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Page 1 of 99

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
IDARADO LEGACY SUBDIVISION

TABLE OF CONTENTS

Article 1 DECLARATION.....	2
Article 2 DEFINITIONS	2
2.1 Act.....	2
2.2 ADU	3
2.3 Allocated Interests	3
2.4 Articles of Incorporation.....	3
2.5 Assessment	3
2.6 Association.....	3
2.7 Association Parcel.....	3
2.8 Association Property	4
2.9 Bridal Veil Lot.....	4
2.10 Budget.....	4
2.11 Building Envelope	4
2.12 Bylaws	4
2.13 Common Area	4
2.14 Common Expenses.....	5
2.15 Common Interest Community	6
2.16 County	6
2.17 Declarant.....	6
2.18 Declaration	7
2.19 Deed of Trust.....	7
2.20 Design Guidelines	7
2.21 Design Review Committee	7
2.22 East Colorado Tract.....	7
2.23 Executive Board.....	7
2.24 Final Plat.....	7
2.25 Household Pets	8
2.26 Idarado Development Plan.....	8
2.26 Idarado Mining Company	8
2.27 Improvements	8
2.28 Lease	8
2.29 Liberty Bell Lot.....	8
2.30 Limited Common Area	8
2.31 Lot.....	9
2.32 Member	9
2.33 Mortgage	9
2.34 Mortgagee	9
2.35 Mortgagor.....	9
2.36 Notice and Hearing.....	9
2.37 Occupant	9
2.38 Owner	9
2.39 Pandora Lot	9
2.40 Permitted Exceptions	10
2.41 Person	10
2.42 Record or Recorded	10
2.43 Regular Assessment.....	10
2.44 Reimbursement Assessment.....	10

2.45	Rules and Regulations	10
2.46	Special Assessment	10
Article 3 GENERAL RESTRICTIONS AND PROVISIONS APPLICABLE TO		
	THE COMMON INTEREST COMMUNITY.....	11
3.1	Development Control.....	11
3.2	Violation of Law, Insurance, Etc	11
3.3	General Maintenance of Common Interest Community.....	12
3.4	Residential Use and Occupancy	13
3.5	New Construction Required, No Temporary Buildings of Occupancy	14
3.6	Building Envelopes	14
3.7	Design Guidelines	15
3.8	Annoying Light, Sound or Odor.....	15
3.9	Noxious or Offensive Activities; Construction Activities.....	16
3.10	No Hazardous or Unsafe Activities	16
3.11	No Solid Fuel-Burning Fireplaces.....	17
3.12	Outlot A and Outlot B.....	17
3.12	Outside Burning; Fire Hazards.....	17
3.13	No Firearms or Hunting	17
3.14	No Heated Driveways	17
3.15	Sprinkler Systems Mandatory	17
3.16	No Unsightliness; Outside Personal Property Storage and Clothes Drying.....	18
3.17	Garbage; Trash; Compost; Containers	18
3.18	Vehicle Parking, Storage, Operation and Repair.....	18
3.19	Garages	20
3.20	Animals.....	20
3.21	Restrictions on Equipment, Tanks, Antennae, Satellite Dishes, Etc.....	21
3.22	Restrictions on Mining or Drilling.....	22
3.23	Excavations	22
3.24	Individual Water Wells.....	22
3.25	Geohazard Mitigation by Lot Owners	23
3.26	Development on Slopes of 30% or Greater.....	23
3.27	Floor Area Limitations.....	23
3.28	Idarado Mining Company Remediation of Environmental Conditions	23
3.29	No Interference with Waterways or Drainage or Irrigation Systems	24
3.30	No Fences.....	24
3.31	Tree and Natural Shrub Preservation.....	24
3.32	Use of Easement Areas; Utility Installation	25
3.33	Landscaping; Irrigation; Weed Control.....	25
3.34	Tennis Courts and Basketball Goals.....	26
3.35	Spas and Related Equipment.....	26
3.36	Signs and Advertising.....	26
3.37	Camping and Picnicking.....	27
3.38	Regulations of Pesticides	27
3.39	Restoration of Improvements in the Event of Damage or Destruction	27
3.40	Leases	27
3.41	Right of Entry	28
3.42	Damage by Owners During Construction	28

3.43	Restrictions on Resubdivision, Property Restrictions, Rezoning, and Time Sharing	29
3.44	Prohibition on Filing of Annexation Petition	30
3.45	Health, Safety and Welfare.....	31
3.46	Implementation and Variances.....	31
3.47	Declarant Activities.....	32
Article 4 COUNTY ENFORCEABLE RESTRICTIONS		32
4.1	Geohazard Mitigation	32
4.2	Provisions Regarding OWS	35
(f)	Management and Maintenance of an OWS.....	36
4.3	Lot Owner Certification to County.....	36
4.4	Enforcement; Amendment	37
Article 5 DESIGN REVIEW COMMITTEE.....		37
5.1	Establishment of Design Review Committee	37
5.2	Establishment of Subcommittees.....	38
5.3	Meetings and Actions of Committee.....	38
5.4	Compensation; Expenses	38
5.5	Records of Actions	38
5.6	Design Guidelines	38
5.7	Design Review Fee	39
5.8	Pre-Purchase Review Encouraged	39
5.9	Design Review and Construction Process.....	39
5.10	Submission of Plans, Specifications and Data; Time Frame for Approval	40
5.11	Criteria for Approval and Disapproval	40
5.12	Decisions of Committee; Binding Effect.....	41
5.13	Completion of Work After Approval	41
5.14	Right to Inspect.....	41
5.15	Notice of Completion; Inspection of Work; Correction of Defects	41
5.16	Certificate of Compliance	42
5.17	Improvements Must Conform to Approvals	43
5.18	Committee Power to Grant Variances	43
5.19	Nonliability for Approval or Disapproval of Plans and Specifications or for Issuance of Certificates of Compliance	44
5.20	Enforcement	45
Article 6 ASSOCIATION PROPERTY.....		45
6.1	Use and Enjoyment of Association Property.....	45
6.2	Association May Regulate Use of Association Property	45
6.3	Association to Maintain and Improve Association Property	46
6.4	No Partition of Association Property.....	46
6.5	Owner Liability for Owner or Occupant Damage to Association Property	46
6.6	Damage or Destruction to Association Property	47
6.7	Condemnation of Association Property.....	47
6.8	Title to Association Property Upon Dissolution of Association	47
6.9	Mechanic's Liens on Association Property.....	47

Article 7	DECLARANT'S RESERVED RIGHTS	48
7.1	Construction of Improvements	49
7.2	Sales, Marketing and Management	49
7.3	Merger	50
7.4	Declarant Control of Association	50
7.5	Withdrawal Rights and Procedure	50
7.6	Effect of Contraction	50
7.7	Transfer of Additional Property to Association	51
7.8	Other Reserved Development Rights	51
7.9	Owner Review, Acceptance and Waiver of Rights Re Idarado Development Plan and Declarant's Reserved Rights	51
7.10	Declarant As Attorney-in-Fact for Owners	52
7.11	Transfer of Declarant's Reserved Rights	52
7.12	Termination of Declarant's Reserved Rights	52
Article 8	EASEMENTS	52
8.1	Easements for Incidental Encroachments	52
8.2	Blanket Association Utility and Drainage Easement Over Roads and Association Property	53
8.3	Association Administrative Easement Over Roads, Private Driveways and Association Property	53
8.4	Declarant Easement Over Roads and Association Property	53
8.5	Utility and Drainage Easements	54
8.6	East Colorado Tract, Liberty Bell Lane and Pandora Lane Easements	54
8.7	County Idarado Trail Easement	54
8.8	Association Historical Preservation Easement	54
8.9	Association Rockfall Fence Easements	55
8.10	Blanket Emergency Services Easement	55
8.11	Easements Deemed Created	55
8.12	Restrictions on Owners in Easement Areas	55
8.13	Recorded Easements and Licenses	56
Article 9	ASSOCIATION	56
9.1	Association	56
9.2	Association Executive Board	56
9.3	Membership in Association	57
9.4	Voting Rights of Members	57
9.5	Period of Declarant Control of Association	58
9.6	Termination of Contracts and Leases of Declarant	60
Article 10	POWERS AND DUTIES OF ASSOCIATION	60
10.1	General Powers and Duties of Association	60
10.2	Power to Grant Easements	61
10.3	Power to Convey or Encumber Association Property	61
10.4	General Power to Provide Services and Facilities to Owners	61
10.5	Power to Provide Special Services to Owners	62
10.6	Power to Charge for Special Association Property Uses and Special Association Services	62
10.7	Power to Acquire Property and Construct Improvements	62

10.8	Power to Adopt Rules and Regulations	62
10.9	Power to Contract with Employees, Agents, Contractors, Districts, Consultants and Managers	63
10.10	Power to Assign Future Income	63
10.11	Duty to Accept Property and Facilities Transferred by Declarant	63
10.12	Duty to Manage and Care for Association Property	64
10.13	Duty to Pay Taxes	64
10.14	Duty to Keep Association Records	64
10.15	Duty to Support Design Review Committee	64
10.16	Insurance	65
(a)	Casualty Insurance	65
10.17	Damage to Common Interest Community	70
10.18	Limited Liability	71
Article 11 ASSESSMENTS		71
11.1	Assessment Obligation and Lien	71
11.2	Statutory Lien	72
11.3	Lien Superior to Homestead and Other Exemptions	72
11.4	Priority of Lien	72
11.5	Perfection of Lien	73
11.6	Regular Assessments	73
11.7	Association Budget	74
11.8	Special Assessments	75
11.9	Reimbursement Assessments	75
11.10	Effect of Nonpayment of Assessments; Remedies of the Association	76
11.11	Statement of Unpaid Assessments	76
11.12	Working Capital Fund	77
11.13	Real Estate Transfer Assessment	77
Article 12 EMINENT DOMAIN		82
12.1	Definition of Taking	82
12.2	Representation in Condemnation Proceedings of Association Property	82
12.3	Award for Association Property	82
12.4	Taking of Lots	82
12.5	Miscellaneous	83
Article 13 GENERAL PROVISIONS		83
13.1	Duration of Declaration	83
13.2	Termination of Common Interest Community	83
13.3	Amendment of Declaration and Plat	83
13.4	Compliance; Enforcement	84
13.5	Rights of First Mortgagees	86
13.6	Notice	86
13.7	No Dedication to Public Use	86
13.8	Interpretation of Declaration; Conflicts with Act	87
13.9	Conflict With Plats	87
13.10	Violations Constitute a Nuisance	87
13.11	Declarant's Disclaimer of Representations and Warranties	87
13.12	Captions	88

13.13	Singular Includes Plural.....	88
13.14	Remedies Cumulative	88
13.15	Costs and Attorneys' Fees.....	88
13.16	Governing Law; Jurisdiction	88
13.17	Severability	88
13.18	Disclaimer Regarding Safety	88

EXHIBITS

- Exhibit A Allocated Interests
- Exhibit B Recorded Easements and Licenses

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
IDARADO LEGACY SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR IDARADO LEGACY SUBDIVISION (the "Declaration"), effective this 5th day of May, 2004, is made and entered into by **IDARADO LEGACY, LLC**, a Colorado limited liability company (the "Declarant").

RECITALS:

1. Declarant is the owner of that certain real property situated in San Miguel County, Colorado, known as the Idarado Legacy Subdivision, according to the Final Record Plat thereof recorded February 10, 2004 in Plat Book 1 at Page 3238, Reception No. 364049, in the Office of the Clerk and Recorder of San Miguel County, Colorado (the "Common Interest Community").
2. Declarant intends to develop the Common Interest Community as a planned community under the Colorado Common Interest Ownership Act.
3. The Common Interest Community has been approved for development pursuant to a Subdivision Exemption Plat and Cluster Development Plan (collectively the "Idarado Development Plan") approved by the Board of County Commissioners of San Miguel County, Colorado ("BOCC") by Resolution No. 2003-30A, as amended by Resolution No. 2004-4 and a 1041 Environmental Hazard Review, Historic and Archeological Area Review and Wetlands Special Use Permit approved by the BOCC by Resolution No. 2003-30C (collectively the "Idarado Development Plan Approvals").
4. Under the Idarado Development Plan, thirty-seven (37) legally separate Lots and an Association Parcel are permitted to be created and developed in Idarado Legacy Subdivision. Therefore, the maximum number of Lots that may be created within the Common Interest Community is thirty-seven (37).
5. Idarado Legacy Homeowners Association, a Colorado non-profit corporation, has been formed as an association to exercise the functions set forth herein and to own, lease, hold, operate, care for and manage certain property for the common benefit of Owners and Occupants of Lots within, and of any other person acquiring an interest in, the Common Interest Community.
6. Declarant desires to establish covenants, conditions and restrictions upon the Common Interest Community and certain mutually beneficial restrictions and limitations with respect to the proper use, occupancy, improvement and enjoyment thereof, all for the purposes of enhancing and protecting the value, desirability and attractiveness of the Common Interest Community and enhancing the quality of life within the Common Interest Community.

7. Declarant desires and intends that the Owners, Mortgagees, Occupants and all other Persons hereafter acquiring any interest in the Common Interest Community shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements contained in this Declaration, as it may be amended from time to time.

ARTICLE 1

DECLARATION

NOW, THEREFORE, for the purposes set forth above and herein, Declarant for itself and its successors and assigns hereby declares that the Common Interest Community and any other property which becomes subject to this Declaration in the manner hereinafter provided, and each part thereof, shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, maintained and enjoyed subject to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, exceptions, easements, privileges, rights and other provisions hereinafter set forth, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, use, occupancy and enjoyment of the Common Interest Community, and all of which shall run with the land and be binding upon and inure to the benefit of (i) the Common Interest Community and every part thereof, (ii) Declarant and its successors and assigns, (iii) the Association and its successors and assigns, (iv) every Member of the Association, and (v) all Owners, Occupants and other Persons having or acquiring any right, title or interest in or to the Common Interest Community or any part thereof, or any Improvement thereon, and their respective heirs, personal representatives, successors and assigns. Provided always, that to the extent this Declaration provides that Declarant shall not be bound by or is exempt from the application of certain covenants, conditions and restrictions contained herein, Declarant shall not be considered subject to such covenants, conditions or restrictions.

This Declaration shall be recorded in San Miguel County, Colorado and shall be indexed in the Grantee's index in the name of Idarado Legacy Subdivision and the Association and in the Grantor's Index in the name of Idarado Legacy, LLC.

ARTICLE 2

DEFINITIONS

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

2.1 Act. "Act" shall mean the Colorado Common Interest Ownership Act as set forth in C.R.S. 38-33.3-101, et seq., as the same may be amended from time to time.

2.2 ADU. “ADU” means an Accessory Dwelling Unit, as now or hereafter defined in the San Miguel County Land Use Code.

2.3 Allocated Interests. “Allocated Interests” means the Common Expense liability and the votes in the Association allocated to each Lot, which interests are allocated as follows:

(a) The Common Expense liability for each Lot is calculated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Common Interest Community. Such fraction is then multiplied by the Common Expense or the Assessment in question to determine that Lot’s share thereof. The Common Expense liability of a Lot is determined without reference to the size, location, value or use of the Lot.

(b) One (1) vote in the Association is allocated to each Lot in the Common Interest Community.

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

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

The Allocated Interests for the Common Interest Community are specifically set forth on Exhibit A attached hereto and made a part hereof by this reference, as said Exhibit A may be amended from time to time.

2.4 Articles of Incorporation. “Articles of Incorporation” or “Articles” means the Articles of Incorporation of Idarado Legacy Homeowners Association, which have been filed with the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

2.5 Assessment. “Assessment” means a Regular Assessment, Special Assessment, or Reimbursement Assessment.

2.6 Association. “Association” means the Idarado Legacy Homeowners Association, a Colorado nonprofit corporation, its successors and assigns

2.7 Association Parcel. “Association Parcel” means the Association Parcel depicted and described on the Final Plat.

2.8 Association Property. "Association Property" means, to the extent of the Association's interest therein: (a) all real and personal property, including Improvements, now or hereafter owned or leased by the Association, specifically including without limitation the Association Parcel, (b) all Common Areas and Limited Common Areas now or hereafter owned, leased or maintained by the Association, together with the Improvements thereon; (c) all easements created or reserved on the Final Plat, or in this Declaration, or in any separate agreement, for the use and benefit of the Association and/or the Owners, and (d) any water rights, ditch rights, and water systems, facilities and/or features (or interests therein) that may be owned, leased or maintained by the Association or which the Association is entitled to use. Association Property may be located within or outside the Common Interest Community. With the exception of easements which are Association Property, and with the further exception of the Bridal Veil and Liberty Bell Rockfall Fences, which shall be owned by the Association, Association Property does not include the Lots or the Improvements constructed thereon, and is subject to the Permitted Exceptions.

2.9 Bridal Veil Lot. "Bridal Veil Lot" means each of Lot Nos. BV1-BV4, as depicted on the Final Plat.

2.10 Budget. "Budget" means a written itemized estimate of the Common Expenses to be incurred by the Association in performing its functions under this Declaration and adopted by the Executive Board pursuant to Section 11.7 of this Declaration.

2.11 Building Envelope. "Building Envelope" means that portion of a Lot which is depicted and designated as the "Building Envelope" on the Final Plat. All Improvements on a Lot must be located entirely within the Building Envelope, including but not limited to dwellings, attached patios and decks, garages, kennels, storage buildings, and other out buildings, facilities and amenities associated with the residence. No disturbance shall be allowed outside the Building Envelope, including without limitation excavation, grading or clearing activities, excepting the minimum disturbance required in connection with the construction or installation of landscaping approved by the Design Review Committee, underground utilities, County-approved septic facilities, water wells, irrigation and drainage systems, access driveways, and environmental remediation undertaken by Idarado Mining Company.

2.12 Bylaws. "Bylaws" means the Bylaws of the Association which have been or will be adopted by the Executive Board of the Association, as the same may be amended from time to time.

2.13 Common Area. "Common Area" means any portion of the Common Interest Community designated in this Declaration or on the Final Plat as Common Area or Limited Common Area and which is owned or leased or maintained by the Association for the common use and enjoyment of the Owners and Occupants or some of them.

2.14 Common Expenses. "Common Expenses" means any expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, but not limited to the following:

- (a) The costs of maintenance, management, operation, repair and replacement of Association Property, and of all other parts of the Common Interest Community which are managed or maintained by the Association;
- (b) The costs of Improvements constructed from time to time by the Association on or in connection with Association Property, if such costs were included within a duly adopted Budget;
- (c) Unpaid assessments;
- (d) The costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;
- (e) The costs of any utilities and services (including, but not limited to, electricity, gas, sewer or common septic maintenance and management, trash pick-up and disposal and recycling), which are provided to the Association or the Common Interest Community or parts thereof and not individually metered or assessed or billed to Lots, common landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Common Interest Community or parts thereof and which are provided by or on behalf of the Association;
- (f) The costs of insurance maintained by the Association as required or permitted herein;
- (g) Reasonable reserves for contingencies, replacements and other proper purposes as deemed appropriate by the Executive Board to meet anticipated costs and expenses including, but not limited to, maintenance, repair and replacement of Association Property that must be maintained, repaired or replaced on a periodic basis.
- (h) The costs of bonding the members of the Executive Board, the officers of the Association, any professional managing agent or any other Person handling the funds of the Association;
- (i) Taxes paid by the Association;
- (j) Amounts paid by the Association for the discharge of any lien or encumbrance levied against Association Property or any portion thereof;

(k) The costs and expenses incurred by the Design Review Committee, and compensation that may be paid by the Association to members of the Design Review Committee;

(l) The costs and expenses incurred by any committees that may be established from time to time by the Executive Board, and compensation that may be paid by the Association to members of such committees;

(m) The costs of any security or security systems or services that may be installed, operated, monitored or contracted for by the Association for the benefit of the Common Interest Community or any part thereof;

(n) The costs of maintaining, operating and replacing informational, recreational, cultural, health-related or similar facilities or enterprises available to or for the benefit of all or a portion of the Common Interest Community;

(o) All expenses expressly declared to be Common Expenses by this Declaration, and all expenses lawfully determined to be Common Expenses by the Executive Board; and

(p) Other expenses incurred by the Association for any reason whatsoever in connection with Association Property, or the costs of any other item or service provided or performed by the Association pursuant to this Declaration, the Articles, Bylaws, Rules and Regulations, or Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association. In the event that any common services furnished to the Common Interest Community are part of services that are provided to or benefit property in addition to the Common Interest Community, Common Expenses shall only include the cost of such services reasonably allocated to the services provided to the Common Interest Community.

2.15 Common Interest Community. “Common Interest Community” means Idarado Legacy Subdivision, including all Lots and Association Property (including the Association Parcel), together with all Improvements and other amenities now or hereafter located thereon, and together with all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto. If any property is subsequently withdrawn from the Common Interest Community pursuant to the provisions of this Declaration, the term “Common Interest Community” shall thereafter not include said withdrawn property.

2.16 County. “County” means San Miguel County, State of Colorado

2.17 Declarant. “Declarant” means Idarado Legacy, LLC, a Colorado limited liability company, its successors, assigns, and affiliates. A Person shall be deemed to be a “successor and assign” of Declarant if specifically designated in a duly Recorded instrument as a successor or assign of Declarant under this Declaration and shall be

deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in that written instrument. The term "affiliate of Declarant" shall have the meaning set forth in Section 38-33.3-103(1) of the Act.

2.18 Declaration. "Declaration" means this instrument, as this instrument may be amended from time to time.

2.19 Deed of Trust. "Deed of Trust" means a Mortgage.

2.20 Design Guidelines. "Design Guidelines" means the rules, regulations, procedures, standards, guidelines and requirements promulgated from time to time by the Design Review Committee, and all amendments thereto, governing the review and approval or disapproval of proposed Improvements within the Common Interest Community, the performance of construction activities, and such other matters as the Design Review Committee considers necessary or appropriate.

2.21 Design Review Committee. "Design Review Committee" means the Design Review Committee provided for in Article 5 of this Declaration.

2.22 East Colorado Tract. "East Colorado Tract" means the tract depicted on the Final Plat which corresponds to the existing location of East Colorado Avenue, for which the Town of Telluride has asserted certain prescriptive rights as a public road. Declarant hereby reserves all fee simple ownership rights and interest in the East Colorado Tract and Declarant may, but need not, convey title to the East Colorado Tract to a public body or to the Association. Nothing herein shall obligate Declarant to convey fee simple ownership rights and interest in the East Colorado Tract. Declarant shall grant the Owners the right to use and access the East Colorado Tract as may be necessary. The Town of Telluride and/or San Miguel County have managed and maintained and are expected to continue to manage and maintain the East Colorado Tract, provided, however, that should the Town of Telluride and/or San Miguel County fail to manage and maintain the East Colorado Tract, Declarant reserves the right to require the Association to manage and maintain the East Colorado Tract.

2.23 Executive Board. "Executive Board" or "Board" means the Executive Board of the Association.

2.24 Final Plat. "Final Plat" means that certain Final Record Plat of Idarado Legacy Subdivision recorded February 10, 2004 in Plat Book 1 at Page 3238, Reception No. 364049, in the Office of the Clerk and Recorder of San Miguel County, Colorado, as said Final Plat may be amended from time to time. For purposes hereof, the Final Plat shall be deemed to include the Site Constraints Map for Idarado Legacy Subdivision recorded February 10, 2004 in Plat Book 1 at Page 3247, Reception No. 364050, in said records. By this reference, said Final Plat is incorporated in this Declaration.

2.25 Household Pets. “Household Pets” means generally recognized household pets such as dogs, cats, fish, birds, rodents, and non-poisonous reptiles.

2.26 Idarado Development Plan. “Idarado Development Plan” means that certain Subdivision Exemption Plat and Cluster Development Plan as approved by the Board of County Commissioners of San Miguel County, Colorado by Resolution No. 2003-30A recorded _____, 2004 as Reception No. _____, as amended by Resolution No. 2004-4 recorded _____, 2004 as Reception No. _____, all in the Office of the Clerk and Recorder of San Miguel County, Colorado, as said Idarado Development Plan may be amended from time to time.

2.27 Idarado Mining Company. “Idarado Mining Company” means the Idarado Mining Company, a Delaware corporation.

2.28 Improvements. “Improvements” means any improvements, structural or otherwise, alterations, additions, repairs, excavation, grading, landscaping or other work which in any way alter any property within the Common Interest Community, or the improvements located thereon, from its natural or improved state existing on the date this Declaration was first Recorded, including, but not limited to, dwelling units, buildings, outbuildings, additions, patio covers, awnings, the painting, staining or other change of any exterior surfaces of any visible structure, walkways, outdoor sculptures or artwork, sprinkler or irrigation systems, garages, carports, roads, driveways, parking areas, ponds, ditches, fences, screening walls, retaining walls, stairs, decks, flag poles, fixtures, landscaping (including the addition, alteration or removal of any tree, shrub or other vegetation), hedges, windbreaks, plantings, planted trees and shrubs, gardens, poles, signs, tanks, solar equipment, wind harnessing or other energy generating equipment, exterior air conditioning, water softener fixtures, utilities, antennae and satellite dishes or receivers. Once an Improvement has been constructed or accomplished on a property within the Common Interest Community, any subsequent alteration of or addition to or removal of that Improvement shall also constitute an “Improvement” hereunder.

2.29 Lease. “Lease” means and refers to any agreement for the leasing, rental, use or occupancy of a residential dwelling located on a Lot within the Common Interest Community. The required terms and procedures for Leases are more particularly set forth in Section 3.41 below.

2.30 Liberty Bell Lot. “Liberty Bell Lot” means each of Lot Nos. L1-L9, as depicted on the Final Plat.

2.31 Limited Common Area. “Limited Common Area” means a Common Area that is designated by this Declaration or on the Final Plat for the exclusive use or benefit of one or more Lots in the Common Interest Community but fewer than all of the Lots. Without limiting the generality of the foregoing: (a) Liberty Bell Lane shall be a Limited Common Area for the benefit of Lots L2-L8, and Pandora Lane shall be a Limited Common Area for the benefit of Lots P1-P21; and (b) the Bridal Veil Rockfall Fence shall be a Limited Common Area for the benefit and protection of

Lots BV1-BV4 and Lots P12-P15, P23 and P24, and the Liberty Bell Rockfall Fence shall be a Limited Common Area for the benefit and protection of Lots L6-L9.

2.32 Lot. "Lot" means any part of the Common Interest Community which is designated as a Lot on the Final Plat, together with all Improvements thereon and appurtenances thereto. The term "Lot" means and includes each Bridal Veil Lot, Liberty Bell Lot, and Pandora Lot, but does not mean or include the Association Parcel.

2.33 Member. "Member" means each Lot Owner, including the Declarant. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

2.34 Mortgage. "Mortgage" means any mortgage, deed of trust or other security instrument, given voluntarily by the Owner of a Lot, creating a real property security interest in a Lot and Recorded in the records of the Clerk and Recorder of San Miguel County. "First Mortgage" means a mortgage which is the first and most senior of the Mortgages on the same Lot. The term "Mortgage" does not mean a statutory, tax or judicial lien. The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage."

2.35 Mortgagee. "Mortgagee" means a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee.

2.36 Mortgagor. "Mortgagor" means the maker, obligor or grantor of a Mortgage. The term "Mortgagor" includes a trustor or grantor under a Deed of Trust.

2.37 Notice and Hearing. "Notice and Hearing" means a written notice and public hearing before the Executive Board, or a panel appointed by the Executive Board, as set forth in the Bylaws.

2.38 Occupant. "Occupant" means any Person who is a tenant in a residence on a Lot pursuant to a Lease with the Owner thereof. "Occupant" also means any Person who is present within the Common Interest Community as a family member, guest or invitee of an Owner, an Occupant, the Declarant, or the Association.

2.39 Owner. "Owner" means the Person, including Declarant, or, if more than one, all Persons collectively, who hold fee simple title of record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder. The term "Owner" shall be analogous to the term "Unit Owner", as that term is defined in the Act.

2.40 Pandora Lot. "Pandora Lot" means each of Lot Nos. P1-P24, as depicted on the Final Plat.

2.41 Permitted Exceptions. “Permitted Exceptions” means all liens, encumbrances, reservations, restrictions, conditions, easements and other matters of record which encumber the title to all or any part of the Common Interest Community, as of the date this Declaration is Recorded. This Declaration shall be subject to such Permitted Exceptions.

2.42 Person. “Person” means a natural person, a corporation, a partnership, a limited liability company, a trust, or any other entity capable of holding title to real property pursuant to the laws of the State of Colorado.

2.43 Record or Recorded. “Record” or “Recorded” means an instrument of record in, or the act of recording an instrument with, the Office of the Clerk and Recorder of San Miguel County.

2.44 Regular Assessment. “Regular Assessment” means a charge against an Owner and the Owner’s Lot for purposes of covering the annual costs of operating and administering the Association and all other Common Expenses. Regular Assessments are based on a Budget adopted by the Executive Board in accordance with Section 11.7 below, and are allocated to the Lots in accordance with the Allocated Interests, except that Common Expenses that in the judgment of the Executive Board benefit fewer than all of the Lots may be allocated exclusively to the Lots benefited.

2.45 Reimbursement Assessment. “Reimbursement Assessment” means a charge against a particular Owner and the Owner’s Lot for the purpose of reimbursing the Association for costs and expenses incurred by the Association in connection with the enforcement of any provision hereof or the remedying of any violation by the Owner or an Occupant of this Declaration or any amendment hereto, the Articles, Bylaws, Rules and Regulations, or Design Guidelines, or any approvals granted by the Design Review Committee, or for other purposes set forth in the Declaration, pursuant to Section 11.9 hereof, together with late charges and interest as provided for herein. Reimbursement Assessment shall include without limitation any Common Expense caused by the misconduct of any Lot Owner or of such Owner’s Occupants.

2.46 Rules and Regulations. . “Rules and Regulations” means rules and regulations adopted from time to time by the Executive Board, as provided in Section 10.8 of this Declaration.

2.47 Special Assessment. “Special Assessment” means a charge against an Owner and the Owner’s Lot for purposes of reimbursing the Association for costs and expenses incurred or to be incurred by the Association for the purpose of paying for the construction, reconstruction, repair, maintenance or replacement of capital improvements to or upon or serving the Common Interest Community or any part thereof, the costs of which were not included in a Regular Assessment, or for excess reconstruction costs or other extraordinary expenses, or to acquire Association Property, or for funding any operating or reserve deficit of the Association, as authorized by the Executive Board from time to time as provided herein. Special

Assessments shall be based on a Budget adopted by the Executive Board in accordance with Section 11.7 below.

ARTICLE 3

GENERAL RESTRICTIONS AND PROVISIONS APPLICABLE TO THE COMMON INTEREST COMMUNITY

It is the intention of Declarant to establish and impose a common and general plan for the improvement, development, use and occupancy of the Common Interest Community, all in order to enhance the value, desirability, and attractiveness of the Common Interest Community and to promote the marketing, development and enjoyment thereof. Accordingly, Declarant hereby declares that the entire Common Interest Community, including but not limited to all Lots, shall be owned, held, used, occupied, improved, altered, maintained, conveyed, leased, encumbered and enjoyed subject to the following covenants, conditions, restrictions, reservations, easements, rights and other provisions, and to the further requirements and restrictions set forth in the Design Guidelines, subject to such Declarant exemptions as may be set forth herein. Development shall also conform to the provisions of the Idarado Development Plan Approvals and the notes contained on the Final Plat.

3.1 Development Control. Except as otherwise expressly provided in this Declaration, (i) no residence, building, structure, fence, wall, landscaping or other Improvement shall be commenced, made, done, permitted, located, erected, improved, altered or removed within the Common Interest Community without the prior written approval of the Design Review Committee, and (ii) all subsequent additions to or changes or alterations in any residence, building, structure, fence, wall, landscaping or other Improvement, including without limitation exterior color scheme, and all changes in the grade of Lots, shall also be subject to the prior written approval of the Design Review Committee. No modifications from the approvals granted by the Design Review Committee shall be made without the prior written approval of the Design Review Committee. Notwithstanding the foregoing, in the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of Persons or property within the Common Interest Community, the Executive Board and/or the Design Review Committee shall have the authority (without the prior approvals described above), to take whatever remedial action may be necessary anywhere in the Common Interest Community to protect Persons and property until such time as applicable notice and/or approval procedures can reasonably be utilized. Further notwithstanding the foregoing, Design Review Committee approval shall not be required for Improvements made by Declarant in the exercise of any development rights or special Declarant rights reserved by Declarant in this Declaration.

3.2 Violation of Law, Insurance, Etc. No Owner or Occupant or Person shall do any act or cause or permit anything to be done or kept in or upon a Lot or a residence constructed thereon, or the Association Property, which would result in the increase of, or cancellation of, insurance maintained by the Association or would be in

violation of any federal, state, County or other law, ordinance, regulation or code of any governmental body having jurisdiction, or of any Rule or Regulation promulgated by the Association, or of any provision of this Declaration or of the Design Guidelines.

3.3 General Maintenance of Common Interest Community. All property within the Common Interest Community, including without limitation all Lots (including unimproved Lots, and Lots on which Improvements are under construction), Association Property, Improvements, and landscaping, shall be kept and maintained in a clean and attractive condition and in good order, condition and repair.

(a) Except as specifically set forth in this Section 3.3, maintenance, repair, and upkeep of each Lot and the Improvements thereon (including attractive painting and refinishing thereof at regular intervals) shall be the responsibility of the Owner of the Lot. Such maintenance and repair shall be performed by each Owner whenever necessary or appropriate and at regular intervals in order to keep the Lot and Improvements in substantially the same condition and appearance as existed at the time of completion of construction, subject to normal wear and tear that cannot be avoided. Said Owner obligations shall include all maintenance, repair or replacement required as a consequence of any fire, wind, vandalism, theft or other casualty. With respect to a Lot, this maintenance obligation extends to all lands and landscaping within the Lot lines, excepting any areas or elements that are to be maintained by the Association, and includes without limitation the landscaping maintenance and weed control obligations set forth in Section 3.34 below. Unsightly conditions on a Lot, as determined by the Executive Board in the exercise of its reasonable judgment, shall constitute a nuisance under this Declaration.

(b) Each private driveway (as built) between an access road and the residence on a Lot shall be maintained, and repaired and improved by the Owner of the Lot at such Owner's cost and expense; provided that the cost of maintaining, repairing and improving the portion of the shared driveway that serves Lots BV1/BV2 and of the shared driveway that serves Lots BV3/BV4, respectively, that is used in common by such Lots, shall be shared equally by the Owners of the Lots benefited thereby. All private driveways in the Common Interest Community shall be snowplowed by the Association, and the cost thereof shall be a Common Expense which shall be allocated among the Lot Owners in accordance with a formula to be reasonably determined by the Executive Board, which formula shall be generally based on the length of private driveway lying between an access road and each residence.

(c) Maintenance, repair, and upkeep of Association Property, including the Association Parcel and all Common Areas and Limited Common Areas, and including any Improvements and landscaping located on Association Property, shall be the responsibility of the Association, although the Association may enter into contracts to have such responsibilities performed by third parties.

(d) The individual Owners and the Association shall each use a reasonable standard of care in providing for the repair, management and maintenance of the properties for which they are responsible so that the entire Common Interest Community will reflect a pride of ownership.

(e) If an Owner fails to perform any of such obligations within ten (10) days following receipt of a written notice from the Executive Board requesting the same, the Executive Board shall have the right to enter upon the Lot of the Owner to cure the violation, to perform any needed repairs or maintenance, or to otherwise cause compliance with this Section 3.3, and to levy and collect a Reimbursement Assessment upon the Owner and its Lot for the costs and expenses incurred by the Association in connection therewith. The Executive Board shall have no right to enter into the interior of a residence without the consent of the Owner except in the case of a clear emergency.

3.4 Residential Use and Occupancy. Each Lot shall be improved, occupied and used only for private single-family residential purposes. ADU's shall be a permitted use in the Common Interest Community, in the discretion of each Lot Owner and the Association Parcel owner, but only in the event the Idarado Development Plan Approvals and the San Miguel County Land Use Code are amended to allow the use of ADU's or if the area is rezoned to a zone that allows the use of ADU's, and in the further event that a legal source of water is available for an ADU use and a properly engineered, designed and sized OWS can be installed on the Lot to serve all of the Improvements.

No structures or uses whatsoever, other than those permitted by the Idarado Development Plan or by other applicable San Miguel County zoning regulations and approved in writing by the Design Review Committee, shall be erected, placed, permitted to remain, or conducted on any Lot. The Association Parcel shall be used only for residential housing for the manager or employee of the Association and related Association uses.

No office, business and/or commercial structures shall be permitted within the Common Interest Community except in those areas where such uses are allowed by applicable provisions of the Idarado Development Plan. No business, professional or other non-residential or commercial use shall be made of any Lot, or conducted in any residence constructed on a Lot, excepting in-home businesses or occupations which do not involve (i) employees, (ii) the solicitation or invitation of the general public, or (iii) the servicing of customers, and which activities are conducted entirely within the residence and do not cause any additional traffic or parking within the Common Interest Community or otherwise create a nuisance for neighboring Lots or the Common Interest Community and for which use a legal source of water is available and a properly engineered and sized OWS can be installed on the Lot to serve all of the Improvements and uses. The leasing of a residence in compliance with the provisions of Section 3.41 below shall not violate this restriction. No equipment or materials incident to any business or occupation (whether conducted within the residence or elsewhere) shall be kept or stored on any Lot except within the residence,

garage, barn, or other outbuilding approved by the Design Review Committee and allowed by the Idarado Development Plan Approvals. Notwithstanding the foregoing, activities normally associated with the sale by the Declarant or an Owner of an improved or unimproved Lot shall be allowed, subject to any limitations contained in this Declaration.

3.5 New Construction Required, No Temporary Buildings of Occupancy.

All Improvements constructed within or placed upon the Common Interest Community shall be new. No pre-fabricated or manufactured housing, no mobile homes (single or double wide), and no used or temporary house, structure, tent, teepee, or non-permanent out-building (specifically including without limitation mobile homes and trailers) shall ever be placed, erected or allowed to remain within the Common Interest Community except temporary structures or construction trailers used for construction purposes during the construction of a residence, which temporary facilities shall be removed immediately following completion of construction and in any event no later than 18 months following commencement of construction or remodeling unless a written extension is granted by the Design Review Committee. No trailer, mobile home, incomplete residence or other structure other than a residence completed in accordance with approved plans, shall ever be used or occupied at any time for residential purposes, either temporarily or permanently. No completed residence on a Lot or the Association Parcel shall be occupied in any manner until all provisions of this Declaration and of the Design Guidelines and all conditions of development approval have been complied with, and a Certificate of Compliance has been issued pursuant to Section 5.16 below. The work of constructing, altering or remodeling any residence on a Lot or the Association Parcel or any other Improvement within the Common Interest Community shall be prosecuted diligently from the commencement thereof until the completion thereof.

Notwithstanding the foregoing, existing structures may remain or be relocated within the Common Interest Community, in the discretion of Declarant. In addition, used materials (e.g. barnwood) and/or structures may be permitted on a Lot or the Association Parcel if (i) the Owner makes a specific written request to the Design Review Committee for approval of such used materials and/or structures, and (ii) the Design Review Committee determines that the criteria set forth in Section 5.11 hereof have been met and specifically approves such request in writing.

3.6 Building Envelopes. See the above definition of this term for the general regulations applicable to Building Envelopes. A Lot Owner may submit a written request to the Executive Board to modify the Building Envelope on the Lot. The Executive Board, in the exercise of its reasonable discretion, may approve or deny such request based upon the Board's consideration of the following factors:

- (a) The revised Building Envelope shall not cross "hard building lines" as depicted on the Final Plat.
- (b) The revised Building Envelope shall not subject development on the Lot to increased geohazard conditions, in excess of conditions anticipated

for the existing Building Envelope location, for which mitigation is not available.

(c) The revised Building Envelope shall not result in unacceptable spacing between domestic wells or OWS/Sewer Facilities (if being utilized) established in the Idarado Legacy Development Plan.

(d) The revised Building Envelope will result in construction in a delineated wetland (this does not include a wetland buffer area).

(e) Potential impacts on any other Building Envelope, Association Property or Owner within the Common Interest Community.

(f) Other factors deemed relevant by the Executive Board.

If the request is approved by the Executive Board, the Lot Owner shall then apply for approval of the proposed modification by the San Miguel County Planning Department, which application shall be handled as an administrative review. The Planning Department shall approve the proposed Building Envelope modification, unless the Planning Department determines that the modification will violate one or more of the prohibitions described in subsections (a), (b), (c) and (d) above.

3.7 Design Guidelines. All excavation and other land disturbance, construction or installation of Improvements, landscaping and irrigation activities within the Common Interest Community shall be strictly governed by the procedures, standards, guidelines, restrictions and requirements set forth in the Design Guidelines. A violation of the Design Guidelines shall constitute a violation of this Declaration and may be enforced in accordance with the terms hereof.

3.8 Annoying Light, Sound or Odor. All exterior lighting installed or maintained on any Lot or the Association Parcel or on any Improvement located on a Lot or the Association Parcel shall be placed so that the light source is totally screened or shielded from the residence on any other Lot and from Association Property. No light shall be emitted from any part of the Common Interest Community (including any Lot) which is unreasonably bright or causes unreasonable glare. Without limiting the generality of the foregoing, no spotlights, floodlights, landscape lighting, exterior architectural lighting, or other high-intensity lights shall be permitted within the Common Interest Community without the prior written approval of the Design Review Committee. The Design Guidelines may contain additional standards for exterior lighting including, without limitation, standards for hue and intensity.

No sound shall be emitted from any part of the Common Interest Community (including without limitation any Lot or the Association Parcel) which is unreasonably loud or annoying to others, and no odor shall be emitted from any part of the Common Interest Community (including without limitation any Lot or the Association Parcel) which is noxious or unreasonably offensive to others. Again without limiting the

generality of the foregoing, no exterior speakers, horns, whistles, bells (excepting chimes), or other sound devices, other than security devices used exclusively for security purposes, shall be located or used within the Common Interest Community except with the prior written approval of the Design Review Committee.

The Executive Board, in its sole discretion, shall have the right and authority to determine the existence of any violation of this Section 3.8 including the reasonableness of any light, sound or odor.

3.9 Noxious or Offensive Activities; Construction Activities. No noxious or offensive activity shall occur or be allowed at any time on any property within the Common Interest Community, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to Owners, Occupants, Declarant or the Association, or which causes damage to neighboring property, or which interferes with the peaceful enjoyment or possession and proper use of the Common Interest Community, or any part thereof, by Owners or Occupants. Any activity on a Lot or the Association Parcel which interferes with satellite dish, television, cable or radio reception on another Lot or the Association Parcel shall be deemed a nuisance and shall be a prohibited activity. As used herein, the term "nuisance" shall not apply to any activities of Declarant which are reasonably necessary or appropriate to the development, improvement, maintenance, marketing and/or sale of the Common Interest Community or any part thereof. The Executive Board, in its sole discretion, shall have the right and authority to determine the existence of any nuisance or unreasonable embarrassment, disturbance or annoyance under this Section 3.9.

Each Owner shall comply with the Rules and Regulations and the requirements of all health authorities and other governmental authorities having jurisdiction over the Common Interest Community. Normal construction activities and parking, during daylight hours, in connection with the building of Improvements on a Lot or the Association Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration unless they are in violation of the Design Guidelines or other requirements of the Design Review Committee, but Lots and Association Property shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Design Review Committee. In addition, construction equipment and building materials may only be stored or kept within the Common Interest Community during and in connection with the construction of Improvements thereon, and then may be kept only in areas approved by the Design Review Committee, which also may require screening of the storage areas. All such equipment and materials shall be removed immediately following completion of construction.

3.10 No Hazardous or Unsafe Activities. No activity shall be conducted on, and no Improvement shall be constructed on, any property within the Common Interest Community which is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, and except as allowed below, no

explosives, gasoline, fireworks, or other volatile and/or incendiary materials or devices or any materials deemed hazardous or toxic substances under applicable environmental laws, rules, or regulations shall ever be used, kept, stored, permitted to remain or be released or disposed of on any Lot or the Association Parcel or elsewhere within the Common Interest Community. Gasoline or fuel for an Owner's lawn mower, snowblower, and the like may be maintained on an incidental basis in an enclosed structure on a Lot or the Association Parcel in an amount not to exceed 10 gallons.

3.11 No Solid Fuel-Burning Fireplaces. No solid fuel-burning fireplaces shall be constructed or used in residences constructed on Lots or the Association Parcel within the Common Interest Community.

3.12 Outlot A and Outlot B. "Outlot A" and "Outlot B" are non-buildable parcels owned by the Declarant, and Declarant reserves the right to convey one or both of such parcels to an entity or person as determined by Declarant. Without the prior written approval of Declarant, (i) no structures, roads, driveways, trails, utilities or other improvements may be constructed or placed on Outlot A and Outlot B, (ii) no clearing, grading or disturbance of land or vegetation may occur thereon, and (iii) no easements or rights-of-way may be created granting use of Outlot A and Outlot B. The use of Outlot A and Outlot B shall not interfere with modifications to the Owl Creek drainage being undertaken by Declarant or the Association.

3.13 Outside Burning; Fire Hazards. No exterior fires shall be lighted or permitted on any property within the Common Interest Community except in a contained barbecue unit while attended and in use for cooking purposes. No Owner shall cause or permit any condition on his Lot which creates a fire hazard or is in violation of fire prevention regulations, or which would increase insurance rates for Association Property or for other Owners. Notwithstanding the foregoing, the Declarant shall have the right to perform burning activities in connection with the development, marketing and maintenance of the Common Interest Community.

3.14 No Firearms or Hunting. The use or discharge of firearms, including but not limited to BB guns and pellet guns, on any part of the Common Interest Community (including without limitation the Lots and the Association Parcel) is expressly prohibited. Hunting on any part of the Common Interest Community (including without limitation the Lots and the Association Parcel) is expressly prohibited.

3.15 No Heated Driveways. The construction, operation, maintenance or use of heated driveways is expressly prohibited on Lots and the Association Parcel within the Common Interest Community.

3.16 Sprinkler Systems Mandatory. All residences constructed on Lots within the Common Interest Community, and any residential improvements constructed on the Association Parcel, shall be required to contain a fire suppression sprinkler system.

3.17 No Unsightliness; Outside Personal Property Storage and Clothes Drying. All unsightly structures, facilities, equipment, objects, and conditions, all sporting equipment (e.g., skis, snowboards, bikes, mountain bikes, kayaks, etc.), and all snow removal, garden or maintenance equipment except when in actual use, shall be kept in an enclosed structure or in a screened area approved in writing by the Design Review Committee. Tasteful patio furniture and accessories, barbecue grills, and playground equipment and other outside personal property approved in writing in advance by the Design Review Committee, may be kept on the side or in the rear of a Lot or the Association Parcel and must be kept in an attractive and good condition. No laundry or wash shall be dried or hung outside on any Lot or on the Association Parcel.

3.18 Garbage; Trash; Compost; Containers. No refuse, garbage, trash, grass, shrub, or tree clippings, plant waste, compost, metal, bulk materials, scrap, rubbish, or debris of any kind shall be kept, stored, maintained or allowed to accumulate or remain on any Lot or on Association Property except temporarily within an enclosed structure approved by the Design Review Committee, except that any approved container containing such materials may be placed next to the street not earlier than 6:00 a.m. on the designated morning of garbage collection and must be returned to its enclosed structure that same day. No garbage containers, trash cans or receptacles shall be maintained in an unsanitary or unsightly condition, and except when placed for pickup they shall not be visible from another Lot or Association Property. All such refuse, garbage, trash, plant waste, compost, metal, scrap materials, rubbish and debris shall be promptly removed from the Common Interest Community and shall not be burned thereon. Compost structures and containers may be placed on a Lot or on Association Property in locations and in containers approved by the Design Review Committee, provided that no such structure or container shall be larger than fifty-five (55) gallons. Notwithstanding the foregoing, only bear-proof garbage containers (as defined in the Design Guidelines) shall be used on Lots and the Association Parcel within the Common Interest Community, and the Association shall have the right to require that every Lot Owner purchase and use a designated garbage container.

3.19 Vehicle Parking, Storage, Operation and Repair.

(a) Except as permitted under subparagraph (e) below, no motorized vehicles of any kind shall be parked or stored on public or private roadways within or adjacent to the Common Interest Community.

(b) No more than two (2) permitted vehicles (passenger automobiles, including without limitation vans and SUVs, and/or one ton or smaller pick-up trucks) shall be parked at any time in the driveway of any Lot or the Association Parcel, except during special occasions and then only for the duration thereof. Permitted vehicles shall not be parked in any location on a Lot or the Association Parcel except the driveway or an enclosed garage.

(c) No boats, trailers, buses, motor homes, mobile homes, campers (on or off supporting vehicles), motorcycles, snowmobiles, recreational vehicles, all terrain vehicles, trucks, industrial or commercial vehicles (both cabs or trailers), abandoned or inoperable vehicles (as defined below), or any other similar vehicles (excepting passenger automobiles and one ton or smaller pick-up trucks) shall be parked or stored upon any Lot or the Association Parcel in the Common Interest Community except within enclosed structures approved in advance by the Design Review Committee.

(d) No motorized vehicle of any kind shall be maintained, repaired, repainted, serviced or rebuilt on Association Property or on any Lot except within a completely enclosed garage which fully screens the sight and sound of the activity from the streets and other Lots and Association Property. This restriction shall not prevent the non-commercial washing and polishing of vehicles and boats, together with activities normally incident thereto.

(e) Notwithstanding the foregoing, vehicles may be temporarily parked on driveways on Lots and the Association Parcel and on roadways within the Common Interest Community (i) during special occasions, but only for the duration thereof not to exceed 8 hours, (ii) for loading, delivery service or emergency purposes, but only for the time required to accomplish such purpose, and (iii) as necessary on a daily basis for the construction, maintenance or servicing of Improvements within the Common Interest Community.

(f) An "abandoned or inoperable vehicle" shall mean any motorized vehicle which does not display a current motor vehicle license or which has not been driven under its own propulsion for a period of one (1) week or longer (excepting otherwise permitted vehicles parked by Owners or Occupants on their Lot driveways while on vacation or during a period of illness), or which does not have an operable propulsion system within the vehicle.

(g) In the event that the Executive Board or the Design Review Committee shall determine that a vehicle is abandoned or inoperable, or is otherwise in violation of the provisions of this Section 3.18, a written notice of violation describing said vehicle shall be personally delivered to the vehicle owner (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner cannot be reasonably ascertained), and if the offending vehicle is not removed within seventy-two (72) hours thereafter, the Executive Board or Design Review Committee (as the case may be) shall have the right to remove and store the offending vehicle, or cause the vehicle to be removed and stored, at the sole expense of the owner of the vehicle if the vehicle is located on a roadway, or at the sole expense of the Owner of the Lot on which the vehicle is located, and to enter upon an Owner's Lot for such purpose, all without liability on the part of the Executive Board or the Design Review Committee.

(h) Snowmobiles, motorcycles, trail bikes, minibikes, dirt bikes, all-terrain vehicles, and similar motorized vehicles shall not be used or operated (but may be transported on trailers) within the Common Interest Community, except that motorcycles properly licensed for operation on public roads may be used on roadways within the Common Interest Community. Notwithstanding the foregoing, Declarant and/or the Association may operate such recreational vehicles within the Common Interest Community solely for maintenance, construction, security or similar purposes or in emergency circumstances.

3.20 Garages. All garage doors shall be kept closed when not in use. No garage shall be permanently enclosed, and no portion of a garage originally intended for the parking of an automobile shall be converted into living space or storage space without the express prior written approval of the Design Review Committee.

3.21 Animals. Except as specifically permitted below or by the Rules and Regulations, no animals, reptiles, primates, fish, fowl or insects of any kind shall be kept, raised, bred, maintained or boarded within or upon any part of the Common Interest Community.

(a) Each Lot and the Association Parcel shall be entitled to a maximum of no more than three (3) dogs or cats (or any combination thereof) and a reasonable number of other Household Pets, so long as such dogs, cats or other Household Pets are not kept for any commercial purpose, are not kept in unreasonable numbers, do not cause an unreasonable amount of noise or odor, or do not otherwise become a nuisance or threat to other Owners or Occupants. Contractors and subcontractors may not bring dogs or other pets into the Common Interest Community.

(b) A permitted dog, cat or other Household Pet must be fenced or restrained at all times within the Owner's or Occupant's Lot, or within the Association Parcel, and shall not be permitted outside such Lot or Association Parcel except when leashed and accompanied by the pet's owner or the owner's representative. All Household Pets shall be properly immunized and otherwise maintained and cared for as required by applicable laws.

(c) The Owner of a Lot (and the owner of the Association Parcel) where a Household Pet is kept, as well as the legal owner of the pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the pet, and for any clean-up of the Owner's Lot and of streets, sidewalks, Association Property or other Lots necessitated by such pet.

(d) The Executive Board shall be responsible for enforcing the restrictions set forth in this Section 3.21, and shall have, and is hereby given, the right and authority to determine in its sole discretion that any one or more dogs, cats or other Household Pets are being kept for commercial purposes, or are being kept in unreasonable numbers, or are causing an unreasonable amount of noise or odor, or are otherwise a nuisance to other Owners or Occupants, or

that an Owner or Occupant is otherwise in violation of this Section 3.21, and to take such action or actions as it deems reasonably necessary to remedy the violation, including without limitation the levying of fines and/or Reimbursement Assessments as provided in Section 11.9 hereof. Also without limiting the generality of the foregoing, the Executive Board may require the owner or custodian of a dog that barks or howls excessively, or of a dog, cat, or other Household Pet that exhibits threatening behavior or that has other offensive habits or that otherwise violates the restrictions set forth in this Section 3.21, to confine such animal indoors, or to permanently remove such animal from the Common Interest Community, and may adopt Rules and Regulations governing pets.

3.22 Restrictions on Equipment, Tanks, Antennae, Satellite Dishes, Etc.

Heating, air conditioning (including swamp coolers), air movement, wind collection, or refrigeration equipment must be screened from the view of neighboring properties and must receive the prior written approval of the Design Review Committee. It is expressly understood that except in extenuating circumstances, as determined by the Design Review Committee, only central air conditioning will be allowed within the Common Interest Community. The use of solar energy systems (both passive and active) within the Common Interest Community is encouraged, provided such systems comply with governmental guidelines for residential uses and meet the same architectural criteria as are applied to other Improvements within the Common Interest Community, and are approved in advance by the Design Review Committee. No tanks of any kind, whether elevated or buried, shall be erected, placed or permitted to remain upon any Lot or Association Property except in compliance with applicable federal and state regulations, and then only with the prior written approval of the Design Review Committee. Any approved tank must be located underground or adequately concealed from view by fencing or screening approved by the Design Review Committee.

If an Owner wishes to install an antenna to receive video programming, the Owner shall notify the Design Review Committee in writing of the proposed installation and location thereof at least ten days before the installation. The antenna installation and location shall comply with all fire, electrical and other applicable safety codes, and the installing Owner shall to the extent feasible install the antenna in a location that minimizes its visibility from neighboring Lots or Association Property. The installing Owner shall be obligated to paint the antenna so that it blends into the background against which it is mounted and to plant and maintain such reasonable landscaping as will screen the antenna, to the extent feasible, from neighboring Lots and Association Property. Provided always, that in the event that in any particular situation any of the foregoing requirements or restrictions cause an unreasonable delay or cost in the installation, maintenance or use of the antenna, or prevent the reception of acceptable quality signals, said requirements or restrictions shall be invalid as they apply to that particular situation.

Satellite dishes that exceed one meter in diameter, and MDS antennas that exceed one meter in diameter or diagonal measurement, shall not be allowed within

the Common Interest Community. Mast antennas that extend higher than 12 feet above the roof line and antennas that are not used to receive video programming shall only be permitted within the Common Interest Community if they receive the prior written approval of the Design Review Committee as to design, location and screening from neighboring Lots and Association Property.

3.23 Restrictions on Mining or Drilling. No property within the Common Interest Community shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for, developing or removing, water, geothermal resources, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, except drilling, exploring for, removing, distributing or storing underground water by Declarant or the Association, and except for individual domestic wells and related storage tanks located on Lots and on the Association Parcel within the Common Interest Community. Nothing contained herein shall be construed to limit the rights of the owners of mineral interests severed from the surface of any portion of the Common Interest Community prior to the recording of this Declaration.

3.24 Excavations. No excavation or other earth disturbance shall be performed or permitted within the Common Interest Community except in connection with the construction of Improvements, and then only with the prior written approval of the Design Review Committee. Upon completion of construction, openings in the ground shall be backfilled and compacted and all disturbed ground shall be graded and landscaped in accordance with the Design Guidelines and the requirements of the Design Review Committee.

3.25 Individual Water Wells. A domestic water well may be drilled and installed by Declarant on each Lot and the Association Parcel in the Common Interest Community, in accordance with the requirements and provisions of BOCC Resolution No. 2004-_____. Thereafter, the well shall be maintained, repaired or replaced by the Lot Owner, at the Lot Owner's cost and expense, or by the owner of the Association Parcel at such owner's expense, and no other water wells shall be drilled or permitted to remain by Lot Owners within the Common Interest Community.

Each well shall be equipped with a totalizing flow meter or similar device for the measurement of the volume of water pumped therefrom, which meter shall be acceptable to the Association and the Colorado State Engineer's Office. Each Owner of a Lot, and the owner of the Association Parcel, shall be responsible for keeping the flow meter in good working order at all times, and for notifying the Association of any malfunctioning of or damage to the flow meter. Each Owner of a Lot and the owner of the Association Parcel shall not withdraw or use more than one acre-foot (325,850 gallons) of water during each 12-month period commencing November 1 of each year. The Association or its designated agent shall have the right to inspect each flow meter at any time to ensure compliance with this volumetric limit, and to record and report such meter readings to the State Engineer. Each Owner of a Lot and the owner of the Association Parcel shall be otherwise responsible for maintaining and operating each well in accordance with the requirements of its well permit and other

applicable law, including without limitation compliance with the irrigation limitations contained in each well permit.

Although the County has approved the use of a well to provide water to each Lot and the Association Parcel, Declarant is not precluded from developing another water supply to serve some or all of the Lots and the Association Parcel as long as such alternate supply is demonstrated to be legally and physically adequate for such purpose.

3.26 Geohazard Mitigation by Lot Owners. Certain Lots in the Common Interest Community are identified on the Site Constraints Map as being potentially exposed to geohazard conditions (individually, a "Geohazard Lot"). Each Owner of a Geohazard Lot shall adhere to and comply with the geohazard standards, requirements and procedures set forth in Section 4.1 of this Declaration and the Idarado Development Plan Approvals.

3.27 Development on Slopes of 30% or Greater. Whenever a Lot Owner or the owner of the Association Parcel contemplates development on portions of a Lot or the Association Parcel with slopes of 30% or greater, a site and structure specific geotechnical engineering plan and slope stability analysis, including a site-specific soil and foundation investigation, shall be prepared by a qualified engineer and submitted to the County Engineer for review and approval prior to any site disturbance and prior to issuance of a Development Permit for a single-family residence on the Lot or a residential structure on the Association Parcel. The analysis shall include an evaluation of the proposed building pad, driveway, and septic system (if necessary).

3.28 Floor Area Limitations. The Design Guidelines contain floor area limitations for each Lot in the Common Interest Community. Each Lot Owner shall strictly comply with the floor area restrictions applicable to the Owner's Lot.

3.29 Idarado Mining Company Remediation of Environmental Conditions. Under the Idarado Development Plan approvals, Idarado Mining Company is obligated to mitigate recognized environmental conditions that may be identified within the Common Interest Community in a manner consistent with the applicable "Preliminary Remediation Goals" as adopted by the United States Environmental Protection Agency, with the element "Lead" to be designated as the indicator element for remediation purposes. The basic standard for any such mitigation activities shall be to achieve an environmental condition that is compatible with the residential use of the property contemplated by the Idarado Development Plan. In the event deposits of mill tailings are visibly identified on the ground surface or encountered during infrastructure or residential excavations within the Common Interest Community, Idarado Mining Company will do the following:

- (a) Remove the tailings material and transport the material to the Idarado repository located at the Pandora Mill Site; and

(b) Collect and analyze additional surface samples as necessary to confirm material removal.

There is hereby created, granted and reserved to the Idarado Mining Company a perpetual, non-exclusive blanket easement to enter upon any portion of the Common Interest Community, including without limitation any part of a Lot or the Association Parcel, at any time and from time to time, for purposes of evaluating and/or remediating any environmental conditions that may be identified thereon, including any such conditions that may be encountered during infrastructure or residential construction. Idarado Mining Company will restore the surface and grade of any lands within the Common Interest Community that may be disturbed during the performance of any such remediation responsibilities, excepting lands within a house excavation area on a Lot or the Association Parcel, as closely as possible to the condition that existed prior to such disturbance.

3.30 No Interference with Waterways or Drainage or Irrigation Systems.

No Owner or Occupant shall construct, install, maintain or permit any Improvement or obstruction or plant trees or take any other action which damages or interrupts or interferes in any way with (i) the normal flow of water through and along waterways and water features within the Common Interest Community, (ii) any pond or other water collection, storage or distribution system within or serving the Common Interest Community, or (iii) normal drainage patterns within the Common Interest Community, including drainage patterns resulting from implementation of the Idarado Development Plan, subject always to the rights of owners of ditches and other water rights and the requirements of the Design Review Committee. The Executive Board shall have the authority to take such action as may be necessary to abate or enjoin any such damage or interference, and shall have the right to enter upon a Lot or the Association Parcel for purposes of correcting or removing the same, and any costs incurred by the Association in connection with such abatement, injunctive or corrective activities shall be assessed to the subject Lot Owner in the form of a Reimbursement Assessment.

3.31 No Fences. No perimeter or other fencing shall be allowed on Lots or the Association Parcel within the Common Interest Community other than the Idarado Trail and at such other locations as determined by Declarant.

3.32 Tree and Natural Shrub Preservation. All Improvements within the Common Interest Community shall be located, designed, and constructed so as to preserve and protect trees and natural shrubs. In order to conserve the natural beauty of the area, no existing trees or natural shrubs may be removed or trimmed except with the prior written approval of the Design Review Committee. Any violation of this Section shall subject the offending Owner to such penalties, fines and/or other conditions as the Design Review Committee considers appropriate, including without limitation the withdrawal or modification of previously granted development approvals, or the requirement that replacement trees or shrubs of equivalent or

different size and type be planted and maintained by the Owner. Development approvals may be withheld until any such requirements are performed.

3.33 Use of Easement Areas: Utility Installation. Any easements shown on the Final Plat covering any portion of the Common Interest Community have been created or reserved for the purposes indicated on the Final Plat and/or in Article 8 below or elsewhere in this Declaration. Declarant expressly reserves the right for a period extending 20 years from the date of Recording of this Declaration to enlarge the purposes for which any easement may be established in this Declaration or on the Final Plat, and/or to expand the permitted users of any such easement. No Owner or Occupant may erect any structure of any type whatsoever in such easement areas, nor may an Owner or Occupant use the surface of such easement areas for any private use, other than driveways or landscaping which will not interfere with the use of said easement by the Persons or entities for whose benefit it has been created or reserved and which receives the prior written approval of the Design Review Committee.

With respect to easements created for access and/or utility purposes either by the terms of this Declaration or any other Recorded agreement or on a Plat, any and all bona fide public and private utility service companies shall have the right of access, ingress, egress, and use of such easement areas for the installation, operation and maintenance of utility facilities serving the Common Interest Community, subject to the following limitations. Except as to special street lighting or other aerial facilities which may be required by the County, no aerial utility lines or facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed within the Common Interest Community, whether upon Lots, Association Property, easements, streets, or rights-of-way of any type, either by a utility company, an Owner, the Association or any other person or entity (including but not limited to any person owning or acquiring any part of the Common Interest Community) and all utility lines and facilities (including but not limited to water, sewer, gas, electricity, telephone, and cable tv) shall be buried underground. Provided, that during the construction of a residence on a Lot or the Association Parcel, or during Declarant's installation of any infrastructure, a temporary overhead power line may be installed which shall be promptly removed upon completion of construction.

3.34 Landscaping; Irrigation; Weed Control. No landscaping shall be performed on any Lot or on Association Property unless a landscaping plan therefor has received the prior written approval of the Design Review Committee, and all landscaping shall comply with the Design Guidelines. A landscaping plan for each Lot and the Association Parcel must be approved by the Design Review Committee before construction is commenced on the residence on that Lot or on residential improvements on the Association Parcel. Any substantial change in the type or location of approved landscaping vegetation shall require the further approval of the Design Review Committee. No artificial grass, plants or other artificial vegetation shall be placed or permitted to remain within the Common Interest Community (except indoors) without the prior written approval of the Design Review Committee.

All irrigation practices within the Common Interest Community shall be governed by the Design Guidelines.

Each Owner, and the owner of the Association Parcel, shall diligently maintain, trim, weed, cultivate, husband, protect, preserve and otherwise keep in a healthy and attractive condition the shrubs, trees, hedges, grass, planters, gardens and other landscaping upon the Owner's Lot and the Association Parcel, and shall keep the Owner's Lot and the Association Parcel free of noxious weeds. Lot Owners and the Association (with respect to Association Property) shall comply with County weed control laws and regulations, as applied uniformly to other developments within the County. The Association shall inspect the Lots periodically, and may give written notice to the Owner or Occupant of a Lot containing a noxious weed infestation that corrective measures are required. If the weed infestation is not corrected within 10 days following the giving of such notice, the Association may enter upon the subject Lot to perform the work itself, or may contract to have the work performed by a third party, and all associated costs and expenses shall be assessed to the Lot Owner in the form of a Reimbursement Assessment. Each Owner shall cooperate with the Association in its brush clearing and fire protection husbandry program for reduction of fire hazard within the Common Interest Community.

Each Owner, and the owner of the Association Parcel, shall also maintain all paved, concrete and other synthetically surfaced areas within the Owner's Lot and the Association Parcel, including but not limited to, driveway and parking areas, in good condition and repair.

3.35 Tennis Courts and Basketball Goals. Tennis courts, basketball goals, backboards and nets shall not be allowed unless they comply with the Design Guidelines and the written approval of the Design Review Committee is first obtained.

3.36 Spas and Related Equipment. Spas or hot tubs may be erected, constructed or installed on Lots within the Common Interest Community, provided they comply with the Design Guidelines and receive the prior written consent of the Design Review Committee. If a spa or hot tub is approved, all service equipment shall be fenced and located in either (a) a side yard between the front and rear boundaries of the residence, or (b) in the rear yard adjacent to the residence, and shall be adequately screened from any neighboring Lots, Association Property, and all streets in the Common Interest Community.

3.37 Signs and Advertising. With the exception of one entry/identification sign per Lot or Association Parcel during the period of actual construction on the Lot or Association Parcel, which sign shall comply with the Design Guidelines, no sign, poster, billboard or advertising device of any kind shall be allowed or displayed upon any Lot or any Association Property within the Common Interest Community except: (a) such signs as may be used by the Declarant in connection with the development, marketing and sale of Lots in the Common Interest Community; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (c) such signs as may be required for traffic control and for regulation of Association

Property; (d) neighborhood monuments (e.g., entrance and directional signs) which are compatible with the architecture of the area; (e) one security company sign; and (f) such other signs, if any, as may be specifically authorized and regulated by the Design Guidelines. All permitted signs must comply with the Design Guidelines. "For Sale" signs shall not be displayed anywhere within the Common Interest Community, except in compliance with the Design Guidelines and with Design Review Committee approval. "For Rent" signs shall not be displayed anywhere within the Common Interest Community.

3.38 Camping and Picnicking. No camping or picnicking shall be allowed on Association Property except in areas, if any, that may be designated for such purpose by the Association.

3.39 Regulations of Pesticides. The Design Review Committee may adopt reasonable rules and regulations governing the use and application of pesticides, herbicides, fertilizers and fungicides within the Common Interest Community.

3.40 Restoration of Improvements in the Event of Damage or Destruction. In the event of damage to or destruction of any Improvement on any Lot or the Association Parcel, the Owner thereof (including the owner of the Association Parcel) shall cause the damaged or destroyed Improvement to be promptly restored or replaced to its original condition or such other condition as may be approved in writing by the Design Review Committee, or the Owner shall cause the damaged or destroyed Improvement to be promptly demolished and the Lot (or Association Parcel) to be suitably landscaped, subject to the approval of the Design Review Committee, so as to present a pleasing and attractive appearance. Such Improvements shall be repaired, restored or otherwise demolished and suitably landscaped within such reasonable time frame as may be established by the Design Review Committee.

3.41 Leases. Any Owner shall have the right to Lease the residential dwelling on his Lot under the following conditions:

(a) All Leases shall be in writing, and must cover the entire residence, i.e., no Leases of bedrooms alone or otherwise covering less than all of the residence shall be permitted. If a legal ADU is constructed on a Lot, the ADU may be separately rented.

(b) All Leases shall provide (i) that the terms of the Lease and the tenant's (Occupant's) use of the residence shall be subject in all respects to the provisions of this Declaration and the Articles, the Bylaws, the Rules and Regulations, and the Design Guidelines and in particular the OWS requirements, (ii) that the Occupant has received and reviewed copies of said documents, and (iii) that any failure by the Occupant to comply with any of the aforesaid documents, in any respect, shall be a default by Occupant under the Lease and a default by Occupant and Owner under said documents which may be enforced against Occupant and/or Owner by the Executive Board.

(c) In the case of Leases of 32 days or longer, the Owner shall notify the Association immediately upon the leasing of his residence and shall provide the Association with a copy of the Lease and with the name and mailing address of the Occupant and the mailing address (if changed) of the Owner.

(d) Each Owner who leases a residence shall be responsible for assuring compliance by the Occupant with all of the provisions of this Declaration, the Articles, the Bylaws, the Rules and Regulations, and the Design Guidelines, and shall be jointly and severally responsible with the Occupant for any violations thereof by the Occupant.

(e) Each Lease shall expressly provide that the Association (via the Executive Board) shall have the right to give the Occupant written notice that the Occupant is in violation of one or more of the documents listed in subsection (c) above, which notice shall specify a period of time (at least 5 days) in which the Occupant may cure the violation. If the violation continues uncured, or if it is repeated within the 3-month period following the date of the first notice, the Lease shall provide that the Owner gives to the Association an irrevocable power of attorney to act on the Owner's behalf to give such statutory notices to the Occupant and to take such other actions as may be necessary or appropriate to terminate the Lease and to evict the Occupant from the Premises. If a Lease does not contain such provisions, the Owner hereby irrevocably appoints the Association as its attorney-in-fact to act on its behalf as set forth herein, which power shall be deemed coupled with an interest.

3.42 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or Occupant of a Lot (including the owner or occupant of the Association Parcel), any member of the Design Review Committee, any member of the Executive Board, and any authorized representative of either of them, shall have the right to enter upon and inspect any Lot or the Association Parcel, and the Improvements thereon, except for the interior portions of any occupied dwelling (which shall require the permission of the Owner or Occupant, except in case of emergency, when no notice or permission shall be required), for the purpose of ascertaining whether or not the provisions of this Declaration and of the Design Guidelines have been or are being complied with, or for the purpose of exercising any rights or performing any responsibilities (maintenance, repair, etc.) established by this Declaration, and such individuals shall not be deemed guilty of trespass by reason of such entry. For purposes of this Section 3.42, "emergency" shall mean circumstances posing an imminent threat of injury or damage to persons or property.

3.43 Damage by Owners During Construction. Each Owner is responsible for any damage caused to roads, streets, bridges, ditches, fences, rock fall mitigation, trails, natural or constructed drainage courses, utilities, Association Property, or to other Lots or Improvements thereon, during the construction or alteration of Improvements upon the Owner's Lot or on the Association Parcel, including without limitation damage caused by any construction vehicles using the roads or streets within the Common Interest Community. Damage shall include any degradation in the

appearance or condition of such roads, streets, Association Property, or other Lots or Improvements. The responsible Owner shall promptly repair and clean up any such damage, at its sole expense. Each Owner shall also be responsible for any damage caused by utility cuts in roads, and for washouts and runoff damage, and to promptly repair any such damage. If the Owner fails to repair any such damage within 10 days following receipt of a written notice from the Executive Board requesting the same, the Executive Board shall have the right to perform such repairs on behalf of the Owner, and to levy a Reimbursement Assessment upon the Owner and its Lot to recover the costs thereof.

3.44 Restrictions on Resubdivision, Property Restrictions, Rezoning, and Time Sharing. Except as expressly permitted in this Declaration, (i) no Lot shall ever be further subdivided or replatted by an Owner into smaller Lots, (ii) no physical portion comprising less than all of any such Lot, nor any easement or divided interest therein, shall be conveyed, transferred or encumbered by the Owner, and (iii) no Lot may be combined with any other Lot nor the boundary lines adjusted between any two Lots.

(a) Declarant reserves the right to subdivide or replat Lots and/or the Association Parcel, and/or the East Colorado Tract, provided the maximum number of Lots established in Recital No. 4 above is not exceeded, or to combine two Lots owned by Declarant, or to adjust or remove boundary lines between Lots or the Association Parcel owned by Declarant, provided any necessary County approvals are obtained, all Declaration and Plat amendments required by the Act and/or local land use laws are prepared, executed and Recorded, and the necessary reallocation of Allocated Interests of the Owners is accomplished. In the case of the combination of two Lots, such interests shall be reallocated to reflect the fact that two Lots have been eliminated and one Lot created in its place, unless the Executive Board requires that the combined Lots continue to pay two Assessments. All costs relating to the foregoing activities shall be the sole responsibility and obligation of Declarant. Declarant's rights under this subsection (a) shall terminate upon the first to occur of (i) the date which is 30 years after the Recording of this Declaration, or (ii) Declarant's relinquishing of these rights by a Recorded instrument.

(b) The boundaries between adjoining Lots (including the Association Parcel) may also be adjusted or removed (*i.e.* the Lots combined) by the Owner(s) thereof other than Declarant, if (i) the written consent of the Executive Board is first obtained, in the sole discretion of the Executive Board, (ii) all applicable regulations and codes are complied with and all necessary County approvals are obtained, (iii) the proposed adjustment or removal does not violate the terms of any document evidencing a security interest in the subject Lots, (iv) all Declaration and Plat amendments required by the Act and/or local land use laws are prepared, executed and Recorded, and (v) the necessary reallocation of Allocated Interests of the Owners is accomplished pursuant to the guidelines set forth above or as otherwise required by the Executive Board. All costs relating to such activity (including the attorneys'

fees and costs incurred by the Executive Board in reviewing and acting upon the matter) shall be the sole responsibility and obligation of the Owner(s) applying for the same.

(c) No Owner of a Lot shall grant or convey any easement rights affecting any portion of the Lot without the prior written consent of the Executive Board.

(d) No further covenants, conditions, restrictions or easements shall be Recorded by any Owner (except Declarant in the exercise of its reserved rights) or other Person against any Lot without the provisions thereof having been first approved in writing by the Executive Board for consistency with the Declaration and the general plan of development for the Common Interest Community. Any covenants, conditions, restrictions or easements Recorded without such approvals being evidenced thereon shall be null and void. This provision does not apply to Mortgages.

(e) No application for rezoning of any Lot, and no application for any variance or special use permit for any Lot, shall be filed with any governmental authority by any Owner (except Declarant in the exercise of any reserved rights) unless the proposed use of the Lot has first been approved in writing by the Executive Board and the proposed use otherwise complies with the Declaration.

(f) Unless expressly authorized by the Declarant or the Executive Board, no form of timeshare or interval ownership or use program shall ever be created or allowed in connection with any Lot in the Common Interest Community, and any such attempted ownership or use program shall be null and void and unenforceable and the Executive Board shall have the right to enjoin the same.

3.45 Prohibition on Filing of Annexation Petition. Declarant hereby covenants and agrees for and with respect to each Lot and the Association Parcel in the Common Interest Community, and each Lot Owner (and the owner of the Association Parcel) by acceptance of a deed therefor (including a public trustee's or sheriff's deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, that no owner shall file or consent to the filing of a petition for the annexation of any Lot the Association Parcel or the East Colorado Tract in the Common Interest Community into the Town of Telluride until the earlier to occur of (i) the Recording in the Office of the Clerk Recorder of a Notice of Release of this restriction, or (ii) the sale of the last Lot owned by Declarant in the Idarado Legacy Subdivision to a third party, at which time said Notice of Release shall be Recorded. Upon the Recording of this Declaration, Declarant shall escrow with San Miguel Title Company a signed and acknowledged Notice of Release, together with instructions that such Notice of Release be Recorded in the San Miguel County records upon the sale to a third party of the last Lot owned by Declarant in the Idarado Legacy Subdivision or upon delivery by Declarant to the

title company of written instructions to record the same, whichever first occurs. This Section 3.45 may not be amended, modified or terminated without the express prior written consent of Declarant.

3.46 Health, Safety and Welfare. In the event any uses, activities, or facilities within the Common Interest Community are deemed by the Executive Board to be an unreasonable annoyance or nuisance, or to adversely affect the health, safety or welfare of Owners or Occupants, the Executive Board may adopt Rules and Regulations governing the same in order to appropriately restrict and regulate such uses, activities or facilities within the Common Interest Community. Such rules shall be consistent with the purposes and provisions of this Declaration.

3.47 Implementation and Variances. The Executive Board may implement the restrictions set forth in this Article 3, or otherwise restrict and regulate the use and occupancy of the Common Interest Community and the Lots and the Association Parcel by reasonable Rules and Regulations of general application adopted by the Executive Board from time to time. The Executive Board may, in its sole discretion and in extenuating circumstances, grant variances from any of the restrictions set forth in this Article 3 (excepting any such restrictions with respect to which the Design Review Committee has the authority to grant variances under Section 5.18 below), if the Executive Board determines, in its sole discretion, (a) either (i) that a particular restriction creates a substantial hardship or burden on an Owner or Occupant, which hardship or burden was not caused by said Owner or Occupant, or (ii) that a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete, and (b) that the activity permitted under the variance, in the judgment of the Executive Board, will not have any material adverse effect on the Owners and Occupants of the Common Interest Community (including neighboring Lots) and is consistent with the high quality of living intended to be promoted hereby throughout the Common Interest Community. When an Owner applies for a variance, the Board must give at least ten (10) days advance written notice of the variance hearing, and of the nature of the variance requested, postage prepaid, by certified mail, return receipt requested, to all Owners of Lots that are situated within a radius of 300 feet of the Lot or Association Parcel for which the variance is sought, at the current addresses for such Owners reflected in the Association files. The applying Owner must provide the Committee with an accurate list of the Owners to be so notified. If the foregoing notice requirements are complied with, it is not necessary that the Owners actually receive the notice that is mailed to them, such notices being deemed received upon mailing.

No variance shall conflict with the Idarado Development Plan or with the Idarado Development Plan Approvals or any other resolutions or regulations of the County. If a variance from the Idarado Development Plan or County laws or regulations is also required in connection with a matter for which a variance is desired hereunder, it shall be the Owner's responsibility to obtain such County variance before submitting a variance application to the Executive Board.

3.48 Declarant Activities. Nothing contained in this Declaration is intended or shall be construed to prevent, regulate or delay or to restrict in any way Declarant's right and ability to develop, improve, maintain, repair, regulate, operate, administer, manage, market, sell, lease, encumber or dispose of the Common Interest Community, the Lots, the Association Parcel, other Association Property, or any part thereof, including the right to construct Improvements, place and utilize construction and office trailers, and install signs thereon, all in the complete discretion of Declarant.

ARTICLE 4

COUNTY ENFORCEABLE RESTRICTIONS

4.1 Geohazard Mitigation. The following "Geohazard Design Criteria" shall be complied with when designing a home to be constructed on a Geohazard Lot:

(a) **Avalanche Criteria.** Home design and home construction on a Lot identified on the 1041 Geohazard Map as lying within a potential avalanche geohazard area shall comply with the following criteria and standards, as applicable:

(i) Each site and structure shall be protected by structural avalanche defenses designed by a certified engineer to withstand avalanche damage, utilizing the specific design criteria established by a qualified engineer designated by the Design Review Committee (the "Association Engineer") and approved by the County Engineer.

(ii) Each site and structure shall be restricted to the most protected areas and located as far away as possible from the base of steep slopes and ravines.

(iii) Clear-cutting or other large-scale removal of vegetation on a Lot is prohibited.

(iv) Extractive operations in high hazard, or historic avalanche areas during winter are prohibited, unless an adequate program of avalanche control and defense measures exists to the satisfaction of the Association Engineer, the Design Review Committee and the County.

(v) Utility lines or pipes crossing historic avalanche areas shall be buried, and surface pipes and poles or towers for suspended transmission lines in historic or high or moderate hazard avalanche areas shall be protected by utilizing avalanche diversion methods or structures.

(vi) Warning signs shall be placed along commonly traveled winter roads and trails that cross major avalanche paths.

(vii) Property owners who develop in avalanche areas or obtain driveway access via avalanche areas shall bear the costs of any avalanche control measures.

(viii) An underground facility, such as a water reservoir or a temporary building used only in non-avalanche season, may occur provided that the Association Engineer, the Design Review Committee and the County approve the design and location of the structure and that it must either be adequately protected or removed during the winter.

(ix) Design of homes shall reinforce the uphill-facing building walls, doors, and windows. The structural engineer shall address the strengths and horizontal load distributions, sizes of reinforced structures, and impact factors to be utilized. These parameters shall be specified and available for the structural engineer after final building positions and orientations are known.

(b) **Rockfall Criteria.** The Declarant is installing a Liberty Bell Rockfall Fence and a Bridal Veil Rockfall Fence, pursuant to the provisions of the Idarado Development Plan. In the event that additional rockfall mitigation is required on a Lot identified on the 1041 Geohazard Map as lying within a potential rockfall geohazard area, as determined by the Association Engineer, the Design Review Committee and/or the County, then home design and home construction on that Lot shall comply with applicable County regulations and with the following criteria and standards to be addressed by a qualified engineer (who may be the Association Engineer):

(i) Site-specific uphill wall reinforcement for affected buildings may be required to absorb the energy of any rocks not completely stopped by other rockfall mitigation.

(ii) These special building walls might consist of any deformable structures (gabions, planter boxes, etc.). Heights of these structures will depend on site-specific design.

(c) **Debris Flow Criteria.** Home design and home construction on a Lot identified on the 1041 Geohazard Map as lying within a potential debris flow geohazard area shall comply with the following criteria and standards, which shall be addressed and designed by a qualified engineer (who may be the Association Engineer):

(i) Each site and structure shall be protected by channelizing, damming or diverting potential mud or debris flows utilizing engineered structures.

(ii) A disturbance shall be prohibited in the drainage basin above a fan unless an evaluation of the effect on runoff and stability of the fan shows that disturbance is acceptable.

(iii) House designs shall integrate the use of stem walls and possibly lower walls, reinforced for static debris flow depositional loads and impact of small rocks.

(d) **Review and Approval by the Design Review Committee.** A qualified registered engineer, retained by an Owner of a Lot, must design and engineer each home design requiring a geohazard mitigation plan. The design must conform to the Geohazard Design Criteria set forth above. Each site-specific geohazard mitigation plan shall be submitted to the Association Design Review Committee. The Design Review Committee shall refer the application to its designated, qualified engineer (Association Engineer) for review for compliance with the Geohazard Design Criteria. An Owner may retain the Association Engineer to prepare its geohazard mitigation plan. The Association Engineer shall review the plan and make comments to the Design Review Committee. The Design Review Committee shall advise the Owner in writing of any changes required to the site-specific geohazard mitigation plan and the Owner shall modify the geohazard mitigation plan in accordance with the direction of the Design Review Committee, if any. Under no circumstances shall a geohazard mitigation plan result in new or increased geohazard conditions occurring on another Lot.

(e) **Review and Approval by the County.** An Owner shall submit the geohazard mitigation plan, as approved by the Design Review Committee, to the County for review and approval prior to issuance of a development permit and building permit for development on a Lot. The County shall consider all applicable state and County reviewing criteria applied to all projects in San Miguel County and the approved Geohazard Design Criteria when reviewing the geohazard mitigation plan. In the event of a conflict between a geohazard mitigation plan as approved by the Design Review Committee and as approved by the County, the County requirements shall prevail.

(f) **Installation of Site Specific Geohazard Mitigation.** An Owner shall install all elements of the approved geohazard mitigation plan, without deviation or variation unless approved by the Design Review Committee and the County. An Owner shall notify the Association when the elements of the approved geohazard mitigation plan are being installed to enable the Association Engineer to periodically monitor installation for compliance with the approved geohazard mitigation plan.

(g) **Management and Maintenance of Site Specific Geohazard Mitigation.** Each Lot Owner shall be obligated to inspect, maintain, repair and replace the elements of the approved geohazard mitigation plan on the Owner's Lot.

4.2 Provisions Regarding OWS. Each Lot and the Association Parcel in the Common Interest Community will be served by an OWS/Sewer Facility ("OWS"), subject to the following:

(a) **Design Criteria.** Each OWS must be constructed in strict accordance with applicable requirements of the Colorado Department of Public Health and the Environment and with the OWS Design Criteria prepared by Declarant and Buckhorn Geotech and approved by the County, which shall include provisions for primary, secondary and tertiary treatment for biodegradable waste, as well as disinfectant treatment, so that the discharged effluent will meet or exceed State of Colorado subsurface discharge standards for OWS prior to subsurface discharge for all home sites and/or residences and will be required to meet all applicable County Enforceable Restrictions set forth in this Article 4. Any and all restrictions relating to the OWS/Sewer Facility and the OWS/Sewer Facility disposal field contained in this Declaration shall automatically expire and be of no further force or effect with respect to any Lot or Association Parcel that is connected to and provided sewer service by the Town of Telluride Sewer System.

(b) **Review and Approval by the Design Review Committee.** A qualified registered engineer, retained by an Owner of a Lot, must design and engineer each OWS. The design must conform to the OWS Design Criteria. Each site-specific OWS design plan shall be submitted to the Association Design Review Committee. The Design Review Committee shall refer the application to its designated, qualified engineer (Association OWS Engineer) for review for compliance with the OWS Design Criteria. An Owner may retain the Association OWS Engineer to prepare its OWS design plan. The Association OWS Engineer shall review the plan and make comments to the Design Review Committee. The Design Review Committee shall advise the Owner, in writing, of any changes required to the site-specific OWS design plan and the Owner shall modify the OWS design plan in accordance with the direction of the Design Review Committee, if any.

(c) **Review and Approval by the County.** An Owner shall submit the OWS design plan, as approved by the Design Review Committee, to the County for review and approval prior to issuance of a development permit for development on a Lot. The County shall consider all applicable state and County reviewing criteria applied to all projects in San Miguel County, and the approved OWS Design Criteria, when reviewing the OWS. In the event of a conflict between an OWS design plan as approved by the Design Review Committee and as approved by the County, the County requirements shall prevail.

(d) **Installation of an OWS.** An Owner shall only install an OWS that has been approved by the Design Review Committee and the County. In all respects, the OWS shall conform to the OWS design plan approved by the Design Review Committee and the County. An Owner shall notify the

Association when the OWS is being installed to enable the Association OWS Engineer to periodically monitor installation for compliance with the approved OWS design plan.

(e) **Location of the OWS.** At the time a house design is developed, the engineer shall determine the required OWS disposal field necessary to support the proposed development and shall size the OWS disposal field accordingly. The location of each OWS disposal field shall be as established on the Site Constraints Map recorded as a part of the Final Plat. If the design of the home necessitates the enlargement and/or relocation of the OWS disposal field, the septic field shall be enlarged and/or relocated, provided that the location of an OWS disposal field, without the approval of the County, shall not be located closer than: (a) 100 feet from any existing or proposed well; (b) 25 feet from the location of an existing or proposed OWS; (c) 50 feet from any riparian area or waterway; or (d) 10 feet from a Lot line (without the consent of the adjacent Lot Owner and the County) or such more restrictive standards that may be adopted by the Association, the County or the State of Colorado. An OWS shall not be located within a wetland buffer, riparian area or beyond the location of a "hard building line" depicted on the Final Plat without the approval of the County. The location of the OWS shall be surveyed by the Owner of the Lot to insure compliance with the approved OWS design plan.

(f) **Management and Maintenance of an OWS.** To insure that all required maintenance is timely and properly completed, the Association shall inspect, maintain, monitor, repair and replace each individual OWS ("OWS Management") on behalf of each Lot Owner pursuant to a master operations contract with a manufacturer-approved OWS maintenance provider pursuant to a maintenance protocol established by the Association OWS Engineer and managed by the Association. The Association shall have and is hereby granted a perpetual, non-exclusive easement upon and across each Lot and the Association Parcel for purposes of access to the OWS on that Lot in order to inspect, monitor, maintain, repair, improve and/or replace the OWS. The Association will impose and collect assessments to fund the required OWS Management, which will be assessed as a Common Expense against the Lot for which the work is being performed.

(g) **Alternate Sewage Treatment System.** Although the County has approved the use of an OWS/Sewer Facility to treat sewage for each Lot and the Association Parcel, Declarant is not precluded from providing another means of sewage treatment to serve some or all of the Lots and the Association Parcel, as long as such alternate system is demonstrated to be legally and physically adequate to serve such purpose and to meet or exceed the OWS Design Criteria

4.3 Lot Owner Certification to County. As a condition of the issuance of a County development permit for the construction of any improvements on a Lot, the Lot Owner will certify to the County as follows:

(a) The Owner has been provided a copy of an Environmental Site Analysis (ESA) from Declarant or its designee covering the Subdivision or the particular Lot; and

(b) The Owner has reviewed the conditions of the Idarado Development Plan Approvals and will comply with each applicable condition, including Condition 4.2.

4.4 Enforcement; Amendment. Before approving construction of residential improvements on a Geohazard Lot in the Common Interest Community, the Association (through its Design Review Committee) shall require that the Lot Owner comply with the requirements and procedures of the County Enforceable Restrictions set forth in this Article 4, and the Association shall have the authority to enforce such Restrictions. The County shall also have the perpetual right and authority, in its discretion, to monitor and enforce the performance of such Restrictions from time to time. All of the County Enforceable Restrictions contained in this Article 4 shall constitute equitable servitudes for the benefit of the Association and of the County, in order to support the enforcement thereof by such parties. Any such enforcement action may involve a claim for injunctive relief, for damages, or both, and the prevailing party in such action shall be entitled to an award of its reasonable attorney's fees and costs incurred in connection therewith. The terms and provisions of this Article 4 may not be modified, amended or terminated without the prior written consent of the County.

ARTICLE 5

DESIGN REVIEW COMMITTEE

5.1 Establishment of Design Review Committee. The Common Interest Community shall have a Design Review Committee, which shall consist of an odd number of members with a minimum of three (3) members and a maximum of seven (7) members, each of whom shall either be (i) a representative of the Declarant, (ii) an Owner or Occupant of a Lot in the Common Interest Community, or (iii) a local architect, landscape architect or engineer. For so long as Declarant owns any Lots in the Common Interest Community, or until Declarant relinquishes said right to the Association by written notice thereto, Declarant hereby reserves and shall have the sole right to appoint, and to remove without cause, all members of the Design Review Committee, for such terms as Declarant considers appropriate. Following the expiration or relinquishment or other termination of Declarant's right to appoint members of the Design Review Committee, all such members shall be appointed and removed from time to time by the Executive Board in its discretion, and shall serve for such term as may be established by the Executive Board from time to time. A member appointed by the Executive Board may be removed by the Executive Board at any time upon written notice, without cause. Subject to the three (3) member minimum and seven (7) member maximum, and to the membership criteria set forth above, Declarant, or following termination of Declarant's rights under this Section 5.1 the Executive Board, may increase or decrease the size of the Design Review

Committee from time to time in its discretion. The Executive Board may hire or appoint a secretary for the Design Review Committee and shall provide appropriate compensation for any such secretarial services.

5.2 Establishment of Subcommittees. The Design Review Committee shall have the right but never the obligation to establish one or more subcommittees to perform one or more of the functions of the Design Review Committee. For purposes of this Declaration, all references to the Design Review Committee shall also refer to any subcommittee established by the Design Review Committee. The procedures for establishment of subcommittees, the rights and duties thereof, and the limitations thereon may be established and adopted by the Design Review Committee from time to time, in its discretion.

5.3 Meetings and Actions of Committee. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Review Committee may from time to time, by resolution in writing adopted by a majority of the members, designate a Committee Representative (who may but need not be one of its members) to take any action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval for any Improvements and the granting of variances. The action of such Committee Representative within the authority of such Committee Representative shall constitute the action of the Design Review Committee. A majority of the members of the Design Review Committee shall constitute a quorum of the Committee. Actions of the Committee may be taken (without a meeting) by the written consent of a majority of the members thereof, or at a meeting at which a quorum is present in person, by the vote of a majority of such members constituting the quorum, but in no event less than two (2) members.

5.4 Compensation; Expenses. The members of the Design Review Committee shall be entitled to reasonable compensation for their services on the Design Review Committee, which compensation shall be set by the Executive Board from time to time. The members of the Design Review Committee shall also be entitled to reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder. All expenses of the Design Review Committee, including reasonable compensation of the members thereof, shall be paid by the Association and shall constitute a Common Expense; provided, that if the Design Review Committee incurs special expenses (e.g., engineering or other consultant charges) in connection with a particular application, such expenses shall be charged back to the Owner submitting the application and must be paid in full before final approval of the application is granted by the Design Review Committee..

5.5 Records of Actions. The Design Review Committee shall keep a permanent record of all final actions of the Design Review Committee.

5.6 Design Guidelines. The Design Review Committee has established an initial set of rules, procedures, standards, guidelines and requirements, including without limitation architectural, design and development standards and guidelines,

which shall govern the review and approval or disapproval of proposed Improvements within the Common Interest Community, and other matters provided for therein (the "Design Guidelines"). The Design Guidelines shall, among other things, (i) regulate materials, lighting and landscaping that will promote scenic quality in the Common Interest Community, (ii) require the use of indirect lighting for all exterior lighting, (iii) prohibit the use of highly reflective materials, and (iv) incorporate as an attached exhibit the Construction Management Plan submitted by Declarant to County as part of the Idarado Cluster Plan application. The Design Review Committee may make such amendments, deletions or additions to the Design Guidelines as the Committee deems necessary or appropriate from time to time to accomplish the purposes of (and as are not in conflict with) this Declaration and to ensure the orderly and attractive development of the Common Interest Community. Upon its adoption, each such amendment shall be provided to the Executive Board. The Design Guidelines (as they may be amended from time to time) are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on the Common Interest Community, and on all Lot Owners, Occupants, Members or other Persons as if expressly set forth herein. A copy of the current Design Guidelines shall at all times be a part of the Association's records. The Design Review Committee, in its sole discretion, shall have the authority and obligation to determine the existence of any violation of the Design Guidelines or of any approvals granted or other decisions made by, or other requirements of, the Design Review Committee, which determination shall be binding on the Owners.

5.7 Design Review Fee. The Design Review Committee may adopt, and may from time to time amend, a design review fee schedule which shall apply to requests for the original construction of a residential improvement, and for each subsequent request for approval of an Improvement on a Lot including remodels, renovations or other alterations of the original approval, except that no fee shall be charged for any proposed alteration or addition to an approved landscaping plan. The design review fee schedule shall be set forth in the Design Guidelines. The applicable fee must accompany each request for approval of any proposed Improvement. The Design Review Committee shall not take any action on a request for approval until all required fees are paid in connection therewith. All fees collected by the Design Review Committee shall be remitted to the Association to help defray the expenses of the Design Review Committee's operation.

5.8 Pre-Purchase Review Encouraged. If a contract purchaser of a Lot believes that his eventual building plans may be in any way controversial, such purchaser is encouraged to submit a sketch plan to the Design Review Committee for review and comment in advance of closing on the Lot. The Committee shall make a good faith effort to accommodate the purchaser's schedule, but shall have no liability to the purchaser if it fails to perform a timely sketch plan review. No pre-purchase comments made to a purchaser by the Design Review Committee in the context of a sketch plan review shall constitute an approval of any kind.

5.9 Design Review and Construction Process. Every Owner proposing to make Improvements on its Lot, and the owner of the Association Parcel, must comply

with the design review and construction procedures that are set forth in the Design Guidelines.

5.10 Submission of Plans, Specifications and Data; Time Frame for Approval. Prior to commencement of work to accomplish any proposed Improvements, the Owner (including the owner of the Association Parcel) proposing to make such Improvements shall submit to the Design Review Committee such descriptions, surveys, plot plans, excavation plans, drainage plans, grading plans, roof plans, elevation drawings, construction plans, landscaping plans, waterscaping plans, specifications, and samples of materials and colors as the Design Review Committee shall reasonably request, showing among other things the nature, kind, shape, bulk, massing, articulation, height, width, dimensions, exterior design, color, materials, and location of the proposed Improvements. All submissions shall conform to and be in accordance with the Design Guidelines established pursuant to Section 5.6 and with the provisions of Article 4 governing the County Enforceable Restrictions. The Owner shall be entitled to receive a receipt for the same from the Design Review Committee or its authorized agent. The Design Review Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvements. Until receipt by the Design Review Committee of all required information and materials in connection with the proposed Improvements, the Design Review Committee may postpone review of the application.

From and after the date on which the Design Review Committee receives all required information and materials in connection with the proposed Improvements, the Design Review Committee shall have 30 calendar days in which to approve, approve with conditions, or deny the application. In the discretion of the Committee, one or more meetings may be held with the Owner during that period. If the Design Review Committee fails to approve or deny the application within said 30-day period, the final plans and specifications submitted to the Committee by the Owner shall be deemed approved.

5.11 Criteria for Approval and Disapproval. The Design Review Committee shall approve any proposed Improvements only if it determines in the exercise of its reasonable judgment that (i) the Idarado Development Plan and the Idarado Development Plan Approvals, (ii) the Design Guidelines, and (iii) all pertinent provisions of this Declaration have been complied with; that the proposed Improvements will not be detrimental to the value or enjoyment of the surrounding areas in the Common Interest Community; that the siting, design, bulk, height, appearance and overall aesthetic impact of the proposed Improvements will be in harmony with the surrounding areas in the Common Interest Community; that the proposed Improvements will enhance the quality, wholesomeness, and attractiveness of the Common Interest Community and the enjoyment thereof by Lot Owners; and that the upkeep and maintenance of the proposed Improvements will not become a burden on the Association. The Design Review Committee may condition its approval of any proposed Improvements upon the making of such changes therein as the Design Review Committee may deem reasonably appropriate, and may require that additional landscaping be performed on the subject Lot or the Association Parcel.

The approval by the Committee of any Improvement shall in no event imply or require that such approval will be granted again in the future for the same or a similar Improvement, and the Committee shall have complete discretion, consistent with the standards and criteria contained herein and in the Design Guidelines, to grant or deny such approval in each instance on the merits of the particular application or proposal and considering the circumstances surrounding the same.

5.12 Decisions of Committee; Binding Effect. Decisions of the Design Review Committee shall be made in accordance with the procedures established in the Design Guidelines, and shall be conclusive and binding on all interested parties.

5.13 Completion of Work After Approval. Following the approval of any proposed Improvements by the Design Review Committee, the proposed Improvements shall be completed by the Lot Owner or the owner of the Association Parcel: (a) as promptly and diligently as possible but in no event in excess of the time periods set forth below; (b) in compliance with the Design Guidelines and with all applicable laws, regulations and codes, (c) in strict conformance with all plans and specifications and other materials furnished to and approved by the Design Review Committee; and (d) in accordance with any and all conditions imposed by the Design Review Committee. All Improvements approved by the Design Review Committee shall be completed, a Certificate of Compliance shall be obtained in accordance with Section 5.16 below, and all construction equipment, materials and debris shall be removed (i) within 18 months from the date of approval of such Improvements by the Design Review Committee, or (ii) within such other time period as the Design Review Committee may prescribe in its discretion. Provided, however, that any and all landscaping and/or gardening approved by the Design Review Committee which is related to the initial construction of a residence on a Lot or the Association Parcel shall be completed no later than 90 days immediately following the issuance of the Certificate of Occupancy for such residence. Failure to comply with the terms and conditions of this Section 5.13 shall constitute noncompliance with the terms and provisions of this Declaration and the Design Review Committee and/or the Executive Board shall have the right to invoke all rights and remedies provided to them hereunder, including but not limited to, the right to seek injunctive relief and/or to impose fines and penalties.

5.14 Right to Inspect. Any member or authorized consultant of the Design Review Committee or of the Executive Board, or any authorized officer, employee or agent of the Declarant or of the Association, may (but shall not be obligated to) at any reasonable time enter upon any Lot or the Association Parcel, without being deemed guilty of trespass, in order to inspect Improvements constructed or being constructed on such Lot or Association Parcel, to ascertain whether such Improvements have been or are being built or changed in compliance with the Design Guidelines, the approvals granted by the Design Review Committee, and this Declaration.

5.15 Notice of Completion; Inspection of Work; Correction of Defects.

(a) Upon the completion of any Improvements (excepting the related landscaping) for which plans and specifications have been approved by the Design Review Committee, the Owner shall submit to the Committee a written Notice of Completion, on a form to be provided by the Committee, which Notice shall certify that the Improvements have been completed in accordance with all plans, specifications and other materials furnished to and approved by the Committee, any conditions imposed by the Committee, and with the Design Guidelines. Until receipt of such Notice, the Committee shall not be deemed to have any notice regarding completion of the Improvements.

(b) Within twenty-one (21) days following receipt of the Notice of Completion, the Design Review Committee or its duly authorized representative shall inspect the Improvements. If the Committee finds that the Improvements have not been completed as set forth in the Notice of Completion, it shall notify the Lot Owner (or the owner of the Association Parcel) in writing of such noncompliance within said twenty-one (21) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same. If for any reason other than the Lot Owner's act or neglect, the Committee fails to notify the Owner of any noncompliance or to issue to the Owner a Certificate of Compliance pursuant to Section 5.16 below prior to the expiration of said twenty-one (21) day period, the Improvements shall be deemed in compliance if the Improvements were, in fact, completed as of the date of the Notice of Completion and the Owner may proceed to request a Certificate of Occupancy from the County.

(c) If upon the expiration of thirty (30) days from the date of such notification of non-compliance the Lot Owner (or the owner of the Association Parcel) shall have failed to remedy such noncompliance, the Design Review Committee shall notify the Executive Board in writing of such failure. Thereupon the Executive Board (and its duly authorized representatives), at the Executive Board's option, may enter upon the Lot or the Association Parcel at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove the noncomplying Improvement or otherwise remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses, including interest on monies expended and attorneys' fees incurred in connection therewith. If such expenses are not repaid by the Owner to the Association within thirty (30) days following delivery of a written demand therefor to the Owner, the Executive Board may levy a Reimbursement Assessment against such Owner and the Owner's Lot for all such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under this Declaration, and the Lot Owner shall have no claim for damages or otherwise on account of the entry upon the property and remedying or removal of the noncomplying Improvement.

5.16 Certificate of Compliance. When the Design Review Committee is satisfied that the Improvements have been completed in accordance with all plans,

specifications and other materials furnished to the Design Review Committee, any conditions imposed by the Committee, and with the Design Guidelines, it shall issue to the Owner a Certificate of Compliance with respect to said Improvements. Upon receipt of such Certificate, but not before, the Owner may proceed to apply to the County for a Certificate of Occupancy. No newly-constructed residence on a Lot or the Association Parcel shall be occupied until a Certificate of Compliance has been issued therefor by the Design Review Committee and a Certificate of Occupancy has been issued therefor by the County.

5.17 Improvements Must Conform to Approvals. Other than work commenced by Declarant, no building, fence, wall, structure, landscaping or other Improvement of whatever type shall be commenced, constructed, erected, placed, installed, located, maintained or removed within the Common Interest Community, nor shall there be any additions or changes to the exterior of any residence or other structure or Improvement upon a Lot or the Association Parcel or the landscaping, grading or drainage thereof, including without limitation, the painting or staining (other than painting or staining with the same color and type of paint or stain as previously existed) of exterior walls, patio covers and fences, except in accordance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee and in compliance with the Design Guidelines and all pertinent provisions of this Declaration.

5.18 Committee Power to Grant Variances. The Design Review Committee may grant variances from any of the restrictions set forth in Article 5 of this Declaration or the Design Guidelines pertaining to proposed Improvements and the criteria therefor, including restrictions upon height, size, floor area, setbacks, location or placement of structures, or similar restrictions, when (i) unique circumstances not created by the Lot Owner or the owner of the Association Parcel, such as topography, natural obstructions, or aesthetic or environmental considerations would otherwise result in substantial hardship or burden which is not suffered by other similarly-situated Lots, or (ii) when a change of circumstances since the Recording of this Declaration has rendered such restriction obsolete, and (iii) in either case, when the Design Review Committee determines that the activity allowed by the variance will not have any material adverse effect on the Owners and Occupants of the Common Interest Community (including neighboring Lots) and is consistent with the high quality of living intended to be promoted hereby throughout the Common Interest Community. When an Owner applies for a variance, the Committee must give at least ten (10) days written notice of the variance hearing, and of the nature of the variance requested, postage prepaid, by certified mail, return receipt requested, to all Owners of Lots that are situated within a radius of 300 feet of the Lot or Association Parcel for which the variance is sought, at the current addresses for such Owners reflected in the Association files. The applying Owner must provide the Committee with an accurate list of the Owners to be so notified. If the foregoing notice requirements are complied with, it is not necessary that the Owners actually receive the notice that is mailed to them, such notices being deemed received upon mailing.

All variances that are granted by the Design Review Committee must be evidenced in writing, must specify the Lot or Association Parcel for which the variance is granted and the unique circumstances or change in circumstances justifying the variance, and must be signed by at least a majority of the members of the Committee. If any such variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration or the Design Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Design Guidelines for any purpose except as to the particular property and particular provision hereof covered by the variance. A copy of each variance request and approval, or denial, will be kept on file at the Association offices.

The granting of a variance in a particular instance shall in no event imply or require that such a variance will be granted again in the future in a similar situation, and the Committee shall have complete discretion, consistent with the standards and criteria contained herein and in the Design Guidelines, to grant or deny a variance in each instance on the merits of the particular application and considering the circumstances surrounding the same.

No variance shall conflict with the Idarado Development Plan or with resolutions or regulations of the County. If a variance from the Idarado Development Plan or County laws or regulations is also required in connection with a matter for which a variance is desired hereunder, it shall be the Owner's responsibility to obtain such County variance before submitting a variance application to the Design Review Committee.

5.19 Nonliability for Approval or Disapproval of Plans and Specifications or for Issuance of Certificates of Compliance. The criteria for Design Review Committee approval of plans and specifications are set forth or referenced in Section 5.12 above. The Design Review Committee shall not be responsible for reviewing plans and specifications with respect to engineering design or for compliance with zoning, building ordinances, environmental laws, the County Enforceable Restrictions, the Idarado Cluster Plan Approvals or related mitigation requirements, or any other applicable laws or regulations. By its approval of any such plans and specifications, neither the Design Review Committee, the members thereof, the Association, any Member, the Executive Board nor the Declarant assumes or shall have any liability or responsibility with respect to engineering design or for compliance with zoning, building ordinances, environmental laws, the County Enforceable Restrictions, the Idarado Cluster Plan Approvals or related mitigation requirements, or any other applicable laws or regulations, or for any defect in any Improvement constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Association, the Executive Board nor the Declarant shall be liable to any Lot Owner, Occupant or other Person for any injury, damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective, or any delay in granting such approval or disapproval, (b) the construction or performance of

any work, whether or not pursuant to approved plans, drawings and specifications, (c) the issuance of a Certificate of Compliance, or (d) the development, or manner of development of any property within the Common Interest Community. The approval of plans and specifications by the Design Review Committee, and/or the issuance of a Certificate of Compliance by the Design Review Committee, shall not under any circumstances constitute or be deemed to be a representation or warranty that the plans, specifications or completed Improvements comply with applicable laws, resolutions, ordinances or regulations, including but not limited to, zoning ordinances, building codes, and environmental laws and related mitigation requirements.

5.20 Enforcement. The requirements and provisions of this Article 5 and/or of the Design Guidelines shall be enforceable in accordance with the rights and procedures set forth in Section 13.4 of this Declaration.

ARTICLE 6

ASSOCIATION PROPERTY

6.1 Use and Enjoyment of Association Property. With the exception of Limited Common Areas, and except as otherwise provided in this Declaration or in the Rules and Regulations, each Owner shall have the non-exclusive right to use and enjoy Association Property in common with all other Owners. This right to use and enjoy Association Property shall extend to each Owner, Occupant, and the family members, guests and invitees of each Owner, and to such other users as may be authorized by this Declaration or by the Executive Board from time to time, and shall be appurtenant to each Lot, subject at all times to the provisions of this Declaration (including Declarant's reserved rights hereunder), the Articles, Bylaws, and the Rules and Regulations. No Owner or Occupant shall place any structure or store or leave any materials or personal property upon Association Property, nor shall any Owner or Occupant engage in any activity which will temporarily or permanently impair free and unobstructed access to all parts of the Association Property (excepting Limited Common Areas) by all Owners.

With respect to Limited Common Areas, and except as otherwise provided in this Declaration, each Owner and Occupant of a Lot designated by Declaration or Plat for the use of such Limited Common Area shall have the non-exclusive right to use and enjoy the same in common with all other Owners and Occupants of Lots so designated, for all purposes for which the Limited Common Area was created, subject to any Rules and Regulations relating thereto.

6.2 Association May Regulate Use of Association Property. The Association, acting through the Executive Board, shall have the right and authority to regulate the use of Association Property by the promulgation, enforcement and interpretation from time to time of such Rules and Regulations relating thereto as the Association considers necessary or appropriate for the protection and preservation of Association Property and the enhancement of the use and enjoyment thereof by Owners and Occupants and other authorized users.

The Association, acting through the Executive Board, may for good cause suspend the right of any person to use and enjoy Association Property, including without limitation the right of a Member who or which is delinquent in the payment of any Assessments, and the right of any Member or other authorized user who is in violation of the terms and provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, Design Guidelines or the terms and provisions of any approvals granted by the Design Review Committee.

6.3 Association to Maintain and Improve Association Property. The Association, its agents and employees, shall maintain and repair, snowplow as necessary, improve as necessary, and otherwise manage the Association Property (including the Rockfall Fences and other Limited Common Areas), including, but not limited to, any Improvements, postal kiosks, landscaping, paths, trails, parking areas, drives, lighting, signage, and recreational and other facilities located thereon. The Association may construct, alter and remove such Improvements and landscaping upon Association Property as the Association in its discretion considers necessary, desirable or appropriate from time to time, and may do all such other and further acts which the Executive Board deems necessary or appropriate to preserve, protect and enhance the Association Property and the beauty and function thereof in accordance with the general objectives for the Common Interest Community reflected in this Declaration. Separate or segregated bids shall be let for the maintenance of Limited Common Areas so that the costs thereof can be assessed exclusively to the Lots benefited or protected thereby. As provided in Section 10.9 below, the Association may contract with third parties to perform any of the foregoing responsibilities.

No Owner, Occupant, or employee or agent thereof, shall repair, maintain, improve, or otherwise alter or interfere with any Association Property (including Rockfall Fences and other Limited Common Areas) without the express prior written authorization of the Executive Board.

6.4 No Partition of Association Property. No Owner or other Person shall have any right to partition or to seek the partition of Association Property or any part thereof.

6.5 Owner Liability for Owner or Occupant Damage to Association Property. Each Owner shall be liable to the Association for any damage to Association Property or for any expense, loss or liability suffered or incurred by the Association in connection with Association Property arising from (a) the negligence or willful misconduct of such Owner or of any Occupant, agent, employee, family member, guest or invitee of such Owner, or (b) any violation by such Owner or any Occupant, agent, employee, family member, guest or invitee of such Owner of any law, regulation, or code, including without limitation any environmental law, or of any provisions of this Declaration or the Rules and Regulations relating to Association Property. Each Owner shall indemnify, defend and hold the Association harmless from any loss, damage, expense or liability arising from the circumstances described in subsections (a) or (b) immediately above. The Association shall have the power to levy and collect a Reimbursement Assessment against a Lot Owner to

recover the costs, expenses, damages, losses or liabilities incurred by the Association as a consequence of any such negligence, willful misconduct or violations.

6.6 Damage or Destruction to Association Property. In the event of damage to or destruction of Association Property, including Improvements thereon, by fire or other casualty, the Association shall repair or replace the same in accordance with the provisions of Section 10.17 below. Repair, reconstruction, or replacement of Association Property shall be accomplished under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may place the excess proceeds in a reserve account relating to the damaged Association Property, or may use the same for future maintenance, repair, improvement, and operation of Association Property or for any other use deemed appropriate by the Executive Board.

6.7 Condemnation of Association Property. If any Association Property or part thereof or interest therein is taken under exercise of the power of eminent domain or by purchase in lieu thereof, the portion of any award in condemnation or the price payable for the deed in lieu that is attributable to the Association Property taken or purchased shall be paid to the Association. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners and Occupants and other Persons therein. Any award or funds received by the Association shall be held by the Association for the purposes stated in Section 6.6 above or as a reserve for future maintenance, repair, reconstruction, or replacement of Association Property or may be used for Improvements or additions to or operation of Association Property or for such other uses as may be deemed appropriate by the Executive Board. Except as may otherwise be provided by the Act, no Owner or other Person shall be entitled to participate as a party or otherwise in any condemnation proceedings nor to receive any proceeds therefrom.

6.8 Title to Association Property Upon Dissolution of Association. In the event of dissolution of the Association, the Association Property shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agency or organization or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for the purposes for which the Association Property was held by the Association. If the foregoing is not possible, the Association Property shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners in proportion to each Owner's Allocated Interest in the Common Expenses of the Association.

6.9 Mechanic's Liens on Association Property. Declarant shall be responsible for the release of mechanics' liens filed with respect to Association Property, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of Declarant, its agents, contractors or subcontractors. Likewise, the Association shall be responsible for the release of mechanics' liens filed with respect to Association Property, or any part thereof, if such liens arise from labor

performed or materials furnished at the instance of the Association, its directors, officers, agents, contractors or subcontractors. No labor performed or materials furnished with respect to a Lot at the instance of the Lot Owner shall be the basis for filing a lien against Association Property. No labor performed or materials furnished with respect to Association Property at the instance of the Executive Board shall be the basis for filing a lien against any Lot.

ARTICLE 7

DECLARANT'S RESERVED RIGHTS

Declarant hereby expressly reserves to itself and its successors and assigns the following described rights, which include development rights and special Declarant rights, any one or more of which rights may be exercised, in the sole and absolute discretion of Declarant, at any time and from time to time during the period commencing upon the Recording of this Declaration in the County and ending on the date of termination of such rights established under Section 7.12 below. It is expressly understood that Declarant shall not be obligated to exercise any of these reserved rights, and that no consent shall be required from any Owner, Mortgagee, or the Association for the effective exercise of any of these reserved rights.

Except as limited by this Article 7, such reserved rights may be exercised upon or in connection with all or any portion of the Common Interest Community. Such rights may be exercised with respect to different parcels of said real estate at different times, and in connection therewith Declarant hereby states that (i) no assurances are made regarding the boundaries of said different parcels or with respect to the order in which such parcels may be subjected to the exercise of these reserved rights, even if a reference to a phase or phasing appears in a legal description, Plat, Development Plan or other agreement relating to the property, and (ii) if a particular reserved right is exercised in any portion of the real estate subject to that reserved right, that reserved right is not required to be exercised in all or any portion of the remainder of that real estate.

The reserved rights hereinafter set forth shall be prior and superior to any other provisions of this Declaration, and may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Lots and other portions of the Common Interest Community hereafter made, whether by Declarant or otherwise, shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the rights reserved by and to Declarant in this Article 7 and elsewhere in this Declaration, even though no specific reference to such rights appears in the conveyancing instruments. Nothing in this Article 7 shall limit or impair any other rights granted or reserved to Declarant by other provisions of this Declaration.

The following rights are hereby reserved to Declarant and its successors and assigns:

7.1 Construction of Improvements. The right, but not the obligation, to construct additional Improvements upon or in connection with Association Property at any time and from time to time for the improvement and enhancement thereof for the benefit of the Association and the Owners, or some of them. Furthermore, the right throughout the Common Interest Community to complete Improvements indicated on the Final Plat and/or in this Declaration, as such Plat and/or this Declaration may be amended from time to time. Furthermore, the right to construct and complete Improvements required by the terms of the Subdivision Improvements Agreement Recorded February 10, 2004 as Reception No. 364051 in the Office of the Clerk and Recorder of San Miguel County, Colorado ("SIA"), as said SIA may be amended from time to time. Furthermore, the right to create, grant and/or use and enjoy additional non-exclusive easements, and to relocate existing platted or other easements, upon or across any portion of the Common Interest Community (including Lots and the Association Parcel, but excepting Building Envelopes), as may be reasonably required for the construction by Declarant of the above-described Improvements or the effective exercise by Declarant of any of the other reserved rights described in this Article 7. Furthermore, for so long as Declarant is the owner of Lots LB3 and LB4, the right to move, remove or alter the stone house that is presently situated on Lots LB3 and LB4, if permitted by San Miguel County, including a right of access to accomplish the same. For so long as the stone house remains on Lots LB3 and LB4, it shall be jointly maintained by the owners of Lots LB3 and LB4, and shall be used jointly by such owners as they may agree from time to time.

7.2 Sales, Marketing and Management. The right to construct, locate or operate, and to maintain upon, and to remove from, any part of the Common Interest Community including Lots owned by Declarant and Association Property, in the discretion of Declarant, and in such number, size and location as may be reasonably required by Declarant in connection with the completion of Improvements, the management of the development, and/or the promotion, marketing, sale or rental of Lots, the following:

- (a) Sales offices, management offices, and/or construction offices, and structures containing or relating to the same. Such offices, to the extent they are not situated on a Lot, are hereby declared to be personal property of the Declarant and shall in any case be removable by Declarant or its successors or assigns promptly upon the Declarant or its successors or assigns ceasing to be a Lot Owner;
- (b) Signs identifying and advertising the Common Interest Community and the Lots therein, or relating to development or construction thereon;
- (c) Model residences constructed or to be constructed on Lots;
- (d) Parking areas and facilities, and lighting, necessary or desirable in the marketing of the Common Interest Community and the Lots;

(e) Employees in offices; equipment; vehicles; and marketing and construction materials.

Together with the right to attract, invite or bring prospective purchasers of Lots into the Common Interest Community at all times, and to permit them to use and enjoy the Association Property.

7.3 Merger. The right to merge or consolidate the Common Interest Community with another common interest community of the same form of ownership.

7.4 Declarant Control of Association. The right to appoint or remove any Executive Board member or officer of the Association, as more specifically set forth in Section 9.5 below, but only for and during the "Period of Declarant Control of Association" as defined in said Section 9.5.

7.5 Withdrawal Rights and Procedure. The right at any time and from time to time to withdraw from the Common Interest Community any Declarant-owned Lot(s) or Association Property.

Withdrawal may only be accomplished by the recording by Declarant of an amendment to this Declaration and an amendment to the Final Plat, if necessary. Upon the recording of such amendment(s), the withdrawn Lots and/or Association Property shall no longer be part of the Common Interest Community or subject to this Declaration in any way.

Each Declarant-owned Lot, and each Declarant-owned Association Property, is hereby described and declared to be a separate portion of real estate or property that is subject to this right of withdrawal, and Declarant expressly reserves the right to withdraw one or more Declarant-owned Lots and/or all or a portion of any Declarant-owned Association Property from the Common Interest Community. Once a Lot has been conveyed to a Lot Owner other than Declarant, that portion of the real estate is no longer subject to this right of withdrawal. Likewise, once an Association Property has been conveyed to the Association, or the County, that portion of the real estate or property is no longer subject to this right of withdrawal.

The withdrawn property shall be subject to whatever easements, if any, may be reasonably necessary for access or utility service to, or operation or management or use or enjoyment of, the Common Interest Community or any part thereof. Similarly, the owner(s) of the withdrawn property shall have whatever easements, if any, are reasonably necessary for access or utility service to or for use or enjoyment of the withdrawn property over and across Association Property (including road easements) within the Common Interest Community. At the time any withdrawal of real estate or other property is accomplished, Declarant shall record whatever documents are necessary to establish such reciprocal easements in the San Miguel County records.

7.6 Effect of Contraction. In the event any real estate or other property is withdrawn from the Common Interest Community as provided herein, the definitions

used in this Declaration shall be automatically revised to encompass and refer to the Common Interest Community as contracted, *e.g.*, "Common Interest Community" shall mean the real estate and other property described herein minus any real estate and other property withdrawn therefrom; similarly, "Association Property" and "Lots" shall mean and include those areas as described herein less those so designated on any amendment to the Declaration or a Plat relating to any real estate or other property which is withdrawn pursuant to this Article 7.

The recording of amendments to the Declaration and/or to a Plat which reallocate the Allocated Interests in the Common Interest Community shall automatically:

- (a) Vest in each existing Owner the reallocated Allocated Interests appurtenant to the Owner's Lot; and
- (b) Vest in each existing Mortgagee a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot.

7.7 Transfer of Additional Property to Association. The right, but not the obligation, to transfer additional real and personal property, and Improvements thereon, to the Association from time to time in furtherance of this Declaration.

7.8 Other Reserved Development Rights. Subject to compliance with any applicable County requirements, the right with respect to all or any Declarant-owned portion of the Common Interest Community (including the Lots and the Association Parcel) to (a) create Association Property (including Limited Common Areas); (b) combine Lots; (c) reconfigure Lots and/or Association Property, or otherwise modify or amend the recorded Plat; (d) amend the Idarado Development Plan; (e) convert Lots or parts thereof into Association Property and/or streets; and (f) convert Association Property or parts thereof into Lots and/or streets. Additionally, in order to effectively exercise the rights reserved to Declarant under this Article 7, the right to amend this Declaration (without the consent of Owners, Mortgagees or the Association being required) for purposes of (i) complying with or qualifying for federal or state registration of the project (ii) satisfying title insurance requirements, or (iii) bringing any provision or provisions of this Declaration into compliance with the Act.

7.9 Owner Review, Acceptance and Waiver of Rights Re Idarado Development Plan and Declarant's Reserved Rights. Each Owner, by its acceptance of a deed or other conveyance vesting in the Owner an interest in a Lot in the Common Interest Community, acknowledges that the Owner has carefully reviewed and understands the Idarado Development Plan (as it may be amended from time to time) and the Declarant's reserved rights as set forth in this Article 7 or elsewhere in this Declaration, that the Owner accepts and approves such matters and appreciates any potential impacts that the implementation of the Idarado Development Plan and/or the exercise of such reserved rights may have on the Owner's Lot and/or on Association Property, and expressly waives any rights the Owner may have to object

to or to interfere in any way with the implementation of such Idarado Development Plan or the exercise of such reserved rights.

7.10 Declarant As Attorney-in-Fact for Owners. Each Owner, by its acceptance of a deed or other conveyance vesting in the Owner an interest in a Lot in the Common Interest Community, does hereby irrevocably constitute and appoint Declarant (with full power of substitution) as said Owner's attorney-in-fact, in said Owner's name, place and stead, to take any and all actions and to execute and deliver any and all instruments as may be necessary or appropriate to Declarant's exercise of the various rights reserved to Declarant under this Article 7 or elsewhere in this Declaration, specifically including without limitation Declarant's reserved right to use all existing easements within the Common Interest Community, or to create, grant, use and/or replat and relocate additional or existing easements across any portion of the Common Interest Community excepting platted Building Envelopes.

7.11 Transfer of Declarant's Reserved Rights. Any one or more rights created or reserved for the benefit of Declarant under this Article 7 or elsewhere in this Declaration may be transferred to any Person by an instrument describing the right or rights transferred and Recorded in San Miguel County. Such instrument shall be executed by the transferor Declarant and the transferee. The provisions of Section 38-33.3-304 of the Act shall apply to any transfer of special declarant rights.

7.12 Termination of Declarant's Reserved Rights. With the exception of Declarant's right to appoint or remove Executive Board members and officers of the Association, which is addressed in Section 9.5 below, the rights reserved to Declarant in this Article 7 shall automatically terminate and expire upon the first to occur of (i) the date which is thirty (30) years after the Recording of this Declaration, or (ii) Declarant's relinquishment and surrender of such rights by Recorded instrument. Declarant may from time to time relinquish and surrender one or more but less than all of the reserved rights, in which event the unrelinquished reserved rights shall remain fully valid and effective for the remainder of the term thereof. The Association may extend the time period for exercise of a development right, or reinstate a lapsed development right, subject to whatever terms, conditions and limitations the Association may impose on the subsequent exercise of the development right. The extension or renewal of a development right and any terms, conditions and limitations shall be included in an amendment executed by Declarant or the owner of the real estate or other property subject to the development right and the Association.

ARTICLE 8

EASEMENTS

8.1 Easements for Incidental Encroachments. If any portion of an Improvement approved by the Design Review Committee encroaches in its approved location upon an Association Property, including any future encroachments arising or resulting from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, a valid easement on the surface and for

subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such incidental encroachment.

8.2 Blanket Association Utility and Drainage Easement Over Roads and Association Property. There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive blanket easement over, across, upon and under all roads and the 10' General Easement in the Common Interest Community including the East Colorado Tract, Liberty Bell Lane and Pandora Lane, and all Association Property for the construction, installation, testing, operation, monitoring, management, administration, maintenance, repair, removal and replacement of utilities and utility lines, irrigation lines and systems, water features, drainage systems, pipes, wires, circuits, conduits, meters, facilities and systems for the benefit of the Common Interest Community or any part thereof or neighboring lands, including but not limited to drainage, domestic water, irrigation water, sewer, gas, telephone, electricity, cable TV and other master TV and communication systems, if any, together with an easement for access, ingress and egress to accomplish such purposes, and together with the right to grant any such easement rights to utility companies. The Association or other person or entity exercising such utility and drainage easement rights shall be obligated to restore, reseed, replant and/or re-landscape the surface of the disturbed area to as close to its original condition as possible, as promptly as possible following completion of any utility or drainage work.

8.3 Association Administrative Easement Over Roads, Private Driveways and Association Property. There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement over, across, upon and under all roads and private driveways (as-built) in the Common Interest Community and all Association Property and a right to use the same for purposes of enabling the Association to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including without limitation the snowplowing of private driveways.

8.4 Declarant Easement Over Roads and Association Property. There is hereby created, granted and reserved to Declarant and its successors and assigns a non-exclusive easement over, across, upon and under all roads in the Common Interest Community including the East Colorado Tract (to the extent such easement is legally necessary), Liberty Bell Lane and Pandora Lane, and all Association Property (including without limitation all easements benefiting the Association), including a right of access, ingress and egress thereto, and a right to use such roads and Association Property, and each and every part thereof, for all purposes reasonably related to (a) Declarant's development, improvement, maintenance, management, marketing and sale of the Common Interest Community and all portions thereof, and/or (b) Declarant's exercise and implementation of the rights reserved to Declarant under this Declaration, and/or (c) the discharge by Declarant of any of its obligations under this Declaration or under the SIA, the Idarado Cluster Plan Approvals, or any other Declarant obligations relating to the Common Interest Community. Declarant's rights with respect to this easement shall terminate upon the first to occur of (i) the

date which is thirty (30) years after the Recording of this Declaration, or
(ii) Declarant's relinquishment of all or a portion of this easement right by Recorded instrument.

8.5 Utility and Drainage Easements. There are hereby created, granted and reserved for the use and benefit of the Declarant, the Association, and appropriate public utilities, perpetual, non-exclusive easements over, upon, across and under those portions of the Common Interest Community that are designated "Utility Easement" or "Drainage Easement" on the Final Plat. Utility Easements may be used for the installation, operation, maintenance, repair, removal or replacement of underground utility lines and related surface facilities. Drainage Easements may be used for the installation, operation, maintenance, repair, removal or replacement of drainage systems and facilities. Except as may otherwise be provided in any Subdivision Improvements Agreement between Declarant and the County or in any other separate agreement between Declarant and a utility supplier, the party causing the disturbance shall be obligated to restore, repair, reseed and/or relandscape any area disturbed by the exercise of these easement rights to as close to its original condition as possible, as promptly as possible following the completion of any work within a Utility or Drainage Easement.

8.6 East Colorado Tract, Liberty Bell Lane and Pandora Lane Easements. There are hereby created, granted and reserved for the use and benefit of the Association and of all Owners and Occupants and their respective families, guests, invitees, employees, contractors and agents perpetual, non-exclusive easements and rights-of-way over, across and along the East Colorado Tract, Liberty Bell Lane and Pandora Lane as depicted and described on the Final Plat, for purposes of access, ingress and egress to and from their respective properties within the Common Interest Community, and in the case of the Association, for the construction, improvement, operation and maintenance of private access roads serving Lots and Association Property within the Common Interest Community.

8.7 County Idarado Trail Easement. By separate instrument, a perpetual, non-exclusive easement has been granted to the County over, upon and along the 10-foot wide "Idarado Trail Easement" depicted and described on the Final Plat, as said alignment may be modified by recorded instrument from time to time, for purposes of operating, maintaining, repairing, and improving from time to time a public interpretive trail that assists in depicting and describing the history of mining in the area. Declarant shall be responsible for initial construction of the trail, and the Association will be responsible for maintenance of interpretive features along the trail and is hereby granted a perpetual right of access along the Idarado Trail Easement for such purpose. Upon completion of construction of the trail, the Idarado Trail Easement will be relocated to its as-built alignment, and the Final Plat or other recorded instrument will be amended accordingly.

8.8 Association Historical Preservation Easement. There is hereby created, granted and reserved for the use and benefit of the Association a perpetual, non-exclusive blanket easement upon and across the entire Common Interest

Community for purposes of maintaining and preserving from time to time the historical elements and features within the Idarado Legacy Subdivision.

8.9 Association Rockfall Fence Easements. There are hereby created, granted and reserved for the use and benefit of the Association perpetual, non-exclusive easements 40 feet in width lying 20 feet on either side of the centerline of the Bridal Veil Rockfall Fence and the centerline of the Liberty Bell Rockfall Fence as constructed and in place, for purposes of the continued existence of and the maintenance, repair, improvement and replacement of said Rockfall Fences, together with a right of vehicular and pedestrian access over the Common Interest Community to all portions of said Rockfall Fences for such purposes and the right to construct a vehicular road or trail as reasonably necessary for such purpose.

8.10 Blanket Emergency Services Easement. There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter serving the Common Interest Community and its Owners and Occupants, a perpetual, non-exclusive blanket Emergency Services Easement over, upon, along and across all streets, roads, properties and areas within the Common Interest Community, for use in the lawful performance of their duties.

8.11 Easements Deemed Created. All conveyances of Lots and Association Property hereafter made, whether by Declarant or otherwise, shall be deemed and construed to grant and reserve all of the easements referred to in this Article 8 and elsewhere in this Declaration, even though no specific reference to such easements appears in the conveyancing instruments.

8.12 Restrictions on Owners in Easement Areas. Owners of Lots or the Association Parcel that are subject to any easements created by this Declaration or by the Plat shall acquire no right, title or interest in any cables, conduits, mains, lines, or other equipment or facilities or improvements that may be installed upon, over or under the easement area by a beneficiary of said easement rights. Moreover, Owners and Occupants of Lots or of the Association Parcel that are subject to any such easements are hereby prohibited from (i) constructing any Improvements upon the easement areas excepting driveways and any other Improvements expressly approved in writing in advance by the Design Review Committee, (ii) altering or obstructing the flow of any water or drainage thereon, or (iii) landscaping the same in any manner that might interfere with the full and proper exercise of said easement rights by any beneficiary thereof. Finally, said Owners and Occupants are hereby prohibited from violating any of the restrictions relating to the use of the easement areas as may be set forth in this Declaration. Any Owner or Occupant violating any of these restrictions shall be obligated to remove the offending improvement or landscaping and to restore the surface of the area to its original condition at the Owner's cost and expense, or otherwise to remedy the violation, within 30 days following a written request therefor from any easement beneficiary. If said Owner or Occupant fails to comply with the request in a timely manner, the Association shall have the right to enter upon the

Owner's Lot to perform the necessary work and may assess the costs thereof against the Owner and the Owner's Lot in the form of a Reimbursement Assessment.

8.13 Recorded Easements and Licenses. In addition to the easements described in this Article 8 and elsewhere in this Declaration, the recorded easements and licenses appurtenant to or included in the Common Interest Community are set forth on Exhibit B attached hereto and made a part hereof by this reference.

ARTICLE 9

ASSOCIATION

9.1 Association. The Association has been formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act to manage the affairs of the Common Interest Community. The Association shall serve as the governing body for all of the Owners and Occupants for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of Association Property, the levying and collection of Assessments for Common Expenses and other expenses of the Association, and such other matters as may be provided in this Declaration, the Articles, Bylaws, and Rules and Regulations. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it on behalf of the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

9.2 Association Executive Board. The affairs of the Association shall be managed by an Executive Board. The number, term, and qualifications of the members of the Executive Board shall be fixed in the Articles of Incorporation or the Bylaws. A quorum shall be deemed present throughout any meeting of the Executive Board if persons entitled to cast at least fifty percent (50%) of the votes on the Executive Board are present at the beginning of the meeting or grant their proxy as provided in C.R.S. Section 7-128-205(4). With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3-7) of the Act, all regular and special meetings of the Executive Board or any committee thereof shall be open to attendance by all Members of the Association or their representatives. Without limiting the generality of the foregoing, no Rule or Regulation may be validly adopted during an executive session. Agendas for meetings of the Executive Board shall be made reasonably available for examination by all Members of the Association or their representatives.

The Executive Board shall have all of the powers, authority and duties granted or delegated to it by the Act, this Declaration, the Articles or Bylaws. Except as provided in the Act, this Declaration, the Articles or Bylaws, the Executive Board may act in all instances on behalf of the Association.

The Executive Board may not, however, act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect members of the Executive Board or determine the qualifications, powers and duties, or

terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

The Executive Board may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Executive Board of the ultimate responsibility for management of the affairs of the Association. If appointed by Declarant, in the performance of their duties the members of the Executive Board and the officers of the Association are required to exercise the care required of fiduciaries of the Lot Owners. If not appointed by Declarant, no member of the Executive Board and no officer shall be liable for actions taken or omissions made in the performance of such member's or officer's duties except for wanton and willful acts or omissions.

9.3 Membership in Association. There shall be one Membership in the Association for each Lot within the Common Interest Community. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership appurtenant to that Lot, and shall collectively be the "Member" of the Association with respect to that Lot, and the Membership appurtenant to that Lot shall automatically pass with fee simple title to the Lot. Declarant shall hold a Membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, and may not otherwise be separated from ownership of a Lot.

9.4 Voting Rights of Members. Each Lot in the Common Interest Community shall be entitled to one (1) vote in the Association. Occupants of Lots shall not have voting rights. If title to a Lot is owned by more than one (1) Person, such persons shall collectively cast their allocated vote. If only one of the multiple owners of a Lot is present at an Association meeting, such owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any of the multiple owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the Lot. In the event of a protest being made by one or more multiple owners, and a majority of the multiple owners of the Lot cannot agree on how to cast their vote, any vote cast for that Lot shall be null and void with regard to the issue being voted upon. Such multiple owners and their Lot shall nevertheless be counted in determining the presence of a quorum with respect to the issue being voted upon.

In accordance with Section 38-33.3-309 of the Act, and except as may otherwise be provided in the Bylaws, a quorum is deemed present throughout any meeting of the Members of the Association if persons entitled to cast at least twenty percent (20%) of the total allocated votes in the Association are present, in person or by proxy, at the beginning of the meeting.

Provided a quorum of allocated votes entitled to vote is present in person or by proxy, the affirmative vote of a majority of the total allocated votes so present shall

constitute approval of any matter voted upon unless a different number is required on a particular matter by the Act, this Declaration, the Articles, or the Bylaws.

The vote allocated to a Lot may be cast pursuant to a proxy duly executed by a Lot Owner. If a Lot is owned by more than one person, each owner of the Lot may vote or register protest to the casting of a vote by the other owners of the Lot through a duly executed proxy. A Lot Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after its date, unless a different termination date is otherwise set forth on its face.

No vote allocated to a Lot owned by the Association may be cast.

The Lot Owners, by a vote of sixty-seven percent (67%) of all allocated votes present and entitled to vote at any meeting of the Lot Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by Declarant.

9.5 Period of Declarant Control of Association. Notwithstanding any other provisions hereof, Declarant shall have and hereby reserves the power to appoint and remove, in its sole discretion, the members of the Executive Board and the officers of the Association during the period commencing upon the Recording of this Declaration and terminating no later than the earlier of (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than Declarant; or (b) two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business.

During said Period of Declarant Control of the Association:

(a) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board must be elected by Lot Owners other than Declarant.

(b) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Executive Board must be elected by Lot Owners other than Declarant.

At any time prior to the termination of the Period of Declarant Control of the Association, the Declarant may voluntarily surrender and relinquish the right to appoint and remove officers and members of the Executive Board, but in such event Declarant may require, for the duration of the Period of Declarant Control of the Association, that specified actions of the Association or the Executive Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant

before they become effective. As to such actions, Declarant may give its approval or disapproval in its sole discretion and option, and its disapproval shall invalidate any such action by the Executive Board or the Association. Not later than the termination of the Period of Declarant Control of the Association, the Owners (including Declarant) shall elect an Executive Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant, and the Executive Board shall elect the officers, with such Executive Board members and officers to take office upon election. Pursuant to Section 38-33.3-303(9) of the Act, within sixty (60) days after Owners other than Declarant elect a majority of the members of the Executive Board, Declarant shall deliver to the Association all property of the Owners and of the Association held or controlled by Declarant, including without limitation the following items:

- (a) The original or a certified copy of the recorded Declaration as amended, the Association's Articles of Incorporation, Bylaws, minute books, other books and records, and any rules and regulations which may have been promulgated;
- (b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the Association.
- (c) The Association funds or control thereof;
- (d) All of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of Association Property, and inventories of these properties;
- (e) A copy, for the nonexclusive use by the Association, of any plans and specifications used in the construction of the improvements in the Common Interest Community;
- (f) All insurance policies then in force, in which the Owners, the Association, or its directors and officers are named as insured persons;
- (g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Common Interest Community;

(h) Any other permits issued by governmental bodies applicable to the Common Interest Community and which are currently in force or which were issued within one year prior to the date on which Lot Owners other than the Declarant took control of the Association:

(i) Written warranties of any contractors, subcontractors, suppliers, and manufacturers that are still effective;

(j) A roster of Owners and Occupants and Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records.

(k) Employment contracts in which the Association is a contracting party; and

(l) Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services.

9.6 Termination of Contracts and Leases of Declarant. The following contracts and leases, if entered into before the Executive Board elected by the Owners pursuant to Section 38-33.3-303(7) takes office, may be terminated without penalty by the Association at any time after the Executive Board elected by the Owners pursuant to said Section 38-33.3-303(7) takes office, upon not less than ninety (90) days notice to the other party: (i) Any management contract, employment contract or lease of recreational or parking areas or facilities; (ii) Any other contract or lease between the Association and Declarant or an affiliate of Declarant; or (iii) Any contract or lease that is not bona fide or was unconscionable to the Owners at the time entered into under the circumstances then prevailing.

ARTICLE 10

POWERS AND DUTIES OF ASSOCIATION

10.1 General Powers and Duties of Association. The Association shall have and may exercise all of the powers and rights and duties of a Colorado corporation formed under the Colorado Revised Nonprofit Corporation Act, and all of the powers and duties provided for in the Act including those enumerated in Section 38-33.3-302 of the Act, as such laws may be amended from time to time, subject only to the limitations upon such powers as are contained in this Declaration. More specifically, and without limiting the generality of the foregoing, the Association shall have all of the powers and duties necessary (i) for the administration, management, governance and operation of the Common Interest Community and the Association, (ii) to own, operate, improve, maintain, repair, manage, lease, encumber, and otherwise deal with Association Property, (iii) to improve, maintain and repair the Limited Common Areas, and (iv) to do any and all lawful things that may be authorized, required or

permitted to be done by the Association under the Act and/or under the provisions of this Declaration.

10.2 Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, irrigation, and such other easements upon, over, across or under Association Property as it deems necessary or desirable for the benefit of the Common Interest Community or parts thereof, or for the benefit of all or less than all of the Owners, or for the benefit of lands situated outside the Common Interest Community.

10.3 Power to Convey or Encumber Association Property. The Association shall have the power to convey, or subject to a security interest, portions of the Association Property if Owners entitled to cast at least sixty-seven percent (67%) of the allocated votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant, agree to that action, except that all Owner(s) of Lots for the benefit of which any Limited Common Area has been created must agree in order to convey that Limited Common Area or to subject it to a security interest. Proceeds of the sale are an asset of the Association.

An agreement to convey, or subject to a security interest, Association Property must be evidenced by the execution of an agreement, in the same manner as a deed, by the Association. The agreement must specify a date after which the agreement will be void unless approved by the required percentage of allocated votes. Any grant, conveyance or deed executed by the Association must be recorded in San Miguel County, and is effective only upon Recordation. The Association, on behalf of the Owners, may contract to convey an interest in an Association Property, but the contract is not enforceable against the Association until approved, executed and ratified pursuant to this Section 10.3. Thereafter, the Association shall have all the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments. Unless in compliance with this Section 10.3, any purported conveyance, encumbrance, judicial sale, or other transfer of Association Property is void. A conveyance or encumbrance of Association Property pursuant to this Section 10.3 shall not deprive any Lot of its rights of (i) access, ingress and egress to the Lot, and (ii) support of the Lot. A conveyance or encumbrance of Association Property pursuant to this Section 10.3 shall not affect the priority or validity of preexisting encumbrances.

10.4 General Power to Provide Services and Facilities to Owners. The Association shall have the power, but not the obligation, to acquire, construct, operate, manage, maintain, repair and administer services and facilities for the benefit of the Owners, or some of them, including, without limitation, security, animal control, vegetation control, insect and pest control, television service, parking facilities, transportation facilities, snow removal, signage, (including entry monuments), lighting, (including seasonal lighting), fencing, landscape walls, landscaping services and facilities, drainage facilities, including retention and detention ponds, irrigation facilities, water features, trash and solid waste disposal services, including recycling programs, utility services, recreational facilities and

services, maintenance, and such other services, functions and facilities as are deemed appropriate by the Executive Board. The foregoing list shall not be deemed to be a representation by Declarant of services or facilities that will in fact be available for use by the Owners. The Association may enter into such agreements and arrangements as it may deem appropriate with any provider of utilities or services to the Common Interest Community or any portion thereof, and may form or join any districts created to provide such services.

10.5 Power to Provide Special Services to Owners. The Association shall have the power to provide services to an Owner or group of Owners. Any service or services to an Owner or group of Owners shall be provided pursuant to an agreement in writing, which shall provide for payment to the Association by such Owner or group of Owners of the costs and expenses of the Association in providing such services, including a fair share of the overhead expenses of the Association, and shall contain reasonable provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Owner or group of Owners and that the payment for such services shall, in the discretion of the Executive Board, be secured by a lien on the Lot(s) of the Owner or group of Owners.

10.6 Power to Charge for Special Association Property Uses and Special Association Services. The Association shall have the power to establish reasonable admission or other fees or charges for any special or extraordinary Association Property uses or Association services such as special parking privileges, special recreation facilities, conference rooms, instruction, or similar uses beyond the ordinary use of Association Property and ordinary Association services. Such charges or fees shall be set forth in schedules of charges and fees adopted from time to time by the Executive Board.

10.7 Power to Acquire Property and Construct Improvements. The Association may acquire, hold, encumber and/or convey any right, title or interest in or to real or personal property, including Improvements. The Association may construct Improvements on Association Property and may demolish existing Improvements thereon.

10.8 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal, and enforce such Rules and Regulations as the Executive Board may consider necessary, desirable or appropriate from time to time with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Property (including Limited Common Areas), and the use of any other property within the Common Interest Community, including Lots. Any such Rules and Regulations shall be effective only upon adoption by resolution at an open meeting of the Executive Board. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Owner, and copies of the currently effective Rules and Regulations shall be made available to each Owner and Occupant upon request and payment of the reasonable expense of copying the same. Each Owner and Occupant (and all other Persons who

are authorized users of Association Property) shall comply with such Rules and Regulations, and each Owner shall see that Occupants claiming through such Owner comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall govern. Such Rules and Regulations may establish reasonable and uniformly applied penalties (including the levying and collection of fines) for the violation of such Rules and Regulations or of any provision of this Declaration, the Articles, or the Bylaws.

10.9 Power to Contract with Employees, Agents, Contractors, Districts, Consultants and Managers. The Association shall have the power to contract with, and/or to employ and discharge employees, agents, independent contractors and consultants, including lawyers and accountants, and special districts, to perform any of the responsibilities of the Association under this Declaration, including without limitation maintenance responsibilities. The Association shall also have the power to retain and pay for the services of a manager or managers, which may be an affiliate of Declarant, to undertake any of the administrative or managerial responsibilities for which the Association may have responsibility under this Declaration, to the extent deemed advisable by the Association, and may delegate any of its duties, powers, or functions to any such manager. Notwithstanding any delegation to a manager of any duties, powers, or functions of the Association, the Association and its Executive Board shall remain ultimately responsible for the performance and exercise of such duties, powers, and functions.

10.10 Power to Assign Future Income. The Association shall have the power to assign its right to future income, including the right to receive Regular Assessments, but only following the affirmative vote of at least fifty-one (51) percent of the total allocated votes in the Association, at a duly-called meeting of the Members of the Association.

10.11 Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to any real or personal property, or interests therein, including any Improvements thereon, transferred to the Association by Declarant, or Declarant's successors or assigns, specifically including without limitation the Association Parcel. Property interests transferred to the Association by Declarant or its successors or assigns may include fee simple title, undivided interests, easements, leasehold interests and licenses to use. Without limiting the generality of the foregoing, upon completion of construction of the Bridal Veil Rockfall Fence and the Liberty Bell Rockfall Fence, all of Declarant's title and interest in such Rockfall Fences shall be transferred and conveyed to the Association.

Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Executive Board, be transferred to the Association free and clear of all monetary obligations, liens and encumbrances (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this

Declaration and all easements, covenants, conditions, restrictions, and equitable servitudes or other encumbrances of record or otherwise in existence. Except as otherwise specifically approved by resolution of the Executive Board, no property or interest in property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee.

Any Improvements or personal property transferred to the Association by Declarant shall be in good working order, ordinary wear and tear excepted, and at the time of transfer Declarant shall make any repairs reasonably required to bring the transferred property into good working order. Subject only to the foregoing, the Association shall accept all properties transferred to it by Declarant in their "Where Is, As Is" condition, without recourse of any kind, and Declarant disclaims and shall not be deemed to make or to have made any representations or warranties, express or implied, by fact or law, with respect to the transferred properties or any aspect or element thereof, including without limitation warranties of merchantability, habitability, fitness for a particular purpose, or workmanlike construction.

10.12 Duty to Manage and Care for Association Property. The Association shall manage, operate, care for, maintain, repair and replace all Association Property and keep the same in a functional, clean and attractive condition for the benefit and enjoyment of the Owners, or some of the Owners in the case of Limited Common Areas. Except as otherwise specifically provided in this Declaration, the Association shall also manage, operate, care for, maintain and repair the Limited Common Areas.

10.13 Duty to Pay Taxes. The Association shall pay any taxes and assessments levied upon Association Property and any other taxes and assessments payable by the Association before they become delinquent. The Association shall have the right to contest any such taxes or assessments by appropriate legal proceedings provided no sale or foreclosure of any lien for such tax or assessment occurs and provided further that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful.

10.14 Duty to Keep Association Records. The Association shall keep financial records in sufficient detail to enable the Association to carry out its responsibilities under this Declaration and to comply with the requirements of the Act, including, but not limited to, current records of paid and unpaid Assessments for each Lot. All financial and other records of the Association shall be made reasonably available for examination by the Owners and the authorized agents of the Owners.

10.15 Duty to Support Design Review Committee. The Association shall take such actions, provide such funds, and do such other things as may be necessary or appropriate from time to time to support and assist the Design Review Committee in the performance of its responsibilities under this Declaration, and shall cooperate with said Committee to the fullest extent possible in such matters.

10.16 Insurance. Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Association shall maintain and keep in effect at all times the following types of insurance, and the cost of said coverage shall be paid by the Association as a Common Expense:

(a) **Casualty Insurance.** To the extent reasonably available, property insurance on all Association Property, including but not limited to Improvements and personalty, owned or leased by the Association, and on all property that must become Association Property. Such insurance shall be for broad form covered causes of loss, including casualty, fire, and extended coverage insurance including, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies.

(b) **Liability Insurance.** Comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of the Association Property (including the Limited Common Areas), and covering public liability or claims of liability for injury to persons and/or property, and death of any person or persons, and, if the Association owns or operates motor vehicles, public liability or claims of liability for bodily injury (including death) and property damage arising as a result of the ownership and operation of motor vehicles. Separate policy endorsements or umbrella policies shall be carried on each of the Bridal Veil and Liberty Bell Rockfall Fences, and the premiums thereon shall be assessed only to the Lots benefited and protected by such Rockfall Fences, as set forth in Section 2.28 above.

Such liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable, (a) have limits of not less than Five Million Dollars (\$5,000,000.00) per person and Five Million Dollars (\$5,000,000.00) per occurrence; (b) insure the Executive Board, the Design Review Committee, the Association and its officers, the manager, if any, and their respective employees, agents and all Persons acting as agents; (c) include the Declarant as an additional insured as its interests may appear; (d) include the Owners as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of Association Property; (e) cover claims of one or more insured parties against other insured parties; (f) be written on an occurrence basis; and (g) shall name as additional insureds such other parties as may be required by specific agreements..

(c) **Contractual Liability Insurance.** To the extent reasonably available, contractual liability insurance covering such contractual obligations and liabilities, indemnifications, hold harmless agreements, and agreements to

defend, as the Association may have or be a party to from time to time, with coverage of at least Two Million Dollars (\$2,000,000.00) or such greater amount as the Executive Board shall determine to be appropriate from time to time.

(d) **Fidelity Bonds.** To the extent reasonably available, fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association. If funds of the Association are handled by a management agent, then fidelity bond coverage may also be obtained for the officers, employees, or agents thereof handling or responsible for Association funds. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection in an amount no less than the lesser of (a) one-half times the Association's estimated annual operating expenses and reserves, (b) a sum equal to three (3) months aggregate Regular Assessments, plus reserves, as calculated from the current Budget of the Association; or (c) the estimated maximum amount of funds, including reserves, in the custody of the Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(e) **Worker's Compensation.** A Worker's Compensation policy, if necessary, to meet the requirements of law.

(f) **Directors and Officers Liability Insurance.** Directors and officers liability insurance with coverage of at least Two Million Dollars (\$2,000,000.00) or such greater amount as the Executive Board shall approve for all Executive Board and Design Review Committee directors, officers, members and managers, for any and all errors and/or omissions and other covered actions that occur during their tenure in office or employment. This insurance coverage shall be mandatory.

(g) **Other Insurance.** Such other insurance in such amounts as the Executive Board shall determine, from time to time, to be appropriate to protect the Association or the Owners, or as may be required by the Act.

(h) **General Provisions Respecting Insurance.** Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. If the insurance described is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained by it, the Association shall promptly cause notice of that fact to be delivered or sent prepaid by U.S. Mail to all Owners.

Insurance policies carried pursuant to Sections 10.16(a) and 10.16(b) above shall provide that (i) each Owner is an insured Person under the policy with respect to liability arising out of such Owner's interest in the Association Property or membership in the Association; (ii) the insurer waives its rights of subrogation under the policy against the Association, each Owner, and any Person claiming by, through, or under such Owner or any other director, agent, or employee of the foregoing; (iii) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (iv) if at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy shall be the primary insurance. An insurer that has issued an insurance policy for the insurance described in Sections 10.16(a) and 10.16(b) above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and each Owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

Any loss covered by the property insurance policy described in Section 10.16(a) above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and lienholders as their interests may appear. Subject to the provisions of Section 38.33.3-313(9) of the Act, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Common Interest Community is terminated.

The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. In the event more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Lot Owner a pro rata share of any deductible paid by the Association. Insurance obtained by the Association shall, to the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant.

Insurance policies and insurance coverage shall be reviewed at least annually by the Executive Board to ascertain whether coverage under the policies is sufficient in light of the current values of the Association Property and in light of the possible or potential liabilities of the Association and other insured parties. The aforementioned insurance may be provided under blanket policies covering the Association Property and property of Declarant.

In no event shall insurance coverage obtained or maintained by the Association obviate the need for Owners and Occupants to obtain insurance for their own benefit.

Furthermore, to the extent reasonably available, insurance policies obtained by the Association shall contain the following provisions:

(i) The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by an Owner, Occupant or Mortgagee.

(ii) The conduct of any one or more Owners or Occupants shall not constitute grounds for avoiding liability on any such policies.

(iii) Each policy must contain a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured.

(iv) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner or Occupant because of the conduct or negligent acts of the Association and its agents or other Owners or Occupants.

(v) Any "no other insurance" clause shall exclude insurance purchased by Owners, Occupants or Mortgagees.

(vi) Coverage must not be prejudiced by (i) any act or neglect of Owners or Occupants when such act or neglect is not within the control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Common Interest Community over which the Association has no control.

(vii) Coverage may not be canceled or substantially modified without at least thirty (30) days (or such lesser period as the Association may reasonably deem appropriate) prior written notice to the Association.

(viii) Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written

approval of the Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

(ix) A recognition of any insurance trust agreement entered into by the Association.

(x) Each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating as designated in *Best's Key Rating Guide* of Class VI or better, or if such rating service be discontinued, an equivalent rating by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Colorado.

(i) **Nonliability of Association or Executive Board.**

Notwithstanding the duty of the Association to obtain insurance coverage, as stated herein, neither the Association nor any Executive Board member, nor the Declarant, shall be liable to any Owner, Occupant, Mortgagee or other Person, if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner and Occupant to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or Occupant may desire.

(j) **Premiums.** Premiums for insurance policies purchased by the Association and other expenses connected with acquiring such insurance shall be paid by the Association as a Common Expense, except that (i) liability insurance on Limited Common Areas shall be separately bid and the cost thereof shall only be included in the Regular Assessments of the Lots entitled to use or benefited by such Limited Common Areas, and (ii) the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or Association Property, by an Owner or Occupant, may at the Executive Board's election, be assessed against that particular Owner and his Lot as a Reimbursement Assessment.

(k) **Insurance Claims.** The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Executive Board has full and complete power to act for the Association in this regard, and may, in its discretion, appoint an authorized representative, or enter into an insurance trust agreement, wherein the trustee shall have the authority to negotiate losses under any policy purchased by the Association.

(l) **Benefit.** Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for the Association, the Owners, or the Occupants, as their interests may appear.

(m) **Other Insurance to be Carried by Lot Owners.** Insurance coverage on the furnishings and other items of personal property belonging to a Lot Owner or Occupant, public liability insurance coverage upon each Lot, and casualty insurance coverage on the Improvements constructed on Lots, shall be the responsibility of the Owner or Occupant of the Lot. No Lot Owner or Occupant shall maintain any insurance, whether on its Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to Association Property or the Improvements or fixtures thereon.

10.17 Damage to Common Interest Community. Any portion of the Common Interest Community for which insurance is required under Section 38-33.3-313 of the Act which is damaged or destroyed must be repaired or replaced promptly by the Association unless: (i) the Common Interest Community is terminated; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; (iii) sixty-seven percent (67%) of the Lot Owners, including owners of every Lot that will not be rebuilt, vote not to rebuild; or (iv) prior to the conveyance of any Lot to a person other than Declarant, a Mortgagee on the damaged portion of the Common Interest Community rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense, although the cost of repairing or replacing a Limited Common Area shall be assessed only to the Lots entitled to use or benefited by such Limited Common Area. If the entire Common Interest Community is not repaired or replaced, the insurance proceeds attributable to the damaged Association Property must be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community, and, except to the extent that other Persons will be distributees, the insurance proceeds attributable to Lots that are not rebuilt must be distributed to the Owners of those Lots, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all Owners or lienholders as their interests may appear in proportion to the Common Expense liabilities of all the Lots.

In the event of damage to or destruction of all or a portion of the Association Property due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Association Property damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Association may levy a Special Assessment in the aggregate amount of such deficiency, or if any Owner or group of Owners is liable for such

damage, may levy a Reimbursement Assessment against the Owner or group of Owners responsible therefor, and shall proceed to make such repairs or reconstruction. Such Assessment shall be due and payable as provided by resolution of the Executive Board, but not sooner than sixty (60) days after written notice thereof. The Assessment provided for herein shall be a debt of each Owner assessed and a lien on his Lot, and may be enforced and collected in the same manner as any Assessment Lien provided for in this Declaration. If the entire damaged Association Property is not repaired or replaced, the insurance proceeds attributable to the damaged Association Property must be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners (or some of them, as appropriate) and first Mortgagees of their respective Lots, if any.

10.18 Limited Liability. Neither the Association nor its past, present or future officers or directors, nor any employee, agent or committee member of the Association, the Executive Board or the Design Review Committee shall be liable to any Owner or Occupant or to any other Person for actions taken or omissions made except for wanton and willful acts or omissions. Without limiting the generality of the foregoing, the Association, the Executive Board and the Design Review Committee shall not be liable to any Owner or Occupant or other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice, specifically including without limitation actions or failures to act with respect to compliance with or enforcement of the County Enforceable Restrictions set forth in Article 4 hereof. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice.

ARTICLE 11

ASSESSMENTS

11.1 Assessment Obligation and Lien. Declarant, for each Lot, shall be deemed to covenant and agree, and each Lot Owner, by acceptance of a deed therefor (including a public trustee's or sheriff's deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) Regular Assessments or charges, (2) Special Assessments, and (3) Reimbursement Assessments, such assessments to be established and collected as hereinafter provided (collectively the "Assessments"). No Owner shall have any right to set-off against an Assessment any claims that the Owner may have or may claim to have against the Association. The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Lot against which each such Assessment is charged. The obligation for such payments by each Lot Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without set-off or deduction of any kind or nature. Each Lot Owner is liable for Assessments made against such Owner's Lot during his period of ownership of the

Lot. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the joint, several and personal obligation of each Person who was an Owner of such Lot at the time when the Assessment became due. Upon the transfer of title to a Lot, the transferor and the transferee shall be jointly, severally and personally liable for all unpaid Assessments and other charges due to the Association prior to the date of transfer, and the transferee shall be personally liable for all such Assessments and charges becoming due thereafter.

11.2 Statutory Lien. The Association has a statutory lien pursuant to Section 38-33.3-316 of the Act on the Lot of an Owner for all Assessments levied against such Lot or fines imposed against such Lot's Owner from the time the Assessment or fine becomes due (the "Assessment Lien"). Fees, charges, late charges, attorneys' fees, fines and interest charged by the Association pursuant to the Act or this Declaration are enforceable as Assessments. The amount of the lien shall include all such items from the time such items become due. If an Assessment is payable in installments, the Association has an Assessment Lien for each installment from the time it becomes due, including the due date set by the Executive Board's acceleration of installment obligations. An Assessment Lien is extinguished unless proceedings to enforce the lien are instituted within 6 years after the full amount of Assessments becomes due.

11.3 Lien Superior to Homestead and Other Exemptions. An Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

11.4 Priority of Lien. An Assessment Lien is prior to all other liens and encumbrances on a Lot except as follows:

- (a) Liens and encumbrances Recorded before the recordation of this Declaration;
- (b) A security interest on the Lot which has priority over all other security interests on the Lot and which was Recorded before the date on which the Assessment sought to be enforced became delinquent. An Assessment Lien is prior to the security interest described in the preceding sentence to the extent of an amount equal to the Regular Assessments (based on a Budget adopted by the Association pursuant to Section 11.7 below) which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by the Association or any party holding a lien senior to any part of the Association lien created under this Article 11 of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien;
- (c) Liens for real estate taxes and other governmental assessments or charges against the Lot; and

(d) As may otherwise be set forth in the Act. The priority of mechanics' and materialmen's liens is not affected by the Act.

This Article 11 does not prohibit an action or suit to recover sums for which this Article 11 creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Lot shall not affect the lien for an Assessment.

11.5 Perfection of Lien. The Recording of this Declaration constitutes record notice and perfection of the statutory lien. No further Recordation of any claim of lien for Assessments is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Lot as a Reimbursement Assessment.

11.6 Regular Assessments.

(a) A Regular Assessment shall be made annually against each Lot, based upon an annual Budget prepared by the Executive Board, for purposes of paying (i) the annual costs of operating and administering the Association and all other Common Expenses, (ii) reasonable reserves for contingencies, replacements, and other proper purposes, (iii) the costs of services rendered or expenditures incurred by the Association to or for less than all Lots, (iv) the costs of improving, maintaining or replacing Limited Common Areas, including Liberty Bell Lane, Pandora Lane, the Bridal Veil Rockfall Fence and the Liberty Bell Rockfall Fence, and reasonable reserves for such costs, which costs shall be assessed only to the Lots designated for the use or benefit of said Limited Common Areas (unless such costs are for the general benefit of the Common Interest Community), and (v) such other matters as may be reasonably determined by the Executive Board to be the subject of a Regular Assessment;

(b) Regular Assessments shall be allocated in accordance with the Allocated Interests of each Lot in the Common Interest Community. Any Common Expense or portion thereof benefiting fewer than all of the Lots, including without limitation the expenses relating to Liberty Bell Lane, Pandora Lane, and the Rockfall Fences, costs and expenses associated with OWS Management, and costs and expenses associated with riverfront maintenance, shall be assessed exclusively against the Lots benefited. If Common Expense liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be reallocated in accordance with the reallocated Common Expense liabilities.

(c) Regular Assessments shall be levied on a calendar year basis, except that the initial Regular Assessment period shall commence on the first day of the calendar month or quarter in which the first Lot is conveyed by Declarant to a Person other than Declarant. Regular Assessments shall be paid in installments on a monthly, quarterly or semi-annual basis, as the Executive Board may determine from time to time, and shall be due either on the first day

of each calendar month or on the first day of each calendar year quarter (January 1, April 1, July 1 and October 1), or on the first day of a semi-annual period (e.g. January 1, July 1) as appropriate. Unless and until changed to a monthly or semi-annual system by the Executive Board, Regular Assessments shall be due and payable on the first day of each calendar quarter. Any Lot Owner acquiring a Lot between installment due dates shall pay a pro rata share of the immediately preceding installment.

(d) The Executive Board shall fix the amount of the Regular Assessment, using the Budget procedure described below, at least thirty (30) days before the end of each calendar year. Written notice of the Regular Assessment shall be sent to each Owner. Failure of the Executive Board timely to fix and levy the Regular Assessments for any year or to send a notice thereof to any Owner shall not relieve or release any Owner from liability for payment of Regular Assessments or any installments thereof for that or subsequent years as soon as the Executive Board levies the Regular Assessment and provides notice thereof. If a duly adopted Budget is amended during the calendar year, the Executive Board shall provide written notice to the Owners of any changes caused thereby in the remaining Regular Assessments due during that year.

(e) The Executive Board shall also mail to each Owner at least ten (10) days prior to the due date thereof a written notice of the amount of the next quarterly (or monthly or semi annual, as the case may be) installment of Regular Assessment that is due from such Owner, and the date on which such installment is due pursuant to paragraph 11.6(d) above. Failure of the Executive Board to send timely notice to any Owner of an installment of Regular Assessment due shall not relieve or release any Owner from liability for payment of that installment as soon as the Executive Board in fact provides such notice.

(f) In accordance with Section 38-33.3-314 of the Act, any surplus funds remaining after payment of or provision for Association expenses and any prepayment of reserves shall be carried forward as a credit against the next year's budget. Funds placed in reserve accounts for payment of anticipated future costs and expenses shall not be so credited.

11.7 Association Budget. Commencing in 2004, and during the last three (3) months of each year thereafter, the Executive Board shall prepare or cause to be prepared an operating budget (the "Budget") for the next calendar year. The Budget shall provide for the allocation of any surplus funds remaining from any previous Budget period. The annual Budget may provide for a Special Assessment in any calendar year, if considered necessary or appropriate by the Executive Board. Alternatively, the Executive Board may at any time adopt a Special Budget that provides for a Special Assessment. Within thirty (30) days after adoption of any proposed Budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the Budget not less

than fourteen (14) nor more than sixty (60) days after the mailing or other delivery of the summary. Such meeting may, but need not be, concurrent with the annual meeting of the Members as provided in the Bylaws. Unless at that meeting sixty-seven percent (67%) of all allocated votes in the Association reject the Budget, the Budget shall be ratified, whether or not a quorum of Owners is present. In the event that the proposed Budget is rejected, the Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Executive Board.

If the Executive Board considers it necessary or appropriate, a duly adopted Budget may be amended during the calendar year by the Executive Board, provided the same notice and ratification procedure is followed for the Amended Budget as is required for the annual Budget.

11.8 Special Assessments. In addition to the other Assessments authorized in this Article 11, the Executive Board may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, maintenance or replacement of capital improvements (including related fixtures and personal property and including without limitation irrigation systems), to or upon or serving the Common Interest Community or parts thereof, or for excess reconstruction costs or other extraordinary expenses, or to acquire Association Property, or for funding any operating deficit or reserve deficit of the Association. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the Allocated Interests of each Lot in the Common Interest Community, and shall be due and payable to the Association on the due date fixed by the Executive Board in the notice given to the Owners of such Special Assessment, which due date shall be no earlier than thirty (30) days after the giving of such notice. Any Special Assessment for an Improvement or other expenditure which will benefit fewer than all of the Lots shall only be levied against the Lots benefited; provided, that expenditures in connection with Association Property (excepting Limited Common Areas) shall be deemed for the general benefit of all Lots, wherever located. If fewer than all of the Lots will be subject to the Special Assessment, then such Special Assessment shall be allocated equally amongst those Lots.

11.9 Reimbursement Assessments. In addition to the other Assessments authorized in this Article 11, the Executive Board may levy against any Owner or Owners, at any time and from time to time, a Reimbursement Assessment for purposes of reimbursing the Association for all costs and expenses incurred by it in enforcing any provision of or in remedying any violation of this Declaration, the Articles, Bylaws, Rules and Regulations or Design Guidelines, or any approvals granted by the Design Review Committee, by such Owner or Owners, their Occupant(s), or their agents, employees or contractors. Reimbursement Assessments may also be made by the Executive Board for any other purposes for which this Declaration provides for the levying of a Reimbursement Assessment. Finally, and in addition to the foregoing, a Reimbursement Assessment may also be levied in the form of a reasonable fine against an Owner for a violation of this Declaration, the Articles, Bylaws, or the Rules and Regulations, but only after the Owner(s) to be so fined have been provided with

Notice and Hearing. Reimbursement Assessments shall be due and payable to the Association on the due date fixed by the Executive Board in the notice given to the Owner(s) of such Reimbursement Assessment, which date shall be no earlier than thirty (30) days after the giving of such notice.

11.10 Effect of Nonpayment of Assessments; Remedies of the Association.

Any Assessment or portion or installment thereof which is not paid when due (or for which a bad check is issued) shall be deemed delinquent and shall bear interest from and after the due date at the rate of interest set by the Executive Board from time to time, which shall not be less than twelve percent (12%) nor more than twenty-one percent (21%) per year, and the Executive Board may also assess a bad check charge in the amount of 10 percent (10%) of the bad check or \$100.00, whichever is greater. The Executive Board may also elect to accelerate the installment obligations of any Regular Assessment for which an installment is delinquent. The Executive Board may also suspend the delinquent Owner's use of Association Property and Association services or benefits, as provided in Section 13.4. The delinquent Owner shall also be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting a delinquent Assessment, which collection costs shall be added to the delinquent Assessment. The Executive Board may but shall not be required to record a Notice of Delinquent Assessment or charge against any Lot as to which an Assessment or charge is delinquent. The Notice shall be executed by an officer of the Executive Board, and shall set forth the amount of the unpaid Assessment or charge, the name of the delinquent Owner and a description of the Lot.

The Assessment Lien may be foreclosed by the Association in the same manner as a mortgage on real property. The Association shall be entitled to purchase the Lot at foreclosure. The Association may also bring an action at law against the Owner personally obligated to pay the delinquent Assessment and/or foreclose the lien against said Owner's Lot in the discretion of the Association. No Owner may exempt himself or otherwise avoid liability for the Assessments provided for herein by waiver of the use or enjoyment of any of the Association Property or by abandonment of the Lot against which the Assessments are made.

In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver to collect all sums alleged to be due from the Lot Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Regular Assessments.

11.11 Statement of Unpaid Assessments. The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by facsimile transmittal or by certified mail, first class postage prepaid, return receipt requested, to the Association, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot, whether delinquent or not. The statement shall be furnished within fourteen (14) days after receipt of the request and is binding on the Association, the Executive Board, and every Owner. If no statement is furnished either delivered

personally or by facsimile transmission or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid Assessments which were due as of the date of the request.

11.12 Working Capital Fund. In addition to the various Assessments provided for above, at the time of closing of each conveyance of a Lot in the Common Interest Community, including initial conveyances to the Lot Owners, and all subsequent resales, the Lot purchaser shall be obligated to pay to the Association a non-refundable contribution to the Association's working capital fund in the amount of two (2) times the most recently adopted regular monthly assessment. Said working capital fund may be used by the Association from time to time for any Association purpose deemed appropriate by the Executive Board, and need not be segregated or accumulated. Such payment shall not be deemed to be a prepayment of any Assessment, and shall not relieve the Owner from the obligation to pay all Assessments as and when due. At the time of closing of a reconveyance of an Owner's Lot to a new Owner, the selling Owner shall forfeit any right to the working capital fund and the new Owner shall pay an additional non-refundable contribution to the working capital fund in the amount calculated as above set forth.

Notwithstanding the foregoing, any builder acquiring an undeveloped Lot from Declarant for the purpose of constructing a residential dwelling thereon and selling the same in the ordinary course of the builder's business, and not for the builder's own residence, shall not be required to pay the above-described contribution to the working capital fund until the first to occur of the following: (a) the new residence on the Lot is occupied by a tenant or otherwise; or (b) the Lot is sold to a third party, in which case the purchaser shall make the payment to the working capital fund.

The following conveyances shall be exempt from the working capital fund contribution obligation: Gift transfers and other transfers for no consideration, transfers for estate planning purposes or public purposes, transfers by court order (including foreclosure sales) or by will or intestacy, and transfers to a successor or assign of Declarant or an affiliate of Declarant.

If a working capital fund contribution is not timely paid to the Association as above required, the delinquent contribution shall bear interest at the rate of eighteen percent (18%) per annum from the date of the conveyance until paid in full, shall constitute the personal, joint and several obligation and liability of the transferee(s), and the Association shall have a lien and security interest on the title to the transferee's Lot in the amount of the delinquent contribution, accrued interest thereon, and costs and attorneys' fees incurred in collecting the same, which may be foreclosed by the Association in the same manner as a mortgage on real property.

11.13 Real Estate Transfer Assessment. Upon the initial sale and each subsequent resale of an improved or unimproved Lot in the Common Interest Community, or of an interest therein, to another Person (a "Transfer"), excluding Transfers for which an exemption is provided below, the Lot purchaser shall be

obligated to pay to the Association a Real Estate Transfer Assessment ("Transfer Assessment") equal to one percent (1%) of the "Consideration" (as defined below) paid for the Lot or interest. This Transfer Assessment shall apply to Lot sales made by Declarant.

Upon receipt, the Association shall deposit such Transfer Assessments in a separate interest-bearing bank account under the name of the Idarado Legacy Historical Fund, and the monies therein shall be expended from time to time in the discretion of the Executive Board for purposes of creating, preserving, evaluating and enhancing historical elements and features situated within or near the Idarado Legacy Subdivision. Such activities shall include, without limitation, (i) the creation and preservation of the Idarado Trail and of the interpretive features thereon, (ii) maintenance of the stone wall at Liberty Bell and maintenance and/or relocation of the historic stone house situated on certain Liberty Bell Lots, and (iii) the making of monetary grants to the Telluride Historical Society or other historical organizations for purposes of historical preservation, education or interpretation. In the discretion of the Association, a tax exempt nonprofit corporation may be formed to hold and administer such Transfer Assessments.

The Transfer Assessment shall be due and payable by the purchaser to the Association on the same day as the Transfer giving rise to the Transfer Assessment. If the full amount of the Transfer Assessment is not paid to the Association at the time of transfer of the Lot as provided herein, the delinquent Transfer Assessment shall bear interest at the rate of twenty percent (20%) per annum from the date of transfer until paid in full, shall constitute the personal, joint and several obligation and liability of the transferee Lot Owner, and the Association shall have an Assessment Lien on the transferee's Lot for such delinquent amount (together with accrued interest, and costs and attorney's fees incurred in collecting the same by collection action, foreclosure, or otherwise) as provided in Section 11.2 above.

As used in this Section 11.13, the term "Transfer" shall mean, whether or not the same is in writing or is recorded, (a) any grant, assignment, transfer, exchange, conveyance or consummated sale of any ownership or title to real property located within the Common Interest Community; (b) the leasing, letting, conveyance, assignment, transfer or consummated sale of a possessory interest in real property located within the Common Interest Community; or (c) a sale, conveyance or transfer of a majority controlling economic or voting interest in a corporation, limited liability company, partnership (general or limited, and with or without limited liability), joint venture, trust, or other association or organization where such entity owns real property located within the Common Interest Community.

As used in this Section 11.13, the term "Consideration" shall mean the gross consideration paid for the real property affected by a Transfer and shall include actual cash paid, the fair market value of real and personal property delivered or conveyed in exchange for the Transfer, or contracted to be so paid or delivered or conveyed, in return for the Transfer, and shall include the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price,

or any part thereof, or remaining unpaid on the property at the time of the Transfer. The term "Consideration" does not include as an addition to gross consideration the amount of any outstanding lien or encumbrance in favor of the United States, the State of Colorado, or any municipal or quasi-municipal corporation or district for taxes, or special or local benefits or improvements.

The Real Estate Transfer Assessment imposed by this Section 11.13 shall not apply to:

(a) Any Transfer wherein the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivision of the State of Colorado, is either the grantor or grantee.

(b) Any Transfer by gift of real property, where there is no Consideration other than love and affection or charitable donation.

(c) Any Transfer to an organization which is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended, provided that the Association, in its sole and absolute discretion, specifically approves such exemption in each particular case.

(d) Any Transfer by document, decree or agreement partitioning, terminating or evidencing termination, of a joint tenancy, tenancy in common or other co-ownership in real property; provided, however, if additional Consideration is paid in connection with such partition or termination, the Real Estate Transfer Assessment shall apply and be based upon such additional Consideration.

(e) Any Transfer by reason of death, whether pursuant to a will, the law of descent and distribution or otherwise.

(f) Any Transfer made (i) pursuant to a reorganization, merger or consolidation of corporations, limited liability companies or partnerships for no Consideration other than the issuance of securities or interests that give the Person the same relative interest in the real property it had prior to such Transfer, or (ii) by a subsidiary to a parent corporation for no Consideration other than cancellation or surrender of the subsidiary's stock, or (iii) to a corporation, limited liability company, partnership, business trust, trust, association or any other legal entity if that entity is owned by the Person by whom such Transfer was made and if such Person thereafter has the same relative interest in such entity as it had in the real property immediately prior to the Transfer and there is no Consideration other than its interest in such entity.

(g) Any Transfer without Consideration for the purpose of: confirming, correcting, modifying or supplementing a Transfer previously

made; making minor boundary adjustments; removing clouds on titles; or granting rights-of-way, easements or licenses.

(h) Any Transfer by decree or order of a court of competent jurisdiction quieting, determining or resting title except for a decree of foreclosure, including a final order awarding title pursuant to a condemnation proceeding.

(i) Transfers to secure a bona fide debt or other obligation, or releases thereof, other than by foreclosure of real property that is security for a debt or other obligation.

(j) An executory contract for the sale of real property of less than three (3) years duration, under which the vendee is entitled to or does take possession of such real property without acquiring title thereto, or any assignment or cancellation of any such contract.

(k) Any Transfer to, between or amongst spouses, siblings, children (natural or adopted), grandchildren, or a trust solely for the benefit of an Owner and any such individuals or any combination thereof, including a transfer which is from an entity owned by a spouse, sibling, child (natural or adopted), or grandchild to an individual who is a spouse, sibling, child (natural or adopted), or grandchild of the person owning the entity.

(l) Any of the following Transfers related to foreclosures of security interests:

(i) Transfers pursuant to purchase at a foreclosure sale, whereby the First Mortgagee (or a qualifying assignee of the First Mortgagee who acquires rights under such Mortgage in the ordinary course of business and prior to any default) takes title to the real property. Purchase at foreclosure sale by any Person or entity other than the First Mortgagee (or the qualifying assignee of the First Mortgagee) shall not be exempt from the Real Estate Transfer Assessment.

(ii) Transfers by qualifying voluntary conveyance in lieu of foreclosure, whereby the First Mortgagee (or the qualifying assignee of the First Mortgagee who acquires rights under such Mortgage in the ordinary course of the assignee's business) takes title to real property.

(iii) Redemption from foreclosure by the Owner of the real property. Redemption from foreclosure by any Person other than the Owner of the real property subject to foreclosure shall not be exempt from the Real Estate Transfer Assessment.

(iv) Transfers pursuant to a decree of separation or divorce.

(v) Transfers to or from nominees or other intermediaries for no Consideration other than any unpaid lien, mortgage, contract indebtedness or other encumbrance or debt not assumed by or the obligation of the nominee or intermediary, for a period not to exceed six (6) months, such as Transfers made to facilitators in connection with a tax-free exchange. The exemption in this section is not intended to extend to the exchange or other Transfer transaction as a whole, but only to the portion of such transaction involving conveyances to or from Persons holding legal title but not owning any of the beneficial interest in the real property.

(vi) Transfers to a trust if the donor has the same relative interest in the trust as the donor had prior to the Transfer or if there is no Consideration other than love and affection or charitable donation, and Transfers from such a trust where there is no Consideration.

(vii) Exchanges of parcels of real property where one of the parties to the exchange is Declarant.

(viii) Any Transfer by Declarant whereby Declarant retains a minimum of fifty percent (50%) equity interest in the transferee.

(ix) Any Transfer made by Declarant, pursuant to a reorganization, merger, liquidation or consolidation of corporations, partnerships, limited liability companies or other entities, wherein all or substantially all of Declarant's real property located within the Common Interest Community is transferred or any Transfer made by Declarant to any member of Declarant as a distribution in kind.

(m) Notwithstanding the exemption provisions set forth above, if an artifice or device is employed in connection with a Transfer, such Transfer shall nevertheless be subject to the Real Estate Transfer Assessment.

(n) In the event of any Transfer claimed to be exempt from the Real Estate Transfer Assessment imposed by this Declaration, the transferor or transferee may deliver to the Association an Application for Exemption, together with such information as the applicant may deem appropriate to demonstrate that the Transfer is exempt, in order to apply for a Certificate of Exemption from the Association. Except as provided below, a Certificate of Exemption shall constitute prima facie evidence of the exemption of a Transfer from the Real Estate Transfer Assessment as set forth in this Declaration. The Association shall have fifteen (15) days within which to grant or deny a Certificate of Exemption, which, if granted, may be affixed to the deed or other instrument of Transfer and Recorded. If the Association does not grant a Certificate of Exemption with respect to such Transfer within such time, the application shall be deemed denied. The burden of proving any exemption shall in all cases be upon the Person claiming the exemption.

ARTICLE 12

EMINENT DOMAIN

12.1 Definition of Taking. The term "taking", as used in this Article 12, shall mean condemnation by eminent domain or sale under threat of condemnation.

12.2 Representation in Condemnation Proceedings of Association Property. In the event of a threatened taking of all or any portion of the Association Property, the Owners hereby appoint the Association and the Declarant for so long as Declarant owns a Lot through such persons as the Executive Board and the Declarant may designate to represent the Association and all of the Owners in connection therewith. The Association and the Declarant shall jointly act with respect to any awards being made in connection with the taking and shall be jointly entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Service of process on the Association and the Declarant shall constitute sufficient notice to all Owners, and service of process on each individual Owner shall not be necessary.

12.3 Award for Association Property. Any awards received by the Association on account of the taking of Association Property shall be paid to the Association. The Association may, in its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Owners as their interests may appear. The rights of an Owner and the Mortgagee of a Lot as to any such distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

12.4 Taking of Lots. If a Lot is acquired by eminent domain or part of a Lot is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Owner for that Lot and its Allocated Interests whether or not any Association Property was acquired. Upon acquisition, unless the decree otherwise provides, that Lot's Allocated Interests are automatically reallocated to the remaining Lots (as appropriate) in proportion to the respective Allocated Interests of those Lots before the taking. Any remnant of a Lot remaining after part of a Lot is taken is thereafter Association Property. Otherwise, if part of a Lot is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Lot and its interest in the Association Property whether or not any Association Property was acquired. Upon acquisition, unless the decree otherwise provides:

(a) That Lot's Allocated Interests are reduced in proportion to the reduction in the size of the Lot; and

(b) The portion of Allocated Interests divested from the partially acquired Lot is automatically reallocated to that Lot and to the remaining Lots (as appropriate) in proportion to the respective interests of those Lots before

the taking, with the partially acquired Lot participating in the reallocation on the basis of its reduced Allocated Interests.

12.5 Miscellaneous. The court decree shall be recorded in San Miguel County. The reallocations of Allocated Interests pursuant to this Article shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

ARTICLE 13

GENERAL PROVISIONS

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

13.2 Termination of Common Interest Community. The Common Interest Community may be terminated only by the agreement of (i) Owners to which at least eighty percent (80%) of the votes in the Association are allocated, and (ii) the holders of all First Mortgages on Lots. In the event of such termination, the provisions of Section 38-33.3-218 of the Act shall apply.

13.3 Amendment of Declaration and Plat. This Declaration and the Final Plat may be amended pursuant to Section 38-33.3-217 of the Act. Under the Act, the Declaration may be amended by Declarant in certain defined circumstances, including without limitation (a) when the Declarant is exercising reserved rights under Article 5 hereof, (b) for purposes of correcting clerical, typographical or technical errors, or (c) to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association. The Act also provides that the Declaration may be amended by the Association in certain defined circumstances. Otherwise, and subject always to (i) any provisions of this Declaration requiring the consent of Declarant, and (ii) the provisions of Section 3.44(b) above allowing Owners to amend this Declaration (with the consent of the Association) in certain circumstances (lot line adjustments), this Declaration (including the Plat) may be amended only by the vote or agreement of Owners to which more than fifty percent (50%) of the votes in the Association are allocated. No amendment shall be effective to change, limit, impair, reduce or eliminate any right of Declarant as provided in this Declaration unless such amendment is approved in writing by Declarant.

Furthermore, Section 38-33.3-217(4) of the Act provides that except to the extent expressly permitted or required by other provisions of the Act (*e.g.*, permitted Declarant or Association amendments), no amendment may (i) create or increase special Declarant rights, (ii) increase the number of Lots, or (iii) change the boundaries of any Lot or the Allocated Interests of a Lot in the absence of a vote or agreement of Owners to which at least sixty-seven percent (67%) of the votes in the

Association are allocated, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant.

Further, Section 38-33.3-217(4.5) of the Act provides that except to the extent expressly permitted or required by other provisions of the Act, no amendment may change the uses to which any Lot is restricted in the absence of a vote or agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

No consent of any mortgage or trust deed holder shall be required to accomplish any such amendments.

An amendment to this Declaration shall be in the form of a "First (or Second, etc.) Amendment to Declaration and Plat of Idarado Legacy Subdivision." With the exception of Declarant amendments, amendments to this Declaration shall be duly executed by the President and Secretary of the Association and Recorded in the Office of the Clerk and Recorder of San Miguel County. All amendments to this Declaration shall be indexed in the Grantee's index in the names of the Common Interest Community and the Association, and in the Grantor's index in the name of each Person executing the amendment.

13.4 Compliance; Enforcement. Every Owner and Occupant in the Common Interest Community and every other Person who may be an authorized user of Association Property, shall fully and faithfully observe, abide by, comply with and perform all of the covenants, conditions and restrictions set forth in this Declaration, the Articles, Bylaws, Rules and Regulations, the Idarado Development Plan, and the Design Guidelines and all approvals granted by the Design Review Committee, as the same or any of them may be amended from time to time. With the exception of the enforcement of the provisions of Article 4 (County Enforceable Restrictions), which is specifically addressed in Section 4.3, and in addition to any other rights or remedies that may be provided to any Person under the terms and provisions of this Declaration, Declarant (for so long as it holds any of the rights set forth in Articles 5 and 7 hereof), the Association through its Executive Board, the Design Review Committee as to matters involving (i) Improvements within the Common Interest Community, (ii) the Design Guidelines, or (iii) any other matters arising under Article 5 hereof or with respect to which the Design Review Committee is otherwise expressly given enforcement authority under this Declaration, and every Owner (except an Owner that is delinquent in the payment of Assessments hereunder) shall have the right, acting alone or together with others having such right, to enforce, by any proceeding at law or in equity, any or all of the covenants, conditions, restrictions, assessments, charges, liens, servitudes, easements and other provisions now or hereafter imposed by this Declaration, the Articles, Bylaws, Rules and Regulations, the Idarado Development Plan, the Design Guidelines, and approvals granted by the Design Review Committee. The enforcement authority granted hereunder to the Design Review Committee shall not be considered exclusive, and may also be exercised by the Executive Board.

Such enforcement rights shall include without limitation the right to bring an injunctive action for any form of injunctive relief available under Colorado law (including specific performance), or an action for damages, or both. Injunctive relief may include, without limitation, orders to stop work, orders to remove Improvements constructed in violation hereof, orders to compel performance, and any other orders appropriate under the circumstances.

The Executive Board shall have the further right (a) to levy and collect, after Notice and Hearing, reasonable fines for the violation of any of the foregoing matters, (b) to levy and collect a Reimbursement Assessment against any Owner, (c) to enter upon any Lot within the Common Interest Community, after giving the Owner or Occupant at least five (5) days' written notice of the nature of the violation, (unless an emergency exists, in which case without notice), without liability to the Owner or Occupant thereof, to enforce or cause compliance with such matters, at the cost and expense of the Owner or Occupant in violation, and/or (d) the Executive Board may temporarily cut off any or all Association services or benefits to the subject Owner or Occupant and his Lot, including the right to use Association Property (except access roads), until the violation is cured.

In any action brought under this Section 13.4, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection therewith. Failure by any party entitled to do so to exercise in a particular instance any of the rights available to it under this Section 13.4 shall in no event be deemed a waiver of the right to do so in any other instance.

Provided always, that no Owner shall have the right to bring an enforcement action against another Owner or Occupant for a breach by that Owner or Occupant of any of such matters, or against Declarant, the Association or the Design Review Committee for a breach by Declarant, the Association or the Design Review Committee of any of such matters or for a failure by the Declarant, Association or the Design Review Committee to enforce compliance with such matters by others, until the aggrieved Owner has given the offending Owner or Occupant, or Declarant, the Association and/or the Design Review Committee at least thirty (30) days prior written notice of the aggrieved Owner's complaint and the opportunity to resolve the problem during that thirty (30) day period.

And further provided, that notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of this Declaration, the Bylaws, the Articles of Incorporation, the Colorado Legacy Development Plan, the Design Guidelines, or the Rules and Regulations, or to compel the removal of any building or Improvement because of the violation of the terms of any such building restriction, unless the action is commenced within one year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

13.5 Rights of First Mortgagees. Upon the filing of a written request therefor with the Association, the holder of a First Mortgage on any Lot in the Common Interest Community shall be entitled to:

- (a) Written notice from the Association that the Owner of the subject Lot is delinquent in the payment of Assessments thereon;
- (b) Inspect the books and records of the Association during normal business hours;
- (c) Receive copies of annual Association financial statements;
- (d) Receive written notice of meetings of the Association where matters will be considered that, if approved, will require the consent of First Mortgagees or some of them;
- (e) Receive written notice of condemnation proceedings affecting any Association Property; and
- (f) Receive written notice of the lapse of any insurance that the Association is required to maintain under this Declaration.

In addition, any First Mortgagee shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against Association Property and may pay any overdue premiums on hazard or general liability insurance policies covering Association Property, and shall be entitled to immediate reimbursement therefor from the Association, unless the Association is contesting any unpaid taxes or other charges and has set aside sufficient funds to pay the contested amounts if necessary.

13.6 Notice. Each Owner, and each First Mortgagee if it so elects, shall register its mailing address from time to time with the Association. Except as otherwise specifically provided in this Declaration, any notice permitted or required to be given hereunder shall be in writing and may be delivered either personally, or by facsimile transmission, or by mail. Notices delivered personally or sent by facsimile transmission shall be deemed given on the date so delivered or sent. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been posted in the first-class U.S. Mail with adequate postage affixed, addressed to the receiving party at the address last registered by such party with the Association, or in the case of an Owner that has not provided such an address, to the Lot of that Owner. Notices to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

13.7 No Dedication to Public Use. Except as otherwise expressly provided herein or therein to the contrary, nothing contained in this Declaration or on a Plat shall be deemed to be or to constitute a dedication of all or any part of the Common Interest Community to the public or to any public use.

13.8 Interpretation of Declaration: Conflicts with Act. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a common and general plan for the development, improvement, enhancement, protection and enjoyment of the Common Interest Community, and to the extent possible, shall be construed so as to be consistent with the Act. In the event that any of the terms and conditions of this Declaration are determined to be inconsistent with the Act, the Act shall control. Notwithstanding anything to the contrary in this Declaration, no rights or powers reserved to Declarant hereunder shall exceed the time limitations upon or the permissible extent of such rights or powers under the Act, and in the event any of such reserved rights or powers are determined to be inconsistent with the Act, the related provisions shall not be invalidated but shall be modified to the extent required to comply with the Act.

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

13.10 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration. This provision does not limit the remedies that may be available under this Declaration or at law or in equity. Failure of the Association or other Person to bring enforcement action to correct any violation of this Declaration shall not constitute a waiver of or estop the Association or other Person from bringing a future or subsequent enforcement action to correct such violation or any other similar violation.

13.11 Declarant's Disclaimer of Representations and Warranties. No representations or warranties of any kind, express or implied, have been given or made or shall be deemed to have been given or made by Declarant or its agents or employees in connection with the Common Interest Community or any portion thereof or any Improvements thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use or operation, adequacy or availability of utilities, or in connection with the subdivision, sale, improvement, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing herein, in any registration statement or purchase and sale agreement executed by Declarant, or in any closing document related thereto. Furthermore, no such representations or warranties have been given or made or shall be deemed to have been given or made by Declarant or its agents or employees that the plans presently envisioned for the complete development of the Common Interest Community can or will be carried out, or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration or that any such land (whether or not it is subjected to this Declaration) is or will be committed

to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect, unless and except as shall be specifically set forth in writing herein, in any registration statement or purchase and sale agreement executed by Declarant, or in any closing document related thereto.

13.12 Captions. Captions given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof and shall not be considered in interpreting any of the provisions hereof.

13.13 Singular Includes Plural. Unless the context requires a contrary construction, as employed in this Declaration the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

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

13.15 Costs and Attorneys' Fees. In any action or proceeding involving the interpretation or enforcement of any provision of this Declaration, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith.

13.16 Governing Law; Jurisdiction. The laws of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Declaration. Any legal action brought in connection with this Declaration shall be commenced in the District Court for San Miguel County, Colorado, and by acceptance of a deed to a Lot each Lot Owner voluntarily submits to the jurisdiction of such court.

13.17 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof. Where any provision of this Declaration is alleged to be or declared by a court of competent jurisdiction to be unconscionable, Declarant shall have the right by amendment to this Declaration to replace such provision with a new provision, as similar thereto as practicable but which in Declarant's reasonable opinion would be considered not to be unconscionable.

13.18 Disclaimer Regarding Safety. DECLARANT AND THE ASSOCIATION HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMON INTEREST COMMUNITY. ANY OWNER OR OCCUPANT OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION AND BYLAWS, AND ARE NOT OBLIGATED TO DO ANY

OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMON INTEREST COMMUNITY.

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

IDARADO LEGACY, LLC,
a Colorado limited liability company

By: [Signature]

Its: MANAGER

STATE OF Colorado)
) ss.
COUNTY OF Denver)

The foregoing Declaration was acknowledged before me, this 27th day of May, 2004, by David A. Baker as Manager of Idarado Legacy, LLC, a Colorado limited liability company, Declarant.

WITNESS my hand and official seal.

My commission expires: May 1, 2007

[Signature]
Notary Public

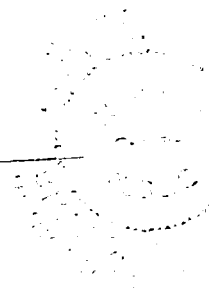


EXHIBIT A

ALLOCATED INTERESTS
IDARADO LEGACY SUBDIVISION

<u>Lot No.</u>	<u>Common Expense Liability</u>	<u>Votes</u>
1	1/37	1
2	1/37	1
3	1/37	1
4	1/37	1
5	1/37	1
6	1/37	1
7	1/37	1
8	1/37	1
9	1/37	1
10	1/37	1
11	1/37	1
12	1/37	1
13	1/37	1
14	1/37	1
15	1/37	1
16	1/37	1
17	1/37	1
18	1/37	1
19	1/37	1
20	1/37	1
21	1/37	1
22	1/37	1
23	1/37	1
24	1/37	1
25	1/37	1
26	1/37	1
27	1/37	1
28	1/37	1
29	1/37	1
30	1/37	1
31	1/37	1
32	1/37	1
33	1/37	1
34	1/37	1
35	1/37	1
36	1/37	1
37	<u>1/37</u>	<u>1</u>
Totals:	37/37	37

EXHIBIT "B"

Those easements and agreements currently of record and those which are to be recorded subsequent to the recordation of this Declaration pursuant to the rights of Declarant hereunder and/or those easements and agreements which are required or necessary and appropriate in furtherance of the Idarado Development Plan Approvals.