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(48)

MASTER DECLARATION
FOR
ASPEN VILLAGE
PLANNED DEVELOPMENT

Return: Pagosa Partners Inc
PO Box 4219
Pagosa Springs CO 81157

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**MASTER DECLARATION
FOR
ASPEN VILLAGE PLANNED DEVELOPMENT**

This Master Declaration (this "Master Declaration" or this "Declaration") is made as of the _____ day of _____, 2005, by PAGOSA PARTNERS I, INC., a Colorado Corporation, ("Declarant"), whose address is P.O. Box 4219, Pagosa Springs, Colorado 81147.

GENERAL

Section 1.1 Property. Declarant is the owner of the real property described as the Aspen Village Planned Unit Development, according to the plat thereof filed of record in the real property records of Archuleta County, Colorado on _____, 2005, as Reception No. _____, which is hereinafter defined in this Declaration as the "Project." Declarant intends that the Project be developed as a balanced, planned community accommodating a mix of residential, commercial and mixed-use lots.

Section 1.2 Purposes of Declaration. This Declaration is executed (a) in furtherance of a common and general plan for those portions of the Property which may become part of the Project; (b) to protect and enhance the quality, value, desirability and attractiveness of all property which becomes part of the Project; (c) to provide for mutual, common and reciprocal rights and easements in certain portions of the Property which becomes part of the Project; and (d) to define certain duties, powers and rights of Owners.

Section 1.3 Declaration. Declarant, for itself, its successors and assigns, hereby declares that the Project and each part or parcel thereof, shall, from the date the same becomes subject to this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, easements, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, for the duration thereof, all of which are declared to be a part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Project. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with Section 8.1 hereof, shall bind, be a charge upon and inure to the benefit of (a) the Property (b) Declarant and its successors and assigns, and (c) all Persons having or acquiring any right, title or interest in the Project or any part or parcel thereof or any Improvement thereon, and their heirs, personal representatives, successors and assigns.

Section 1.4 CCIOA Exemption. The Project is a planned community which is exempt from the provisions of the Colorado Common Interest Ownership Act, pursuant to C.R.S. §38-33.3-116(2). Notwithstanding the foregoing, this Declaration incorporates certain terms and concepts contained within CCIOA.

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Section 1.5 No Merger. It is the intention of Declarant that the covenants, conditions, restrictions, limitations, reservations, exceptions, easements, equitable servitudes and other provisions set forth in this Declaration shall continue to burden or benefit, as applicable, all of the Project.

ARTICLE 2 DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

Section 2.1 Affiliate. "Affiliate" shall mean any Member or Manager of Declarant or any Person controlled by or under common control with Declarant or any such Member.

Section 2.2 Agencies. "Agencies" shall mean, collectively, the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA), the Colorado Housing Financing Authority (CHFA) or any other public, quasi-public or private agency or entity which performs (or may in the future perform) functions similar to those currently performed by the entities specifically listed herein.

Section 2.3 Association. "Association" shall mean the "Master Association" that may hereafter be established by the Declarant for the purpose of exercising the rights and obligations of the Declarant under this Declaration.

Section 2.4 CCIOA. "CCIOA" shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq (the "Act" or "CCIOA") as amended from time to time.

Section 2.5 Commercial Site. "Commercial Site" shall mean all of the Lots shown in the PD Plat with the exception of the following Lots: Block 6, Lot 1; Block 2, Lot 1; and Block 1, Lot 1 which have been designated Residential Sites. A Commercial Site shall be designated for commercial/office uses.

Section 2.6 Common Elements. "Common Elements" shall mean all general common elements as designated on a recorded subdivision plat of any portion of the Property or as indicated in this Declaration, including all real estate and improvements within the Property that may be owned by the Association. Common Elements shall include, but not be limited to, the area comprising the Right of Way, common signage and entrance features, and such other common elements as may be conveyed, granted or dedicated to the Association by Declarant pursuant to Declarant's reserved rights, namely, trails and Open Space.

Section 2.7 Declarant. "Declarant" shall mean Pagosa Partners I, Inc., a Colorado limited liability company, its successors and assigns. A Person shall be deemed a

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"successor or assign" of Declarant only if specifically designated in a written and duly Recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor or assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the written instrument. Notwithstanding the foregoing, however, a successor to Pagosa Partners I, Inc., by consolidation or merger, and any Person acquiring all or substantially all of the right, title and interest of Pagosa Partners I, Inc. in the Property by foreclosure, judicial sale, bankruptcy proceedings or by other similar involuntary transfer, shall automatically be deemed a successor or assign of Pagosa Partners I, Inc. as Declarant under this Declaration.

Section 2.8 Declarant Approval Period. "Declarant Approval Period" shall mean the period of time commencing on the date of Recordation of this Declaration and expiring on the earlier of (a) seven years from the date hereof or (b) the date upon which the last Privately Owned Site within the Project has been sold and conveyed to any Owner other than Declarant or an Affiliate of Declarant. Notwithstanding the foregoing, the Declarant Approval Period may expire on an earlier date at the discretion of the Declarant as provided in Section 3.4.

Section 2.9 Declaration. "Declaration" shall mean this instrument as the same may be amended from time to time.

Section 2.10 Design Review Criteria. "Design Review Criteria" shall mean the Design Review Criteria for Aspen Village Planned Development as the same may be amended from time to time.

Section 2.11 DRC. "DRC" shall mean the Design Review Committee provided for in Article 5 of this Declaration.

Section 2.12 Dwelling Unit. "Dwelling Unit" shall mean a residential building designed for occupancy on a Residential Site, but excluding any accessory building.

Section 2.13 Expansion Property. "Expansion Property" means the real property described on Exhibit A attached hereto which Declarant may submit to the terms of this Declaration by one or more supplemental Declarations. Declarant, however, is not obligated to submit the Expansion Property to this Declaration.

Section 2.14 First Mortgage. "First Mortgage" shall mean a Mortgage that has priority of Record over all other Recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments) and except as otherwise provided in this Declaration.

Section 2.15 First Mortgagee. "First Mortgagee" shall mean the Mortgagee under a First Mortgage.

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Section 2.16 Improvements. "Improvements" shall mean all structures and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, bicycle and/or equestrian trails, sprinkler pipes, utility lines, facilities and appurtenances, satellite dishes, antennae, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, and exterior air conditioning and water softener fixtures.

Section 2.17 Mortgage. "Mortgage" shall mean an interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term "Mortgage" includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation.

Section 2.18 Mortgagee. "Mortgagee" shall mean any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Mortgage or any successor to the interest of any such Person under such Mortgage.

Section 2.19 Multifamily Site. "Multifamily Site" shall mean a platted parcel of land within the Property as shown in the recorded PUD, which has been further subdivided to provide for the construction of Multifamily residences (including town homes, patio homes, and/or condominiums). The Multifamily Sites shall be permitted to be governed by their own Sub-Associations; however, subject to the restrictions and conditions of this Declaration. The Sub-Association shall exercise the vote and shall pay the assessments allocated to the Multifamily Site.

Section 2.20 Notice and Hearing. "Notice and Hearing" shall mean a written Notice given to an Owner in the manner for giving notices provided in this Declaration which Notice shall describe the nature of the matter to be heard and specify the date, time and place for hearing of the matter and a Hearing, at the date, time and place specified in the Notice, before the DRC and/or Association, as the case may be, who shall hear the matter and issue a written decision with respect to the matter.

Section 2.21 Notice of Completion. "Notice of Completion" shall mean written notice to the DRC of the completion of any Improvement to Property pursuant to Article 5 of this Declaration.

Section 2.22 Open Space. "Open Space" shall mean Open Space A and Open Space B as designated on the Plat. The use of Open Space is restricted to recreational purposes as provided in the Plat and this Declaration. Declarant reserves the right to convey Open Space to a third party or to the Association.



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Section 2.23 Owner. "Owner" shall mean the Record title holder, whether one or more Persons, of fee simple title to a Privately Owned Site, including sellers under executory contracts of sale and excluding buyers thereunder. The Owner of a Privately Owned Site developed as rental apartments and the Owner of a Commercial Site shall be the Owner for purposes of this Declaration, and not the lessees or tenants of the apartments or Commercial Site.

Section 2.24 Person. "Person" shall mean a natural person, a corporation, a partnership, limited liability company, trust or any other legal entity.

Section 2.25 Plat. "Plat" shall mean, collectively: (a) the Aspen Village P.U.D. map, and (b) all of the subdivision plats for any portion or phase of the Project which may be Recorded from time to time, as the same may be amended from time to time.

Section 2.26 Privately Owned Site. "Privately Owned Site" shall mean any Lot or parcel of land within the Project which is shown upon any Recorded Plat, or any other parcel of land which may be sold or conveyed without violation of the provisions of Colorado law pertaining to the subdivision of land. "Privately Owned Site" shall include, without limitation, any parcel identified on the Aspen Village P.U.D. Plat developed for either commercial or residential purposes and shall include Multi-family Sites. Each Privately Owned Site constitutes a "unit" for purposes of CCIOA.

Section 2.27 Record or Recorded. "Record" or "Recorded" shall mean the recording of any documents in the real estate records in the office of the Clerk and Recorder of Archuleta County, Colorado.

Section 2.28 Default Assessment. "Default Assessment" shall mean a charge against a particular Owner and such Owner's Privately Owned Site for the purpose of reimbursing the DRC for expenditures and other costs of the DRC in curing any violation of this Declaration or Design Review Criteria by the Owner or a Related User of such Owner. Default Assessments shall also include any fines which the DRC, in its discretion, may impose on a per diem basis pursuant to Section 5.17.

Section 2.29 Related User. "Related User" shall mean any Owner who resides with such Owner on a Residential Site; guests, customers and invitees of an Owner of a Privately Owned Site; employees of an Owner of a Privately Owned Site; and occupants, tenants and contract purchasers of the Privately Owned Site of an Owner who claim by, through, or under an Owner.

Section 2.30 Residential Site. "Residential Site" shall mean any Privately Owned Site within the Project which is designated for residential uses in the Plat and/or this Declaration. The following Lots have been designated Residential Sites: Block 6, Lot 1; Block 2, Lot 1; and Block 1, Lot 1.

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Section 2.31 Restrictions. "Restrictions" shall mean covenants, conditions, restrictions, easements, limitations, reservations, exceptions and equitable servitudes affecting real property.

Section 2.32 Right of Way. "Right of Way" shall mean that strip of real property which is improved with trees and other landscaping which is located between the Privately Owned Sites and the curbing located adjacent to public streets within the Project as more particularly depicted on the Plat.

Section 2.33 Sub-Association. "Sub Association" means a property owners association that may be formed by Declarant or an Owner for the purpose of creating a multi-family community or commercial condominiums within the Project. All Sub-Associations must be approved by the Declarant and shall be subject to this Master Declaration and any assessments due hereunder.

Section 2.34 Supplemental Declaration. "Supplemental Declaration" means an instrument which amends this Declaration.

ARTICLE 3 DECLARANT'S RIGHTS AND RESERVATIONS

Section 3.1 Period of Declarant's Rights and Reservations. Declarant shall have retained and reserved certain rights as hereinafter set forth until the expiration of the Declarant Approval Period. Notwithstanding any other provisions of this Declaration, the rights and reservations hereinafter set forth in this Article 3 and in Sections 4.12, 4.19, 4.22, 5.4, 6.2, 11.1, 11.2, 11.5 and 11.12 (collectively, the "Special Declarant Rights"): (a) shall be deemed excepted and reserved in each conveyance of property within the Project, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Project is so conveyed; (b) shall be prior and superior to any other provisions of this Declaration, and in the event of any inconsistency between the provisions of this Declaration pertaining to the Special Declarant Rights and any other provisions of this Declaration, the provisions pertaining to the Special Declarant Rights shall control; and (c) may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of this Declaration during the Declarant Approval Period. Declarant's consent to any one such amendment shall not be construed as a consent to any other amendment.

Section 3.2 Declarant's Rights to Complete Development of Project. No provision of this Declaration shall be construed to prevent or limit Declarant's rights, and Declarant expressly reserves the right to complete the development of property within the boundaries of the Project; to construct or alter Improvements on any lots owned by Declarant within the Project; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant; and to post signs incidental to development, construction, promotion, marketing, sales or leasing of Lots within the

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boundaries of the Project. Declarant may maintain, or permit other Persons to maintain, management offices, signs, model homes, construction offices, trailers and sales offices, in such numbers, of such sizes and at such locations, as Declarant may determine in its reasonable discretion from time to time. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant or to construct, alter, demolish or replace any Improvements on any property owned by Declarant, or to use any structure on any Lot owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any Lot within the boundaries of the Project, nor shall anything herein be deemed to require Declarant to seek or obtain the approval of the DRC for any such activity or Improvement to Lot (as defined in Section 5.3) by Declarant on any Lot owned by Declarant.

Section 3.3 Other Special Declarant Rights. In addition to the foregoing development rights, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to:

- (a) Construct underground utility lines, pipes, wires, ducts, conduits and other facilities across any portion of the Project for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the Property.
- (b) Withdraw and grant easements and licenses to public utility companies and to convey Improvements within those easements anywhere in the Property not occupied by buildings, for the purposes mentioned above.
- (c) Create Lots and Common Elements; subdivide, reconfigure, and/or consolidate Lots; convert Lots to General Common Elements; and withdraw property from the Project.
- (d) Create cross parking and shared-access easements where necessary, in order to provide suitable access among two or more Commercial Sites located within Block 8, Lots 1, 2, 3, and 4.
- (e) Approve and subject condominium or other multi-family development and ownership to the Project and ensure that condominium and multi-family owners sub-associations are subject to the Declarations.
- (f) Create and/or relocate or vacate access easements within the Project at such locations and configuration as determined by the Declarant.
- (g) Subject additional phases of the Expansion Property to the provisions of this Declaration by recordation of a Supplemental Declaration.
- (h) Develop the Property in any order of development or phasing, which Declarant, in its sole discretion, determines appropriate.
- (i) Subject the Project to governance by a master association.



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(j) Create trail and conservation easements across Open Space A and Open Space B and convey Open Space A and Open Space B to either the Master Association, an Owner or a governmental entity.

(k) Change the designation of a Residential Site to a Commercial Site and vice versa.

No assurances are made by Declarant as to whether Declarant will exercise the above-described Declarant Rights or the order in which such Declarant Rights will be exercised. The exercise of Declarant Rights as to some portions of the Property will not obligate Declarant to exercise them as to other portions.

Section 3.4. Termination of Rights Reserved. Except as otherwise expressly reserved in this Declaration, all rights reserved by and to the Declarant terminate 7 years after the date upon which this Declaration is recorded or, the date upon which the last Privately Owned Site within the Project has been sold and conveyed to any Owner other than Declarant or an Affiliate of Declarant, whichever shall first occur; provided, however, such reserved rights may be: (i) reinstated or extended by mutual agreement of the Association and Declarant, subject to whatever terms are agreed upon by the parties or (ii) terminated in whole or in part, at the discretion of the Declarant, by a written instrument executed by the Declarant and delivered to the Association.

ARTICLE 4 GENERAL RESTRICTIONS APPLICABLE TO PROPERTY

Section 4.1 Limitations and Restrictions. All of the Project shall be held, used and enjoyed subject to the following limitations and restrictions, and subject to the exemptions for Declarant set forth in this Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Association or DRC (whichever is applicable) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated by the DRC and/or Association. It is intended that the DRC have governing authority over all design and construction related aspects of the Project and that the Master Association govern the maintenance and upkeep of Common Elements and the imposition of assessments in connection therewith.

Section 4.2 Construction of Improvements.

(a) All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Improvement to Project shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay access to or from the Project, or any part thereof, to or from any public right-of-way. Staging for the construction, replacement, alteration or expansion of any Improvement

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located in a Privately Owned Lot including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Privately Owned Lot approved in advance in writing by the DRC. Unless otherwise specifically stated herein, the Person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and Improvements damaged or destroyed in the performance of such work.

(b) The Contracting Party shall not permit any mechanics', material men's or other professional services liens (as contrasted against consensual monetary liens such as construction and/or permanent financing) to stand against any Privately Owned Site for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner or Related User of any Privately Owned Site encumbered by any such lien or claim of lien, (i) cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, or (ii) give such assurance as would enable a title insurance company to insure over such lien or claim of lien, failing which the Owner or Related User of the Privately Owned Site shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners and Related Users of Privately Owned Sites, from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and costs and reasonable attorneys' fees and costs on any appeal), liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work.

(c) Staging for any construction, maintenance, repair, replacement, alteration or expansion performed on any Privately Owned Site, including the location of any temporary buildings or construction sheds, the storage of building materials and the parking of construction vehicles and equipment, shall be limited to that Privately Owned Site unless the Owner of such Privately Owned Site requests and obtains the consent of the DRC and the Owner on whose Privately Owned Site the staging will occur. Such staging and storage areas shall also be fenced off at the request of DRC or Declarant.

Section 4.3 Maintenance of Property. No property within the Project shall be permitted to fall into disrepair, and all property within the Project, including any improvements and landscaping thereon, shall be kept and maintained in a clean, safe, attractive and slightly condition and in good repair. Maintenance, repair and upkeep of each Privately Owned Site shall be the responsibility of the Owner of the Site and shall include, without limitation, maintenance, repair and replacement of all buildings and other structures located thereon; maintenance, repair and replacement of shrubs, trees, vegetation, irrigation systems and other landscaping on such Privately Owned Site, including, but not limited to, removal of snow, ice, dirt, mud and debris from any walkways, driveways and parking areas on such

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Owner's site and any public sidewalks adjacent to such sites. Violation of this provision by an Owner shall permit the Association, after Notice and Hearing, to enter on the Privately Owned Site to cure the violation or cause compliance with this provision and to levy and collect a Default Assessment for the costs and expenses of the Association in so doing; provided, however, that there shall be no entry into the interior of an Improvement intended for human occupancy without the consent of the Owner thereof unless an Emergency Situation exists.

Section 4.4 Maintenance of Right of Way. The maintenance, repair and upkeep of the trees and landscaping located on the Right of Way shall be the responsibility of the Association and shall include, without limitation, maintenance, repair and replacement of sprinkler systems, trees, vegetation, and other landscaping on such portion of the Right of Way located adjacent to such Privately Owned Lot, including, but not limited to, fertilizing and trimming of trees, vegetation and other landscaping located on such portion of the Right of Way. Notwithstanding the foregoing, Owners shall be responsible for picking up trash and keeping the Right of Way in a neat and clean condition and free of debris. Owners shall be liable for all damages (for example, costs of repair and replacement of landscaping) arising out of the acts or omissions of an Owner in connection with the Right of Way. Failure by an Owner to reimburse the Association for the costs of repair and/or replacement of the Right of Way shall be deemed a violation of this provision. Violation of this provision by an Owner shall permit the Association after Notice and Hearing, to cure the violation or cause compliance with this provision and to levy and collect a Default Assessment for the costs and expenses of the Association in so doing. In addition, except in the case of negligence by Declarant and/or the Association, an Owner shall indemnify, defend and hold harmless the Declarant and the Association, from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and costs and reasonable attorneys' fees and costs on any appeal), and causes of action, arising out of or in any way connected with the Right of Way.

Section 4.5 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any property within the Project, nor shall anything be done or placed thereon which is or may become a nuisance or which is or may cause an unreasonable embarrassment, disturbance or annoyance to others.

Section 4.6 No Annoying Light, Sounds or Odors. No light shall be emitted from any Privately Owned Site or Improvement thereon which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any property within the Project which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spotlights, searchlights, speakers, horns, whistles, bells or other light or sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property except with the prior written approval of the DRC and review and approval from The Town of Pagosa Springs.

Section 4.7 No Hazardous Activities. No activity shall be conducted on and no Improvement shall be constructed on any property within the Project which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the

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foregoing, no firearms shall be discharged upon any property and no open fires shall be lighted or permitted on any property except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

Section 4.8 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within a structure, including snow removal equipment and garden or maintenance equipment, except when actually in use.

Section 4.9 Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials scrap, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any part of the Project, except within an enclosed structure or when appropriately screened from view.

Section 4.10 No Temporary Structures. No tent, shack, temporary structure or temporary building shall be placed upon any property within the Project, except with the prior written consent of the DRC and following review and approval from The Town of Pagosa Springs. Notwithstanding the foregoing, the DRC may permit the use of temporary structures during construction upon a Lot in accordance with the rules and regulations of the Design Review Criteria.

Section 4.11 Restriction on Antennae, Pipes and Utility Lines. Pipes for water, gas, sewer, drainage or other purposes, and wires, fiber optic and other cables, poles, antennae and other facilities for the transmission or reception of audio, visual or other electromagnetic signals or electricity, and utility meters or other utility facilities shall be kept and maintained underground or within an enclosed structure. No exterior radio antenna, television antenna, or other antenna of any type (including satellite dishes) shall be erected or maintained in the Project except that: (a) on Commercial Sites an Owner may erect an antenna if: (i) such antenna is necessary to carry on the business conducted by the Owner on the Site; (ii) the DRC gives its consent to the erection of such an antenna in accordance with the provisions of Article 5 hereof; and (iii) if the erection of such antenna is in compliance with all applicable statutes, ordinances and regulations; and (b) the requirements of this Section shall not apply to those "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996, as amended from time to time. As to "antenna" which is specifically covered by the Telecommunications Act of 1996, the DRC shall be empowered to adopt rules and regulations governing the types of "antenna" that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance of such "antennae." Any project shall also comply with the District Zoning Ordinances (D4 Regulations) of The Town of Pagosa Springs.

Section 4.12 Restrictions on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Project so as to be evident to public view, except such signs as may be approved in writing by the DRC and thereafter approved by the Town of Pagosa Springs and except

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such signs as Declarant, or other Persons authorized by Declarant, shall be entitled to post or erect pursuant to Section 3.2. A sign advertising a Privately Owned Site for sale or for lease may be placed on such Privately Owned Site; provided, however, that standards relating to dimensions, color, style and location of such a sign shall be determined from time to time by the DRC and shall comply with the sign provisions of The Town of Pagosa Springs and with all other applicable statutes, ordinances and regulations.

Section 4.13 Restrictions on Mining or Drilling. No Owner of any Lot within the Project shall engage in mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, except drilling, exploring for or removing underground water by Declarant or any Person designated by Declarant for the purpose of providing water service to property within the boundaries of the Project, which drilling, exploring or removing underground water shall not disturb or subside the surface of the ground in any portion of the Project (other than any property within the Project which is owned by Declarant or by such Person so designated by Declarant).

Section 4.14 Maintenance of Drainage. There shall be no interference with or modification to the established drainage pattern over any property within the Project, except as approved in writing by the DRC, The Town of Pagosa Springs and in accordance with any master drainage study for the Project. Such approval shall not be granted unless provision is made for adequate alternate drainage in accordance with the recommendations, satisfactory to the DRC, of a Colorado Registered Professional engineer set forth in an engineer's report obtained by the Person desiring to interfere with or modify such established drainage pattern, at such Person's expense, and submitted by such Person to the DRC with the request by such Person for such approval. The "established drainage pattern" shall mean the drainage pattern which exists at the time the overall grading of any property has commenced by the homebuilder or other party performing such overall grading, and shall include any established drainage pattern shown on plans, if any, approved by the DRC.

Section 4.15 Compliance with Laws. Nothing shall be done or kept on any property within the Project in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction.

Section 4.16 Restoration in the Event of Damage or Destruction. In the event of damage to or destruction of any Improvement on any Privately Owned Site, the Owner thereof shall, subject to the approval of the DRC, either: (i) cause the damaged or destroyed Improvement to be restored or replaced to its original condition or such other condition as may be approved in writing by the DRC; or (ii) the Owner shall cause the damaged or destroyed Improvement to be demolished and the Privately Owned Site to be suitably landscaped, so as to present a pleasing and attractive appearance.

Section 4.17 Vehicular Parking, Storage and Repairs.

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(a) No house trailer, camping trailer, boat trailer, hauling trailer, boat or boat accessories, truck larger than three-quarter (3/4) ton, recreational vehicle or equipment, or commercial vehicle may be parked or stored anywhere in the Project or in the adjacent public street rights-of-way, except in garages, designated parking or storage areas, or except in emergencies or as a temporary expedience. No emergency or temporary parking or storage shall continue for more than twenty-four (24) hours.

(b) No abandoned or inoperable vehicles of any kind shall be stored or parked within the Project or in the adjacent public street rights-of-way, except in garages, designated parking or storage areas or except in emergencies. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, van, trailer, house trailer, camper, recreational vehicle or other device for carrying passengers, goods or equipment which has not been driven under its own propulsion for a period of two weeks or longer, or which does not have installed within it an operable propulsion system; provided, however, that any vehicle belonging to an Owner which is otherwise permitted will not be deemed to be abandoned while the Owner is ill or out of town. If the Association determines that a vehicle is abandoned or inoperable, a written notice describing the vehicle and calling for its removal shall be delivered to the owner of the vehicle if ownership can be reasonably be ascertained, or shall be placed in a conspicuous place on the vehicle if ownership is unknown. If any such inoperable vehicle is not removed within seventy-two hours after such notice is delivered or posted, the Association shall have the right to remove and store the vehicle at the sole expense of its owner, and any Owner determined after Notice and Hearing to be responsible for the vehicle shall be subject to a Default Assessment for the cost of such removal and storage.

(c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, painting or servicing any kind of vehicle shall take place within the Project, except within completely enclosed structures which prevent such activities from being seen or heard from the street and from adjoining property. This restriction shall not be deemed to prohibit washing and polishing of vehicles.

(d) No vehicle shall be parked on any street or roadway shown on any map of dedication, subdivision plat or similar Recorded instrument unless otherwise expressly provided for in or on such Recorded map of dedication, subdivision plat or similar instrument showing the street or roadway or in a separate Recorded instrument executed by the DRC. No Person may make use of a parking space which use in any way obstructs, interferes with or results in a safety hazard with respect to the streets and/or roadways within the Project or any other Person's parking rights. Without limiting the generality of the foregoing provisions, if the Association determines that a vehicle is parked on a street or roadway where parking is not permitted, the Association may have such vehicle immediately removed and stored at the expense of the Owner who owns, or whose Related User owns, the vehicle in question. Such Owner shall be subject to a Default Assessment for such removal and storage to be determined pursuant to Notice and Hearing.

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Section 4.18 Household Pets. No animals, livestock, birds, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on any Residential Site; provided, however, that Owners of Residential Sites may keep a reasonable number of dogs, cats, or other domestic animals which are bona fide household pets, provided that (a) such pets are not kept for any commercial purpose and (b) are not kept in such number or in such manner as to violate any zoning ordinance or other governmental requirements or to create a nuisance. The DRC shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance or that an Owner is otherwise in violation of the provisions of this Section, and to take such action or actions as it deems reasonably necessary to correct the violation. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in Article 10 hereof.

Section 4.19 Restrictions on Further Subdivision, Property Restrictions and Rezoning. No part of the Project shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Declarant during the Declarant Approval Period, thereafter without the prior written approval of the DRC and in either case, subject to review and approval by The Town of Pagosa Springs. Nothing herein shall be deemed to require the approval of the Declarant or the DRC for the transfer or sale of any Site or other parcel of land, including improvements thereon, to more than one person to be held by them as tenants in common or joint tenants, or for the granting of any Mortgage. No application for approval of a final P.D. site plan, zoning amendment, subdivision plat, variance or use permit (or for modification to any of the same) pertaining to any portion of the Project shall be submitted to The Town of Pagosa Springs, Colorado until first approved in writing by the Declarant during the Declarant Approval Period and thereafter by the DRC. Notwithstanding the foregoing, the restrictions contained in this Section shall not apply to portions of the Project owned by Declarant during the Declarant Approval Period.

Section 4.20 Leases. The term "Lease," as used herein, shall include any agreement for the leasing or rental of a Privately Owned Site, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases, whether or not the parties thereto comply with the terms of this Section. A Privately Owned Site, or any portion thereof, may be leased by its Owner only if the Lease shall provide that the terms of the Lease and the lessee's occupancy of the leased premises shall be subject in all respects to the provisions of this Declaration and that any failure by the lessee to comply with any of the provisions of this Declaration shall be a default under the Lease.

Section 4.21 Open Space. Open Space A and Open Space B shall be restricted to recreational uses only. No Dwelling Units or commercial buildings shall be located within Open Space A and Open Space B. Structures such as fencing, gazebos, park benches,

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picnic tables, playground equipment and other recreational facilities may be located within the Open Space only with the prior approval of the Declarant or DRC, as the case may be.

Section 4.22 Commercial Uses. In order to promote a diverse and successful business community, any change in the use or business conducted on a Commercial Site must have the prior approval of the Declarant during the Declarant Approval Period. Heavy industrial and manufacturing shall only be permitted with the approval of the Declarant subject to any applicable zoning regulations of the Town of Pagosa. Notwithstanding anything to the contrary herein, no adult bookstores or medical facilities in the business of performing abortions shall be permitted on the Property. Nor shall liquor retail stores (excluding supermarkets, restaurants, performing arts, theaters or other commercial enterprises in which alcohol is not the predominant business purpose) shall be permitted on the Property.

Section 4.23 Restricted Sales. No sales of printed or visual materials containing "X-rated" content shall be permitted on the Property.

Section 4.24 Landscaping. An Owner shall cause its Privately Owned Site to be landscaped within 24 months of the date of purchase of the Lot. Landscaping shall be done in accordance with a landscape plan which has been approved by the DRC and which shall include trees, shrubs, native grasses and berms. In the event an Owner has not submitted a landscaping plan within a period of 18 months from the date the Lot was purchased from the Declarant, the DRC shall prepare and provide Owner with a DRC approved landscape plan. The DRC shall implement the DRC landscape plan and shall landscape Owner's Lot in accordance therewith, at the expense of the Owner. All costs of landscaping the Lot shall be subject to the DRC's rights of collection and imposition of a Default Assessment as provided in Section 10 hereof.

ARTICLE 5 DESIGN APPROVAL

Section 5.1 Membership of Design Review Committee. The DRC shall initially consist of five (5) members, all of whom shall be appointed by Declarant. Declarant shall have the continuing right to appoint the members of the DRC until the expiration of the Declarant Approval Period. Thereafter, the Owners shall have the right to appoint the members of the DRC as set forth in Section 5.27. Members of the DRC may, but shall not necessarily, be Owners or architects, engineers or other design professionals. Members of the DRC appointed by Declarant may be removed at any time by Declarant and shall serve until resignation or removal by Declarant. Members of the DRC appointed by the Owners may be removed at any time by the Owners as set forth in Section 5.27, and shall serve for such term as may be designated by the Owners or until resignation or removal by the Owners. Unless otherwise specified in this Declaration, the vote or written consent of a majority of the members of the DRC shall constitute the act of the DRC. During the period while Declarant has rights to appoint members of the DRC, Declarant shall give written notice to the Owners of the appointment or removal of any member of the DRC. After the

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Declarant Approval Period, the Owners may at any time, and from time to time, change the authorized number of members of the DRC, but the number of members shall always be an odd number and shall not be less than three (3). Declarant may relinquish all or any part of the foregoing rights of Declarant to appoint the DRC by written notice given by Declarant to the Owners.

Section 5.2 Address of Committee. The address of the DRC shall be that of the principal office of the Declarant or to such other person or such other address designated by notice sent to the Owners.

Section 5.3 "Improvement to a Lot" Defined. "Improvement to a Lot," requiring approval of the DRC, shall mean and include, without limitation: (a) the construction, installation, erection or expansion of any building, structure or other Improvements, including, without limitation, Dwelling Units, utility facilities and signs; (b) the demolition or destruction, by voluntary action, of any building, structure or other Improvements; (c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; (d) landscaping, planting, clearing or removing of trees, shrubs, grass or perennial plants; (e) the construction, installation, erection, placement or expansion of any temporary or other nonpermanent structure, improvement or facility such as, without limitation, any tent, shed, trailer or outdoor storage area or facility; and (f) any change or alteration to the exterior of any previously approved Improvement to a Lot, including any change of exterior appearance, finish material, color or texture.

Section 5.4 Approval of Improvements Required. The approval of the DRC shall be required prior to the construction, installation or alteration of any "Improvement to a Lot", as hereinafter defined, for any Improvement to a Lot on any Commercial Site or Residential Site, except for any Improvement to a Lot made by Declarant, and except as prior approval may be waived or certain Improvements to a Lot may be exempted in writing or under written guidelines or rules promulgated by the DRC, and except and to the extent that the requirement for such approval may otherwise specifically be prohibited pursuant to the provisions of applicable federal, state or local laws, statutes, ordinances, rules or regulations.

Section 5.5 Design Review Criteria. The DRC has issued the Design Review Criteria, and may issue additional guidelines or rules, relating to the procedures, materials to be submitted, design requirements or standards and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to a Lot. Such guidelines or rules may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part. Such guidelines or rules may waive the requirement for approval of certain Improvements to a Lot or exempt certain Improvements to a Lot from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration.

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Section 5.6 Submission of Plans. Plans to accomplish any improvement to a Lot must be submitted to the DRC within 18 months from the date of purchase of the Lot. Prior to commencement of work to accomplish any proposed improvement to a Lot, the Person proposing to make such improvement to a Lot ("Applicant") shall submit to the DRC at its offices such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the DRC shall reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed improvement to a Lot. The Applicant shall be entitled to receive a receipt for the same from the DRC or its authorized agent. The DRC may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed improvement to a Lot. Until receipt by the DRC of all required materials in connection with the proposed improvement to a Lot, the DRC may postpone review of any materials submitted for approval by a particular Applicant. Additionally, all obligations of the DRC hereunder to review and approve all such plans, specifications and other materials with respect to a proposed improvement to a Lot (but not the Applicant's obligation to obtain the DRC's approval thereof) shall be suspended during the period of time in which the Applicant shall be in default under the provisions of Articles 4 or 5 of this Declaration, and such default shall remain uncured by the Applicant, with respect to such Privately Owned Site. In the event an Applicant fails to submit plans within 18 months from the date of purchase of the Lot, the DRC shall require landscaping of the Lot pursuant to Section 4.24.

Section 5.7 Criteria for Approval. The DRC shall approve any proposed improvement to a Lot only if it deems in its reasonable discretion that the improvement to a Lot in the location indicated will not be detrimental to the appearance of the surrounding areas of the Project as a whole; that the appearance of the proposed improvement to a Lot will be in harmony with the surrounding areas of the Project; that the improvement to a Lot will not detract from the beauty, wholesomeness and attractiveness of the Project or the enjoyment thereof by Owners; and that the improvements to a Lot are in conformity with the Design Review Criteria. The DRC may condition its approval of any proposed improvement to Property upon the making of such changes therein as the DRC may deem appropriate.

Section 5.8 Design Review Fee. The DRC may, in its guidelines or rules, provide for the payment of a fee to accompany each request for approval of any proposed improvement to a Lot. The DRC may provide that the amount of such fee shall be uniform for similar types of any proposed improvement to a Lot or that the fee shall be determined in any other reasonable manner, such as based on the estimated cost of the proposed improvement to a Lot.

Section 5.9 Decision of Committee. The decision of the DRC shall be made within thirty (30) days after the date the DRC receives all materials required by the DRC, unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is to disapprove a proposed improvement to Property, the reasons therefore shall be stated. The decision of the DRC shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the DRC.

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Section 5.10 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed approved unless notice of approval or conditional approval or a request for additional information or materials is transmitted to the Applicant by the DRC within thirty (30) days after the date the DRC receives all required materials.

Section 5.11 Obtaining Governmental Approvals. Applicant shall obtain, prior to commencement of construction of any Improvements to a Lot, all permits, licenses, certificates, consents and any other approvals necessary or required pursuant to any law, ordinance, resolution, order, rule or regulation of any governmental authority having jurisdiction ("Governmental Approvals") in order for Applicant to construct, operate and maintain the Improvements to a Lot. The Governmental Approvals shall be deemed to include, but not be limited to, (i) issuance of a special use permit by The Town of Pagosa Springs along with an excavation and/or building permit issued by the Building Department for The Town of Pagosa Springs, (ii) approval of Improvement plans by The Town of Pagosa Springs's Department of Planning and Community Development, or (iii) a site specific development plan approved by The Town of Pagosa Springs planning commission along with an excavation and/or building permit issued by the Building Department for The Town of Pagosa Springs.

Section 5.12 Prosecution of Work After Approval. After approval of any proposed Improvement to a Lot, the proposed Improvement to a Lot shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement to a Lot, any materials submitted to the DRC in connection with the proposed Improvement to a Lot, any conditions imposed by the DRC and in compliance with the Restrictions contained in this Declaration. **Failure to complete any proposed Improvement to a Lot within one (1) year after the date work is commenced or to complete the Improvement to a Lot in accordance with the description and materials furnished to, and the conditions imposed by, the DRC, shall constitute a violation of this Article 5.**

Section 5.13 Notice of Completion. Upon completion of the Improvement to a Lot, the Applicant shall give written Notice of Completion to the DRC. Until the date of receipt of a Notice of Completion, the DRC shall not be deemed to have notice of completion of any Improvement to a Lot.

Section 5.14 Inspection of Work. The DRC or its duly authorized representative shall have the right to inspect any Improvement to a Lot prior to or after completion; provided that the right of inspection shall terminate one hundred and twenty (120) days after the DRC receives a Notice of Completion from the Applicant.

Section 5.15 Notice of Noncompliance. If, as a result of inspections or otherwise, the DRC finds that any Improvement to a Lot has been done without obtaining the approval of the DRC, or was not done in substantial compliance with the description and materials



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furnished to, and any conditions imposed by, the DRC, or was not completed within one (1) year after the date of commencement of work, the DRC shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event, within one hundred and twenty (120) days after the DRC receives any Notice of Completion from the Applicant ("Notice of Noncompliance"). The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance. In addition, the DRC shall send a copy of such notice to any "Interim Lender," as hereinafter defined, for the Privately Owned Site upon which the Improvement to a Lot is being constructed, who shall have previously requested in writing to the DRC that the DRC send to it a copy of any such notice of noncompliance. "Interim Lender" shall mean any Mortgagee providing the Owner with funds for the construction of an Improvement to a Lot.

Section 5.16 Failure of Committee to Act After Completion. If, for any reason other than the Applicant's act or neglect, the DRC fails to notify the Applicant of any noncompliance within one hundred and twenty (120) days after receipt by the DRC of written Notice of Completion from the Applicant, the Improvement to a Lot shall be deemed to be in compliance if the Improvement to a Lot was, in fact, completed as of the date of Notice of Completion.

Section 5.17 Fines or Remedies in Event of Noncompliance. If the DRC determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date the DRC gives its notice. If the Applicant does not comply with the DRC notice within such 45 day period, the DRC may, at its option, do the following:

- (i) impose a fine of \$50.00 per day (or such other amount as implemented by the DRC after the Declarant Approval Period) against any Owner and such Owner's Privately Owned Site for each day the Owner fails to comply with the requirements of this Declaration or Design Review Criteria;
- (ii) enter upon the property and remove or cure the noncompliant Improvement to Property at the Owner's sole cost and expense; or
- (iii) otherwise remedy the noncompliance by taking such actions as the DRC determines are necessary or desirable, including a suit to enjoin such action and the Applicant shall reimburse the DRC, upon demand, for all expenses, including legal expenses, incurred in connection therewith.

If such fines or expenses are not promptly repaid by the Applicant or Owner to the DRC, the DRC may levy a Default Assessment against the Owner of the Site for reimbursement of such costs and expenses. The right of the DRC to impose a fine, or remedy or remove any noncompliance shall be in addition to all other rights and remedies which the DRC may have at law, in equity, or under this Declaration, including an award for damages or injunctive relief.

Section 5.18 Correction of Noncompliance by Interim Lender. If, within a period of not more than thirty (30) days after the date of receipt by the Interim Lender of the copy of

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the Notice of Noncompliance as provided in Section 5.17, the Interim Lender notifies the DRC that it has begun, and will continue to diligently pursue, proceedings to obtain title to the Privately Owned Site upon which is being constructed the Improvement to a Lot pursuant to the remedies provided in the Mortgage held by such Interim Lender or pursuant to any foreclosure, or deed or assignment in lieu of foreclosure, of such Mortgage, then the DRC, at its option, may extend the period for remedy or removal of the noncompliance for a period expiring forty-five (45) days after the date the Interim Lender obtains title to the Privately Owned Site. If the Interim Lender does not comply with the DRC ruling within such extended period, or if at any time during such extended period the Interim Lender shall fail to diligently pursue proceedings to obtain title to the Privately Owned Site as aforesaid, the DRC may, at its option, exercise all of its rights and remedies provided in Section 5.17 hereof.

Section 5.19 No Implied Waiver or Estoppel. No action or failure to act by the DRC shall constitute a waiver or estoppel with respect to future action by the DRC with respect to any Improvement to a Lot. Specifically, the approval by the DRC of any Improvement to a Lot shall not be deemed a waiver of any right or an estoppel to withheld approval or consent for any similar Improvement to a Lot or any similar proposals, plans, specifications or other materials submitted with respect to any other Improvement to a Lot.

Section 5.20 Committee Power to Grant Variances. The DRC may authorize variances from compliance with any of the provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the DRC or by its authorized representative. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that no variance shall operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision covered by the variance nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances and setback lines or other requirements imposed by any governmental authority having jurisdiction.

Section 5.21 Authorized Representative. The powers and duties of the DRC may be delegated to one or more authorized representatives, who shall have the power to review and approve or disapprove proposed Improvements to Property and to grant variances and exemptions. Notwithstanding the foregoing, the authorized representative shall not have the authority to change the policies and guidelines of the DRC. The DRC may, from time to time, by resolution in writing adopted by a majority of the members, designate an authorized representative or representatives (who may, but need not, be members of the DRC). The action of such authorized representative or the written consent or the vote of a majority of the members of the DRC shall constitute the action of the DRC.

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Section 5.22 Meetings of Committee. The DRC shall meet from time to time as necessary to perform its duties hereunder.

Section 5.23 Records of Actions. The DRC shall record in writing all final actions of the DRC, and the DRC shall keep a permanent record of such actions.

Section 5.24 Estoppel Certificates. The DRC shall, upon the request of any interested party and after confirming any necessary facts with the DRC, furnish a certificate with respect to the approval or disapproval of any Improvement to a Lot or regarding whether any Improvement to a Lot was made in compliance herewith. Any Person without actual notice to the contrary shall be entitled to rely on said certificate with respect to all matters set forth therein.

Section 5.25 No Liability for Committee Action. There shall be no liability imposed on the DRC, any member of the DRC, any authorized DRC representative or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the DRC, if such party acted in good faith and without malice. In reviewing any matter, the DRC shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations nor shall its approval of an Improvement to Property be deemed approval of such matters.

Section 5.26 Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to a Lot, and provided that construction is proceeding with due diligence, the DRC shall temporarily suspend the provisions contained in this Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction; provided, however, that, during the course of any such construction (including the use of temporary construction trailers), nothing is done which will result in a violation of any of the provisions of this Declaration upon completion of construction, and nothing is done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

Section 5.27 Appointment and Removal of Successor Members of the DRC. Upon the expiration of the Declarant Approval Period, any successor member of the DRC may be appointed, removed or replaced upon the vote of the Owners having a majority of the total acreage of Privately Owned Lots within the Project.

ARTICLE 6 EASEMENTS

Section 6.1 Maintenance Easement. An easement to exercise its respective rights and to perform its respective obligations pursuant to this Declaration is hereby reserved and granted to Declarant and its respective officers, agents, employees and assigns, upon, across, over, in and under the Project, together with the right to make such use of the Project as may be necessary or appropriate in carrying out such rights or obligations;

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provided, however, that the foregoing easement shall not apply to any portion of a Privately Owned Site upon which is located any building which has been constructed in a manner consistent with the provisions of this Declaration for such Site.

Section 6.2 Utilities. Declarant hereby creates and reserves to itself until the expiration of the Declarant Approval Period, a blanket non-exclusive easement upon, across, over, in and under the Project for the installation, operation, replacement, repair and maintenance of utilities and facilities therefore and other appurtenances thereto, including, but not limited to, water, sanitary sewer, storm sewer, gas and other energy services, telephone, electricity and cable television, fiber optic and other telecommunication services; provided, however, that the foregoing easement shall not apply to any portion of a Privately Owned Site upon which is located any building which has been constructed in a manner consistent with the provisions of this Declaration. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Project and to affix, repair, maintain and replace water and sanitary and storm sewer pipes, gas, electric, telephone, fiber optic and television wires, cables, circuits, conduits and meters. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Project (other than any portion thereof upon which is located a building as set forth above) without conflicting with the terms hereof; provided, however, that such right and authority shall be transferred and shall devolve upon the Owners upon the expiration of the Declarant Approval Period. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other Recorded easement on the Project.

Section 6.3 Conservation Easements. Declarant hereby creates and reserves to itself until the expiration of the Declarant Approval Period, the right to create conservation easements upon the property designated on the Plat as Open Space A and Open Space B. The terms and restrictions of the conservation easements shall be as determined by the Declarant; provided, however, that Open Space A and Open Space B shall not permit Dwelling Units or commercial buildings and shall be restricted to recreational purposes.

Section 6.4 Cross-Parking and Shared Access Easements. Declarant hereby creates and reserves to itself until the expiration of the Declarant Approval Period, the right to dedicate and/or convey on plats or by instrument, certain easements described as "cross-parking easements" and/or shared access easements to promote vehicular ingress and egress to two or more Commercial Lots anywhere within the Project, including but not limited to, Block 8, Lots 1, 2, 3, and 4. Such cross-parking easements and shared access easements shall be placed in such locations as the Declarant deems necessary in order to facilitate traffic flows within the Project.

Section 6.5 Infrastructure, Trails. Declarant reserves, as a blanket easement, the right to grant, dedicate reserve and otherwise create from time to time, other easements necessary for infrastructure improvements and hiking trails on, across and under the

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Property, in particular, the Open Space provided that such easements do not unreasonably interfere with an Owner's use of a Privately Owned Site.

Section 6.6 Easements Deemed Created. All conveyances of Privately Owned Sites hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 6, whether or not specific reference to such easements or to this Article appears is made in the instrument of such conveyance.

ARTICLE 7 Default Assessments

Section 7.1 Default Assessments. The DRC may, subject to the provisions hereof, levy a Default Assessment against an Owner if the willful or negligent failure of the Owner, a Related User of the Owner, or a person claiming through the Owner to comply with this Declaration, or the Design Review Criteria or the actions or failure to act of such Owner or a Related User of such Owner have resulted in the expenditure of funds by the DRC. Such Default Assessment shall be levied only after a Notice and Hearing, the time and place of which shall be determined by the DRC with reasonable notice to the Owner. The amount of the Default Assessment shall be due and payable to the DRC thirty (30) days after the Notice and Hearing and a notice to the Owner of the decision that the Default Assessment is owing.

Section 7.2 Late Charges and Interest. If any Default Assessment or any installment thereof is not paid within thirty (30) days after it is due, the Owner obligated to pay the Default Assessment may be required to pay a reasonable late charge to be determined by the DRC. Any Default Assessment or installment of an Default Assessment which is not paid within thirty (30) days after the date of any Notice of Default is given, shall bear interest from the date such Default Assessment became due and payable at the rate of eighteen percent (18%) per annum simple interest.

Section 7.3 Remedies to Enforce Default Assessments. Each Default Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whom the same is assessed. In the event of a default in payment of any Default Assessment or installment thereof, the DRC may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation by suit or by filing and foreclosure of a lien as hereinafter provided.

Section 7.4 Lawsuit to Enforce Default Assessments. The DRC may bring a suit at law to enforce any Default Assessment obligation. Any judgment rendered in such action shall include any late charge, interest, and other costs of enforcement including reasonable attorneys' fees in the amount as the court may adjudge, against the defaulting Owner.

Section 7.5 Lien to Enforce Default Assessments. The DRC may also elect to file a claim of lien against the lot of the delinquent Owner by recording a notice ("Notice of Lien")

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setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection which have accrued thereon, (c) the legal description and street address of the lot against which the lien is claimed and (d) the name of the record Owner thereof. Such Notice of Lien shall be duly executed by the DRC or other duly authorized agent of the DRC. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts (including any per diem fines) are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the DRC shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the DRC to cover the costs of preparing and recording the release of the lien. Unless paid or otherwise satisfied, the lien may be foreclosed in the manner for foreclosure of liens in the State of Colorado.

Section 7.6 Estoppel Certificates. Upon payment of such reasonable fee as may be determined from time to time by the DRC, and upon the written request of any Owner and any person with, or intending to acquire, any right, title or interest in the lot of an Owner, the DRC shall furnish a written statement setting forth the amount of any Default Assessments or other amounts, if any, due and accrued and then unpaid with respect to a lot and the Owner thereof and setting forth the amount of any Default Assessment levied against such lot which is not yet due and payable. Such statement shall, with respect to the person to whom it is issued, be conclusive against the DRC and all persons for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied under or pursuant to this Declaration.

Section 7.7 No Offsets or Abatements. All Default Assessments shall be payable in the amounts specified in the levy thereof, and no abatements or offsets or reduction thereof shall be permitted for any reasons including, without limitation, any claim that the DRC is not properly exercising its duties and powers under this Declaration, any inconvenience arising from the making or repairs or improvements to the Common Areas, or for any other reason.

ARTICLE 8 ARBITRATION

Section 8.1 Alternative Dispute Resolution. The purpose of the Declaration is to establish a harmonious planned community. Because the prompt, efficient, fair and non-belligerent resolution of any disputes is desirable, any controversy arising out of or relating to this Declaration, or a breach thereof, or any other dispute between (1) the Declarant and (2) the Association, DRC, or any Owner shall be resolved as set forth in this Article.

Section 8.2 Direct Communication. The parties to the disagreement shall set forth their respective positions in the dispute in correspondence. Each party shall respond within seven days after receipt of a letter from the other until agreement is reached.

Section 8.3 Mediation. If the dispute cannot be resolved through direct communication of the parties, either party may request appointment of a neutral and properly

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credentialed mediator. Both parties shall participate in the mediation in good faith until the dispute is resolved for a period not to exceed thirty days with the consent of all parties. The cost of the mediation shall be divided equally among the parties.

Section 8.4 Method. If the dispute cannot be resolved through mediation, either party may request appointment of one or more neutral and properly credentialed arbitrators with expert knowledge and experience regarding the subject in dispute. The initiating person shall give written notice of its decision to arbitrate by providing a specific statement setting forth the nature of the dispute, the amount involved and the remedy sought. The initiating person shall be responsible for all filing requirements and the payment of any fees according to the rules of the applicable regional office of the American Arbitration Association. The parties shall have an equal and fair opportunity to present their respective positions to the arbitrators, orally or in writing, as the arbitrators may specify depending on the nature of the dispute. The arbitrators may require such testimony, materials and documentation as they may determine to be appropriate. The arbitrators shall provide a written resolution within thirty days after the conclusion of the presentations of the parties and receipt of requested materials and documents. Any dispute shall be settled by binding arbitration administered by the American Arbitration Association.

(a) **Costs.** The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and expenses including any attorney's fees, arbitrator's fees and out-of-pocket expenses of any kind. The term "prevailing party" shall mean the party whose position is most nearly upheld in arbitration. (For example, the prevailing party would be the party who is required to pay \$1,000.00 in the arbitration proceeding where such party had, prior to the commencement of the arbitration, offered \$500.00 by way of settlement and the opposing party, refusing such offer, had claimed entitlement to \$10,000.00.)

(b) **Binding Nature; Applicable Law.** The consideration of the parties to be bound by arbitration is not only the waiver of access to determination by a court and/or jury, but also the waiver of any rights to appeal the arbitration finding. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction.

(c) **Location.** The alternative dispute resolution proceeding shall be held within Archuleta County, Colorado unless otherwise mutually agreed by the parties.

(d) **Sole Remedy; Waiver of Judicial Rights.** The Declarant, the DRC, the Association, and each Owner of a Lot expressly consent to these procedures established in this Article as their sole and exclusive remedy, and expressly waive any right they may have to seek resolution of any dispute contemplated by this Article in any court of law or equity, and any right to trial by judge or jury. If a dispute involves the Declarant or the Association, no person shall file a memorandum of lis pendens or similar instrument that would encumber or create a lien upon the land owned either by the Declarant or the Association.

(e) **No Agreement by Association or DRC.** Notwithstanding any provision in this Article 8 to the contrary, the DRC and Association shall have the right to enforce all

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covenants set forth herein against Owners, as provided in this Declaration, and the Association and/or DRC does not agree to mediate or arbitrate its claims in such enforcement actions.

ARTICLE 9 OWNER'S ASSOCIATION

Section 9.1 Formation. The Association shall be charged with the duties and invested with the powers prescribed by this Declaration and the Association articles and bylaws. The Association articles and bylaws shall not, for any reason, be amended, otherwise modified, or interpreted so as to be inconsistent with this Declaration.

Section 9.2 Executive Board and Officers. The affairs of the Association shall be conducted by the Executive Board and such officers as the Executive Board may elect or appoint in accordance with its articles and bylaws, as the same may be amended from time to time. The Association, by and through the Executive Board, shall govern and manage the affairs of the Association, property owned by the Association, and the provisions of this Declaration. The Executive Board shall be composed of a minimum of three members. The Executive Board may also appoint various committees. Declarant, during the "Declarant Approval Period", shall have the right to appoint and remove Directors and officers.

Declarant may voluntarily surrender the right to appoint and remove Directors and officers before termination of the Declarant Approval Period. In that event, Declarant may require, for the duration of the Declarant Approval Period, that specified actions of the Executive Board, as described in a recorded instrument executed by the Declarant, must be approved by Declarant before they become effective.

Except as otherwise provided above, upon the termination of the Declarant Control Period, the Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom shall be Owners, and the Executive Board shall elect the officers. The Executive Board and officers shall take office upon election.

Section 9.3 Association Rules. The Association may, by a majority vote of the Executive Board, adopt, amend and repeal Association Rules to be known as the "Association Rules". The purpose of the Association Rules shall be to implement, supplement or otherwise carry out the purposes and intentions of this Declaration; provided such Association Rules must be consistent with this Declaration.

Section 9.4 Liability. In the performance of their duties, the officers and members of the Executive Board are required to exercise the care required of a fiduciary of the Owners. No member of the Executive Board and no officer shall be liable for actions taken or omissions made in performance of such member's duties, except for wanton and willful acts or omissions. Officer or member actions taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and to have met the care required under the Act.

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Section 9.5 Membership. The Association shall be a membership association without certificates or shares of stock. Every Owner shall be a member of the Association, and a person or entity who is not an Owner may not be a member of the Association. Membership in the Association shall automatically terminate when a member ceases to be an Owner. There shall be one class of membership, which is a voting membership by Owners.

Section 9.6 Voting. Each Lot (including Lots owned by the Declarant and including a Multi-family Site or such other Lot governed by a Sub-Association) shall be allocated a vote which shall be equal to the amount of acreage comprising such Lot as shown on the table attached hereto as Exhibit B. Sub-Association board of directors shall be deemed the Owner of, and shall be allocated the vote of Multi-family parcels or Lots which have been further subdivided and which are governed by a Sub-Association. Neither fractional nor cumulative voting shall be allowed. If the Owners of a Lot cannot agree among themselves as to how to cast their vote on a particular matter, they shall lose their right to vote on such matter. If any Owner of a Lot casts the vote for that Lot, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of that Lot, unless an Owner of that Lot makes an objection thereto to the person presiding over the meeting when the vote is cast. If more than one vote is cast for any Lot, none of such votes shall be counted and all of such votes shall be deemed null and void. For the election of the Executive Board, those candidates receiving the highest number of votes shall be deemed elected. Notwithstanding anything to the contrary herein, Open Space A and Open Space B shall not have any "voting" rights in the Association.

Section 9.7 Enforcement. The Declarant (its successors and assigns) and the Association shall each have the right and power to bring suit in its name for legal or equitable relief for the failure to comply with any provision of this Declaration, or Association Rules promulgated by the Executive Board. In addition, the Association shall have the right to impose on any Owner monetary fines for any lack of compliance with provisions of this Declaration or Association Rules promulgated by the Executive Board and where such fines are not paid within the time provided, such fines may be collected as an Assessment Lien. The failure of the Declarant and/or the Association to insist upon the strict performance of any such provisions or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or relinquishment for the future of any such provision or the enforcement thereof. Any Owner aggrieved by a lack of compliance by another Owner may also bring suit for legal and equitable remedies. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to reimbursement of its costs and expenses, including reasonable attorney's fees, in connection therewith.

Section 9.8 Power of Association. Each Owner agrees that the Association has all the powers granted to it by this Declaration, the Act, and Colorado Nonprofit Corporation Act and any amendments thereto. Such powers shall include, without limitation, levying Assessments against Owners; imposing a lien on Privately Owned Sites for any unpaid or uncollected Assessments or penalties, and foreclosing any such liens; enforcing these Declarations;

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acquiring, holding, owning, leasing, mortgaging and disposing of property; the adoption of Association Rules; the defending, prosecuting or intervention in litigation on behalf of all members; the borrowing of monies for Association purposes; and the right to pledge future income in order to secure such borrowings. The term "pledge future income" shall include the right to impose a special assessment for repayment of such borrowings and to assign such special assessment (and all lien and collection rights appurtenant thereto) to the mortgagee as security for repayment thereof. The Association may exercise any other right, power or privilege given to it by this Declaration, the articles and bylaws of the Association.

Section 9.9 Maintenance of Privately Owned Sites. Each Owner shall, at such Owner's sole cost and expense, maintain such Owner's Privately Owned Site and the improvements located thereon in good order and repair. If, in the reasonable judgment of the Association, an Owner fails to maintain Owner's Privately Owned Site or the Improvements located thereon, and such failure remains uncured for more than thirty (30) days after the Association's delivery of written notice thereof to such Owner, the Association may enter upon such Privately Owned Site, including its Common Elements, perform such maintenance and repairs the Association deems necessary and appropriate, and charge all costs and expenses incurred by the Association in connection therewith to such Owner as a Default Assessment. The Association may, without notice, make emergency repairs to and maintain any Privately Owned Site or Improvements located thereon, as may, in its judgment, be necessary for the safety of all persons or to prevent damage to any other property. The cost of such emergency repairs shall be charged to the Owner of the Privately Owned Site as a Default Assessment.

Section 9.10 Maintenance by Sub-Associations. Each Sub-Association shall maintain the Common Elements within its Multi-family Site or such other site governed by it. If, in the reasonable judgment of the Association, a Sub-Association fails to maintain its Common Elements in good order and repair, and such failure remains uncured for more than thirty (30) days after the Association's delivery of written notice thereof to such Sub-Association, the Association may enter upon such Multi-family Site, or other site governed by a Sub-Association, including their Common Elements, perform such maintenance and repairs the Association deems necessary and appropriate, and charge all costs and expenses incurred by the Association in connection therewith to such Sub-Association's members, as a Default Assessment.

Section 9.11 Managers. The Association may employ or contract for the services of managers to whom the Executive Board may delegate certain powers, functions or duties of the Association. Managers shall not have the authority to make expenditures except upon prior approval of the Executive Board.

Section 9.12 Special Provisions Regarding Association Property. All Common Elements which may be eventually owned by the Association shall, at all times, be owned, managed, operated, and maintained by the Association consistent with the provisions of this Declaration and in trust for the use, benefit, and enjoyment of the Owners of Privately Owned Sites.

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ARTICLE 10
ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS.

Section 10.1 Obligation for Assessments and Other Charges.

(a) Each Owner, by accepting a deed to a Privately Owned Site, shall be deemed to have covenanted and agreed to pay the Association all Assessments and other charges that the Association is required or permitted to levy or impose on such Owner, or such Owner's Privately Owned Site.

(b) Notwithstanding the definition of the term "Owner": (i) a person or entity that acquires a Privately Owned Site in a foreclosure sale shall be personally liable for all Assessments or other charges that the Association may levy, commencing on the date of the foreclosure sale; and (ii) a person or entity that acquires a Privately Owned Site by deed in lieu of foreclosure shall also be personally liable for all such Assessments, commencing on the date the Owner executes the deed in lieu of foreclosure.

(c) No Owner shall be exempt from liability for any Assessment or other charges by waiving the use or enjoyment of any Common Element, or by abandoning any Privately Owned Site against which such Assessments or other charges are made.

(d) Each Owner shall be personally liable for all Assessments and other charges levied on such Owner's Privately Owned Site. If there is more than one Owner, each Owner shall be jointly and severally liable with the other Owners for all Assessments or other charges so levied.

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

(f) Notwithstanding anything else to the contrary contained in this Declaration, the Association and its Common Elements (including Open Space A and Open Space B) shall be exempt from all Assessments; and, during the Declarant Approval Period, Assessments shall be made only as to Privately Owned Sites conveyed by the Declarant to any Owner other than the Declarant.

Section 10.2 Budgets.

(a) Prior to the first levy of any Assessments, and, thereafter, on or before

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July 1 of each calendar year, the Executive Board shall adopt the 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; and (ii) the amount of funds for such common expenses that the Executive Board proposes to raise through all Assessments.

(b) The proposed annual budget shall be sent to all Owners for approval; provided, however, that unless seventy-five (75) percent of all votes within the Association, whether or not a quorum is present, rejects the proposed annual budget, the proposed annual budget shall be deemed ratified. If the Executive Board deems it necessary to amend an annual budget that has been ratified by the Owners, the proposed amendment shall also be sent to all Owners and, unless seventy-five (75) percent of all votes within the Association, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

Section 10.3 Annual Assessments. Prior to the first levy of any Assessments, and, thereafter, on or before July 1st of each calendar year, the Executive Board shall levy and collect from each Owner an annual assessment for the common expenses of the Association (to be paid in twelve equal monthly installments).

Section 10.4 Special Assessments. If, at any time, the Executive Board believes that the sum of common expenses for a calendar year will exceed the revenues of the Association for that calendar year, then the Executive Board may cause the Association to levy and collect a special assessment from Owners in an amount equal to the amount of such excess. To the extent that Common Elements are applicable to a Multi-family Site, and/or applicable to a site governed by a Sub-Association, for which the Association has the responsibility for maintenance, the Association may specially assess the Sub-Association or to the extent necessary to maintain such Common Elements.

Section 10.5 Default Assessments. Notwithstanding anything to the contrary contained herein, if any common expense for which the Association has assumed responsibility is caused by (a) the negligence or misconduct of an Owner or such Owner's family or guests and/or (b) a violation of any covenant or condition of this Declaration by an Owner or such Owner's family or guest, the Association may levy an Assessment against such Owner's Privately Owned Site. Any such Assessment levied by the Association, and each fine, penalty, fee or other charge imposed upon an Owner for such violation, shall be referred to as a "Default Assessment". With respect to any Default Assessment, the Association shall provide reasonable notice and reasonable opportunity to the Owner against whom the Association seeks to levy the Default Assessment to review the Default Assessment circumstances with the Executive Board prior to its decision to so levy the Default Assessment.

Section 10.6 Assignment of Assessments. The Association shall have an unrestricted right to assign its right to receive Assessments and other future income, either as security for the obligations of the Association or otherwise.

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Section 10.7 Assessment Lien. The Association shall have a lien on each Privately Owned Site for any Assessment levied against such property and any fine, late charges, penalties, interest, attorney's fees, and disbursement of costs of collection imposed against the Owner. The Assessment lien shall secure all of the foregoing obligations of an Owner until such time as the obligations become due. If any Assessment is paid in installments, the Assessment lien secures each installment from the time it becomes due, including any due dates set by the Association for the acceleration of installment obligations. An Assessment lien is prior to all liens and encumbrances on a Privately Owned Site, except as otherwise provided in the Act. The recording of this Declaration constitutes record notice and perfection of any Assessment lien on any Privately Owned Site. No further recordation of any claim of any Assessment lien is required. This Section 10.7 does not prohibit actions or suits to recover sums secured by an Assessment lien, or prohibit the Association from taking a deed in lieu of foreclosure, which actions or suits the Association may undertake in accordance with this Declaration. A court may appoint a receiver for an Owner to collect all sums to be due from the order prior to or during the pendency of the action. An Assessment lien may be foreclosed in any manner as a mortgage or real estate.

Section 10.8 Estoppel Certificates; Notice to Mortgagees. The Association shall furnish to an Owner or its designee, upon written request, delivered personally or by certified mail, to the Association's registered agent, a statement setting forth the amount of unpaid Assessments currently levied against an Owner's Privately Owned Site. The statement shall be furnished within fourteen days after receipt of the request.

Section 10.9 Administration of Assessments. The Association shall have the right to inspect and copy all records of any Owner that are related to the Owner's obligation to pay any Assessment. The Association may adopt such Association Rules that it deems necessary and appropriate with respect to the administration of Assessments.

Section 10.10 Assessments on Residential Units. Pursuant to CCIOA 38-33.3-116(2), the average annual common expense liability for each unit restricted to residential purposes (including each residential unit within a Multi-family Site) may not exceed \$450.00 (determined as of January 2005 and which may be adjusted in accordance with any increase in the US Dept of Labor Bureau of Labor Statistics consumer price index for the Denver-Boulder consolidated metropolitan area for the preceding calendar year). The restriction on the average annual common expense liability shall be exclusive of any optional user fees and any insurance premiums paid by the Association. The \$450.00 limitation shall not be increased if the final consumer price index for the preceding calendar year did not increase and shall not be decreased if the final consumer price index for the preceding calendar year decreased.

Section 10.11 Allocation of Assessments. Each Owner shall be responsible for that Owner's share of the Common Expenses, which, except as specifically provided in this Declaration, shall be divided among the Privately Owned Sites included within the Property under this Declaration from time to time according to the following allocation formula: At any

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given time, an Owner's share of Common Expenses shall be determined as a fraction, the numerator of which is the total acreage comprising a Privately Owned Site owned by an Owner and the denominator of which is the total acreage of all Lots within the Project. Any Common Expenses or portion thereof benefiting fewer than all of the Lots (which determination shall be made by the Declarant) shall be assessed exclusively against the Lots benefited. Exhibit B attached hereto is a table showing the approximate acreage of each Privately Owned Site within the Project. Declarant reserves the right, during the Declarant Approval Period, to amend Exhibit B in order to accurately reflect acreages of Privately Owned Sites.

Section 10.12. Agreement in Advance Regarding Surpluses. The Executive Board shall establish an adequate reserve fund for the maintenance repair and replacement of those Common Elements that must be periodically maintained, repaired or replaced. To the extent possible, such reserve fund shall be funded through the monthly installments of the annual Common Expense Assessments. Any surplus funds derived from assessments shall be transferred to the reserve fund or used for Association operations during the next fiscal year, in the Executive Board's sole discretion. In no event shall any surplus funds be distributed to Owners. Each Owner by acceptance of the deed to the Privately Owned Site, for each fiscal year of the Association in which such Privately Owned Site is owned, hereby authorizes the Executive Board, in its sole discretion, to either use such surplus during the next fiscal year or to transfer to the reserve fund.

ARTICLE 11 MISCELLANEOUS

Section 11.1 Term of Declaration. Unless amended as herein provided, each provision contained in this Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints on alienation shall continue and remain in full force and effect for the period of twenty-one (21) years following the death of the survivor of John Ranson and the now living descendants of said person, or until this Declaration is terminated as hereinafter provided, whichever first occurs. Unless amended as herein provided, all other provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective until December 31, 2050, and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by the affirmative vote, by written ballot, of Owners then holding at least seventy-five percent (75%) of the total acreage of Privately Owned Sites within the Project and, during the Declarant Approval Period, with the prior written consent of Declarant. The termination of this Declaration shall be effective upon the Recording of an instrument acknowledging such termination which has been executed by the Owners holding at least seventy-five percent (75%) of the total acreage of Privately Owned Sites within the Project, and, if required as aforesaid, Declarant.

Section 11.2 Amendment of Declaration by Declarant. Until the first Privately Owned Site subject to this Declaration has been converted by Declarant by deed Recorded in the office of the Clerk and Recorder of Archuleta County, Colorado, any of the restrictions in this Declaration may be amended or terminated by Declarant by the Recordation of a written

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instrument, executed by Declarant setting forth such amendment or termination. Notwithstanding the foregoing, Declarant hereby reserves and is granted the right and power to make and, where required, to Record technical amendments to this Declaration at any time prior to the date upon which the last Privately Owned Site within the Project has been sold and conveyed by Declarant to any Owner other than Declarant, for the purposes of correcting spelling, grammar, dates, cross references, typographical errors or other similar technical errors, or as may otherwise be required to clarify the meaning of any provision of any or all of such documents.

Section 11.3 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended at any time and from time to time upon approval of the amendment by Owners holding at least seventy-five percent (75%) of the total acreage of the Privately Owned Sites within the Project, and, if such amendment or repeal is made during the Declarant Approval Period, the consent of Declarant. Any such amendment shall be effective upon the Recording of an instrument acknowledging such amendment which has been properly executed by the Owners and, if required as aforesaid, Declarant.

Section 11.4 Agency Amendments. Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any of the Agencies, then, subject to the following sentence of this Section, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of the Declarant Approval Period, and each such amendment must contain thereon the written approval of the VA or HUD, to the extent required by VA or HUD.

Section 11.5 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate upon the expiration of the Declarant Approval Period.

Section 11.6 Special Rights of First Mortgagees. Any First Mortgagee, upon filing a written request therefore with the DRC, shall be entitled to receive written notice from the DRC and/or Association of any default by the Owner indebted to such First Mortgagee in the performance of the Owner's obligations under this Declaration, the Design Review Criteria or any other guidelines or rules of the DRC and/or Association.

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Section 11.7 First Mortgagee Exemption from Rights of First Refusal. Any First Mortgagee who obtains title to any Privately Owned Site within the Project pursuant to the remedies provided in the First Mortgage held by such First Mortgagee or pursuant to any foreclosure of the First Mortgage or by deed or assignment in lieu of foreclosure shall be exempt from any right of first refusal if any such right of first refusal is ever contained in this Declaration.

Section 11.8 Priority of First Mortgage Over Assessments. Each First Mortgagee who obtains title to the Privately Owned Site encumbered by the First Mortgage, whether pursuant to the remedies provided in the Mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Privately Owned Site free and clear of any claims for unpaid Default Assessments or charges against such Privately Owned Site which accrued prior to the time such First Mortgagee acquires title. A First Mortgagee shall be deemed to have acquired title to a Privately Owned Site on the date of receipt of a deed in lieu of foreclosure, or on the date of receipt of a Certificate of Purchase from the Public Trustee, or on the date of sale pursuant to a judicial foreclosure and receipt of the Sheriff's Certificate of Purchase, as the case may be.

Section 11.9 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, facsimile transmission or telegraph. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the DRC and/or Association for the purpose of service of such notice, or to the Privately Owned Site of such Person if no address has been given to the DRC and/or Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the DRC and/or Association.

Section 11.10 Persons Entitled to Enforce Declaration. Any Association acting by authority of its board of directors, any Owner of a Privately Owned Site within the Project (subject to the provisions below), the DRC and Declarant shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration against any property within the Project and the Owner thereof; provided, however, that (a) an Owner of a Privately Owned Site within the Project shall have the right of enforcement only if (i) there is not in existence at the time of such enforcement an Association formed with respect to the portion of the Project of which such Owner is a member by virtue of its ownership of such Privately Owned Site and (ii) the Owners of Privately Owned Sites join in the exercise of such right of enforcement. For the purpose of the foregoing sentence, "majority" shall mean the Owners holding more than fifty percent (50%) of the total acreage of the Privately Owned Sites then existing within such portion of the Project, including the lot of the Owner who initiates such endorsement. No other Person shall have any right of enforcement with respect to this Declaration. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provisions of this Declaration.

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Section 11.11 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the letter sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

Section 11.12 Enforcement by Self Help. Declarant or the DRC or the Association, or any authorized agent of any of them, may enforce, by self help, any of the provisions, covenants, conditions, restrictions or equitable servitudes contained in this Declaration, provided such self help is (except in the event of an "Emergency Situation," as hereinafter defined) preceded by Notice and Hearing. An "Emergency Situation" shall mean a situation in which prompt action is required to be taken in order to prevent or to reduce the effect of any imminent or threatened damage or harm to person or property, to preserve property or to prevent or minimize the effects of any negative impacts on surrounding property from any condition existing on the property upon which the entry is to occur. Any such self help by Declarant, Association or the DRC may include entering upon the respective property and taking such actions as Declarant, Association or the DRC, as the case may be, determines are necessary or desirable to cause compliance with this Declaration, all without liability to the Owner of the affected property and without any further notice or opportunity to cure afforded to such Owner, in which case Declarant, Association or the DRC, as the case may be, shall be entitled to recover from such Owner, in addition to all other amounts to which Declarant, Association or the DRC, as the case may be, shall be entitled, all costs and expenses incurred by Declarant, Association or the DRC, as the case may be, in so doing.

Section 11.13 Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Project, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 11.14 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

Section 11.15 Costs and Attorneys' Fees. In any action or proceeding under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees.

Section 11.16 Limitation on Liability. Except as may otherwise be provided by law, the DRC, Declarant, and any member, or officer, director, agent or employee of either of the same, shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

Section 11.17 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its officers, directors, agents or employees in connection with any portion of the Property,

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or any Improvement thereon, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation, thereof, unless and except as shall be specifically set forth in a writing signed by Declarant. ANY AND ALL WARRANTIES WITH RESPECT TO ANY PORTION OF THE PROJECT, AND ANY IMPROVEMENTS THEREON, EXPRESS OR IMPLIED, WHETHER ARISING UNDER FEDERAL OR STATE LAW, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OR MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY SPECIFICALLY DISCLAIMED.

Section 11.18 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purposes of this Declaration.

Section 11.19 Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 11.20 Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 11.21 Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

Section 11.22 Captions for Convenience. The titles, headings and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

Section 11.23 Restrictions Imposed. The Project shall be subject to all of the covenants, conditions, Restrictions, limitations and other provisions contained in this Declaration and in the applicable Plat.

Section 11.24 Inconsistencies Between Laws and Instruments. In the event of any inconsistency between this Declaration and the Plat, this Declaration shall control. In the event of any inconsistency between the Declaration and the Design Review Guidelines, the terms of this Declaration shall control.

Section 11.25 Additional Enforcement Powers. In addition to any other enforcement powers under this Declaration, the DRC shall have the right to enforce any or all of the provisions of the Design Review Criteria or other guidelines or rules of the DRC through any or all of the enforcement mechanisms provided by this Declaration.

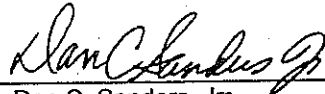
IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

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PAGOSA PARTNERS I, INC.



By: Dan C. Sanders, Jr.

Title: V.P. Pagosa Partners I Inc

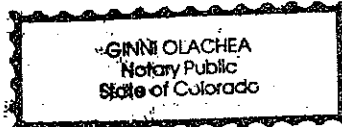
STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

The foregoing instrument was acknowledged before me this 27th day of April, 2005, by Dan C. Sanders, Jr., Vice President of Pagosa Partners I, Inc.

WITNESS my hand and official seal.

My commission expires: 23 Oct 2006


Notary Public



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EXHIBIT A
TO
MASTER DECLARATION
FOR
ASPEN VILLAGE

(Description of Expansion Property)

Lot A2, Harmon Park Subdivision according to the Plat thereof filed Dec. 21, 2004 as reception no. 20412244, in office of clerk and recorder, Archuleta County, Plat No. 718

The property is 3.18 acres.



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EXHIBIT B
TO
MASTER DECLARATION
FOR
ASPEN VILLAGE

Lots

% Allocated for Voting

% Allocated for Common Expenses



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EXHIBIT B

Voting rights by lot ownership - note openspace and common areas do not vote

BLOCK	LOT	LOT ACERAGE	% of TOTAL
1	1	Cottages	See Cottages Break Down Page 2 of 3
2	1	Enclaves	See Enclave Break Down Page 3 of 3
3	1	0.88	1.66477%
3	2	0.87	1.64586%
3	3	5.00	9.45895%
3	4	1.02	1.92963%
3	5	1.36	2.57283%
4	1	1.44	2.72418%
4	2	0.69	1.30533%
4	3	0.85	1.60802%
4	4	3.00	5.67537%
5	1	1.24	2.34582%
5	2	0.66	1.26094%
5	3	1.72	3.25388%
5	4	1.03	1.94654%
5	5	0.73	1.38101%
6	1	4.52	8.55089%
6	2	1.06	2.00530%
6	3	0.99	1.87287%
7	1	3.36	6.35841%
8	1	0.86	1.62694%
8	2	1.25	2.36474%
8	3	6.65	12.58040%
8	4	1.60	3.02689%
9	1	0.70	1.32425%
9	2	0.65	1.22966%
9	3	0.62	1.17291%
9	4	0.90	1.70281%
9	5	1.52	2.87552%
SUBTOTAL		45.37	85.8%

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EXHIBIT B

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SUBDIVISION			SUBDIVISION		
COTTAGES LOT ACERAGE			COTTAGES LOT ACERAGE		
		Percent of			Percent of
		Total			Total
1	0.115	0.21756%	28	0.131	0.24782%
2	0.125	0.23847%	29	0.148	0.27998%
3	0.126	0.23837%	30	0.127	0.24026%
4	0.122	0.23080%	31	0.110	0.20810%
5	0.139	0.26296%	32	0.110	0.20810%
6	0.144	0.27242%	33	0.096	0.18161%
7	0.134	0.25350%	34	0.105	0.19864%
8	0.104	0.19675%	35	0.119	0.22512%
9	0.158	0.29890%	36	0.112	0.21188%
10	0.144	0.27242%	37	0.119	0.22512%
11	0.134	0.25350%	38	0.136	0.25728%
12	0.112	0.21188%	39	0.109	0.20621%
13	0.123	0.23289%	40	0.108	0.20431%
14	0.121	0.22891%	41	0.103	0.19485%
15	0.112	0.21188%	42	0.097	0.18350%
16	0.112	0.21188%	43	0.100	0.18918%
17	0.097	0.18350%	44	0.096	0.18181%
18	0.097	0.18350%	45	0.087	0.16459%
19	0.097	0.18350%	46	0.119	0.22512%
20	0.113	0.21377%	47	0.111	0.20999%
21	0.152	0.28755%	48	0.108	0.20431%
22	0.116	0.21945%	49	0.135	0.25539%
23	0.120	0.22701%	50	0.132	0.24972%
24	0.120	0.22701%	51	0.109	0.20621%
25	0.111	0.20999%	52	0.100	0.18918%
26	0.149	0.28188%	53	0.099	0.18729%
27	0.155	0.29323%	54	0.101	0.19107%
SUBTOTAL 3.352			6.34% SUBTOTAL 3.027 5.73%		

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EXHIBIT B

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SUBDIVISION			SUBDIVISION		
ENCLAVE LOT ACERAGE			ENCLAVE LOT ACERAGE		
Percent of			Percent of		
Total			Total		
A1	0.025	0.04729%	D1	0.025	0.04729%
A2	0.022	0.04540%	D2	0.022	0.04162%
A3	0.024	0.04540%	D3	0.024	0.04540%
A4	0.022	0.04162%	D4	0.022	0.04162%
A5	0.025	0.04729%	D5	0.024	0.04540%
A6	0.025	0.04729%	D6	0.022	0.04162%
A7	0.022	0.04162%	D7	0.025	0.04729%
A8	0.024	0.04540%	E1	0.025	0.04729%
A9	0.022	0.04162%	E2	0.022	0.04162%
A10	0.025	0.04729%	E3	0.022	0.04162%
B1	0.025	0.04729%	E4	0.025	0.04729%
B2	0.022	0.04162%	F1	0.022	0.04162%
B3	0.024	0.04540%	F2	0.024	0.04540%
B4	0.022	0.04162%	F3	0.024	0.04540%
B5	0.025	0.04729%	F4	0.022	0.04162%
B6	0.025	0.04729%	F5	0.022	0.04162%
B7	0.022	0.04162%	F6	0.024	0.04540%
B8	0.024	0.04540%	F7	0.024	0.04540%
B9	0.022	0.04162%	F8	0.022	0.04162%
B10	0.025	0.04729%	G1	0.022	0.04162%
C1	0.025	0.04729%	G2	0.024	0.04540%
C2	0.022	0.04162%	G3	0.024	0.04540%
C3	0.024	0.04540%	G4	0.022	0.04162%
C4	0.022	0.04162%			
C5	0.025	0.04729%			
SUBTOTAL	0.590	1.12% SUBTOTAL	0.534	1.01%	

TOTAL VOTING ACRES 52.86

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**FIRST SUPPLEMENT TO
MASTER DECLARATION FOR
ASPEN VILLAGE
PLANNED DEVELOPMENT**

THIS FIRST SUPPLEMENT is intended to supplement and amend that certain Master Declaration for Aspen Village Planned Development recorded on May 10, 2005 at Reception No. 20504450 in the office of the Archuleta County Clerk and Recorder, (the "Master Declarations"). This First Supplement to Master Declaration For Aspen Village Planned Development is hereby made this 16 day of August, 2005 by Pagosa Partners 1, Inc., a Colorado corporation (the "Declarant").

The Declarant is the owner of more than 75% of the real property comprising the Aspen Village Planned Unit Development and has the authority to amend this Master Declaration for the purposes described herein pursuant to Sections 11.2 and 11.3 of the Master Declaration.

This First Supplement is hereby amended in order to further clarify and provide a detailed legal description and map depicting the real property governed by the Master Declaration.

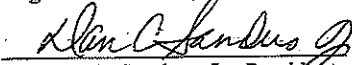
NOW THEREFORE, the Declarant hereby certifies and declares that the Declarations are amended as follows:

Section 1.1 of the Master Declaration is hereby amended as follows:

The real property described as, and consisting of, the Aspen Village Planned Unit Development (the "Project") is more fully described in the legal description attached hereto as Exhibit A-1. A map of the Aspen Village Planned Unit Development is attached hereto as Exhibit A-2.

IN WITNESS WHEREOF, this First Supplement to Master Declaration for Aspen Village Planned Development has been executed and acknowledged by the undersigned.

Pagosa Partners 1, Inc. a Colorado corporation


By Dan C. Sanders, Jr., President

State of Colorado)
) ss.
County of Archuleta)

The foregoing instrument was acknowledged before me this 16 day of August 2005, by Dan J. Sanders, President Pagosa Partners I, Inc., a Colorado corporation.

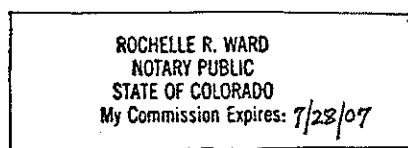
Pagosa Partners 1 INC
DBA Aspen Village
390 Boulder Dr Ste 200
Pagosa Springs CO 81147



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WITNESS my hand and official seal.

My commission expires: 7/28/07



Rochelle R. Ward
Notary Public

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EXHIBIT A-1
LEGAL DESCRIPTION OF ASPEN VILLAGE
PLANNED UNIT DEVELOPMENT

TRACT ONE:

That part of the SW/4SE/4 of Section 16, and that part of the NW/4NE/4 and the NE/4NW/4 of Section 21, Township 35 North, Range 2 West, N.M.P.M., Archuleta County, Colorado, more particularly described as follows, to wit:

Beginning at the northeast corner of said NW/4NE/4 of Section 21, said point bearing N88°53'52"W, 1306.30 feet, more or less, from the northeast corner of said Section 21, said point also being the northwest corner of Parcel 2 of said Section 21, as shown, on the map of Pagosa Alpha Section recorded June 13, 1969, as Reception No. 91872, in the Office of the Clerk and Recorder of said county; thence from said Point of Beginning, S00°04'22"W, 1325.38 feet, more or less, to the southeast corner of the NW/4NE/4 of Section 21; thence N88°54'29"W, 2616.25 feet along the south line of the N/2N/2 of said Section 21 to the southwest corner of the NE/4NW/4 of said Section 21, which is also the northwest corner of Parcel 10 of said Pagosa Alpha Section; thence N00°15'16"E along the west line of the NE/4NW/4 a distance of 306.41 feet, more or less, to a point on the southeasterly right-of-way line of U.S. Highway 160; thence N56°17'10"E along said southeasterly right-of-way line, 3162.86 feet, more or less, to the east line of the SW/4SE/4 of said Section 16 thence; S01°04'50"W along the east line of said SW/4SE/4 of Section 16, a distance of 786.56 feet to the Point of Beginning. LESS AND EXCEPT: Alpha Drive, as shown on that certain plat recorded November 6, 1972, as Reception No. 76769, in the Office of the Clerk and Recorder, Archuleta County, Colorado. ALSO LESS AND EXCEPT a tract of land being a portion of the NENW/4 of said Section 21, lying south of the southeasterly right-of-way line of U.S. Highway 160 as it existed on October 14, 1985, as shown on Results of Survey recorded as Reception No. 135026, in the Office of the Clerk and Recorder, Archuleta County, Colorado, and lying westerly of Alpha Drive, said tract being more particularly described as follows, to wit: Commencing at the southwest corner of said NE/4NW/4 of Section 21; thence N00°15'16"E, a distance of 306.41 feet to the southeasterly right-of-way line of U.S. Highway 160; thence N56°17'18"E along said right-of-way line a distance of 1470.28 feet to the westerly boundary line of Alpha Drive as described in said plat recorded November 6, 1972, as Reception No. 76769; thence along the westerly boundary of Alpha Drive 31.42 feet through a curve to the right having a radius of 20.00 feet and a delta angle 90°; thence continuing along the westerly boundary line of said Alpha Drive 100.47 feet along a curve to the right having a radius of 170.00 feet and a delta angle of 33°51'38" to a point; thence S00°08'56"W a distance of 1045.91 feet along the westerly boundary line of said Alpha Drive to a point on the south boundary line of said NE/4NW/4 of Section 21; thence N88°54'29"W, a distance of 1278.40 feet along the south boundary line of said NE/4NW/4 of Section 21 to the Point of Beginning.

TRACT TWO:

A tract of land located in the SE/4SE/4, of Section 16, Township 35 North, Range 2 West, N.M.P.M., Town of Pagosa Springs, Archuleta County, Colorado, and entirely within Parcel C of the Pagosa Partners Minor Subdivision, the plat of which subdivision is filed under Reception No. 99011753, of the records in the Office of the Archuleta County Clerk and Recorder, which tract is more particularly described by meters and bounds as follows, to-wit:



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Beginning at the northwest corner of Parcel A Pagosa Partners Minor Subdivision, which corner is identical with the northeast corner of the tract herein described; thence S33°41'37"E, 284.59 feet along the west boundary of said Parcel A to the angle point therein; thence S01°00'48"W, 49.70 feet along the west boundary of said Parcel A to the southeast corner of the tract herein described; thence S83°44'47"W, 213.42 feet to the southwest corner of the tract herein described; thence 193.09 feet on the arc of a curve to the left, having a radius of 330.00 feet, the long chord of which curve bears N16°55'57"W, 190.35 feet; thence N33°41'40"W, 48.59 feet to the northwest corner of the tract herein described; thence N57°36'59"E, 164.26 feet to Point of Beginning.

TRACT THREE:

All that portion of the E1/2SE1/4 of Section 16, Township 35 North, Range 2 West, N.M.P.M., Archuleta County, Colorado, lying and being southeasterly of U.S. Highway 160, said tract being more particularly described as follows, to-wit:

Beginning at a found G.L.O. brass cap which is the southeast corner of said Section 16 whence the northeast corner of said Section 16 bears N01°00'48"E, 5329.23 feet; thence from said southeast corner of Section 16 N88°51'38"W, 1307.14 feet along the south boundary line of said Section 16 to a rebar and aluminum cap marked P.E. and L.S. 5933 being the southwest corner of the E1/2SE1/4 of said Section 16 whence the SE/4 corner of said Section 16 bears N88°51'38"W, 1307.14 feet; thence N01°08'50"E, 788.19 feet along the west boundary line of said E1/2SE1/4 to a found rebar and aluminum cap marked L.S. 12064 being a point of intersection of the west boundary line of said E1/2SE1/4 and the southeasterly right way line of U.S. Highway No. 160; thence N58°18'37"E, 1588.29 feet along said southeasterly right of way line to found rebar and cap marked L.S. 9009 being the point of intersection of said southeasterly right of way line and the east boundary line of said Section 16 whence the northeast corner of said Section 16 bears N01°00'48"E, 3635.91 feet; thence S01°00'48"W, 1693.32 feet along the east boundary line of said Section 16 to the southeast corner of said Section 16 and the Point of Beginning. Excepting therefrom, that certain parcel conveyed to the State of Colorado, Department of Highways in deed recorded July 24, 1995 as Reception No. 1995004609, in the Office of the Clerk and Recorder, Archuleta County, Colorado.

TRACT FOUR:

Parcel B of the Replat of Pagosa Partners Minor Subdivision recorded in the Office of the Archuleta County, Clerk and Recorder under Reception Number 20401277.

TRACT FIVE:

All that portion of Parcel A of the Replat of Pagosa Partners Minor Subdivision recorded in the Office of the Archuleta County, Clerk and Recorder under Reception Number 20401277.

TRACT SIX:

All that part of Parcel C, as shown hereon, of the Replat of Pagosa Partners Minor Subdivision recorded in the Office of the Archuleta County, Clerk and Recorder under Reception Number 20401277.

Contains 78.64 acres, more or less.

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Archuleta County

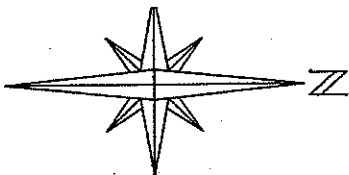
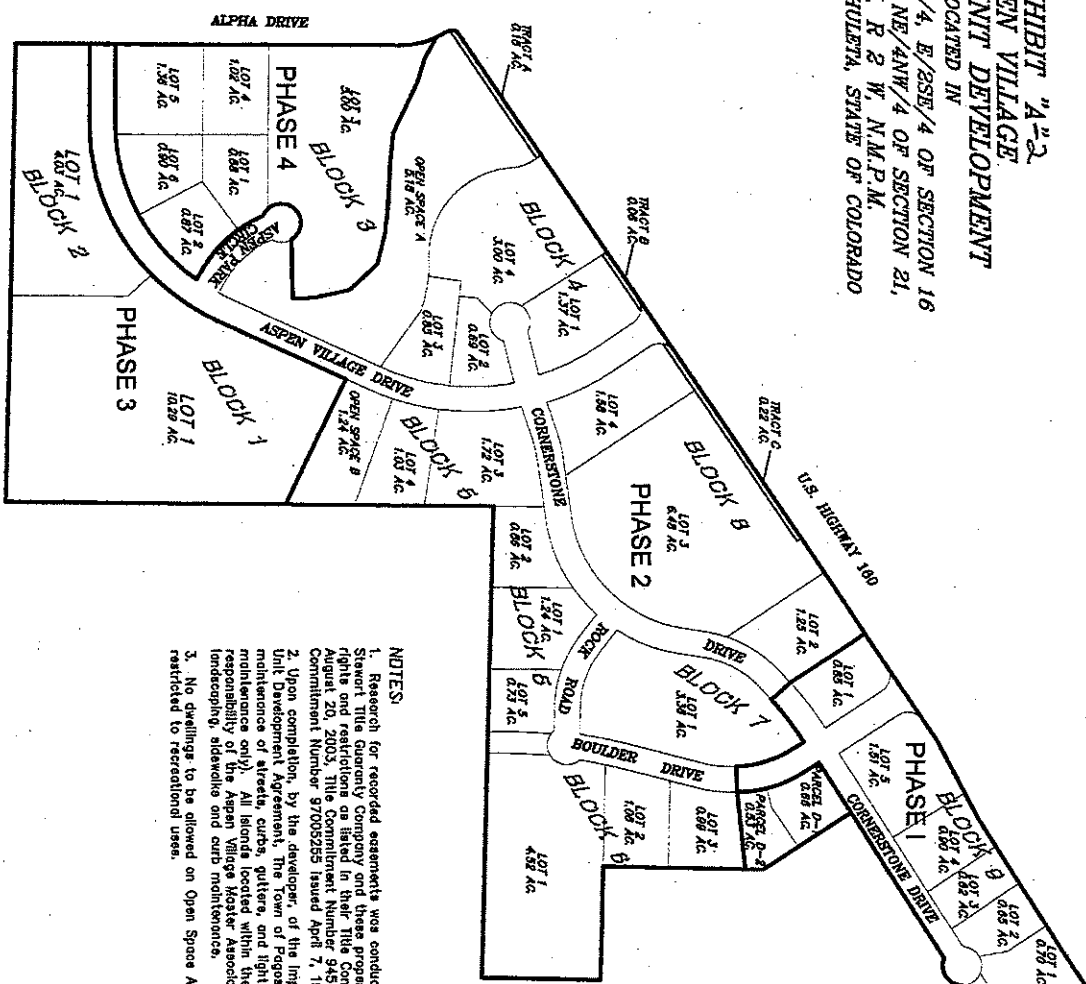


EXHIBIT "A-2"
ASPEN VILLAGE
PLANNED UNIT DEVELOPMENT
LOCATED IN
SW/4SE/4, SE/4SE/4, E/2SE/4 OF SECTION 16
AND NW/4NE/4, NE/4NW/4 OF SECTION 21,
T 36 N, R 2 W, N.M.P.M.
COUNTY OF ARCHULETA, STATE OF COLORADO



1. Research for recorded assessments was conducted by Great Divide Title Company, and Plaintiff Title Guaranty Company and these properties may be subject to the easements, rights and restrictions as listed in their Title Commitment Number 9257-03 issued August 20, 2003, the Commitment Number 9451-03 issued October 27, 2003 and Commitment Number 970053255 issued April 7, 1997.
2. Upon completion, by the developers, of the improvements required by the Planned Unit Development Agreement, the Town of Pigeon Springs will be responsible for the maintenance of streets, curbs, gutters, and lighting, (power and light bulb maintenance only). All lands located within the right-of-way will be the responsibility of the Aspen Village Master Association for the purpose of landscaping, sidewalk and curb maintenance.
3. No dwellings to be allowed on Open Space A or Open Space B which shall be restricted to recreational uses.

EXHIBIT "A"
ASPEN VILLAGE
PLANNED UNIT DEVELOPMENT

PINNACLE
SURVEYING, INC.
P.O. BOX 1295
DENVER, CO 80202
(303) 531-1835

DATE: 6/10/06
NEW
REVISOR: N/A
PROJECT NO.:
SHEET 1" = 400'
DRAWING NO.:
CHECKED BY: TML
SHEET 1 OF 1

OWNER: ASPEN PLANNING, INC.

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**SECOND SUPPLEMENT TO
MASTER DECLARATION FOR
ASPEN VILLAGE
PLANNED DEVELOPMENT**

THIS SECOND SUPPLEMENT is intended to supplement and amend that certain Master Declaration for Aspen Village Planned Development recorded on May 10, 2005 at Reception No. 20504450 in the office of the Archuleta County Clerk and Recorder, (the "Master Declarations") and the First Supplement recorded on August 17, 2005, at Reception No. 20508528. This Second Supplement to Master Declaration For Aspen Village Planned Development is hereby made effective this 9th day of June, 2006 by Pagosa Partners 1, Inc., a Colorado corporation (the "Declarant").

The Declarant has the authority to record technical amendments to this Master Declaration for the purposes described herein pursuant to Sections 10.11 and 11.2 of the Master Declaration.

The purpose of this Second Supplement is to correct and clarify the table which reflects the acreage of each Lot for each Lot located within Aspen Village and each Lot owner's corresponding percentage allocation for voting and common expenses.

The Master Declarations contemplate the existence of sub-associations within Aspen Village and this amendment shall also further clarify the authority of sub-associations with respect to the responsibility of payment of assessments and voting by Sub-Associations.

NOW THEREFORE, the Declarant hereby certifies and declares that the Declarations are amended as follows:

1. Amended Exhibit B. Exhibit B of the Master Declaration is hereby deleted and replaced in its entirety with the attached amended "Exhibit B To Master Declaration For Aspen Village."
2. Voting. As required by Section 9.6 of the Master Declarations, the Sub-association Board shall be allocated the vote of a multi-family Lot. The Sub-association shall be responsible for, and the Master Association hereby delegates to the Sub-association, the responsibility for administering and counting the ballots (which have been prepared by the Master Association) of its unit owners/members and for providing the Master Association with the ballot results. The Master Association shall be entitled to rely upon the tally and/or results provided by the Sub-Association Board as constituting a valid and proper vote by its unit owner/members. The Master Association may, at its discretion, review the records of the Sub-Association with respect to any Master Association ballot procedures.

Pagosa Partners I, Inc.
390 Boulder Dr. Suite 200
Pagosa Springs, CO 81147

3. Assessments. The Master Association shall bill each Sub-Association directly for any assessments allocated to it. The Master Association hereby delegates to the Sub-Association, the authority to allocate such assessments among its unit owner/members in such proportions as dictated by its Sub-Association governing documents. Failure of a Sub-Association to pay assessments of the Master Association shall be a default under the Master Declaration and shall entitle the Master Association to lien the non-paying unit owners as provided in Section 10.7 of the Master Declaration and take such other action as available under Colorado law and the Master Declaration. The Sub Association shall cooperate with the Master Association in the collection of assessments levied by it.

IN WITNESS WHEREOF, this Second Supplement to Master Declaration for Aspen Village Planned Development has been executed and acknowledged by the undersigned.

Pagosa Partners 1, Inc. a Colorado corporation

Mark J. Kneedy
By: Mark Kneedy, President

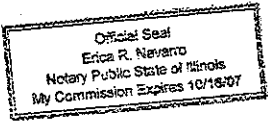
State of Illinois)
County of Cook) ss.

The foregoing instrument was acknowledged before me this 9th day of June 2006, by Mark Kneedy, President Pagosa Partners I, Inc., a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: 10/16/07

Erica R Navarro
Notary Public



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EXHIBIT B
TO
MASTER DECLARATION
FOR ASPEN VILLAGE

LOTS BLOCK- LOT	ACREAGE	% ALLOCATED FOR VOTING AND COMMON EXPESNES
1 1	10.29	16.74%
2 1	4.03	6.56%
3 1	0.88	1.43%
3 2	0.87	1.42%
3 3	5.0	8.14%
3 4	1.02	1.66%
3 5	1.36	2.21%
3 6	0.9	1.46%
4 1	1.37	2.23%
4 2	0.69	1.12%
4 3	0.85	1.38%
4 4	3.0	4.88%
5 1	1.24	2.02%
5 2	0.86	1.40%
5 3	1.72	2.80%
5 4	1.03	1.68%
5 5	0.73	1.19%
6 1	4.52	7.35%
6 2	1.06	1.72%
6 3	0.99	1.61%
7 1	3.36	5.47%
8 1	0.85	1.38%
8 2	1.25	2.03%
8 3	6.48	10.54%
8 4	1.54	2.51%
9 1	0.7	1.14%
9 2	0.65	1.06%
9 3	0.62	1.01%
9 4	0.9	1.46%
9 5	1.51	2.46%
D 1	0.66	1.07%
D 2	0.53	0.86%
TOTALS	61.46	100.00%



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**DECLARATION OF COVENANTS AND RESTRICTIONS
FOR THE ENCLAVE AT ASPEN VILLAGE**

This Declaration of Covenants and Restrictions for the Enclave Townhomes (hereafter the "Declaration") is made as of November 13, 2006, by Aspen Village Investments, LLC, a Colorado Limited Liability Company ("Declarant").

1. RECITALS AND DECLARATION.

1.1 Declarant is the owner of the real property situated in the Town of Pagosa Springs, County of Archuleta, State of Colorado, more particularly described on Exhibit A, attached hereto and made a part hereof, and appurtenant interests in Common Elements as described on Exhibit A, attached hereto and made a part hereof (collectively the "Property").

1.2 Declarant has created a residential townhome common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes 38-33.3-101 *et seq.* on the Property, the name of which is The Enclave @ Aspen Village. At build out with phased construction and annexation of future phases the planned community will consist of forty eight (48) residential lots with townhome improvements constructed thereon and general common elements for the benefit of the community, subject to Reserved Declarant Rights to annex or withdraw property as set forth herein.

1.3 The Property is subject to the Master Declaration for Aspen Village Planned Development recorded in the records of the Archuleta County, Colorado Clerk and Recorder on May 10, 2005 as Reception No. 20504450, and units or lots within the Property may be subject to assessments pursuant to such Master Declaration.

1.4 Declarant incorporates all of the terms, conditions, and plat notices of The Enclave Planned Development Plat, recorded in office of the Archuleta County, Colorado Clerk and Recorder on November 13, 2006, as Reception No. 20610987. Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property, and any property annexed in accordance with the terms hereof. Additionally, Declarant hereby submits the Property and any property annexed in accordance with the terms hereof to the provisions of the Colorado Common Interest Ownership Act.

RN: Aspen Village Investments
555 Rivergate Ln
suite B-2 135
Durango Co. 81301



1.5 Declarant intends to develop The Enclave as a planned community under the Colorado Common Interest Ownership Act. Declarant may annex to or withdraw from the Common Interest Community from time to time the Annexable Property, more particularly described as Exhibit B, attached hereto and made a part hereof, or the Withdrawal Property, more particularly described as Exhibit A, attached hereto and made a part hereof, and develop such property as part of the planned community. Each such annexation shall be accomplished by the recording of a Supplemental Declaration, together with a Supplemental Plat, if necessary, which describe and depict any new Lots and Common Areas thereby added to the Common Interest Community, and which describe any Common Elements thereby created. Each such withdrawal shall be accomplished by the recording of a Supplemental Declaration, together with a Supplemental Plat, if necessary, which describe and depict any Lots and Common Areas thereby withdrawn from the Common Interest Community, and which describe any Common Elements thereby withdrawn.

2. DEFINITIONS.

2.1 Allocated Interests shall mean the interest of each Lot in the Common Elements, as described on the recorded Plat of The Enclave, determined by a fraction, the numerator of which is one and the denominator of which is the total number of townhomes in the Project. The allocated voting interests shall be one vote per Lot.

2.2 Annual Assessments shall mean the charges levied and assessed each year against a tract or lot.

2.3 Articles shall mean Articles of Organization and any amendments thereto for The Enclave Property Owners Association, a Colorado non-profit corporation.

2.4 Assessments shall mean the Annual, Special and Default Assessments levied pursuant to Article 6 below. Assessments are also defined in CCIOA as a capital expense.

2.5 Association shall mean The Enclave Property Owners Association, Inc., a Colorado non-profit association, and its successors and assigns.

2.6 Association Documents shall mean this Declaration, the Articles, the Bylaws, the Plat, and any procedures, rules, regulations or policies adopted under such documents by the Association.

2.7 Bylaws shall mean the Bylaws adopted by the Association, as amended from time to time.

2.8 Town shall mean the Town of Pagosa Springs, Colorado.

2.9 Clerk and Recorder shall mean the office of the Clerk and Recorder in the County of Archuleta, Colorado.

2.10 CCIOA shall mean the Colorado Common Interest Ownership Act, § 38-33.3-101, *et seq.*

2.11 Common Expenses shall mean (i) all expenses as expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the General Common Elements or Limited Common Elements; (iii) insurance premiums for the insurance carried under Article 7; and (iv) all expenses lawfully determined to be common expenses by the Executive Board, which expenses shall be assessed based upon the Allocated Interests defined herein. "Allocated Interests" means the Common Expenses liability and the votes in the Association allocated to each Lot, which interests are allocated as follows:

(a) The Common Expenses liability for each Lot is calculated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Common Interest Community as of the date of the calculation. Such fraction is then multiplied by the Common Expenses or the Assessment in question to determine that Lot's share thereof. The Common Expenses liability of a Lot is determined without reference to the size, location, value or use of the Lot, except that initial assessments shall be allocated to and based upon the number of completed units (defined by issuance of certificate of occupancy) in the project.

(b) One vote in the Association is allocated to each Lot in the Common Interest Community.

(c) The foregoing allocations may not discriminate in favor of Lots owned by Declarant or an affiliate of Declarant.

(d) If Lots are added to or withdrawn from the Common Interest Community, (i) the Common Expenses liability for each Lot shall be reallocated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Common Interest Community following the addition or withdrawal of such Lots, and (ii) one vote in the Association shall continue to be allocated to each Lot in the Common Interest Community following the addition or withdrawal of such Lots.



- 2.12 County shall mean Archuleta County, Colorado.
- 2.13 Declaration shall mean this Declaration and the Plat, and amendments and supplements to the foregoing.
- 2.14 Executive Board shall mean the governing body of the Association.
- 2.15 First Lienor shall mean any person named as a mortgagee or beneficiary in any First Mortgage or any successor to the interest of any such person under such First Mortgage.
- 2.16 General Common Element(s) shall mean all real and personal property of the project excluding lots, and shall have the same meaning as Common Elements as set forth in the Act.
- 2.17 Limited Common Element(s) shall mean the portion of the General Common Elements assigned for the exclusive use and enjoyment for some, but not all lots, and shall have the same meaning as set forth in the Act.
- 2.18 Lot shall mean the subdivided parcels of land designated by number on the Plat.
- 2.19 Manager shall mean a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.
- 2.20 Owner shall mean the person or persons or legal entity holding record fee simple title to a Lot. Declarant shall be entitled to treat the record titleholder of a Lot as the Owner thereof for all purposes.
- 2.21 Pedestrian Easement shall mean the right of pedestrians for ingress to and egress from the Property.
- 2.22 Property shall mean the real property subject to this Declaration and which is described in Exhibit A and any property annexed in accordance with terms hereof.
- 2.23 Plat shall mean the final plat of The Enclave, recorded with the Archuleta County, Colorado Clerk and Recorder, on November 13, 2006, under Reception No. 20610987, and on any Supplemental Plat.
- 2.24 Project and The Enclave Project shall mean the common interest community



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created by this Declaration and as shown on the Plat, consisting of the Property, as subdivided, together with all General Common Elements and Limited Common Elements.

2.25 Townhome shall mean an attached dwelling located on a Lot and designed to be occupied as a single family residence.

2.26 Utilities shall mean those underground utilities that are constructed and installed under roads, other utility easements, or General Common Elements, which services, The Enclave Project.

3. RESTRICTIONS ON USE.

3.1 Residential Use. All Lots and Townhomes shall be used only for residential purposes, and such accessory or incidental uses thereto as may be permitted by the Plat, this Declaration. Owners of Townhomes may rent or lease such Townhomes to others for these purposes. On each Lot there shall be constructed one single-family townhome residence not to exceed the height set forth in the plans and specifications designated by Declarant. The minimum Townhome construction size shall be 1,450 square feet of heated living area, exclusive of garage, and the maximum construction size shall be 1,700 square feet of heated living area, exclusive of garage. Once constructed, the Townhomes' exterior colors, floor plan, architectural and aesthetic treatment, may not be modified without the consent of the Declarant, (during the Declarant Control Period) or the Association,

3.2 Decks, Patios, and Porches. Decks, Patios, and porches, although privately owned, will be maintained by the Association as referenced in paragraph 7.3. Decks, patios, and porches shall not be used for storage of any kind, including, but not limited to bicycles, kayaks, rafts, and firewood. No use of charcoal grills shall be allowed on decks or balconies. Use of natural gas or propane gas grills is permitted. No laundry, flags, banners, antennae, satellite dishes or any other items shall be allowed to hang from or set upon decks, patios, porches, or outside windows. Because the decks are not engineered to carry excessive weights beyond those required for snow loads and applicable building codes, no hot tubs, Jacuzzi's, soaking tubs, or large scale water features of any type shall be allowed on or upon the decks at any time. It shall be permissible to maintain patio furniture and planters on decks so long as same are maintained in a neat and orderly condition. There shall be no deck enclosures, roofs, awnings, or any other modifications made to the decks by any Owner other than the Declarant.

3.3 Windows and Window Coverings; Coolers; Satellite Dishes and Antennae; and Air Conditioners. No permanent decals or stickers shall be placed on any windows or exterior



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doors at any time, with the exception of alarm company identification. All window coverings, shades, blinds, curtains or drapes shall appear neutral or have the color of white to the extent visible from the exterior. No flags, banners, posters, signs, electric string lights or any other material shall be hung in front of windows in a manner that is visible from the exterior except during holiday



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seasons. Such items may only be displayed 30 days before the holiday and must be removed 30 days after the holiday. No window air conditioners or coolers shall be permitted within the Project. No antennae or satellites shall be installed within the Project with the exception of those installed by the Declarant (during the Declarant period), or the Association. (In the event Federal Communications Commission regulations or other applicable government regulations limit the ability to prohibit certain small satellite dishes or antennae, the prohibition shall be enforced to the maximum extent allowed under such regulations and any allowed antennae or satellite dish shall be subject to being located in a manner approved by the Association.)

3.4 Animals. Except as may be otherwise authorized in writing by the Executive Board, there shall be the following restrictions with respect to animals:

No animals, livestock, or poultry of any kind shall be raised, bred or kept on the Project except common small household pets, including dogs and cats. All dogs must be on a leash at all times when being walked outside a townhome. There shall be no more than two (2) dogs or two (2) cats and no combination of dogs and cats exceeding three (3) in any one Unit. No pets shall be kept, maintained or bred for any commercial purpose. All pets shall be maintained at all times so that they are not a nuisance to other residents in the Project. Owners must clean up all feces from their animals at all times and at all places within the Project. Owners agree to find new homes for their pets if the pet becomes a nuisance to other residents. Excessive barking shall be considered a nuisance for the purpose of this Section. Each Owner shall be responsible and liable for any damage to persons or property caused by the pets of the Owner.

3.5 Development Activity. All development within The Enclave Project shall be undertaken consistent with this Declaration, the Plat, any design review guidelines of the Association (in accordance with Section 5.2 herein below) and applicable rules and regulations herein.

3.6 Building Envelope. All Townhome improvements shall be located within the boundaries of the Lot as shown on the Plat.

3.7 Approval of Design. No Townhome improvements shall be constructed on any Lot without the prior written approval of Declarant, (during the Declarant Control Period) or the Association.

3.8 Further Subdivision. Lots shall not be further subdivided. Any amendment to this Declaration modifying this prohibition to further subdivision can only be amended with unanimous consent of all Owners of The Enclave Project, and City of Pagosa Springs approval.

3.9 Utilities. All Utilities, including but not necessarily limited to, water, sewer, gas, electrical, telephone, and cable T.V., shall be underground to the service meter or entry and



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shall be constructed and installed consistent with this Declaration. All Utilities shall be provided to The Enclave Project by third party providers.

3.10 Parking. All parking for any vehicles must be in garages or in designated surface parking spaces. No parking shall be permitted on roads or in front of garages. Owners shall undertake good faith efforts to prevent vehicles that are owned by, under the control of, or invited by a Lot owner to be loaded, unloaded, or parked on the Roads. The Association shall have the right to remove or tow away any vehicle which is parked within or on the drive aisles within the Project. The cost for any removal or towing shall be charged to the responsible Owner. Overhead garage doors will remain closed when not entering or exiting the garages. No overnight parking or storage of motor homes, trailers, boats, or recreational vehicles shall be permitted on the Project. No inoperable vehicles shall be parked or maintained on the Project. All vehicles parked on the premises will be in good repair as to not leak fluids and soil the parking area. Any vehicle found to be leaking fluids will be given a warning and if not repaired, fined and charged for the cost of the cleanup.

3.11 Fire and Safety. Obstruction of any driveway, walkway, or passageway is not allowed. Blocking a fire lane is against the law. Residents must ensure that smoke detectors in their townhomes are in working order at all times. All cigarettes should be completely extinguished and disposed of in proper containers.

3.12 Noise and Safety. Loud music or noise is **PROHIBITED** at any time, but in particular between 10:00 p.m. and 8:00 a.m. Social gatherings must be confined to the individual unit, and must be immediately terminated if neighbors are disturbed. Every effort should be made by participants not to disturb neighbors. The fact that a complaint has not been made does not mean that your gathering is not disturbing neighbors and is not improper. Specific requirements are:

- There will be no speeding within the Project.
- Parties and social gatherings shall be held inside the Townhome or in designated picnic areas.
- No gatherings will be held in parking areas or on roadways.
- Absolutely NO "keg" parties or parties where an admission is charged are allowed. Charging admission is against the law!
- Stereos, televisions, etc. must not be audible outside of the Townhome.
- There shall be NO violation of any state or city ordinance.
- There shall be NO underage drinking.
- Public profanity is strictly prohibited.
- If the Police must be called to quell a disturbance or party, the host-tenant or Owner will be held responsible and a citation may be issued. In addition, The



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Enclave Property Owner's Association (POA) may press charges against the host-tenant or Owner of the Townhome.

3.13 Fences. No fences shall be constructed on any Lot except as permitted by the Rules and Regulations, and unless approved in writing by the Declarant or Association.

3.14 Signs. No signs shall exist on any Lot except real estate "for sale" signs. No more than one sign shall be allowed on each Lot. No sign shall exceed 4 square feet in size.

3.15 Garbage and Trash. All garbage and trash shall be dealt with consistent with the Rules and Regulations. All trash removal on and off each Lot shall be undertaken at the expense of the Owner of the Lot consistent with the rules and regulations promulgated by the Association, if any.

3.16 Landscaping. All landscaping and landscaping improvements shall be constructed and installed within The Enclave Project pursuant to a landscaping plan adopted by Declarant. All landscaping shall be installed within the General Common Elements. After the initial plan being fully implemented, thereafter all landscaping maintenance and repair shall be undertaken by the Association.

3.17 Association Responsibility. All General Common Elements and Limited Common Elements, including Roads and Utilities shall be owned, controlled and maintained, including snow and ice removal, by, and at the expense of, the Association. Section 8.3 below sets forth more completely Association responsibility for maintenance.

3.18 Maintenance of Townhome Lots. All Lots, together with Townhome improvements constructed thereon, shall be kept at all times in a sanitary, healthful, safe and attractive condition and the Owner or occupants shall in no way use any Lot for storage of materials and equipment except for normal residential requirements or incidental to the construction improvements thereon as herein permitted.

3.19 Compliance With Law. No Lot shall be used, occupied, altered, changed, improved, or repaired except in compliance with (i) this Declaration, (ii) the Rules and Regulations, and (iii) all present and future laws, ordinances, regulations, and the like of the United States of America, State of Colorado, and County of Archuleta, or other governmental or lawful authority whatsoever effecting the Lot or the improvements thereon or any part thereof, and of all their departments, bureaus and officials.

3.20 Deviations. The Executive Board at its discretion is hereby permitted to approve deviations in this Declaration where, in its judgment, such deviations will result in a more common beneficial use. Such approvals must be granted in writing and when given, will become



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part of this Declaration; however, any such deviations are subject to the approval of the Declarant during the period of Declarant control and the Association.

3.21 Party Walls.

(a) for purposes of this Section 3.20, "Party Wall" shall mean and refer to any wall which is part of a Townhome and located between two or more Townhomes and is placed on or immediately adjacent to a Townhome Lot line and which separates two Townhomes.

(b) Mutual reciprocal easements are hereby established, declared and granted for all Party Walls between Townhome Lots which reciprocal easements shall be for mutual support and shall be governed by this Declaration. Every conveyance of a Townhome Lot, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

(c) To the extent not inconsistent with the provisions of this Section 3.18, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions apply thereto.

(d) The cost of reasonable repair and maintenance of any Party Wall shall be borne equally by the Owners of Townhomes sharing the Party Wall. If the Owner of one Townhome sharing the Party Wall refuses to pay his proportionate share of the cost of repair or maintenance, then the other Owner may cause the Party Wall to be repaired and shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Townhome Lot, and the same shall become and remain a lien against the Townhome Lot, until fully paid. Said lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(e) If a Party Wall is destroyed or damaged by fire or other casualty, Owners of Townhomes sharing the Party Wall may restore it, and if other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion of such use, subject however, to the right of any such Owners to call for a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions. If one Owner causes the Party Wall to be restored and any other Owner uses the Party Wall and does not contribute his proportionate share to the costs of the Party Wall's restoration, the Owner who caused the wall to be restored shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Townhome Lot, and the same shall become and remain a lien against such property until fully paid. The lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(f) Notwithstanding any other provision of this Section 3.19, an



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Owner who by his negligent or willful act or omission causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent insurance proceeds are unavailable.

(g) The right of any Owner to contribution from any other Owner under this Section 3.21 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

(h) If any dispute arises concerning a Party Wall under the provisions of this Section 3.21, such dispute shall be arbitrated in the manner hereinafter provided. Three individuals (including one or more members of the board of directors of the Association or one or more Owners or a combination of both) appointed by the President of the Association, none of whom may be a party to the dispute, shall act as a Board of Arbitration and the decision shall be by a majority vote of the Board of Arbitration after an arbitration proceeding. No legal action with respect to a Party Wall dispute shall be commenced or maintained unless and until the provisions of this arbitration clause have been met. The appointment of arbitrators hereunder shall be made within 20 days after notice by one party to the other party that a dispute exists, which notice shall not be given after any applicable statute of limitations concerning such dispute shall have expired. All arbitrations shall be subject to the Colorado Uniform Arbitration Act, C.R.S. 13-22-201, *et seq.*

(i) Notwithstanding any other provision of this Section 3.22, the Association may, in its sole discretion make any repairs to Party Walls which the Association deems necessary and the cost for such repairs shall be assessed equally against the Townhome Lots containing Townhomes benefited by such repairs unless the repairs are necessitated by willful acts or omissions or negligence of one Owner in which case the Owner causing the damage shall pay for all costs of repairs.

3.22 Tenant Violations. In the event that tenants in a townhome unit violate the Declaration or the Rules and Regulations for Investors and Landlords (referred to as Exhibit B) adopted by the Association from time to time, they will be provided with written notice of the violation with a copy to the Owner(s) of record. In the event the violation is not corrected or does not cease within 5 days of receipt of written notice or if the violation reoccurs within 12 months of the date of the first notice, the Association shall have the authority to terminate the tenant's lease and to, if necessary, remove the tenant from the premises through an unlawful detainer action in accordance with Colorado law.

4. ASSOCIATION FORMATION AND MEMBERSHIP.

4.1 Formation of Association. The Association shall be a nonprofit Colorado



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corporation charged with the duties and invested with the powers prescribed by law and as set forth in its Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.2 Executive Board and Officers. The affairs of the Association shall be conducted by the Executive Board and such officers as the Executive Board may elect or appoint in accordance with its Articles and Bylaws as the same may be amended from time to time. The Association, by and through the Executive Board, shall govern and manage The Enclave Project, including the Property described in Exhibit A hereof, and any property owned by the Association, and shall enforce the provisions of this Declaration. The initial Executive Board shall be composed of three Members. The Executive Board may also appoint various committees. Declarant, during the "Declarant Control Period", shall have the right to appoint and remove Directors and officers. The Declarant Control Period commences on the date on which Declarant forms the Association and terminates on the earliest to occur of:

- (i) sixty days after conveyance to Purchasers of 75 percent of the maximum number of Lots that may be created by Declarant pursuant to the Declaration;
- (ii) two years after the last conveyance of a Lot by Declarant to a Purchaser in the ordinary course of business; or
- (iii) two years after any right under the Declaration to add new Lots was last exercised.

Declarant may voluntarily surrender the right to appoint and remove Directors and officers before termination of the Declarant Control Period. In that event, the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

4.3 Association Rules. The Association may, by a majority vote of the Executive Board, adopt, amend and repeal rules and regulations to be known as The Enclave Project "Association Rules" or "Rules and Regulations". The purpose of the Association Rules shall be to implement, supplement or otherwise carry out the purposes and intentions of this Declaration; provided such Association Rules must be consistent with this Declaration.

4.4 Liability. Consistent with the provisions of C.R.S. §38-33.3-303, if appointed by the Declarant, in the performance of their duties, the Officers and Members of the Executive Board are required to exercise the care required of a fiduciary of the Owners. If the



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Officers and Members of the Executive Board are not appointed by the Declarant, then no Member of the Executive Board and no Officer shall be liable for actions taken or omissions made in performance of such Member's duties, except for wanton and willful acts or omissions. Officer or Member actions taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and to have met the care required under CCIOA.

4.5 Membership. The Association shall be a membership association without certificates or shares of stock. The Members of the Association shall be those persons or entities, including Declarant, who are the Owners, from time to time, of Lots within The Enclave Project. Membership in the Association shall automatically terminate when a Member ceases to be an Owner of a Lot. There shall be one class of membership which is a voting membership by Owners of Lots.

4.6 Voting. A Member shall have one vote for each Lot owned. Except as otherwise provided herein and in the Rules and Regulations, the affirmative vote of a majority of the Owners of Lots entitled to vote on any matter shall constitute approval of such matter. Where there are multiple Owners of a Lot, there shall remain only one vote for each Lot. If only one of the multiple Owners of a Lot are present at a meeting of the Association, such Owner shall be entitled to cast the vote allocated to such Lot. If more than one of the multiple Owners are present, the vote allocated to the Lot may be cast only in accordance with the agreement of a majority in interest of the Owners of such Lot. The provisions of C.R.S. §38-33.3-310(1) and (2) regarding voting shall apply to Lots with multiple Owners.

For the election of Executive Board Members, those candidates receiving the highest number of votes shall be deemed elected. Lessees of Lots shall have no voting rights.

4.7 Enforcement. The Association shall each have the right and power to bring suit in its name for legal or equitable relief for the failure to comply with any provision of this Declaration or rules promulgated by the Executive Board. In addition, the Association shall have the right to impose on any Owner monetary fines for any lack of compliance with provisions of this Declaration or rules promulgated by the Executive Board and where such fines are not paid within the time provided, such fines may be collected as an Assessment Lien. The failure of the Association to insist upon the strict performance of any such provisions or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or relinquishment for the future of any such provision or the enforcement thereof. Any Owner aggrieved by a lack of compliance by another Owner may also bring suit for legal and equitable remedies. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to reimbursement of its costs and expenses, including reasonable attorney's fees, in connection therewith.

4.8 Power of Association. Each Owner agrees that the Association has all the powers granted to it by the Colorado Nonprofit Corporation Act and CCIOA, and any amendments thereto or replacements thereof. Such powers shall include, without limitation, levying Assessments against Owners, imposing a lien on Lots for any unpaid or uncollected Assessments or penalties, and foreclosing any such liens, enforcing any deed restrictions and these Declarations, acquiring, holding, owning, leasing, mortgaging and disposing of property (except as such disposition of property may be limited in accordance with Section 4.12 below), the adoption of rules and regulations, the defending, prosecuting or intervention in litigation on behalf of all Members, the borrowing of monies for Association purposes and the right to pledge future income in order to secure such borrowings. The term "pledge of future income" shall include the right to impose a Special Assessment for repayment of such borrowings and to assign such Special Assessment (and all lien and collection rights appurtenant thereto) to the lender as security for repayment thereof. The Association may exercise any other right, power or privilege, given to it by this Declaration, the Articles and Bylaws of the Association, or by law.

4.9 Other Association Functions. The Association shall undertake those functions and provide those services to The Enclave Project as described in this section or otherwise set forth in this Declaration. Further, the Association may undertake, to the extent the Executive Board in its sole discretion so elects, to provide The Enclave Project certain other functions or services for the benefit of its Members on such bases as the Executive Board may reasonably determine. Such functions may be provided by the Association's employees or an independent contractor retained by the Association. With respect to any of The Enclave Project functions or services, the Executive Board shall have the authority to make common expense assessments consistent with the provisions of C.R.S. §38-33.3-315.

The Association shall provide, but shall not be limited to, the following functions or services: (i) the maintenance, and repair of drive areas; (ii) maintenance, repair, and operation of all Utilities up to Lot entrances; (iii) snow removal on Roads; (iv) the installation, maintenance, repair and replacement of all improvements and landscaping on the General Common Elements and Limited Common Elements (v) all powers and functions permitted by the Act.

4.10 Notice to Maintain. An Owner shall immediately report to the Association, in writing, the need for any maintenance, repair or replacement which is the Association's responsibility to provide. In the event of any disagreement as to the need for or the responsibility of the Association to provide the said maintenance, repair or replacement, the good faith decision of the Executive Board shall be final.

4.11 Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the



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Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and discretion by the Executive Board.

4.12 Special Provisions Regarding Association Property.

4.12.1 General Common Elements. All General Common Elements shall be eventually owned by the Association and shall, at all times, be owned, managed, operated and maintained by the Association consistent with the provisions of this Declaration and in trust for the use, benefit, and enjoyment of all or some of the Owners of Lots, together with their family members, permitted guests and permitted invitees. Conveyancing or encumbrance of Association property can only occur consistent with the provisions of C.R.S. §38-33.3-312.

4.12.2 Limited Common Elements. The Limited Common Elements described on the Plat, shall be owned, managed, operated and maintained by the Association consistent with the provisions of this Declaration and in trust for the use, benefit, and enjoyment of the owners of the Lots designated for each L.C.E. as shown on The Enclave Townhomes Planned Development Plat, together with their family members, permitted guests, and permitted invitees, and permitted licensees. Conveyancing or encumbrance of Association property can only occur consistent with the provisions of C.R.S. §38-33.3-312.

5. ASSESSMENTS.

5.1 Purpose of Assessments; Assessment Lien. All Members of the Association hereby covenant and agree, and each Owner by acceptance of a deed to a Lot, including public trustee or sheriff's deed, is deemed to covenant and agree, to pay the Association Annual Assessments, Special Assessments, and Default Assessments, all such Assessments and charges to be established and collected as hereinafter provided. Annual Assessments, Special Assessments, and Default Assessments, together with interest, costs, and reasonable attorney's fees, shall be secured by a lien (the "Assessment Lien") on the Lot to which they relate in favor of the Association, which shall be a continuing servitude and lien upon the Lot against which each such Assessment or charge is made. The Assessment Lien, including, but not limited to, its enforcement and priorities, shall be consistent with, and shall contain, all of the provisions set forth in C.R.S. §38-33.3-316. The Assessment Lien shall be the personal obligation of the Owner of a Lot. Where there is more than one Owner, each shall be jointly and severally liable for all assessments. Declarant and the Association shall be entitled to purchase a Lot at any Assessment Lien foreclosure sale.

5.2 Annual Assessments.



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(a) Prior to the first levy of an Assessment, and thereafter on or before a date of each fiscal year set by the Executive Board, the Executive Board shall adopt a proposed annual budget for the Association for the following fiscal year that sets forth:

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

(ii) the amount of funds for such annual Expenses that the Executive Board proposes to raise through 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 Budget, the Executive Board shall deliver a summary of the proposed Budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed budget. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed budget to the Owners. Unless at that meeting a majority of the votes allocated to all Memberships, whether or not a quorum is present, rejects the proposed budget, the proposed budget shall be deemed ratified. If the proposed 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 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 this Section 6.2, the Executive Board may adopt a proposed amendment to the annual budget, deliver 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 delivery of the summary of the proposed amendment. Unless at that meeting a majority 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.

5.3 Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment period, as defined in Section 6.5 hereafter, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, or for other extraordinary expenses, provided that any Special Assessment in excess of One Thousand Dollars (\$1,000.00) shall (except in the event of an emergency where there shall be no such limit) require a majority approval of those voting in person or by proxy at a meeting duly called for such purpose at which a quorum is



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present pursuant to the by laws of the Association. If any Common Expense is caused by the misconduct of any Lot Owner, the Association, at its discretion, may assess that expense exclusively against such Owner's Lot.

5.4 Default Assessments. All monetary fines assessed against an Owner pursuant to this Declaration and the Rules and Regulations, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to this Declaration and the Rules and Regulations, shall be a Default Assessment and shall become a lien against such Owner's unit which may be foreclosed or otherwise collected as provided in this Declaration or the Rules and Regulations. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such assessment at least ten (10) days prior to the due date.

5.5 Rate of Assessment. Annual Assessments, Special Assessments and Default Assessments shall be fixed based on the amount of the Assessment divided by the number of Lots that are obligated to pay such Assessments. Assessments may be collected on a yearly basis or more often as the Executive Board so determines. Assessments, in the discretion of the Executive Board, may be equitably charged to those Lots participating in or receiving Association benefits

5.6 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be from May 1 to April 30 of each year, except that the first Assessment Period shall commence upon the recording of this Declaration and terminate on the next April 30 date. The Executive Board in its sole discretion from time to time may change the Assessment Period. The Executive Board shall fix the amount of the Annual Assessment against each Lot at least thirty days in advance of the end of each Assessment Period. Written notice of the Annual Assessment shall be sent to each Member. Failure of the Association timely to fix the Annual Assessment or to send a bill to any Member shall not relieve the Member of liability for payment of any Assessment or charge. The due dates for payment of any Assessments shall be established by the Executive Board. Initially, annual assessments shall be paid in quarterly installments with due dates as established by the Executive Board.

5.7 Effect of Nonpayment. Any Assessment, Assessment charge, or installment thereof, not paid when due, shall be deemed delinquent. Fees, charges, late charges, attorney's fees, fines, and interest shall be applicable to such delinquent Assessment pursuant to the provisions of C. R. S. § 38-33.3-316. The Executive Board may, but shall not be required to, record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent. Such notice shall be executed by an officer of the Executive Board, shall set forth the amount of the unpaid assessment, the name of the delinquent Owner(s), and a description of the Lot. The Association may bring an action at law against the Owner(s) obligated to pay the delinquent Assessment and/or



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may foreclose the Assessment Lien in conformance with the provisions of C. R. S. § 38-33.3-316(11)(a).

5.8 Priority of Lien. The priority of an Assessment Lien shall be consistent with the provisions of C.R.S. §38-33.3-316.

5.9 Statement from Association. Upon written request and payment of such reasonable fee as may be set by the Association, the Association shall issue a written statement to any grantee or Mortgagee verifying the status of all Assessments or charges affecting the Lot. Any statement as to the existence or amount of any delinquencies shall, absent manifest error, conclusively bind the Association.

5.10 Assessments for Tort Liability. In the event of any tort liability against the Association which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a Special Assessment. The Association may, however, require a larger contribution from fewer than all Owners under any legal or equitable principles regarding liability for negligent or willful acts or omissions.

5.11 Declarant Responsibility. Until a common expense assessment has been duly adopted by the Association, Declarant shall pay all association common expenses related to The Enclave Project.

6. INSURANCE.

6.1 Townhome Insurance. The Association shall, on behalf of the Owners, (i) keep all Townhome improvements, including all fixtures and equipment therein, (but not including furniture, furnishings or other personal property supplied or installed by Owners), insured against loss or damaged by fire, with extended coverage, (including insurance against loss for damage by vandalism or malicious mischief), in approximately the amount of the maximum replacement value thereof as properly determined from time to time; (ii) provide and keep in force, for the protection of the Association, its officers and directors, and all the Owners and First Lienors, general public liability and property damage insurance against claim for bodily injury or death or property damage occurring upon or in the General Common Elements and Limited Common Elements, in amounts of not less the \$1,000,000.00 in respect to bodily injury or death to any one person and not less than \$5,000,000.00 for bodily injury or death to any number of persons arising out of one accident or disaster, and in limits of not less than \$500,000.00 for damage to property, and if higher limits shall at any time be customary to protect against possible tort liability, such higher limits shall be carried; (iii) carry insurance required by CCIOA and such other insurance as the Executive Board may, within its discretion, determine desirable for the protection of the General Common Elements and Limited Common Elements, if any; and (iv) assure that all such insurance shall conform with the



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requirements set forth in C.R.S. 38-33.3-313(4)(a)/(d).

6.2 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are common expenses, notwithstanding the fact that the Owners may have disproportionate liability or that some Townhomes may have greater risk of loss than others. All insurance required to be carried under this paragraph shall be carried in favor of the Association, the Owners and all First Lienors, as their respective interests may appear.

6.3 Owner Insurance. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Each Owner shall be responsible for all insurance covering loss or damage to personal property in his Townhome and liability for injury, death or damage occurring outside his Townhome. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

6.4 Fidelity Insurance. Fidelity insurance or fidelity bonds may be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, independent contractors and employees and on the part of all others including any manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a manager, such insurance must be obtained by or for the manager, and its officers, employees and agents, as applicable. Such fidelity insurance or bond shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

6.5 Workmen's Compensation Insurance. The Executive Board shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

7. MAINTENANCE.

7.1 Maintenance By Owners. Each Owner shall maintain and keep in repair the interior of his Townhome, including the fixtures thereof, to the extent current repairs shall be necessary in order to avoid damaging other Townhome Owners. In performing such maintenance or repairs, or in improving or altering his Townhome, no Owner shall do any act or work which impairs the structural soundness of any Party Wall.

7.2 Owner's Failure To Maintain or Repair. In the event that a Townhome is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained



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portion of the Townhome lies with the Owner of the Townhome, or in the event the Townhome is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Townhome for which the Owner is responsible to substantially restore those portions damaged or destroyed to the same condition on which they existed prior to the damage or destruction, then the Association, after notice to Owner and with the approval of the Executive Board shall have the right to enter upon the Townhome to perform such work as is reasonably required to restore the Townhome to a condition of good order and repair. All costs incurred by the Association in connection with such restoration shall be reimbursed to the Association by the Owner of the Townhome, upon demand. All unreimbursed costs shall be a lien upon the Townhome 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 6 of this Declaration.

7.3 Maintenance By Association. The Association shall be responsible for the maintenance and repair of the exterior of all Townhomes including but not limited to the roofs, decks, siding, beams and trellises, and planter boxes. All General Common Elements (unless necessitated by damage caused by the negligence, misuse or tortuous act of an Owner or Owner's agent) and such maintenance and repairs shall be the common expense of all Owners. The maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all roads, driveways, utilities, storm sewer system, easements, landscaping, walls, fences (if any), gates, signage, irrigation systems, sidewalks, and improvements, if any (which shall include without limitation snow and ice removal services unless performed by another private or public organization formed for such purposes), located in the General Common Elements. In the event the Association does not maintain or repair the General Common Elements, Declarant, or an Owner or Owners, shall have the right, but not the obligation, to do so at the expense of the Association. Maintenance of all areas within any Lot (other than the exterior of the Townhomes), including replacing glass, shall be the responsibility of the individual Owner of the Townhome.

7.4 Easement For Maintenance. Each Owner in the Association shall have the irrevocable right, to be exercised by the Manager, the Executive Board or officers or employees of the Association, to have access to each Townhome from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the General Common Elements or Limited Common Elements therein or accessible therefrom, or at any hour, for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the General Common Elements, Limited Common Elements, or another Townhome. In the event insurance proceeds under Article 7 are payable to an Owner, but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.



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7.5 Association's Right To Grant Owner's Maintenance Area. The Association reserves the right to grant the maintenance responsibility of certain areas on each Townhome to the Townhome Owner, and the Townhome Owner is obligated to accept such maintenance responsibility, provided said assignment is done in a uniform and non-discriminatory manner.

7.6 Limited Common Elements Damage. In the event of damage or destruction of a Limited Common Element from any cause other than the negligence or tortious acts of an Owner or Owner's agents, the then Owners of the Units to which the Limited Common Elements is attributable shall bear equally the expense to repair or rebuild the Limited Common Elements to its previous condition. The Owner shall bear the cost of such damage to the extent of such Owner's or Owner's agent's negligence.

7.7 Association Power. The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptibility from another Townhome, the General Common Elements or Limited Common Elements. No Owner shall make any addition or other alteration to any portion of the General Common Elements or Limited Common Elements without the express consent of the Executive Board.

8. EASEMENTS.

8.1 Recorded Easements. The Property shall be subject to all easements as shown on the Plat, those of record, those provided in CCIOA (including easements for encroachment set forth in Section 2.14 of CCIOA and an easement for maintenance of any such encroachment) and otherwise as set forth in this Article.

8.2 Created Easements.

8.2.1 Utility Easements. There is hereby created an easement upon, across, over, in, and under all General Common Elements for ingress and egress, installation, replacing, repairing and maintaining all Utilities, including, but not limited to, water, sewer, gas, propane tanks, telephone, cable T.V., and electricity. Said easement includes future Utility services not presently available to the Lots which may be reasonably required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing Utilities to erect and maintain the necessary equipment on any of the Lots or General Common Elements and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by this Association as to locations. All Utilities, with the possible exception of propane tanks, shall be buried underground.



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8.2.2 Pedestrian Easement(s). There is hereby reserved and created a pedestrian access easement in the location as set forth on the plat.

8.3 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility, or pedestrian easements, permits or licenses over the General Common Elements for the best interest of all Owners, Members and Future Members of the Association, the Declarant, and the Association. Each Owner is hereby granted a perpetual nonexclusive right of ingress and egress, from the Owner's Lot over and across the General Common Elements and Limited Common Elements appurtenant to the Owner's Lot, which right shall be appurtenant to the Owner's Lot, and which right shall be subject to limited and reasonable restriction on the use of General Common Elements set forth in writing by the Association.

8.4 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

8.5 Ownership of Easements. All General Common Elements, including all easements described herein and on the plat, are generally intended to be owned by the Association, and, with the exception of Limited Common Elements, are for the benefit of all Lots and the owners thereof. Until the Roads and Utilities have been fully constructed, improved and installed consistent with Declarant's contractual obligations to Lot purchasers, the ownership and control of such road and utility easements shall remain vested in Declarant. Upon completion of construction, and not later than the date Declarant has conveyed to a buyer the last Lot available for sale, the ownership and control of the Roads and Utilities shall be transferred and conveyed to the Association. Upon such conveyance, Declarant shall be relieved from any and all continuing responsibilities and liabilities thereafter, except for Declarant's intentional or negligent construction, improvement, and installation of such improvements. No amendment to this Declaration may preclude a Lot from having an access road and utility easement necessary to permit the use of such Lot for the purposes set forth in this Declaration.

9. DAMAGE OR DESTRUCTION.

9.1 The Role of the Executive Board. In the event of damage or destruction to all or any part of any General Common Elements, Limited Common Elements and any improvements existing thereon, or other property covered by insurance written in the name of the Association, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property.

9.2 Estimate of Damages or Destruction. As soon as practicable after an event

causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction unless the approval is first obtained of fifty-one percent (51%) of First Lienors of Units subject to a First Lien (which percentage is measured by votes allocated to such Units). Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.

9.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

9.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Lienors.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 9.5, if permitted under the Act, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

9.5 Disbursement of Funds for Repair and Reconstruction. The insurance held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contribution such Owner made as Special Assessments, the remainder to be divided among the Lots, first to the First Lienors, and then to the

Owners, as their interests appear.

10. CONDEMNATION.

10.1 Rights of Owners. When all or any part of the General Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the General Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

10.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such a taking shall be payable to the Association for the benefit of the Owners and First Lienors and, unless otherwise required under the Act, the award shall be disbursed as follows:

(a) if the taking involves a portion of the General Common Elements on which improvements have been constructed, then, unless within 60 days after such taking Declarant and Owners who represent at least 67% of the votes of all the Owners shall otherwise agree, the Association shall restore or replace such General Common Elements so taken on the remaining land included in the General Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Association. If such General Common Elements are to be repaired or restored, the provisions in Article 7 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any General Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed equally among the Lots, first to the First Lienor and then to the Owners, as their interests appear.

10.3 Complete Condemnation. If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate provided that the approval is first obtained of 51% of all First Lienors of Lots (which percentage is measured by votes allocated to such Lots), and the portion of the condemnation award attributable to the General Common Elements shall be distributed as provided in Section 10.2 above.

11. ASSOCIATION AS ATTORNEY-IN-FACT.

Each Owner hereby irrevocably appoints the Association as the Owner's true and



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lawful attorney-in-fact for the purposes of purchasing and maintaining insurance pursuant to Article 7 including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 7 upon their damage or destruction as provided in Article 10 or a complete or partial taking as provided in Article 11. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authority, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

12. RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS.

12.1 Reservation of Withdrawal Rights. Declarant reserves the right for itself and any successor declarant at any time and from time to time to withdraw from the provisions of this Declaration, including General and Limited Common Elements, provided however that none of the Property may be withdrawn after any Lot has been conveyed by Declarant to an Owner. All Property of Declarant and/or its successors and assigns shall continue to be subject to the terms and conditions of the Master Declaration for Aspen Village Planned Development (the "Master Declarations") notwithstanding a withdrawal from the provisions of this Declaration.

12.3 Other Reserved Rights. Declarant reserves the right for itself and any successor declarant at any time and from time to time to:

(a) maintain and relocate sales offices, management offices, signs advertising the project, of any size, on one or more Lots or Townhome improvements and within the General Common Elements so long as Declarant or successor declarant continues to be an Owner of a Lot or the period of Declarant control has not terminated;

(b) construct fences throughout the Property during any time of the development and improvement of the Project, including temporary construction fencing.

(c) dedicate any access roads and utility easements, including Roads and Utilities within the Project, to public use, and Association use;

(d) to establish easements, reservations, exceptions and exclusions consistent with the ownership of this Project and for the best interest of Owners, the Association, including road and utility easements, and pedestrian easements;

(e) develop, install, and construct all improvements anticipated by, and included in, a Development Agreement between Declarant and the City for the full and complete development of The Enclave Townhomes as anticipated, permitted, and allowed in the Planned Development Agreement, and as it may be subsequently amended thereafter; and

(f) enter into agreements with the City, and any other third parties, for the purpose of planning and fully developing The Enclave Townhomes;

(g) appoint and remove directors in accordance with Section 4.2 above.

(h) any exterior improvement on a lot shall also be subject to the design criteria and standards set forth in the Design Review Criteria for Aspen Village Planned

Development, and must have the approval of the Aspen Village Design Review Committee for exterior improvements to a lot.

12.4 Termination of Rights. As to all Declarant rights reserved in this Declaration, Declarant offers no assurances regarding the manner or order in which it may exercise such reserved development rights enumerated. The time limits within which each of these rights must be exercised are the later in the time of: (i) the time limit set forth in the applicable section of this Declaration; or (ii) January 1, 2050.

12.5 Transfer of Records. Within 60 days after the Owners, other than Declarant, elect a majority of the Members of the Executive Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including the following:

- (a) a copy of this recorded Declaration;
- (b) an accounting for Association funds and financial statements for the period the Association received funds and ending on the date the period of Declarant control ended;
- (c) the Association funds or control thereof;
- (d) a copy of any plans and specifications used in the construction of any Common Property;
- (e) all insurance policies in force;
- (f) all permits issued by governmental bodies applicable to the common interest community and which are currently in force;
- (g) written warranties of any contractors, subcontractors, suppliers and manufacturers that are still effective;
- (h) a roster of Owners and First Lienors and their addresses and telephone numbers, if known, as shown in the Declarant's records;
- (i) employment contracts in which the Association is a contracting party; and
- (j) any service contract in which the Association is a contracting party or in which the Association or Owner have an obligation to pay a fee to the persons performing the

service.

13. TERM, AMENDMENT AND TERMINATION OF COVENANTS.

13.1 Term. The term of this Declaration shall be perpetual.

13.2 Amendments. This Declaration may, except as limited by Section 15.4, be amended with the approval of a majority of the votes entitled to be cast by Members of the Association (as defined in Section 4.5 herein above); provided that such amendment shall not adversely affect marketable title to any Lot. During the period of Declarant control, Declarant may amend this Declaration and the Plat to correct any inadvertent errors, omissions, and any other amendment to this Declaration must also receive the approval of Declarant. Consent of Mortgagees shall not be required; provided, however, that no such amendment may substantively and adversely affect such Mortgagee's security interest. The Declaration shall be amended at a meeting called for that purpose, and within 6 months of such meeting there shall be recorded in the real estate records of the County an instrument evidencing such amendment. Any instrument amending this Declaration shall be duly executed by the Declarant or President and Secretary of the Association, as the case may be. Notwithstanding the preceding, no amendment shall be permitted that is inconsistent with any of the rights granted, retained or reserved to Declarant hereunder or which attempts to enlarge or expand any obligation of Declarant hereunder unless such amendment is consented to in writing by Declarant. All amendments shall be consistent with the provisions of C.R.S. §38-33.3-217, as amended which currently requires 67% of the votes of the Members in specified instances.

13.3 Rule Against Perpetuities. If any of the terms, covenants, conditions, easements, restrictions, uses, limitations or obligations created by this Declaration shall be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provision, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing like or similar time limits, such provision shall continue only for the period of the life of Emil Wanatka, his now living descendants, and the survivor of them, plus 21 years.

13.4 Termination. This Declaration, and the common interests of the Owners in Association Property, may be terminated only if all Owners and Mortgagees agree to such termination by an executed, acknowledged instrument duly recorded in the real estate records of Archuleta County, Colorado; however, any such voluntary termination must be approved by the Association. This Declaration shall also terminate in the event of a taking of all of The Enclave Project by condemnation, eminent domain, or termination as otherwise (except for voting) provided by C.R.S. §38-33.3-218.

13.5 Disbursement of Proceeds. Upon the termination of this Declaration all



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property owned by the Association shall be disposed of, with the proceeds generated being disbursed, as provided by C.R.S. §38-33.3-218.

14. GENERAL PROVISIONS.

14.1 Sales Activity. Declarant may conduct, on The Enclave Project, sales activities, including, the showing of Lots (Units) by Declarant and their designated sales agents, maintaining sales and management offices, promoting or marketing events, and maintaining signs advertising The Enclave Project Property.

14.2 Conflict with Plats. In the event of any conflict or inconsistency between the provisions of this Declaration and the Plat, including the plat notes thereon, the provisions of the Plat and plat notes, as the case may be, shall govern and control and this Declaration shall be automatically amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of said Plat, including any plat notes.

14.3 Rights of Mortgagee. Mortgagees shall be entitled to:

- (a) upon request, inspect the books and records of the Association during normal business hours;
- (b) receive written notice of meetings of the Association where the consent of any Mortgagee is required;
- (c) upon request, obtain copies of Association financial statements; and
- (d) where the Owner of any Lot shall be deemed delinquent in the payment of any Assessment, any Mortgagee of said Lot shall be given written notice of such delinquency.

14.4 Provisions Incorporated in Deeds. Each provision contained in this Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument. Upon the recording of this Declaration in the office of the Clerk and Recorder, every contract, deed, lease, mortgage, trust deed, or other applicable instrument may legally describe a Lot by reference to its corresponding number on the recorded Plat as follows:

The Enclave Townhomes Planned Development Plat, filed for record



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in Archuleta County, Colorado on November 13, 2006, under
Reception No. 20610987.

This legal description shall be considered to include, without the requirement of specific reference, any and all General or Limited Common Properties appurtenant to the Lot described and to incorporate all rights incident to ownership of a Lot and all limitations of ownership as described in the Plat, and in this Declaration.

14.5 Number and Gender. Unless the context shall otherwise provide, a singular number shall include the plural, a plural number shall include the singular, and the use of any gender shall include all genders.

14.6 No Dedication. Unless expressly provided, nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of The Enclave Project to the public or for any public use.

14.7 Registration By Owner of Mailing Address and Notices. Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent either by registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, postage prepaid, to the address of the Association as designated in the Bylaws of the Association.

14.8 Applicable Law, Jurisdiction and Venue. The interpretation, enforcement or any other matters relative to this Declaration shall be construed and determined in accordance with the laws of the State of Colorado. All parties to this Declaration, or those parties who are benefited by this Declaration, hereby consent to venue for any action commenced with respect to this Declaration being in the District Court in and for the County of Archuleta, State of Colorado.

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

14.10 References to Standards. Wherever in this Declaration there is reference to County standards, or other federal, state or local rules, laws or regulations, such references shall automatically be waived, released, modified or amended, as the case may be, to correspond with any subsequent waiver, release, modification or amendment of such rules, laws, regulations or standards.



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14.11 Run with the Land. Declarant, for itself, its successors and assigns, hereby declares that all of The Enclave Project shall be held, used and occupied subject to the provisions of this Declaration, and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Owner of any interest in The Enclave Project.

14.12 CCIOA Provisions. In the event of any conflict between the provisions of CCIOA and the provisions of the Plat, this Declaration, or the articles of incorporation or the bylaws of the Association, the provisions of CCIOA shall control.

14.13 Binding Effect. Declarant, Owners, lessees, Mortgagees, permitted guests and invitees, and their heirs, personal and legal representatives, successors and assigns, or any other person using or occupying The Enclave Project, shall be bound by, and shall strictly comply with the provisions of this Declaration, the Bylaws, the Articles, any deed restrictions, and all rules, regulations and agreements lawfully made by the Association.

14.14 Limit on Time Sharing. No Owner of any Lot shall offer or sell any interest in such Lot under a "timesharing" or "interval ownership" plan, or any similar plan without the specific prior written consent of the Association.

14.15 Estoppel Statement. Upon the written request of any Owner, Mortgagee, prospective Mortgagee, Purchaser, or other prospective transferee of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid common assessments, if any, with respect to such Lot, the amount of the current monthly assessment, the date on which such assessment became or shall become due and the amount of any credit for prepaid expenses. Such statement, for which a reasonable fee may be charged, shall be binding upon the Association in favor of any person who may rely thereon in good faith. Unless a request for such statement shall be complied with within thirty (30) days after receipt thereof, all unpaid common assessments which become due prior to the date of making such a request shall be subordinated to the lien or other interest of the person requesting such a statement.

14.16 Conflict with Master Association. In the event of any conflict or inconsistency between this Declaration and the Master Declarations, the Master Declarations shall control and govern, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of the Master Declaration.



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IN WITNESS WHEREOF, Declarant has executed this Declaration of Covenants And Restrictions for The Enclave Project this 14th day of November, 2006.

Aspen Village Investments, LLC
a Colorado Limited Liability Company

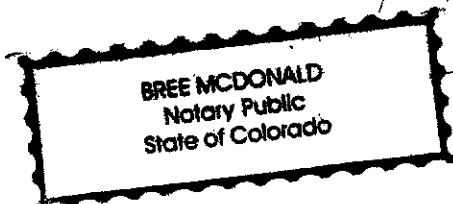
By: [Signature], Member

STATE OF COLORADO)
) ss.
COUNTY OF LAPLATA)

The foregoing instrument was acknowledged before me this 14th day of November, 2006 by Emil Wanatka, Member of Aspen Village Investments, LLC.

Witness my hand and official seal.

My commission expires: 4/19/09



[Signature]
Notary Public



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EXHIBIT A

Legal Description

BLOCK 2, ASPEN VILLAGE PHASE 3 PLANNED UNIT DEVELOPMENT, AS SHOWN
ON THE PLAT OF ASPEN VILLAGE PHASE 3 PLANNED UNIT DEVELOPMENT,
RECEPTION NUMBER 20510844.

LOCATED IN THE NW1/4 NE1/4, OF SECTION 21, TOWNSHIP 35 NORTH, RANGE 2
WEST, N.M.P.M., TOWN OF PAGOSA SPRINGS, COLORADO.
CONTAINING 4.03 ACRES, MORE OR LESS.



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EXHIBIT B

The Cottages at Aspen Village Planned Development, hereto described as:

**BLOCK 1, ASPEN VILLAGE PHASE 3 PLANNED UNIT DEVELOPMENT, AS SHOWN
ON THE PLAT OF ASPEN VILLAGE PHASE 3 PLANNED UNIT DEVELOPMENT,
RECEPTION NUMBER 20510844.**

**LOCATED IN THE NW1/4 NE1/4, SECTION 21, TOWNSHIP 35 NORTH, RANGE 2
WEST, N.M.P.M., TOWN OF PAGOSA SPRINGS, COLORADO; CONTAINING 10.29
ACRES, MORE OR LESS.**



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EXHIBIT C

The Enclave Townhomes Rules and Regulations for Investors and Landlords

The following are Rules and Regulations for The Enclave Townhomes. ALL PROPERTY OWNERS WHO LEASE THEIR TOWHOMES AND PROPERTY OWNER'S GUESTS are subject to these rules. Failure to comply with these rules could result in fines, eviction, or in the case of disturbances with the complex, could result in actual arrest.

LEASES OF TOWNHOMES:

Owners who lease their units, or who have them leased by others, shall assure that leases will be in writing and these Rules and Regulations for Investors and Landlords attached. In addition, such leases shall be subject to all POA Rules and Regulations, Covenants and By-Laws. Two (2) bedroom Townhomes are limited to 4 unrelated people living in the Townhome at one time, and three (3) bedroom Townhomes are limited to 5 unrelated people living in the Townhome at one time.

GUESTS:

All guests are subject to the same Rules and Regulations as residents. It is the responsibility of residents to insure that guests comply. Residents are responsible for and shall pay for any damage caused by their guests.

PETS:

Tenants must abide by all Association rules for pets. A fine of \$100.00 of the first pet violation, and higher fines for repeated incidences are applicable. There is no limitation upon the amount of fines that accrue. If such fines should remain unpaid, the POA may file a lien against the property.

ASSOCIATION RIGHTS OF ENFORCEMENT:

To enforce these rules, the POA's Board of Managers, through the Managing Agent, may levy a fine against tenants and owners not to exceed \$500.00, except that pet fines shall have no maximum limitation. If any fine is not paid within 30 days, it shall bear interest



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at the rate of 18% per annum until paid and, if unpaid, shall result in a lien being filed against the property (Townhome) involved.

In instances where the POA has given a written warning to a property owner or property manager regarding the conduct of a building occupant, and no action satisfactory to the POA has been taken, the POA shall have the authority and ability to seek injunctive relief and enforcement against any owner, tenant or resident with regard to any of the above Rules and Regulations. The Association may be reimbursed its court cost and reasonable attorney fees incurred in enforcement of any part, or all, of these Rules and Regulations. Ordinarily, only one warning on routine incidents is given. Fines will be given in the minimum of fifty (\$50.00) dollars and increased in increments of fifty (\$50.00) dollars.

PROCEDURE FOR APPEAL OF FINES:

A unit owner and/or tenant may appeal the levying of the fine upon their Townhome, within 15 days of the levying of the fine, by requesting a hearing by the Board of Managers. Such hearing will be held as soon as possible by the Board of Managers, at a time and date set by them. The decision by the Board of Managers resulting from such hearing shall be final. **ALL FINES ARE DUE IN FULL 30 DAYS WITHIN ISSUANCE.**

These Rules and Regulations are intended to preserve the safety and comfort of all residents of The Enclave Townhomes. The Board of Managers of The Enclave Townhomes Property Owner's Association may from time to time modify these Rules and Regulations.