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Gay Cappis Clerk-Recorder San Miguel Cnty Co

11/5/99

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

SUNNYSIDE RANCH AT TELLURIDE WEST

11/5/99

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SUNNYSIDE RANCH AT TELLURIDE WEST

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SUNNYSIDE RANCH AT TELLURIDE WEST (this "Declaration") is made as of this 5th day of November, 1999, by SUNNYSIDE DEVELOPMENT COMPANY L.C., a Utah limited liability company ("Declarant").

RECITALS

A. Declarant is the owner of certain real property interests located in San Miguel County, Colorado as more particularly described on Exhibit "A-1," which is attached hereto and incorporated herein by this reference (the "Declarant's Property");

B. Bluewater Corporation, an Arizona corporation ("Bluewater"), Foot Creek Corporation of Arizona, an Arizona corporation ("Foot Creek"), and Grandilla (Arizona), Inc., an Arizona corporation ("Grandilla") conveyed the Declarant's Property to Declarant, reserving collectively to themselves the ownership of a contiguous parcel of land containing approximately 35 acres, identified as Lot 11 on the Community Map, and more particularly described on Exhibit "A-2," which is attached hereto and incorporated herein by this reference ("Lot 11," and together with the Declarant's Property, the "Property");

C. Bluewater, Foot Creek and Grandilla, for themselves and for their successors and assigns, join in this Declaration for the limited purpose of subjecting Lot 11 to the burdens, benefits, easements, covenants, conditions and restrictions stated in this Declaration.

D. This Declaration imposes upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property, and establishes a flexible and reasonable procedure for the overall development, administration, and maintenance of the Property, in order to preserve the unique and authentic rural and ranching character and heritage of Sunnyside Ranch at Telluride West, to assure architectural harmony of the improvements to be constructed within the community, and to preserve the environmental values and natural amenities inherent in the community.

E. Declarant desires to create, and Sunnyside Ranch at Telluride West qualifies as, a planned community generally exempt from the provisions of Colorado's Common Interest Ownership Act, C.R.S. §38-33.3-101 et seq. (the "Act"), pursuant to the small planned community exemption described in Section 116 of the Act.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Declarant, Bluewater, Foot Creek and Grandilla hereby declare that each of their respective portions of the Property shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with title to, the Property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

Article I
DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Accessory Dwelling Unit": An additional dwelling unit which may be constructed on any Lot located within a Low Density Zone District of San Miguel County (as designated pursuant to the Land Use Code), which dwelling unit shall be accessory to a Primary Dwelling Unit, subject to San Miguel County R-1 Housing Deed Restriction, and subject to the applicable maximum size restrictions and other requirements set forth in the Land Use Code.

1.2 "Area of Common Responsibility": The Common Area (including the Limited Common Area except as otherwise expressly provided in this Declaration), together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenant, contract, or agreement with any Person, including, without limitation, any private individuals or entities, public agencies, authorities or utilities, are now or hereafter become the responsibility of the Association.

1.3 "Articles of Incorporation" or "Articles": The Articles of Incorporation of Sunnyside Ranch at Telluride West Homeowners Association, Inc., dated as of November 3, 1999, as filed with the Secretary of the State of Colorado.

1.4 "Association": Sunnyside Ranch at Telluride West Homeowners Association, Inc., a Colorado non-profit corporation, its successors or assigns.

1.5 "Association Documents": Collectively, the Articles of Incorporation, the Bylaws, this Declaration, and the Design Guidelines, as the same may be amended pursuant to the provisions thereof.

1.6 "Base Assessment": Assessments levied on all Lots subject to assessment under Article IX to fund Common Expenses for the general benefit of all Lots, as more particularly described in Section 9.1 and Section 9.2.

1.7 "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the Articles and Bylaws, and serving as the Association's board of directors under Colorado corporate law.

1.8 "Building Envelope": The area designated on the Community Map as the location on each Lot for the Primary Dwelling Unit, the Accessory Dwelling Unit or Caretaker's Unit, and certain other permitted improvements, as more particularly provided in the Design Guidelines. The Building Envelope for any Lot may be further limited by setback, shape or other restrictions set forth in the Design Guidelines or on the Community Map.

1.9 "Bylaws": The Bylaws of Sunnyside Ranch at Telluride West Homeowners Association, Inc., dated as of November 5, 1999, as they may be amended from time to time.

1.10 "Caretaker Unit": An additional residential unit which may be constructed on any Lot that is not located within a Low Density Zone District of San Miguel County (as designated by the Land Use Code), the maximum size and other restrictions and requirements pertaining to which residential unit shall be governed by Section 5-307 C of the Land Use Code.

1.11 "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint all of the members of the Board of Directors as provided in Section 7.3.1 of the Articles.

1.12 "Common Area": All real and personal property in which the Association holds ownership, leasehold, possessory, easement or use rights for the common use and enjoyment of the Owners, including, without limitation: (i) rights-of way for Common Roads, maintenance roads and common recreational trails, together with all Common Roads, maintenance roads and landscaping located within such rights-of-way; (ii) utility easements located within or adjacent to all Common Road and Private Driveway rights-of-way, together with all of the utility lines located within such easements; (iii) easements for supply wells, diversion and collection galleries and facilities, storage and treatment facilities, retention and augmentation pond(s), and transmission and distribution lines in connection with the Project's community water supply system, together with the wells, pumps, diversion and collection galleries and facilities, storage tanks, treatment equipment, retention or augmentation ponds, and transmission and distribution lines located within such easements; (iv) fencing easements and all fences located within any such easement; and (v) all entry gates, monument signage, directional signage, landscaping, and other improvements located within any such areas. The term Common Area shall also include the Private Driveways, which constitute "Limited Common Area" and are subject to certain use restrictions and repair, maintenance, insurance and reconstruction obligations as specifically

provided in this Declaration. All Common Area (including Limited Common Area) existing at the time of recording this Declaration is more particularly depicted on the Community Map as Tracts A through H, inclusive.

1.13 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Lot Owners, as the Board may find necessary and appropriate pursuant to any of the Association Documents. Common Expenses include, without limitation: (i) expenses of administration, operation and management of the Association, including third party legal, accounting and consulting fees, general office and equipment expenses, the costs of operating the Design Review Committee, and salaries and/or expense reimbursement, as approved by the Board, to officers, directors and members of the Design Review Committee; (ii) expenses of administration, operation, management, repair, maintenance and replacement of the Common Area and the other portions of the Area of Common Responsibility, including all Common Roads, maintenance roads, common trails, utility systems, landscaping, approved fencing and signage; subject, however, to the provisions of clause (iii) following with respect to Limited Common Area; (iii) unless the Board elects otherwise, the cost of repair and maintenance of the Limited Common Area, including without limitation maintaining, repairing and plowing the Private Driveways (subject to the Owners' reimbursement obligations set forth in Section 5.2.2 below); (iv) the cost of providing common trash collection service (subject to the allocation of such cost as a Specific Assessment to those Lot Owners who are actually receiving such trash collection service); (v) the cost of operating, maintaining, repairing and replacing the Project's community well and central water supply, storage, treatment and distribution system (subject to the allocation of such costs as Specific Assessments to those Lot Owners actually served by such system, as provided in Section 9.5.2); (v) the cost of designing, constructing and maintaining the Initial Association Improvements (subject to the cap on the Association's design and construction costs of the Initial Association Improvements as provided in the Development Agreement); (vi) expenses incurred in connection with the maintenance of any property over which the Association has a license and maintenance agreement with private individuals or entities, public agencies, authorities or utilities, including, but not limited to, the Association's pro-rata share of the cost of: (x) the construction of a common mailbox building at the corner of Aldasoro Boulevard and Airport Road, and (y) the repair and maintenance of Aldasoro Boulevard, as more particularly provided in that certain Aldasoro Boulevard Road Maintenance and Mailbox/Bus Stop Easement Agreement dated September 13, 1999 and recorded September 16, 1999 as Reception No. 329238 in the real property records of San Miguel County, Colorado; (vii) income and other taxes assessed against the Association; (viii) insurance premiums for the insurance carried under Section 6.1; (ix) reasonable contributions, as estimated by the Board in its reasonable business judgment, to establish or maintain an appropriate capital reserve or to eliminate a deficit from the prior year, and (x) any other expenses declared Common Expenses by the provisions of any of the Association Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for the initial development, construction and installation of the Project's infrastructure improvements (other than the Initial Association Improvements), as more

particularly provided in the Development Agreement, unless otherwise approved by seventy-five percent (75%) of the total Class "A" vote of the Association, other than Declarant.

1.14 "Common Roads": The common roads serving the Project, including without limitation Sunnyside Ranch Road, Elk Ridge Drive, and a portion of Aldasoro Boulevard, located within that portion of the Common Area depicted as Tract A on the Community Map.

1.15 "Community Map": The Sunnyside Ranch at Telluride West Community Map depicting the Project prepared by San Juan Surveying Inc., as it may be amended from time to time. The Community Map is being recorded in the San Miguel County, Colorado real property records contemporaneously with this Declaration. Depiction of properties on the Community Map which are not part of the Property shall not, under any circumstances, obligate Declarant to subject such properties to this Declaration. The Community Map is an integral part of this Declaration.

1.16 "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard may be more specifically determined by the Board of Directors and/or the Design Review Committee, as the context may require.

1.17 "Declarant": Sunnyside Development Company L.C., a Utah limited liability company, or any successor, successor-in-title, or assign of Sunnyside Development Company L.C. who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant. Any Person other than Sunnyside Development Company L.C., or any successor, successor-in-title, or assign of Sunnyside Development Company L.C., may, with the consent of the Declarant, submit property to the terms of this Declaration so long as such submission does not adversely affect or impair the Project's general exemption from the Act as hereinabove described. In any event, no such Person shall be a "Declarant" under this Declaration unless such Person is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.18 "Declarant's Property": That certain parcel of real property, depicted as Lots 1 through 10, inclusive, on the Community Map, as more particularly described on Exhibit "A-1" attached to this Declaration.

1.19 "Design Guidelines": The design and development guidelines for the Project more particularly defined in Section 10.3.1.

1.20 "Design Review Committee": The committee of the Board appointed for the purpose of reviewing plans submitted to it for approval as provided herein.

1.21 "Development Agreement": That certain Development Agreement dated November 5, 1999 entered into by and between Sunnyside Development Company L.C., as developer, and the Association, setting forth Declarant's obligation to complete the Project's initial infrastructure improvements.

1.22 "Initial Association Improvements": Those certain capital improvements to the Property to be made by the Association in connection with the original development of the Project, as described on Exhibit C attached hereto, and as more particularly provided in the Development Agreement.

1.23 "Land Use Code": The San Miguel County Land Use Code, as the same may be amended from time to time.

1.24 "Limited Common Area": Those portions of the Common Area intended for the limited use or primary benefit of one or more, but less than all, of the Lots, as more particularly described in Article II below. Without limiting the generality of the foregoing, the term Limited Common Area includes all Private Driveways, which are collectively depicted as Tract H on the Community Map.

1.25 "Lot": A portion of the Property, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy of a Primary Dwelling Unit with related improvements including, without limitation, an Accessory Dwelling Unit or a Caretaker Unit, and other approved outbuildings. All Owner Improvements sought to be constructed on a Lot are subject to Design Review pursuant to Article X of this Declaration and the Design guidelines. The term "Lot" shall refer to all land which is within the legal boundaries of the Lot as well as any improvements located thereon, expressly including any portion of such land designated as Common Area on the Community Map. The boundaries of each Lot located upon and within the Property are depicted on the Community Map and labeled similarly as "Lot *x*".

1.26 "Lot 11": That certain parcel of real property depicted as Lot 11 on the Community Map, as more particularly described on Exhibit "A-2" attached to this Declaration.

1.27 "Member": A Person entitled to membership in the Association.

1.28 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed recorded against any Lot.

1.29 "Mortgagee": A beneficiary or holder of a Mortgage.

1.30 "Mortgagor": Any Person who grants a Mortgage.

1.31 "Owner": One or more Persons who hold record fee title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. In the event a Lot is put under contract for sale, the seller shall be considered the Owner throughout the contract period until the closing thereunder, unless the contract is recorded and expressly provides to the contrary.

1.32 "Owner Improvements": All exterior improvements, structures and appurtenances thereto or components thereof of every type or kind constructed or installed on a Lot by an Owner including, without limitation, buildings, outbuildings, swimming pools, tennis courts, platform tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping features (including hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel and bark), exterior light fixtures, satellite dishes, antennae, poles, signs, exterior tanks, exterior air conditioning, cooling, heating and water-softening equipment, septic systems, and all excavations, site preparations and clearing in connection with any of the foregoing.

1.33 "Person": A natural person, a corporation, a partnership, a limited liability company, a trust, or any other legal entity.

1.34 "Primary Dwelling Unit": Any building or portion of a building situated upon a Lot which is designed and intended for use and occupancy by a single family or an individual as the primary residence upon that Lot.

1.35 "Private Driveways": the respective private driveways serving each Lot from the Common Roads, which private driveways are collectively depicted as Tract H on the Community Map. The Private Driveways constitute Limited Common Area.

1.36 "Project": The exempt planned community created by this Declaration consisting of the Property and known by name as Sunnyside Ranch at Telluride West.

1.37 "Property": The real property subject to this Declaration, consisting of the Declarant's Property and Lot 11, as more particularly described in Exhibit "A" attached hereto.

1.38 "Special Assessment": Assessments levied in accordance with Section 9.4.

1.39 "Specific Assessment": Assessments levied in accordance with Section 9.5.

1.40 "Sunnyside Ranch Access, Utility and Construction Easement Agreement": That certain Sunnyside Ranch Access, Utility and Construction Easement Agreement dated as of September 16, 1999, between Declarant and Sunnyside Associates L.C., recorded September 20, 1999 at Reception Number 329339 of the real property records of San Miguel County, Colorado.

1.41 "Supplemental Declaration": An amendment or supplement to this Declaration which imposes, expressly or by reference, additional restrictions and obligations on the Property.

1.42 "Use Guidelines and Restrictions": The affirmative and negative covenants, easements and restrictions affecting the Property which are adopted by the Board from time to time by resolution, as more particularly defined in Section 11.1.

Article II
OWNERS' PROPERTY RIGHTS

2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

2.1.1 This Declaration, the matters described in Exhibit "B" attached hereto, and any other applicable covenants, restrictions, easements or limitations contained within the chain of title for any such property, including without limitation the easement rights and obligations contained in the Sunnyside Ranch Access, Utility and Construction Easement Agreement, and the rights contained in that certain Aldasoro Access License Agreement, dated August 27, 1999, among Sunnyside Associates L.C., as licensor, and Albert A. Aldasoro, Mary Louise Leonard, Angela M. Petersen, Pamela M. Bennett, Cristine Mitchell, Monica McDaid, Lydia Leonard, and Mark Leonard, collectively, as licensees;

2.1.2 The right of the Board to adopt rules regulating the use and enjoyment of the Common Area; provided, however, no such rules shall ever prevent, impair or diminish the right of each Owner and its family, lessees and guests to: (i) receive water from the community water system (if any) for such Owner's customary domestic use, subject to the restrictions imposed upon all of the Lots pursuant to this Declaration or the Design Guidelines; or (ii) access such Owner's Lot along, across and upon the Common Roads and applicable Private Driveway, except during temporary periods for maintenance or repair, in which case a reasonably equivalent alternative means of access shall be provided;

2.1.3 The right of the Board to suspend the right of an Owner to use facilities within the Common Area (but not those portions of the Common Area comprising the Project's community water system or Common Roads except during temporary periods for maintenance or repair as aforesaid) after notice and a hearing pursuant to Section 3.3.6 of the Bylaws;

2.1.4 The right of the Board to permit use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

2.1.5 The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate all or any portion of any real or personal property to which the Association holds fee title, as security for money borrowed or debts incurred;

2.1.6 The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Area," as more particularly described in Section 2.2 below; and

2.1.7 The restriction with respect to those portions of the Common Area depicted as Tracts F and G and described in Map Note 2(i), on the Community Map, to use by the Declarant, the Association and their respective agents and representatives solely for the construction, operation, maintenance, repair and replacement of those components of the Project's community water system located within such Tracts F and G and the property described in Map Note 2(i), on the Community Map.

Any Owner may extend such Owner's right of use and enjoyment of the Common Areas to the members of the Owner's family and the Owner's lessees (subject to the terms of Section 11.6.16 below), service providers and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases any Lot pursuant to the *p+10Xand restrictions hereinafter described shall be deemed to have assigned all such Owner's rights under this Section to the lessee of such Lot, for the duration of such lease.

2.2 Limited Common Area. Certain portions of the Common Area may be designated as Limited Common Area by the Declarant on the Community Map, in order that such Limited Common Area shall thereafter be for the limited use or primary benefit of some, but not all, of the Owners and occupants of Lots within the Property. Without limiting the generality of the foregoing, each Private Driveway shall constitute Limited Common Area, for the exclusive use of the Owner and occupants of the Lot(s) served by such Private Driveway; provided, however, that Declarant, the Association and their respective agents and representatives shall have certain easement rights over all of the Limited Common Area, including all Private Driveways, for the construction, maintenance and repair of the Private Driveways and utility lines located adjacent to such Private Driveways, all as more particularly provided in Article XII below. All costs associated with the maintenance, repair and replacement of any portion of the Limited Common Area shall be assessed as a Specific Assessment against the Owners of the applicable Lot or Lots benefited by such portion of the Limited Common Area. Following the initial designation of any portion of the Common Area as Limited Common Area by the Declarant as aforesaid, the Declarant shall have no further right to alter the designation or create any additional Limited Common Area; provided, however, that previously designated Limited Common Area may be reassigned, with the prior consent of the Owner(s) of any Lot(s) originally served or benefited by such previously designated Limited Common Area, together with the vote of a majority of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if any.

Article III
MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner shall be a Member of the Association. An Owner shall be entitled to one membership for each Lot owned by such Owner. No Owner, whether one or more Persons, shall have more than one membership per Lot owned. If a Lot is owned by more than one Person, all co-owners shall be entitled to the privileges of membership, subject to the restrictions on voting set forth in Section 6.2 of the Articles, and all co-owners shall be jointly and severally obligated to perform the responsibilities of Owner. Membership is mandatory and appurtenant to the Lot of each Owner; the membership appurtenant to each Lot shall automatically pass with fee simple title to the Lot. The membership of an Owner in the Association may not be transferred except in connection with the transfer of the title of the Lot; provided, however, that the rights of membership may be assigned to a mortgagee as further security for a loan secured by a first lien on a Lot. The membership rights of an Owner which is a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. No Owner may reject, repudiate, disown, renounce or disclaim its membership in the Association or any of the rights, duties and obligations attendant to such membership. During the Class "B" Control Period, the Declarant shall also be a Member of the Association, as more particularly provided in Section 6.2 of the Articles.

3.2 Voting. The Association shall have two classes of membership, Class "A" and Class "B," as more particularly provided in the Articles. The Class "A" Members' and the Class "B" Member's respective voting rights are set forth in Section 6.2 of the Articles.

Article IV
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Area. Subject to the rights of the Owners set forth in this Declaration, and subject to the Board's right to turn over the maintenance of the Limited Common Area to the applicable Lot Owners, the Association shall manage and control the Common Area and all improvements thereon (including, without limitation, Common Roads, common trails, Private Driveways, entry gates, signage, fencing, utility lines, community water system, augmentation ponds, equipment, and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

4.2 Personal Property and Real Property for Common Use. The Association, through the action of the Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed from the party conveying the same to the Association. Fee

title to the Common Area located within each individual Lot shall remain vested in the Owner of such Lot, subject to the easements and common use rights provided in this Declaration. Declarant's conveyance of any Lot to any Person shall be expressly subject to the easements and common use rights set forth in this Declaration with respect to all of the Common Area included within such Lot.

4.3 Enforcement. The Association may impose sanctions for violations of this Declaration, the Bylaws, or rules in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote and to use any facilities within the Common Area; provided, however, no such sanctions shall ever prevent, impair or diminish the right of each Owner and its family, lessees, and guests to: (i) receive water from the community water system (if any) for such Owner's customary domestic use, subject to the restrictions imposed upon all Lots pursuant to this Declaration or the Design Guidelines; or (ii) access such Owner's Lot along, across and upon those portions of the Common Area comprising the Project's Common Roads and the applicable Private Driveway, except during temporary periods for maintenance or repair, in which case a reasonably equivalent alternative means of access shall be provided. In addition, the Association, through the Board, in accordance with Section 3.3.6(c) of the Bylaws, may exercise self-help to cure violations, and may suspend any services it provides (except access or water as aforesaid) to the Lot of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. The Association, by contract or other agreement, may enforce County and local ordinances, if applicable, and permit San Miguel County to enforce ordinances on the Property for the benefit of the Association and its Members.

4.4 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege.

4.5 Indemnification of Officers, Directors and Committee Members. The Association shall indemnify every officer, director, and committee member against all expenses, including reasonable attorneys' fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of

any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.6 Initial Association Improvements. The Association shall be responsible for designing and constructing the Initial Association Improvements, as more particularly provided in the Development Agreement. In the event that the total cost to the Association for the design, construction and/or installation of the Initial Association Improvements exceeds $260,000, Declarant shall reimburse the Association for the amount of such excess.

4.7 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designated to make the Property safer than it otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE FIRE PROTECTION OR SECURITY OR INEFFECTIVENESS OF FIRE PROTECTION OR SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT AND ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT ANY WILDFIRE MITIGATION PLAN, FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, ACCESS CONTROLLED GATE SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY WILDFIRE MITIGATION PLAN, FIRE PROTECTION OR BURGLAR ALARM SYSTEMS, ACCESS CONTROLLED GATE SYSTEM, OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR THAT ANY WILDFIRE MITIGATION PLAN, FIRE PROTECTION OR BURGLAR ALARM SYSTEMS, ACCESS CONTROLLED GATE SYSTEM, OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE PLAN OR SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE

MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATING TO ANY WILDFIRE MITIGATION PLAN, FIRE AND/OR BURGLAR ALARM SYSTEMS, ACCESS CONTROLLED GATE SYSTEM, OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

Article V
MAINTENANCE

5.1 Association's Responsibility.

5.1.1 Area of Common Responsibility. The Association shall maintain and keep in good condition and repair the Area of Common Responsibility, which shall include, without being limited to:

(a) all of the Common Roads and common trails as shown on the Community Map;

(b) unless the Board of Directors elects otherwise, all of the Private Driveways as shown on the Community Map (subject to the Owners' reimbursement obligation set forth in Section 5.2.2 below);

(c) all landscaping and any parks situated upon the Common Area, including, without limitation, all trees, hedges, windbreaks, plantings, shrubs, flowers, sod, gravel and bark, situated within the entries, along Common Road rights-of way (but not Private Driveway rights of way, which shall be the responsibility of each individual Owner), and within utility and water system easements, all with an emphasis on landscaping and revegetating with native species;

(d) all drainage and utility systems not otherwise dedicated to a public or private utility, or to a governmental or quasi-governmental entity;

(e) any community well and central water supply, storage, treatment and distribution system developed by Declarant serving all or any portion of the Property, including without limitation, all supply wells, diversion and collection facilities, pumping, storage and treatment equipment, augmentation ponds, irrigation ditches, and transmission and distribution lines;

(f) all other improvements or amenities located within the Common Area, including without limitation, entry gates, entry monument signage, interior directional signage, and all approved fencing;

(g) such portions of any additional property included within the Area of Common Responsibility pursuant to any contract or agreement for maintenance thereof entered into by the Association and the owner of such additional property, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard; and

(h) all ponds, streams and/or wetlands located within the Property, if any, which serve as part of the drainage and storm water retention system for the Property, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith.

5.1.2 Trash Collection. Unless the board determines otherwise, the Association will contract for the provision of trash collection services for each of the improved Lots. The cost of such trash collection service shall be assessed equally against those Lots actually receiving the service, as a Specific Assessment pursuant to Section 9.5.

5.1.3 Reduction; Assignment of Responsibilities. Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant. The Association, by contract or agreement, may assign its maintenance responsibility for any part of the Area of Common Responsibility to any Person, including, without limitation, a managing agent (which may be Declarant or an affiliate of Declarant), a public or private utility, San Miguel County, Colorado, or any other governmental or quasi-governmental entity. In the event the Association does by contract or agreement transfer any maintenance responsibilities, the transfer may obligate the Association Owners to pay for such maintenance in such manner as the Board determines is reasonable.

5.1.4 Maintenance Expenses. Except as otherwise specifically provided in Section 5.2.2, Section 9.5 or elsewhere in this Declaration, all costs associated with the maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2 Owner's Responsibilities.

5.2.1 Lot Maintenance. Each Owner shall maintain its, his or her Lot and all Owner Improvements located on the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, except (i) any portion of the Area of Common Responsibility located within the boundaries of such Lot (the maintenance of which is the Association's responsibility as provided in Section 5.1.1 above), and (ii) in the case of a Lot, any such maintenance responsibility that is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or any other declaration of covenants applicable to such Lot. Without limiting the generality of the foregoing, each Owner shall maintain the landscaping materials on such Owner's Lot in a healthy, attractive, and well-maintained condition and in accordance with the Lot's approved landscaping plan hereinafter described. In addition to any other enforcement rights, if an Owner fails properly to perform its, his or her maintenance responsibility pursuant to Section 5.2.1 or 5.2.2, the Association may perform such maintenance responsibilities and specifically assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 9.5. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.2.2 Private Driveway Maintenance. The cost of the maintenance and repair of each Lot's Private Driveway, as shown on the Community Map, including without limitation surface repair, repaving and snowplowing, shall be the responsibility of the applicable Lot Owner. Unless the Board elects not to provide Private Driveway maintenance under a common contract pursuant to Section 5.1.1 above, then each Owner will be specifically assessed pursuant to Section 9.5 below for such Owner's share of the cost of such maintenance, based upon the actual time and materials cost of performing such maintenance. In the event that the Board elects not to provide such maintenance, each Owner shall be responsible for maintaining the Private Driveway appurtenant to such Owner's Lot, as shown on the Community Map, in good condition and repair and properly plowed, consistent with the Community-Wide Standard.

5.2.3 Private Driveway Naming Rights. The initial Owner of each Lot (other than Declarant) shall have the right to name the Private Driveway appurtenant to such Owner's Lot, subject to the approval of the Board, which will not be unreasonably withheld. Upon determining the applicable name of each Private Driveway, the Association shall produce, at the Association's expense, a sign identifying each such Private Driveway, consistent with the design being used for the Project's interior signage. Upon the sale of any Lot from an Owner (other than Declarant) to a subsequent purchaser, the new Owner shall have the right to rename the applicable Private Driveway, subject to the approval of the Board, which will not be unreasonably withheld, provided, however, that the cost of producing a sign identifying the new name of such Private Driveway shall be the responsibility of such new Owner.

5.3 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association and/or an Owner shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities. No Owner shall be liable for any injuries or other liabilities in connection with any portion of the Common Area located within the boundaries of such Owner's Lot, unless such injury was directly caused by such owner's gross negligence or willful misconduct.

5.4 Party Walls and Similar Structures.

5.4.1 General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

5.4.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners whose Lots are served by the party structure; except that the cost of repairing any damage to a party structure, beyond normal wear and tear, caused solely by one of the Owners' use (e.g., damage to a party driveway from construction vehicle and equipment traffic performing construction services on or deliveries to one Owner's Lot), shall be borne entirely by the Owner causing such damage.

5.4.3 Casualty. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of such insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

5.4.4 Dispute Resolution. Any dispute concerning a party structure shall be subject to the dispute resolution procedures set forth in Article XV.

Article VI
INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain the insurance coverage described below. Premiums for all

insurance carried by the Association pursuant to this Section 6.1 shall be a Common Expense of the Association, included in the computation of the Base Assessment.

6.1.1 Casualty Insurance. The Association shall obtain blanket "risks of direct physical loss" property insurance, if reasonably available, for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement thereof in the event of a casualty. If blanket "risks of direct physical loss" coverage is not generally available at reasonable cost, then "broad form" coverage, including coverage for vandalism and malicious mischief, shall be obtained. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property.

6.1.2 Liability Insurance. The Association also shall obtain a "commercial liability insurance" policy covering entire the Area of Common Responsibility, insuring the Association and its Members (expressly including each Owner in its capacity as the fee title owner of such Owner's Lot, to the extent that any portion of the Area of Common Responsibility falls within the boundaries of such Lot), for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the "commercial liability insurance" policy shall have at least a $1,000,000.00 combined single limit as respects bodily injury and property damage and at least a $3,000,000.00 limit per occurrence and in the aggregate. The Association's Board may increase the amounts of insurance required hereunder from time to time as determined by the Board in its sole but reasonable business judgment.

6.1.3 Other Insurance; Fidelity Bond. The Association shall also obtain, as a Common Expense: (i) worker's compensation insurance if and to the extent required by law, (ii) directors' and officers' liability coverage, if reasonably available, and (iii) flood insurance, if available and advisable. The Association may also obtain, as a Common Expense, fidelity insurance or a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. If so obtained, the Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to not less than one-half of the annual Base Assessments on all Lots plus reserves on hand. Any fidelity insurance or bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or non-renewal.

6.1.4 Deductibles. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance meets the coverage requirements hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an

opportunity to be heard in accordance with Section 3.3.6 of the Bylaws, that the loss is the result of the gross negligence or willful conduct of one or more Lot Owners, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 9.5.

6.1.5 Policy Requirements. All insurance coverage obtained by the Board shall:

(a) Be written with a company authorized to do business in Colorado which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the closest equivalent rating available;

(b) Be written in the name of the Association as trustee for the benefited parties. Policies relating to the Common Area shall be for the benefit of the Association, the Owners of Lots, and their Mortgagees, as their interests may appear;

(c) Vest in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss;

(d) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

(e) Have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement.

(f) The Board shall be required to use reasonable efforts to secure insurance policies containing endorsements that:

(1) Waive subrogation as to any claims against the Board, or the Association's officers, employees, and its manager (if any), the Owners and their tenants, servants, agents, and guests;

(2) Waive the insurer's rights to repair and reconstruct instead of paying cash;

(3) Preclude cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(4) Exclude individual Owner's policies from consideration under any "other insurance" clause; and

(5) Require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

6.2 Owners Responsibility to Reconstruct. Each Owner covenants and agrees that in the event of damage to or destruction of structures on or comprising a Lot, the Owner thereof shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article X of this Declaration. Alternatively, the Owner shall promptly clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs of reconstruction or clearing which are not covered by insurance proceeds.

6.3 Damage and Destruction.

6.3.1 Estimate of Repair Costs. Within a reasonable time after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

6.3.2 Obligation to Reconstruct. Any casualty damage to or destruction of all or any portion of the Common Area shall be repaired or reconstructed by the Association unless the Class "B" Member, if any, all Members upon whose respective Lots the casualty damage occurred, and at least seventy-five percent (75%) of the votes of the Class "A" membership decide within sixty (60) days after the loss not to repair or reconstruct. such damage. If reliable and detailed estimates of either the amount of available insurance proceeds or the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such information is available; provided, however, that such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

6.3.3 Obligation to Clear Debris. If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.4 Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in the capital reserve account, and used for such purposes as the Board shall determine.

6.5 Insufficient Proceeds. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board shall, without a vote of the Members, levy Special Assessments as required to cover any such insufficiency. In particular, in the event that insurance proceeds are insufficient to cover the cost to repair or reconstruct any portion of the Limited Common Area, then the uninsured portion of such cost shall be borne by those Lots served or benefited by such repaired or reconstructed portion of the Limited Common Area, by Specific Assessment pursuant to Section 9.5 below.

Article VII
NO PARTITION

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition of the Common Area unless the same or such portion thereof sought to be partitioned has been removed from the provisions of this Declaration in accordance with the terms hereof. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

Article VIII
CONDEMNATION

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of the Declarant, as long as the Declarant owns any land subject to this Declaration, and at least sixty-seven percent (67%) of the total Members votes in the Association) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

8.1 Improved Common Area. If the taking involves a portion of the Common Area upon which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any land subject to this Declaration, and at least seventy-five percent (75%) of the total Members' vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Sections 6.4 and 6.5 regarding funds for the repair of damage or destruction shall apply.

8.2 Unimproved Common Area. If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

Article IX
ASSESSMENTS

9.1 Creation of Assessments. The Board is hereby authorized to create assessments for Association expenses in such amounts as the Board may specifically authorize from time to time. There shall be four types of assessments: (i) Base Assessments to fund Common Expenses for the general benefit of all Lots; (ii) Special Assessments as described in Section 9.4; (iii) Specific Assessments as described in Section 9.5; and (iv) Real Estate Transfer Assessments as described in Section 9.9.

9.1.1 Obligation upon Owners, Transferees and Mortgagees. Each Owner, by accepting a deed or entering into a recorded contract of sale for any one or more Lots within the Property, is deemed to covenant and agree to pay all assessments, together with interest, late charges, costs, and reasonable attorney's fees, which are levied, fixed or established against such Lot(s) as provided in any of the Association Documents or any other rules and regulations of the Association as may be in effect from time to time. In addition to constituting a charge and a continuing lien upon the Lot against which any assessment is made, as more particularly provided in Section 9.6, each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. No Owner may exempt himself from liability for assessments, by non-use of Common Area or other portions of the Area of Common Responsibility, abandonment of its, his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the Board. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title except as may otherwise be provided by applicable law. The Association shall, upon request, furnish to any Owner liable for any type of assessment, or to such Owner's Mortgagee, a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment.

9.1.2 Time and Manner of Payment; Late Charges and Interest. Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so

elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on its, his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. If any assessment shall not be paid within ten (10) days after it has become due and payable, then the board shall assess a "late charge" thereon in the amount of $100.00 to cover extra expenses involved in handling such delinquent expenses. In addition, any assessment that is not paid within ten (10) days after notice of delinquency shall bear interest at the rate of eighteen percent (18%) per annum from the date upon which such assessment was originally due and payable. The Declarant's assessment obligations with respect to any Lot owned by Declarant may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of the two. The Association is specifically authorized to enter into contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses, provided that any such contract is made upon substantially similar terms to the Association as would be available from an unaffiliated third party.

9.2 Base Assessment. The Association's Base Assessment shall be determined and levied in accordance with this Section 9.2.

9.2.1 Operating Expense Budget. Prior to the beginning of each fiscal year, the Board shall prepare an operating budget covering the Association's estimated income and Common Expenses for such fiscal year, including such contributions to the Association's capital reserve fund as the Board deems prudent in its reasonable business judgment, together with the estimated total amounts required to be raised through Base Assessments, Specific Assessments and/or Special Assessments, as provided in this Article IX, in order to cover all of the Association's budgeted expenses. The Board shall present the operating budget for the subsequent fiscal year to the Owners at the Association's annual meeting. At the annual meeting, the Members shall have a right to discuss and comment upon the proposed budget, and the Board shall consider such discussion and comment. However, the Board shall retain the sole power to approve the proposed operating budget. The Association may consider supplementing or amending the Homeowner's existing budget at any regular or special meeting, but the Board shall retain the sole power to approve any such supplement or amendment.

9.2.2 Levy of Base Assessment. The Base Assessment shall be levied equally against all Lots. The Base Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total amount of all budgeted Association operating expenses, including reasonable contributions to reserves, which are to be allocated equally against all of the Lots (i.e. all Common Expenses other than those which are to be specifically assessed to certain Lots as expressly provided in this Declaration). In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots

subject to assessment under Section 9.7 on the first day of the fiscal year for which the budget is being prepared and the number of Lots reasonably anticipated to become subject to assessment during such fiscal year. The Board shall cause a copy of the final budget and notice of the amount of the Base Assessment for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. If the Board fails for any reason to determine the operating budget for any year, then until such time as a budget is determined, the operating budget in effect for the immediately preceding year shall continue for the current year.

9.3 Capital Reserve Budget and Capital Reserve Contributions. The Board shall annually prepare a capital reserve budget projecting the Project's upcoming capital expenditures over a five year prospective period, taking into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost thereof. The Board shall set the annual contribution to the Association's capital reserve (i.e., the capital reserve portion of the Common Expenses included in each year's Base Assessment) in an amount sufficient to enable the Association to meet its projected non-discretionary capital needs with respect both to amount and timing, as shown on the capital reserve budget, with the intent of avoiding the need to levy any Special Assessments as provided in Section 9.4. As used in this Section, non-discretionary capital expenditures are those expenditures of a capital nature that are required in connection with carrying out the Association's obligations under this Declaration (e.g., repaving the Common Roads from time to time as necessary to maintain the Community-Wide Standard). The Board shall not be authorized to undertake any material discretionary capital expenditures on behalf of the Association, whether funded by Special Assessment or from the capital reserve account, without obtaining the affirmative vote or written consent of at least fifty-one percent (51%) of the Members, and the affirmative vote or written consent of the Class "B" Member, if such exists

9.4 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses, expenses in excess of those budgeted, or discretionary capital improvements. Such Special Assessment may be levied against the entire membership if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least fifty-one percent (51%) of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.5 Specific Assessments. The Board shall have the power to specifically assess Lots for expenses of the Association (a) that are incurred for benefits, items, or services not provided equally to all Lots within the Property (including, without limitation, the benefit of any portion

of the Limited Common Area to the extent that such portion benefits one or more, but not all, of the Lots), or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests. The Association may also levy a Specific Assessment against any Lot to reimburse the Association for costs incurred (including, without limitation, reasonable attorneys' fees and court costs) in bringing such Lot into compliance with the provisions of any of the Association Documents and/or any other rules or regulations promulgated by the Association, provided the Board gives prior notice to the Lot Owner, as applicable, and an opportunity for a hearing as provided in Section 3.3.6 of the Bylaws. Without limiting the generality of the foregoing, the following expenses shall be specifically assessed under this Section:

9.5.1 Private Driveway Maintenance. Unless the Board elects to discontinue the provision of common Private Driveway maintenance, each Owner shall be specifically assessed by the Association for the actual cost of maintaining and repairing the Private Driveway appurtenant to such Owner's Lot, as shown on the Community Map, to be determined by the applicable contractor's bid on a time and materials basis.

9.5.2 Community Water System. The cost of operating (including compliance with reporting and accounting requirements of any applicable governmental agency), maintaining, repairing and replacing the Project's central water supply, collection, storage, treatment and distribution system, or any component thereof, shall be specifically assessed against only those Lots served by the water system, in proportion to their respective use, through the implementation of a water usage charge schedule, to be determined by the Board in its reasonable discretion.

9.5.3 Trash Collection Service. The cost of the Project's common trash collection service shall be specifically assessed against the Owners of only those Lots actually receiving such trash collection service.

9.6 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of any delinquent assessments, as well as interest, late charges (subject to the limitations of Colorado law), costs of collection (including reasonable attorneys' fees), and any fines imposed by the Board, after notice and an opportunity for a hearing, as provided in Section 3.3.6 of the Bylaws. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, except as otherwise provided by applicable law.

9.6.1 Enforcement of Lien. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure. The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by

the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

9.6.2 Transferees and Mortgagees. The sale or transfer of any Lot shall not affect any assessment lien encumbering such Lot, or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer, except as otherwise provided by applicable law. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title except as otherwise provided pursuant to applicable law. Any such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 9.7, including such acquirer, its successors and assigns.

9.7 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first Base Assessment and Specific Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

9.8 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Specific Assessments, if any, on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

9.9 Real Estate Transfer Assessments. In addition to the other assessments authorized in this Article IX, the Association shall levy upon each Lot and collect a Real Estate Transfer Assessment upon the occurrence of any eligible transfer of a Lot within the Property, pursuant to the provisions of this Section 9.9. The Real Estate Transfer Assessment attributable to the initial conveyance of each Lot from Declarant to the purchaser thereof shall be paid by such purchaser. Nothing contained herein shall prevent the transferor and transferee of a Lot from independently agreeing among themselves which party shall be responsible for payment of the Real Estate Transfer Assessment. The Real Estate Transfer Assessments shall be deposited into the closing escrow with respect to each transfer, and disbursed therefrom to the Association to be used for the following purposes: (i) to capitalize the Association's capital reserve, to the extent deemed prudent in the Board's discretion; (2) to pay for the costs of the Initial Association

Improvements, subject to the limit on such cost to be borne by the Association as provided in the Development Agreement; and (3) to pay for any other capital expenditures and Common Expenses incurred by the Association as the Board may determine, subject to the terms and conditions of this Declaration.

9.9.1 Assessable Transfers. Upon the occurrence of any eligible transfer (as defined below) of a Lot, the transferee under such transfer shall pay to the Association a Real Estate Transfer Assessment equal to the Consideration (as defined below) paid in connection with such transfer, multiplied by the Real Estate Transfer Assessment Rate. The initial Real Estate Transfer Assessment Rate shall be two percent (2%) unless and until the Board shall adopt a different rate. However, in no event shall the Real Estate Transfer Assessment Rate exceed three percent (3%).

9.9.2 Definitions. For purposes of this Section 9.9, the terms set forth below shall have the following meanings:

(a) "transfer" means and includes, whether in one transaction or in a series of related transactions, any conveyance, assignment, lease or other transfer of beneficial ownership of any Lot, including but not limited to (A) the conveyance of fee simple title to any Lot, (B) the transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns one or more Lots, and (C) the transfer of more than 50 percent of the interest in net profits or net losses of any partnership, joint venture, limited liability company or any other entity which, directly or indirectly, owns one or more Lots. The term eligible transfer shall mean all transfers other than those expressly excluded pursuant to Section 9.9.3 below.

(b) "transferee" means and includes all parties to whom any interest in a Lot passes by a transfer, and each party included in the term "transferee" shall have a joint and several liability for all obligations of the transferee under this Section 9.9.

(c) "consideration" means and includes the total amount of money paid and the fair market value of any property delivered, or contracted to be paid or delivered, in return for the transfer of any Lot, including, without limitation, the amount of any note or contract indebtedness assumed by the transferee, or rental payment reserved in connection with such transfer, whether or not secured by any lien, mortgage or other encumbrance given to secure the transfer price, or any part thereof. The term "consideration" does not include the amount of any outstanding lien or encumbrance for taxes, specific benefits or improvements in favor of the United States, the State of Colorado or a municipal or quasi-municipal governmental corporation.

9.9.3 Exclusions. The Real Estate Transfer Assessment shall not apply to any of the following, except to the extent that they are used for the purpose of avoiding any Real Estate Transfer Assessment that would otherwise be payable:

(a) Any transfer to the United States, or any agency or instrumentality thereof, the State of Colorado, any city, county, municipality, or other political subdivision of this State;

(b) Any transfer to the Association, its successors or assigns;

(c) Any transfer, whether outright or in trust, that is for the benefit of the transferor or his relatives, but only if there is no more than nominal consideration for the transfer. For the purposes of this exclusion, the relatives of a transferor shall include all lineal descendants of any grandparent of the transferor, and the spouses of the descendants. Any person's stepchildren and adopted children shall be recognized as descendants of that person for all purposes of this exclusion. For the purposes of this exclusion, a distribution from a trust shall be treated as a transfer made by the grantors of the trust, in the proportions of their respective total contributions to the trust;

(d) Any transfer arising solely from the termination of a joint tenancy or the partition of property held under common ownership, except to the extent that additional consideration is paid in connection therewith;

(e) Any transfer or change of interest by reason of death, whether provided for in a will, trust, decree of distribution or by the laws of intestate succession;

(f) Any transfer made (i) to a corporation or by a corporation to the extent that no consideration is given other than issuance, cancellation or surrender of the corporation's stock, or (ii) by a partner, joint-venturer or member to a partnership, joint venture or limited liability company, to the extent that it is in exchange for an equity interest in such partnership, joint venture or limited liability company, or by a partnership, joint venture or limited liability company to a partner, joint-venturer or member to the extent that it is in exchange for (or redemption of) an equity interest in such partnership, joint venture or limited liability company;

(g) Any transfer made solely for the purpose of conforming, correcting, modifying or supplementing a transfer previously recorded, making minor boundary adjustments, removing clouds on titles or granting easements, rights-of-way or licenses;

(h) Any transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a

condemnation proceeding, but only where such decree or order would otherwise have the effect of causing the occurrence of a second assessable transfer in a series of transactions which includes only one effective transfer of the right to use or enjoyment of a Lot;

(i) Any lease of any Lot (or assignment or transfer of any interest in any such lease) for a period of less than five years;

(j) Any transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation, including but not limited to a transfer made in lieu of foreclosure of a deed of trust or mortgage;

(k) Any transfer by gift, where there is no consideration other than love and affection or charitable donation; and

(l) Any transfer to an entity that controls, is controlled by, or is under common control with, the transferor; as used in this clause (l), "control" shall mean the ownership or control, whether directly or indirectly, of more than 50% of the voting interests of any legal entity.

9.9.4 Payment and Reports. The Real Estate Transfer Assessment shall be due and payable by the transferee to the Association at the time of the transfer giving rise to such Real Estate Transfer Assessment. With such payment the transferee shall make a written report to the Association on forms prescribed by the Association, fully describing the transfer and setting forth the true, complete and actual consideration for the transfer, the names of the parties thereto, the legal description of the Lot transferred and such other information as the Association may reasonably require.

9.10 Exempt Property. The following property shall be exempt from payment of Base Assessments, Special Assessments, Specific Assessments and Real Estate Transfer Assessments: (i) any portion of the Property owned by the Association from time to time; and (ii) any property dedicated to and accepted by any governmental authority or public or private utility provider.

Article X
ARCHITECTURAL STANDARDS

10.1 General. The rural and ranching character and heritage of the Project is unique and authentic. The Property's location, topography, vegetation, views and wildlife make Sunnyside Ranch at Telluride West an unparalleled community. Great care has been taken in the planning and design of the Lots and infrastructure improvements so that the community will suitably complement its natural environment. Declarant and all of the Owners agree that architectural styles, character and siting within the Project should reflect this philosophy. Consequently, in order to preserve and protect the amenity created by the Project's pristine

natural environment, each Owner covenants and agrees that no structure shall be placed, erected, or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in full compliance with this Article and the provisions of the Design Guidelines, as administered by the Design Review Committee. All dwellings constructed on any portion of the Property shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

10.1.1 Exclusions. Any Owner may remodel, paint or redecorate the interior of structures on such Owner's Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the Declarant's construction of the initial infrastructure improvements, the Association's construction of the Initial Association Improvements, or to any other improvements made by or on behalf of the Association to the Common Area or any other portion of the Area of Common Responsibility.

10.1.2 Amendment. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration.

10.2 Design Review Process.

10.2.1 Design Review Committee. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the Design Review Committee. The members of the Design Review Committee need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Design Review Committee shall consist of three (3) persons and shall have exclusive jurisdiction over all construction on any portion of the Property, including, without limitation, site clearing, excavation and grading, and all modifications, additions, or alterations made on or to existing structures on Lots. Until expiration of the Class "B" Control Period, the Declarant shall have the right to appoint, remove and replace all members of the Design Review Committee who shall serve at the Declarant's discretion. Upon the expiration of the Class "B" Control Period, the Board shall appoint the members of the Design Review Committee, who shall serve and may be removed in the Board's discretion.

10.2.2 Design Review Fees. The Board may establish, and the Design Review Committee shall adopt and charge, reasonable fees for review of applications hereunder and reasonable deposits to ensure timely clean-up of Lots and approved revegetation following completion of Owner Improvements thereon, and may require such fees to be paid in full prior to

review. The amount of such fees, and the time when such fees are required to be paid shall be stated in the Design Guidelines from time to time in effect.

10.3 Guidelines and Procedures.

10.3.1 Design Guidelines. The Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall apply to all construction activities within the Property as aforesaid. The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, and intended use of any given Lot or location within the Project. The Design Guidelines shall describe the process for review and approval of plans for all Owner Improvements. The Design Review Committee shall adopt such Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them with the consent of the Board. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. The Design Review Committee shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Property and all such Persons shall conduct their activities in accordance with such Design Guidelines. In the Declarant's discretion, such Design Guidelines may be recorded in the public records of San Miguel County, Colorado, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

10.3.2 Approval of Plans and Specifications. Each Owner shall submit plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and other Owner Improvements proposed to be made upon any Lot, to the Design Review Committee for review and written approval (or disapproval). Without limiting the generality of the foregoing, information concerning irrigation systems, drainage, grading, erosion control, lighting, landscaping, and other features of proposed construction shall also be submitted as applicable and as hereinafter described and/or as described in the Design Guidelines. In reviewing each submission, the Design Review Committee may consider, among other things, the quality of workmanship and design, harmony of external design with existing structures, location in relation to surrounding structures, visual obtrusiveness of any structures to the other Lots within the Project, topography, finish grade elevation, and consistency with the community architectural character stated in the Design Guidelines.

(a) The Design Review Committee shall also consider the impacts that any Owner Improvement may have on existing drainage patterns within the Project, if any, and what steps are proposed to be taken to minimize those impacts. In no event shall grading of any Lot within the Project interfere with or redirect the natural course of any

drainage or runoff onto or off of the Project, without the prior written approval of the Design Review Committee. All plans and specifications submitted to the Design Review Committee for approval shall include a revegetation/erosion control plan illustrating areas of revegetation and the locations of erosion and sediment control devices. The plan shall depict the location, type, and quantity of seed or other plantings and erosion control devices sufficient to stabilize all disturbed areas and areas of cut and fill, and to prevent the growth or spread of noxious weeds.. To prevent sediment loading in areas adjacent to any proposed disturbance during any construction, clearing and/or grading activities, the revegetation/erosion control plan shall describe the means by which temporary control devices, such as properly anchored down gradient silt fencing and/or properly anchored hay bale dikes at all channelized point releases, will be used and located on the Lot.

(b) In addition to the foregoing, all plans and specifications submitted to the Design Review Committee for approval shall include a detailed landscaping plan which includes the proposed planting of vegetation on the Lot and conforms to the Design Guidelines. The precise area and type of landscaping improvements on each Lot shall be shown to and approved by the Design Review Committee and no deviations from the landscaping plan shall take place without the express approval of the Design Review Committee. As used herein, the term "landscaping improvements" means turf, trees, shrubs, ground cover, and irrigation systems, but does not include fences, patios, decks, paving or other similar improvements. Each Owner must complete the final grade and installation of all materials as shown in such Owner's landscape plan within ninety (90) days after receiving the certificate of occupancy for the Primary Dwelling Unit on the Lot, unless seasonal weather does not permit. The Design Review Committee shall have the power to affirmatively require a landscape plan to be carried out on a Lot, which plan meets the Community-Wide Standard, is consistent with the Design Guidelines and is comparable to and compatible with the other Lots in the Project.

10.3.3 Deemed Approval. In the event that the Design Review Committee fails to deliver written approval or disapproval of any application within sixty (60) days after submission of all information and materials required pursuant to the Design Guidelines or reasonably requested by the Design Review Committee, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Design Review Committee pursuant to Section 10.5.

10.4 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

10.5 Variance. The Design Review Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate, and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Design Review Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

10.6 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Design Review Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. None of the Declarant, the Association, the Board, the Design Review Committee, or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

10.7 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be non-conforming. Upon written request from the Board or the Declarant, the Owner of any non-conforming structure or improvement shall, at such Owner's own cost and expense, either (i) alter such non-conforming structure or improvement in such a manner (if possible), as the Design Review Committee determines, in its sole discretion, will bring such structure or improvement into compliance with this Declaration and the Design Guidelines, or (ii) remove such structure or improvement and restore the land to substantially the same condition as existed prior to the non-conforming work. Should an Owner fail to so alter, if possible, or to so remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, including attorneys' fees and court costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Property, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this Section. In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Design Review Committee, including the levy of reasonable fines and the imposition of liens to collect such fines, pursuant to the provisions of Section 3.3.6 of the Bylaws.

10.8 Inspections. Members of the Board or the Design Review Committee shall have the right to enter any Lot at any reasonable time during the construction of any Owner Improvements thereon, in order to inspect such Owner Improvements to ensure compliance with this Article and the Design Guidelines.

Article XI
USE GUIDELINES AND RESTRICTIONS

11.1 Plan of Development; Application; Amendment. In furtherance of Declarant's and each Owner's interests, Declarant has established a general plan of development for the Project as a master planned community. Declarant has promulgated the Project's general plan of development in order to protect and enhance the Owners' quality of life and collective interests, the aesthetics and environment within the Property, and the vitality of and sense of community within the Project, all subject to the Board's ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community. Consequently, the Property is subject to certain affirmative and negative covenants, easements, and restrictions governing land use, individual conduct, and uses of or actions upon the Property, as specifically provided in Section 11.6 of this Declaration (the "Use Guidelines and Restrictions"). The Use Guidelines and Restrictions, and any rules adopted by the Board in connection therewith, shall apply to all of the Lots, to all of the Owners and to all of their respective family members, tenants, guests invitees and other occupants. Any lease of a Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the Bylaws, the Design Guidelines, and the rules of the Association. The Board shall provide, without cost, a copy of the Use Guidelines and Restrictions and any rules then in effect to any requesting Member or Mortgagee.

11.2 Board Power. Subject to the terms of this Article XI and its duty of care and undivided loyalty to the Association and its Members, the Board shall have the power to implement and manage the Use Guidelines and Restrictions by adopting rules from time to time that clarify, elaborate upon, cancel, limit, create exceptions to, or expand the Use Guidelines and Restrictions. Prior to taking any such action, the Board shall notify all Owners of the proposed rules at least ten (10) business days prior to the applicable Board meeting. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to any action being taken with respect to such rules. The Board shall send a copy of any proposed rules, or any proposed amendment, modification or cancellation of any then existing rules (if any), to each Owner at least thirty (30) days prior to the effective date of such new or amended rules. Any such rule, or amendment, modification or cancellation of previously existing rules, shall become effective unless disapproved at a meeting or in writing by a majority of the Members' votes. The Board shall have no obligation to call a meeting to consider disapproval except upon petition of the Class "A" Members as required for special meetings in Section 2.4 of the Bylaws. The Board shall have all powers necessary and proper, subject to its exercise of sound business judgment and reasonableness, to effect the duties contained in this Section 11.2.

11.3 Members' Power. The Class "A" Members, at a meeting duly called for such purpose as provided in Section 2.4 of the Bylaws, may repeal, modify, limit, or expand the Use Guidelines and Restrictions, and any of the Board's implementing rules, by a affirmative vote of seventy-five percent (75%) of the total Class "A" votes, and by the Class "B" Member, if any.

11.4 Owner's Acknowledgment. All Owners are subject to the Use Guidelines and Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Association may add, delete, modify, create exceptions to, or amend the Use Guidelines and Restrictions in accordance with Section 11.2, Section 11.3 or Section 16.2 of this Declaration. Each Owner by acceptance of a deed to its Lot acknowledges and agrees that the use, enjoyment, and marketability of such Lot can be affected by this provision and that the Use Guidelines and Restrictions and rules may change from time to time.

11.5 Rights of Owners. Except as may be expressly contained in Section 11.6, neither the Board nor the Association may adopt any rule in violation of the following provisions:

11.5.1 Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

11.5.2 Speech. The rights of Owners and occupants to display political signs and symbols of the kinds normally displayed in or outside of residences located in individually owned, single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

11.5.3 Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lot of kinds normally displayed in or outside of residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

11.5.4 Household Composition. The Association or Board shall make no rule that interferes with the freedom of Owners and occupants to determine the composition of their households.

11.5.5 Activities Within Lot. Neither the Association nor the Board shall make any rule that interferes with the activities of Owners or occupants carried on within the confines of their Lot, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that impose monetary costs on the Association or other Owners, that create a danger to the health or safety of other Owners or occupants, that generate excessive noise or traffic, that create unsightly

conditions visible outside the Lot, that block the views from other Lots, or that create an unreasonable source of annoyance.

11.5.6 Allocation of Burdens and Benefits. The initial allocation of financial burdens and rights to use the Common Area and other portions of the Area of Common Responsibility among the various Lots shall not be changed to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area and other portions of the Area of Common Responsibility available, from adopting generally applicable rules for use of the Common Area and other portions of the Area of Common Responsibility, or from denying use privileges to those who abuse the Common Area or any other portions of the Area of Common Responsibility, violate rules or this Declaration or fail to pay assessments. This provision does not affect the right to increase the amount of the Base Assessments or Specific Assessments as provided in Article IX.

11.5.7 Alienation. The Association or Board shall not adopt rules that prohibit transfer of any Lot, or require consent of the Association or Board for transfer of any Lot, for any period greater than two (2) months. The Association or Board shall not impose any fee on transfer of any Lot greater than an amount reasonably based on the costs of the transfer to the Association, provided, however, that nothing contained in this paragraph shall affect the right of the Association to levy and collect the Real Estate Transfer Assessment described in Section 9.9.

11.5.8 Reasonable Rights to Develop. Neither the Association nor the Board shall adopt any rule or take any action which would unreasonably impede Declarant's right to develop the Project in accordance with the plan envisioned by the Community Map and this Declaration.

11.5.9 Abridging Existing Rights. If any rule would require existing Owners to dispose of personal property which they owned at the time they acquired their Lots, and the personal property was lawfully owned or acquired in accordance with the rules of the regime as it existed at such time, and it was thereafter maintained in or on their Lot, such rule shall not apply to any such Owners without their written consent.

11.6 Initial Use Guidelines and Restrictions. The Property shall be used only for single-family residential dwellings, recreational, and related purposes. Any Supplemental Declaration or additional covenants imposed on property located within any portion of the Property may impose stricter standards than those contained in this Article and the Association shall have standing and the power to enforce such standards. The following Use Guidelines and Restrictions shall apply to all portions of the Property, and to all Owners and their respective lessees, guests, invitees and occupants, unless a variance or waiver is expressly authorized in writing by the Board, and then only subject to such conditions as may be imposed by the Board in connection with such variance or waiver.

11.6.1 Violations of Law. Any activity upon the Property which constitutes a violation of any federal, state, or local statute, law, rule, regulation or ordinance is prohibited, and all Owners shall use the Property in full compliance with all such federal, state, or local statutes, laws, rules, regulations and ordinances.

11.6.2 Oversize Vehicles. Commercial vehicles, recreational vehicles, mobile homes, boats or other watercraft, trailers and other oversized vehicles, stored vehicles or inoperable vehicles must be parked in enclosed garages, or in locations that are not visible from any Common Road within the Project, or from any other Owner's Building Envelope or Primary Dwelling Unit.

11.6.3 Wildlife Protection; Hunting Restriction. The Property's resident elk herd and other wildlife are an integral part of the Sunnyside Ranch at Telluride West community. Capturing, trapping or killing of wildlife within the Property is prohibited except in circumstances posing an imminent threat to the safety of persons using the Property, or as otherwise expressly provided in this Subsection 11.6.3. Overpopulation of the resident elk herd constitutes a risk to both the overall health of the herd, and to the health of the aspen forests located within the Property (from the elks' excessive girdling of the trees). Consequently, upon the mutual agreement of the Board and the Colorado Department of Wildlife, limited supervised or guided hunting will be allowed in certain areas of the Property, but only to the extent that such hunting is required to reduce overpopulation or eliminate nuisances, thereby preserving the health of the elk herd and aspen groves within the Property. Any such hunting shall be undertaken at such times and in such manner as are specified by the Board, in all events with no fewer than ten (10) business days' advance written notice to all Owners. Any Owner may prohibit such hunt from taking place upon such Owner's Lot by delivering a written notice of objection to the Association within ten business days after such Owner's receipt of such notice. Any Owner interested in participating in any such required hunting shall be given priority by the Association over any third party.

11.6.4 Dogs and Pet Control. Each Lot will be permitted to have up to two dogs, two cats, and their offspring up to six months old. Residents will be prohibited from keeping any dogs on a Lot unless they are kept indoors, in a fenced yard or in a dog run (with any such fencing or dog run to be approved by the Design Review Committee). Any dog run must be located immediately adjacent to the home, within the Building Envelope, and shall not exceed 1,000 square feet. The Design Review Committee may require specific location of dog runs or fenced yards in certain instances to minimize impact upon elk migration corridors. Owners are encouraged to enclose dog runs to protect dogs from possible mountain lion and coyote predation. Cats shall be kept indoors. Pets should not be fed outdoors, including on decks or unenclosed patios, to avoid attracting nuisance wildlife or predators. At no time shall dogs or cats be allowed to run freely. When a dog moves beyond its Owner's Building Envelope, it must be controlled by a leash of no more than 20 feet in length, under the direct control of its owner.

(a) Enforcement. The Association shall be responsible for enforcing dog and pet covenants. Owners who are not in compliance shall be responsible for any and all costs incurred by the Association for the enforcement of such covenants. If any dog or cat facilities are inadequate to contain any dog or cat, the dog or cat will be removed from the Property immediately until adequate structures are built. In addition, non-complying Owners shall be subject to a warning, $200 fine, and a $500 fine for the first, second and each subsequent violation of these dog and pet covenants, after notice and an opportunity to be heard pursuant to Section 3.3.6 of the Bylaws. In the event of any non-compliance subsequent to the second offense, the Association may request removal of the dog or cat from the Property. Failure to comply with any such requested removal shall be considered a separate violation for each day that the non-removal continues after notice, and shall be enforced (i.e., fined) accordingly. The Association may retain the services of a private game warden to enforce these provisions.

(b) Third Parties. Contractors, subcontractors, delivery persons and other service providers shall be prohibited from bringing dogs onto the Property, even if kept inside vehicles. Violation of the dog policy by a Person other than a resident may result in immediate eviction of the dog and the dog's owner from the property. In the event of a second violation by the same dog's owner, the dog and the dog's owner may be immediately evicted from the Property and the offending person shall be prohibited from the Property for the following seven consecutive calendar days. In the event of a third violation, the offending person may be prohibited from the Property for up to six months.

11.6.5 Horses and Other Animals. Except as provided in Section 11.6.4 above, raising, breeding or keeping of animals, livestock, or poultry of any kind shall be prohibited, except that an Owner may keep horses on a Lot temporarily, subject to the following conditions. Any Owner may keep up to four (4) horses on such Owner's Lot from time to time, but horses may not be permanently maintained on any portion of the Property. Any horses on the Property shall not be allowed to graze freely, but rather shall be kept by the Owner within a barn and/or small fenced paddock/corral area, the location, design and construction of which shall be subject to review by the Design Review Committee. The keeping and maintaining of any other animal shall only be permitted with the prior written consent of the Board and the Design Review Committee, which consent may be granted or withheld in their sole discretion. Notwithstanding anything to the contrary contained herein, the maintenance and keeping of any animals shall not be permitted if they constitute an annoyance or a nuisance because of repeated noise or trespassing within the Project or adjacent areas, or if the area where the animals are maintained is unsightly, in disrepair or is a hazard to health and welfare of any residents within the Project. All animals kept under Section 11.6.4 or this Section 11.6.5 shall have current inoculations as required by the San Miguel County Health Department or good veterinary practice. The Board may adopt regulations designed to minimize damage and disturbance to other Owners and occupants regarding any animals on the Property, including regulations requiring damage deposits, waste removal, more restrictive leash controls and noise controls. Nothing in this

provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

11.6.6 Environmental Disturbance; Vegetation. No Owner or occupant shall conduct any activity that materially disturbs or destroys the vegetation, wildlife, wetlands, or air quality within the Property, or that uses excessive amounts of water or results in unreasonable levels of sound or light pollution. Without limiting the generality of the foregoing, there shall be no plowing of fields for agricultural production, except household gardens not exceeding ¼ acre in size. There shall be no harvesting of timber on any Lot, except for clearing dead wood, and the selective thinning of such trees and other vegetation: (i) by an Owner to frame established views, as expressly approved by the Design Review Committee, and only for the limited purposes set forth in the Design Guidelines, or (ii) by the Association, in conjunction with recommendations from the Colorado Department of Wildlife or the U.S. Forest Service, as may be required to maintain the health of the forests within the Property. No Owner shall remove any plant material, topsoil or similar items from any neighboring Lot. All landscaping and vegetation within the Project shall be maintained using good conservation practices, in a manner to minimize erosion and encourage growth of ground cover. Owners are strongly encouraged to utilize primarily native species in their respective landscaping plans. To the extent practical on each Lot, no noxious weeds shall be permitted to go to seed, and all noxious weeds shall be destroyed.

11.6.7 Mineral Exploration and Extraction. Exploration for and/or extraction of oil, gas, coal and other hydrocarbons and minerals and mineral substances, including sand gravel and rock, shall be prohibited within the Property, except that sand, gravel and rock may be extracted by Declarant during the construction period for the initial infrastructure improvements from a borrow pit established for such purpose on the Property, as more particularly described and subject to the conditions set forth in Section 12.1.2 below.

11.6.8 No Encroachment upon Common Area or Wetlands. No Owner shall construct any improvement on such Owner's Lot that encroaches in any manner upon any portion of the Common Area or other portions of the Area of Common Responsibility without the express written approval of the Board and the Design Review Committee, except for the completion by such Owner of the Private Driveway to the Building Envelope on such Lot, within the applicable portion of the Limited Common Area as shown on the Community Map. No Owner shall construct any improvement on such Owner's Lot that encroaches in any manner upon any designated wetlands as shown on the Community Map. This provision shall not restrict the Declarant from constructing Common Roads, utility lines, augmentation ponds or any other infrastructure improvements traversing wetlands, provided that such construction is completed in accordance with all laws applicable to wetlands.

11.6.9 Nuisances. Nothing shall be done or suffered to exist on any Lot which is or may become a nuisance. No loud, offensive or noxious activities shall be carried on within any Lot, and nothing shall be done or suffered to exist on any Lot that, in the Board's reasonable judgment, may cause unreasonable embarrassment, disturbance or annoyance to others. Without limiting the generality of the foregoing, no sound shall be emitted from any Lot which is unreasonably loud or annoying, including fireworks, exterior speakers, horns, whistles or other devices, except for alarms used exclusively for security purposes.

11.6.10 Solid Waste Disposal. All solid waste (and liquid waste that cannot be disposed of in the septic system in accordance with applicable laws) shall be collected and held in a safe and sanitary manner inside a garage, or if outdoors then in bear-proof containers within structures approved by the Design Review Committee. Trash removal service for all occupied Lots shall be contracted for by the Association. No junkyard, landfill or disposal site shall be maintained on any Lot. No garbage, trash or other waste or debris shall be allowed to accumulate or be burned upon any Lot, or shall be disposed of in any irrigation or drainage ditch on, within or adjacent to the Property.

11.6.11 Fires; Fireplaces; Firearms and Explosives. Open fires shall not be permitted on any portion of any Lot, except fires contained in outdoor barbecue grills or ovens while attended and in use for cooking purposes. No fireplaces, incinerators or other solid fuel burning devices shall be used on any Lot, except natural gas fired fireplaces and any woodburning fireplaces approved by the Design Review Committee and permitted pursuant to applicable San Miguel County land use regulations. No Owner shall carelessly dispose of any lighted tobacco products and other flammable materials on any portion of the Property. No Owner shall carry or discharge any type of firearm on or within the Property, except in connection with the limited hunting activities expressly permitted under Section 11.6.3 above. No explosives shall be discharged on any Lot, except in compliance with law and under supervised conditions in connection with the extraction of sand, gravel or rock, the construction by Declarant of the initial infrastructure improvements, or the construction of any otherwise permitted Owner Improvements.

11.6.12 Hazardous Materials. No hazardous materials (as defined by applicable environmental laws) shall be brought upon, used, stored or disposed of any Lot except in compliance with all applicable environmental laws and regulations. No hazardous material shall be released or discharged from any Lot.

11.6.13 Drainage. No Owner or occupant shall obstruct or re-channel drainage flows after location and installation of drainage swales, storm sewers, or storm drains, provided, however, that Declarant and the Association shall have such right as long as the exercise of such right shall not materially diminish the value, or unreasonably interfere with the use, of any Lot without the applicable Owner's consent.

11.6.14 No Subdivision. No Owner shall have the right to subdivide a Lot into two or more lots, or to change the boundary lines of any Lot; provided, however, that this provision shall not restrict any Owner that owns more than one Lot at the Project from subsequently developing or selling such Lots on an individual basis.

11.6.15 No Timeshares. Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years is prohibited; provided, however, that this provision is not intended to restrict the ownership of any Lot by a partnership, limited liability company or other legal entity comprised of no more than eight (8) individuals, and the consequent use of such Lot by the partners or members of such entity on any basis they may choose.

11.6.16 Short Term Leases. No Owner may lease any portion of such Owner's Lot or the improvements located thereon for any period of time less than one month in duration;

11.6.17 Business Activities. No Owner or occupant may conduct any business, trade, garage sale, moving sale, rummage sale, or similar activity on the Property, except that an Owner or occupant residing in a Primary Dwelling Unit on a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is undetectable to the senses of sight, sound, or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity may be carried out within the confines of the Lot and is free from regular visitation of the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property. This subsection shall not apply to any activity conducted by the Declarant with respect to the development and sale of the Property.

11.6.18 Design Review Committee Requirement. No owner shall engage in any clearing, excavating, grading, landscaping, construction, erection, or placement of anything, permanently or temporarily, on any Lot or on any previously-approved structure located thereon, unless approved by the Design Review Committee as set forth in Article X, and then only in compliance with all other applicable laws, rules, regulations and ordinances. Notwithstanding the foregoing to the contrary, the Board may prohibit any activity, business or otherwise, which, in the sole discretion of the Board, constitutes a nuisance, or a hazardous or offensive use, or threatens the security, safety, or quiet enjoyment of other residents of Property;

11.6.19 Sewage System. Sewage disposal for each Lot shall be provided by an individual sewage disposal system constructed on each Lot at the sole expense of each Lot Owner. No toilets, sinks, dishwashers, plumbing or plumbing fixtures shall be installed in any building on any Lot unless connected to a sewage disposal system constructed in accordance with this Section. The design of each individual sewage disposal system installed within the

Property shall be in compliance with sound professional engineering criteria and specifications for the type of soils within which each such individual sewage disposal system will be installed, and shall fully comply with all applicable rules and regulations of San Miguel County, Colorado. The design of each individual sewage disposal system shall incorporate at least two inspection ports to facilitate the annual inspection of the individual sewage disposal system. Individual sewage disposal systems shall be subject to inspection with such frequency as required under the rules and regulations of San Miguel County, Colorado or as otherwise required by the Use Guidelines and Restrictions. No individual sewage disposal system shall be constructed, altered or allowed to remain or to be used on any Lot without the Owner thereof first having applied for and received the necessary approvals from the appropriate local and state agencies. Only standard or engineered septic systems and leach fields or aerobic systems approved by the Design Review Committee shall be permitted individual sewage disposal systems within the Property. The design engineer of each individual sewage disposal system shall provide supervision during the installation of the same and verify to San Miguel County, Colorado that the system has been installed in accordance with its intended design. By purchasing a Lot, each Owner shall be deemed to have determined the suitability of soils on that Lot for construction of structures and improvements, including an individual sewage disposal system.

11.6.20 Water. Potable water for domestic and irrigation use shall be supplied to each Lot as provided in Section 14.5 below. No Owner shall be permitted to drill any well on such Owner's Lot, or otherwise to divert the natural flow of water at any point upon such Owner's Lot, without in each case the express written permission of the Board and the Design Review Committee; provided, however, that the Owner of Lot 11 shall have the right to drill and install an individual 35 acre exempt well within the boundaries of Lot 11 to provide potable water for the use of Lot 11. This Section shall not restrict Declarant or the Association from drilling any wells on the Property (outside of any Building Envelopes) that may be necessary or desirable in connection with the Project's community well and central water supply and distribution system.

(a) Fire Suppression Tanks. In connection with the construction of any residential dwelling on any of the Lots, each Owner shall be responsible for the construction of a buried water storage tank for fire protection, meeting all applicable requirements of the Telluride Fire Protection District.

(b) Water Meters. Each Owner acknowledges that it is required, at its own expense, to install an operational water meter on such Owner's Lot, which will accurately meter all water usage (both domestic and irrigation) on such Lot.

(c) Individual Well Requirements. In the event that Declarant provides an individual 35 acre exempt well to one or more Lots in lieu of serving such Lot from a community well and central water system, then the Owner of any such Lot: (i) shall be required to maintain and monitor the well as may be deemed necessary by the

Division Engineer to administer the terms of the well permit issued to provide service to the Owner's Lot; (ii) acknowledges that it may be required, at its own expense, to make annual water reports to the Division Engineer accounting for diversions from the well providing service to such Owner's Lot; (iii) acknowledges and agrees that issuance of well permits for the Property may have been based on applicable statutory exemptions and that no such Owner shall be permitted to drill more than one producing well on their Lot, or pledge or encumber any portion of their Lot in favor of any Person in order to allow that Person to qualify for issuance of an exempt well permit; and (iv) shall not be required to pay any share of the Association's cost of operating or maintaining any community well and central water supply system.

(d) Costs. The cost of the initial construction of the central water system and any required individual exempt wells (except for the well for Lot 11) shall be borne by Declarant. In the event that Declarant provides an individual 35 acre exempt well to one or more Lots in lieu of serving such Lot from a community well and central water system, then each such Owner shall bear the cost of operating, maintaining, repairing or replacing the well serving such Owner's Lot. The Association's cost of operating, maintaining, repairing and replacing any and all components of any community well and central water supply, storage, treatment and distribution system serving any of the Lots within the Project shall be specifically assessed against only those Lots served by such system, in proportion to such Owners' respective usage. The Board shall have the authority to establish and thereafter modify a schedule of usage charges for all Owners served by any such central system. The Board shall also have the authority to establish a schedule of tap fees payable by each Owner who taps into such central system. Declarant shall have no right to receive any portion of any tap fees for the water system.

11.6.21 Motorized Vehicles. No snowmobiles, all-terrain vehicles, dirt bikes or other similar motorized vehicles not certified by law for use on public streets shall be operated on any portion of the Property, except maintenance vehicles required to maintain any of the Common Areas, and snowmobiles, snowcats or similar vehicles used to set track or maintain trails (if any) for cross country skiing, or used by Declarant to conduct property tours to prospective Lot buyers, and helicopters landing on or taking off from any Lot in the case of medical evacuation or other bona fide emergency.

11.6.22 Construction Restrictions.

(a) Building Envelopes. Building Envelopes have been established on each Lot to identify areas available for Owner Improvements. The Building Envelopes are depicted on the Community Map. No Owner Improvements are permitted outside of the Building Envelope except Private Driveways and buried utilities serving the Owner Improvements constructed within the Building Envelope on each Lot, unless approved in writing by the Design Review Committee.

(b) Residential Structures. The Primary Dwelling Unit and any Accessory Dwelling Unit or Caretaker Unit must be located within each Lot's respective Building Envelope, unless otherwise expressly approved by the Design Review Committee. No structure commonly known as a "mobile home" shall be allowed except in connection with construction actively proceeding on a Lot provided that the same is used for office purposes by the contractor or contractors engaged by an Owner in connection with such actual construction activity.

(c) Accessory Dwelling Units and Caretaker Units. Each Lot located within a Low Density Zone District as designated by the Land Use Code may have not more than one (1) Accessory Dwelling Unit constructed on such Lot. Each Lot that is not within a Low Density Zone District as designated by the Land Use Code may have not more than one (1) Caretaker Unit constructed on such Lot. Any permitted Accessory Dwelling Unit or Caretaker Unit may either be attached to the Primary Dwelling Unit or detached therefrom but located within the Building Envelope, and shall be limited in size by the applicable provisions of the Land Use Code and any applicable zoning and building regulations. The Accessory Dwelling Unit or Caretaker Unit shall at all times be owned by the Owner or Owners of the Primary Dwelling Unit and the Lot upon which it is located. Notwithstanding the restrictions on leasing contained in Section 11.6.16 of this Declaration, if permitted by the Land Use Code, the Accessory Dwelling Unit or Caretaker Unit may be rented or leased to a caretaker of the Primary Dwelling Unit and Lot. Any Accessory Dwelling Unit or Caretaker Unit shall be served by and connected to the same water and sanitation facilities designed for and serving the Primary Dwelling Unit on the Lot, and access to the Accessory Dwelling Unit or Caretaker Unit shall only be by the same access driveway as provides access to the Primary Dwelling Unit. San Miguel County may impose further and additional restrictions on the construction of an Accessory Dwelling Unit or Caretaker Unit which an Owner shall be required to satisfy prior to Design Review Committee approval.

(d) Accessory Structures. The number, location and design of any proposed accessory structures or outbuildings to be located upon any Lot, whether temporarily or permanently, including, without limitation, a detached garage, barn or paddock/corral shall be subject to review and approval by the Design Review Committee. Any such approved buildings shall be architecturally compatible with the Primary Dwelling Unit constructed on the applicable Lot, unless otherwise approved by the Design Review Committee. No portion of any accessory structure constructed on a Lot shall be used for living purposes without the prior written approval of the Design Review Committee following approval of such use by San Miguel County.

(e) Building Heights. Maximum building heights of all Owner Improvements within the Project, and the formula for measuring the same, shall be as established in the San Miguel County Zoning Regulations in effect from time to time.

Based on current San Miguel County Zoning Regulations, the maximum building height of Owner Improvements within the Project is thirty five feet (35') above existing grade. Each Owner is charged with responsibility for ascertaining the maximum permitted building height of a proposed Owner Improvement at the time such Owner seeks approval of the same by San Miguel County and the Design Review Committee.

(f) Landscaping; Irrigation. All proposed landscaping improvements on any Lot are subject to review and approval by the Design Review Committee. No more than five thousand (5,000) square feet acre of irrigated area (including without limitation any irrigated turf, garden and landscaping area) shall be maintained on any Lot. Each Owner's Landscaping Plan shall include a wildfire mitigation plan meeting the minimum requirements of the Design Review Committee and San Miguel County. Declarant shall have the right, without obtaining any Owners' consent, to modify any provision in this Declaration relating to irrigation or water use to the extent required in connection with the adjudication of an augmentation plan for the Property, as more particularly described in Section 14.5 below.

(g) Buried Utilities. All utilities serving Owner Improvements constructed on any Lot within the Project shall be installed underground. Declarant shall be responsible to bring electric, natural gas, telephone and cable television lines along the Common Roads, and to the extent necessary, along the Private Driveways, to a point within 150 feet from the Building Envelope of Lots 1 through 10 inclusive, and to a point on the southern boundary line of Lot 11 (each such point being referred to herein as the "Declarant's Utility Stub Point"). Each Owner is solely responsible for the cost and expense of extending utility services from the meter pit located at the Declarant's Utility Stub Point to any Owner Improvements constructed on such Owner's Lot.

(h) Compliance with Law. All construction activities undertaken on any Lot shall comply in all respects with all applicable laws, ordinances, land use codes, building codes, and regulations of all governmental entities and agencies having jurisdiction over the Project.

(i) Commencement of Construction. Each Owner must give written notice to the Board of such Owner's anticipated commencement date for the construction of any Owner Improvements on such Owner's Lot, as early as possible but in no event fewer than 30 days prior to such anticipated commencement date. In no event shall any Owner have the right to commence construction on any Lot prior to July 15, 2000.

(j) Completion of Construction. Subject to force majeure delays beyond the Owner's control, a certificate of occupancy for the approved Primary Dwelling Unit and/or any Accessory Dwelling Unit or Caretaker Unit to be constructed on a Lot must be obtained within twenty-four (24) months from the start of construction

of any such Primary Dwelling Unit and/or Accessory Dwelling Unit or Caretaker Unit, as the case may be, unless otherwise approved by the Design Review Committee. Except to the extent caused by force majeure delays, or otherwise approved by the Design Review Committee, if construction is not completed within the time period defined above, the Board may levy an escalating and cumulative monthly fine against the Owner of the subject Lot, which shall be treated and enforced as a Specific Assessment for purposes of this Declaration, according to the following schedule: for the first ninety (90) days that a certificate of occupancy for the applicable structure(s) is not issued following expiration of the twenty-four (24) month permitted construction period, the fine shall be $1,000.00 per month or portion thereof that completion shall be so delayed; for any following period of time that completion shall be so delayed, the fine shall be $2,500.00 per month or portion thereof until such time as a certificate of occupancy for the applicable structure(s) is issued.

(k) Concrete. During construction on any Lot, no concrete trucks shall be permitted to clean out on any portion of the Property other than the Lot to which they are delivering. Builders shall remove all hardened concrete from each Lot with other trash and construction debris.

(l) Construction Related Damage. In the event that any Common Area or other portion of the Area of Common Responsibility is materially damaged, beyond reasonable wear and tear, by construction or equipment traffic performing construction services or deliveries to any individual Owner's Lot, then such Owner shall be specifically assessed for the cost of repairing such Common Area or other portion of the Area of Common Responsibility.

11.6.23 Parking. Except for guest parking within the Building Envelope for a period not to exceed two (2) weeks in duration for each such guest, and except for temporary parking of an Owner's vehicle for periods not exceeding 24 hours, all vehicles shall be parked within enclosed garages constructed within the Building Envelope of each Lot, or in locations that are not visible from any Common Road within the Project, or from any other Owner's Building Envelope or Primary Dwelling Unit. Garage doors shall be kept closed except when the garage is in actual use.

11.6.24 Fences and Walls. In order to maintain the open character of the Property and to minimize interference with the natural movement of wildlife, fencing shall be limited and is generally discouraged. Fencing shall be permitted within each Lot's Building Envelope (subject to approval by the Design Review Committee as to location and design). There shall be no fencing of Lot boundaries or of the Building Envelope perimeters. No fence or wall shall be permitted to extend outside of the designated Building Envelope on any Lot without the approval of the Design Review Committee. This Section shall not restrict Declarant from: (i) constructing a fence along the western boundary of the Property and along Aldasoro Boulevard,

provided that such fence is constructed with appropriate breaks so as not to unreasonably impede wildlife migration; or (ii) maintaining temporary fences as needed in connection with construction activities or any grazing leases impacting the Property..

11.6.25 Lighting. No exterior light on any portion of any Lot shall produce excessive glare to pedestrian or vehicular traffic within the Project, or to any other Owner's Building Envelope or Primary Dwelling Unit. No direct lighting source shall be visible from any neighboring Lots. Uplighting or "moonlighting" is strictly prohibited within the Project except for the Project's entry signage. Lighting of trees, residential unit facades, other amenities or landscape features on any Lot shall not be permitted without approval of the Design Review Committee.

11.6.26 Signage. Project entry monument signage, street signs and directional signs on trails, Common Roads and intersections shall be designed and constructed by the Association as part of the Initial Association Improvements. There shall be no other signs except Private Driveway signs as described in Section 5.2.3 above, identifying the name (if any) of each of the Private Driveways and the residential addresses and/or name of the respective Owners, which signs shall be designed to be consistent with the Project's interior directional signage. "For Sale" signs shall be permitted only on a temporary basis so long as they do not exceed four (4) square feet in size. Other man-made structures located along the Private Driveways such as entry gates, monuments, etc., shall only be permitted if approved by the Design Review Committee.

11.6.27 Special Uses. No Special Use as defined in the San Miguel County Zoning Regulations will be permitted upon any Lot except with the prior approval of the Design Review Committee and the Association.

Article XII
EASEMENTS

12.1 Temporary Construction Easements. There are hereby reserved unto Declarant, for as long as Declarant is constructing the initial infrastructure improvements pursuant to the terms of the Development Agreement (the "Initial Construction Period"), temporary construction easements upon, over and across the Property, but not within any Building Envelopes, for the following purposes:

12.1.1 the creation and maintenance of cut and fill slopes that may extend outside of the Common Road and Private Driveway rights-of-way shown on the Community Map, as may be required in connection with the construction of such Common Roads and Private Driveways; provided that Declarant shall use its reasonable efforts to minimize the extent of disturbance outside of such Common Road and Private Driveway rights-of-way, and shall restore and revegetate any such disturbed areas to a natural condition substantially similar to that which existed before any such disturbance.

12.1.2 the creation of a borrow pit on the Property for the extraction of rock, sand or gravel for use by Declarant in the construction of the initial infrastructure improvements; provided that: (i) any such extraction shall not continue for a period of more than 24 months after it has commenced, (ii) Declarant shall use reasonable efforts to minimize the spreading of fugitive dust from such sand, gravel or rock onto other portions of the Property, and (iii) upon completion of extraction from any such borrow pit, Declarant shall either convert the borrow pit into a pond (subject to approval from the Owner of the Lot upon which such borrow pit may be located), or regrade, restore and revegetate the borrow pit to a natural condition substantially similar to that which existed before any such disturbance.

12.2 Easements for Roads, Utilities, Fences, Etc. There are hereby reserved unto Declarant, for the duration of the Initial Construction Period and for as long thereafter as the Declarant owns any land subject to this Declaration, and Declarant hereby grants to the Association, and the designees of each (which may include, without limitation, any public or private utility company, San Miguel County, Colorado, and any other governmental or quasi-governmental entity) construction, access and maintenance easements upon, across, over, and under all of the Common Area within the Property to the extent reasonably necessary for the purpose of constructing, replacing, repairing, operating and maintaining the respective components of the Common Area. Without limiting the generality of the foregoing, the easements reserved and granted under this Section 12.2 shall include the following:

12.2.1 Common Roads. An easement over that portion of the Common Area depicted as Tract A on the Community Map, for: (i) the construction by Declarant, and the maintenance, repair and replacement by the Association, of the Project's paved Common Roads and any improvements required in connection with the Property's storm water drainage system; and (ii) common vehicular, pedestrian, equestrian and bicycle access along and across such Common Roads for the benefit of all Owners and their designees.

12.2.2 Maintenance Road. An easement over that portion of the Common Area depicted as Tract B on the Community Map, for: (i) the construction by Declarant of an unpaved maintenance road/recreational trail; (ii) the maintenance, repair and replacement by the Association of such maintenance road/recreational trail; and (iii) limited vehicular access along such maintenance road/recreational trail by Declarant, the Association and their respective agents and representatives as may be required in connection with the construction, installation, maintenance, operation, repair and/or replacement of any components of the Project's community water system located in Tract G of the Common Area (as depicted on the Community Map).

12.2.3 Common Recreational Trail. An easement over that portion of the Common Area depicted as Tract C on the Community Map, for the construction by Declarant of a common recreational trail, and the maintenance, repair and replacement by the Association of such common recreational trail; and an easement over that portion of the Common Area depicted

as Tract B and Tract C on the Community Map for pedestrian, equestrian and bicycle access across and along such common recreational trail for the benefit of all Owners and their designees.

12.2.4 Utilities. An easement over that portion of the Common Area depicted as Tract A on the Community Map, for: (i) the construction and installation by Declarant, and the maintenance, operation, repair and replacement by the Association, of the Project's buried utility lines, including without limitation, electric, natural gas, telephone and telecommunications, cable television and water transmission and distribution; and (ii) for the transmission of utility services through such easement to each Lot for the benefit of the respective Owners and their designees.

12.2.5 Community Water System. An easement over that portion of the Common Area depicted as Tract A, Tract B, Tract D, Tract F, Tract G and Tract H on the Community Map, together with the easement described in Map Note 2(i) with respect to the easement rights described in Section 14.5.5 below, for: (i) the construction and installation by Declarant, and the maintenance, operation, repair and replacement by the Association, of the Project's community well and central water supply, storage, treatment and distribution system, including all wells, diversion and collection galleries, pumping, storage and treatment facilities, augmentation ponds and transmission and distribution lines; and (ii) for the supply, storage, treatment and distribution of water through such system for the benefit of the Owners of the Lots served by such system and their respective designees. In particular, Tract A, Tract B and Tract H may be used for transmission lines, distribution lines and pumping facilities; Tract D may be used for retention and/or augmentation ponds; Tract F may be used for community wells, pumping facilities, and transmission and distribution lines; and Tract G may be used for pumping, storage and treatment facilities, and transmission and distribution lines.

12.2.6 Landscaping, Entry Improvements, Fencing. An easement over that portion of the Common Area depicted as Tract A on the Community Map, for the construction, installation, operation, maintenance, repair and replacement by the Association of entry gates, monument signage, interior signage and landscaping improvements; and an easement over that portion of the Common Area depicted as Tract E on the Community Map, for the construction, maintenance, repair and replacement by the Association of fencing separating the Project from Aldasoro Ranch.

12.2.7 Private Driveways. An easement over that portion of the Limited Common Area depicted collectively as Tract H on the Community Map, for the construction by Declarant (to a point within 150 feet of each respective Building Envelope, and with respect to Lot 11, to a point on the southern boundary of such Lot), and the maintenance, repair and replacement by the Association (subject to the limitations on such obligations set forth elsewhere in this Declaration), of the Private Driveways and buried utilities adjacent to each Private Driveway, including without limitation, electric, natural gas, telephone and telecommunications,

cable television, and water transmission and distribution lines. Access along each Private Driveway shall be restricted as provided in Section 2.2 above.

The foregoing easements may traverse the private property of any Owner; provided, however, an easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any Building Envelope or existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of an easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of an easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

12.3 Utility Companies. Declarant specifically reserves the right to convey to the local electric company, natural gas supplier, telephone company, telecommunications company, and/or cable television supplier easements across the Common Area, expressly including the Limited Common Area, for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes. However, the exercise of this easement shall not extend to permitting entry into any dwelling on any Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Board or Declarant. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement over the Property without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Property. The Board shall have the power to dedicate portions of the utility systems to any public or private utility, San Miguel County, Colorado, or any other governmental or quasi-governmental entity.

12.4 Easements for Drainage System Maintenance and Flood Water. The Declarant reserves for itself and grants to the Association, and their respective successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the ponds, wetlands and other portions of the Property's drainage systems wherever located to (a) construct, maintain, and repair any bulkhead, wall, dam, culvert or other structure retaining or conveying water; and (b) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any land subject to this Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Property abutting or containing any portion of any of the ponds, wetlands and other portions of the Property's drainage systems to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, and Declarant hereby grants to the Association, and the designees of each, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon)

adjacent to or within one hundred feet of the ponds, wetlands and other components of the Property's drainage system located within the Property, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Property; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the ponds, wetlands and other components of the Property's drainage system; (c) maintain and landscape the slopes and banks of such ponds, wetlands and other components of the Property's drainage systems; and (d) enter upon and across such portions of the Property for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to high winds, heavy rainfall, or other natural disasters.

12.5 Easement to Serve Adjacent Land. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, designees, successors, assigns and licensees, an easement over those portions of the Common Area comprising the Common Roads and the utility systems as described in this Article XII, for the purposes of installing and thereafter maintaining common roads and operating utilities to serve other properties adjacent to the Project.

12.6 Easements for Access and Use of Common Roads and Trails. The Declarant hereby reserves for itself, and Declarant hereby grants to the Association and each of the Owners and their respective duly authorized agents, representatives, designees, successors, assigns and licensees, a right and nonexclusive easement of access and use over all of the Common Road and common trail easements located within the Property as depicted on the Community Map.

12.7 Right of Entry. Declarant hereby grants to the Association the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, the Bylaws, the Design Guidelines, and any rules and regulations adopted by the Board or the Association, which right may be exercised by any member of the Board, the Association, and its officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner except by emergency personnel acting in their official capacities.

12.8 Other Easements. In addition to the easements described in this Article and elsewhere in this Declaration, the Property is also subject to the easements, licenses and other matters described on Exhibit "B" attached hereto and incorporated herein by this reference.

Article XIII
MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

13.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

13.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

13.1.2 Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days after notice of such violation; or

13.1.3 Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

13.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

13.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

13.4 Applicability of Article XIII. Nothing contained in this Article shall be construed to change the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Colorado law for any of the acts set out in this Declaration, or to grant any Mortgagee the right to

consent or veto any proposed change to any of the Association Documents or rules and regulations promulgated thereunder.

Article XIV
DECLARANT'S RIGHTS AND OBLIGATIONS

14.1 Right to Transfer. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of San Miguel County, Colorado.

14.2 Sales Activities. So long as construction and initial sales of Lots shall continue, the Declarant and its authorized agents and representatives may maintain and carry on upon portions of the Common Area and any Property owned by Declarant, such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots.

14.3 No Other Declarations. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent, signed by the Declarant and recorded in the public records.

14.4 Declarant's Construction Obligations. In the event that Declarant closes on the sale of any one Lot to an unaffiliated purchaser, Declarant shall be required to construct the initial infrastructure improvements for the Project pursuant to the terms and conditions of the Development Agreement. As more particularly provided in the Development Agreement, the Association shall be responsible for the design and construction of the Initial Association Improvements, subject to a $260,000 limit on the costs to be borne by the Association in connection therewith. In exercising the Association's rights under the Development Agreement, the Board shall be bound to act in good faith and to make all decisions in the context of its fiduciary duty to the Owners. The Association shall not agree to terminate the Development Agreement or to make any amendments thereto which would have a material adverse effect upon the Association or any of the Owners without the prior written approval of at least seventy-five percent (75%) of the Class "A" votes, other than Declarant. Each of the Owners shall have the right to enforce the covenants of the Declarant set forth in this Article XIV.

14.5 Provision of Water Supply.

14.5.1 Water System. Declarant intends to construct a community well and central water supply and distribution system to provide potable water to each Lot (other than Lot 11). The central water supply system may include, without limitation, community wells, diversion and collection galleries, pumping, storage and treatment facilities, retention and augmentation ponds, and transmission and distribution lines. Wastewater treatment on each Lot will be by individual septic disposal systems.

14.5.2 Augmentation Plan. Declarant shall diligently pursue the adjudication of a plan for augmentation with the Water Court for the benefit of Sunnyside Ranch at Telluride West. Each Lot provided water under the augmentation plan will be subject to all terms and conditions of the plan, including any applicable limitations on in-house use, outside irrigation, well metering and accounting requirements. Outside irrigation shall be restricted to a total of 5,000 sq. ft. of lawns and gardens on each Lot. As provided in Section 16.2.1, the Board of Directors shall have the power to amend this Declaration and/or the Community Map to the extent required by the Water Court in the final augmentation plan for the Project. The augmentation plan may be combined with a plan for the remaining portion of the Sunnyside Ranch which borders the Property to the east. Declarant expressly reserves the right to provide water to any one or more Lots by obtaining 35 acre exempt well permits from the State Engineer's office and drilling such exempt well(s) or providing water from any other alternative source.

14.5.3 Lot 11 Water Use. Unless otherwise agreed between Declarant and the owners of Lot 11, Declarant shall not be obligated to provide water to Lot 11 through its central water supply and distribution system or otherwise, and Lot 11 shall not be responsible for any costs associated with the operation, maintenance or repair of the central water system or accounting and reporting costs under the plan for augmentation.

14.5.4 Dry-Up Rights. The Property is hereby encumbered with a dry-up covenant in order to restrict the use of historic water rights on the Property and to allow for the quantification and change of use of such historic water rights on the Property as part of the plan for augmentation for Sunnyside Ranch at Telluride West. As part of said dry-up covenant rights, the Association is hereby granted (i) the right to take or cause to be taken any action reasonably necessary to eliminate any consumptive use of water for agricultural irrigation purposes on all or any portions of the Property that are determined by the Water Court to be historically irrigated lands in any case involving the change of historic water rights associated with the Property, and (ii) a non-exclusive perpetual easement for the purpose of access to and over the Property as may be reasonably necessary to take actions and to conduct any monitoring or testing activity or monumenting of dry-up acreage that may be required by the Water Court to enforce this dry-up covenant.

14.5.5 Easements for Wells, Ponds and Other Water System Components. Declarant hereby reserves for itself and grants to the Association a non-exclusive water system improvement easement to construct, locate, drill or redrill, operate, maintain, use, repair and replace the following components of the central water supply system on any portion of the Property located outside the Building Envelopes depicted on the Community Map: community wells and pumps; diversion and collection galleries and facilities; storage tanks; treatment facilities; retention and augmentation ponds; and transmission and distribution lines. The foregoing components of the central water supply system and the easement herein granted are part of the Common Area and the respective locations of all currently locatable components of the system are more particularly depicted as on the Community Map. The Declarant and/or the Association may vacate portions of this easement in the future as appropriate in its discretion to release portions of the Property from this easement. Declarant or the Association, as the case may be, will use its good faith efforts to minimize, to the extent reasonably possible, any disturbance to the Property caused in connection with the use of the easement granted pursuant to this Section 14.5.5, and shall restore and revegetate all disturbed areas to a natural condition substantially similar to that which existed before any such disturbance.

14.5.6 Responsibility for Administering Plan for Augmentation. After Declarant obtains a final decree from the Water Court approving a plan for augmentation for the Project and completes construction of the initial infrastructure improvements, Declarant shall transfer all of its right, title and interest in and to such improvements and the portion of the augmentation plan covering Sunnyside Ranch at Telluride West to the Association. Following this transfer, the Association shall be solely responsible for the operation, maintenance and repair (after expiration of all applicable warranties) of the central water system and all costs associated therewith, including, without limitation, drilling any new wells or replacement wells that may be required for the system in the future, after the expiration of the general contractor's warranty period described in the Development Agreement. The Association shall also be responsible for all water use reporting and accounting requirements, and for enforcing any terms and conditions contained in the final augmentation plan, including the installation of a water metering device on each Lot acceptable to the State or Division Engineers and the enforcement of water use limitations. The Association's costs incurred in the operation (including reporting and accounting to the State Engineer), maintenance, repair and/or replacement of all or any component of the community water system shall be borne by the Owners of only those Lots being served by the system, by Specific Assessment as provided in Section 9.5.2.

14.5.7 Service to Adjoining Properties. The Board shall have the power and authority to permit owners of any residential property adjacent to the Project to tap into the Project's community water supply system, for such consideration as is determined to be reasonable by the Board in its sole discretion; provided, however, that (i) the cost of providing any such additional service shall be borne by those adjoining property owners that are receiving service, and any such agreement shall not materially increase the Association's anticipated costs of operating or maintaining the Project's community water system, (ii) the provision of such

service shall not materially and adversely impact the water supply to any of the Lots then being served by the community water system, and (iii) the provision of such service is permissible under the augmentation plan covering the Project.

14.5.8 Certain Representations. Declarant hereby represents, warrants and covenants to the Association and to the Owner of each Lot, other than the Owner of Lot 11, that

(a) Declarant owns or reasonably expects that it will acquire, at its sole cost and expense, sufficient water rights capable of providing an adequate supply of water to accommodate the reasonable needs (subject to any restrictions provided herein or by the augmentation plan) of the Owner of each Lot within the Project (except for Lot 11);

(b) Declarant is solely obligated to construct, and pay the entire cost of constructing, a water system designed to distribute potable water to each Lot within the Project (except Lot 11), or in the alternative, to provide individual 35 acre exempt wells or an alternative water source serving some or all of such Lots;

(c) The Association shall have no obligation to construct, or pay for all or any portion of the cost of the construction of, such community water system or any such individual 35 acre exempt wells, except as may be required in connection with the Association's ongoing maintenance, repair and operation of such system, as described in the Section 14.5.6 above; and

(d) Declarant, whether in its capacity as declarant hereunder, or as appointee of the controlling members of the Association's Board of Directors, will not enter into any agreement with any adjoining landowner permitting such adjacent landowner to tap into the Association's community water system, unless such agreement complies with the provisions of Section 14.5.7 above.

14.6 Declarant's Reimbursement Obligation. Notwithstanding anything to the contrary that may be contained in the Association Documents, Declarant shall be responsible for paying any amount that may be due and payable pursuant to Section 5.6 of that certain Sunnyside/Aldasoro Mutual Easement Agreement by and among Aldasoro Bothers, Aldasoro Ltd., and Bluewater, Footcreek and Grandilla, recorded May 31, 1991 in Book 478 at Page 375 of the real property records of San Miguel County, as amended.

14.7 Construction Disturbances. Each of the initial Owners purchasing one or more Lots from Declarant understands that Sunnyside Ranch at Telluride is an ongoing project to be developed over an uncertain amount of time. Accordingly, each Owner acknowledges that there may be certain inconveniences (including, but not limited to, dust, noise, traffic disruption, temporary closure of roadways and construction debris) until the construction of the entirety of Sunnyside Ranch at Telluride West is completed, including all of the infrastructure

improvements and all of the contemplated Owner Improvements on each Lot. Furthermore, while Declarant's affiliate, Sunnyside Associates L.C., currently intends to hold the remaining portion of Sunnyside Ranch, which borders the Property on the east, for long term investment purposes, Sunnyside Associates L.C. may, at some point in the future, sell such property to another entity which could develop such property into 35 acre homesites. EACH OWNER, BY EXECUTING THE DEED TO SUCH OWNER'S LOT, WAIVES ALL CLAIMS, AND AGREES TO HOLD DECLARANT AND DECLARANT'S CONTRACTORS AND AFFILIATES HARMLESS FROM AND AGAINST ANY COSTS, LOSSES, EXPENSES OR OCCURRENCES ARISING OUT OF OR ASSOCIATED WITH CONSTRUCTION ACTIVITIES AND THE ASSOCIATED DISRUPTIONS AND INCONVENIENCES RELATING TO THE DEVELOPMENT OF SUNNYSIDE RANCH AT TELLURIDE WEST OR THE ADJOINING PROPERTY TO THE EAST.

14.8 Amendment Restrictions. This Article may not be amended without the written consent of the Declarant. The provisions of this Article relating to Declarant's construction obligations may not be amended without the affirmative consent of at least seventy-five percent (75%) of the Class "A" Members' votes, other than Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 30 years from the date this Declaration is recorded, or (b) the recording by Declarant of a written statement that all sales activity has ceased.

Article XV
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

15.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association and its members, the Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules, the Design Guidelines, or the Articles of Incorporation (collectively "Claims"), except for those Claims exempt in Section 15.2, shall be resolved using the procedures set forth in Section 15.3, in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

15.2 Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 15.3:

15.2.1 Any suit by the Association against any Bound Party to enforce the provisions of Article IX (Assessments);

15.2.2 Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article X (Architectural Standards) and Article XI (Use Guidelines and Restrictions);

15.2.3 Any suit between Owners (other than the Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the law of the State of Colorado in the absence of a claim based on this Declaration, the Bylaws, Articles, or rules of the Association, if the amount in controversy exceeds $25,000.00;

15.2.4 Any suit by the Association in which similar or identical claims are asserted against more than one Bound Party; and

15.2.5 Any suit by a Bound Party for declaratory or injunctive relief which seeks a determination as to applicability, clarification or interpretation of any provision of this Declaration.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 15.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 15.3 shall require the approval of the Board.

15.3 Mandatory Procedures For All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

15.3.1 Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(a) The nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;

(b) The basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arises);

(c) What Claimant wants Respondent to do or not do to resolve the Claim; and

(d) That Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

15.3.2 Negotiation.

(a) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(b) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

15.3.3 Mediation.

(a) If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (such date being referred to as the "Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association, the Colorado chapter of the Community Association Institute, or such other independent agency providing mediation services upon which the Parties may mutually agree.

(b) If Claimant does not submit the Claim to mediation within (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(c) If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(d) Each Party shall, within five (5) days after the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's

original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

15.3.4 Final and Binding Arbitration.

(a) If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within fifteen (15) days after the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D," or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(b) This Section 15.3.4 is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Colorado. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

15.4 Allocation of Costs of Resolving Claims.

15.4.1 If the Claims are resolved through negotiation or mediation as provided in Section 15.3.2 or Section 15.3.3, each Bound Party shall bear all of its own costs incurred in resolving the Claims, including its attorneys fees and mediation expenses, unless the Bound Parties otherwise agree.

15.4.2 If the Claims are not resolved through negotiation or mediation as provided in Section 15.3.2 or Section 15.3.3, and the Claims go to binding arbitration as provided in Section 15.3.4, the "Prevailing Party" shall receive as a part of its Award from the opposing party(ies) all of its costs, including reasonable attorneys fees, costs for other representatives in resolving each Claim, and any expenses incurred as a result of the dispute resolution procedures of this Article XV.

15.5 Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 15.3 and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to

enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

Article XVI
GENERAL PROVISIONS

16.1 Term. This Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of 30 years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of 10 years, unless an instrument in writing, signed by a majority of the Owners at such time, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein.

16.2 Amendment

16.2.1 By Declarant. Until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration and/or the Community Map for any purpose, provided that such amendment has no material adverse effect upon any Lot or Lot Owner. At any time prior to or after the expiration of the Class "B" Control Period, the Board of Directors may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots: (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. The Board of Directors shall have the power at any time to amend this Declaration and/or the Community Map to the extent required by: (x) the applicable Water Court in connection with the Declarant's adjudication of an augmentation plan with respect to the Project, or (ii) the Army Corps of Engineers in connection with the location of any wetlands areas within the Property.

16.2.2 By Owners. Except as otherwise expressly provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of sixty-seven percent (67%) of the total Members' votes in the

Association, including sixty-seven percent (67%) of the votes held by Members other than the Declarant, together with the vote of the Class "B" Member, if such membership still exists.

16.2.3 General Amendment Provisions. Notwithstanding the foregoing, the percentage of votes necessary to amend a specific clause in this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. To be effective, any amendment must be recorded in the public records of San Miguel County, Colorado. If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege. No amendment may be adopted that would result in the loss of the Project's general exemption from the Act pursuant to the small planned community exemption described in Section 116 of the Act, or seek to make the Project fully subject to the Act.

16.2.4 Amendments of Certain Provisions. Notwithstanding the provisions of Section 16.2.1, Declarant shall have the right to amend any of the provisions of this Declaration which establish, provide for, govern, or regulate any of the actions described below, with the consent of the required percentage of the Class "A" votes set forth in each case:

(a) The contraction of the Property or the withdrawal of Property from the Association, including without limitation, the withdrawal of Lots or Common Area, shall require the affirmative vote or written consent of at least a majority of the Members, other than Declarant, represented at a meeting duly called for such purpose;

(b) The expansion of the Property or the addition or annexation of Property to the Association, including without limitation, the addition or annexation of Lots or Common Area shall require the affirmative vote or written consent of at least a majority of the Members, other than Declarant, represented at a meeting duly called for such purpose; and

(c) Revising the boundaries of any Lot, including, without limitation, the further subdivision of Lots or the conversion of Lots or any portion thereof into Common Area, or the conversion of any portion of the Common Area into Limited Common Area, shall require the affirmative vote or written consent of at least seventy-five percent (75%) of the Members, other than Declarant, represented at a meeting duly called for such purpose.

16.3 Interpretation and Severability. As used in this Declaration, when the context so requires, the masculine shall include the feminine, the singular the plural, and vice versa. Unless expressly provided otherwise, any reference in this Declaration to an Article, Section or

subsection shall be deemed to refer to the applicable Article, Section or subsection of this Declaration. All of the Exhibits to this Declaration are hereby incorporated by reference into this Declaration as though set out in full herein. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

16.4 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

16.5 Litigation. No dispute resolution, judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of sixty-seven percent (67%) of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article IX; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

16.6 Use of the Words "Sunnyside Ranch at Telluride" or Logo. No Person shall use the words "Sunnyside Ranch at Telluride" or any variation or portion thereof without the Declarant's prior written consent. However, Owners may use the terms "Sunnyside Ranch at Telluride" in printed or promotional matter where such terms are used solely to specify that particular property is located within the Project, and the Association shall be entitled to use the words "Sunnyside Ranch at Telluride" in its name. The Declarant may enforce the provisions of this Section by any legal or equitable means, including, without limitation, an action for specific performance, damages or both.

16.7 Compliance. Every Owner and occupant of any Lot shall comply with this Declaration, the Articles, the Bylaws, the Design Guidelines, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Lot Owner(s).

16.8 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to its, his or her Lot shall give the Board at least seven (7) days' prior notice of the name and address of the purchaser or transferee, the date of such transfer of title, the consideration for such proposed transfer, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the

transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

16.9. Annexation and Withdrawal of Property.

16.9.1 Annexation of Property. The Association may annex to the provisions of this Declaration, real property or real property interests other than that described on Exhibit "A" attached hereto, with the consent of the owner of such property, upon a duly adopted resolution of the Board, approved by the affirmative vote or written consent of a majority of all of the Members, other than Declarant, represented at a meeting duly called for such purpose; provided, however, that any such annexation shall not be contrary to the overall, uniform scheme of development for the Property, and shall not cause the Association to lose its exemption under the Act. Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the public records of San Miguel County, Colorado. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

16.9.2 Withdrawal of Property. The Association may withdraw from the provisions of this Declaration, real property or real property interests other than that described on Exhibit "A" attached hereto, with the consent of the owner of such property, upon a duly adopted resolution of the Board, approved by the affirmative vote or written consent of a majority of all of the Members, other than Declarant, represented at a meeting duly called for such purpose; provided, however, that any such withdrawal shall not be contrary to the overall, uniform scheme of development for the Property, and shall not cause the Association to lose its exemption under the Act. Withdrawal shall be accomplished by filing a Supplemental Declaration describing the property being withdrawn in the public records of San Miguel County, Colorado. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and the owner of the withdrawn property. Any such withdrawal shall be effective upon filing unless otherwise provided therein.

16.10. No Merger. It is the intention of the Declarant that the easements, equitable servitudes, covenants, conditions and restrictions set forth in this Declaration shall continue to burden and benefit, as applicable, each of the Lots notwithstanding the fact that, at any time, the same Person or Persons may own one or more of the Lots, or portions thereof. Any such multiple ownership shall not result in the merger of the respective interests, rights and obligations of the Owners of such Lots created hereunder.

11/5/99

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

SUNNYSIDE DEVELOPMENT COMPANY L.C., a Utah limited liability company

By: CIRQUE PROPERTY L.C., a Utah limited liability company

By: _____
J. Gregory Hale,
Managing Member

GRANDILLA (ARIZONA), INC., an Arizona corporation

By: _____
David I. Hoffman, Authorized Agent

FOOT CREEK CORPORATION OF ARIZONA, an Arizona corporation

By: _____
David I. Hoffman, Authorized Agent

BLUEWATER CORPORATION, INC., an Arizona corporation

By: _____
David I. Hoffman, Authorized Agent

(acknowledgments continued on following page)

11/5/99

STATE OF UTAH)
)ss
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 5th day of November 1999, by J. Gregory Hale, as Managing Member of Cirque Property L.C., a Utah limited liability company, the Managing Member of SUNNYSIDE DEVELOPMENT COMPANY L.C., a Utah limited liability, on behalf Sunnyside Development Company L.C.

Witness my hand and official seal.

Kimberly S. Davenport
Notary Public

My Commission Expires: November 15, 2002

KIMBERLY S. DAVENPORT
Notary Public
State of Utah
My Comm. Expires Nov 15, 2002
136 East South Temple Ste 1500 Salt Lake City UT 84111

STATE OF Illinois)
)ss
COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 4 day of Nov., 1999, by David L. Hoffman as Agent of GRANDILLA (ARIZONA), INC., an Arizona corporation, on behalf of the company.

Witness my hand and official seal.

Laurel Gray
Notary Public

My Commission Expires: 9/26/2000

"OFFICIAL SEAL"
LAUREL GRAY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9/26/2000

(acknowledgments continued on following page)

11/5/99

STATE OF Illinois)
)ss
COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 4th day of Nov., 199 9, by David F. Hoffman, as agent of FOOT CREEK CORPORATION OF ARIZONA, an Arizona corporation, on behalf of the company.

Witness my hand and official seal.

Laurel Gray
Notary Public

My Commission Expires: 9/26/2000

"OFFICIAL SEAL"
LAUREL GRAY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9/26/2000

STATE OF Illinois)
)ss
COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 4th day of Nov., 199 9, by David F. Hoffman, as agent of BLUEWATER CORPORATION, INC., an Arizona corporation, on behalf of the company.

Witness my hand and official seal.

Laurel Gray
Notary Public

My Commission Expires: 9/26/2000

"OFFICIAL SEAL"
LAUREL GRAY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9/26/2000

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE DECLARATION

The Southeast ¼ of the Southwest ¼ and the Southwest ¼ of the Southeast ¼ of Section 22, Township 43 North, Range 9 West of the New Mexico Principal Meridian,
AND
The Southwest ¼ of the Southwest ¼; the Southwest ¼ of the Northeast ¼; the South ½ of the Northwest ¼; the North ½ of the Southwest ¼; the Northwest ¼ of the Southeast ¼; the Northwest ¼ of the Northeast ¼ and the Northeast ¼ of the Northwest ¼ of section 27, Township 43 North, Range 9 West of the New Mexico Principal Meridian,
AND
The East ½ of the East ½, (also described as Lots 7, 11, 12 and 16); the Southeast ¼ of the Southwest ¼, (also described as Lot 14); the Southwest ¼ of the Southeast ¼ , (also described as Lot 15); the West ½ of the Northeast ¼; the Northwest ¼ of the Southeast ¼ and the Northeast ¼ of the Southwest ¼ of Section 28, EXCEPT any portion embraced by the Oneita Placer, Mineral Survey No. 6809 or the Scott and McDonald Placer, Mineral Survey No. 6809, Upper San Miguel Mining District, (also described as Lot 4), Township 43 North, Range 9 West of the New Mexico Principal Meridian,
AND
Lots 1 and 2 of Section 33, Township 43 North, Range 9 West of the New Mexico Principal Meridian,
AND
Lot 4 of Section 34, Township 43 North, Range 9 West of the New Mexico Principal Meridian,

EXCEPT that portion lying Easterly and Southerly of the following described line:

Beginning at the Northwest corner of the Southwest ¼ of the Northwest ¼ of said Section 27; Thence S 04° 09' 28" W, along the west line of the Southwest ¼ of the Northwest ¼ of said Section 27, 1324.33 feet; Thence S 41°10'56" E, 1320.69 feet; Thence S 31° 11' 14" W, 1455.93 feet; Thence N 89° 31'36" W, 2914.17 feet, to a point in the east line of the Southeast ¼ of the Southwest ¼ of Section 28 (said point bears N 04° 09' 03" E, along said east line, 418.70 feet from the southeast corner of said Southeast ¼, southwest ¼ of said Section 27).

EXCEPT those portions of the Northeast ¼, Southwest ¼ and the Southeast ¼, Southwest ¼, Section 28, Township 43 North, Range 9 West New Mexico Principal Meridian described as follows:

Beginning at a point in the Northerly line of said Northeast ¼, Southwest ¼ said Section 28 at its intersection with the Northerly line of Aldasoro Boulevard (a 60.00' wide private road easement) as shown on Sheet # 4 of 5 sheets of The Plat of Aldasoro Ranch, Filing 1 as recorded in Plat Book 1 at page 1153, records of San Miguel County Colorado; thence S 89°56'44"W along said Northerly line, 997.83 feet to a point in the Easterly line of the Replat of Lots 12 and 16, Aldasoro Ranch as filed in Plat Book 1 at page 1566 records of San Miguel County; thence S 10°50'00" E, 237.42 feet to an angle point in the Easterly line of said Lot 16; thence S 28°42'40"W, 432.46 feet to a point in the Westerly line of said Northeast ¼, Southwest ¼ said Section 28 (said point also being

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE DECLARATION

the most Northerly corner of Lot 11, Aldasoro Ranch Filing 3, as recorded in Plat Book 1 at page 1830, records San Miguel County); Thence S 04°07'58" W, along the Westerly line of said Northeast ¼, Southwest ¼ said Section 28, 519.10 feet to a point in the Northerly right of way line of Aldasoro Boulevard (a 60.00 foot wide private road easement); Thence Southeasterly, Northeasterly and Northwesterly along said right of way line to the Point of Beginning.

TOGETHER WITH Sunnyside/Aldasoro Mutual Easement Agreement recorded May 31, 1991 in Book 478 at page 375 as modified by instrument recorded July 30, 1999 at reception No.328238 and September 14, 1999 at Reception No. 329167.

County of San Miguel, State of Colorado.

EXHIBIT "A-1"

LEGAL DESCRIPTION OF DECLARANT'S PROPERTY

The Southeast ¼ of the Southwest ¼ and the Southwest ¼ of the Southeast ¼ of Section 22, Township 43 North, Range 9 West of the New Mexico Principal Meridian,
AND
The Southwest ¼ of the Southwest ¼; the Southwest ¼ of the Northeast ¼; the South ½ of the Northwest ¼; the North ½ of the Southwest ¼; the Northwest ¼ of the Southeast ¼; the Northwest ¼ of the Northeast ¼ and the Northeast ¼ of the Northwest ¼ of section 27, Township 43 North, Range 9 West of the New Mexico Principal Meridian,
AND
The East ½ of the East ½, (also described as Lots 7, 11, 12 and 16); the Southeast ¼ of the Southwest ¼, (also described as Lot 14); the Southwest ¼ of the Southeast ¼ , (also described as Lot 15); the West ½ of the Northeast ¼; the Northwest ¼ of the Southeast ¼ and the Northeast ¼ of the Southwest ¼ of Section 28, EXCEPT any portion embraced by the Oneita Placer, Mineral Survey No. 6809 or the Scott and McDonald Placer, Mineral Survey No. 6809, Upper San Miguel Mining District, (also described as Lot 4), Township 43 North, Range 9 West of the New Mexico Principal Meridian,
AND
Lots 1 and 2 of Section 33, Township 43 North, Range 9 West of the New Mexico Principal Meridian,
AND
Lot 4 of Section 34, Township 43 North, Range 9 West of the New Mexico Principal Meridian,

EXCEPT that portion lying Easterly and Southerly of the following described line:

Beginning at the Northwest corner of the Southwest ¼ of the Northwest ¼ of said Section 27; Thence S 04° 09' 28" W, along the west line of the Southwest ¼ of the Northwest ¼ of said Section 27, 1324.33 feet; Thence S 41°10'56" E, 1320.69 feet; Thence S 31° 11' 14" W, 1455.93 feet; Thence N 89° 31'36" W, 2914.17 feet, to a point in the east line of the Southeast ¼ of the Southwest ¼ of Section 28 (said point bears N 04° 09' 03" E, along said east line, 418.70 feet from the southeast corner of said Southeast ¼, southwest ¼ of said Section 27).

EXCEPT those portions of the Northeast ¼, Southwest ¼ and the Southeast ¼, Southwest ¼, Section 28, Township 43 North, Range 9 West New Mexico Principal Meridian described as follows:

Beginning at a point in the Northerly line of said Northeast ¼, Southwest ¼ said Section 28 at its intersection with the Northerly line of Aldasoro Boulevard (a 60.00' wide private road easement) as shown on Sheet # 4 of 5 sheets of The Plat of Aldasoro Ranch, Filing 1 as recorded in Plat Book 1 at page 1153, records of San Miguel County Colorado; thence S 89°56'44"W along said Northerly line, 997.83 feet to a point in the Easterly line of the Replat of Lots 12 and 16, Aldasoro Ranch as filed in Plat Book 1 at page 1566 records of San Miguel County; thence S 10°50'00" E, 237.42 feet to an angle point in the Easterly line of said Lot 16; thence S 28°42'40"W, 432.46 feet to a point in the Westerly line of said Northeast ¼, Southwest ¼ said Section 28 (said point also being the most Northerly corner of Lot 11, Aldasoro Ranch Filing 3, as recorded in Plat Book 1

EXHIBIT "A-1"

LEGAL DESCRIPTION OF DECLARANT'S PROPERTY

at page 1830, records San Miguel County); Thence S 04°07'58" W, along the Westerly line of said Northeast ¼, Southwest ¼ said Section 28, 519.10 feet to a point in the Northerly right of way line of Aldasoro Boulevard (a 60.00 foot wide private road easement); Thence Southeasterly, Northeasterly and Northwesterly along said right of way line to the Point of Beginning.

EXCEPT that portion of the Northwest ¼ of the Northeast ¼ of said Section 28, Township 43 North, Range 9 West of the New Mexico Principal Meridian described as follows:
BEGINNING at the Northwest corner of said Northeast ¼ of said Section 28; Thence South 04°04'43"West along the North-South centerline of said Section 28 a distance of 1319.50 feet to the North 1/16 corner of said Section 28; Thence North 89°56'33" East along the Southerly line of said Northwest ¼ of the Northeast ¼ of Section 28 a distance of 1158.12 feet;
Thence North 04°04'44" East a distance of 1320.25 feet to a point on the North line of said Section 28;
Thence South 89°54'19" West along said North line a
Distance of 1158.18 feet to the POINT OF BEGINNING,

TOGETHER WITH Sunnyside/Aldasoro Mutual Easement Agreement recorded May 31, 1991 in Book 478 at page 375 as modified by instrument recorded July 30, 1999 at reception No.328238 and September 14, 1999 at Reception No. 329167.

County of San Miguel, State of Colorado.

EXHIBIT "A-2"

LEGAL DESCRIPTION OF LOT 11

That portion of the Northwest ¼ of the Northeast ¼ of said Section 28, Township 43 North, Range 9 West of the New Mexico Principal Meridian described as follows:
BEGINNING at the Northwest corner of said Northeast ¼ of said Section 28; Thence South 04°04'43"West along the North-South centerline of said Section 28 a distance of 1319.50 feet to the North 1/16 corner of said Section 28; Thence North 89°56'33" East along the Southerly line of said Northwest ¼ of the Northeast ¼ of Section 28 a distance of 1158.12 feet;
Thence North 04°04'44" East a distance of 1320.25 feet to a point on the North line of said Section 28;
Thence South 89°54'19" West along said North line a
Distance of 1158.18 feet to the POINT OF BEGINNING,

TOGETHER WITH Sunnyside/Aldasoro Mutual Easement Agreement recorded May 31, 1991 in Book 478 at page 375 as modified by instrument recorded July 30, 1999 at reception No.328238 and September 14, 1999 at Reception No. 329167.

County of San Miguel, State of Colorado.

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EXHIBIT "B"

EASEMENTS, LICENSES AND OTHER MATTERS AFFECTING THE PROPERTY

1. All right, title and interest of any person in and to water or water rights located upon or appurtenant to the Property.

2. All right, title and interest of any person in and to unpatented mineral interests rights located upon the Property.

3. Taxes and assessments for the year 1999 and subsequent years, a lien not yet due and payable; special assessments or charges not certified to the county treasurer.

4. Any right, title or interest of U S West Communications to operate, inspect, repair, maintain, replace, remove and require the relocation of telecommunications equipment, lines and related appurtenances upon, over, across, through, beneath or within the Property.

5.. Any right, title or interest of San Miguel Power Association Company of Colorado to operate, inspect, repair, maintain, replace, remove and require the relocation of electric transmission equipment, lines and related appurtenances upon, over, across, through, beneath or within the Property.

6. Any right, title or interest of KN Energy to operate, inspect, repair, maintain, replace, remove and require the relocation of natural gas transmission equipment, lines and related appurtenances upon, over, across, through, beneath or within the Property.

7. Terms and conditions of this Declaration of Protective Covenants, Conditions and Restrictions for Sunnyside Ranch at Telluride West and the Community Map recorded contemporaneously herewith.

8. Terms, conditions, provisions, agreements and obligations specified under the Sunnyside/Aldasoro Mutual Easement Agreement by and between Aldasoro Brothers and Bluewater Corporation, Foot Creek Corporation of Arizona and Grandilla Establishment recorded May 31, 1991 in Book 478 at Page 375, as amended by that certain First Amendment to Sunnyside/Aldasoro Easement Agreement, recorded July 30, 1999 at Reception No. 328238, as amended by that certain Second Amendment to Sunnyside/Aldasoro Easement Agreement, recorded September 14, 1999 at Reception No. 329167, all as recorded in the San Miguel County, Colorado, real property records.

9. Notice filed by San Miguel Power Association, Inc., on March 18, 1999 at Reception No. 325020.

10. The continued, undisturbed and unobstructed flow of water in Ditch D-4 and Conley Ditch as shown on the ALTA/ACSM Survey prepared by San Juan Surveying and dated July 29, 1999, Job No. 99/Sunnyside.

11. Any right of maintenance or access to Ditch D-4, and Conley Ditch as shown on the ALTA/ACSM Survey prepared by San Juan Surveying and dated July 29, 1999, Job No. 99/Sunnyside.

12. Grazing Lease to Aldasoro Brothers, a Colorado general partnership.

13. Terms, conditions, provisions, agreements and obligations specified under the Aldasoro Boulevard Road Maintenance and Mailbox/Bus Stop Easement Agreement dated September 13, 1999, between Aldasoro Homeowners Association, Inc., Aldasoro Ltd., and Sunnyside Associates L.C., and recorded September 16, 1999 as Reception No. 329238 in the real property records of San Miguel County, Colorado.

14. Terms, conditions, provisions, agreements and obligations specified under the Sunnyside Ranch Access, Utility and Construction Easement Agreement dated September 16, 1999, between Declarant and Sunnyside Associates L.C., and recorded September 20, 1999 at Reception Number 329339 of the San Miguel County, Colorado, real property records.

15. Terms, conditions, provisions, agreements and obligations specified under the Aldasoro Access License Agreement, dated August 27, 1999 by and among Sunnyside Associates L.C., as licensor, and Albert A. Aldasoro, Mary Louise Leonard, Angela M. Petersen, Pamela M. Bennett, Cristine Mitchell, Monica McDaid, Lydia Leonard, and Mark Leonard, collectively, as licensees. Such License Agreement was assigned to Declarant pursuant to that certain Assignment and Assumption of Loan Documents and License Agreement, dated September 16, 1999, recorded September 20, 1999 at Reception number 329338 of the San Miguel County, Colorado real property records.

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EXHIBIT "C"

INITIAL ASSOCIATION IMPROVEMENTS

Entry gates, monument signage and landscaping

Fencing along Aldasoro Boulevard and certain portions of the western boundary of the Project

Interior road and Private Driveway identification and directional signage

Landscaping along Common Roads

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EXHIBIT "D"

RULES OF ARBITRATION

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").

2. Each Party shall select an arbitrator ("Party Appointed Arbitrator"). The Party Appointed Arbitrators shall, by agreement, select one or two neutral arbitrators ("Neutral(s)") so that the total arbitration panel ("Panel") has an odd number of arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within 20 days from the date of the Arbitration Notice, the remaining arbitrators shall conduct the proceedings, selecting a Neutral in place of any missing Party Appointed Arbitrator. The Neutral arbitrators(s) shall select a chairperson ("Chair").

3. If the Panel is not selected under Rule 2 within forty-five (45) days from the date of the Arbitration Notice, Claimant may notify the Colorado chapter of The Community Associations Institute, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator ("Arbitrator"), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.

5. The Arbitrator or Chair, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Property unless otherwise agreed by the Parties.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

10. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materially of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

12. There will be no post-hearing briefs.

13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

14. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.