

**CONDOMINIUM DECLARATION FOR THE  
SAN JUAN WAREHOUSE CONDOMINIUM BUILDING**

DECLARATION made on the date hereinafter set forth below by BCB Properties, L.L.C., with an address of P. O. Box 835, Telluride, Colorado 81435 (the "Declarant").

NOW, THEREFORE, the Declaration states as follows:

**ARTICLE 1  
SUBMISSION/DEFINED TERMS**

Section 1.01 Submission of Real Estate. The Declarant hereby submits the real estate described in Exhibit A, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the "Property") pursuant to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §§38-33.3-101 et seq., as it may be amended from time to time (the "Act") and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Further, Declarant hereby declares that all of the Property described in Exhibit A shall be held or sold and conveyed subject to this Declaration and the following easements, restrictions, covenants, and conditions contained herein which are for the purposes of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Unit Owner thereof.

Section 1.02 Defined Terms. Each capitalized term in this Declaration or in the Plat (which has been recorded at Reception No. \_\_\_\_\_) shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration.

- (a) *Allocated Interests* means Common Expense Assessment liabilities and votes, which interests are allocated per Unit based upon the square footage of each Unit as a percentage of the square footage of all the Units in the Common Interest Community, as limited or modified by specific allocations contained herein.
- (b) *Association* means the San Juan Warehouse Condominium Building Association.
- (c) *Commercial Unit* means any one of the Units designated as Commercial in Exhibit B, subject to Declarant's or the successor to the Declarant's right to re-designate the type of use allowed. Units which are designated as Commercial shall not be limited to uses of only a commercial nature; but rather, commercial, retail, office, residential and other uses shall be permitted within Commercial Units, to the extent permitted by local

zoning and approved pursuant to the rules, regulations, covenants and restrictions applicable to the Town of Telluride, San Miguel County, Colorado.

- (d) *Common Elements* shall mean all portions of the Property except the Units. Common Elements may be designated as either General Common Elements or Limited Common Elements.
- (e) *Common Expense Assessments* shall include, in addition to the definition of Common Expense Assessments included in the Act, late charges, attorneys' fees, fines and interest charged by the Association.
- (f) *Common Interest Community* means the Property within the San Juan Warehouse Condominium Building which has been submitted pursuant to the provisions of the Act.
- (g) *Declarant Rights* are those reserved rights of the Declarant enumerated in Article 9 herein.
- (h) *Deed Restricted* or *Affordable Housing* means a Unit with a restricted rent or sale price and occupancy requirement as described in the Telluride Affordable Housing Guidelines, as amended.
- (i) *Executive Board* means the governing body of the Association.
- (j) *General Common Elements* means all portions of the Property except the Units and the Limited Common Elements.
- (k) *Improvements* means finishes, structures and landscaping installed within or upon a Unit.
- (l) *Limited Common Elements* means all portions of the Property except the Units and the General Common Elements which are designated by Declarant for the exclusive use of one or more but fewer than all of the Units.
- (m) *Parking Unit* shall mean an individual air space unit in the Property for permitted vehicle parking use, as more particularly described herein, and as shown on the Plat by an initial letter "P" following by an identifying number. Any Owner of a Parking Unit may grant licenses for the use of such Parking Unit to any other Member of the Association.
- (n) *Person with a Disability* means and includes any person with a "handicap," as defined under the Federal Fair Housing Act and the regulations adopted by the federal government in connection therewith, as such statute and regulations may be amended from time to time.

- (o) *Residential Units* means any of the Units designated as Residential in Exhibit B, subject to Declarant's right to subdivide Unit A into two Residential Units and the right of the Owner of Unit C to subdivide that Unit into two Residential Units.
- (p) *Unit* means a physical portion of the Common Interest Community, designated for separate ownership, shown as a Unit on the Plat for the Common Interest Community, described in Exhibit B and the boundaries of which are defined in Article 4 of this Declaration.
- (q) *Unit Owner* means the Declarant or any other person or entity which owns a Unit.

**ARTICLE 2**  
**NAMES/DESCRIPTION OF PROPERTY**

Section 2.01 Name and Type.

- (a) *Common Interest Community.* The name of the Common Interest Community is "San Juan Warehouse Condominium Building."
- (b) *Association.* The name of the homeowners' association is "San Juan Warehouse Commercial Condominium Association, Inc." ("Association").

Section 2.02 Property. The Common Interest Community is located in the Town of Telluride, San Miguel County, State of Colorado. The Property of the Common Interest Community is described in Exhibit A.

Section 2.03 Recording Data. All easements and licenses to which the Common Interest Community is presently subject are recited in Exhibit A. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to this Declaration, or granted by authority reserved in any recorded document.

Section 2.04 Utility Easements. Easements for utilities over and across the General Common Elements shall be those shown upon the Plat of the Common Interest Community, and such other easements as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.05 Easements for the Executive Board. Each Unit shall be subject to an easement in favor of the Executive Board (including its agents, employees and contractors) to perform its obligations pursuant to this Declaration.

Section 2.06 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter serving the Common Interest Community, to enter upon any part of the Common Interest Community in the performance of their duties.

### ARTICLE 3 THE ASSOCIATION

Section 3.01 General Purposes and Powers. The Association, through its Executive Board, shall perform functions and manage the Common Interest Community as provided in this Declaration so as to further the interests of the residents, commercial and retail occupants, tenants and guests of the Common Interest Community and members of the Association. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.02 Authority. The business affairs of the Common Interest Community shall be managed by the Association. The Association shall be governed by its bylaws, as amended from time to time. The Executive Board, may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility.

#### Section 3.03 Specific Powers.

- (a) The Association shall have the powers, authority and duties as follows and as necessary and proper to manage the business and affairs of the Common Interest Community.
- (b) The Association shall have all of the powers, authority and duties permitted or set forth in Section 388-33.3 - 302 of the Act.
- (c) The Association shall the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of the Unit Owners of Units to which at least seventy percent (70%) of the votes in the Association are allocated at a meeting called for that purpose.

Section 3.04 Membership/Voting. Every person who is a record Unit Owner of a fee interest in any Unit which is subject to this Declaration shall be a Member of the Association, including contract sellers. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of such Unit shall be the sole qualification for such membership. There shall be one vote per Unit. Where more than one person holds an interest in any Unit, one person shall be designated a member and shall thereby be entitled to act on behalf of and bind the owners of that particular Unit. Any Unit owner may authorize a party to act or vote for that Unit owner by use of a

written signed and dated proxy. Voting shall be allocated on the basis of square footage of each Unit as a fraction or percentage of the square footage of all Units in the Common Interest Community.

Section 3.05 Directors. The affairs of the Common Interest Community and the Association shall be governed by an Executive Board which shall consist of four Directors, all of who shall be Unit Owners. The Members owning Commercial Units shall elect one Director; the Members owning Residential Units A and C shall elect one Director; and the Unit Owners at large shall elect two Directors.

Section 3.06 Association Agreements. Any agreement for professional management of the Common Interest Community or any contract providing for services of the Declarant may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty days' written notice; provided, however, the Association shall be not bound either directly or indirectly to contracts or leases (including management contracts) entered into during the period of Declarant Control unless the Association is provided with a right of termination of any such contract or lease without case, which is exercisable without penalty at any time after the end of the period of Declarant Control upon not more than thirty (30) days' notice to the other party thereto.

Section 3.07 Indemnification. To the full extent permitted by law, each officer and director of the Association shall be and hereby indemnified by the Unit Owners and the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not they are an officer or director of the Association at the time such expenses are incurred; except in such cases wherein such officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. In the event of a settlement the indemnification shall apply only when the Executive Board approves such a settlement and reimbursement as being for the best interests of the Association.

#### **ARTICLE 4**

### **UNITS, GENERAL COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

Section 4.01 Number of Units. The number of Units in The San Juan Warehouse Condominium Building is seven (7), of which three (3) are Commercial Units and four (4) are Residential Units. The San Juan Warehouse Condominium Building also includes four (4) non-voting Parking Units of one parking space each. ✓

Section 4.02 Identification of Units/Units Descriptions. The identification number of each Unit is shown on the Plat and Exhibit B of this Declaration. Every contract for sale, deed, lease, Security Interest, will or other legal instrument shall legally describe a Unit by its identifying Unit number followed by the words:

Condominium Unit \_\_\_\_\_, The San Juan Warehouse Condominium Building, in accordance with the recorded Declaration and Plat Map, San Miguel County, Colorado.

The reference to the Declaration and Plat in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration or Plat, without specific references thereto.

Section 4.03 Unit Boundaries. Unit Owners are responsible for the maintenance, repair and replacement of the properties located within their Unit boundaries, except as provided in this Declaration. The following are designated as boundaries of each Unit, as defined below and as depicted on the Plat.

- (a) *Upper Boundaries*. The horizontal plane of the unfinished lower surface of the suspended ceilings, extended to an intersection with the vertical perimeter boundaries. Space above suspended ceilings, to which access is needed for repair and maintenance of the units and Common Elements above the Unit, is a Limited Common Element to the Unit.
- (b) *Lower Boundaries*. The horizontal plane of the undecorated or unfinished upper surface of the floors extended to an intersection with the vertical perimeter boundaries.
- (c) *Vertical Perimeter Boundaries*. The planes defined by the surface of the studs and framing, or the surfaces of the walls, if not built with studs and framing, of all perimeter walls between adjoining Units, including perimeter walls of areas depicted on the Plat as a deck or patio area of a Unit, the unfinished dinner surfaces of poured concrete or other exterior walls, the outside unfinished surfaces of corridor walls, the exterior unfinished surface of corridor doors to Common Elements, the interior surface of closed exterior windows and doors and the vertical planes indicated by lines in common corridors as shown on the plat.
- (d) *Inclusions*. Each Unit includes the spaces and improvements lying within the boundaries described above, as depicted on the Plat. Each Unit also includes the spaces and improvements within the spaces containing water-heating facilities, all electrical switches, wiring, pipes, ducts, conduits, smoke detector or security systems and communications, television, telephone and electrical receptacles and boxes serving that Unit exclusively, the surface of these items being the boundaries of that Unit, whether or not the spaces are contiguous.
- (e) *Exclusions*. Except when specifically included by other portions of this Declaration or by the Plat, the following are excluded from each Unit: the spaces and improvements lying outside the boundaries described above,

air conditions and heating systems, thresholds, exterior lighting and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and other service to other Units and the Common Elements.

- (f) *Noncontiguous Portions.* Certain Units may include special portions or pieces of equipment, such as air conditioning compressors, meter boxes, utility connection structures, air or gas pump and storage facilities and storage portions, which are situated in buildings or structures that are detached from the Unit. Such special equipment or storage portions are a part of the Unit, notwithstanding their non-contiguity with the principal portions.
- (g) *Parking Unit Boundaries.* Each Parking Unit shall consist of the volumes of cubicles of space which are enclosed by the lower, upper and lateral or perimetrical boundaries described as follows:
- (i) *Underground Upper and Lower Boundaries.* The lower boundaries of the Parking Units are horizontal planes, the elevation of which coincides with the elevation of the upper surface of the concrete floor of the San Juan Warehouse Condominiums Building extended to intersect the lateral or perimetrical boundaries thereof. The upper boundaries of the Parking Units are horizontal planes, the elevation of which coincides with the lower surface of the exposed ceiling separating the building garage from the building, extended to intersect the lateral or perimetrical boundaries thereof.
- (ii) *Lateral or Perimetrical Boundaries.* The lateral or perimetrical boundaries of the Parking Units are (a) imaginary vertical planes of the center lines of the painted lines denoting and separating the Parking Units, and (b) imaginary vertical planes intersecting the two imaginary vertical planes noted in paragraph (i) above, and denoting the entrance to and the width of each Parking Unit, and (c) the vertical planes which coincide with the unfinished inside surfaces of the perimeter walls of the San Juan Warehouse Condominium Building area for those Parking Units which front against the inside surface of said perimeter walls or the vertical planes which coincide with any railing or concrete step or centerline of a painted line for those Parking Units which front against any such items, said vertical planes extended to intersect the upper and lower boundaries of the Parking Unit and to intersect the other lateral or perimetrical boundaries thereof.
- (iii) *Property Rights Included in Such Boundaries.* Every such description includes and describes the entire Parking Unit,

including its appurtenant fractional, undivided interest in and to the Common Elements, a non-exclusive easement for ingress and egress between the Parking Unit and the public way, exclusive or semi-exclusive use of any and all of its Common Elements, and all the other rights, easements, obligations, limitations, covenants and restrictions included in the definition of such Parking Unit as provided in this Declaration.

Section 4.04 General Common Elements and Limited Common Elements.

- (a) The General Common Elements of the Property are described in Exhibit C and are illustrated on the Plat. Portions of the General Common Elements may be re-designated as Limited Common Elements, and portions of Units may become General Common Elements or Limited Common Elements with the consent of 100% of the Unit Owners.
- (b) A reasonable area around the principal corridor doors and on each side of the door shall be a Limited Common Element appurtenant to the Commercial Units to which access is provided, for the purpose of special decorative or signage elements, constructed in accordance with any applicable municipal ordinance and with the consent of the Executive Board.

Section 4.05 Unit Owners' Easements of Enjoyment.

- (a) The right of the Association to promulgate and publish rules and regulations with which each Unit Owner and their guests shall strictly comply.
- (b) The rights of the Association to suspend the voting rights and rights to use the General Common Elements by a Unit Owner for any period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (c) The right, power and authority of the Association to grant any easement, right of way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the General Common Elements, to the extent permitted by the Act, if the grant is approved by the affirmative vote of Unit Owners having seventy percent (70%) of the votes appurtenant to all Units, and consented to, in writing, by the holders of first lien Security Interests in the Units whose Unit Owners vote affirmatively; provided, further, that if the grant affects any Limited Common Element, such grant shall also require the express written consent of all Unit Owners having the right to use such Limited Common Element and of all holders of first lien Security Interests in the Units to which such Limited Common Element is appurtenant; provided, further that the granting of easements



for public utilities or for other public purposes consistent with the intended use of such General Common Elements shall not be deemed a transfer within the meaning of this clause. Any easement, right of way, license or similar interest granted by the Association pursuant to this Section shall state that the grant was approved (a) by Unit Owners having at least seventy percent (70%) of the votes, and by the corresponding holders of first lien Security Interests, (b) if appropriate, by all Unit Owners having the right to use any Limited Common Element affected by the grant, and by the corresponding holder of first lien Security Interests. Such grant procedure may be used for the purpose (among other things) of permitting reasonable modification of the General Common Elements to be made by or at the request of, and at the expense of, a Unit Owner, if such modifications are necessary under the Federal Fair Housing Act (as heretofore and hereafter amended) or otherwise appropriate to afford to one or more Persons With a Disability, residing at or intending to reside at the Unit, the full enjoyment of such Unit, the Limited Common Elements, appurtenant to such Unit and/or the General Common Elements.

- (d) The right of the Association to close or limit the use of the General Common Elements and Limited Common Elements while maintaining, repairing and making replacements in the General Common Elements and the Limited Common Elements and Units.
- (e) Any rights of the Declarant reserved in this Declaration/

Section 4.06 Delegation of Use. Any Unit Owner may delegate his right of enjoyment to the General Common Elements and facilities to the members of his family, his tenants, guests, or contract purchasers who reside at the Unit.

Section 4.07 Title to the General Common Elements. The Declarant hereby covenants that it will convey to the Association fee simple title to the General Common Elements prior to the conveyance of the first Unit within the Common Interest Community to a Unit Owner other than Declarant and may not convey any right thereto to any other party.

## ARTICLE 5 MAINTENANCE, REPAIR AND REPLACEMENT

Section 5.01 General Common Elements. The Association shall be responsible for the maintenance, repair and replacement of any General Common Elements.

Section 5.02 Limited Common Elements. In the event a Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, those Common Expenses may be assessed against the Units to which the Limited Common Element is assigned as herein provided.

Section 5.03 Units and Parking Units. Unit and Parking Unit Owners shall be responsible for the maintenance, repair or replacement of their Unit and/or Parking Unit and the properties located within the boundaries of their Unit and/or Parking Unit. For purposes of performing exterior maintenance and other duties of the Association, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Unit and/or Parking Unit Owner thereof, to enter upon any Unit and/or Parking Unit at reasonable hours.

## **ARTICLE 6 ALLOCATED INTERESTS**

Section 6.01 Allocated Interests. The Common Expense liability and votes in the Association allocated to each Unit are set forth in Exhibit B.

Section 6.02 Determination of Allocated Interests. Except as specifically provided in Section 7.08 and as initially provided on Exhibit B hereto, the interests allocated to each Unit have been calculated as follows:

- (a) *Percentage of Liability for Common Expenses.*
  - (i) On the basis of square footage of each Commercial Unit as a fraction or percentage of the square footage of all Units in the Common Interest Community;
  - (ii) On the basis of square footage of each Residential Unit as a fraction or percentage of the square footage of all Units in the Common Interest Community; and
  - (iii) As to structural repair and maintenance and insurance coverage, on the basis of square footage of each Parking Unit as a fraction or percentage of the square footage of all Units in the Common Interest Community, but as to mechanical items and utilities, Parking Units shall have no liability for Common Expenses.

Section 6.03 Reallocation. If and when Unit A and/or Unit C are subdivided, the formulas set forth above shall be used to reallocate the Allocated Interests.

## **ARTICLE 7 COVENANT FOR COMMON EXPENSE ASSESSMENTS**

Section 7.01 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments. Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance assessments (assessed in proportion to risk), utility assessments (assessed in

proportion to usage) and such other assessments as imposed by the Association. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall also be the personal obligation of the Unit Owner of such Unit at the time when the assessment or other charges became or fell due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by such successor. No Unit Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the General Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason, including without limitation any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration.

The Association annual Common Expense Assessments, insurance assessments (assessed per square foot adjusted for risk as specified by the insurance carrier), utility assessments (assessed in proportion to usage) and such other assessments as imposed by the Association, including fees, charges, late charges, attorneys' fees, fines and interest charged by the Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such assessment or charge is made. If a Common Expense Assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

Section 7.02 Purpose of Assessments. The assessments levied by the Association through its Executive Board shall be used exclusively for the purposes of promoting the health, safety and welfare of the residents and guests of the Common Interest Community and the members of the Association. Such purposes shall include but shall not be limited to the following: the improvement, maintenance, repair, upkeep and reconstruction of the General Common Elements, and for the painting, landscape care and snow removal and any other maintenance obligations which may be deemed desirable for the common benefit of the Unit Owners or for the maintenance obligations which may be deemed desirable for the common benefit of the Unit Owners or for the maintenance of property values, or for the payment of expenses which may be incurred by virtue of agreement with or requirement of San Miguel County or other governmental or quasi-governmental authorities. The assessments may also be used to provide insurance of various types and in such amounts deemed appropriate by the Executive Board. Also, a portion of the assessments may be used to provide a reserve fund for the replacement, repair, and maintenance of General Common Elements of the Property which must be replaced on a periodic basis.

Section 7.03 Annual Assessment/Commencement of Common Expense Assessments. The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year, except that the Common Expense Assessments during such assessment year, except that the Common Expense Assessments for Unit E and Unit J,

which are affordable housing units, shall be limited by the terms and conditions of the Town of Telluride Land Use Code §3-780. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Executive Board. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs. The omission or failure of the Executive Board to levy the Assessment for any period shall be not deemed a waiver, modification or release of the Unit Owners from their obligation to pay.

Section 7.04 Effect of Nonpayment of Assessments. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Executive Board, shall bear interest at the rate of eighteen percent (18%) per annum from the due date, and the Association may assess a reasonable late charge thereon as determined by the Executive Board. Any provision of this Section 7.04 notwithstanding, the Common Expense Assessments for Unit E and Unit J, which are affordable housing units, shall be limited by the terms and conditions of the Town of Telluride Land Use Code §3-780. Failure to make payment within sixty days (60 days) of the due date thereof shall cause the total amount of such Unit Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Association against a Unit Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. If such action at law or equity is commenced, or if the Association in any way consults with legal counsel concerning payment of assessment, charge or fee and Unit Owner desires to pay the levied assessment, charge or fee, such Unit Owner will be required to pay all attorneys' fees incurred by Association in obtaining payment of levied assessment, charge or fee. Foreclosure and attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment Lien, and a Unit Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Unit Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 7.05 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien Security Interest on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for Property taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or material men's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under State or Federal law. Sale or transfer of any Unit shall not affect the lien for said assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by applicable State law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, not cancellation or forfeiture shall relieve any Unit from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 7.06 Working Fund. The Association or Declarant may require the first Unit Owner of each Unit (other than Declarant) to make a non-refundable Payment to the Association in an amount equal to one-fourth (1/4) of the annual Common Expense Assessment against that Unit in effect at the closing thereof, which sum shall be held without interest, by the Association as a working fund. Said working fund shall be collected and transferred to the Association at the time of closing of the sale of Declarant of each Unit, as aforesaid, and shall be maintained for the use and benefit of the Association. Such payment shall not relieve a Unit Owner from making regular payments of assessments as the same become due. Upon the transfer of his Unit, a Unit Owner shall be entitled to a credit from his transferee for any unused portion of the aforesaid working fund. This account may be updated annually as of December 31<sup>st</sup>, and notice shall be given to all Unit Owners whose individual account does not equal one-fourth (1/4) of the current annual assessment. Payment of any shortage shall be due with the next regular assessment payment, following written notice.

Section 7.07 Common Expenses Attributable to Fewer than all Units.

- (a) Any Common Expense associated with the maintenance, repair or replacement of components and elements attached to or a part of a Unit or Units or to a Unit or Units to which a Limited Common Element is assigned should be assessed against that or those Units. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element should be assessed equally among the Units to which it is assigned.
- (b) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed exclusively against the Unit.

- (c) An assessment to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense liabilities.
- (d) If a Common Expense is caused by the negligence or misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit.
- (e) Fees, charges, taxes, impositions, late charges, fines, attorneys' fees, collection costs and interest charged against a Unit Owner pursuant to this Section are enforceable as Common Expense assessments.

Section 7.08 Common Expenses. Subject to the terms contained in this Section 7.08 and also subject to change pursuant to the terms of this Declaration, the Common Expenses shall be allocated as follows:

Maintenance Area	Type	Allocation of Expense
Garage space	Four (4) parking spaces	50% among G, H, F1; 25% A; 25% C
Corridor on North	L.C.E. for Units A & C	Per square foot
Heat melt on Pine	G.C.E.	75% F1; 25% Association
Handicap corridor	L.C.E.	50% G&H; 50%F1
Mechanical room	G.C.E.	Individual condo; each has own boiler, water and electric
Alarm with two telephones	G.C.E.	Per square foot
Roof and exterior walls	G.C.E.	Per square foot
Trash and recycling	G.C.E.	10% A, C, E, & J per square foot; 45% G&H; 45%F1
Elevator	L.C.E.	50% G & H; 50% F1
Heat in gutters	G.C.E.	Per square foot
Insurance	HOA expense	Per square foot, adjusted for risk
Maintenance of exterior	HOA expense	Per square foot
Taxes	HOA expense until condominiumized	Each condo billed separately
Professional fees; accounting, legal	HOA expense	Per square foot

## ARTICLE 8 RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Subject to the rights reserved by the Declarant in this Declaration, the following use restrictions apply to all Units and to the Common Elements:

Section 8.01 Use/Occupancy. No Unit within the Common Interest Community shall be used for any purpose other than as allowed by the local zoning codes

and the rules, regulations, covenants, restrictions and conditions applicable to the Town of Telluride, County of San Miguel, State of Colorado. No Unit shall be occupied for business, living or sleeping purposes by more persons than the Unit was designed to safely accommodate. For purposes of the foregoing occupancy restriction, each Residential Unit deemed to have been designed to safely accommodate two (2) persons per bedroom. No Improvements located upon a Unit shall be occupied in any manner at any time prior to being fully completed in accordance with approved plans nor shall any Improvements, when completed, be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions herein set forth. Residential Units shall not be used for any purpose other than a residential dwelling or a manager's unit, and commercial and business uses are strictly prohibited.

Section 8.02 Units to be Maintained. Each Unit at all times shall be kept in a clean, sightly and wholesome condition. No trash, litter, junk boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Unit so that the same are visible from any neighboring Unit, or any street, except as necessary during a period of construction. Declarant, its agents and assigns and the Association, and its agents, shall have the authority to enter and clean up Units which do not conform to the provisions of this Section 8.02, and to charge and collect from the Unit Owners thereof all reasonable costs related thereto.

Section 8.03 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its employees and agents, to perform such reasonable activities, and to maintain upon portions of the Common Interest Community such facilities as they deem reasonably necessary or incidental to the construction and sale of Units in the development of the Common Interest Community, specifically including without limiting the generality of the foregoing the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices and lighting facilities.

Section 8.04 Restrictions on Animals and Pets. No animals, livestock, poultry or insects, of any kind, shall be raised, bred, kept or boarded within a Unit; provided however, that with the prior written approval of the Executive Board, Unit Owners may keep a reasonable number of dogs, cats, fish or other domestic animals which are bona fide household pets, so long as such pets are not kept for breeding purposes and are not kept in such number or in such manner as to create a nuisance to any Unit Owner. The Executive Board shall have, and is hereby given the exclusive right and authority to reasonably determine that dogs, cats, or other household pets are being kept for breeding purposes or are being kept in such a number or in such manner as to be unreasonable or to create a nuisance to any Unit Owner, or that a Unit Owner is otherwise in violation of the provisions of this Section, and to take such action or actions as it deems reasonably necessary to correct the same. A Unit Owner's right to keep household pets shall be coupled with the responsibility to pay for all damage caused by such pets.

*base -*  
*dog rule*

Section 8.05 Nuisances. Nuisance is defined as any activity which poses an unreasonable risk of harm to other Unit Owners or which constitutes a substantial invasion of any Unit Owner's use and enjoyment of a Unit. No Nuisance shall be permitted within the Common Interest Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Unit Owner or which may reasonably interfere with the peaceful enjoyment or possession of the proper use of a Unit, Common Element, or any other portion of the Common Interest Community by Unit Owners. Further, no immoral, improper, offensive or unlawful use shall be permitted within the Common Interest Community or any portion thereof. All valid laws, ordinances and regulations of all governmental and quasi-governmental bodies having jurisdiction over the Common Interest Community or a portion thereof shall be observed. As used herein, the term nuisance shall not include any activities of Declarant which are reasonably necessary to the development and construction of Improvements within this Common Interest Community; provided, however, that such activities of the Declarant shall not unreasonably interfere with any Unit Owner's use and enjoyment of his Unit, or any Unit Owner's ingress and egress to or from their Unit and a public way. Each Unit Owner, by purchasing a Unit, acknowledges and accepts the existence of a brew pub and restaurant and a health food market within the Common Interest Community. The normal and reasonable use of the Units for their intended use shall not constitute a nuisance provided that the following conditions are met: (i) the exhaust fan on the roof of Unit G (brew pub/restaurant) is kept in good operating condition and high level of maintenance, so that it does not produce any vibration or offensive noise, or produce any additional odors than it does on the date hereof, clad in sound-deadening material or devices and a three-sided enclosure that will focus the exhaust flow 180 degrees away from Units A and C and toward San Juan Street; and (ii) no recorded or live music will be played in any Commercial Unit at a level that can be heard in Unit A or C, when the windows and doors of Units A and C are closed, and no music at all will be played after 11:00 p.m., and in no event at a decibel level higher than that which is permitted by the Town of Telluride's noise ordinance. Declarant shall enforce all terms of the lease between BCB Properties, L.L.C. and Portal One Corporation, particularly paragraphs 5, 9, and 23 contained therein. Declarant shall as well enforce all terms of the lease between BCB Properties, L.L.C. and Magic Market, L.L.C., at the sole expense of BCB Properties, L.L.C. or its successor.

Section 8.06 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Common Interest Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Common Interest Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spotlights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Common Interest Community except with the prior written approval of the Executive Board. This Section 8.06 shall be subject to the provisions of Section 8.05 above.



Section 8.07 No Hazardous Activities. No activity shall be conducted on any portion of the Common Interest Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Common Interest Community, and no open fires shall be lighted or permitted on any portion of the Common Interest Community except in a contained grill unit while attended and in use for cooking purposes or within a fireplace designed to prevent the dispersal of burning embers.

Section 8.08 Compliance with Insurance Requirements. Except as may be approved in writing by the Executive Board, nothing shall be done or kept on the Common Interest Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 8.09 No Unsightliness. All unsightly conditions, trash collection facilities, structures, other facilities, equipment, objects and conditions shall be enclosed within an approved structure, except when actually in use. Also all service areas for hanging, drying or airing of clothing shall be kept within approved structures.

Section 8.10 Utilities. All electric, television, radio and telephone line installation and connections shall be placed underground or otherwise concealed. All types of refrigerating, cooling or heating apparatus must be concealed.

Section 8.11 Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display or any kind shall be erected or maintained anywhere within the Common Interest Community except such signs or signs as may be approved in writing by the Executive Board. One sign advertising a Unit for sale or for lease may be placed upon such Unit; and reasonable signage may be placed upon Commercial Units; provided, however, that standards relating to dimensions, color, style and location of such sign shall be determined from time to time by the Executive Board and shall comply with local sign codes and with all other applicable statutes, ordinances and regulations.

Section 8.12 Restrictions on Loads. No Owner of a Unit may place a load on any floor which exceeds the floor load for which the floor was designed to support. No Owners of a Unit shall install, operate or maintain any item of heavy equipment or other installation, except in a manner designed to achieve a proper distribution of weight.

Section 8.13 Lease of a Unit. Any Unit Owner shall have the right to lease their Unit upon such terms and conditions, as the Unit Owner may deem advisable, subject to the following:

- (a) Short-term rentals (of less than three months) of Residential Units to overnight and short-term guests shall be subject to reasonable regulations and restrictions of the Association.

- (b) Any long-term lease or rental agreement (of over three months) shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association, and Articles of Incorporation and the rules and regulations of the Association.
- (c) All short- and long-term leases and rental agreements of Residential Units shall state the failure of the tenant or renter or guest to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the rules and regulations of the Association shall constitute a default of the lease or rental agreement and this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.
- (d) All occupancies of guests of Residential Units shall be subject to the right of the Association to evict the guest for failure to comply with the terms of the Declaration or Bylaws of the Association, the Articles of Incorporation or the rules and regulations of the Association.

Section 8.14 No Restrictions on Mortgaging of a Unit. There are no restrictions whatsoever on the right of the Unit Owners to mortgage or otherwise encumber their Unit.

Section 8.15 No Times Shares. A Unit may not be conveyed pursuant to a timesharing arrangement described in Sections 38-33-110 to 113, Colorado Revised Statutes without the written consent of Declarant for ten (10) years from the date of recording of this Declaration, and thereafter, without the consent of the Association.

Section 8.16 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, rules and regulations concerning and governing the Common Interest Community or any portion thereof may be adopted, amended, or repealed, from time to time, by the Executive Board, or its successors and assigns. The Executive Board may establish and enforce penalties for the infraction thereof.

Section 8.17 Subdivision of Unit C. Unit C shall have or retain the same rights to be subdivided into two (2) Residential Units, which subdivision shall not alter any Unit Owner's allocated interest as currently set forth in Exhibit B, except for Unit C's allocation and which subdivision shall be subject to a majority vote of the Association.

## ARTICLE 9 DECLARANT RIGHTS

Section 9.01 Limitation on Declarant Rights. Notwithstanding anything to the contrary in this Article 9, Declarant shall not exercise any of its rights in such a manner as to infringe upon the view of the Unit Owners of Unit A and Unit C or substantially impair the use and enjoyment by the Unit Owners of such Units.

Section 9.02 Declarant Rights. The Declarant reserves, through such maximum period allowed by law, but not to exceed twenty (20) years, the following Declarant rights:

(a) The right to subdivide Unit A into two (2) Residential Units, which subdivision shall not alter any Unit Owner's allocated interest as currently set forth in Exhibit B, except for Unit A's allocation, and which subdivision shall be subject to a majority vote of the Association; and

(b) The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under this Declaration and exercising any Declarant right.

## **ARTICLE 10 ARCHITECTURAL APPROVAL/DESIGN REVIEW**

Section 10.01 Required Approvals and Design Criteria. No Improvement to the interior of a Unit or any structure or any attachment to the exterior of the buildings or to any existing structure, shall be constructed, erected, placed or installed within the Common Interest Community, as well as such other materials and information as may be required by the Executive Board, shall have been first submitted to and approved in writing by the Executive Board. Concurrently with the request for approval submission to the Executive Board, the applicant shall notify all Unit Owners of such request and such Unit Owners shall be afforded a reasonable opportunity to appear before the Executive Board. However, the Executive Board shall not refuse to permit a Unit Owner to make reasonable modifications to their Unit or to any Limited Common Element which the Unit Owner has the right to use, if such modifications are necessary under the Federal Fair Housing Act (as heretofore and hereafter amended) to afford or more Persons With a Disability residing at or intending to reside at such Unit the full enjoyment of such Unit and/or the Common Elements appurtenant thereto. The Executive Board shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to Units or Common Elements, and within this Common Interest Community shall comply with the requirements set forth herein. The approval of consent of the Executive Committee on matters properly coming before it and actions taken shall not be arbitrary or capricious; decisions shall be conclusive and binding on all interested parties. Approval shall be based upon but not limited to conformity and harmony of exterior appearance of structures with neighboring structures, preservation of aesthetic beauty, and conformity with the plan specifications and submittal, the Executive Board may require that the applicant(s) reimburse the committee for actual expense incurred by it in its review and approval process.

Section 10.02 Reply and Communication. The Executive Board shall reply to all submittal of plans made in accordance herewith in writing within sixty (60) days of receipt. Where prior written consent or approval of the Executive Board is required under this Declaration with respect to the making of an Improvement, such

Improvements shall be conclusively deemed to have been made in compliance with this Declaration unless a notice of intention to commence legal action challenging and objection thereto is issued by the Executive Board within a reasonable period of time after completion of such Improvement. All communications and submittals shall be addressed to the Executive Board at such address as contained in the Bylaws for the Association.

Section 10.03 Variances. The Executive Board may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in the development guide. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Units or Common Elements nor deviate from the general intent and purpose of the Declaration.

Section 10.04 Waivers. The approval or consent of the Executive Board, or appointed representative thereof, to any application for design approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the committee as to any application or other matters subsequently or additionally submitted for approval or consent pursuant to the Declaration.

Section 10.05 Liability. The Executive Board, as well as any representative of a committee designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants.

Section 10.06 Records. The Executive Board shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day.

Section 10.07 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Executive Board and any interested Unit Owner shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this section, the Executive Board shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Executive Board or of any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**ARTICLE 11**  
**INSURANCE/CONDEMNATION**

Section 11.01 Insurance Carried. The Association shall obtain and maintain, in full force and effect at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Association shall maintain, to the extent reasonably available, policies with the following terms or provisions.

- (a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Unit Owner and shall provide that such policies may not be canceled or modified without at least twenty (20) days' prior written notice to all of the Unit Owners, holders of first lien Security Interests and the Association.
- (b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien Security Interests at least ten (10) days prior to expiration of the then-current policies.
- (c) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, the officers of the Association, the Declarant, holders of first lien Security Interests, their successors and assigns and Unit Owners as insureds.
- (d) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal form from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement values of the Units and the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full insurable replacement cost.
- (e) The Executive Board shall receive an initial assessment and allocation of risk from a casualty insurance underwriter to which all Unit Owners shall be bound. The allocation of risk shall be reviewed on an annual basis by the casualty insurance underwriter. Any tenant of the Commercial Units or the Owners of such Commercial Units shall carry insurance which is no less than the level recommended by the casualty insurance underwriter.

- (f) Unit Owners may carry other insurance for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by Unit Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if a Unit Owner has other insurance that covers the same loss or losses as covered by policies of the Association. In this regard, Declarant discloses that the Association's insurance coverage, as specified hereunder and under the Act, does not obviate the need for Unit Owners to obtain insurance for their own benefit.
- (g) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Unit Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Unit Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Unit Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 11.02 Hazard Insurance on the Units and Common Elements. The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the Units, to the Common Elements and the other property of the Association. The insurance obtained on the Units is not required to include improvements and betterments installed by Unit Owners. If coverage purchased by the Association includes improvements and betterments installed by Unit Owners, the cost thereof shall be assessed to each Unit in proportion to risk. All policies shall contain a standard non-contributory mortgage clause in favor of each holder of first lien Security Interests, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such holders of first lien Security Interests, and their successors and assigns, as their interests may appear of record in the records of the Clerk and Recorder of the County of San Miguel, Colorado. If obtainable, the Association shall also obtain the following and any additional endorsements deemed advisable by the Executive Board:

- (a) An Inflation guard endorsement;
- (b) A Construction Code endorsement;
- (c) A Demolition Cost endorsement;
- (d) A contingent liability from operating of building laws endorsement;
- (e) An increased cost of construction endorsement; and/or
- (f) Any special PUD/Condominium endorsements.

Section 11.03 Liability Insurance. The Association shall obtain adequate comprehensive policy of public liability and property damage liability insurance covering all of the Units and the Common Elements, including structural coverage of the Units, in such limits as the Board may from time to time determine, but not in any amount less than Two Million Dollars (\$2,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Common Interest Community, or the Community has central heating and cooling, there must be in force boiler explosion and machinery coverage insurance providing for not less than Two Million Dollars (\$2,000,000.00) per accident, per location.

Section 11.04 Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustee and employees" shall not include any officer, director, agent or employee of Declarant or any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 11.05 Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 11.06 Officers' and Directors' Personal Liability Insurance. The Association may obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 11.07 Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 11.08 Insurance Premium. Except as assessed in proportion to risk, if permitted under the terms of this Declaration, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual assessments levied by the Association.

Section 11.09 Managing Agent Insurance. The manager or managing agent, if any, shall be insured to the same extent as the Association as herein provided, and as

provided in the Act, for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association.

Section 11.10 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Unit Owners, the Association and the Unit Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 11.11 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 11.12 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any holder of a first lien Security Interest. The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and holders of first lien Security Interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Unit Owners and holders of first lien Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 11.13 Duty to Repair. Any portion of the Common Interest Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

Section 11.14 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Unit Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record, and pursuant to the Act.

Section 11.15 Homeowner's Insurance. Any insurance covering the contents ✓ of the Individual Units shall be the responsibility of the individual Unit Owner.

## **ARTICLE 12 SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS**

Section 12.01 General Provisions. The provisions of this article are for the benefit of holders, insurers, or guarantors of holders of first lien Security Interests recorded within the Common Interest Community. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Association. A holder, insurer or guarantor of a first lien Security Interest



who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a Security Interest, shall be considered an "Eligible Holder." Eligible insurers and guarantors of a first lien Security Interest shall have the same rights as Eligible Holder.

Section 12.02 Special Rights. Eligible Holders shall be entitled to:

- (a) Timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation or the Bylaws, which default is not cured within sixty (60) days after the Association learns of such default;
- (b) Examine the books and records of the Association during normal business hours;
- (c) Receive a copy of financial statements of the Association, including any annual audited financial statement;
- (d) Receive written notice of all meetings of the Executive Board or Members of the Association;
- (e) Designate a representative to attend any such meetings;
- (f) Written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (g) Written notice of abandonment or termination of the Association of the plan contemplated under this Declaration;
- (h) Thirty (30) day's written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation or the Bylaws;
- (i) Thirty (30) day's written prior to the effective date of termination of any agreement for professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Common Interest Community or by an Eligible Holder; and
- (j) Immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or a Unit if the cost of reconstruction exceeds Twenty Thousand Dollars (\$20,000.00) and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed

acquisition with respect to any portion of the Common Elements or any Units.

Section 12.03 Special Approvals. Unless at least seventy percent (70%) of the Eligible Holders of first lien Security Interests (based on one vote for each mortgage owned) of Units in the Association and requisite Unit Owners have given their written approval, neither the Association nor any Member shall:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities or easements for other public purposes consistent with the intended use of such Property by the Association shall not be deemed within the meaning of this provision;
- (b) Change the method of determining the obligations, Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards;
- (c) By act of omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Units, including the architectural design of the exterior appearance of Units, or the upkeep of the Common Elements;
- (d) Fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration;
- (e) Use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed;
- (f) Take action to terminate the legal status of the Common Interest Community after substantial destruction or condemnation occurs;
- (g) Amend any material provision of this Declaration;
- (h) Establish self-management by the Association when professional management has previously been required by the legal documents for the Common Interest Community or by an Eligible Holder.

An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Holder of a first lien Security Interest receives written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not

deliver or post to the requesting party a negative response within thirty (30) days, it shall be deemed to have approved such request.

Section 12.04 Right to Pay Taxes and Insurance Premiums. Any holder of a first lien Security Interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Units, and the holder of a first lien Security Interest making such payments shall be entitled to immediate reimbursement therefor from the Association.

### ARTICLE 13 GENERAL PROVISIONS

Section 13.01 Enforcement. The Association or a Unit Owner of any of the Units may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration by proceedings at law or in equity or both against any persons or persons, either to recover damages for such violation, including reasonable attorneys' fees incurred in enforcing these covenants, or to restrain such violation or attempted violation. Failure of the Association or of any Unit Owner to enforce any covenant or restriction here contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 13.02 Compliance with Federal Fair Housing Act. In order to comply with the requirements of the Federal Fair Housing Act (as heretofore and hereafter amended):

- (a) The Executive Board may, to the extent permitted by law, make reasonable accommodations in the rules and regulations to the extent such accommodations are necessary under the aforesaid Federal Fair Housing Act or otherwise appropriate to afford a Person With a Disability equal opportunity to use and enjoy a Unit, the Limited Common Elements appurtenant thereto, and/or the Common Elements, which accommodations may include waivers and modifications (of such rules and regulations) that are applicable only to a particular Person With A Disability or to a particular category of Persons With A Disability. Unless required by law, (i) the Executive Board need not follow procedural requirements in making such waivers and modifications, and (ii) such waivers and modifications need not be approved by, or be subjected to disapproval by, the members of the Association.
- (b) No rule or regulation of the Common Interest Community shall be interpreted or enforced in such a way as to make unavailable or deny a Unit to any person, or to discriminate against any person in the providing of services or facilities in connection with the sale or rental of a Unit to

such person, because of the familial status of such person, as the term "familial status" is defined under the aforesaid Federal Fair Housing Act.

Section 13.03 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions of this Declaration which can be given effect without the invalid provisions or applications.

Section 13.04 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 13.05 Amendment of Declaration by Declarant. Until the first Unit has been conveyed by Declarant by deed recorded in the office of the County Clerk and Recorder of the County of San Miguel, Colorado, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination. If Declarant shall determine that any amendments to this Declaration shall be necessary in order to make non-material changes, such as the correction of a technical, clerical or typographical error or clarification of a statement, then subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to December 31, 2001. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Unit Owner and holder of a Security Interest. Each deed, Security Interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this section.

Section 13.06 Amendment of Declaration by Unit Owners. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least sixty-seven percent (67%) of the votes in the Association and with the written consent of the Association. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of San Miguel County, State of Colorado, of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 13.07 Amendment Required by Government Mortgage Agencies. Prior to December 31, 2001, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires

to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of San Miguel County, State of Colorado, of a certificate, setting for the amendment or repeal in full.

Section 13.07 Amendment Required by Government Mortgage Agencies. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate on December 31, 2002, or upon conveyance of one hundred percent (100%) of the Residential Units to Unit Owners, whichever occurs first.

Section 13.08 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 13.09 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine, and neuter.

Section 13.10 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 13.11 Notices. Notices of matters affecting San Juan Warehouse Condominium Building may be given to Unit Owners by the Association or other Unit Owners by first-class, regular mail, postage prepaid. Notice shall be deemed given three (3) days following mailing.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized agents this \_\_\_\_\_ day of May, 1999.

DECLARANT: BCB PROPERTIES, L.L.C.

By: Carlisle Connick, Member and Manager

**EXHIBIT A**  
**THE SAN JUAN WAREHOUSE CONDOMINIUM BUILDING**  
**DESCRIPTION OF PROPERTY**

Lot 17, Block 23, Town of Telluride, according to the Plat recorded September 6, 1883 in Plat Book 28 at page 1, San Miguel County, Colorado.

**EXHIBIT B**  
**THE SAN JUAN WAREHOUSE CONDOMINIUM BUILDING**  
**TABLE OF INTERESTS**

<u>Unit Number</u>	<u>Designated Use</u>	<u>Square Footage</u>	<u>Percentage Interest</u>
A	Residential	2742	22.7
C	Residential	1622	13.4
E	Deed Restricted/ Affordable Housing	359	3.0
F1	Commercial	1807	15.0
G	Commercial	2903	24.0
H	Commercial	1870	15.5
J	Deed Restricted/	770	6.4
P1	Parking Unit		n/a
P2	Parking Unit		n/a
P3	Parking Unit		n/a
P4	Parking Unit		n/a

12,073.00

**EXHIBIT C**  
**THE SAN JUAN WAREHOUSE CONDOMINIUM BUILDING**  
**COMMON ELEMENTS**

The Common Elements shall be shown, depicted and located on the Plat Map for The San Juan Warehouse Condominium Building, a common interest community. General Common Elements shall be identified as "G.C.E." and Limited Common Elements shall be identified as "L.C.E."