

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

TWILIGHT PEAKS
MOUNTAIN VILLAGE

DURANGO, COLORADO

DEVELOPED BY TWILIGHT PEAKS, LLC
46773 U.S. HIGHWAY 550, DURANGO, COLORADO

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
TWILIGHT PEAKS MOUNTAIN VILLAGE**

Table of Contents

	<u>Page</u>
RECITALS	1
 ARTICLE I - DEFINITIONS	
1.01 Additions to Existing Property	2
1.02 Architectural Committee	2
1.03 Articles	2
1.04 Assessments	2
1.05 Association	2
1.06 Association Rules	2
1.07 Board of Directors	2
1.08 Building Envelope	2
1.09 Bylaws	2
1.10 Common Elements	2
1.11 Common Expenses	3
1.12 Common Roads	3
1.13 Control Date	3
1.14 Covenants, Conditions and Restrictions	3
1.15 Declarant	3
1.16 Declaration	3
1.17 Design Guidelines	3
1.18 First Mortgage	3
1.19 First Mortgagee	3
1.20 Gender and Number	3
1.21 Initial Property	3
1.22 Lot	3
1.23 Managing Agent	3
1.24 Maps	3
1.25 Member	3
1.26 Mortgage	3
1.27 Mortgagee	4
1.28 Mortgagor	4
1.29 Owner or Owners	4
1.30 Outlot	4
1.31 Person	4
1.32 Phase 1	4
1.33 Phase 2 and Phase 3	4
1.34 Private Roads	4
1.35 Project	4
1.36 Project Documents	4
1.37 Statement of Assessments	4
1.38 Supplementary Declaration	4
1.39 Village; Twilight Peaks Mountain Village	4
1.40 Village Property	4
 ARTICLE II - DESCRIPTION OF PROJECT	
2.01 Initial Property	5
2.02 Additions to Initial Property	5
2.03 Common Elements	5

2.04	Delegation of Use.....	6
2.05	Damage and Destruction of Common Elements	6

ARTICLE III - EASEMENTS

3.01	Easements and Rights	7
3.02	Easements to Accompany Conveyance of Lot.....	7
3.03	Maintenance Easement.....	7
3.04	Rights of Entry and Use	7
3.05	Drainage, Irrigation and Fishing Easements.....	8
3.06	Declarant's Easement	8
3.07	Other Easements	8

ARTICLE IV - HOMEOWNERS ASSOCIATION

4.01	General Purposes	8
4.02	Duties.....	9
4.03	Powers.....	10
4.04	Commencement of Association's Duties and Powers	11
4.05	Board of Directors.....	11
4.06	Notice to Registered Mortgagees.....	11
4.07	Indemnification.....	12
4.08	Non-Liability of Officials	12

ARTICLE V - MEMBERSHIP AND VOTING RIGHTS

5.01	Membership	12
5.02	Transfer of Membership	12
5.03	Voting Rights.....	12
5.04	Notice For Meetings.....	13
5.05	Quorum for Any Action Authorized.....	13
5.06	Proxies	13
5.07	Majority	13

ARTICLE VI - ASSESSMENTS

6.01	Purpose of Assessments	13
6.02	General Assessment	13
6.03	Capital Improvement Assessments.....	14
6.04	Special Assessments	14
6.05	Division of Assessments.....	14
6.06	Date of Commencement of Annual Assessment	14
6.07	Effect of Nonpayment of Assessments.....	15
6.08	Creation of the Lien and Personal Obligation of Assessments.....	15
6.09	Transfer of Lot by Sale or Foreclosure	15
6.10	Statement of Account.....	16
6.11	Enforcement and Remedies.....	16
6.12	Unallocated Taxes.....	16
6.13	Exempt Property	16

ARTICLE VII - ARCHITECTURAL AND LANDSCAPE CONTROL

7.01	Purpose	16
7.02	Architectural Design Review Committee.....	17
7.03	Design Guidelines	17
7.04	Approval of Plans	17
7.05	Governmental Approval.....	18

ARTICLE VIII - BUILDING RESTRICTIONS

8.01	Buildings Allowed	18
8.02	Setbacks	18
8.03	Maximum Height	18
8.04	Building Materials	18
8.05	Automatic Fire Sprinklering Systems	18
8.06	Mailboxes	19
8.07	Minimal Impacts	19

ARTICLE IX - USE RESTRICTIONS

9.01	Animals	19
9.02	Antennas	19
9.03	Clothes Drying Area	19
9.04	Commercial Activities	19
9.05	Drainages	20
9.06	Entrance Gates	20
9.07	Fences	20
9.08	Garbage and Refuse Disposal	20
9.09	Hunting and Shooting	20
9.10	Leasing of Lots	20
9.11	Lot Sizes	20
9.12	Maintenance and Repairs	20
9.13	Mineral Activity	21
9.14	No Imperiling of Insurance	21
9.15	No Violation of Law	21
9.16	Nuisances and Abatement	21
9.17	Owner-Caused Damages	21
9.18	Rural Atmosphere	21
9.19	Sales and Construction Facilities	21
9.20	Sewage Systems	22
9.21	Signs	22
9.22	Storage Tanks	22
9.23	Temporary Occupancy and Mobile Homes	22
9.24	Time Sharing	22
9.25	Tree Cutting	23
9.26	Utilities	23
9.27	Vehicles	23
9.28	Violations	23
9.29	Water; Wells	23
9.30	Weed Abatement	24
9.31	Wildfire Hazard Mitigation	24
9.32	Zoning Compliance	24

ARTICLE X - GENERAL PROVISIONS

10.01	Attorney Fees	24
10.02	Captions	24
10.03	Duration and Amendment	24
10.04	Effect of Provisions of Declaration	25
10.05	Enforcement	25
10.06	Special Declarant Rights	25
10.07	Notices to Owners	25
10.08	Notices to Association	25
10.09	Mortgage of Lots	26
10.10	Rights of Mortgagee	26
10.11	Severability	26

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
TWILIGHT PEAKS MOUNTAIN VILLAGE**

This Declaration is made on the date hereinafter set forth by Twilight Peaks, LLC, a Colorado limited liability company, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the record owner of certain real property located in the County of La Plata, State of Colorado, hereinafter referred to as the "Project" and described more particularly on Exhibit "A" attached hereto, made a part hereof and incorporated herein by reference; and

WHEREAS, Declarant desires to and does hereby establish Twilight Peaks Mountain Village, a master planned residential community, hereinafter referred to as the "Village", on a portion of the real property described on Exhibit "A" attached hereto; and

WHEREAS, development of the Village is planned in three (3) phases, wherein the Initial Real Property to be included in the Village in the first phase is described on Exhibit "B" attached hereto, made a part hereof and incorporated herein by reference, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which comprise a part of the Initial "Village Property" as hereinafter defined); and

WHEREAS, Declarant reserves the right, at the option of the Declarant and pursuant to the provisions of this Declaration, to subsequently add other portions of the real property described on Exhibit "A" to, and which will thereafter be included in, the Village and thereby made subject to this Declaration and the jurisdiction of the covenants, conditions, restrictions, limitations, easements, assessments, liens, privileges and rights contained herein; and

WHEREAS, Declarant deems it desirable to establish covenants, conditions and restrictions upon the Village Property and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the proper use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Village Property and enhancing the quality of life within this common interest community; and

WHEREAS, it is desirable for the efficient management of the Village to create an owners' association to which should be delegated and assigned the powers of managing, maintaining and administering the Common Elements within the Village and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and to perform such other acts as are herein provided or which generally benefit its members, the Village, and the Owners of any interests therein; and

WHEREAS, Declarant has or will incorporate under the laws of the state of Colorado, a nonprofit mutual benefit corporation, the Twilight Peaks Homeowners Association, Inc., hereinafter referred to as the "Association", for the purpose of exercising such powers and functions, and each Lot within the Village shall have appurtenant to it a membership in said Association; and

WHEREAS, Declarant desires and intends that the Owners, Mortgagees, beneficiaries and trustees under trust deeds, occupants and all other parties having or acquiring any right, title or interest in or to the described Village Property or any part thereof, their heirs, successors and assigns, shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, limitations, easements, assessments, liens, privileges and rights hereinafter set forth which are imposed as equitable servitudes pursuant to a general plan for the development of the property for the purpose of enhancing and protecting the value and desirability of the Village and every part thereon.

NOW, THEREFORE, Declarant, for the purposes above set forth, hereby declares that, unless otherwise stated herein, all of the initial Village Property, as described on Exhibit "B" attached hereto, and such portions of the real property as described on Exhibit "A" which may hereafter be added thereto and shall thereafter be included in the Village Property pursuant to Article II hereto, is and shall be held, transferred, sold, conveyed, devised, leased, rented, encumbered, used, occupied, improved, and otherwise

affected in any manner subject to this Declaration and the covenants, conditions, restrictions, limitations, easements, assessments, liens, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Village Property and upon all parties having or acquiring any right, title or interest in or to the Village Property, or any part thereof, and shall inure to the benefit of each Owner thereof, the Association and each Member of the Association.

ARTICLE I - DEFINITIONS:

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

1.01 "Additions to Initial Property" shall mean and refer to the real property described on Exhibit "A" which is not included in the Village as the Initial Property and has not been previously added to the Village, or any portions thereof, and which is hereafter added to the Village, thereby becoming a part thereof and subject to this Declaration pursuant to Article II, hereof.

1.02 "Architectural Committee" shall mean and refer to the Architectural Design Review Committee as such is provided for in Article VII of this Declaration.

1.03 "Articles" shall mean and refer to the Articles of Incorporation of the Twilight Peaks Homeowners Association, Inc., as such Articles may be amended from time to time.

1.04 "Assessments" shall include the following:

A. "General Assessments" shall mean and refer to that portion of the Common Expenses, including reserves therefore, which is to be paid by each Owner as determined by the Board.

B. "Capital Improvement Assessments" shall mean and refer to the amount which is to be paid by each Owner representing such Owner's proportionate share of the cost to the Association for the installation, improvement, construction or reconstruction of any capital improvements on any of the Common Elements which the Association may from time to time authorize as provided herein.

C. "Special Assessments" shall mean and refer to any charge against a particular Member, Owner or a Lot, directly attributable to such Member, Owner or Lot, to reimburse the Association for costs incurred in bringing the Owner or the Lot into compliance with provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, together with attorneys' fees and other charges payable by such Owner pursuant to the provisions of this Declaration, as provided in Article VI hereof.

1.05 "Association" shall mean and refer to the Twilight Peaks Homeowners Association, Inc., a Colorado non-profit corporation, its successors and assigns, the exclusive membership of which shall consist of the Owners, including the Declarant, of Lots included in the Village and subject to this Declaration and including, effective at the time such Lots are included in the Village pursuant to the provisions of Article II, Lots which may be as yet undeveloped and not yet included or added hereto.

1.06 "Association Rules" shall mean and refer to the rules and regulations adopted by the Association pursuant to Article IV, hereof, and as such may be amended from time to time.

1.07 "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Twilight Peaks Homeowners Association, Inc.

1.08 "Building Envelope" shall mean and refer to that area of each Lot within which the residential dwelling unit, garages, structures and other improvements, other than the access driveway, shall be located and is the only area where alterations to the natural landscape, if any, may occur. The Building Envelope is designated for each Lot and shown on the plat map. If the Building Envelope is subsequently modified by mutual agreement between the Owner and the Architectural Committee, then in such case the Building Envelope thereafter shall refer to the area as so modified.

1.09 "Bylaws" shall mean and refer to the Bylaws of the Twilight Peaks Homeowners Association, Inc., as such Bylaws may be amended from time to time.

1.10 "Common Elements" shall mean and refer to the portions of the real and personal property, both tangible and intangible, and all improvements thereon which may from time to time be held, owned, leased, operated or maintained by the Association or made available by the Declarant expressly for the common use and enjoyment of the Owners or Members or for the conduct of the Association's duties, whether or not the Association holds title to such property.

1.11 "Common Expenses" means and includes the actual and estimated expenditures made or liabilities incurred for maintenance, repair, construction, reconstruction, replacement, improvement, operation, management and administration of the Common Elements and operation of the Association, its Board and Committees, together with any allocations to reserves for such purposes as approved by the Board, and all sums designated Common Expenses by or pursuant to this Declaration, the Articles or Bylaws.

1.12 "Common Roads" shall mean and refer to the roads constructed within the access easements as shown on the Maps of the Project and which provide common access to the Lots within the Village. The Common Roads shall include such roads or emergency accesses as may hereafter be designated by the Declarant as Common Roads and shown on the Maps.

1.13 "Control Date" shall be sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created, including such Lots as may be created in Phases 2 and 3, to Owners other than Declarant or two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business, including any such Lots as may be created by Declarant in Phases 2 and 3, whichever takes place earlier. The Declarant shall have special rights and powers, as stated elsewhere herein and in C.R.S. 38-33.3-101 et. seq., which give the Declarant substantial control in developing the property, including the ability to appoint Board Members and amend this Declaration until after the Control Date.

1.14 "Covenants, Conditions and Restrictions" shall mean and refer to these declarations, covenants, conditions, restrictions, limitations, easements, assessments, liens, privileges and rights as established, herein, by this Declaration and applicable Colorado law.

1.15 "Declarant" shall mean and refer to Twilight Peaks, LLC, a Colorado limited liability company, its successors and assigns. Declarant is the developer of the Project.

1.16 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, the Plats, Maps and any other recorded instruments that create the Common Interest Community of Twilight Peaks Mountain Village, and any properly recorded supplements or amendments thereto.

1.17 "Design Guidelines" shall mean and refer to the written rules, regulations, restrictions, architectural and landscaping standards and design guidelines adopted by the Architecture Design Review Committee, as amended from time to time.

1.18 "First Mortgage" shall mean and refer to a Mortgage, contract or other instrument of record which purports to have paramount priority with respect to a Lot, excepting the lien of taxes and the lien for Assessments for Common Expenses to the extent set forth herein.

1.19 "First Mortgagee" shall mean and refer to the Mortgagee, Trustee, Vendor or similar party holding a First Mortgage or beneficial interest in a recorded document purporting to be a paramount lien.

1.20 Gender and Number: Unless the context otherwise requires, the use of the masculine shall include the feminine, and the use of the singular shall include the plural, herein.

1.21 "Initial Property" shall mean and refer to that property which shall initially be included in the Village and be subject to this Declaration and which is more particularly described on Exhibit "B" attached hereto.

1.22 "Lot" shall mean and refer to any subdivided plot of land included in the Village which is designed and intended for use and occupancy as a residence by a single family, together with any improvements thereon, as shown upon any recorded Subdivision Map of the Project.

1.23 "Managing Agent" shall mean and refer to such agent, agents or employees thereof who may be appointed by the Board pursuant to the terms of this Declaration.

1.24 "Maps" shall mean and refer to the subdivision plat maps, as recorded, and all amendments and supplements thereto for the Village and including such maps as may apply to any Additions to the Initial Property, including Phases 2 and 3 or any portions thereof.

1.25 "Member" shall mean and refer to a Person entitled to membership in the Association by virtue of being an Owner, including the Declarant, as provided herein.

1.26 "Mortgage" shall mean and refer to any mortgage, deed of trust, executory land sales contract, or other security instrument, given in good faith and for valuable consideration which is not a fraudulent conveyance under Colorado law, encumbering a Lot as security for the performance of an obligation and recorded in the records of the office of the Clerk and Recorder of the county of La Plata, Colorado, but shall not include any instrument creating or evidencing solely a security interest arising under

the Uniform Commercial Code.

1.27 "Mortgagee" shall mean and refer to the beneficiary or holder of a Mortgage.

1.28 "Mortgagor" shall mean and refer to the mortgagor of a Mortgage, including the grantor of a deed of trust, or other similar party.

1.29 "Owner" or "Owners" shall mean and refer to the record holder, whether one (1) or more Persons, including the Declarant, of fee simple title to any Lot which is a part of the Village but excluding any such Persons having an interest merely as security for the performance of an obligation or an interest in the property consisting of an estate which is not fee simple title. If a Lot is sold under a contract of sale the fee owner will be considered the "Owner", rather than the contract purchaser.

1.30 "Outlot" shall mean and refer to any parcel of land which is included in the Village and is owned by the Declarant or the Association and is used in conjunction with the Common Elements or as open space and is not intended to be used for the construction of residential dwellings. Such Outlot(s) shall not be subject to Assessments by the Association.

1.31 "Person" shall mean and refer to a natural person, a corporation, a partnership, a limited liability company, a trustee, an estate or other legal entity.

1.32 "Phase 1" shall mean and refer to the Initial Property included in the Village which is more particularly described on the attached Exhibit "B", including the real property and all improvements and structures constructed or to be constructed thereon and appurtenances including Common Elements, utilities, easements, access easements and any agreements, official action and court decrees which are an integral part of the operation and enjoyment of said Phase 1.

1.33 "Phase 2" and "Phase 3" shall mean and refer to the entire real property described on Exhibit "A" which is not included in Phase 1, including all improvements and structures constructed or to be constructed thereon and appurtenances including Common Elements, utilities, easements, access easements and any agreements, official action and court decrees which are an integral part of the operation and enjoyment of said Phases. All of the real property in Phase 2 and Phase 3, or any portions thereof, may be added to, and included within, the Village pursuant to Article II hereof.

1.34 "Private Roads" shall mean and refer to all roads and driveways, other than the Common Roads or roads dedicated for public use, which are contained within the boundaries of one or more Lots. The maintenance of Private Roads, and the costs thereof, shall be the responsibility of the Owners of those Lots using each such Private Road, respectively, and not the responsibility of the Association.

1.35 "Project" shall mean and refer to the entire real and personal property, including all improvements and structures constructed or to be constructed thereon and as more particularly described on the attached Exhibit "A", together with all plats, permits, design documents, official records, court decrees and Project Documents which are necessary for the creation and operation of the development under the law.

1.36 "Project Documents" shall mean and refer to this Declaration, together with the other basic documents used to create and govern the project, including the Maps, Articles, and Bylaws and any property recorded supplements or amendments thereto, official action documents, court decrees, any lien or assessment documents and the Association Rules and Design Guidelines as such may be adopted and amended from time to time by the Board or the Association.

1.37 "Statement of Assessments" shall mean and refer to the written statement setting forth the nature and amount of Assessments due or owing on a Lot that must be provided to a buyer by an Owner selling such Lot or by the Association upon demand as provided herein.

1.38 "Supplementary Declaration" shall mean and refer to any supplemental declaration to this Declaration recorded in the records of the Clerk and Recorder of the county of La Plata, Colorado, for purposes of bringing additional lands, including Phases 2 and 3 or any portions thereof, within the scheme of this Declaration and making such lands part of the Village.

1.39 "Village" or "Twilight Peaks Mountain Village" shall mean and refer to the planned community subject to this Declaration, including all of the real property and improvements and structures constructed or to be constructed thereon and appurtenances including Common Elements, utilities, easements, access easements, and any agreements, official action and court decrees which are an integral part of the operation and for the enjoyment of said Village. The Village includes the Initial Property as described on Exhibit "B" attached hereto and such Additions to Initial Property that become subject to this Declaration or any Supplementary Declaration pursuant to Article II, hereof.

1.40 "Village Property" shall mean and refer to all such Initial Property and Additions to Initial

Property, (including any leasehold or other estate or interest in, over, or under land including structures, fixtures, and other improvements, appurtenances and interests that, by custom, usage or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance) as are subject to this Declaration or hereafter become subject to this Declaration or any Supplemental Declaration as provided in Article II, hereof.

ARTICLE II - DESCRIPTION OF PROJECT

2.01 Initial Property: The Initial Property is set forth and defined in the "Definitions" portion at Section 1.21 of Article I herein.

2.02 Additions to Initial Property: The Declarant reserves the right to subdivide and create additional Lots in Phase 2 and Phase 3 and add such Lots to, and which will thereafter be included within, the Village. The total number of Lots thus created by the Declarant in all three (3) phases and included in the Village shall not exceed thirty-eight (38) Lots.

The entire real property within Phases 2 and 3 of the Project, or any portions thereof, and any appurtenances or improvements thereon, may become subject to this Declaration by filing of an appropriate plat map depicting the real property to be so included and by recording in the records of the Clerk and Recorder of the County of La Plata, Colorado, a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of this Declaration to such property. Such Supplementary Declaration may contain such complementary additions and modifications of the Covenants, Conditions and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the general plan of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants, conditions and restrictions established by this Declaration and applicable to the property previously included in the Village.

2.03 Common Elements: The Association shall own or otherwise hold and/or manage the Common Elements for the mutual benefit of the Owners and for such other purposes as set forth in, and in accordance with, the provisions of this Declaration, the Articles and the Bylaws. Common Elements, as defined herein at Section 1.10 of Article I, may include, by way of example and not by way of limitation, access roads, entry gates, signs, fences, central water systems, central sewer lines or systems, ditches, utility lines, drainage systems and water retention structures. The costs associated with such Common Elements shall be Common Expenses as defined herein at Section 1.11 of Article I and it shall be the sole responsibility of the Owners to provide sufficient maintenance and reserve funds to pay all such Common Expenses.

A. Declarant may deed, make available or convey by other means, various real and personal property to the Association as Common Elements to be held or managed for the benefit of the Owners. The Association shall accept such Common Elements, including the costs and obligations of subsequent maintenance, repair and replacement of such Common Elements thereafter, and may exercise all powers of assessment and other necessary and proper powers granted or implied herein for the purpose of fulfilling all responsibilities vested in the Association by law, this Declaration or otherwise.

B. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements and each Owner specifically agrees not to institute any action therefor. Further, such Owner agrees that this Section may be pled as a bar to the maintenance of such action. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorney's fees, costs and other damages the Association incurs in connection therewith. Notwithstanding the foregoing, any co-owner of a Lot may sue for partition among the Owners of such Lot provided, however, such partition shall take the form of a sale of the entire Lot and a subsequent division of the proceeds of the sale among such Owners. A partition in kind shall not be allowed and each Owner expressly waives any and all rights of partition in kind.

Notwithstanding any provisions to the contrary contained in this Declaration and in order to provide for a means of terminating the development if this should become necessary or desirable, on occurrence of any of the conditions allowing an Owner of a Lot to maintain an action for partition, three-fourths (3/4) of the Owners of Lots shall have the right to petition the Court having jurisdiction to alter or vacate the recorded Subdivision Map of the property and to vest title to the property in Owners as tenants in common and order an equitable partition of the property in accordance with the laws of the State of Colorado.

C. Each Owner may use the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners, subject to the provisions herein and such reasonable rules and regulations as may, from time to time, be established by the Association or the Board of Directors.

D. The Owners acknowledge that the Common Roads in the project are a Common Element, private in nature, and will not be maintained, repaired, or snow plowed by the County of La Plata or any other public entity. The Association shall keep all of the Village's Common Roads and appurtenances thereto, including fire hydrants, in a state of good condition and repair, including snow removal, consistent with the standard of quality of said roadways, hydrants and appurtenances upon original

installation and to ensure such Common Roads are at all times serviceable for normal and emergency roadway functions and fire hydrants are accessible and serviceable for emergency purposes.

E. The Association shall be responsible for the operation, maintenance and repair of the community Central Water System, including the costs thereof. The installation, maintenance and repair, including the costs thereof, of individual water service lines which connect a Lot with the central water lines shall be the responsibility of the respective Lot Owner. The Central Water System shall include the well(s), pump, water treatment facilities, storage tank, water mains and other necessary components thereto. The Association shall be responsible for operating the Central Water System in strict compliance with the terms of the Water Decree, District Court Case No. 93CW27, Water Division No. 7, (Reception Number 676195 as filed in the records of the Clerk and Recorder of La Plata County).

Declarant reserves the exclusive right and authority to make connections to and use the Central Water System and to grant to others, both Members and/or non-Members, the right to connect to, or otherwise use, the Central Water System. Declarant reserves the right to use the existing well and any future wells hereafter constructed within or used to supply the Village as alternate or substitute points of diversion for all or any portion of its decreed water rights and further reserves the right to use the Central Water System for distribution and treatment of said water and to exercise such rights and fulfill its obligations related thereto and reserves unto itself an easement over, under, across and upon the Common Elements for such purposes. Declarant retains the title to, and the right to use, all remaining water rights owned by Declarant, whether or not included in said decree in Case No. 93CW27, District Court, Water District #7; and Declarant shall be entitled to beneficially use said water for any and all decreed uses including, without limitation, irrigation within or without the Project.

F. The Association shall be responsible for the operation, maintenance and repair of the Central Sewer System, including the costs thereof. The Central Sewer System shall include the central sewer lines, manholes and any other associated components to the point at which the lines connect to the sewer lines owned by the Needles Homeowners Association, Inc. (the "Needles"). The Needles is the owner and operator of the existing sewage processing plant. The installation, maintenance and repair, including the costs thereof, of individual sewer service lines which connect a residence with the central sewer lines and the Needles' user charges for sewage disposal service shall be the responsibility of the respective Lot Owner.

Declarant reserves the exclusive right and authority to make connections to and use the Central Sewer System for sewage disposal services and reserves the sole right to grant to others, both Members and/or non-Members, the right to connect to, or otherwise use, said Central Sewer System and reserves unto itself an easement over, under, across and upon the Common Elements for such purposes.

2.04 Delegation of Use: No Member or Owner may delegate his right of use and enjoyment of the Common Elements and facilities to any Person, except to the members of his immediate family, guests, or tenants as permitted and limited by the Association Rules and except for rights otherwise reserved to Declarant as provided elsewhere herein.

2.05 Damage and Destruction of Common Elements: In the event of partial or total destruction of the Common Elements, or any improvements thereon, it shall be the duty of the Association to restore and repair the same as promptly as practical pursuant to this Section 2.05. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

A. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, shall be at least 75% of the estimated cost of restoration and repair, a Capital Improvement Assessment solely for reconstruction shall be levied by the Association and divided equally among all the Lot Owners to provide the necessary funds for such reconstruction in excess of the amount of the funds available for such purpose. The Association shall thereupon cause the damaged or destroyed Common Elements to be restored to substantially the condition the Common Elements were in prior to the destruction or damage.

B. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, shall be less than seventy-five percent (75%) of the estimated cost of restoration and repair, the Common Elements shall be replaced or restored unless two-thirds (2/3) of the Members, at a special meeting held for such purpose, disapprove of such replacement or restoration. If the Members do not disapprove of such replacement or restoration, the Association shall cause the damaged or destroyed Common Element(s) to be restored as closely as practical to its former condition prior to the destruction or damage and a Capital Improvement Assessment solely for such reconstruction shall be levied by the Association and divided equally among all the Lots and shall be payable by the Owners of such Lots. If the Members disapprove of the repair or restoration of the damaged or destroyed improvements on the Common Elements as provided above, the Common Elements so damaged or destroyed shall be cleared and used as determined by the Association and the costs thereof shall be paid with the insurance proceeds.

C. In the event any excess insurance proceeds remain after any reconstruction and repair by the Association pursuant to this Section, the Association, in its sole discretion, may retain such sums in the general funds of the Association or may distribute all or a portion of such excess to the Owners, subject to the prior rights of Mortgagees whose interest may be protected by the insurance policies carried by the Association. The rights of an Owner or Mortgagee of a Lot as to such distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

ARTICLE III - EASEMENTS

3.01 Easements and Rights: The Lots within the Village shall be subject to the following easements and rights, and such easements and rights are granted to all Owners on a non-exclusive basis and reserved to Declarant on the same basis, subject to the condition that their use and enjoyment shall not unreasonably interfere with the use, occupancy or enjoyment of all or any part of the Lot, or Lots, encumbered or to which they are appurtenant:

A. All of the Lots shown on the Maps, including the lands within Phases 2 and 3 and all Lots which may be subdivided in Phases 2 and 3 and hereafter become subject to this Declaration, shall have appurtenant to them as the dominant tenement, a nonexclusive easement, over, under, upon and across the Common Elements as the servient tenement now or hereafter owned by the Association,

(1) for ingress and egress to and from the Lots from the public streets adjacent to the Project and the Common Roads in the Village;

(2) for the use and enjoyment of the Common Elements;

(3) where applicable, for the construction, maintenance and operation of utilities which serve the Project; and

(4) for access by Owners and residents of the Village from the Common Road to and from the National Forest along the twenty foot (20') Pedestrian Easement as shown on the Plat, specifically prohibiting the use thereof by any and all motorized vehicles.

The foregoing rights and easements are as shown on the recorded plat map and are subject to the limitations and restrictions contained elsewhere on the plat and in this Declaration.

B. The right of the Association to discipline Members and to suspend the voting rights of a Member for any period during which any Assessment against his Lot remains unpaid, and for any infraction of the Declaration, Bylaws, Articles, Architectural Guidelines or written Association Rules, in accordance with the provisions herein.

C. The right of the Association to dedicate, transfer or mortgage all or any part of the Common Elements owned by the Association to any public agency, public authority, or public utility company for such purposes and subject to such conditions as may be agreed to by three-fourths (3/4) of the Members, including the Declarant, provided, that in the case of the borrowing of money and the mortgaging of its property as security therefor, the right of such Mortgagee shall be subordinate to the right of the Members of the Association. No such dedication, transfer or Mortgage shall be effective unless an instrument signed or approved by three-fourths (3/4) of the Members, including Declarant, agreeing to such dedication, transfer or mortgage has been recorded.

D. The right of the Association to grant easements under, in, upon, across, over, above or through any portion of the Common Elements for purposes which are beneficial to the development and enjoyment of the Project, including, by way of example and not by way of limitation, access, utilities, and parking, in accordance with the general plan established by this Declaration and subject to the limitations contained elsewhere in this Declaration.

E. All amounts paid, if any, by any outside agency or other entity to purchase or use easements within the first twenty (20) years following the recording of this Declaration shall belong to Declarant except for payments for actual damages which shall belong to the Association or the affected Lot Owner as the case may be.

3.02 Easements to Accompany Conveyance of Lot: The easements, uses and rights herein created which benefit or burden any Lot shall be appurtenant to that Lot and shall, by operation of this Declaration constitute a grant and reservation of said easements, uses and rights, even though the description in the instrument of conveyance may refer only to the fee title to the Lot.

3.03 Maintenance Easement: The Declarant reserves and hereby grants to the Association a non-exclusive right and easement for the Association to make such use of and to enter into or upon the Common Elements and each Lot as the servient tenement as may be necessary or appropriate for the performance of the duties and functions which the Association is obligated or permitted to perform under this Declaration. Nothing herein shall be construed to mean that the Association is responsible for representing or advocating the interests of any Owner(s) against another Owner(s).

3.04 Rights of Entry and Use: The Lots and Common Elements shall be further subject to the following rights of entry and use:

A. The right of the Association's agents or employees to enter the Common Elements or any Lot to cure any violation of this Declaration, the Articles or the Bylaws, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation within thirty (30) days after the finding of a violation by the Association;

B. The access rights of the Association to maintain, repair or replace improvements or property located in the Common Elements;

C. The easements described in this Article III;

D. The right of the Association, it's agents or employees to enter any Lot to perform maintenance as described in this Article III;

E. The rights of the Declarant during the construction period or any time prior to

assumption of the associated responsibilities by the Association as described in this Article III or elsewhere herein.

3.05 Pond, Drainage, Irrigation and Fishing Easements: An easement over, under and across each Lot is reserved by Declarant, and is hereby granted to the Association, for maintaining, improving, changing, correcting or otherwise modifying the drainage of surface water as necessary and for continued flood, sprinkler or other irrigation of land with Butler Ditch #1 water. Reciprocal appurtenant easements between each Lot and the Common Elements and between adjoining Lots are hereby created for the flow of surface water.

A drainage easement, thirty feet (30') in width, over, under, upon and across the Lots as identified and shown on the plat map is reserved by the Declarant for purposes of collecting and directing water flows into, out of, and through the retention ponds.

A Pond Easement, within and upon Lots 13 and 14, is reserved by the Declarant for purposes of constructing, maintaining, improving, changing, correcting or otherwise modifying water retention ponds and related structures and water storage therein, snow storage, controlling flows into and out of such ponds, and including stocking and maintaining fish in such ponds.

Declarant and each Owner shall have a Fishing Easement in the retention ponds as such may be constructed by Declarant on said Lots 13 and 14. Such Fishing Easement shall permit the Declarant and each Owner to catch and remove fish from such ponds during daylight hours and subject to such reasonable rules and regulations as may be adopted by the Board and subject to any applicable federal, state or local laws or ordinances. Physical access to such ponds for fishing shall be limited to pedestrians and restricted to the south bank of the ponds between the pond inflow and outflow. Said easement does not include the right to swim, wade or boat on or in the ponds.

3.06 Declarant's Easement: Declarant reserves unto itself the nonexclusive right to use the access, utility, snow storage, well and water facility easements as shown on the Plat and may drill additional water wells, install and maintain electric, telephone, television, domestic or other water, sewer, or other utility lines, connections, equipment and facilities within these easements or allow a public or private utility company to install and maintain such utility lines, connections, equipment and related facilities. In addition to any other rights reserved, Declarant reserves the right to access, drill, maintain and utilize a well located approximately 2,290 feet south of the north Section line and 2,450 feet east of the west Section line, Section 2, T38N, R9W, N.M.P.M.

Subject to the provisions of this Declaration, Declarant has an easement over, under, across and through the Common Elements, including but not limited to all access, drainage, irrigation, pond, buffer and utility easements as currently exist or as identified or otherwise shown on the plats, as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Declarant's rights and for work necessary to complete development and construction of the Project including the development and construction of Lots in Phases 2 and 3.

The Declarant reserves and retains unto itself all rights to Castle Rock Spring (Water Decree dated March 4, 1981, Case No. 80CW195, Water Division 7), 0.5 cubic feet per second of water in the Butler Ditch (Priority #143, April 23, 1897; Decree #1751, November 8, 1923) and all rights as provided in and pursuant to the Water Decree in District Court Case No. 93CW27, Water Division No. 7, State of Colorado (Reception No. 676195 in the records of the Clerk and Recorder of La Plata County), including, but not limited to, the right to irrigate with or put such water to other beneficial use upon any of the Village Property or make such water available to the Association for such use. Drainage, ditch and waste water collection easements are hereby reserved unto the Declarant regardless of whether shown on the Plat of the Village, including all phases, and no Owner, other than the Declarant, shall acquire vested rights in such water nor shall any Owner be able to transfer, encumber or otherwise affect title to said water rights unless expressly conveyed to such Owner by Declarant.

Notwithstanding anything contained in this Declaration to the contrary, Declarant hereby reserves unto itself, for a period of twenty (20) years after the recording date of this Declaration, the exclusive right to grant easements to non-Owners for utilities upon, over, under and across utility easements and for access across access easements as such are shown on the Plat and to allow connection to any utilities within the Project by non-Owners. All compensation for such easements and connections shall remain the property of Declarant, except compensation paid for damages or repairs to roadways or utilities. Any such easement grants shall be specifically described in an instrument to be recorded and no easement grants shall unreasonably interfere with the Owners' rights hereunder or be inconsistent with this Declaration. Failure to record shall render such easements unenforceable.

3.07 Other Easements: The Common Elements and each Lot are subject to all easements, dedications, ditches and rights of way granted or reserved in, on, over and under the property as currently exist or as shown on the Maps.

ARTICLE IV - HOMEOWNERS' ASSOCIATION:

4.01 General Purposes: The Twilight Peaks Homeowners Association, Inc., acting through the Board of Directors or the Managing Agent, shall own or hold and shall manage the Common Elements and perform functions as provided in this Declaration, the Articles, and the By-laws so as to promote the health,

safety, welfare and general benefit of all Owners, including the enforcement of this Declaration.

4.02 Duties: In addition to the duties prescribed by law, enumerated in its Articles of Incorporation or Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

A. The Association shall provide for the care, operation, management, maintenance, repair and replacement of the Common Elements, and all improvements and landscaping thereon, and all property held, owned, leased, used, operated or maintained by the Association, which may include, by way of example and not limitation, Common Roads, Central Water System, Central Sewer System, recreational facilities, entry gates, mailbox facilities, pathways, parking areas, street and entry signs, irrigation systems, lighting fixtures, structures, fences, drainage systems, retention ponds and related structures.

Without limiting the generality of the foregoing, said obligations shall include the keeping of Common Elements in good, clean, attractive, safe and sanitary condition, order and repair, the removing of snow and any other materials from Common Elements which might impair access to the Village, keeping the Village attractive and desirable and making necessary or desirable alterations, additions or improvements to or on the Common Elements.

B. Insurance:

(1) **Types of Insurance:** The Association shall obtain and maintain, to the extent reasonably available, the following policies of insurance written with financially responsible and able companies licensed to do business in Colorado unless the Board, in its sole discretion, determines that such insurance is not necessary:

- (a) Property insurance on the Common Elements;
- (b) Commercial general liability insurance, in such limits as the Board may from time to time determine, against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. Such coverage shall include, without limitation, liability for operation of automobiles on behalf of the Association, if applicable, and activities in connection with the management, ownership, existence, operation, maintenance and other use of the Common Elements;
- (c) Workers' compensation and employer's liability insurance to the extent required by law;
- (d) Fidelity bonds or insurance as required covering officers, directors, employees or any other Person who has access to, controls, disburses, or is responsible for any Association funds;
- (e) Any Managing Agent employed as an independent contractor, and the officers and employees of such Agent, shall obtain and maintain fidelity insurance unless the Association names such Person as an insured employee in a contract of fidelity insurance; and
- (f) Such other insurance as the Board in its discretion considers necessary or advisable.

(2) **Terms and Coverage:** The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, and notices of changes or cancellations) shall be no less than that which is customary for similar policies on similar projects in the area as determined by the Board.

(3) **Appointment of Association as Trustee:** Each Owner appoints the Association, or any insurance trustee designated by the Association, to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

(4) **Inability to Obtain Insurance:** The Association, and its directors and officers, shall have no liability to any Owner, Mortgagee or the Association if, after a good faith effort, it is unable to obtain the liability insurance required hereunder because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member, and any Mortgagee entitled to notice pursuant to the provisions herein, that the liability insurance will not be obtained or renewed.

(5) **Owner's Responsibility:** It shall be each Owner's responsibility to provide for himself insurance on his own Lot, his additions and improvements thereto, furnishings and personal property therein, his personal property stored elsewhere within the Village, his personal liability to the extent not covered by the public liability insurance, if any, obtained by the Association and such other insurance which is not carried by the Association as the Owner desires. No Owner shall maintain any insurance, whether on his Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Elements.

(6) **Non-Liability of Association, Board & Officers:** Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member nor the officers of the Association nor the Declarant shall be liable to any Owner, Member, Mortgagee or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner and Member to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or Member may desire.

C. **Discharge of Liens:** The Association shall discharge by payment, if necessary, any lien against the Common Elements and charge the cost thereof to the Member or Members responsible for the existence of the lien after notice and hearing as provided by the Bylaws.

D. **Assessments:** The Association shall fix, levy, collect and enforce Assessments as set forth in Article VI hereof.

E. **Payment of Expenses:** The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

F. **Enforcement:** The Association shall enforce this Declaration, the Articles, Bylaws, Association Rules and Design Guidelines duly adopted by the Association.

4.03 Powers: In addition to the powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following powers:

A. **Adoption of Rules:** The Board may adopt reasonable rules and regulations (the "Association Rules") not inconsistent with this Declaration governing the use of the Lots, Common Elements and all facilities thereon, and the conduct of Owners and their tenants, guests, invitees and other persons with respect to the Village Property and other Owners. Such Association Rules shall be uniform and non-discriminatory. A copy of the current Association Rules, as adopted, amended, or repealed, shall be available upon request at the principal office of the Association to each Owner, Member or other Person reasonably entitled thereto. The Association, the Declarant or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such Association Rules and with the provisions of this Declaration, the Articles and Bylaws and to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law. The Association shall also be entitled to recover all reasonable costs and attorneys' fees incurred with any enforcement action.

B. **Access:** The Board or its agents may enter upon any Lot as necessary in connection with any maintenance or emergency repairs for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association at the expense of the common fund. Except in case of emergency, a minimum of twenty-four (24) hour advance notice shall be given to the Owner or occupant of such Lot.

C. **Assessments, Liens and Fines:** The Association shall have the power to levy and collect Assessments in accordance with the provisions of Article VI herein. The Association may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violations of any provision of the Project Documents. Penalties may include but are not limited to fines, temporary suspension of voting rights, or other appropriate discipline, provided the Member is given notice and a hearing, as provided in the Bylaws, before the imposition of any fine or disciplinary action.

D. **Enforcement:** The Association shall have the power to enforce this Declaration, the Articles, Bylaws, Rules and Regulations, Design Guidelines and the provisions therein.

E. **Easements:** The Association shall have the authority, by Majority vote of the Members, to grant utility easements, in addition to those shown on the Subdivision Map, over the Common Elements where necessary for utility facilities which shall exclusively serve the Lots and Common Elements within the Village. The Association and the Lot Owners shall not have the authority to grant access or utility easements to serve or access private or public property not a part of the Project, except with the prior approval of seventy-five percent (75%) of all the Members and subject to such other restrictions set forth elsewhere herein. Such authority shall be reserved solely unto the Declarant for a period of twenty (20) years after the recording date of this Declaration.

F. **Dedication:** The Association shall have the power to dedicate, sell, or transfer all or any part of the Common Elements owned by the Association to any public agency, authority, or utility company for such purposes and subject to such conditions as may be agreed to by the Members, consistent with this Declaration and subject to the conditions and restrictions as set forth elsewhere in this Declaration, the Articles and Bylaws. No such dedication shall be effective unless an appropriate instrument has been signed or approved by seventy-five percent (75%) of the total voting power of the Members of the Association, agreeing to such dedication, sale or transfer. All compensation for such easements within twenty (20) years of the recording date of this Declaration shall remain the property of the Declarant.

G. **Contracts:** The Association shall have the power to contract for goods and/or services for the Common Elements, facilities and interests or for the Association, including legal and accounting services considered necessary or desirable, subject to any limitations set forth in the Project Documents. The Association shall have the power, but not the obligation, to contract with individual Owners to provide additional services to such Owners, including but not limited to snow plowing private driveways or other maintenance services on a Lot, the entire cost of which shall be paid for by the respective Owner.

H. **Delegation:** The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association or to contract with independent contractors or Managing Agents to perform all or any part of the duties and responsibilities of the Association, provided, however, that the Board shall not delegate its responsibility for the following:

- (1) To make expenditures for capital additions or improvements chargeable against the reserve funds;
- (2) To conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Declaration, Articles, Bylaws, Association Rules or Design Guidelines

promulgated by the Board:

(3) To make a decision to levy monetary fines, impose Special Assessments, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;

(4) To make a decision to levy General or Capital Assessments; or

(5) To make a decision to bring suit, record a claim of lien or institute foreclosure proceedings for default in payment of Assessment.

Any contract with a firm or person appointed as a Manager or Managing Agent shall not exceed a one (1) year term and shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association and to terminate the same without cause or payment of a termination fee on ninety (90) days' written notice, or for cause on thirty (30) days' written notice.

I. **Acquisition and Disposition of Property:** The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, construct, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real and tangible and intangible personal property in connection with the affairs of the Association. Any transfer by the Association of real property owned by the Association shall be by the appropriate legal instrument signed or approved by two-thirds (2/3) of the total voting power of the Association.

J. **Indebtedness:** The Association shall have the power to borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of this Declaration, the Articles and Bylaws and to authorize the appropriate officers to execute all such instruments evidencing such indebtedness as the Board may deem necessary, and such indebtedness shall be the several obligations of all the Owners in the same proportions as they share the Common Expenses; provided, however, that the Board shall not borrow more than \$10,000, or cause the Association to be indebted for more than \$10,000 at any one time, without the prior approval, by a Majority vote or written consent, of the members of the Association present at a meeting duly called for such purpose and at which a quorum is present. The Association shall have the power, with the assent (by Majority vote or written consent) to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for such money borrowed or debts incurred.

K. **Appointment of Trustee:** The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee for insurance purposes or to enforce Assessment liens by sale as provided herein and as provided by Colorado law.

L. **Other Powers:** In addition to the powers contained in this Section 4.03 and elsewhere in this Declaration, the Association may exercise the powers granted to a nonprofit corporation under Colorado law.

4.04 Commencement of Association's Duties and Powers: Until incorporation of the Association, all duties and powers of the Association as described herein, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. From and after the date of incorporation of the Association, the Association shall assume all such duties and powers, and Declarant shall be relieved of any further liability therefor.

4.05 Board of Directors: The affairs of the Association shall be managed by the Board of Directors (the "Board"), which may by resolution delegate any portion of its authority to a Board Member, an executive committee, an officer or a Managing Agent, subject to any restrictions contained elsewhere in this Declaration.

A. There shall be not less than three (3) nor more than five (5) members of the Board (hereinafter "Board Members"), as set forth from time to time in the Bylaws, all of whom shall be Owners and be elected, and may be removed, by the Members as specifically provided in and subject to the limitations as set forth in this Declaration, the Articles and Bylaws.

B. When the Owner of a Lot is not a natural person, such Owner may designate an individual duly appointed, qualified and empowered to represent such Owner, including an officer of the respective corporation in the case of a corporate Owner, a general partner of a partnership, a member of a limited liability company, a trustee of a trust or an executor of an estate, and such individual so designated may serve on the Board, be an officer of the Association or otherwise serve on behalf of such Owner if so elected or appointed in accordance with the provisions herein.

C. Notwithstanding anything to the contrary herein or in the Articles or Bylaws, a majority of the members of the Board of Directors shall be appointed and may be removed by the Declarant until after the Control Date and such Board Members appointed by Declarant may be non-Owners.

4.06 Notice to Registered Mortgagees: Any First Mortgagee may register with the Association by transmitting to the Association, by certified U.S. Mail, return receipt requested, postage prepaid, a notice setting forth its name and mailing address and the name of its Mortgagor and the identifying address or number of the Lot encumbered by its Mortgage, and enclosing a copy of its Mortgage as recorded. The Association shall transmit to each such Registered Mortgagee, upon receipt of payment by the Mortgagee for the Association's actual or estimated costs of providing such materials to the Mortgagee, the following:

1) Notice of any change in the Managing Agent at least ten (10) days before the effective date thereof;

2) A copy of the Association's financial statements, as they become available (which may be audited at the request and expense of the requesting Mortgagee);

- 3) Notice of all meetings of the Members of the Association, which any Mortgagee may attend in person or by representative;
- 4) Notice of any condemnation proceeding or casualty loss in which the Association is directly involved that affects either a material portion of the Village Property or the Lot securing its Mortgage;
- 5) Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- 6) Notice of any proposed action that requires the consent of a specified percentage of Mortgagees; and
- 7) Notice that Assessment Installments pertaining to the Lot encumbered by such Mortgage are delinquent by more than sixty (60) days, if such is the case.

4.07 Indemnification: To the fullest extent permitted by law, every Board Member, officer of the Association, member of the Architectural Committee or Person having served in any such capacities on behalf of the Association and the Declarant (to the extent a claim may be brought against the Declarant by reason of its appointment, removal, control of or failure to control members of the Board or the Architectural Committee) shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or any settlement thereof, whether or not he is a Board Member, officer or member of the Architectural Committee or serving in such other specified capacity at the time such expenses are incurred, provided that such officer, Board Member, member of the Architectural Committee or other Person having so served, or the Declarant, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. Every other Person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may in the discretion of the Board, be similarly indemnified by the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of, all other rights to which such Persons may be entitled at law or otherwise.

4.08 Non-Liability of Officials: To the fullest extent permitted by law, neither Declarant, the Board, the Architectural Committee or any other committees of the Association nor any member thereof, nor any Board Member or officers of the Association, shall be liable to any Member, Owner, occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the Board, or such committees or Persons reasonably believed to be within the scope of their respective duties.

ARTICLE V - MEMBERSHIP AND VOTING RIGHTS

5.01 Membership: The Owner of a Lot shall automatically upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as his interest in the property is transferred or his ownership ceases for any other reason. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or whose interest constitutes a lien upon an ownership interest. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Membership in the Association shall be mandatory for all Owners. Membership in the Association shall be limited to Owners of Lots and shall be held in accordance with this Declaration, the Articles and the Bylaws.

A Person automatically ceases to be an Owner upon conveyance of 100% of his interest in his Lot. Such cessation of ownership shall not per se operate to extinguish or otherwise void any unsatisfied obligation of such Person existing or arising at or prior to the time of such conveyance, specifically including but without limiting the generality of the foregoing, any unsatisfied obligation to pay Association Assessments.

5.02 Transfer of Membership: Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee in the case of an encumbrance, of such Lot. On any transfer of an Owner's interest in his Lot, including a transfer on the death of an Owner, membership passes automatically with transfer of his interest to the transferee or in accordance with law to the appropriate representative of any estate.

5.03 Voting Rights: The Association shall have one (1) class of voting membership. Members shall be all Owners, including Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an interest in any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Association, by action of its Board, shall have the right to suspend the voting rights of any Owner for any period during which any Assessment against his Lot remains unpaid. In the event any group of multiple Owners of any Lot or Lots is not able to agree on how to vote or because of such Owners' inability to communicate and determine how a vote will be made, the Association, acting through its Board, may vote in place of such group and is hereby appointed attorney-in-fact solely for such

purpose. The Association shall have the right to rely upon any vote cast which is later the subject of dispute among multiple owners and the recourse for any such improperly cast vote shall be among such multiple owners only. The Board of Directors shall cast the vote of any Lot owned by the Association.

5.04 Notice For Meetings: Any action authorized which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than fourteen (14) nor more than sixty (60) days in advance of the meeting specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of Colorado Law.

5.05 Quorum for Any Action Authorized: At the first such meeting called pursuant to Section 5.04, the presence of Members or of proxies entitled to cast more than fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, those present may adjourn the meeting for no more than sixty (60) days without additional notice or, in the alternative, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. The Association shall have at least one meeting each year. The date for such meeting shall be the first Saturday in December of each year, or such other date as may be established by the Board.

5.06 Proxies: All proxies or powers of attorney shall be submitted to the appropriate official in writing, and shall be properly acknowledged as may be necessary by a notary, no later than 24 hours prior to any duly called meeting. Failure to do so shall enable the Association to postpone the effect of any motion or action taken until such proxy or power of attorney can be verified. The proxy shall expressly state the scope of authority granted and duration; otherwise the proxy shall be limited to the particular meeting or matter on which to be voted.

5.07 Majority: A "Majority of the Members", "Majority of all the Members" or a "Majority of the total voting power of the Association", for purposes of this Declaration, shall mean Members holding more than fifty percent (50%) of the total votes entitled to be cast with respect to a given matter; any specified fraction or percentage of the Members means the Members holding that fraction or percentage of the total votes entitled to be cast with respect to a given matter.

A "Majority of the Members voting" or a "Majority vote", for purposes of this Declaration, shall mean Members actually voting with respect to a given matter, whether in person or by proxy, who hold more than fifty percent (50%) of the total qualified votes cast with respect to such matter.

ARTICLE VI - ASSESSMENTS

6.01 Purpose of Assessments: The Assessments levied by the Association shall be used exclusively to promote the health, safety, welfare, recreation and general benefit of all the Owners and to enable the Association to perform the obligations hereunder. Assessments will be levied only against Lots designated for private ownership and the lien therefor will only attach to such Lots, not Common Elements or "Outlots", if any. The Association may not assign its future income, including its right to receive Common Expense Assessments. Declarant shall not borrow, convert to its own use or otherwise utilize for its own benefit, any funds of the Association.

6.02 General Assessment: Declarant shall be responsible for collecting all Assessment revenues and shall pay from such revenues all Common Expenses until the Association makes an Assessment for Common Expenses. Thereafter, the Association shall be responsible for collecting such revenues and paying all Common Expenses. After an Assessment for Common Expenses has been made by the Association, such Assessment shall be made no less frequently than annually. The Association or the Declarant, as the case may be, shall be responsible for levy of all General, Capital or Special Assessments and any reference in this Article VI to the Board shall also mean Declarant, but once the Association is formed, Declarant shall have no authority or obligation with regard to levy or collection of Assessments.

A. The General Assessments shall be based upon a budget adopted by the Board not less frequently than annually reflecting the sums determined from time to time by the Board to be required for payment of each estimated expense or liability arising from or connected with the maintenance and operation of the Village and the performance of other obligations and functions of the Association and including reserves therefore. Within thirty (30) days after adoption by the Board of any proposed budget, a summary of the proposed budget, including a determination as to the amount of the General Assessment to be paid by each Member, shall be mailed, by ordinary first class mail, or otherwise delivered to all Members together with notice of the date, time and location of a meeting of the Members to consider ratification of the budget, which meeting shall be not less than fourteen (14) nor greater than sixty (60) days from the date such summary was mailed or otherwise delivered. Unless at that meeting a majority of the Members reject the budget, the budget shall be deemed ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the budget last ratified shall remain in effect until such time as a subsequent budget adopted by the Board is ratified by the Owners as provided herein.

B. If the Association determines that the total General Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the President shall then immediately determine the approximate amount of such inadequacy and, with the consent of the Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of General Assessments to be paid by each Member for the balance of the year, and the date or dates when due. The Association shall then vote upon the revised Assessment in the same manner as established for approval of any General Assessment. If the estimated total General Assessments for the current year proves to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the General Assessments for the succeeding year, or abate collection of General Assessments for such period as it deems appropriate. No reduction or abatement of General Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

C. As part of the annual General Assessments authorized above, the Board of Directors shall annually fix the amount to be contributed pro rata by each Member to reserve funds for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair, improvement or replacement of any Common Elements. Such determination shall be made after consideration of the need for additional funds and of the Association's capital position. The responsibility of the Board shall be only to provide for such reserves as the Board in good faith deems reasonable, and neither the Declarant, the Board or any member thereof shall have any liability to any Owner, Mortgagee or to the Association if such reserves are determined to be inadequate or excessive.

The Association shall maintain a separate accounting for all reserve funds which shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Owners.

6.03 Capital Improvement Assessments: In addition to the General Assessment, the Association may levy, in any Assessment year, a Capital Improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, any action or undertaking on behalf of the Association in connection with, or the cost of, any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, or for extraordinary expenses incurred by the Association. Without the vote of a majority of Members, the Association shall not impose a Capital Improvement Assessment in an amount which in any one year exceeds five percent (5%) of the estimated annual Common Expenses. Any reserves collected by the Association for the future maintenance and repair of the Common elements, or any portion thereof, shall not be included in determining the foregoing limitation on any annual Capital Improvement Assessment.

Notwithstanding the foregoing, a Capital Improvement Assessment solely for reconstruction of damaged or destroyed Common Elements shall be subject to the terms and restrictions set forth under Section 2.05 of Article II hereof.

All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Association in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members. Capital Improvement Assessments shall be levied on the same basis as regular General Assessments. The due date of any Capital Improvement Assessment shall be fixed in the resolution authorizing such Assessment.

6.04 Special Assessments: Special Assessments shall be levied by the Association against an Owner and his Lot to reimburse the Association for the following:

- A. Costs incurred in bringing an Owner and his Lot into compliance with the provisions of this Declaration, the Article, Bylaws, Association Rules or Design Guidelines;
- B. Attorneys' fees, interest and other costs or charges to be paid in connection with levying a Special Assessment, or which are incurred in connection with a Members' conduct giving rise to a Special Assessment;
- C. Any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules.

6.05 Division of Assessments: The General and Capital Improvement Assessments shall be divided equally among all the Lots and charged to the respective Owners thereof, including the Declarant. General and Capital Assessments shall be collected in installments on a monthly basis unless otherwise determined by action of the Board. A Special Assessment shall be charged or levied against a particular Member, Owner or a Lot in a manner consistent with this Declaration, the Articles and Bylaws.

6.06 Date of Commencement of General Assessment: The annual General Assessments provided for herein shall commence as to all Lots in Phase 1 on the first day of July 1995. Assessments against Lots in Phases 2 and 3 included in the Village shall commence on the first day of the month following the closing of the first sale of a Lot to an Owner other than the Declarant in each of Phases 2 and 3, respectively. The first General Assessment for Phases 2 and 3 shall be adjusted according to the number

of months remaining in the calendar year in which the first sale occurs in Phases 2 and 3, respectively.

Subject to the provisions of this Article VI, the Board shall use its best efforts to fix the amount of the General Assessment against each Lot and send written notice thereof to every Owner at least forty-five (45) days in advance of each General Assessment period, provided that failure to comply with the foregoing shall not affect the validity of any Assessment.

6.07 Effect of Nonpayment of Assessments: Any Assessment not paid within fifteen (15) days after the due date thereof, as established and adopted by the Board, shall be delinquent, shall bear interest at the rate of thirty (30) year U.S. Treasury Bonds plus six percent (6%) per annum, calculated monthly, commencing thirty (30) days after the due date and continuing until paid, and shall incur a late payment charge in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law or in the amount of Ten Dollars (\$10.00) or ten percent (10%) of the delinquent Assessment, whichever is greater, to cover the extra cost and expense involved in handling such delinquent installment.

6.08 Creation of the Lien and Personal Obligation of Assessments:

All Assessments shall be secured by a perpetual and continuing lien (hereinafter referred to as the "Lien") on each Lot and this Declaration shall serve as record notice of the Lien, which shall be superior and prior to all other liens and encumbrances, excepting only real property tax and special assessment liens on the Lot in favor of any governmental taxing entity.

Pursuant to the provisions of this Declaration and in accordance with the Colorado Common Ownership Interest Act, Sections 38-33.3-101, et seq., Colorado Revised Statutes, as amended from time to time (the "Act"), any nonpayment of Association dues or fees shall become a priority lien on the Lot that need not be recorded in order to be perfected, runs with the land, is not extinguished by the transfer of ownership from a seller to a buyer, and may be foreclosed to collect the obligation in the same manner as a Mortgage. Amendment or rescission of the Act shall not reduce the priority of the Assessment Lien as herein stated.

Each Owner and Member, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Colorado now in effect, or in effect from time to time hereafter.

The Declarant, for each Lot owned within the Village, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot and whether or not it shall be so expressed in any such deed or other conveyance, shall be personally obligated and does covenant and agree as follows:

A. To accept such deed or contract upon and subject to each and all of the provisions contained in this Article VI, and also the jurisdiction, rights and powers of Declarant and the Association, and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns covenant, consent and agree to keep, observe, comply with and perform in accordance with this Declaration, the Articles and Bylaws. No property within the Village may be withdrawn from the effect of this Declaration;

B. To pay to the Association General Assessments, Capital Improvement Assessments and Special Assessments and charges for purposes permitted herein, such Assessments to be established and collected as herein provided;

C. To allow the Association to enforce an Assessment Lien established hereunder by non judicial proceeding, under a power of sale, or by any other means authorized by law. The General, Capital Improvement and Special Assessments, together with interest, late charges, collections costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing Lien upon the property against which each such Assessment is made. To further evidence the Lien, the Association may prepare a written notice thereof setting forth the present amount of delinquent Assessments and other sums owed by an Owner, the name of the delinquent Owner and a designation of the property. Such notice shall be executed by an officer of the Association or by the Managing Agent and shall be recorded in the records of the Clerk and Recorder of the County of La Plata, Colorado.

Each such Assessment, together with interest, late charges, collection costs, and reasonable attorney's fees, shall also be the personal joint and several obligation of the Person, whether one or more Persons, who was the Owner of such property at the time when such Assessments fell due. No Owner of a Lot may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Lot;

D. To comply with the provisions of this Declaration, the Articles, Bylaws, Design Guidelines, any rules and regulations duly adopted by the Association and the decisions and resolutions of the Association adopted pursuant thereto as the same may be amended from time to time. Failure to comply with any of the same shall be grounds for the levy of penalties, for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all reasonable costs and attorneys fees incurred in connection therewith, which action shall be maintainable by the Association, the Owners, or in a proper case by an aggrieved Owner or the Declarant.

6.09 Transfer of Lot by Sale or Foreclosure: If a Lot is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Lot through and including the date of the transfer. The grantee shall be liable for any such Assessments that become due after the date of transfer. Sale or transfer of any Lot shall not affect the Assessment Lien.

The personal obligation of an Owner for delinquent Assessments shall not be extinguished

by transfer of all or a part of such Owner's interest to Owner's successors in title to a Lot.

6.10 Statement of Account: The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent and payment of a reasonable fee set by the Board and not to exceed Fifty Dollars (\$50.00), a written statement setting forth the amount of unpaid Assessments, if any, currently levied against such Owner's Lot, the amount of the current Assessment installment and the date such Assessment installment becomes due. The statement shall be furnished within fourteen (14) business days after receipt of the request. If no statement is furnished to the holder of a security interest or their designee, after a request has been received for the same, then the Association shall subordinate its preferred priority as to the holder of the lien making such request, but only as to Assessments due as of the date of the request.

6.11 Enforcement and Remedies:

A. An Assessment Lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in a notice of delinquent assessment, or sale by a substituted trustee. Any sale shall be conducted in accordance with the appropriate provisions of Colorado law, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. In any foreclosure, the delinquent Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for recording the notice of lien and all reasonable attorneys fees of the Association.

B. Nothing herein shall preclude the Association from bringing an action directly against the Owner for breaching the personal obligation to pay Assessment.

C. The Association may maintain an action to recover a money judgement for unpaid Assessments without foreclosing or waiving the Lien, and shall be entitled to recover therein all costs and expenses recoverable under this Article VI or as provided elsewhere herein.

D. The Association, acting on behalf of the Owners, shall have the power to bid for a Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Where the purchase of a foreclosure Lot is reasonably expected to result in a five percent (5%) or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association. During the period a Lot is owned by the Association, following foreclosure: (1) no Assessment shall be assessed or levied on the lot; and (2) each other Lot shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such Lot had it not been acquired by the Association as a result of foreclosure. After acquiring title to the Lot at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Lot which deed shall be binding upon the owners, successors, and all other parties. Suit to recover a money judgement for unpaid Common Expenses, rent and attorneys' fees shall be maintainable without foreclosing or waiving the Lien securing the same. The Board may temporarily suspend the voting rights of a Member who is in default in payment of any Assessment, after notice and hearing, as provided in the Bylaws.

E. Nothing herein shall be construed as requiring that the Association take any action required hereunder in any particular instance, and the failure of the Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance.

F. Notwithstanding anything to the contrary herein, it is expressly agreed that neither the Declarant (including without limitation any successor or assignee of the interest of the Declarant hereunder) nor any member in the limited liability company Twilight Peaks, LLC (or in any such successor or assignee) shall have any personal liability to the Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration, except in the case of the Declarant, or its successor or assignee, to the extent of its interest in the Village Property. In the case of a member in the limited liability company (or any such assignee of a member), no execution or other action shall be sought or brought against any other assets, nor be a lien upon such other assets, of the judgment debtor.

6.12 Unallocated Taxes: In the event that any taxes, charges or other assessments are assessed against the Common Elements, or the personal property of the Association, rather than being assessed to the Lots, said taxes shall be included in the Assessments made under the provisions of this Article VI and, if necessary, a General or Special Assessment may be levied against the Lots in an amount equal to said taxes, charges or other assessments, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

6.13 Exempt Property: All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein. Any outlots created by Declarant for the location of Common Elements and on which no residence is permitted to be constructed shall be exempt from the Assessments created herein.

ARTICLE VII - ARCHITECTURAL AND LANDSCAPE CONTROL

7.01 Purpose: The exterior design, landscaping and use of all Lots and Improvements or

alterations thereto shall be subject to review in order to preserve and enhance the natural beauty of the Village and its setting, to maintain and improve the Village as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, to maintain habitat for the wildlife and minimize any impacts thereto, and to protect and promote the value of the Village Property.

7.02 Architectural Design Review Committee: The Architectural Design Review Committee ("Architectural Committee") shall consist of three (3) members. Declarant may appoint, reappoint, or remove, all of the original members of the Architectural Committee and all replacements until December 31, 1998. After December 31, 1998, the Declarant reserves to itself the power to appoint or remove a majority of the members to the Architectural Committee until ninety percent (90%) of all the Lots in the Project have been sold, including any Lots hereafter created in Phases 2 and 3 and added to the Village. After ninety percent (90%) of all the Lots in the Project have been sold, the Board shall have the power to appoint, reappoint or remove all of the members of the Architectural Committee. A majority of the Members appointed to the Architectural Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Committee by the Declarant need not be members of the Association. A majority of the Architectural Committee may designate a representative to act for it.

7.03 Design Guidelines: The Architectural Committee shall promulgate, and may amend from time to time, Design Guidelines concerning structure design and appearance along with landscaping, site improvement standards and any other relative design and enforcement matters. Such Design Guidelines shall be subject to approval and adoption by the Board and a copy of the current Design Guidelines shall at all times be a part of the Association's records and shall be made available to all Owners and their representatives. The Design Guidelines shall incorporate the notice and enforcement provisions contained in this Declaration, and shall be binding on all Owners, Members or other Persons; provided, however, the provisions expressly set forth in this Declaration shall at all times supersede and take precedence over any inconsistency in said Design Guidelines.

The Architectural Committee shall adopt and include in the Design Guidelines, in its reasonable discretion, such other limitations and restrictions deemed appropriate and as are not in conflict with this Declaration, including, without limitation, the regulation of all landscaping, construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement and a reasonable maximum time for completion of any such improvements.

7.04 Approval of Plans:

A. No building, fence, wall or other structure or improvement of any type shall be commenced, constructed, erected, placed, altered, or permitted or allowed to remain on any Lot, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, nor shall materials, equipment or construction vehicles be placed on any Lot except in compliance with plans and specifications with respect thereto which have been submitted, in manner and form satisfactory to the Architectural Committee showing the proposed improvements, site location of such improvement, complete building plans and material specifications, and all exterior elevations, materials and colors, landscaping, grading, drainage, erosion control, easements and utilities, and such other information as may be requested by said committee, and have been approved in writing by the committee.

If so requested by the Lot Owner, the Architectural Committee shall have the right, but not the obligation, to modify the Building Envelopes as such are designated on the Plat and to grant variances to the setbacks and building restrictions as set forth in Article VIII, herein, or in the Design Guidelines, providing, however, such variances shall not be inconsistent with the intent of the Design Guidelines or this Declaration or contrary to any zoning or land use regulations of La Plata County.

Due to the geology of the area, the design and engineering of all foundations, Lot grading and Lot drainage must be approved by a Colorado Licensed Professional Engineer at the Applicant's sole expense. All such materials shall be submitted in writing over the signature of the Owner of the Lot or the Owner's authorized agent. The Architectural Committee shall have the right to charge persons submitting such plans, a reasonable fee for reviewing each application or approval of the plans and specifications in an amount not to exceed the actual cost of review by a qualified consultant(s) which said review costs shall not exceed one hundred dollars (\$100.00) without the prior approval of the applicant.

B. Approval of plans shall be based, among other things, on conformity and harmony of exterior design, colors and materials with neighboring structures, relation of the proposed improvements to the natural topography and landscape, drainage, erosion control, grade and finished ground elevation of the structure to that of neighboring structures and natural features of the property, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Architectural Committee shall not arbitrarily or unreasonably withhold its approval of such plans and specification.

C. Neither the Architectural Committee nor Declarant or its respective successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Owner of land affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. Every Owner or other Person who submits plans to the Architectural Committee for approval agrees, by

submission of such plans and specifications, that he will not bring any action or suit against the Architectural Committee or Declarant to recover any such damages. Approval by the Architectural Committee shall not be deemed to constitute compliance with the requirements of any local building codes, and it shall be solely the responsibility of the Owner or other Person submitting plans to the Architectural Committee to comply with such local building codes and the provisions of this declaration.

D. The Board may fix a fine of up to five thousand dollars (\$5,000.00) for failure to obtain required approval from the Architectural Committee and may take such other actions as provided herein or otherwise allowed by law. The right to enjoin any proposed project or the enjoyment of any violating project which is completed or not completed is expressly reserved in addition to any other remedies.

7.05 Governmental Approval: Before commencement of any alteration or improvements approved by the Architectural Committee, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the separate approvals that may be required by any governmental entity with appropriate jurisdiction.

ARTICLE VIII - BUILDING RESTRICTIONS:

8.01 Buildings Allowed: The Village is intended as a residential development for detached single family homes. The following structures and buildings shall be permitted on each Lot within the Village:

One (1) custom built single family home, built from the foundation up, of not less than 1,800 (one thousand eight hundred) square feet of floor area, with not less than two (2) nor more than four (4) attached garage spaces.

The use of mobile or modular homes is prohibited.

Buildings or other structures used by the Declarant, the Association or a public agency to operate, provide, protect, or otherwise related to, any Common Elements or utilities serving the Village, shall also be permitted on any Lot.

Declarant may construct and maintain an office building on Lot 2 to be used for real estate sales and management purposes. Such office building shall not exceed 2,000 square feet in floor area and, notwithstanding any other provisions of this Declaration to the contrary, such lot and building shall not otherwise be subject to the building and use restrictions of this Declaration. Declarant may designate and use one additional Lot within the Project for purposes of constructing, maintaining and showing a model home.

8.02 Setbacks: No buildings (residences, garages, storage sheds, etc.) or other structures, not including Common Elements, driveways, fences, walls, ponds, irrigation ditches or portions of or connections to central utility systems, shall be constructed outside of the Building Envelope designated on the Plat or as such Building Envelope may be modified by the Architectural Committee and in no case shall such buildings or other structures be constructed within fifty (50) feet of the property line bordering the public roadway (U.S. Highway 550) or any property line adjoining another Lot within the Village unless prior written permission is obtained from the Owner of said adjoining Lot and approval is obtained from the Architectural Committee. In addition, no buildings shall be constructed within the access easements for Common Roads nor within twenty-five (25) feet of said access easements.

8.03 Maximum Height: No buildings shall exceed two (2) stories in height, excluding walk-out basements and attics. The maximum height of any structure above ground level, measured from the site's existing grade to the highest point of the roof line, shall not exceed thirty feet (30'). Architectural features, including chimneys, may exceed the maximum thirty foot (30') height limit with the prior written approval of the Architectural Committee, which shall consider such requests and base approval or disapproval upon reasonable standards of design in keeping with the design and style of the entire Village.

8.04 Building Materials: All buildings shall be constructed, insofar as possible, with exteriors of natural materials such as wood, stone, and masonry selected so as to be harmonious with the surrounding materials and environment. All siding shall be stained or painted with earth-tones or other harmonious colors; the use of bright primary colors is prohibited. The use of fiberglass, metal, or other artificial materials for exterior siding and finishing, with the exception of roofs, is likewise prohibited, however, the Architectural Review Committee shall have the authority, but not the obligation, to approve exterior siding materials that have a realistic appearance of wood. All buildings shall be constructed with fire retardant roofs. Use of shiny (unfinished) metal roofs is prohibited.

8.05 Automatic Fire Sprinklering Systems: The residence, and all other buildings or structures on each Lot, shall be constructed in compliance with all provisions of this Declaration and all applicable building and fire codes. Automatic fire sprinklering systems shall be installed in all residences and garages in accordance with the requirements of the Hermosa Cliff Fire District and applicable NFPA-13-D standards, as amended. Smoke detectors shall be installed on each level of the residence including in each room used for sleeping purposes. In addition to the requirements set forth in this Declaration and the Architectural Guidelines, no individual dwelling in excess of 7,650 (seven thousand six hundred fifty) square feet in size

shall be approved or constructed unless such dwelling has previously been approved for compliance separately by the Hermosa Cliff Fire Protection District.

8.06 Mailboxes: All mailboxes and other similar receptacles for mail, newspapers or other deliveries associated with Lots in the Village shall be subject to prior approval of the Architectural Committee, whether located on the Village Property or on public property adjacent to the Village. Mailboxes or other delivery receptacles serving Lots within the Village shall not be installed or maintained within the public right of way adjacent to the Village if a central mailbox and/or delivery structure is constructed as a Common Element within the Village and made available to the residents of the Village.

8.07 Minimal Impacts: All buildings, driveways, fences and other improvements shall be constructed in such a manner as to minimize damage to the trees, vegetation and property. Best management practices shall be followed in all construction activities to minimize silt and debris entering the drainage system and reduce the impacts of such activities.

ARTICLE IX - USE RESTRICTIONS

The Village Property shall be subject to the following restrictions on the use of such property and the activities allowed thereon.

9.01 Animals: The keeping of animals within the Village is subject to the following restrictions:

A. All animals within the Village must be kept under Owner's control and properly cared for. In no event, shall any Owner permit his animals to become a nuisance or otherwise cause a disturbance for other Owners, such as, but not limited to, excessive barking or chasing wildlife or other animals. Each Lot shall be kept clean from animal waste and other refuse and in such a manner as to minimize dust and insects. Each Owner is responsible for any damage caused by his animals or those animals of his tenants, guests or invitees, and such Owner shall be obligated to clean up after his animals within the Village.

B. Owners are permitted to keep a reasonable number, as may be determined and set forth in the rules and regulations adopted by the Association of domestic animals as pets per Lot. No dogs shall be allowed to run at large within the Village. Dogs shall be kept on a leash or in a pen or residence, except when under the active, personal control of the Owner.

C. The keeping of wild animals as pets, and the keeping of horses, ponies, cows, llamas, sheep, goats, pigs or other farm animals on any private Lot is prohibited. The Association may adopt rules allowing for the keeping of horses or ponies on Common Elements.

D. Breeding of animals, livestock, reptiles, birds, pets or other animals for commercial purposes is prohibited within the Village.

E. Animals, livestock, reptiles or birds may be excluded from the Village or regulated pursuant and subject to all governmental animal ordinances and laws and subject to rules and regulations as may be adopted by the Association in regard thereto.

F. No Owner shall allow his pet dog or the dog of his tenant, guest, or invitee to enter upon the Public Lands contiguous to the Project without the express permission of the governing entity of those Public Lands.

G. The U.S. Forest Service, Department of Wildlife, state or county animal control agencies and their agents shall have the right to enter the Common Elements and upon the Lot of any Owner for the express purpose of apprehension of a dog or other animal in violation of the ordinances of the U.S. Forest Service, County of La Plata or other government agency.

9.02 Antennas: No radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals, shall be placed or maintained upon any Lot except as may be permitted by the Association Rules or in accordance with the Design Guidelines. Any satellite dish antennas so permitted shall be screened or so placed and kept in a manner that they are not visible from other Lots, Common Roads or other Common Elements within the Village. The placement of any antenna shall be subject to review and approval of the Architectural Committee.

9.03 Clothes Drying Area: No portion of any Lot shall be used as a drying or hanging area for laundry of any kind if such area is visible from other Lots, the Common Roads or other Common Elements.

9.04 Commercial Activities: All Lots shall be used solely for single family residential purposes and no other. No commercial, industrial, retail or manufacturing type operations or businesses shall at any time be conducted on any Lot within the Village, except each Owner may maintain an office for professional purposes in the residence for use solely by the Owner living in the residence, provided that the primary use of the Lot and the residence shall remain residential, and provided further that no such use shall have vehicular or walk-in customer traffic and that no manufacturing activity or sales of goods shall be conducted on the premises. No other commercial activities are permitted. Any home office use permitted hereunder shall have no external evidence of a business there. The Association may conduct activities upon any Lot when such activities are necessary or desirable for the Association to fulfill its duties and responsibilities herein. Nothing herein contained shall be deemed to limit the Declarant's rights as set forth elsewhere.

herein.

9.05 Drainages: No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or the Village drainage and water collection systems, except within the Building Envelope and as approved by the Architectural Committee.

9.06 Entrance Gates: Subject to the easements shown on the Plat and as created in Article III herein, the Association may from time to time determine who may have access through the entrance gates to the Village onto the Common Roads. The Declarant reserves the unrestricted right of entry and use of such roads for itself and its successors in interest as to the property described in Exhibit "A" and for its employees, agents, invitees, licensees and guests. The Association may make reasonable rules relating to the right of entry through the entrance gates, but not restricting entry to Members, Owners, their tenants and guests or to prospective purchasers of homes or Lots invited by an Owner or such Owner's agent. This provision shall not be deemed to restrict the access rights, if any, as held or reserved by others.

9.07 Fences: All fences shall be subject to review and approval of the Architectural Committee. Fences shall be constructed of stacked wooden rail or wooden post and rail design, with natural aspen poles as the preferred material. Fences constructed shall be built to comply with Division of Wildlife recommendations to prevent interference with wildlife movement and no fences shall exceed forty-two inches (42") in height. Wire, chain link, or solid wood fences are prohibited. However, the Architectural Committee may waive the foregoing, other than the requirement that all fences are subject to review of the Architectural Committee, for privacy fences on a Lot which shall enclose an area not greater than 2,000 square feet in total and which are located in an area immediately adjacent to the Owner's residence and entirely within the Building Envelope. No Lot shall be fenced in its entirety nor shall a fence be constructed along the entire length of any boundary line of any Lot, subject to the following exceptions:

1. Fences may be constructed and maintained by the Association alongside Common Roads. Such fences shall be located within the access easements, shall allow driveway access for the Lot Owner and shall be of stacked wooden rail or wooden post and rail design and construction.

2. Fences between the Village and adjacent public or private lands used for grazing or other agricultural uses shall be constructed (which construction may be of post and wire) and maintained in accordance with the applicable requirements of the La Plata County Land Use System or other government agency having authority. The maintenance of such fences shall be the responsibility of the Association.

9.08 Garbage and Refuse Disposal: No Lot shall be used or maintained as a dumping ground for rubbish. All trash, garbage, junk or other waste shall not be kept on a Lot or elsewhere within the Village except in appropriate sanitary containers with tight fitting lids as necessary and sufficient to keep wildlife out of such trash. All equipment and containers for the storage or disposal of such material shall be kept in a clean and sanitary condition. All equipment and containers shall be screened or so placed and kept in a manner that they are not visible from other Lots or Common Roads within the Village. On the day trash is collected within the Village waste containers may be placed by the edge of the road for collection purposes. No waste shall be burned or otherwise disposed of in any manner upon any Lot.

9.09 Hunting and Shooting: Hunting, trapping and discharge of firearms is strictly prohibited within the Village.

9.10 Leasing of Lots: No Lot shall be leased, including subleased, rented, let or sublet, for any period less than twenty-five (25) consecutive days. Any lease agreement shall be required to be in writing and shall provide that the terms thereof and the lessee's occupancy of the Lot shall be subject in all respects to the provisions of this Declaration, the Articles, Bylaws and any rules and regulations of the Association and that any failure by the lessee to comply therewith shall constitute a default under such lease. No guest house, garage, outbuildings, nor any portion of a Lot is to be rented or sublet separately from the Lot and any residence constructed thereon. Other than the foregoing, there is no restriction on the right of any Owner to lease his Lot. Within ten (10) days after the execution of such lease, the Owner shall deliver a copy of the same to the Association and provide the addresses and telephone numbers where such Owner and tenant, respectively, can be reached.

9.11 Lot Sizes. Each Lot shall be a minimum of one acre in size. No Lot shall be subdivided or resubdivided by any Owner, except the Declarant, and no portion less than all of any Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Association.

9.12 Maintenance and Repairs: Except for those portions of the Village which the Association is required to maintain and repair, each Lot Owner shall, at his sole cost and expense, maintain and repair his Lot and all improvements thereon, and all landscaping thereon, keeping the same in good condition.

In the event that any Owner fails to maintain his Lot and the improvements thereon as required herein in good condition, including, but not limited to, physical deterioration to the point where the

same can reasonably be construed as causing a devaluation in the value of the property of other Owners, the same shall be deemed a nuisance as defined in this Declaration and will be subject to abatement.

9.13 Mineral Activity: No exploration, drilling, mining, extraction or removal thereof of oil, gas or other hydrocarbons or minerals or other earth substance of any kind shall be permitted on any Lot. This provision shall not be deemed to restrict the vested rights, if any, as held or reserved by non-Members related to oil, gas or other mineral rights.

9.14 No Imperiling of Insurance: No Person shall do anything or cause any substance or anything to be kept in or on a Lot or any portion of the Village which might result in an increase in the premiums for, or cause the cancellation of, insurance covering the Village.

9.15 No Violation of Law: No Person shall do anything or keep anything in or on any Lot or portion of the Village which would be immoral, improper, offensive or in violation of any statute, rule, ordinance, regulation, permit or other requirement of any governmental body having jurisdiction.

9.16 Nuisances and Abatement:

A. No noxious, illegal, or offensive activity shall be carried on upon any Lot or any part of the Village, nor shall anything be done or placed thereon which is or may become an unreasonable nuisance or annoyance or cause embarrassment or disturbance to other Owners, their tenants, guests or invitees, or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot and the Common Elements.

B. The determination of what constitutes an unreasonable annoyance or nuisance shall include, but not be limited to, the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

1. No sound shall be emitted on any part of the Village which is unreasonably loud or annoying, such as noisy motor vehicles or any other noise which unduly disturbs the peace of the neighborhood.

2. No coal or other type of fuel which gives off smoke, except wood and charcoal, shall be used for heating, cooking or any other purpose within a Lot unless approved by the Association.

C. No activity shall be conducted on any Lot or any part of the Village and no improvement shall be made or constructed on any Lot or any part of the Village which is or might be unsafe or hazardous to any Person or property.

D. Every violation of this Declaration or any part thereof is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed therefor by law or equity against an Owner or such other Person in violation, shall be applicable against every such violation and may be exercised by the Association, its Board, the Declarant or any other Owner pursuant to the provisions of this Declaration and as provided by law.

E. In the event an Owner shall allow a nuisance to continue, the Board shall have the power and authority, after notice and a hearing as provided in the Bylaws, to correct such nuisance with the costs thereof to be levied against the respective Lot as a Special Assessment immediately payable to the Association by the Owner of such Lot, together with interest at a rate established by the Board (but not to exceed the maximum interest rate authorized by law) from the date the cost was incurred by the Association until the date the cost is paid by the Owner. If the Board fails to establish an interest rate, the rate of interest shall be fifteen percent (15%) per annum.

9.17 Owner-Caused Damages: If, due to the act or neglect of an Owner or such Owner's family, tenants, guests, agents or invitees, loss or damage shall be caused to any Person or property, including Common Elements or any Lot, such Owner shall be liable and responsible therefore, except to the extent such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner and the Association.

9.18 Rural Atmosphere: Each Owner shall, to the best of his ability, maintain the rural atmosphere of the Village by refraining from undue noise, by keeping his Lot well maintained, clean and orderly, and by using his Lot for residential purposes only, as provided herein. Landscaping with native plants and grasses is encouraged. There shall be no harassment of the wildlife.

Lighting shall not spill, reflect or glare off-site. Exterior light fixtures shall be shielded or the light directed in a manner such that the light from such light fixtures does not adversely impact the Common Elements or adjoining Lots to the greatest extent reasonably possible. No tennis courts may be lighted except in accordance with the Association Rules and any requirements which may be imposed by the Architectural Committee as a condition of approval of such lighting. Dusk to dawn exterior lighting is prohibited, however, the Association shall be permitted to install and maintain lighting of the entrance to the Village from the public roadway and any entry signs and road signs.

9.19 Sales and Construction Facilities: Notwithstanding any provisions to the contrary contained herein, Declarant, its agents, employees and contractors shall be permitted during the periods of construction and sale of the Lots to maintain upon such portion of the Project (except Lots owned by Owners other than Declarant) as Declarant may choose, such facilities as, in the sole opinion of Declarant,

may be reasonably required, convenient or incidental to the construction of improvements or sale of Lots, including without limitation, storage areas, construction yard and office, lighting and parking areas. In addition, Declarant, its agents, employees and contractors shall have the right, during reasonable business hours and upon reasonable notice, of ingress and egress in and through all Lots during the period of construction of the Lots and improvements thereon, for the purpose of any required construction, maintenance or repair to such Lots and any improvements thereon, the Project or any part thereof, which may be the responsibility of the Declarant.

9.20 Sewage Systems: It shall be the responsibility of each Lot Owner to connect his respective residence to the Central Sewage Disposal System and to pay for the costs of such connection, including an initial hook-up fee to be paid to Declarant for the right to connect to and use the Central Sewage Disposal System, and the respective Lot's proportionate share of the costs of operations and maintenance of the sewage disposal plant. All sewage disposal shall be in compliance with all applicable regulations of the San Juan Basin Health Unit and any other federal, state or local authority having jurisdiction. The release of untreated sewage from any system, either on or under the surface, or the operation of any sewage system in violation of applicable regulations is hereby declared to be a nuisance subject to abatement pursuant to the provisions of this Declaration.

Individual Sewage Disposal Systems, including but not limited to on-site septic tanks and leach fields, are prohibited unless central sewer services are not available to the Village. If for any reason an Individual Sewage Disposal System must be used, the right to do so shall be conditioned upon modification, if necessary, of the Water Decree in District Court Case 93CW27, Water Division No. 7.

9.21 Signs: No signs shall be permitted other than the following:

A. Signs identifying the Project shall be located at or near the entrance to the property from the public road. Street signs identifying the names of the Individual Common Roads shall be required at each intersection. Other signs as may be required for traffic control and regulation of the Common Elements shall be installed as necessary. Such entry, street, traffic or regulatory signs shall be Common Elements.

B. House addresses for each residence shall be installed and maintained by each Owner. Such addresses shall be located on each house or fronting the Lot or access drive and shall be visible and legible from the roadway fronting the Lot.

C. A single construction sign, not larger than six (6) square feet in size with the top of the sign not in excess of five (5) feet from grade, may be placed on the Lot during building for no more than a six (6) month period.

D. Signs required by legal proceedings, or the prohibition of which is precluded by law, may be posted as required on a Lot and shall be not larger than four (4) square feet in size with the top of the sign not in excess of five (5) feet from grade.

E. A real estate sign, not larger than six (6) square feet in size with the top of the sign not in excess of five (5) feet from grade, may be placed on a Lot or in a window of the residence identifying such Lot for sale. In the alternative, an Owner may, in accordance with applicable provisions of the Association Rules, be permitted to post one "For Sale" sign in a form approved by the Board in a location specified for that purpose by the Board, which may be in or on a Common Element rather than on the respective Lot.

F. Declarant and its agents may install and maintain directional, promotional and advertising signs on Lot 2 or within the access easements during the marketing of the Project.

All signs of any kind displayed to the public view or from any Lot or any Common Element shall be subject to review and approval by the Architectural Committee prior to placement on any Lot or Common Element to maintain uniformity within the Village and must be in compliance with the provisions of this Declaration and all local ordinances regulating same.

9.22 Storage Tanks: All tanks used for the storage of materials (e.g. for storage of natural gas, propane or water), other than any water storage tanks installed as part of the Central Water System, shall be screened or so placed and kept in a manner that they are not visible from other Lots or Common Roads within the Village. The placement of storage tanks shall be subject to review and approval of the Architectural Committee.

9.23 Temporary Occupancy and Mobile Homes: No vehicle, trailer, tent, shack, garage, barn or other similar structure and no temporary building or structure of any kind shall be used at any time for a temporary residence. Motor homes and travel trailers shall not be used as living quarters except that guests of an Owner may park and occupy such recreational vehicles within the Building Envelope of such Owner's Lot for periods not to exceed three (3) weeks in any calendar year with no more than two (2) such recreational vehicles present on any Lot at any time. Temporary storage and work structures must be removed immediately upon completion of construction and may not remain on a Lot for more than twelve (12) months regardless of the time to complete construction. Except as otherwise provided herein, no mobile or modular home shall be placed upon any Lot at any time for any purpose.

9.24 Time Sharing: No Lot or Lots or any portion thereof in the Village shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license", "travel club",

"extended vacation", or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Lot or Lots or any portion thereof in the Village rotates among various Persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. Provided, this section shall not be construed to limit the personal use of any Lot or any portion thereof in the Village by any Lot Owner or his social or familial guest.

9.25 Tree Cutting: It is deemed desirable to maintain and enhance the natural wooded appearance and character of the Village and the privacy between individual Lots. Therefore, cutting any trees, or disturbing the roots thereof, which are over four (4) inches in size in trunk diameter, as measured at a point four (4) feet above the ground, shall be subject to review and approval of the Architectural Committee and such cutting or disturbance of the roots is prohibited without such approval except as such may be required in emergency situations. The Architectural Committee may require the planting of new trees on a Lot where such may be desirable as a condition of the committee's approval of any plans for such Lot submitted for its review.

9.26 Utilities: All electric, telephone, water, gas, television, sewer and other utility services installed hereafter must be underground. Service connections or meters are excepted. Declarant hereby reserves unto itself, for a period of twenty (20) years after the recordation of this Declaration, the exclusive right to grant easements for utilities to non-Owners across utility and access easements as shown on the Plats and to allow connection to any utilities within the Village by non-Owners. All compensation, if any, for such easements and connections shall remain the property of Declarant, except compensation paid for damages or repairs to roadways or utilities, as the case may be.

9.27 Vehicles:

A. No vehicles shall be kept, stored, or maintained upon the Common Elements, including the Common Roads, provided, however, that any vehicles owned, leased, operated or otherwise controlled by the Association, its employees, agents or contractors may be allowed to be kept by the Association upon the Common Elements. No vehicles shall be parked upon any Common Road in such a way as to interfere with normal access upon the Common Road or to any Lot or the Common Elements or to interfere with emergency vehicle access or snow removal. No vehicles shall be operated upon the Common Elements except on roads and other spaces designated therefor by the Association.

B. Trucks, trailers, motor homes, attached or detached camper units, boats, commercial vehicles and all vehicles that are inoperable or otherwise not in use shall not be kept, placed or maintained upon any Lot in a manner that such vehicle is visible from other Lots or Common Roads within the Village. The provisions of this paragraph shall not apply to temporary construction equipment and facilities maintained during and used exclusively in connection with the construction of any dwelling or other improvement on a Lot if in compliance with plans approved by the Architectural Committee.

C. Snowmobiles, ATVs, motorcycles and the like shall be equipped with adequate mufflers and operating spark arrestors and shall not be operated in such a manner as to generate excessive noise or dust. No motor vehicles shall be operated off platted roads or access easements within the Project without the express, prior approval of the Owner of the respective lot or such other property.

D. No vehicles not licensed to be legally operated on the public roadways of the State of Colorado shall be operated on the Common Roads. Vehicles shall not exceed twenty (20) miles per hour on any Common Road.

E. The operation and parking of all vehicles within the Village shall be subject to the Association Rules as such may be adopted and amended from time to time.

9.28 Violations: No Person, his family or their guests, invitees or lessees shall violate this Declaration, the Articles, Bylaws or the Association Rules adopted or amended from time to time by the Association or the Board, whether relating to the use of Lots, the use of the Common Elements or otherwise. Any determination as to whether or not a particular activity or condition constitutes a violation of the provisions of this Article IX shall be made by the Board and shall be final.

9.29 Water Wells: It shall be the responsibility of each Lot Owner, at Owner's cost, to connect his respective residence to the Central Water System and shall pay a hook-up fee to Declarant for such water rights sufficient to provide domestic water (hereinafter "Water Tap") for his respective residence, as provided in and pursuant to Water Decree, Case No. 93CW27, District Court, Water Division No. 7, State of Colorado (Reception No. 676195 in the records of the Clerk and Recorder of La Plata County). Each Lot Owner who connects to the Central Water System or otherwise utilizes water therefrom, agrees, for himself, his heirs, successors and assigns, to use the water solely for indoor domestic purposes subject to, and in compliance with, the terms of said decree which are incorporated herein by reference for all purposes. The Declarant reserves all rights to drill additional water wells within the Village; other private water wells are prohibited. The Declarant shall retain all title and right to use all water not allocated for indoor domestic use or pond consumptive uses in Case No. 93CW27, District Court, Water District No. 7 (hereafter referred to as "excess water"). No Lot Owner shall be entitled to claim any legal or equitable interest in, or encumber, such excess water, waste water or return flows generated therefrom, even if such

Lot Owner is a beneficiary of the use of a portion of such excess water. Nothing herein shall prevent Declarant from using said excess water outside the Project or conveying any portion thereof for use outside the Project free and clear of the objections and any claims of any Lot Owner.

9.30 Weed Abatement: Each Lot shall be maintained in an attractive condition and kept free of weeds and other noxious growth. Building sites and other improvements shall be designed and constructed in such a manner as to minimize the surface disturbance and areas where weed control will be required. Any ground disturbed as a result of construction or other activities shall be replanted as soon as practical with plants or a seed mixture approved by the Architectural Committee.

9.31 Wildfire Hazard Mitigation: To provide an environment safe from wildfires, the following shall apply to all Owners and Lots and the Common Elements:

A. Each Owner shall clear brush and other vegetation as necessary to maintain the property in attractive condition, free from disease and fire hazard in accordance with Colorado State Forestry recommendations for prevention of wildfires.

B. There shall be a thirty (30) foot "safety zone" around each homesite that is on a level site. The safety zone shall increase as the grade of the homesite increases. Tree limbs shall at all times be pruned to a height of ten (10) feet above the ground within the safety zone. All tall grass shall be cut and dead debris which could serve as flammable fuel for a wildfire shall be removed from the safety zone. Continuous tree and brush cover shall be thinned out within the safety zone.

C. A ten (10) foot firebreak shall be maintained around all structures on a Lot

D. All tree branches that are within fifteen (15) feet of a chimney or any that overhang or touch a structure on a Lot shall be removed. All chimney external vents shall have a screen that prevents sparks and cinders from exiting. It shall be an Owner's responsibility to continually clean all debris from roofs and gutters.

E. All firewood stacked outside shall be located uphill or on a contour away from buildings, preferably at least fifteen (15) feet from any building.

F. Exterior fires are permitted only for barbecue fires contained within receptacles designed for that use.

9.32 Zoning Compliance: Lots shall not be used for any purposes contrary to or in violation of any applicable zoning ordinance as adopted by the County of La Plata or any other government entity having jurisdiction. It is intended that Lots be used for residential purposes only, as provided herein.

ARTICLE X - GENERAL PROVISIONS:

10.01 Attorney Fees: In the event of any litigation between an Owner and the Association, including but not limited to an action brought for the purpose of enforcing this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, to recover Liens for Assessments or other charges levied by the Association pursuant to this Declaration, or otherwise arising out of this Declaration, the prevailing party therein shall be entitled to recover its costs, including all reasonable charges for witnesses, experts, or consultants, and attorney's fees expended by such party therein.

In the event of a dispute between or among Owners with respect to an action brought for the purpose of enforcing this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or otherwise arising out of this Declaration, then, upon written request of one (1) of such Owners addressed to the Association, the matter shall be submitted to arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, and the decision of the Arbitrator(s) shall be final and conclusive on the parties. In any such arbitration, the prevailing party therein shall be entitled to recover its costs, including all reasonable charges for witnesses, experts, or consultants, and attorney's fees expended by such party therein.

10.02 Captions: The captions, headings and numbering of Articles and sections in this Declaration are for convenience only and are not intended to modify or affect the meanings of any of the substantive provisions hereof.

10.03 Duration and Amendment:

A. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for forty (40) years from the date on which this Declaration is recorded. Thereafter, this Declaration and such covenants, conditions and restrictions contained herein, together with any amendments or supplements thereto, shall be automatically extended for a period of ten (10) years, with like extensions to take place at the expiration of each such extension, in perpetuity, unless, within the one (1) year period before any such renewal date, one hundred percent (100%) of the Owners file a declaration, in writing, in the records of the Clerk and Recorder of the county of La Plata, Colorado, revoking this Declaration in its entirety.

B. This Declaration may be amended or additional provisions may be added by a written instrument or instruments, specifying the entire amendment or addition, executed by the Declarant and recorded in the records of the Clerk and Recorder of the County of La Plata, Colorado, until the Control

Date. After the Control Date, this Declaration may be amended or additional provisions may be added by recording in the records of the Clerk and Recorder of the County of La Plata, Colorado, a written instrument or instruments, specifying the amendment or addition, and signed by seventy-five percent (75%) of the Owners of Lots then existing within the Village and with the approval of more than one-half (1/2) of First Mortgagees (based upon one vote for each First Mortgage held), except that no provision of this Declaration requiring the approval or consent of a greater number of First Mortgagees may be amended or revoked without the consent of at least such greater number.

C. If any of the covenants, conditions, limitations, restrictions, options, privileges or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of Robert W. Chamberlain.

10.04 Effect of Provisions of Declaration: Each provision of this Declaration and each agreement, promise, covenant or undertaking to comply with or be beyond the provisions of this Declaration which is contained herein shall:

A. Be deemed incorporated in each deed or other instrument by which any right, title or interest in any Lot or other property is granted, devised, conveyed, or otherwise transferred, whether or not set forth or referred to in such deed or instrument; and

B. By virtue of acceptance of any right, title or interest in any Lot by an Owner, such Owner shall be deemed to have accepted, ratified, adopted and declared said agreements, promises, covenants and undertakings as personal covenants of such Owner and such Owner's heirs, personal representatives, successors and assigns to, with and for the benefit of the Association.

10.05 Enforcement: The Declarant, the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, restrictions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Articles, Bylaws, Architectural Guidelines or other duly adopted rules or regulations. Failure of the Declarant, Association or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of any such provision or of any other provision of this Declaration.

10.06 Special Declarant Rights: Declarant is undertaking the work of construction of a planned community development and incidental improvements upon the property. The completion of that work and the sale, rental, and other disposal of Lots is essential to the establishment and welfare of said property as a common interest residential community. In order that said work may be completed and said property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

A. Prevent Declarant or its contractors from doing on the property or any Lot, whatever is reasonably necessary or advisable in connection with the completion of said work; or

B. Prevent Declarant from conducting on the property (except upon Lots owned by others) its business of completing said work and of establishing a plan of residential ownership and of disposing of said property in Lots by sale, lease or otherwise; or

C. Prevent Declarant or its representatives from erecting, constructing and maintaining on the property (except upon Lots owned by others), such structures as may be reasonable and necessary for developing said property as a residential community and disposing of the same by sale, lease or otherwise; or

D. Prevent Declarant from maintaining such signs on the property (except upon Lots owned by others) as may be necessary for the sale, lease or disposition thereof.

The foregoing Special Declarant Rights shall terminate on the Control Date, however, such termination shall not affect any other rights or obligations of Declarant including any rights reserved to Declarant elsewhere in this Declaration.

10.07 Notices to Owners: Each Owner shall register his mailing address with the Association and except for monthly statements and other routine notices, all other notices to be given or demands to be made upon an Owner shall be sent by certified mail, postage prepaid, return receipt requested, addressed in the name of the Owner at such registered mailing address. Unless an Owner shall notify the Association by certified U.S. Mail, postage prepaid, return receipt requested, of a different address, any notice required or permitted to be given by the Association under this Declaration to any Owner or any other written communication to any Owner may be mailed to such Owner in a postage prepaid envelope by first class, registered or certified mail, to the address of the Lot shown upon the Association's records as owned by such Owner. If more than one Owner owns a Lot, any notice or other written instrument may be addressed to all of such Owners and may be mailed in one envelope in accordance with the foregoing. Any notice or other written instrument given to any Person by the Association in accordance herewith, shall be deemed to be given on the date mailed.

10.08 Notices to Association: All notices, demands, or other legal documents intended to be served upon the Association shall be sent by either registered or certified mail, return receipt requested, postage prepaid, to the following address, or such other address as the Association may designate from time to time:

Twilight Peaks Homeowners Association, Inc.
 c/o Gerald B. McDaniel
 McDaniel, Baty & Miller
 (1040 Main Avenue)
 P.O. Box 1157
 Durango, Colorado 81302

10.09 Mortgage of Lots: Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot. No Member shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot.

10.10 Rights of Mortgagees:
 A. No violation, breach of or failure to comply with any provisions of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any Mortgage taken in good faith and for value; nor shall such violation, breach, failure or action to enforce, affect, defeat, render invalid or impair the title or interest of the holder of any such Mortgage or result in any liability, personal or otherwise, of any Mortgagee. However, all of the provisions of this Declaration shall be binding upon and effective against any such lien holder in possession of a Lot, or with paramount right of possession of any Lot, and any Owner whose title is derived through foreclosure, trustee's sale, tax sale, or otherwise, with respect to a Lot.

B. Any First Mortgagee who fails to submit a response to any written request for its consent or approval of any matter for which the consent or approval of a prescribed number of First Mortgagees is required hereunder within thirty (30) days after receipt thereof by certified U.S. Mail, return receipt requested, postage prepaid, shall be conclusively deemed to consent to and approve such matter.

C. The consent of any Mortgagee, other than First Mortgagees, shall not be required as a condition to implementation of any provision of this Declaration.

10.11 Severability: If any provision of this Declaration, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid or unenforceable, the validity or enforceability of the remainder of the Declaration, and the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration shall remain in full force and effect and be construed as if such invalid or unenforceable part were never included therein.

IN WITNESS WHEREOF, the Declarant herein, has executed this Declaration and caused its company name to be subscribed hereto by its Managing Member on this 30th day of November, 1994.

Twilight Peaks, LLC

Robert W. Chamberlain
 Robert W. Chamberlain, Managing Member

STATE OF CALIFORNIA }
 } ss.
 COUNTY OF SAN DIEGO }

The foregoing instrument was acknowledged before me this 30th day of November, 1994, by Robert W. Chamberlain, as Managing Member of Twilight Peaks, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.
 My Commission Expires: 10-7-97



Y.S. Vargas
 Notary Public

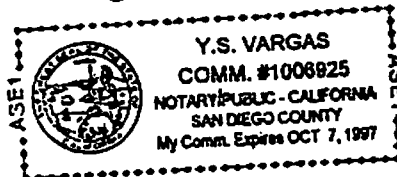


EXHIBIT "A"
Description of the Real Property Included in the "Project"

LEGAL DESCRIPTION:

A tract of land located in Section 2, Township 38 North, Range 9 West, New Mexico Principal Meridian, in La Plata County, Colorado, being that tract of land as shown on the Elbert Creek Property plat recorded in Book 8 at Page 1 of the La Plata County Surveyor Land Survey Plats under Reception Number 182, and being more particularly described as follows:

Beginning on the westerly right-of-way of U.S. Highway 550 whence the Northeast Corner of said Section 2 bears N 37° 30' 43" E, 3452.55 feet;
 Thence 12° 12' 01" E, 17.82 feet along the westerly right-of-way of U.S.

Highway 550;

Thence N 00° 49' 21" E, 418.62 feet along the westerly right-of-way of U.S.

Highway 550;

Thence N 15° 34' 00" E, 524.37 feet along the westerly right-of-way of U.S.

Highway 550;

Thence N 21° 46' 05" E, 61.20 feet along the westerly right-of-way of U.S.

Highway 550 to the southerly line of the Stock Driveway as described in the Deed recorded in the Office of said Clerk and Recorder in Book 232 at Page 252;

Thence N 66° 00' 00" W, 481.39 feet along the southerly line of said Stock Driveway;

Thence N 49° 00' 00" W, 412.10 feet along the southerly line of said Stock Driveway;

Thence North, 117.26 feet along the westerly line of said Stock Driveway to the north line of the SE1/4NW1/4 of said Section 2;

Thence S 88° 47' 32" W, 1282.82 feet along the north line of the SE1/4NW1/4 to the Northwest 1/16 Corner of said Section 2;

Thence S 01° 50' 06" W, 1215.25 feet along the west line of the SE1/4NW1/4 to the Center-West 1/16 Corner of said Section 2;

Thence S 01° 47' 38" W, 1248.14 feet along the west line of the NE1/4SW1/4 of said Section 2 to the Southwest 1/16 Corner of said Section 2;

Thence N 89° 06' 50" E, 1321.84 feet along the south line of the NE1/4SW1/4 of said Section 2 to the Center-South 1/16 Corner of said Section 2;

Thence N 01° 50' 24" E, 846.00 feet along the east line of the NE1/4SW1/4 of said Section 2;

Thence N 85° 56' 37" E, 590.75 feet to the westerly right-of-way of U.S.

Highway 550;

Thence N 12° 12' 10" E, 17.82 feet along the westerly right-of-way of U.S.

Highway 550;

Thence N 00° 49' 21" E, 418.63 feet along the westerly right-of-way of U.S.

Highway 550;

Thence N 15° 34' 00" E, 276.90 feet along the westerly right-of-way of U.S.

Highway 550 to the point of beginning.

Contains 92.351 acres, more or less.

EXHIBIT "B"
Description of the Initial Real Property Included in the "Village"

A tract of land located in Section 2, Township 38 North, Range 9 West, New Mexico Principal Meridian, in La Plata County, Colorado, being a portion of that tract of land as described in the deed recorded in the Office of the La Plata County, Colorado, Clerk and Recorder under Reception Number 653730 and being more particularly described as follows:

Beginning at the Northwest Corner of Phase I on the southerly right-of-way of Stock Drive as described in the deed recorded in the Office of said Clerk and Recorder in Book 232 at Page 252 whence the Center-North 1/16 Corner of said Section 2 bears N 18° 42' 30" E, 124.69 feet;

Thence S 49° 00' 00" E, 412.10 feet along the southerly line of said Stock Drive;

Thence S 66° 00' 00" E, 481.39 feet along the southerly line of said Stock Drive to the westerly right-of-way of U.S. Highway 550;

Thence S 21° 46' 04" W, 612.20 feet along the westerly right-of-way of U.S. Highway 550;

Thence S 15° 34' 00" W, 524.37 feet along the westerly right-of-way of U.S. Highway 550;

Thence S 00° 49' 21" W, 418.63 feet along the westerly right-of-way of U.S. Highway 550;

Thence S 12° 12' 10" W, 17.82 feet along the westerly right-of-way of U.S. Highway 550 to southerly line of said tract of land, Reception Number 653730;

Thence S 85° 56' 37" W, 519.24 feet along the southerly line of said tract of land, Reception Number 653730;

Thence N 08° 04' 00" W, 243.52 feet;

Thence along the arc of a tangent curve to the right with a delta angle of 11° 36' 00" and a radius of 200.00 feet for a distance of 40.49 feet, the long chord bears N 02° 16' 00" W, 40.42 feet;

Thence N 03° 32' 00" E, 68.97 feet;

Thence along the arc of a tangent curve to the left with a delta angle of 14° 15' 00" and a radius of 400.00 feet for a distance of 99.48 feet, the long chord bears N 03° 35' 30" W, 99.23 feet;

Thence N 18° 33' 00" W, 17.47 feet;

Thence along the arc of a tangent curve to the right with a delta angle of 19° 38' 00" and a radius of 253.60 feet for a distance of 86.90 feet, the long chord bears N 00° 54' 00" W, 86.47 feet;

Thence N 08° 55' 00" E, 64.64 feet;

Thence N 28° 17' 18" E, 72.46 feet;

Thence along the arc of a tangent curve to the left with a delta angle of 14° 45' 40" and a radius of 200.00 feet for a distance of 51.53 feet, the long chord bears S 79° 52' 26" W, 51.38 feet;

Thence along the arc of a tangent curve to the right with a delta angle of 60° 05' 23" and a radius of 200.00 feet for a distance of 209.75 feet, the long chord bears N 77° 27' 40" W, 200.27 feet;

Thence N 47° 25' 00" W, 150.78 feet;

Thence N 31° 34' 00" E, 31.10 feet;

Thence along the arc of a tangent curve to the left with a delta angle of 27° 18' 00" and a radius of 150.00 feet for a distance of 71.47 feet, the long chord bears N 17° 55' 00" E, 70.80 feet;

Thence N 04° 16' 00" E, 349.97 feet;

Thence along the arc of a tangent curve to the right with a delta angle of 108° 40' 04" and a radius of 100.00 feet for a distance of 189.66 feet, the long chord bears N 58° 36' 02" E, 162.49 feet;

Thence N 27° 16' 32" E, 195.06 feet to the point of beginning.

Contains 21.387 acres, more or less.