURANCE**

13.1 Insurance Required to be Obtained by the Association. The Association shall obtain and maintain all insurance required to be obtained and maintained by the Association under the Act and any additional insurance that the Executive Board deems necessary.

13.2 Casualty Insurance for Improvements.

(a) The Association shall obtain and maintain casualty insurance for all Improvements located on or forming a part of the Common Elements, including, without limitation, the structural and mechanical components serving the Units, in accordance with the requirements set forth in Section 13.1 above.

(b) Owner's shall be responsible for obtaining and maintaining any casualty insurance that they desire for any contents, fixtures, furnishings, spas and equipment owned by Owner and located in the Unit.

13.3 Adjustments. Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds for any such loss shall be paid in accordance with the terms and conditions of the Act.

ARTICLE XIV
CASUALTY

14.1 Casualty to Common Elements. The Association shall respond to any damage to, or the destruction of, any Common Elements in accordance with the terms and conditions of the Act.

14.2 Casualty to a Unit. To the extent that the Association is not obligated to make any such repairs or replacements, each Owner shall repair or replace any damage to or destruction to the interior of its Unit, as soon as is reasonably practical after such damage or destruction occurs.

ARTICLE XV
CONDEMNATION

15.1 Condemnation of All Units. If the entire Community is taken by condemnation or similar proceeding, the Community shall terminate as of the date of the taking, and any condemnation award payable in connection therewith shall be paid to the Association and then disbursed by the Association in accordance with the terms and conditions of the Act.

15.2 Condemnation of Fewer Than All Units. If one or more Units, but less than the entire Community, are taken by condemnation or similar proceeding:

- (a) any condemnation award payable in connection therewith shall be paid;
- (b) the Allocated Interest appurtenant to those Units shall be reallocated; and
- (c) the Shares of Common Expenses allocated to those Units shall be reallocated, in accordance with the terms and conditions of the Act.

15.3 Condemnation of Common Elements.

(a) If any Common Element is taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Association and used by the Association:

- (i) first, to repair any damage to Common Elements resulting from the condemnation or similar taking; and
- (ii) second, for any other Common Expenses.

(b) The Association shall not be required to pay all or any portion of the condemnation award received for the condemnation or similar taking of a Limited Common Element to the Owners of the Units served by such Limited Common Element, unless the Association deems it necessary or appropriate to do so.

**ARTICLE XVI
SPECIAL DECLARANT RIGHTS**

16.1 General. Declarant shall have, retain and reserve certain rights as hereinafter set forth in this Article and as otherwise set forth in this Declaration with respect to the Association, the Property, the Units, and the Common Elements. The rights and reservations set forth herein shall be deemed excepted and reserved, and each conveyance of Property by Declarant to the Association, whether or not specifically stated therein and each deed or other instrument by which any property within the Property is conveyed by Declarant. The rights, reservations and easements set forth herein shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other subsequent amendment. Any development right may be exercised with respect to different parcels of the Expansion Area, the Expansion Property or the balance of the Property at different times. No assurances are made regarding the fixing of the boundaries of those portions of the Property or regulating the order in which those portions may be subjected to the exercise of each development right. Declarant makes no assurances that Declarant will exercise the rights reserved by Declarant herein with respect to all or any portion of the Property or the Expansion Area or the Expansion Property and Declarant reserves the right to exercise such rights in such time frames and in a manner as Declarant deems fit in its sole and absolute discretion.

16.2 Improvements. Declarant hereby reserves for itself, its successors and assigns the right, but is not obligated, to construct:

- (a) Any Improvements shown on the Map; and
- (b) Any other buildings, structures or improvements that Declarant desires to construct on the Property, the Expansion Area, the Expansion Property or any other real property owned by Declarant, regardless of whether the same ever become part of the Community.

16.3 Development Rights.

- (a) Declarant hereby reserves for itself, its successors and assigns:
 - (i) the right to create up to the maximum number of Units allowed by the Town of Mountain Village on the Property and the right to amend the Map and this Declaration to add new Units as they are constructed on the Expansion Area, the Expansion Property or any other real property owned by the Declarant to the Community and specifically to amend Exhibit "C" of this Declaration to

reallocate the Allocated Interests, which reallocations shall be calculated in accordance with Section 3.2;

- (ii) the right to subdivide any Unit owned by Declarant;
- (iii) the right to combine any Units owned by Declarant;
- (iv) the right to convert any Unit owned by Declarant into Common Elements;
- (v) the right to withdraw all or any portion of the Expansion Area, the Expansion Property or other real property owned by the Declarant and located within the Community at any time prior to the conveyance of a Unit located in such portion of the Property to a third-party purchaser;
- (vi) those other rights reserved to Declarant under this Declaration and all other development rights and special declarant rights that may be reserved by a Declarant under the Act; and
- (vii) an easement through the Common Elements as may be reasonably necessary for the purpose of discharging any Special Declarant Rights.

(b) In exercising any development right reserved hereunder, Declarant shall execute and record an amendment to this Declaration in accordance with the requirements of the Act.

16.4 Sales Offices and Models. Declarant hereby reserves for itself, its successors and assigns the right to maintain and remove construction offices, sales offices, management offices and models within any Unit owned or leased by Declarant. Declarant also reserves for itself, its successors and assigns the right to construct and maintain signs advertising the Elkstone project and the Community on any and all Common Elements.

16.5 Merger. Declarant hereby reserves for itself and its successors and assigns the right to merge or consolidate the Community with any other common interest community.

16.6 Declarant's Rights to Complete. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to (a) complete the development of Elkstone; (b) construct or alter Improvements on any of the Expansion Area, the Expansion Property or other property owned by Declarant; (c) maintain model homes, temporary buildings or offices for construction or sales purposes, or similar facilities on any property owned by Declarant or owned by the Association; (d) post signs incidental to the development, construction, promotion, marketing or sales of Units within the Property. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to (a) excavate, cut, fill or grade any property owned by the Declarant, or on any easement held by Declarant, or to construct, alter, demolish or replace any Improvements on any property owned by Declarant; (b) use any

portion of the Improvements as a construction, model home or real estate sales office; or (c) to require Declarant to seek or obtain the approval of the Association for any such activity. Nothing contained in this Declaration shall limit or impair the rights reserved by Declarant elsewhere provided in this Declaration.

16.7 Declarant's Rights to Grant Easements. Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements for access, utilities, drainage, water, snow storage or for other similar purposes on, under, over and across any of the Property for any purpose (i) incidental to the development and sale of the Units within the Property, or (ii) incidental to the withdrawal of any of the Expansion Area or Expansion Property.

16.8 Declarant's Rights to Convey Additional Property. Declarant shall have and hereby reserves the right, but not the obligation, to annex additional real property and/or Improvements to the Community at any time and from time to time in accordance with this Declaration.

16.9 Annexation of Additional Real Estate. Declarant hereby reserves the right, but not the obligation, during the Declarant Control Period, to annex the Expansion Property and any additional, unspecified real estate to the Community to the fullest extent permitted by the Act. In the event the Declarant elects to annex the Expansion Property or any other additional property, Declarant shall annex such property to the Community in accordance with the provisions of this Article.

16.10 Withdrawal. All or any portion of the Property depicted on the Map as being subject to special development rights may be withdrawn from the Community by Declarant at any time during the Declarant Control Period by Declarant's recording of a notice stating its election to withdraw all or certain portions of the Expansion Area from the Community and providing a legal description of the area so withdrawn. Upon recording such a notice the area so withdrawn shall not be subject to the terms and provisions of the Map or this Declaration, provided that Declarant may grant easements across the Property for the benefit of the withdrawn area as described in 16.7 above.

16.11 Expansion of Uses. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to expand the permitted uses for the Units in the Property provided that such uses (a) are consistent with Declarant's overall development plan for the Community, and (b) are in accordance with all applicable rules, regulations, requirements and approvals of the Town of Mountain Village.

16.12 Special Power of Attorney. The Association and the Owners irrevocably constitute and appoint, with a full power of substitution, Declarant as their true and lawful attorney in fact with the full power and authority, in the name of the Association and the Owners, to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary to exercise the Special Declarant Rights reserved herein, including, but not limited to, any building permit applications and development applications for the Expansion Area, the Expansion Property and any new easements over, under

and across any of the Common Elements. The power of attorney granted herein shall terminate upon the expiration of the Declarant Control Period.

16.13 Exercising Special Declarant Rights. Declarant may exercise its Special Declarant Rights at any time prior to the later to occur of the date on which the Declarant Control Period expires or the date that is twenty (20) years after the date on which this Declaration is recorded in the San Miguel County Records. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights. If Declarant exercises any Special Declarant Right with respect to any portion of the Property, the Expansion Area or the Expansion Property, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Property, the Expansion Area or the Expansion Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article XVI and any other right reserved to Declarant in this Declaration, without the consent of the Association or any of the Owners.

16.14 Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rule or Regulation that interferes with or diminishes any Special Declarant Right, without Declarant's prior written consent. Any action taken in violation of this Section 16.14 shall be null and void and have no force or effect.

16.15 Rights Transferable. Declarant may transfer any Special Declarant Right reserved to it under this Article XVI or under any other provision of this Declaration in accordance with the terms and conditions of the Act.

ARTICLE XVII MORTGAGEE PROTECTIONS

17.1 Benefit or Mortgagees. This Article establishes certain standards and covenants which are for the benefit of First Mortgagees. This Article is supplemental to, and not in substitution of, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

17.2 Notice of Actions. If requested in writing to do so, the Association shall give prompt written notice of the following to each First Mortgagee making such request:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the First Mortgagee;
- (b) any delinquency in the payment of Assessments which remains uncured for sixty days by an Owner whose Unit is encumbered by a First Mortgage held by such First Mortgagee;
- (c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) any proposed action which would require the consent of First Mortgagees as set forth in this Article; and

(e) any judgment rendered against the Association.

17.3 Consent Required. Notwithstanding anything to the contrary contained in this Declaration, the Association may not take any of the following actions without the consent of sixty-seven percent (67%) of the First Mortgagees (based on one vote for each Unit encumbered by a First Mortgage):

(a) by act or omission seek to abandon or terminate the Community, except after condemnation or substantial casualty;

(b) except as provided herein for condemnation, casualty and the exercise of Special Declarant Rights, change the Allocated Interests, Shares of Common Expenses or votes in the Association of any Unit;

(c) subdivide, partition, or relocate the boundaries of any Unit, except as permitted with respect to Special Declarant Rights;

(d) abandon, subdivide, partition, encumber, sell or transfer the Common Elements (the granting of easements for public utilities or for other purposes provided for in this Declaration shall not be deemed transfers) except as permitted with respect to Special Declarant Rights;

(e) use hazard insurance proceeds for losses to any portion of the Common Elements for other than repair, replacement, or reconstruction of such Common Elements, except as provided by the Act; or

(f) merge the Community with any other common interest community, except as permitted with respect to Special Declarant Rights.

17.4 Notice of Objection. Unless a First Mortgagee provides the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within thirty (30) days following the receipt of notice of such proposed amendment or action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

17.5 First Mortgagee's Rights.

(a) First Mortgagees, jointly or singularly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, for the Common Elements. First Mortgagees making such payment shall be owed reimbursement from the Association.

(b) A First Mortgagee shall be entitled to cure any delinquency of the Owner of a Unit encumbered by its First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

17.6 Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this Article shall operate to:

(a) deny or delegate control over the general administrative affairs of the Association by the Owners or the Executive Board;

(b) prevent the Association or the Executive Board from commencing, intervening and/or settling any legal proceeding; or

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of Article XIII above.

17.7 Declarant Rights. No provision or requirement of this Article XVII shall apply to any Special Declarant Rights or other rights reserved to Declarant in this Declaration.

**ARTICLE XVIII
ENFORCEMENT AND REMEDIES**

18.1 Enforcement.

(a) Each provision of this Declaration with respect to the Association or the Common Elements shall be enforceable by Declarant or by any Owner by a proceeding for injunctive relief.

(b) Each provision of this Declaration with respect to an Owner or a Unit shall be enforceable by Declarant or by the Association by any and all remedies available at law or in equity, including, but not limited to, all or any combination of the following remedies:

(i) a proceeding for injunctive relief;

(ii) a suit or action to recover damages; or

(iii) in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and its Guests from the use of any Common Elements and from participation in any Association affairs.

18.2 Nonwaiver. Failure by Declarant, the Association or any Owner to enforce any covenant, condition, restriction, reservation, easement, Assessment, charge, lien or other provision of this Declaration or any other Association Document shall in no way be deemed to be a waiver of the right to do so thereafter. NO ACTION SHALL BE BROUGHT AGAINST THE DECLARANT OR THE ASSOCIATION FOR OR ON ACCOUNT OF ITS FAILURE TO BRING ANY ACTION FOR ANY BREACH OF THIS DECLARATION.

ARTICLE XIX TERM AND AMENDMENTS

19.1 Term. The covenants, conditions, restrictions, reservations, easements, Assessments, charges and liens set forth in this Declaration shall run with and bind the Property until the Declaration is terminated pursuant to Section 19.2 below.

19.2 Termination. Subject to the rights of First Mortgagees under Article XVII above, the Owners may terminate the Community and this Declaration, by the vote of eighty-five percent (85%) of the votes allocated to all Units. If the necessary votes are obtained, the agreement of the Owners to terminate the Community and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the Act. Upon recordation of the termination agreement in the San Miguel County Records, the Community shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved. Notwithstanding the foregoing, the Owners may not terminate the Community during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

19.3 Amendments.

(a) Except for provisions of this Declaration regarding the rights and obligations of Declarant, which may not be amended without Declarant's prior written consent, Owners may amend any provision of this Declaration at any time by a vote of at least sixty-seven percent (67%) of the votes allocated to all Memberships. If the necessary votes and consent are obtained, the Association shall cause an amendment to the Declaration to be recorded in the San Miguel County Records in accordance with the terms and conditions of the Act. Notwithstanding the foregoing, the Owners may not amend this Declaration during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

(b) Notwithstanding the terms and conditions of Section 19.3(a) above, Declarant may amend this Declaration as expressly provided herein, without the approval of the Owners.

ARTICLE XX MISCELLANEOUS

20.1 Interpretation of the Declaration. Except for judicial construction, the Association, by its Executive Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and Property benefited or bound by the covenant and the provisions hereof.

20.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

20.3 Disclaimer of Representations. Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Elkstone Project or the Community can or will be carried out or that any land now owned or hereafter acquired by the Declarant is or will be subject to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, that such use will continue in effect. By accepting title to a Unit, the Owner thereof, acknowledges and agrees that Declarant has not made and Owner is not relying upon any representations with respect to the Unit, the size or living area of a Unit, the value of the Unit, the existence or preservation of any view or vista with respect to the Unit or any other matter relating to the Unit or its suitability for the Owner's intended purposes. In that regard, Owner acknowledges and agrees that Owner is not relying upon any square footage figures reflected in marketing or other materials distributed to Owner or Owner's agents, or otherwise represented to Owner, as such square footage figures may not reflect the actual living area of the Unit (which may be smaller), and may not comport with the square footage of the Unit for purposes of allocating voting rights and expenses within the Community applicable to the Unit.

20.4 Reference to Declaration and Deeds. Deeds to and instruments affecting any Unit or any other part of the Community may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, Assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other Person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

20.5 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder

on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

20.6 Captions and Titles. All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

20.7 Exhibits. All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.

20.8 Governing Law. This Declaration shall be governed by and construed in accordance with Colorado law.

20.9 Notices. All Owners of each Unit shall have one registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representative of the Owners of a Unit shall furnish such registered address to the secretary of the Association within thirty (30) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized to represent the interests of all Owners of the Unit. If no address is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed the address contained in the San Miguel County Assessor's records, and any notice shall be deemed duly given if delivered to such address. All notices and demands intended to be served upon the Association shall be sent to the following address or such other address as the Association may designate from time to time by notice to the Owners:

Elkstone Owners Association, Inc.
ATTN: Jeffrey Essakow, President
3252 Holiday Court, Suite 224
La Jolla, CA 92037

20.10 Priority of Mountain Village Documents. Each Owner, in addition to being a Member of the Association as set forth in Section 5.1(a), is also a member of the Telluride Mountain Village Resort Company as set forth in the Mountain Village Documents. This Declaration and the other Association Documents shall be subject and subordinate to the Mountain Village Documents. If there is any conflict or inconsistency between the terms and conditions of the Mountain Village Documents, the terms and conditions of the Mountain Village Documents shall control. The terms and conditions of this Section 20.10 may not be amended or deleted without the prior written consent of the Resort Company.

20.11 Development and Construction Disturbances. By accepting title to a Unit, the Owner thereof, acknowledges and agrees that Elkstone is planned as a phased construction project to be developed incrementally over time. Accordingly, Owner acknowledges and agrees that if any when other portions of Elkstone are constructed there may be certain inconveniences

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

All that real property situate in the Town of Mountain Village, County of San Miguel, State of Colorado, more particularly described as follows:

Lot 600A, Substantial Amendment to the Final Plat of Replat No. 7,
Filing No. 1, Telluride Mountain Village, according to the Plat recorded
December 9, 1993 in Plat Book 1 at page 1600

TOGETHER WITH all appurtenant interest and rights as set forth in the General Declaration for the Telluride Mountain Village recorded March 9, 1984 in Book 409 at Page 714 and the amendments and supplements thereto,

**EXHIBIT B
LEGAL DESCRIPTION OF EXPANSION PROPERTY**

Parcel I:

All that real property situate in the Town of Mountain Village, County of San Miguel, State of Colorado, more particularly described as follows:

Lot 600B, Substantial Amendment to the Final Plat of Replat No. 7,
Filing No. 1, Telluride Mountain Village, according to the Plat recorded
December 9, 1993 in Plat Book 1 at page 1600

TOGETHER WITH all appurtenant interest and rights as set forth in the General Declaration for the Telluride Mountain Village recorded March 9, 1984 in Book 409 at Page 714 and the amendments and supplements thereto; and

Parcel II:

Tract A-7A, Filing 1, Telluride Mountain Village, according to the Plat recorded September 8, 1994 in Plat Book 1 at page 1739, County of San Miguel, State of Colorado

**EXHIBIT C
ALLOCATED INTERESTS**

UNIT	SQUARE FOOTAGE	ALLOCATED INTEREST
4	3,874	50%
5	3,864	50%
Total	7,738	100%

EXHIBIT D
LIST OF RECORDED EXCEPTIONS TO TITLE, EASEMENTS AND LICENSES

1. Any tax or assessment imposed or created by reason of the inclusion of the subject property in the Mountain Village Metropolitan District as created by Order of Court in Civil Action No. 83-CV-34 recorded February 10, 1984 in Book 409 at page 275 and any amendments, additions or adjustments to the boundaries of said District.
2. Notice filed by San Miguel Power Association, Inc., on March 18, 1999 at reception No. 325020.
3. The terms, conditions, provisions and obligations contained in the San Miguel County/Mountain Village Metropolitan District Intergovernmental Agreement between The Telluride Company, San Miguel County Board of County Commissioners and Mountain Village Metropolitan District, recorded February 17, 1984 in Book 409 at page 369.
4. General Notes 1 through 14, inclusive, and definitions 1 through 25, inclusive, as shown on sheets 1 and 2 of the Plat for the Telluride Mountain Village, Filing 1, recorded March 9, 1984 in Plat Book 1 at page 476, and any amendments thereto as incorporated into the Plat of the subject property as modified and superceded by Plat Notes 1 through 18, inclusive, and Definitions A through X, inclusive, as shown on sheet 4 of the Town of Mountain Village Official Town Plat recorded July 24, 1996 in Plat Book 2 at page 2073.
5. Mountain Village P.U.D. Subdivision Improvements Agreement by the San Miguel County Planning Commission, recorded March 9, 1984 in Book 409 at page 708 and re-recorded and amended May 30, 1984 in Book 411 at page 211.
6. General Declaration for the Telluride Mountain Village regarding covenants, conditions and restrictions, recorded March 9, 1984 in Book 409 at page 714, as amended or supplemented by the following instruments;
 Book 419 at page 593, Book 419 at page 597, Book 426 at page 963, Book 434 at page 520, Book 438 at page 681, Book 438 at page 702, Book 439 at page 982, Book 441 at page 677, Book 441 at page 980, Book 442 at page 269, Book 445 at page 522, Book 445 at page 769, Book 446 at page 804, Book 447 at page 942, Book 448 at page 589, Book 449 at page 139, Book 451 at page 402, Book 452 at page 621, Book 454 at page 690, Book 454 at page 694, Book 455 at page 167, Book 455 at page 522, Book 455 at page 526, Book 456 at page 870, Book 457 at page 761, Book 458 at page 157, Book 459 at page 741, Book 459 at page 745, Book 459 at page 749, Book 461 at page 609, Book 462 at page 747, Book 462 at page 886, Book 463 at page 526, Book 464 at page 712, Book 466 at page 988, Book 467 at page 829, Book 474 at page 833, Book 480 at page 954, Book 484 at page 184, Book 486 at page 106, Book 489 at page 938, Book 489 at page 964, Book 489 at page 974, Book 501 at page 1022, Book 503 at page 646, Book 505 at page 12, Book 505 at page 252, Book 507 at page 326, Book 509 at page 281, Book 515

at page 83, Book 515 at page 623, Book 516 at page 402, Book 520 at page 629, Book 523 at page 79, Book 532 at page 745, Book 537 at page 1001, Book 548 at page 193, Book 554 at page 429, Book 559 at page 151, Book 572 at page 445, Book 583 at page 703, reception No. 329777, reception No. 329778, reception No. 338897 and reception No. 338898, and the Amended and Restated General Declaration recorded December 11, 2002 at reception No. 353668, and the terms, conditions, provisions and obligations contained therein.

7. Stipulated Settlement Order entered in Case No. 97 CV 133 by and between the Board of County Commissioners of the County of San Miguel, State of Colorado & San Miguel County Housing Authority, Plaintiffs, vs. Town of Mountain Village, Colorado, et al, defendants, recorded September 8, 1999 at reception 329093.
8. Notice of Water and Sewer Tap Fee Payment pursuant to Section 8.4 of the Mountain Village Metropolitan District Water and Sewer Operation Rules and Regulations which reads:
"8.4 TAP FEE. A tap fee shall be a charge to all customers of the District which shall be assessed and paid for before a building permit is issued." as recorded April 14, 1987 in Book 435 at page 603 and as modified by Tap Fee Agreement recorded May 29, 1992 in Book 492 at page 991, and by First Amendment to Tap Fee Agreement recorded December 18, 1996 in Book 573 at page 237, as assigned by Tap Fee Assignment and Assumption Agreement recorded April 29, 1999 at reception No. 326037.
9. Reservation by The Telluride Company of all the rights to minerals and oil, gas or other hydrocarbons located on, in or under the real property, without any right of surface entry for exploration, development or extraction of the same as reserved in Deed recorded May 9, 1994 in Book 528 at page 975.
10. Second Mountain Village Improvements Agreement recorded November 28, 1989 in Book 460 at page 47 and All Filing Improvement Bonding Agreement recorded July 17, 1990 in Book 468 at page 212, and as amended or supplemented.
11. Resolution of the Board of County Commissioners of San Miguel County, Colorado authorizing the First Technical Amendment to "General Note 3" of the final plats in the Telluride Mountain Village, Resolution No. 1990-12, recorded February 12, 1990 in Book 462 at page 759, and the terms, conditions, provisions and obligations contained therein.
12. Final Development Plan Approval for The Mountain Village Planned Unit Development recorded January 19, 1993 in Book 504 at page 788.
13. Resolution of the Board of County Commissioners of San Miguel County Approving a Planned Unit Development Amendment and Rezoning for the Telluride Mountain Village PUD, Resolution No. 1992-76, recorded January 7, 1993 in Book 504 at page 203.

14. Easements, restrictions and other matters as set forth on the Plats recorded in Plat Book 1 at page 1600 and at page 1739.
15. Matters as set forth on Town of Mountain Village Official Town Plat recorded July 24, 1996 in Plat Book 2 at page 2073.
16. G.E., an easement 16 feet in width, as set forth on the recorded Plat, and any assignment thereof or interest therein. First Supplement to Agreement Regarding General Easements recorded October 24, 1996 in Book 569 at page 670 in connection therewith. As modified by Quit Claim Deed recorded June 9, 1994 in Book 530 at page 770.
17. Items 11, 12, 14 and 15 set forth in Exhibit WD-TFI-1 attached to Deed recorded May 9, 1994 in Book 528 at page 975.
18. Non Exclusive Easement granted to The Telluride Company in instrument recorded August 26, 1994 in Book 534 at page 5.
19. Notice of Property Subject to Landscape and Paving Completion Policy recorded September 27, 1994 in Book 535 at pages 575 through 586 and pages 607, 608 and 609.
20. Resolution of the Board of Commissioners of San Miguel County, Colorado, Approving a Rezoning and Substantial Final Plat Amendment for Lots 600A and 648, Mountain Village, Resolution #1994-59, recorded October 17, 1994 in Book 536 at page 631, and Resolution #1994-68 recorded December 8, 1994 in Book 538 at page 849 in connection therewith.
21. Assignment of Density Unit recorded February 27, 1995 in Book 542 at page 205.
22. Assignment of Density Unit recorded May 12, 1995 in Book 545 at page 837.
23. Resolution of the Town Council of the Town of Mountain Village, Mountain Village, Colorado Approving Amendment to the Final Plats for Density Transfer of Lot(s) 128/600A, Resolution No. 1996-0109-10, recorded February 16, 1996 in Book 557 at page 499.
24. Letter regarding density recorded November 9, 2000 at reception No. 338011 and Resolution of the Town of Mountain Village, Mountain Village, Colorado Approving Amendment to the Plat of Lot 648 and Lot 600A, a Rezone and Town of Mountain Village Office Lot List, Resolution No. 2000-1127-21, recorded December 13, 2000 at reception No. 338548.
25. Ditch traversing subject property and notes as shown on ALTA/ASCM Land Title Survey prepared by Foley Associates, Inc. dated July 20, 2001, project #94112.

26. Easement by Montegra Capital Resources, Ltd., releasing the Easement conveyed in Easement Deed recorded November 18, 1996 in Book 571 at page 195 pursuant to paragraph 4 thereof.
27. Easement Agreement by and between Elk Lake Properties, LLC and Lot 600B, LLC recorded October 30, 2000 at reception No. 337661.
28. Easement Agreement by and between Lot 600B, LLC, Bruce Gilman and Elk Lake Properties, LLC recorded October 30, 2000 at reception No. 337660.
29. Easement Agreement by and between Bruce Gilman and Elk Lake Properties, LLC recorded October 30, 2000 at reception No. 337659.
30. Encroachment of retaining walls upon Adjacent Lot 600B and Mountain Village Blvd as disclosed by ALTA Survey No. 94112, dated July 20, 2001 prepared by Foley Associates, Inc.

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

STEPHANIE L. FANOS
REED & FANOS
620 MT VILLAGE BLVD, 2C
MT VILLAGE, COLORADO 81435

SPACE ABOVE THIS LINE RESERVED FOR USE BY RECORDER

**FIRST SUPPLEMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
ELKSTONE**

This First Supplement to the **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ELKSTONE** ("**First Supplemental Declaration**") is made this 8th day of July 2005, by Elk Lake Properties, LLC, a Colorado limited liability company, hereinafter referred to as Declarant.

WHEREAS, on May 16, 2003, Declarant executed and recorded: (1) the Declaration of Covenants, Conditions and Restrictions for Elkstone ("**Declaration**") in the records of the Clerk and Recorder for San Miguel County, Colorado at Reception Number 357307, and (2) the Elkstone Common Interest Community Map ("**Map**") in the records of the Clerk and Recorder for San Miguel County, Colorado, in Plat Book 1, Page 3138 at Reception Number 357310;

WHEREAS, Articles 3 and 16 of the Declaration provide for certain development rights and special Declarant Rights including the right to add and create additional Units and Common Elements.

NOW THEREFORE Declarant does hereby publish and declare that:

1. **CREATION OF ADDITIONAL UNITS AND COMMON ELEMENTS.**

Pursuant to certain rights reserved to Declarant as set forth in Section 3.1(b) and 16.3, Declarant hereby adds two (2) additional Units and certain additional Common Elements and Limited Common Elements to Elkstone ("**Community**"), which additional Units, Common Elements and Limited Common Elements are shown, depicted and designated on the First Supplemental Map described below. The additional Units and their respective square footages are identified in **Exhibit "A"** attached hereto and incorporated herein by this reference. Immediately upon the recording of the First Supplemental Map and this First Supplemental Declaration, the total number of Units in the Community, their numeric designation and allocated interests shall be as set forth on the Amended and Restated **Exhibit "B"**, attached hereto and incorporated herein by this reference.

2. **FIRST SUPPLEMENTAL MAP.** Pursuant to Section 3.1(b) and 16.3 of the Declaration and simultaneously herewith, Declarant has prepared and recorded in the records of the office of the Clerk and Recorder of San Miguel County, Colorado, a First Supplemental Map

#50064215

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to Elkstone ("**First Supplemental Map**"), which describes, depicts and designates the additional Units, Common Elements and Limited Common Elements.

3. Unless otherwise defined herein, initially capitalized terms defined in the Declaration shall have the same meaning herein.

4. Except as specifically amended by this First Supplemental Declaration or other amendments or supplements, all other terms and conditions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has caused this First Supplemental Declaration to be executed by its duly authorized agents this 8th day of July, 2005.

ELK LAKE PROPERTIES, LLC, a Colorado limited liability company

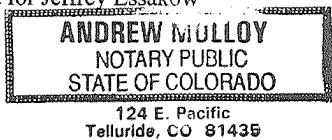
By: Double Cabins Development, LLC, a Colorado limited liability company, Its Manager

By: Protea Holdings, LLC, a California limited liability company, Its Manager

By: Jeffrey Essakow, Co-Trustee, its Manager

By: *[Signature]* *as attorney-in-fact*
Stephanie L. Fanos, Attorney-in-Fact for Jeffrey Essakow

STATE OF COLORADO }
 } ss.
COUNTY OF SAN MIGUEL }



The foregoing instrument was acknowledged before me by Stephanie L. Fanos, attorney-in-fact for Jeffrey Essakow, as Manager of Protea Holdings, LLC, a California limited liability company on the 8th day of July, 2005.

My commission expires: 12-15-08

Witness my hand and official seal.

[Signature]
Notary Public

CERTIFICATE OF COMPLETION

I, Dan Hunter, an architect licensed under the laws of the State of Colorado, do hereby certify pursuant to C.R.S. § 38-33.3-201(2) that all structural components of all buildings containing or comprising any units created by the First Supplemental Declaration for Elkstone and the First Supplemental Map of Elkstone are substantially completed.

Dan Hunter
Dan Hunter
License No. B2223

Date: 7-7-05

STATE OF COLORADO }
 } ss.
COUNTY OF SAN MIGUEL }

The foregoing Certificate of Completion was acknowledged before me by Dan Hunter on the 7th day of July, 2005.

Witness my hand and official seal.

My commission expires: Sept. 9/08

DK
Notary Public



EXHIBIT A
ADDITIONAL UNITS CREATED AND ADDED

Unit	Square Footage
6	3,602
7	3,714



**AMENDED AND RESTATED
EXHIBIT B
ALLOCATED INTERESTS**

UNIT	SQUARE FOOTAGE	ALLOCATED INTEREST
4	3,874	25.7%
5	3,864	25.6%
6	3,602	24.0%
7	3,714	24.7%
Total	15,054	100%
