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*AMENDED DECLARATION*

*OF THE*

*BLUE MESA LODGE CONDOMINIUMS*



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*AMENDED DECLARATION  
OF THE  
BLUE MESA LODGE CONDOMINIUMS*

This Amended Declaration is made the date set forth below to be effective September 1, 1997.

*RECITALS:*

A. The Blue Mesa Condominiums were originally created by a Declaration recorded in Book 461, at Page 26 under reception No. 262839 of the real estate records of San Miguel County (the "Declaration"), and by a Condominium Map recorded December 22, 1989 in Plat Book 1 at Page 972 of the San Miguel County real estate records (the "Original Condominium Map").

B. The Declaration was amended by an instrument titled First Amendment to the Condominium Declaration for Blue Mesa Condominium recorded September 14, 1994, in Book 534, Page 954 of the records of the San Miguel County Clerk and Recorder. The Declaration, as amended, is defined as the "Original Declaration."

C. The Original Declaration was amended and supplemented by an instrument titled Supplement to Condominium Declaration for Blue Mesa condominium recorded September 15, 1994, in Book 535, at Page 29, in the records of the Clerk and Recorder of San Miguel County, Colorado (the "Supplemental Declaration"). The Original Declaration, as amended and supplemented by the Supplemental Declaration is referred to hereinafter as the "Original, Supplemental Declaration."

D. The Original Condominium Map was amended and supplemented by an instrument titled First Supplement to Condominium Map for Blue Mesa Condominium, recorded September 15, 1994, in Plat Book 1 at Page 1740 of the San Miguel County real estate records, (the "Supplemental Condominium Map"). The Original Condominium Map as amended and supplemented by the Supplemental Condominium Map is referred to hereinafter as the "Original, Supplemental Condominium Map."

E. The properties subject to the Original, Supplemental Declaration are as described in Exhibit A of the Original Declaration and the Original Condominium Map and as described in paragraph 1 of the Supplemental Declaration and the Supplemental Condominium Map.

F. The Blue Mesa Condominium Association is the association of unit owners authorized to administer the entire Blue Mesa Condominium Community (as created by the

Original, Supplemental Declaration and the Original, Supplemental Condominium Map) to manage common expenses and assessments.

G. The Owners of Units in the Blue Mesa Condominium Community and the Blue Mesa Condominium Association wish to amend the Original, Supplemental Declaration as set forth in this Declaration and as may be set forth in a separate Amended and Restated Declaration of the Blue Mesa Condominiums.

H. The Owners of Units in the entire Blue Mesa Condominium Community and the Blue Mesa Condominium Association have divided the entire Blue Mesa Condominium Community into two separate Condominium Communities, one of which consists of the property subject to the Original Declaration and the Original Condominium Map, as amended, and which Condominium Community is now known as (and has been referred to as) the Blue Mesa Condominiums (amended). The other of which consists of the property subject to the Supplemental Declaration and the Supplemental Condominium Map, as amended by this Declaration, and which Condominium Community is now known as (and has been referred to as) the Blue Mesa Lodge Condominiums.

I. Pursuant to paragraph 33(b) of the Original, Supplemental Declaration, the Original, Supplemental Declaration may be terminated and/or amended by the approval of not less than eighty percent (80%) of the Owners and at least seventy-five percent (75%) of all First Mortgagees and the holders of recorded mortgages.

J. The undersigned, being an authorized officer and agent of the Blue Mesa Condominium Association, hereby certifies and verifies that the Blue Mesa Condominium Association has obtained the approval to amend the Original Declaration and the Supplemental Declaration as set forth in this Declaration from all (100%) of the Owners of the entire Blue Mesa Condominium Community and from at least seventy-five percent (75%) of the First Mortgagees.

NOW, THEREFORE, the Original, Supplemental Declaration and the Original, Supplemental Condominium Map are amended by the exclusion of the real property described in the Supplemental Declaration and the Supplemental Condominium Map and the Blue Mesa Lodge Condominium Community is created, by amendment, through this Declaration:

#### ARTICLE 1 SUBMISSION/DEFINED TERMS

Section 1.1 Submission of Real Estate. The undersigned hereby submits the real estate described in the Supplemental Declaration and the Supplemental Condominium Map, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the "Real Estate") to the terms and conditions of this Declaration. The Real Estate is also hereby removed from the Original, Supplemental Declaration

and the original Supplemental Condominium Map. The undersigned hereby declares that all of the Real Estate shall be held or sold, and conveyed subject to the following easements, restrictions, covenants, and conditions. The undersigned further declares that this Declaration is made for the purpose of protecting the value and desirability of the Real Estate, that this Declaration shall run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Unit Owner thereof.

Section 1.2 Defined Terms. Each capitalized term in this Declaration or in the Supplemental Condominium Map shall have the meaning specified or used in the Act, unless the context requires otherwise or unless otherwise defined in this Declaration:

- a. Act means applicable portions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as it may be amended from time to time.
- b. Articles of Incorporation or Articles means the articles of incorporation of the Blue Mesa Lodge Condominium Association, Inc., as amended from time to time.
- c. Association means the Blue Mesa Lodge Condominium Association, Inc., a Colorado nonprofit corporation, its successors and assigns.
- d. Bylaws means the duly adopted bylaws of the Blue Mesa Lodge Condominium Association, Inc., as amended from time to time.
- e. Commercial Unit means a portion of the Blue Mesa Lodge Condominium Community designated and intended for individual ownership for commercial use and consists of any one of those Units of the Condominium community which is separately identified by the words "Commercial Unit", followed by an identifying symbol and separately shown on the Supplemental Condominium Map, together with the percentage interest in the Common Elements appurtenant to that Unit.
- f. Common Elements means the Real Estate within the Blue Mesa Lodge Condominium Community co-owned by the Owners and as designated in a recorded Supplemental Condominium Map and in this Declaration.
- g. Common Expense Assessment(s) shall mean expenditures made or liabilities incurred by or on behalf of the Blue Mesa Lodge Condominium Association, Inc., together with an allocation for reserves, and including the late charges, attorneys' fees, fines and interest charged by the Blue Mesa Lodge Condominium Association, Inc. Common Expense Assessments shall include common water, common electricity, common sewer, common heating and/or common hot water, until or unless any such utilities are separately metered and such utilities shall be excluded from the budget. Upon metering, the metered services shall be billed by the Blue Mesa Lodge Condominium Association, Inc. or billed directly by the service provider to the appropriate Unit and Unit Owner, and



those metered services shall continue to be excluded from the budget to be ratified by the members. Common Expense Assessment(s) shall also include the following: (i) all sums lawfully assessed against the Owners and their units by the Blue Mesa Lodge Condominium Association, Inc.; (ii) expenses of administration, management, maintenance, repair or replacement of the Common elements; (iii) expenses declared Common Expenses by provisions of this Declaration and the Bylaws of the Blue Mesa Lodge Condominium Association, Inc.; (iv) expenses of snow removal and maintenance of public or private roadways, walkways or other areas within and/or adjacent to the Community and necessary and/or convenient to the Community or part thereof; and (v) additional expenses agreed upon as Common Expenses by an extraordinary majority vote of the Association Owners, representing an aggregate ownership interest of three-fourths (3/4) of the Owners.

h. Community shall mean and refer to the Blue Mesa Lodge Condominium Community, which Condominium Community is a Condominium Community as defined in the Act and which Condominium Community is also a Common Interest Community as defined in the Act.

i. Condominium Act shall mean and refer to applicable portions of the Colorado Ownership Act, C.R.S. § 38-33-101 *et seq.* as it may be amended from time to time.

j. Declaration means this Amended Declaration, as amended from time to time.

k. Eligible Holder means a holder, insurer or guarantor of a first lien Security Interest who has delivered a written request to the Blue Mesa Lodge Condominium Association, Inc. containing its name, address, the legal description and the address of the Unit upon which it holds a Security Interest or first mortgage.

l. Executive Board, Board or Board of Directors means the body, regardless of name, designated in this Declaration to act on behalf of the Blue Mesa Lodge Condominium Association, Inc.

m. Governing Documents means this Declaration, the plat and Supplemental Condominium Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Blue Mesa Lodge Condominium Association, Inc., as all of the foregoing may be amended from time to time.

n. Limited Common Elements means those portions of the Common Elements, if any, designated for the exclusive use of one or more but fewer than all of the Units, including any decks or storage areas.

o. Managing Agent means the person or company employed and so designated by the Board to perform the management and operation functions of the Community. There may be only one Managing Agent for the Community.

p. Parking Space Unit or Parking Unit means a portion of the Blue Mesa Lodge Condominium Community designated and intended for individual ownership for permitted vehicle parking use as more particularly described in this Declaration and the Supplemental Condominium Map, and consist of any one of those Units of the Blue Mesa Lodge Condominium Community for permitted vehicle parking use, which is separately identified and separately shown on the Supplemental Condominium Map.

q. Real Estate means the property described in the Supplemental Declaration and the Supplemental Condominium Map, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

r. Residential Unit means a portion of the Blue Mesa Lodge Condominium Community designated and intended for individual ownership for residential use and as described in this Declaration and the Supplemental Condominium Map and consists of any one of those Units of the Blue Mesa Lodge Condominium Community which is separately identified by the words "Residential Unit" and separately shown on the Supplemental Condominium Map, together with percentage interest in the Common Elements appertaining to that Unit. Residential Unit shall or may include, but not be limited to, apartments, lock-off units, suites or lodge units.

s. Rules and Regulations means any instruments, however denominated, which are adopted by the Blue Mesa Lodge Condominium Association, Inc. for the regulation and management of the Blue Mesa Lodge Condominium Community, including any amendment to those instruments.

t. Unit means a physical portion of the Community, designated for separate ownership, shown as a Unit on the recorded Supplemental Condominium Map for the Community, the boundaries of which are defined in the Supplemental Condominium Map and in this Declaration.

u. Unit Owner or Owner means any person or entity that owns a Unit.

## ARTICLE 2 NAMES/DESCRIPTION OF REAL ESTATE

Section 2.1 Statement of Purpose - Condominium Units. The Real Estate is hereby confirmed to have been divided in ownership into Condominium Units as described in the Supplemental Condominium Map, each consisting of a separate, fee simple absolute estate in a

designated Unit, together with the appurtenant, fractional or percentage, undivided fee simple interest in and to the Common Elements which is set forth opposite the designating Unit symbol as restated and amended in Exhibit A of this Declaration, attached to and by this reference made part of this Declaration, and together with the right to use, to the exclusion of others, any Limited Common Elements designated herein and/or on the Supplemental Condominium Map as appurtenant to the Unit or Units in question.

Section 2.2 Name and Type. The type of Common Interest Community is a Condominium Community. The name of the Condominium Community is the "Blue Mesa Lodge Condominiums." The name of the Association is the "Blue Mesa Lodge Condominium Association, Inc."

Section 2.3 Number of Units. The number of Units presently included in the Blue Mesa Lodge Condominium Community is twenty-nine (29), including ten (10) Units used for residential purposes, four (4) Units used for commercial purposes and fifteen (15) Units used for parking purposes.

Section 2.4 Supplemental Condominium Map. The Supplemental Condominium Map currently depicts and each further supplement, amendment, addition, section of, of that map shall depict: (a) The legal description of the surface of the property described and a survey thereof and/or, in the case of supplements to the Supplemental Condominium Map, the surface of that Additional Property being added to the Community and being submitted to condominium ownership by supplement to this Declaration; (b) The linear measurements and location, with reference to the exterior boundaries of said land, of the buildings and all improvements built on said land depicted; (c) Perimeter floor plans and elevation plans of building improvements on said land, showing the horizontal and vertical location, the letter and/or number designation and the linear dimensions of each Unit, and the designation of the Limited Common Elements as can reasonably be depicted on said Supplemental Condominium Map. Supplemental condominium maps need not depict those utility lines or fixtures which are located within walls, attics, the ground or other places where they are not normally visible and which are Common Elements or which, because they serve only one Unit, are Limited Common Elements; (d) The elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plane and the linear measurements showing the thickness of the perimeter walls and those walls separating Units; (e) The designation of each Unit as Commercial Condominium Unit, a Residential Condominium Unit, or a Parking Unit; (f) Supplemental condominium maps shall comply with this Declaration and Colorado law, shall not be filed for record until any building shown thereon has been substantially completed and shall contain a statement of an architect, engineer or duly registered land surveyor certifying that such supplemental condominium maps fully and accurately depicts the layout, measurement and location of all the improvements, the Building, the Units and the Condominium Units (Residential, Commercial or Parking) designations, the dimensions of such Units, all Limited Common Elements which can be reasonably depicted and the elevations of the floors and ceilings.

The Blue Mesa Lodge Condominium Association, Inc. continues to have the reserved right, from time to time, without the consent of any Owner or any others being required; to amend the Supplemental Condominium Map and any additional supplemental condominium map supplement(s) to conform those Supplemental Condominium Maps to the actual location of any of the constructed improvements.

Section 2.5 Alterations Within and Between Units. If any Unit Owner is the owner of two or more adjoining Residential Units, then such Unit Owner shall have the right to remove all or any part of any intervening partition or to create doorways or other apertures therein, as allowed under the Act, notwithstanding the fact that such partition may, in whole or in part, be a General or Limited Common Element, so long as no portion of any bearing wall or bearing column is weakened or removed, and no portion of any Common Element other than that partition and/or the materials and items contained therein is damaged, destroyed or endangered, and so long as the Owner obtains approval of the Blue Mesa Lodge Condominium Association and complies with the provisions of the Act as related to alterations within and between Units. In no event, however, may adjoining Residential and Commercial Condominium Units be combined. Parking Units may not be joined. No amendment shall be effective until the appropriate instruments are executed and recorded in accordance with applicable law. It is confirmed and acknowledged that no Residential Unit Owner's consent is needed to such amendment other than the Unit Owners of the Residential Units to be combined.

A Unit Owner may make improvements or alterations within his or her Unit at their sole cost and risk, with the Owner indemnifying the Blue Mesa Lodge Condominium Association from any loss or claim related thereto, including the Owner's failure to obtain worker's compensation insurance; provided that the improvements do not impair the structural integrity of the building or the structure or otherwise lessen the support of any portion of the Condominium or the Blue Mesa Lodge Condominium Community. No Unit Owner shall do anything (including painting) which would change the exterior appearance of his or her Unit or entrance doors or any other portion of the Blue Mesa Lodge Condominium Community (including Limited Common Elements) without the express written consent of the Board of Directors. No Unit Owner shall engage in any conduct in any Unit or in the Common Elements which is not consistent with a safe and pleasant environment as may be more particularly set out in the Governing Documents.

A Parking Unit Owner may not make improvements or alterations to his or her Parking Space Unit whether or not of a structural nature without the express written consent of the Board of Directors.

The Blue Mesa Lodge Condominium Association, Inc. may promulgate guidelines for the materials which may be used for any construction, improvements and/or alterations. All alterations must be in compliance with the requirements of local government.

Section 2.6 Limited Common Elements. Except for, or provided for, or if inconsistent with the Supplemental Condominium Map, the following portions of the Common Elements are Limited Common Elements assigned to the Units as stated: (a) Any balcony or patio which is

accessible directly from, is associated with and which adjoins an individual Unit, shall, without need for further reference thereto, be confirmed to be a Limited Common Element to be used in conjunction with such Unit to the exclusion of others, except by invitation of the Owner(s) of the Unit in questions; (b) Exterior windows and doors, screens and exterior lights which abut one Unit only and do not provide access and/or light to more than one Unit, shall be considered Limited Common Elements of said one Unit; (c) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one (1) Unit is a Limited Common Element to those Units and any portion serving only the Common Elements is a part of the Common Elements; (d) Any doorsteps, decks and exterior doors and windows or other fixtures designed to serve a single Unit, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit; (e) Limited Common Elements shall be kept in good repair by the Unit Owner to which those Limited Common Elements are allocated, except that balconies may be cleared of snow by the Blue Mesa Lodge Condominium Association as an expense to the Owners with the rights to use a balcony. If such repair is reasonably required and is not undertaken within a reasonable time by the Owner, the Blue Mesa Lodge Condominium Association, Inc. may make such repair, and charge the Unit Owner for the cost of such repair. If such cost is not paid, the unpaid amount shall constitute a lien upon the Unit, which the Blue Mesa Lodge Condominium Association, Inc. may enforce according to this Declaration and Colorado law. Any Limited Common Element assigned to a Unit may not be changed without the express written consent of Unit Owners having the right to use such Limited Common Element.

Section 2.7 Common Elements. The real estate described in the Supplemental Condominium Map are the Common Elements. Portions of any Common Elements may be designated as a part of a Unit or as a Limited Common Element to a Unit, and portions of Units may become Common Elements or Limited Common Elements, pursuant to rights reserved elsewhere in this Declaration.

Section 2.8 Inseparability of Condominium Units. A Condominium Unit's undivided interest in and to the Common Elements shall not be separated from the Condominium Unit of which it and/or they are part of or appurtenant to, by deed, lease, encumbrance or otherwise (except as provided in reserved rights in this Declaration) and shall be deemed to be conveyed or encumbered with the Condominium described in a deed or other instruments.

Section 2.9 Identification of Units/Unit Descriptions. The identification letter of each Unit is shown on the Supplemental Condominium Map and Exhibit A of this Declaration. Every contract for sale, deed, lease, Security Interest, will or other legal instrument shall legally describe a Unit by its identifying letter, followed by the name of the Community, with or without reference to the prior Community in which the Unit was included (the Blue Mesa Condominium Community) with reference to the Supplemental Condominium Map and this Declaration. An illustrative description is as follows:

Unit \_\_\_\_, Blue Mesa Lodge Condominiums (formerly known as Unit \_\_ of the Blue Mesa Condominiums), in accordance with the recorded Supplemental Condominium Map and Declaration, San Miguel County, Colorado.

Reference to this Declaration and Supplemental Condominium Map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration and Supplemental Condominium Map, without specific references thereto; except that reference to the Supplemental Condominium Map shall not include, with or without reference, the separate Blue Mesa Lodge Condominium Community of the Blue Mesa Condominiums (as amended).

Section 2.10 Unit Boundaries. Unit boundaries are as depicted on the Supplemental Condominium Map. In supplementation of those descriptions and definitions created by the Supplemental Condominium Map, but without modification, the following terms and conditions further define Unit boundaries:

a. Inclusions. Each Unit includes the spaces and improvements lying within the boundaries depicted on the Supplemental Condominium Map. If any Unit shall be constructed with windows which protrude beyond the confines of the lateral or perimetric boundaries of said Unit (such windows being commonly known as "bay windows") or with fireplace structures which protrude beyond the confines of the lateral or perimetric boundaries of the Unit, or with garden boxes (also called window boxes) which protrude beyond the perimetric boundaries of the Unit, then the lateral or perimetric boundaries of the Unit shall be deemed to extend to include the area contained within such protrusions, and such areas shall be considered as a part of the Unit and not as a part of the Common Elements. Each Unit also includes the utilities to the extent those utilities exclusively serve that Unit and interior stairways that serve just that Unit. Utilities that may exclusively serve a Unit include, but are not limited to: the spaces and improvements containing utility meters, water heating facilities, electrical switches, wiring, pipes, ducts, conduits, smoke detector or security systems and communications, and television, telephone and electrical receptacles and boxes.

b. Exclusions. Except when specifically included by other provisions of this Declaration or by the Supplemental Condominium Map, the following are excluded from each Unit: the structural components of the Blue Mesa Lodge Condominium Community bearing walls, floors, halls, corridors, lobbies, stairs, stairways outside of the boundaries of a Unit, fire escapes, entrances, exits, roofs (except for the interior surface thereof, of a perimeter wall, floor or ceiling), foundations, columns, girders, beams, supports, shafts, all windows and doors, (except for interior windows and interior doors), or windows or doors serving only one Unit, the spaces and improvements lying outside the boundaries described above, air conditioners and heating systems, thresholds, exterior lighting and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and other service to other Units and the Common Elements.

c. Noncontiguous Portions. Certain Units may include special portions or pieces of equipment, such as utility meters, meter boxes, utility connection structures, and storage areas detached from the Unit. Such special equipment or storage portions are a part of the Unit, notwithstanding their non-contiguity with the principal portions as shown on the Supplemental Condominium Map. Each Unit includes the spaces and improvements lying within the boundaries described above, and also includes the utilities and utility meters and communications, television, telephone and electrical receptacles and boxes serving that Unit exclusively, whether or not in the boundaries or contiguous to the Unit, unless the same are maintained by a governmental agency or entity. The Common Elements are excluded from each Unit and any utilities or other facilities running through or within any Unit for the purpose of furnishing utility and other service to other Units and/or the Common Elements are also excluded.

d. Parking Space Boundaries. Each Parking Space Unit consists of the volumes or cubicles of space which are enclosed by the lower, upper and lateral or perimetrical boundaries described as follows: The lower boundaries of the underground Parking Space Units are horizontal planes, the elevation of which coincides with the elevation of the upper surface of the paved, concrete floor of the building garage, extended to intersect the lateral or perimetrical boundaries thereof. The upper boundaries of the underground Parking Space Units are horizontal planes, the elevation of which coincides with the lower surface of the finished ceiling separating the building garage from the ground floor of the building, extended to intersect the lateral or perimetrical boundaries thereof. The lateral or perimetrical boundaries of the underground Parking Space Units are (a) imaginary vertical planes of the center lines of the painted lines denoting and separating the underground Parking Space Units, (b) imaginary vertical planes intersecting the two imaginary vertical planes noted above and denoting the entrance to, and the width of, each underground parking Space Unit, (c) the vertical planes which coincide with the unfinished inside surfaces of the perimeter walls of the building garage for those underground Parking Space Units which front against the inside surface of said perimeter walls or the vertical planes which coincide with any railing or concrete step or center line of a painted line for those underground Parking Space Units which front against such items, said vertical planes extended to intersect the upper and lower boundaries of the underground Parking Space Units and to intersect the other lateral or perimetrical boundaries thereof.

Section 2.11 No Partition. The Common Elements shall be owned in common and shall remain undivided (except as provided in reserved rights in this Declaration). No right of action either for partition or division either of the Common Elements of an individual Condominium Unit or of an individual Unit shall or does exist whether by conveyance, contract, lease, easement, judicial proceeding or otherwise.

Section 2.12 Separate Taxation of Condominium Units. All taxes, assessments and other governmental impositions of the State of Colorado or of any political subdivision, special district or of any other taxing or assessing authority shall be assessed and collected against each

Condominium Unit separately and not against the building or the Community as a whole. Each separate Condominium Unit shall be designated on tax records as a separate and distinct parcel. For the purpose of valuation for assessment, the valuation of the Common Elements shall be apportioned among the several Condominium Units in proportion to their fractional or percentage undivided interest in the Common Elements. The lien for taxes assessed against any Condominium Unit shall be confined to that Condominium Unit. No forfeiture or sale of any Condominium for delinquent taxes, assessments or other governmental impositions shall divest or in any way affect the title to any other Condominium Unit.

Section 2.13 Title. A Condominium Unit may be held and owned by more than one person as joint tenants, as tenants in common, or in any form of real property co-ownership recognized under the laws of the State of Colorado.

Section 2.14 Certain Work Prohibited. No Owner shall undertake any work in his or her Unit or elsewhere in the Community which would jeopardize the soundness or safety of a Unit or the building or of the Community, reduce the value thereof or impair an easement or hereditament thereon or thereto without the unanimous vote of all other Owners. Structural alterations shall not be made by an Owner, to roof trusses or other supporting structural members, common water, gas or steam pipes, electric or other utility conduits, plumbing or other fixtures connected therewith, nor shall an Owner remove any improvements or fixtures from the building, the Community or any part thereof without prior written consent of the Board of Directors first having been obtained. No Owner shall enclose, by means of screening or otherwise, any balcony, yard, deck, patio or porch which is accessible from, associated with and which adjoins a Unit, without having first obtained the written approval of the Board (which approval may be withheld for any reason).

Section 2.15 Liens Against Condominium Units - Release of Lien - Effect of Part Payment. Liens or encumbrances shall only arise or be created against an individual Condominium Unit in the same manner and under the same conditions as liens and encumbrances may arise or be created against any other parcel of real property subject to individual ownership. Repair work performed on a Unit with the consent of, or at the request of an Owner or her or his agent, shall be the basis for the filing of a lien pursuant to law against the Unit only, except that express consent shall be deemed to have been given by the Owner of any Unit to the Blue Mesa Lodge Condominium Association, Inc. and/or Managing Agent in the case of need for emergency repairs. Labor performed upon, or material furnished for incorporation into the Common Elements, if duly authorized by the Blue Mesa Lodge Condominium Association, Inc. or its Managing Agent in accordance with the Declaration or the Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner.

Each Owner shall indemnify and hold each of the other Owners harmless from and against liability or loss arising from any claim of lien against all or part of the Condominium Unit of another Owner, for labor or materials furnished in work on such indemnifying Owner's Unit. At the written request of any Owner, the Blue Mesa Lodge Condominium Association, Inc. shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was



performed and/or materials furnished the amount necessary to discharge any such lien and all costs incidental thereto, including reasonable attorney's fees. If not promptly paid, the Blue Mesa Lodge Condominium Association, Inc. may proceed to collect the same in the manner provided herein for collection of assessments hereunder for the purpose of discharging the lien.

Section 2.16 Unit Maintenance. Unit Owners are responsible for the maintenance, repair and replacement of the Improvements and properties located within their Unit boundaries which is not specifically the obligation of the Blue Mesa Lodge Condominium Association, Inc. to maintain, replace and keep in good repair. Unit Owners shall provide for all interior maintenance, repair and replacement of all Improvements constructed in a Unit.

### ARTICLE 3 EASEMENTS

Section 3.1 Utility, Supplemental Condominium Map and Plat Easements. Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat and on the recorded Supplemental Condominium Map of the Blue Mesa Lodge Condominium Community.

Section 3.2 Easements for the Executive Board and Unit Owners. Each Unit shall be subject to an easement in favor of the Executive Board (including its agents, employees and contractors) and to each Unit Owner to allow for their performance of obligations in this Declaration. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages, and a lien therefore is authorized and established against that party's property, pursuant to this Declaration.

Section 3.3 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to the managing agent, to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Blue Mesa Lodge Condominium Community, to enter upon any part of the Blue Mesa Lodge Condominium Community in the performance of their duties.

Section 3.4 Unit Owners' Easements of Enjoyment. Every Unit Owner shall have a right and easement access to their Unit and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- a. The right of the Board to promulgate and publish Rules and Regulations which each Unit Owner and their guests shall strictly comply with.
- b. The right of the Board to suspend the voting rights and rights to use the Common Elements by a Unit Owner for any period during which any assessment against

their Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations.

c. The right, power and authority of the Blue Mesa Lodge Condominium Association, Inc. to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act.

d. The right of the Blue Mesa Lodge Condominium Association, Inc. to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

e. The Development Rights reserved in this Declaration.

Section 3.5 Delegation of Use. Any Unit Owner may delegate their right of enjoyment to the Common Elements and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Unit.

Section 3.6 Owner's Rights in Limited Common Elements. Subject to the other provisions of this Declaration each Owner, his or her family and such Owner's Guests, shall have the right to use and enjoy the Limited Common Elements defined herein and/or designated on the Map as appurtenant to the Unit of such Owner. Certain of the Limited Common Elements may be designated on the Map for common use in conjunction with more than one, but fewer than all Units.

Section 3.7 Association Rights. The Blue Mesa Lodge Condominium Association, Inc., its Board and its Managing Agent shall have a perpetual, non-exclusive right and easement to make such use of, and to enter into or upon any of the Common Elements, the Limited Common Elements and the Units under its jurisdiction as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Declaration.

Section 3.8 Owner's Easement for Access, Support and Utilities. Each Condominium Unit shall include a perpetual, non-exclusive easement appurtenant to any part of such condominium ownership interest for access between the Unit in question and the public way adjacent to the Community, and over and across the lawns, walks, driveways and all other Common Elements of the Community, an easement for horizontal and lateral support of her or his Unit for utility services, including water, sewer, gas, electricity, telephone, television and all other utility services to such Unit.

Section 3.9 Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Unit, the Owner of the

encroaching Unit shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either against the title to the Common Elements or any Condominium Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of a Building, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of any Building within the Community, or any improvement within the Community or any part thereof.

Section 3.10 Easements within the Units for Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within a Unit or may be conveniently accessible only through a particular Unit. The Blue Mesa Lodge Condominium Association, Inc., Managing Agent and each Owner shall have a perpetual easement, which may be exercised on behalf of any Owner by and through the Blue Mesa Lodge Condominium Association, Inc. or the Managing Agent, as agent for such Owner, for access through any Unit and all Common Elements, from time to time, during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit. Damage to the interior of any Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, or as a result of emergency repairs within another Unit, at the instance of the Blue Mesa Lodge Condominium Association, Inc., shall be a Common Expense of all the Owners of the Property and the Additional Property, or the Unit Owners within a particular building, as determined by the Board, whose decision shall be binding upon the Owners. If such damage resulted from the acts or omissions of an Owner, the cost of the repair shall be a debt of said Owner. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with law, ordinance or lawful order of any governmental authority. Restoration of the damaged improvements shall be substantially the same condition as existed prior to the damage.

Section 3.11 Easements Deemed Appurtenant. The easements, servitude, uses and rights herein created shall be appurtenant to, inseparable from and part of each of the Condominium Units. All conveyances of, and other instruments affecting title to a Condominium Unit shall be deemed to grant and reserve the easements, servitude, uses and rights as are herein provided, even though no specific reference to such easements, servitude uses and rights need appear in any such conveyance.

#### ARTICLE 4 THE ASSOCIATION

Section 4.1 Membership. Every person who is a record Unit Owner of a fee interest in any Unit which is subject to this Declaration shall be a member of the Blue Mesa Lodge Condominium Association, Inc. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of such Unit shall be the sole qualification for such

membership. Where more than one person holds an interest in any Unit, all such persons shall be members.

Section 4.2 General Purposes and Powers of the Blue Mesa Lodge Condominium Association, Inc. The Blue Mesa Lodge Condominium Association, Inc., through its Executive Board, shall perform functions and manage the Blue Mesa Lodge Condominium Community as provided in this Declaration so as to protect the value and desirability of the Blue Mesa Lodge Condominium Community and the Units and to further the interests of the residents, occupants, tenants and guests of the Blue Mesa Lodge Condominium Community and members of the Blue Mesa Lodge Condominium Association, Inc. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designation and management. The Blue Mesa Lodge Condominium Association, Inc. shall have all power necessary or desirable to effectuate such purposes.

Section 4.3 Authority of the Blue Mesa Lodge Condominium Association, Inc. The business affairs of the Blue Mesa Lodge Condominium Community shall be managed by the Blue Mesa Lodge Condominium Association, Inc. The Blue Mesa Lodge Condominium Association, Inc. shall be governed by the Act, this Declaration, the Supplemental Condominium Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Executive Board. The Executive Board may, by written resolution, delegate authority to a manager or managing agent for the Blue Mesa Lodge Condominium Association, Inc., provided no such delegation shall relieve the Board of final responsibility.

Section 4.4 Specific Powers. The Blue Mesa Lodge Condominium Association, Inc. shall have the powers, authority and duties as follows and as necessary and proper to manage the business and affairs of the Blue Mesa Lodge Condominium Community. The Blue Mesa Lodge Condominium Association, Inc. shall have all of the powers, authority and duties permitted or set forth in the Condo Act and applicable portions of the Act.

Section 4.5 Blue Mesa Lodge Condominium Association, Inc. Maintenance. The Executive Board of the Blue Mesa Lodge Condominium Association, Inc. shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance responsibilities. The Blue Mesa Lodge Condominium Association, Inc. shall be responsible for: the improvement, maintenance, repair, upkeep and reconstruction, and replacement of the Common Elements; the improvement, maintenance, repair, upkeep and reconstruction and replacement of Limited Common Elements; windows; for the payment of expenses which may be incurred by virtue of agreement with or requirement of the Town of Telluride Mountain Village or other government authorities and for operational expenses of the Blue Mesa Lodge Condominium Association, Inc. The Blue Mesa Lodge Condominium Association, Inc. may install utility meters on any common utilities, and may bill the expense thereof and the resulting metered services to the appropriate Unit and Unit Owner. Further, the Blue Mesa Lodge Condominium Association may also provide heat and/or laundry services to Unit Owners with the cost allocated to those Owners.

Section 4.6 Allocated Interests. The ownership interest, Common Expense liability and votes in the Blue Mesa Lodge Condominium Association, Inc. allocated to each Unit are set as follows: (a) the percentage of ownership of the Common Elements, based on the square footage of each Unit; (b) the percentage of liability for Common Expenses, based on the allocations currently used, copies of which are available from the Association's managing agent, or, at the option of the Association, and as an alternative allocation, the percentage of liability for Common Expenses may be allocated by the Association based on the square footage of each Unit; (c) the number of votes in the Blue Mesa Lodge Condominium Association, Inc. based on the square footage of each Unit. The Allocated Interests (based on square footage) are set forth in Exhibit A. When and if necessary, the formulas set forth above shall be used to reallocate the Allocated Interests.

Section 4.7 Blue Mesa Lodge Condominium Association, Inc. Agreements. Any agreement for professional management of the Blue Mesa Lodge Condominium Community may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days' written notice.

Section 4.8 Blue Mesa Lodge Condominium Association, Inc. as Attorney-in-Fact for Owners. The Blue Mesa Lodge Condominium Association, Inc. is hereby irrevocably and perpetually appointed attorney-in-fact for the Owners, and each of them, during such time as each may be Owner, to manage, control and deal with the interest of such Owners in the Real Estate and in the Blue Mesa Lodge Condominium Community, as the case may be, so as to permit the Blue Mesa Lodge Condominium Association, Inc. to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Community, including, without limitation, its destruction or obsolescence as hereinafter provided; and as such attorney-in-fact to grant access of utility easements through any portion of the Common Elements. The acceptance by any person of any interest in any Condominium Unit shall constitute the appointment of said Blue Mesa Lodge Condominium Association, Inc. as attorney-in-fact

Section 4.9 Other Blue Mesa Lodge Condominium Association, Inc. Functions. The Blue Mesa Lodge Condominium Association, Inc. may undertake any activity, function or service for the benefit of or to further the interests of all, some or any of its Owners on a self-supporting, special assessment or common assessment basis. Such activities, functions or services may include, but need not be limited to, the providing of security services, garbage and trash collection services, firewood, general management services, garden landscaping maintenance, maid and cleaning services for individual Units, and window box planting for individual Units.

Section 4.10 Labor and Services. The Blue Mesa Lodge Condominium Association, Inc. (a) may obtain and pay for the services of a Managing Agent to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as said Blue Mesa Lodge Condominium Association, Inc. shall determine to be necessary or desirable for the proper operation of the Community, whether such personnel are furnished or employed directly by the Blue Mesa Lodge Condominium Association, Inc. or by any person with whom or with which it contracts; (b) may obtain and pay for legal and/or accounting services necessary or desirable

in connection with the operation of the Community, or the enforcement of this Declaration; and (c) may arrange with others to furnish lighting, heating, water, snow clearing and/or snow plowing, grading, trash collection, alley and/or driveway maintenance, landscape maintenance, flowerbox plantings, painting and decorating, sewer service, landscaping and groundskeeping, maintenance of drainage facilities and other common services.

Section 4.11 Implied Rights. The Blue Mesa Lodge Condominium Association, Inc. shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

Section 4.12 Indemnification. To the full extent permitted by law, each officer and director of the Blue Mesa Lodge Condominium Association, Inc. shall be and are hereby indemnified by the Unit Owners and the Blue Mesa Lodge Condominium Association, Inc. against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of the Blue Mesa Lodge Condominium Association, Inc., or any settlements thereof, whether or not they are an officer or director of the Blue Mesa Lodge Condominium Association, Inc. at the time such expenses are incurred; except in such cases wherein such officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interests of the Blue Mesa Lodge Condominium Association, Inc.

Section 4.13 Limitation on Board of Directors' Liability. The Board of Directors or individual members thereof shall not be liable for any failure of any service to be obtained and paid for by the Board of Directors hereunder, or for injury or damage to person or property caused by the elements or by another Owner or person, or resulting from electricity, mud, ice, water or rain which may leak, flow, or fall from outside or from any part of the Community, or from any of its pipes, drains, conduits, ducts, roofing, appliances, equipment, or from any other place. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Elements or from any action taken to comply with any law, ordinance or order of a governmental authority.

Section 4.14 Right to Notice and Comment. Pursuant to C.R.S. § 38-33.3-205(1)(c), or whenever the Governing Documents require that an action be taken after "Notice and Comment," and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Further, any Unit Owner may give "Notice and Comment" to the Unit Owners of any matter affecting the Blue Mesa Lodge Condominium Community, and Unit Owners shall then have the right to comment, orally or in writing, on the matter. Notice shall be given to each Unit Owner in writing, delivered personally or by mail to all Unit Owners at such address as appears in the records of

the Blue Mesa Lodge Condominium Association, Inc., or notice shall be published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than three (3) days before proposed action is to be taken. The Notice shall invite comment to the Executive Board or a Unit Owner, orally or in writing before the scheduled time of any meeting.

## ARTICLE 5 COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 5.1 Creation of Blue Mesa Lodge Condominium Association, Inc. Lien and Personal Obligation to Pay Common Expense Assessments. Each Unit and each Unit Owner, by acceptance of a deed therefor, covenants and agrees to pay to the Blue Mesa Lodge Condominium Association, Inc. annual Common Expense Assessments, insurance assessments (assessed in proportion to risk); utility assessments (assessed in proportion to the Allocated Interest or usage), and such other assessments as imposed by the Blue Mesa Lodge Condominium Association, Inc. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Blue Mesa Lodge Condominium Association, Inc. shall be the personal obligation of the Unit Owner of such Unit at the time when the assessment or other charges became or fell due. The Blue Mesa Lodge Condominium Association, Inc. annual Common Expense Assessments and such other assessments as imposed by the Blue Mesa Lodge Condominium Association, Inc., including fees, charges, late charges, attorney fees, fines and interest charged by the Blue Mesa Lodge Condominium Association, Inc., shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such assessment or charge is made. If any assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Blue Mesa Lodge Condominium Association, Inc. shall not pass to a successor in title unless expressly assumed by them. No Unit Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made. All assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Blue Mesa Lodge Condominium Association, Inc. or the Executive Board is not properly exercising its duties and powers under this Declaration.

Section 5.2 Apportionment of Common Expenses. Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Units in accordance with formula for liability for the Common Expenses as set forth in this Declaration. The Association may adopt and prepare separate budgets or have separate cash requirements to include and differentiate: Common Expenses attributable to the Commercial Condominium Units, Common Expenses attributable to the Residential Condominium Units and Common Expenses attributable to both Commercial and Residential Condominium Units.

Section 5.3 Annual Assessment. The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budgets or the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments may include common water, common electricity, common sewer, common heating and/or common hot water, until or unless any such utilities are separately metered, and shall then be excluded from the budgets. Upon metering, the metered services shall be billed by the Blue Mesa Lodge Condominium Association, Inc. or billed directly by the service provider to the appropriate Unit and Unit Owner, and those metered services shall continue to be excluded from the budgets to be ratified by the members. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Executive Board. Common Expense Assessments may begin on the first day of the month in which this Declaration is approved and recorded. The omission or failure of the Executive Board to levy the assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 5.4 Effect of Non-Payment of Assessments. Any assessment, charge or fee provided for in this Declaration, or any monthly, quarterly or other installment thereof, which is not fully paid within fifteen (15) days after the due date thereof, as established by the Executive Board, shall bear interest at the rate established by the Executive Board, on a per annum basis from the due date, and the Blue Mesa Lodge Condominium Association, Inc. may assess a reasonable late charge thereon as determined by the Executive Board. Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Unit Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Blue Mesa Lodge Condominium Association, Inc. may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue assessments, interest, charges or fees, or monthly, quarterly or other installments thereof, and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Blue Mesa Lodge Condominium Association, Inc. against a Unit Owner to recover a money judgment for unpaid assessments, interest, charges or fees, or monthly, quarterly or other installments thereof, may be commenced and pursued by the Blue Mesa Lodge Condominium Association, Inc. without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Blue Mesa Lodge Condominium Association, Inc. of its lien shall not be deemed to estop or otherwise preclude the Blue Mesa Lodge Condominium Association, Inc. from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, interest, charges or fees, or monthly, quarterly or other installments thereof, which are not fully paid when due. The Blue Mesa Lodge Condominium Association, Inc. shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Blue Mesa Lodge Condominium Association, Inc. votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any assessment lien, and a Unit Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Unit Owner. The rights of the Blue Mesa Lodge Condominium Association, Inc.



shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 5.5 Lien Priority. The lien of the Blue Mesa Lodge Condominium Association, Inc. under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien Security Interest on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Blue Mesa Lodge Condominium Association, Inc. under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Unit shall not affect the lien for said assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 5.6 Working Fund. The Blue Mesa Lodge Condominium Association, Inc. may require a Unit Owner of each Unit to make a non-refundable payment to the Blue Mesa Lodge Condominium Association, Inc. in an amount equal to one-fourth (1/4) of the annual Common Expense Assessment against that Unit in effect at the closing thereof, which sum shall be held, without interest, by the Blue Mesa Lodge Condominium Association, Inc. as a working fund. Said working fund shall be collected and transferred to the Blue Mesa Lodge Condominium Association, Inc. at the time of closing. Such payment shall not relieve a Unit Owner from making regular payments of assessments as the same become due.

Section 5.7 Owner's Negligence or Misconduct. In the event that the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Blue Mesa Lodge Condominium Association, Inc. for such maintenance, repair, or replacement shall be a personal obligation of such Owner, and if not repaid to the Blue Mesa Lodge Condominium Association, Inc. within seven (7) days after the Blue Mesa Lodge Condominium Association, Inc. shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Section 5.1, such expenses, costs, and fees shall automatically become a default assessment determined and levied against such Unit, and the Blue Mesa Lodge Condominium Association, Inc. may proceed in accordance with the applicable provisions of Article 5 hereof.

**ARTICLE 6  
RESTRICTIONS ON USE, ALIENATION  
AND OCCUPANCY**

All Real Estate within the Blue Mesa Lodge Condominium Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Executive Board or by an appropriate committee (subject to review by the Executive Board) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or Rules and Regulations.

Section 6.1 Use/Occupancy. No Unit within the Blue Mesa Lodge Condominium Community shall be used for any purpose other than as allowed by the local zoning codes, except as restricted in or by this Declaration. The Blue Mesa Lodge Condominium Association, Inc. shall have the right but not the obligation to purchase and own any Condominium Unit for any use which the Board determines is consistent with the operation of the Community. The Blue Mesa Lodge Condominium Association, Inc. may also maintain one or more offices and/or storage facilities within the Common Elements, under its jurisdiction, compatible with the Community. However, no commercial use may be maintained in any Residential Unit or Parking Unit and no use of any nature (Commercial, Residential or Parking) shall unreasonably interfere with the quiet use and enjoyment of any other Unit located within the Community.

Quiet use and enjoyment shall include, without limitation, the following:

- a. No skis or bicycles shall be taken above the residential lobby, except for the purpose of long-term (seasonal) storage. No ski boots shall be worn above the residential lobby;
- b. Alcohol may be served or sold in a public establishment only if accompanied by a State of Colorado food service license;
- c. Any music played within the Community, including public establishments, shall not disturb residents and occupants;
- d. Use of all or any part of a Commercial Condominium Unit shall not include, without limitation, a saloon, dance hall, night club, or any associated or similar use. The Commercial Condominium may include, however, a restaurant, which establishment may serve alcohol at tables or at a bar, so long as such activity does not disturb residents and occupants of the Blue Mesa Lodge Condominium Community. Live music shall be allowed in such an establishment as long as it is of a benign and inoffensive nature, such as folk, classical, jazz, traditional, or piano music, so long as such music does not disturb residents and occupants of the Blue Mesa Lodge Condominium Community.

Section 6.2 Rental or Overnight Lodging of Residential Units. Rental or overnight lodging of a Residential Unit shall be subject to the terms and conditions of this section and shall be subject to the terms and conditions of a separate "rental pool management agreement." Subject to the foregoing, any Unit Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Unit Owner may deem advisable, subject to the following:

a. Short term occupancies and rentals (of less than thirty (30) days) of Residential Units for resort lodging to overnight and short term guests shall be subject to reasonable regulation of the Blue Mesa Lodge Condominium Association. Specifically, the Blue Mesa Lodge Condominium Association shall have the power and authority to require all short term occupancies or rentals to be through such management company or companies as the Association may approve and designate.

b. Any long term lease or rental agreement (of over thirty (30) days) shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Blue Mesa Lodge Condominium Association, the Articles of Incorporation and the rules and regulations of the Blue Mesa Lodge Condominium Association.

c. All short and long term occupancies, leases and rental agreements of Residential Units shall be deemed to state that the failure of the tenant, renter or guest to comply with the terms of the Declaration or Bylaws of the Blue Mesa Lodge Condominium Association, Articles of Incorporation or the rules and regulations of the Blue Mesa Lodge Condominium Association shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Blue Mesa Lodge Condominium Association or the landlord, or by both of them.

d. All occupancies of guests of Residential Units shall be subject to the right of the Blue Mesa Lodge Condominium Association to remove and/or evict the guest for failure to comply with the terms of the Declaration, the Bylaws of the Blue Mesa Lodge Condominium Association, the Articles of Incorporation or the rules and regulations of the Blue Mesa Lodge Condominium Association.

e. The rights of any lessee, sublessee or short term (hotel or transient) use, of a Residential Condominium Unit, or any part thereof shall be subject to, and each such lessee or sublessee (or short term renter) shall be bound by, the covenants, conditions and restrictions set forth in the Declaration, Bylaws and Rules and Regulations, and a default thereunder shall constitute a default under the lease or sublease (or short term rental agreement); provided, however, that the foregoing shall not impose any direct liability on any lessee, sublessee or short term renter of a Residential Unit to pay any Common Expense Assessments on behalf of the Owner of that Residential Unit.

f. Except as restricted in this Declaration, and such Rules and Regulations as the Blue Mesa Lodge Condominium Association may promulgate, the right to lease or allow occupancy of a Unit shall not be restricted.

Section 6.3 Use of Common and Limited Common Elements. The Common Elements may be used only in accordance with the purposes for which intended, without hindering or encroaching upon the lawful rights of others. The Board may adopt rules and regulations governing the use of Common and Limited Common Elements, pursuant to which part of the Common Elements may be allocated to the use of one or more but fewer than all Owners. Each Owner, tenant and/or guest by acceptance of its deed, lease, mortgage or other instrument of conveyance or assignment or occupancy agrees thereby to be bound by this Declaration, the Articles, the Bylaws and by and adopted rules and regulations duly adopted by the Board.

Section 6.4 Units to be Maintained. Unit Owners are responsible for the maintenance, repair and replacement of the properties located within their Unit boundaries. Each Unit at all times shall be kept in a clean, sightly, and wholesome condition. No bicycles, kayaks, sport or recreational equipment, trash, litter, junk boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon or within any Unit so that the same are visible from any neighboring Unit, from any street or from the river trail. The Blue Mesa Lodge Condominium Association, Inc., and its agents, shall have the authority to enter, replace, maintain, repair and clean up Units which do not conform to the provisions of this Section, and to charge and collect from the Unit Owners thereof all reasonable costs related thereto as an assessment hereunder.

Section 6.5 Owners Maintenance Responsibility. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring) but not surfaces of the perimeter walls, ceilings and floors within the Unit. An Owner shall not be deemed to own lines, pipes, wires, conduits or systems (for brevity, hereafter called "Utilities") running through his Unit which serve one or more other Units, except as co-tenant with the Owners. An Owner's right to maintain, repair, alter and remodel a Unit carries with it the obligation to replace at his sole cost and expense, any finishing or other materials removed with similar or other types or kinds of materials of at least equal quality. An Owner shall maintain and keep in good repair and in a clean, safe, attractive and sightly condition, at his sole cost and expense, the interior of her or his own Unit, including the fixtures, doors and windows thereof and the improvements affixed thereto, fireplaces and fireplace accessories, and such other items and areas as may be required by the By-Laws or by rules and/or regulations promulgated pursuant to this Declaration or the By-Laws. An Owner shall maintain and keep in a neat and clean condition, any balcony or patio area adjoining and/or leading to such Owner's Unit as well as areas which are shown on the Supplemental Condominium Map as Limited Common Elements appurtenant to such Owner's Condominium Unit. All fixtures and equipment installed within a Unit, commencing at the point where the utilities enter the Unit and any fixtures, equipment and utility facilities serving only that one Unit shall be maintained and kept in repair by and at the expense of the Owner thereof. If any Owner fails to carry out or

neglects the responsibilities set forth in this paragraphs, the Blue Mesa Lodge Condominium Association, Inc. may fulfill the same and charge such Owner therefor, with lien rights vesting in the Blue Mesa Lodge Condominium Association, Inc. in the event of nonpayment by the Owner, including payment by that Owner of costs and reasonable attorney's fees, if any. Any expense incurred by an Owner under this paragraph shall be the sole expense of said Owner.

Section 6.6 Restrictions on Animals and Pets. Pets, including cats, dogs, birds, reptiles, or other animals, hereinafter for brevity termed "pet," shall not be kept, maintained or harbored in the Blue Mesa Lodge Condominium Community.

Section 6.7 Nuisances. No nuisance shall be permitted within the Blue Mesa Lodge Condominium Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Unit Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Unit or Common Element, or any portion of the Blue Mesa Lodge Condominium Community by Unit Owners. Further, no immoral, improper, offensive or unlawful use shall be permitted within the Blue Mesa Lodge Condominium Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Blue Mesa Lodge Condominium Community or a portion thereof shall be observed.

Section 6.8 Vehicular Parking, Storage, and Repairs.

a. Vehicle parking and storage is subject to the Rules and Regulations of the Blue Mesa Lodge Condominium Association, Inc.

b. The following vehicles may not be parked or stored within the Blue Mesa Lodge Condominium Community: oversized vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, trucks used for commercial uses (as opposed to trucks used for personal uses), self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation.

c. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of or washing of any kind of vehicle, trailer or boat, may be performed or conducted inside of garages.

d. No hazardous activity or condition of any vehicle shall be permitted.

Section 6.9 Parking of Vehicles. Parking of any and all vehicles within the Community shall be subject to the rules and regulations of the Blue Mesa Lodge Condominium Association, Inc., which shall not defeat the rights of the Owners of parking spaces designated as their Parking Units.

Section 6.10 Restriction on Parking and Storage. No part of the Common Elements of the Community, including ramps, streets or drives, parking areas or the garage, unless

specifically designated by the Blue Mesa Lodge Condominium Association, Inc., shall be used as storage, display, or as an accommodation or parking area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, truck or recreational vehicle, except as a temporary expedient for loading, delivery or emergency (provided, however, that this restriction shall not restrict trucks or other commercial vehicles within the Community which are necessary for the construction or maintenance of the Community).

Section 6.11 Garage not to be Used as Residence. Areas designated on the Supplemental Condominium Map or Supplements thereto as garage or parking areas, if any, shall not be converted into living, sleeping, or residential space.

Section 6.12 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Blue Mesa Lodge Condominium Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Blue Mesa Lodge Condominium Community which would reasonably be found by others to be noxious or offensive.

Section 6.13 No Hazardous Activities/Restriction on Outdoor Grills. No activity shall be conducted on any portion of the Blue Mesa Lodge Condominium Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no outdoor grills may be used within the Community, no firearms shall be discharged upon any portion of the Blue Mesa Lodge Condominium Community and no open fires shall be lighted or permitted on any portion of the Blue Mesa Lodge Condominium Community. Propane gas tanks are expressly prohibited.

Section 6.14 Compliance with Insurance Requirements. Except as may be approved in writing by the Executive Board, nothing shall be done or kept on the Blue Mesa Lodge Condominium Community which may result in an increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Blue Mesa Lodge Condominium Association, Inc.

Section 6.15 Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Blue Mesa Lodge Condominium Community except such sign or signs as may be approved in writing by the Executive Board.

Section 6.16 No Restrictions on Sale of a Unit. The right of a Unit Owner to sell, transfer or otherwise convey their Unit shall not be subject to any right of first refusal or similar restriction and such Unit may be sold free of any such restrictions.

Section 6.17 No Restrictions on Mortgaging of a Unit. There are no restrictions on the right of the Unit Owners to mortgage or otherwise encumber their Unit. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 6.18 Restrictions on Structural Alterations and Exterior Improvements. No structural alterations to any Unit or any Common or Limited Common Elements shall be done by any Owner, without the prior written approval of the Blue Mesa Lodge Condominium Association, Inc. No Improvement to the exterior of a building which includes a Unit or to the Common Elements or to any landscaping shall be constructed, erected, placed or installed within the Common Interest Community, unless complete plans and specifications thereto shall have been first submitted to and approved in writing by the Executive Board.

Section 6.19 No Violation of Law. No Owner and no Owner's guest shall do anything or keep anything in or on or about the Community which would be immoral, improper, offensive or in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body or authority having jurisdiction over the Community.

Section 6.20 No Noxious, Offensive, Hazardous or Annoying Activities. No noxious or offensive activity shall be carried on upon any part of the Community nor shall anything be done or placed on or in any part of the Community which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Community and no improvement shall be made or constructed on any part of the Community which would or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Community which is unreasonably loud or annoying. No odor shall be emitted on any part of the Project which is noxious or offensive to others. No light shall be emitted from any part of the Project which is unreasonably bright or causes unreasonable glare. These restrictions and reservations specifically include, without limitation, the Commercial Units.

Section 6.21 No Unsightliness. No unsightliness shall be permitted on or in any part of the Community. Without limiting the generality of the foregoing, nothing shall be hung or placed upon any of the Common Elements, including areas which are Limited Common Elements or in the garage, and nothing shall be placed on or in windows or doors of Units which would or might be unsightly. The judgment of the Board shall be final in determining what is or is not unsightly within the Building subject to its jurisdiction. Objects once determined to be or not to be unsightly may later be reconsidered by the Board provided that at least a year has passed since the Board's previous consideration of the same matter.

Section 6.22 Owner-Caused Damages. If, due to the act or negligence of an Owner or such Owner's guests, agents, tenants or family, or pets, loss or damage shall be caused to any person or property (including the Community or any Condominium Unit therein), such Owner shall be liable and responsible for the same (except to the extent that such damage or loss is covered by insurance obtained by either Blue Mesa Lodge Condominium Association, Inc. and

the carrier of the insurance has waived its rights of subrogation against such Owner and the Board makes such other determinations on the deductible and effect of the claim on the Association's future premiums). The amount of such damage shall constitute an assessment against such Owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the Unit of such Owner as provided here for assessments and other charges. The Blue Mesa Lodge Condominium Association, Inc., and its insurance carriers shall have the right of indemnification from any Owner for any payment made as a result of such Owner's actions (or inactions).

Section 6.23 Violations. Determination of whether or not a particular activity or occurrence shall constitute a violation of this Article shall be made by the Board having jurisdiction and shall be final.

Section 6.24 Specific Commercial Unit Restrictions. Commercial Condominium Unit usage restrictions shall include, without limitation, the following:

- a. Alcohol may be served or sold in a public establishment only if accompanied by a State of Colorado food service license.
- b. There shall be no live entertainment, including music, past the hour of 10 o'clock p.m. of each day.
- c. Music and public entertainment shall not disturb residents or occupants of the Community.
- d. Usage shall not include, without limitation, a saloon, dance hall, bar, night club, or any associated or similar use.

Section 6.25 Skis, Ski Boots and Bicycles. In order to preserve the property and to maintain peace and quiet within the Community, no ski boots shall be worn above the residential lobby, nor shall skis or bicycles be carried through or above the residential lobby, except that skis or bicycles may be carried to a Unit for the purpose of seasonal storage, only.

Section 6.26 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Blue Mesa Lodge Condominium Community or any portion thereof may be adopted, amended, or repealed from time to time by the Executive Board, or its successors and assigns. The Executive Board may establish and enforce penalties for the infraction thereof.

Section 6.27 No Violation of Rules. No Owner and no Owner's guests, family, tenants or agents shall violate the rules and regulations adopted from time to time by either Blue Mesa Lodge Condominium Association, Inc. within its jurisdiction, whether relating to the use of Condominium Units, the use of General or Limited Common Elements, or otherwise.



## ARTICLE 7 DEVELOPMENT RIGHTS

Section 7.1 Development Rights. The Blue Mesa Lodge Condominium Association, Inc. reserves, for seven (7) years after the recording of this Declaration, subject to extension as the Association may determine, as allowed in the Act, the following Development Rights to the Blue Mesa Lodge Condominium Association and to the Owners, with the approval of the Blue Mesa Lodge Condominium Association: (a) the right to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements, subdivide Units or complete or make improvements, as the same may be indicated on Supplemental Condominium Maps or plats filed of record or filed with the Declaration; (b) the right to create or construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements or to convert Common Elements into Units; (c) the right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary; (d) the right to exercise any development rights reserved or allowed in the Act; (e) the right to amend the Declaration in connection with the exercise of any development right; and (f) the right to amend the Supplemental Condominium Maps or plat in connection with the exercise of any development right.

Section 7.2 Additional Reserved Rights. In addition to the rights set forth above, Blue Mesa Lodge Condominium Association, Inc. also reserves the following additional rights: (a) the right to maintain sales offices, management offices and models in Units or on the Common Elements; (b) the right to maintain signs and advertising on the Blue Mesa Lodge Condominium Community to advertise the Blue Mesa Lodge Condominium Community; (c) the right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including, but not limited to, public access, access paths, walkways, drainage, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions; (d) the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of Common Elements, which may or may not be a part of the Blue Mesa Lodge Condominium Community; (e) Blue Mesa Lodge Condominium Association, Inc. and its assignees expressly reserve the right to perform warranty work, and repairs and construction work, and to store materials in secure areas, in Units and in Common Elements, and the future right to control such work and repairs and the right of access thereto, until completion. All work may be performed without the consent or approval of any Unit Owner or holder of a Security Interest. Blue Mesa Lodge Condominium Association, Inc. and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Real Estate; and (f) the right to exercise any additional reserved right created by any other provision of this Declaration.

Section 7.3 Rights Transferrable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of Blue Mesa Lodge Condominium Association, Inc.

may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of San Miguel County. Such instrument shall be executed by the transferor Blue Mesa Lodge Condominium Association, Inc. and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Blue Mesa Lodge Condominium Association, Inc., any Unit Owners or any holders of a Security Interest in a Unit. Any rights created or reserved under this Article or the Act for the benefit of Blue Mesa Lodge Condominium Association, Inc. may also be transferred to the Blue Mesa Lodge Condominium Association, Inc. by an instrument describing the rights transferred recorded in the real property records of San Miguel County. Such instrument shall be executed by the transferor Blue Mesa Lodge Condominium Association, Inc. and the Blue Mesa Lodge Condominium Association, Inc. as transferee. The rights transferred may then be exercised by the Blue Mesa Lodge Condominium Association, Inc. in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) with the consent of the appropriate Unit Owner(s) or any holders of a Security Interests on the Unit(s).

Section 7.4 No Further Authorizations Needed. The consent of Unit Owners or holders of Security Interests shall not be required for exercise of any reserved rights, and Blue Mesa Lodge Condominium Association, Inc. or its assignees may proceed without limitation at its sole option. Blue Mesa Lodge Condominium Association, Inc. or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Blue Mesa Lodge Condominium Association, Inc. or its assignees shall not be obligated to exercise any reserved rights.

Section 7.5 Amendment of the Declaration or Supplemental Condominium Map. If Blue Mesa Lodge Condominium Association, Inc. or its assignees elect to exercise any reserved rights, that party shall comply with the Act.

Section 7.6 Interpretation. Recording of amendments to the Declaration and the Supplemental Condominium Map or plat pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically (a) vest in each existing Unit Owner the reallocated Allocated Interests appurtenant to their Unit, and (b) vest in each existing Security Interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration Supplemental Condominium Map. Reference to the Declaration and Supplemental Condominium Map in any instrument shall be deemed to include all Amendments to the Declaration, and the Supplemental Condominium Map without specific reference thereto.

Section 7.7 Termination of Reserved Rights. The rights reserved to Blue Mesa Lodge Condominium Association, Inc., for itself, its successors and assigns, shall expire as set forth above or in the Act, unless (i) reinstated or extended by the Blue Mesa Lodge Condominium Association, Inc., subject to whatever terms, conditions, and limitations the Executive Board may

impose on the subsequent exercise by Blue Mesa Lodge Condominium Association, Inc., (ii) extended as allowed by law or, (iii) terminated by written instrument executed by the Blue Mesa Lodge Condominium Association, Inc., recorded in the records of the Clerk and Recorder of San Miguel County, Colorado.

## ARTICLE 8 INSURANCE/CONDEMNATION

Section 8.1 Insurance Carried. The Blue Mesa Lodge Condominium Association, Inc. shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado commencing not later than the time of this Declaration is approved and recorded. The Blue Mesa Lodge Condominium Association, Inc. shall maintain, to the extent reasonably available, policies with the following terms or provisions:

a. All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Unit Owner and shall provide that such policies may not be cancelled or modified without at least thirty (30) days' prior written notice to all of the Unit Owners, holders of first lien Security Interests and the Blue Mesa Lodge Condominium Association, Inc.

b. If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien Security Interests at least ten (10) days prior to the expiration of the then-current policies.

c. All liability insurance shall be carried in blanket form, naming the Blue Mesa Lodge Condominium Association, Inc., the Board, the manager or managing agent, if any, the officers of the Blue Mesa Lodge Condominium Association, Inc., holders of first lien Security Interests, their successors and assigns and Unit Owners as insureds.

d. Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Units and the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full insurable replacement cost.

e. Unit Owners may carry and are advised to carry other insurance on the Improvements and personal property in their Unit for their benefit and at their expenses, provided that the liability of the carriers issuing insurance obtained by the Blue Mesa

Lodge Condominium Association, Inc. shall not be affected or diminished by reason of any such insurance carried by Unit Owners and provided, further, that the policies of insurance carried by the Blue Mesa Lodge Condominium Association, Inc. shall be primary, even if a Unit Owner has other insurance that covers the same loss or losses as covered by policies of the Blue Mesa Lodge Condominium Association, Inc. In this regard, the Blue Mesa Lodge Condominium Association, Inc. discloses that the Association's insurance coverage, as specified hereunder and under the Act, does not obviate the need for Unit Owners to obtain insurance for their own benefit.

f. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Unit Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Unit Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Unit Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 8.2 Hazard Insurance on the Units and Common Elements. The Blue Mesa Lodge Condominium Association, Inc. shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to Units and to the Common Elements and the other property of the Blue Mesa Lodge Condominium Association, Inc. Insurance obtained on the Units is not required to include improvements and betterments installed by Unit Owners. If coverage purchased by the Blue Mesa Lodge Condominium Association, Inc. includes improvements and betterments installed by Unit Owners, the cost thereof shall be assessed to each Unit in proportion to risk. All blanket hazard insurance policies shall contain a standard non-contributory mortgage clause in favor of each holder of first lien Security Interests, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Blue Mesa Lodge Condominium Association, Inc. for the use and benefit of such holders of first lien Security Interests, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of San Miguel County. If obtainable, the Blue Mesa Lodge Condominium Association, Inc. shall also obtain the following and any additional endorsements deemed advisable by the Executive Board: (a) an Inflation guard endorsement, (b) a Construction Code endorsement, (c) a demolition cost endorsement, (d) a contingent liability from operation of building laws endorsement, (e) an increased cost of construction endorsement, and/or (f) any special PUD endorsements.

Section 8.3 Liability Insurance. The Blue Mesa Lodge Condominium Association, Inc. shall obtain adequate comprehensive policy of public liability and property damage liability insurance covering all of the Units and the Common Elements, including structural coverage of the Units, in such limits as the Board may determine from time to time, but not in any amount less than One Million Dollars (\$1,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include,

without limitation, liability for personal injuries, operation of automobiles on behalf of the Blue Mesa Lodge Condominium Association, Inc., and activities in connection with the ownership, operation, maintenance and other uses of the Blue Mesa Lodge Condominium Community. All liability insurance shall name the Blue Mesa Lodge Condominium Association, Inc. as the insured. If there are steam or common boilers in operation on the Blue Mesa Lodge Condominium Community, or if the Community has central heating or cooling, there must be in force boiler explosion and machinery coverage insurance providing for not less than One Million Dollars (\$1,000,000.00) per accident, per location.

Section 8.4 Fidelity Insurance. The Blue Mesa Lodge Condominium Association, Inc. shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Blue Mesa Lodge Condominium Association, Inc., including persons who serve the Blue Mesa Lodge Condominium Association, Inc. with or without compensation. The clause "officers, directors, trustees and employees" shall not include any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Blue Mesa Lodge Condominium Association, Inc. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Blue Mesa Lodge Condominium Association, Inc., its officers, directors, trustees and employees.

Section 8.5 Worker's Compensation and Employer's Liability Insurance. The Blue Mesa Lodge Condominium Association, Inc. shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law. The Blue Mesa Lodge Condominium Association, Inc. may require contractors engaged by owners to also have worker's compensation and employer's liability insurance, before work is performed or access to the Blue Mesa Lodge Condominium Community is provided.

Section 8.6 Officers' and Directors' Personal Liability Insurance. The Blue Mesa Lodge Condominium Association, Inc. may obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Blue Mesa Lodge Condominium Association, Inc. Neither the term "officers" nor the term "directors" shall include any officer, director, agent or employee of any professional manager or managing agent heretofore or hereafter employed by the Blue Mesa Lodge Condominium Association, Inc.

Section 8.7 Other Insurance. The Blue Mesa Lodge Condominium Association, Inc. may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Blue Mesa Lodge Condominium Association, Inc. responsibilities and duties.

Section 8.8 Insurance Premium. Except as assessed in proportion to risk insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual assessments levied by the Blue Mesa Lodge Condominium Association, Inc.

Section 8.9 Managing Agent Insurance. The manager or managing agent, if any, shall be adequately insured for the benefit of the Blue Mesa Lodge Condominium Association, Inc. and shall maintain and submit evidence of such coverage to the Blue Mesa Lodge Condominium Association, Inc.

Section 8.10 Waiver of Claims Against Blue Mesa Lodge Condominium Association, Inc. As to all policies of insurance maintained by or for the benefit of the Blue Mesa Lodge Condominium Association, Inc. and Unit Owners, the Blue Mesa Lodge Condominium Association, Inc. and the Unit Owners hereby waive and release all claims against one another, the Board, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 8.11 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Blue Mesa Lodge Condominium Association, Inc. at least annually, for the purpose of determining the amount of insurance required.

Section 8.12 Adjustments by the Blue Mesa Lodge Condominium Association, Inc. Any loss covered by an insurance policy described above shall be adjusted by the Blue Mesa Lodge Condominium Association, Inc., and the insurance proceeds for that loss shall be payable to the Blue Mesa Lodge Condominium Association, Inc. and not to any holder of a first lien Security Interest or any Unit Owner. The Blue Mesa Lodge Condominium Association, Inc. may require contribution towards the deductible from the Owner with the loss or from such Owners as the Blue Mesa Lodge Condominium Association, Inc. may reasonably determine. The Blue Mesa Lodge Condominium Association, Inc. shall hold any insurance proceeds in trust for the Blue Mesa Lodge Condominium Association, Inc., Unit Owners and holders of first lien Security Interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Blue Mesa Lodge Condominium Association, Inc., Unit Owners and holders of first lien Security Interest are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 8.13 Duty to Repair. Any portion of the Blue Mesa Lodge Condominium Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Blue Mesa Lodge Condominium Association, Inc. or Unit Owner, at the Unit Owner's option on whether the repair is done by the Blue Mesa Lodge Condominium Association, Inc. or the Unit Owner, except as provided in the Act.

Section 8.14 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Unit

Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 8.15 Damage, Destruction, Obsolescence - Blue Mesa Lodge Condominium Association, Inc. as Attorney-in Fact. All of the Owners by being Owners, irrevocably constitute and appoint the Blue Mesa Lodge Condominium Association, Inc. their attorney-in-fact, to act in their name, place and stead for the purpose of dealing with the Community or part thereof, with respect to its destruction, repair or obsolescence as is hereafter provided. As attorney-in-fact, the Blue Mesa Lodge Condominium Association, Inc., by its President and Secretary, shall have full and complete authorization, right and power, to make, execute and deliver any contract, deed or any other instrument with respect to the interest of any Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvement(s) as used in the succeeding subparagraphs (except where otherwise specified) means restoring the improvement(s) to substantially the same condition which existed prior to the damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. Subject to the rights of all first mortgagees in accordance with terms of this Declaration, the proceeds of any insurance collected shall be available to each Blue Mesa Lodge Condominium Association, Inc. for the purpose of repair, restoration or replacement unless the Owners of said Blue Mesa Lodge Condominium Association, Inc. agree not to rebuild in accordance with the provisions set forth hereinafter.

Assessments for Common Expenses shall not be abated during period of insurance adjustment, repair and reconstruction.

a. Casualty-Less than 60% Damage. In the event that damage or destruction amount to not more than sixty percent (60%) of the total replacement cost of the Property (and Additional Property, if any, not including land), due to fire or other casualty event, the insurance proceeds, if sufficient to reconstruct the improvement(s) shall be applied by the Blue Mesa Lodge Condominium Association, Inc., as attorney-in-fact for the Owners, to such reconstruction and the improvement(s) shall be promptly repaired and reconstructed. The Blue Mesa Lodge Condominium Association, Inc. shall have full authority, right and power, as such attorney-in-fact, to cause the repair and restoration of the improvements.

b. Casualty-Less than 60% Damage-Insufficient Insurance. If the insurance proceeds are insufficient to repair and reconstruct the improvement(s) and if such damage is not more than sixty percent (60%) of the total replacement costs of the Property (and Additional Property, if any, not including land), such damage or destruction shall be promptly repaired and reconstructed by the Blue Mesa Lodge Condominium Association, Inc., as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners and their Condominium Units. Such deficiency assessments shall be a Common Expense, shall be made pro-rata according to each Condominium Unit's percentage interest in and to the Common Elements and shall be due and payable within thirty (30) days after written notice thereof is given. Users of

Limited Common Elements shall alone pay the full cost of repairs thereto. The Blue Mesa Lodge Condominium Association, Inc. shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds and such assessment. This assessment shall be a debt of each Owner, be a lien against the Condominium Unit of each Owner and may be enforced and collected as is provided herein. In addition, the Blue Mesa Lodge Condominium Association, Inc., as attorney-in-fact, shall have the absolute right and power to sell and convey the Condominium Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Blue Mesa Lodge Condominium Association, Inc. shall cause to be recorded in the records of the Clerk and Recorder, San Miguel County, Colorado, a notice that the Condominium Units of the delinquent Owner shall be sold by the association as attorney-in-fact for such Owner. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Blue Mesa Lodge Condominium Association, Inc., as attorney-in-fact, in the following order: (i) For payment of repair/reconstruction assessment; (ii) For payment of all sums owing under or pursuant to any First Mortgage against such Condominium Unit; (iii) For payment of taxes and special assessment liens in favor of any proper assessing entity against such Condominium Unit; (iv) For payment of unpaid Common Expenses to the extent that they are assessed against such Condominium Unit; (v) For payment of junior Mortgages and encumbrances in the order of and to the extent of their lien priority against such Condominium Unit; and (vi) The balance remaining, if any, shall be paid to the Unit Owner.

c. Casualty - More than 60% Damage - Sale. If more than sixty percent (60%) of the total replacement costs of the Property or Additional Property, not including land, is destroyed or damaged, and if the Owners of seventy-five percent (75%) or more of the Common Elements do not voluntarily of the affected parcel, within one hundred (100) days thereafter, make provisions for reconstruction, which plan must have the approval or consent of seventy-five percent (75%) or more of the First Mortgagees of the affected parcel (based upon one vote for each First Mortgage owned) the Blue Mesa Lodge Condominium Association, Inc. shall forthwith record in the records of the San Miguel County Clerk and Recorder, a notice setting forth such fact or facts, and upon recordation of such notice, the affected parcel shall be sold by the Blue Mesa Lodge Condominium Association, Inc., as attorney-in-fact for all of the Owners therein, free and clear of the provisions contained in the Declaration, the Supplemental Condominium Map, the Articles and By-Laws. The insurance settlement proceeds shall be collected by the Blue Mesa Lodge Condominium Association, Inc. according to each Owner's interest (as such interests appear of record in the office of the Recorder), and such divided proceeds shall be paid into separate fiduciary account, each such account representing one Condominium Unit. Each such account shall be in the name of the Blue Mesa Lodge Condominium Association, Inc. as fiduciary hereunder, and shall be further identified by the Unit's designation and the name of its Owner. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds derived from the sale of the Property or Additional Property. Such apportionment shall be based upon each Owner's



percentage interest in and to the affected Common Elements. The total funds of each account shall be applied and disbursed, without contribution from one account to another, by the Blue Mesa Lodge Condominium Association, Inc., as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraphs (b) (i) through (v) of this Paragraph.

d. Casualty - More than 60% Damage - Reconstruction. If more than sixty percent (60%) of the total replacement costs of the Property or Additional Property (not including land) is destroyed or damaged, and if the Owners of seventy-five percent (75%) or more of the Common Elements therein adopt a plan for reconstruction, which plan has the approval of seventy-five percent (75%) of the First Mortgages of the affected parcel (based upon one vote for each First Mortgage owned), then all of the Owners in said parcel shall be bound by the terms and other provisions of such plan. The Blue Mesa Lodge Condominium Association, Inc. shall have the right to use, in accordance with such plan, all proceeds of insurance of such destruction or damages, as well as the proceeds of an assessment, if necessary to be made against all of the said Owners and their Units. Any assessment made in connection with such plan shall be a Common Expense, shall be made pro-rata according to each such Owner's percentage interest in and to the affected Common elements and shall be due and payable as provided by the terms of such plan but not sooner than thirty (30) days after written notice thereof is given. The Blue Mesa Lodge Condominium Association, Inc. shall have full authority, right and power, as attorney-in-fact, for each and all of its Owners, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment. The assessment herein provided shall be a debt of each such Owner, a lien against such Owner's Condominium Unit and may be enforced and collected as provided herein. In addition, Blue Mesa Lodge Condominium Association, Inc., as attorney-in-fact for such Owner, shall have the absolute right and power to sell and convey the Condominium Unit of any such Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Blue Mesa Lodge Condominium Association, Inc. shall cause to be recorded in the records of the San Miguel County Clerk and Recorder a notice that the Condominium Unit of the delinquent owner shall be sold by the Blue Mesa Lodge Condominium Association, Inc. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Blue Mesa Lodge Condominium Association, Inc., as attorney-in-fact for the owner, for the same purposes and in the same order as is provided in subparagraph (b) (i) through (vi) of this Paragraph.

e. Obsolescence - Renovation. The Owners of seventy-five percent (75%) or more of the respective Common Elements may agree that the Real Estate or any Building has become obsolete and may adopt a plan for its renovation and/or reconstruction, provided that such plan shall have the approval of seventy-five percent (75%) of the first mortgagees in the affected parcel of record at the time of the adoption of such plan (based upon one vote for each First Mortgage owned). If such a plan for renovation or reconstruction is adopted, notice of any assessments under such plan shall be payable by

all of said Owners as Common Expenses; provided however, that an Owner not voting in favor of such a plan for renovation or reconstruction may give written notice to the Blue Mesa Lodge Condominium Association, Inc. within thirty (30) days after notice of the adoption of such plan is recorded that such Unit shall be purchased by the Blue Mesa Lodge Condominium Association, Inc. for the fair market value thereof. The Blue Mesa Lodge Condominium Association, Inc. shall then have fifteen (15) days within which to cancel such plan. If such plan is not cancelled within such time period, then the Condominium Unit shall be purchased by the Blue Mesa Lodge Condominium Association, Inc. according to the following procedures: (i) If such Owner and the Blue Mesa Lodge Condominium Association, Inc. can agree on the fair market value thereof then such sale shall be consummated within thirty (30) days following expiration of the fifteen (15) day cancellation deadline; (ii) If the parties are unable to agree as to value, the date when either party notified the other that he or it is unable to agree with the other shall be the "Commencement Date" from which all periods of time hereinafter mentioned in this subparagraph shall be measured. Within ten (10) days following the Commencement Date, each party shall nominate in writing (and give notice of such nomination to the other party) an independent appraiser. If either party fails to make such a nomination, the appraiser nominated shall, within five (5) days after default by the other party, appoint and associate with him another independent appraiser. If the two appraisers designated by the parties, or selected as above in the event of the default of one party, are unable to agree, they shall appoint a third independent appraiser. The decision of a majority of the three appraisers, as to the fair market value, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Blue Mesa Lodge Condominium Association, Inc. and the Owner. The sale shall be consummated within fifteen (15) days thereafter, and the Blue Mesa Lodge Condominium Association, Inc., as attorney-in-fact, shall disburse such proceeds as is provided in subparagraphs (b) (i) through (vi) of this Paragraph or assess all costs pro rata to square footage owned by the remaining Owners.

f. Obsolescence - Sale. The Owners of seventy-five percent (75%) or more of the Common Elements may agree that the Community is obsolete and that the same should be sold. Such plan (agreement) must have the approval of two-thirds (2/3) of the First Mortgages (based upon one vote for each First Mortgage owned) before being implemented. In such instance, the Blue Mesa Lodge Condominium Association shall forthwith record in the records of the Clerk and Recorder, San Miguel County, Colorado, and shall send to each Owner a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President or Secretary, the Real Estate, constituting the entire Community may be sold by the Blue Mesa Lodge Condominium Association, Inc. as attorney-in-fact for all of the Owners, free and clear of the provisions contained in the Declaration, the Supplemental Condominium Map, the Articles and the By-Laws. The sales proceeds less costs of sale shall be apportioned between the Owners on the basis of each Condominium Unit's percentage interest in and to the Common Elements, and such apportioned proceeds shall be paid into separate fiduciary accounts, each such account representing one Condominium Unit. Each such account shall be in the name of the Blue Mesa Lodge Condominium Association, Inc. as fiduciary, and shall

be further identified by the Unit designation and the name of the Owner. From each separate account the Blue Mesa Lodge Condominium Association, Inc. as attorney-in-fact, shall apply and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subparagraph (b) (i) through (vi) of this Paragraph.

**ARTICLE 9  
SPECIAL RIGHTS OF HOLDERS OF  
FIRST LIEN SECURITY INTERESTS**

Section 9.1 General Provisions. The provisions of this Article are for the benefit of holders, insurers, or guarantors of holders of first lien Security Interests recorded within the Blue Mesa Lodge Condominium Community. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Blue Mesa Lodge Condominium Association, Inc. A holder, insurer or guarantor of a first lien Security Interest who has delivered a written request to the Blue Mesa Lodge Condominium Association, Inc. containing its name, address, the legal description and the address of the Unit upon which it holds a Security Interest shall be considered an "Eligible Holdcr." Eligible insurers and guarantors of a first lien Security Interest shall have the same rights as Eligible Holder.

Section 9.2 Special Rights. Eligible Holders shall be entitled to: (a) timely written notice from the Blue Mesa Lodge Condominium Association, Inc. of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Blue Mesa Lodge Condominium Association, Inc. learns of such default; (b) examine the books and records of the Blue Mesa Lodge Condominium Association, Inc. during normal business hours; (c) receive a copy of financial statements of the Blue Mesa Lodge Condominium Association, Inc., including any annual audited financial statement; (d) receive written notice of all meetings of the Executive Board or Members of the Blue Mesa Lodge Condominium Association, Inc.; (e) designate a representative to attend any such meetings; (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Blue Mesa Lodge Condominium Association, Inc.; (g) written notice of abandonment or termination of the Blue Mesa Lodge Condominium Association, Inc. of the plan contemplated under this Declaration; (h) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; (i) thirty (30) days' written notice prior to the effective date of termination of any agreement for professional management of the Blue Mesa Lodge Condominium Association, Inc. or the Common Elements, when professional management had been required previously under the legal documents for the Blue Mesa Lodge Condominium Community or by an Eligible Holder; and (j) immediate written notice as soon as the Blue Mesa Lodge Condominium Association, Inc. receives notice or otherwise learns of any damage to the Common Elements or to the Unit on which the Eligible Holder holds a Security Interest, if the cost of reconstruction exceeds Twenty Thousand Dollars (\$20,000.00) and as soon as the Blue

Mesa Lodge Condominium Association, Inc. receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Units.

Section 9.3 Special Approvals. Unless at least sixty-seven percent (67%) of the Eligible Holders of first lien Security Interests (based on one (1) vote for each mortgage owned) of Units in the Blue Mesa Lodge Condominium Association, Inc. and requisite Unit Owners have given their written approval, neither the Blue Mesa Lodge Condominium Association, Inc. nor any Member shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Blue Mesa Lodge Condominium Association, Inc. (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such Real Estate by the Blue Mesa Lodge Condominium Association, Inc. shall not be deemed within the meaning of this provision); (b) change the method of determining the obligations, Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Units, including the architectural design of the exterior appearance of Units, or the upkeep of the Common Elements; (d) fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration; (e) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed; (f) take action to terminate the legal status of the Blue Mesa Lodge Condominium Community after substantial destruction or condemnation occurs; (g) amend any material provision of this Declaration; and (h) establish self-management by the Blue Mesa Lodge Condominium Association, Inc. when professional management has previously been required by the legal documents for the Blue Mesa Lodge Condominium Community or by an Eligible Holder. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Holder of a first lien Security Interest receives written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within thirty (30) days, it shall be deemed to have approved such request.

Section 9.4 Right to Pay Taxes and Insurance Premiums. Any holder of a first lien Security Interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Units, and the holder of a first lien Security Interest making such payments shall be entitled to immediate reimbursement therefor from the Blue Mesa Lodge Condominium Association, Inc.

## ARTICLE 10 GENERAL PROVISIONS

Section 10.1 Compliance with Provisions of this Declaration, Articles of Incorporation, By-Laws of the Blue Mesa Lodge Condominium Association, Inc. Each Owner shall comply strictly with and shall cause of his or her guests, agents and tenants to comply strictly with all of the provisions of this Declaration, the Articles of Incorporation, Bylaws of the Blue Mesa Lodge Condominium Association, Inc., and the decisions, rules, regulations and resolutions of the Blue Mesa Lodge Condominium Association, Inc. adopted pursuant thereto, as the same may be lawfully amended from time to time. The Association's Board may from time to time, adopt, modify and enforce rules and regulations, penalties, fines of up to \$250.00 per violation and/or sanctions to compel compliance with said Articles, Bylaws, Rules, Regulations and the Declaration or to prevent or abate nuisances, disorderly or unsafe conduct in or about the Community. Owners may be held responsible and may be fined or otherwise sanctioned for the misconduct of their families, guests, agents or tenants. Failure to comply with any of such shall be grounds for legal acting to recover fines, penalties and/or other sums due and for damages or injunctive relief of both, along with costs of suit and reasonable attorneys' fees, maintainable by the Managing Agent or Board of Directors in the name of the Blue Mesa Lodge Condominium Association, Inc. for itself and/or on behalf of one or more of the Owners, or, in a proper case, by an aggrieved Owner.

Section 10.2 Enforcement. The Blue Mesa Lodge Condominium Association, Inc. or a Unit Owner (with Owners being subject to arbitration provisions in this Declaration) may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for such violation, including reasonable attorneys' fees incurred in enforcing these covenants, or to restrain such violation or attempted violation. Failure of the Blue Mesa Lodge Condominium Association, Inc. or of any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 10.3 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 10.4 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 10.5 Amendment of Declaration by Unit Owners. Subject to provisions elsewhere contained in this Declaration requiring the consent of others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration or in the Supplemental Condominium Map may be amended or repealed at any time and from time to time upon approval of at least eighty percent (80%) of the votes in the Blue Mesa Lodge Condominium

Association, Inc. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of San Miguel County, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Blue Mesa Lodge Condominium Association, Inc.

Section 10.6 Amendment Required by Mortgage Agencies. Prior to seven (7) years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which a holder of a first lien Security Interest, or FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by the Blue Mesa Lodge Condominium Association, Inc. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of San Miguel County, State of Colorado, of a certificate, setting forth the amendment or repeal in full.

Section 10.7 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 10.8 Failure to Insist on Strict Performance No Waiver. The failure of the Blue Mesa Lodge Condominium Association, Inc. to insist, in any one or more instances, upon the strict performances of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction, but such term covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance of the Board of Directors of any assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board of Directors of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors.

Section 10.9 No Waiver. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provisions or of any provision of this Declaration.

Section 10.10 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 10.11 Limitation on Challenges to This Declaration and any Subsequent Amendments of this Declaration. Pursuant to 38-33.3-217(2) of the Act, no action to challenge the validity of this Declaration, and no action to challenge the validity of an amendment to this Declaration adopted by the Foundation pursuant to this Declaration and the Act may be brought more than one (1) year after the amendment is recorded.

Section 10.12 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed.

Jack Brady  
Jack Brady, Agent

STATE OF \_\_\_\_\_ )  
DISTRICT OF COLUMBIA ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing was acknowledged before me this 26<sup>th</sup> day of August, 1997, by Jack Brady, Agent.

Witness my hand and official seal.

My commission expires: July 31, 2002

Karen M. Thompson  
Notary Public

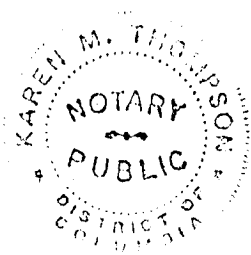


EXHIBIT A

UNITS AND ALLOCATED INTERESTS -  
BLUE MESA LODGE CONDOMINIUMS

UNIT NO.	SQUARE FOOTAGE	PERCENTAGE SHARE OF OWNERSHIP IN THE COMMON ELEMENTS	PERCENTAGE SHARE OF COMMON EXPENSE LIABILITIES	VOTES IN THE AFFAIRS OF THE ASSOCIATION
Residential Unit 20	1374.00	0.06205	0.06205	0.06205
Residential Unit 21	1408.00	0.06359	0.06359	0.06359
Residential Unit 22	1265.00	0.05713	0.05713	0.05713
Residential Unit 23	1279.00	0.05776	0.05776	0.05776
Residential Unit 30	982.00	0.04435	0.04435	0.04435
Residential Unit 31	1388.00	0.06269	0.06269	0.06269
Residential Unit 32	1067.00	0.04819	0.04819	0.04819
Residential Unit 33	1210.00	0.05465	0.05465	0.05465
Residential Unit 40	1868.00	0.08436	0.08436	0.08436
Residential Unit 41	1993.00	0.09001	0.09001	0.09001
Sub-total: 10	13834.00	0.62479	0.62479	0.62479
Residential Parking Unit 34	162.00	0.00732	0.00732	0.00732
Residential Parking Unit 35	162.00	0.00732	0.00732	0.00732
Residential Parking Unit 36	162.00	0.00732	0.00732	0.00732
Residential Parking Unit 37	162.00	0.00732	0.00732	0.00732



UNIT NO.	SQUARE FOOTAGE	PERCENTAGE SHARE OF OWNERSHIP IN THE COMMON ELEMENTS	PERCENTAGE SHARE OF COMMON EXPENSE LIABILITIES	VOTES IN THE AFFAIRS OF THE ASSOCIATION
Residential Parking Unit 38	162.00	0.00732	0.00732	0.00732
Residential Parking Unit 39	162.00	0.00732	0.00732	0.00732
Residential Parking Unit 40	162.00	0.00732	0.00732	0.00732
Residential Parking Unit 41	162.00	0.00732	0.00732	0.00732
Residential Parking Unit 42	162.00	0.00732	0.00732	0.00732
Residential Parking Unit 43	162.00	0.00732	0.00732	0.00732
Sub-Totals: 10	1620.00	0.07316	0.07316	0.07316
Residential Sub-Totals: 20	15454.00	0.69795	0.69795	0.69795
Commercial Unit D	3355.00	0.15152	0.15152	0.15152
Commercial Unit E	915.00	0.04132	0.04132	0.04132
Commercial Unit F	900.00	0.04065	0.04065	0.04065
Commercial Unit G	708.00	0.03198	0.03198	0.03198
Sub-Totals: 4	5878.00	0.26547	0.26547	0.26547
Commercial Parking Unit 44	162.00	0.00732	0.00732	0.00732
Commercial Parking Unit 45	162.00	0.00732	0.00732	0.00732
Commercial Parking Unit 46	162.00	0.00732	0.00732	0.00732
Commercial Parking Unit 47	162.00	0.00732	0.00732	0.00732

UNIT No.	SQUARE FOOTAGE	PERCENTAGE SHARE OF OWNERSHIP IN THE COMMON ELEMENTS	PERCENTAGE SHARE OF COMMON EXPENSE LIABILITIES	VOTES IN THE AFFAIRS OF THE ASSOCIATION
Commercial Parking Unit 48	162.00	0.00732	0.00732	0.00732
Sub-Totals: 5	810.00	0.03658	0.03658	0.03658
Commercial Sub-Totals: 9	6688.00	0.30205	0.30205	0.30205
<b>GRAND TOTALS: 29</b>	<b>22142.00</b>	<b>1.00000</b>	<b>1.00000</b>	<b>1.00000</b>

**EXHIBIT B**

**TELLURIDE ASSOCIATES**

The undersigned, being the owner of certain reserved development rights, as referenced in the Original Declaration, does hereby consent to, ratify, confirm, adopt and approve the provisions of the foregoing Declaration, releasing all reserved rights of the undersigned under the Original Declaration and the Supplemental Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Consent this 25<sup>th</sup> day of August, 1997.

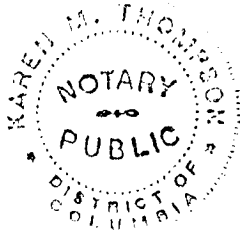
**TELLURIDE ASSOCIATES**  
a Washington DC general partnership

By: Jack Brady  
Authorized Agent

STATE OF \_\_\_\_\_ )  
DISTRICT OF COLUMBIA ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing was acknowledged before me this 25<sup>th</sup> day of August, 1997, by Jack Brady, as Authorized Agent of TELLURIDE ASSOCIATES, a Washington DC general partnership.

Witness my hand and official seal.  
My commission expires: July 31, 2002



Karen M. Thompson  
Notary Public