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Laplata County Clerk

**DECLARATION OF COVENANTS AND RESTRICTIONS
FOR BLACK BEAR TOWNHOMES**

Steve Krueger
11592 CR 250
Durango, CO 81301

DECLARATION OF COVENANTS AND RESTRICTIONS FOR BLACK BEAR TOWNHOMES

This Declaration of Covenants and Restrictions for the Black Bear Townhomes (hereafter the "Declaration") is made as of January 27, 2005, by Merritt Tacoma, LLC, a Maryland Limited Liability Company authorized to do business as a foreign limited liability company in Colorado ("Declarant").

1. RECITALS AND DECLARATION.

1.1 Declarant is the owner of the real property situate in the County of La Plata, State of Colorado, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"). Declarant also has the option to purchase or otherwise may acquire an interest in some or all of the real property situate in the County of La Plata, State of Colorado, adjacent to the Property, as described on Exhibit B attached hereto and made a part hereof and as shown on the Plat (the "Future Development Property").

1.2 Declarant desires to create a residential townhome common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes §§ 38-33.3-101 *et seq.* ("CCIOA") on the Property, the name of which is the Black Bear Townhomes.

1.3 The planned community will initially consist of sixteen (16) residential lots with townhome improvements constructed thereon, and general and limited common elements for the benefit of the community. When and if any portion of the Future Development Property is added to the community, in accordance with Article 13, the community shall contain that additional number of lots shown in the amendment(s) to the plat evidencing the same. Declarant reserves the right to create up to a total maximum of eighty-two (82) lots on the Property and the Future Development Property.

1.4 Declarant incorporates all of the terms, conditions, and plat notes of the Black Bear Townhomes plat. Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of CCIOA.

2. DEFINITIONS.

2.1 Annual Assessments shall mean the charges levied and assessed each year against a Lot.

2.2 Articles shall mean Articles of Organization and any amendments thereto for the Black Bear Townhomes Owners Association, a Colorado nonprofit corporation.

2.3 Assessments shall mean the Annual, Special and Default Assessments levied pursuant to Article 6 below.

2.4 Association shall mean the Black Bear Townhomes Owners Association, Inc., a Colorado nonprofit association, and its successors and assigns.

2.5 Association Documents shall mean this Declaration, the Articles, the Bylaws, the Plat, and any procedures, rules, regulations or policies adopted under such documents by the Association.

2.6 Bylaws shall mean the Bylaws adopted by the Association, as amended from time to time.

2.7 Clerk and Recorder shall mean the office of the Clerk and Recorder in the County of La Plata, Colorado.

2.8 CCIOA shall mean the Colorado Common Interest Ownership Act, §§ 38-33.3-101, *et seq.*

2.9 Common Expenses shall mean (i) all expenses as expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the General Common Elements or Limited Common Elements; (iii) insurance premiums for the insurance carried under Article 7; and (iv) all expenses lawfully determined to be common expenses by the Executive Board, including any allocations to reserves, which expenses shall be assessed based upon the Allocated Interests defined herein. "Allocated Interests" means the Common Expenses liability and the votes in the Association allocated to each Lot, which interests are allocated as follows:

(a) The Common Expenses 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 as of the date of the calculation. Such fraction is then multiplied by the Common Expenses or the Assessment in question to determine that Lot's share thereof.

(b) One 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 added to or withdrawn from the Common Interest Community, (i) the Common Expenses liability for each Lot shall be reallocated on the same basis as set forth in subsection (a) of this Section 2.9, and (ii) one vote in the Association shall continue to be allocated to each Lot in the Common Interest Community following the addition or withdrawal of such Lots.

2.10 County shall mean La Plata County, Colorado.

2.11 Declaration shall mean this Declaration and the Plat, and amendments and supplements to the foregoing.

2.12 District shall mean the Purgatory Metropolitan Service District.

2.13 Durango Mountain Resort shall mean all the real property described in the Amended and Restated Land Use Declaration for Durango Mountain Resort (the "Land Use Declaration"), recorded on September 8, 2003 at Reception No. 867059 in the Clerk and Recorder's office and any supplements or amendments thereto.

2.14 Executive Board shall mean the governing body of the Association.

2.15 First Lienor shall mean any person named as a mortgagee or beneficiary in any first mortgage, or any successor to the interest of any such person under such first mortgage.

2.16 General Common Element(s) shall mean all real and personal property of the Project excluding Lots, and shall have the same meaning as set forth in CCIOA.

2.17 Limited Common Element(s) shall mean the portion of the General Common Elements assigned for the exclusive use and enjoyment for some, but not all Lots, and shall have the same meaning as set forth in CCIOA.

2.18 Lot shall mean the subdivided parcels of land designated by number on the Plat and designated for separate ownership or occupancy. "Lot" shall further have the same meaning as "Unit" under CCIOA.

2.19 Manager shall mean a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

2.20 Master Association shall mean the Durango Mountain Master Association described in the Land Use Declaration.

2.21 Owner shall mean the person or persons or legal entity holding record fee simple title to a Lot. Declarant shall be entitled to treat the record titleholder of a Lot as the Owner thereof for all purposes.

2.22 Pedestrian Easement shall mean the right of pedestrians and skiers for ingress to and egress from the Property.

2.23 Property shall mean the real property subject to this Declaration and which is described in Exhibit A.

2.24 Plat shall mean the final plat of the Black Bear Project recorded with the Clerk and Recorder, on _____, 2005, under Reception No. _____, and any amendments or supplements thereto. Plat #

2.25 Project and Black Bear Project shall mean the common interest community created by this Declaration and as shown on the Plat, consisting of the Property, as subdivided, together with all General Common Elements and Limited Common Elements.

2.26 Roads shall mean the common access road easements described on the Plat, including such improvements as underlying utilities, culverts, guardrails, and the like, as shown on the Plat, and which provide general access to the Black Bear Project. Roads also include any right granted to the Master Association or to the District by Declarant to use a portion of the Project Roads for Durango Mountain Resort and/or District road purposes.

2.27 Townhome shall mean an attached dwelling located on a Lot and designed to be occupied as a single family residence and not having more than one indoor kitchen facility.

2.28 Utilities shall mean those underground utilities that are constructed and installed under roads, other utility easements, or General Common Elements, which service the Property, the Black Bear Project, and may service other property within the Durango Mountain Resort.

3. RESTRICTIONS ON USE.

The following general uses and restrictions applicable to the Black Bear Project are supplemental and in addition to the general restrictions contained in the Land Use Declaration. In the event of any conflict among the following restrictions on use and the Land Use Declaration, the Land Use Declaration provisions shall control.

3.1 Residential Use. All Lots and Townhomes shall be used only for residential purposes, and such accessory or incidental uses thereto as may be permitted by the Plat, this

Declaration, and the Land Use Declaration. Owners of Townhomes may rent or lease such Townhomes to others for these purposes. The Townhomes' exterior and interior design, floor plan, colors, architectural and aesthetic treatment, may not be modified without the consent of the Declarant (during the Declarant Control Period) and the Master Association obtained in accordance with the procedures set forth in Article 5.

3.2 Development Activity. All development within the Black Bear Project shall be undertaken consistent with this Declaration, the Plat, the any design review guidelines, and applicable rules and regulations herein and as contained within the Land Use Declaration.

3.3 Approval of Design. No Townhome improvements or modifications shall be constructed on any Lot without the prior written approval of Declarant (during the Declarant Control Period) and the Master Association in accordance with Section 5.1.

3.4 Further Subdivision. Lots shall not be further subdivided. Any amendment to this Declaration modifying this prohibition to further subdivision can only be amended with unanimous consent of all Owners of Lots in the Black Bear Project, and the consent, as required, by the Land Use Declaration.

3.5 Utilities. All Utilities, including but not necessarily limited to, water, sewer, electrical, telephone, and cable T.V., but with the exception of gas, shall be underground and shall be constructed and installed consistent with this Declaration and the Land Use Declaration. All Utilities shall be provided to the Black Bear Project by third party providers. If the gas utility is propane, the propane tank(s) may be above-ground or buried, unless burial is precluded by applicable safety laws and regulations, and shall be in a location approved by the Declarant (during the Declarant Control Period) and the Master Association.

3.6 Parking. All parking for any vehicles must be on designated driveways within Lots, on the Limited Common Elements, or in provided parking spaces. No parking shall be permitted on Roads. Owners shall undertake good faith efforts to prevent vehicles that are owned by, under the control of, or invited by a Lot Owner to be loaded, unloaded, or parked on the Roads. The Association shall have the right to remove or tow away any vehicle that is parked within or on the Road. The cost for any removal or towing shall be charged to the responsible Owner.

3.7 Fences. No fences shall be constructed on any Lot except as permitted by the Land Use Declaration.

3.8 Signs. No signs shall exist on any Lot except for those permitted by the Land Use Declaration.

3.9 Garbage and Trash. All garbage and trash shall be dealt with consistent with the Land Use Declaration. Trash removal shall be managed by the Association and the cost thereof

shall be a Common Expense. Each Owner shall store trash in accordance with the rules and regulations promulgated by the Association, if any.

3.10 Landscaping. All landscaping and landscaping improvements shall be constructed and installed within the Black Bear Project pursuant to a landscaping plan adopted by Declarant. All landscaping shall be installed within the General Common Elements. After the initial plan being fully implemented, thereafter all landscaping maintenance and repair shall be undertaken by the Association.

3.11 Completion of Construction. Any construction activity on any Lot shall be commenced within twelve months of written approval of plans and specifications by the Declarant (during the period of Declarant control) and the Master Association in accordance with Section 5.1. All construction activity shall be consistent with this Declaration, the Plat, and the Land Use Declaration. All construction commenced shall be fully completed within 24 months of the date of construction commencement.

3.12 Association Responsibility. All General Common Elements, including Roads and underground Utilities, shall be owned, controlled and maintained, including snow removal, by, and at the expense of, the Association.

3.13 Maintenance of Townhome Lots. All Lots, together with Townhome improvements constructed thereon, shall be kept at all times in a sanitary, healthful, safe and attractive condition and the Owner or occupants shall in no way use any Lot for storage of materials and equipment except for normal residential requirements or incidental to the construction improvements thereon as herein permitted.

3.14 Compliance With Law. No Lot shall be used, occupied, altered, changed, improved, or repaired except in compliance with (i) this Declaration, (ii) the Land Use Declaration, and (iii) all present and future laws, ordinances, regulations, and the like of the United States of America, State of Colorado, and County of La Plata, or other governmental or lawful authority whatsoever effecting the Lot or the improvements thereon or any part thereof, and of all their departments, bureaus and officials.

3.15 Deviations. The Executive Board at its discretion is hereby permitted to approve deviations from this Declaration where, in its judgment, such deviations will result in a more common beneficial use. Such approvals must be granted in writing by the Executive Board and when given, will become part of this Declaration; however, any such deviations are subject to the approval of the Declarant during the period of Declarant control and the Master Association.

3.16 Party Walls.

(a) For purposes of this Section 3.16, "Party Wall" shall mean and refer

to any wall which is part of a Townhome and located between two or more Townhomes and is placed on or immediately adjacent to a Townhome Lot line and which separates two Townhomes.

(b) Mutual reciprocal easements are hereby established, declared and granted for all Party Walls between Townhome Lots which reciprocal easements shall be for mutual support and shall be governed by this Declaration. Every conveyance of a Townhome Lot, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

(c) To the extent not inconsistent with the provisions of this Section 3.16, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions apply thereto.

(d) The cost of reasonable repair and maintenance of any Party Wall shall be borne equally by the Owners of Townhomes sharing the Party Wall. If the Owner of one Townhome sharing the Party Wall refuses to pay his proportionate share of the cost of repair or maintenance, then the other Owner may cause the Party Wall to be repaired and shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Townhome Lot, and the same shall become and remain a lien against the Townhome Lot, until fully paid. Said lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(e) If a Party Wall is destroyed or damaged by fire or other casualty, Owners of Townhomes sharing the Party Wall may restore it, and if other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion of such use, subject however, to the right of any such Owners to call for a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions. If one Owner causes the Party Wall to be restored and any other Owner uses the Party Wall and does not contribute his proportionate share to the costs of the Party Wall's restoration, the Owner who caused the wall to be restored shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Townhome Lot, and the same shall become and remain a lien against such property until fully paid. The lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(f) Notwithstanding any other provision of this Section 3.16, an Owner who by his negligent or willful act or omission causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent insurance proceeds are unavailable.

(g) The right of any Owner to contribution from any other Owner under this Section 3.16 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

(h) If any dispute arises concerning a Party Wall under the provisions of this Section 3.16, such dispute shall be arbitrated in the manner hereinafter provided. Three individuals (including one or more members of the Executive Board or one or more Owners or a combination of both) appointed by the President of the Association, none of whom may be a party to the dispute, shall act as a Board of Arbitration and the decision shall be by a majority vote of the Board of Arbitration after an arbitration proceeding. No legal action with respect to a Party Wall dispute shall be commenced or maintained unless and until the provisions of this arbitration clause have been met. The appointment of arbitrators hereunder shall be made within 20 days after notice by one party to the other party that a dispute exists, which notice shall not be given after any applicable statute of limitations concerning such dispute shall have expired. All arbitrations shall be subject to the Colorado Uniform Arbitration Act, C.R.S. §§ 13-22-201, *et seq.*

(i) Notwithstanding any other provision of this Section 3.16, the Association may, in its sole discretion make any repairs to Party Walls which the Association deems necessary and the cost for such repairs shall be assessed equally against the Townhome Lots containing Townhomes benefited by such repairs unless the repairs are necessitated by willful acts or omissions or negligence of one or more Owner(s) in which case the Owner(s) causing the damage shall pay for all costs of repairs.

4. ASSOCIATION FORMATION AND MEMBERSHIP.

4.1 Formation of Association. The Association shall be a nonprofit Colorado corporation charged with the duties and invested with the powers prescribed by law and as set forth in its Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.2 Executive Board and Officers. The affairs of the Association shall be conducted by the Executive Board and such officers as the Executive Board may elect or appoint in accordance with its Articles and Bylaws as the same may be amended from time to time. The Association, by and through the Executive Board, shall govern and manage the Black Bear Project, including the Property described in Exhibit A hereof, and any property owned by the Association, and shall enforce the provisions of this Declaration. The initial Executive Board shall be composed of three Members. The Executive Board may also appoint various committees. Declarant, during the "Declarant Control Period", shall have the right to appoint and remove Members and officers. The Declarant Control Period commences on the date on which Declarant forms the Association and terminates on the earliest to occur of:

(i) sixty days after conveyance to purchasers of 75 percent of the total number of Lots that may be created by Declarant on the Property and/or the Future Development Property pursuant to the Declaration;

(ii) two years after the last conveyance of a Lot by Declarant or a Successor Declarant to a purchaser in the ordinary course of business; or

(iii) two years after any right under the Declaration to add new Lots was last exercised.

Declarant may voluntarily surrender the right to appoint and remove Members of the Executive Board and officers before termination of the Declarant Control Period. In that event, the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Not later than 60 days after conveyance of 25 percent of the total number of Lots that may be created on the Property and/or the Future Development Property (all phases) to purchasers, at least one Member and not less than 25 percent of the Members of the Executive Board shall be elected by Owners other than the Declarant. Not later than 60 days after conveyance of 50 percent of the total number of Lots that may be created to purchasers, not less than 33-1/3 percent of the Members of the Executive Board shall be elected by Owners other than the Declarant.

4.3 Association Rules. The Association may, by a majority vote of the Executive Board, adopt, amend and repeal rules and regulations to be known as the Black Bear Project "Association Rules". The purpose of the Association Rules shall be to implement, supplement or otherwise carry out the purposes and intentions of this Declaration; provided such Association Rules must be consistent with this Declaration.

4.4 Liability. Consistent with the provisions of Section 303 of CCIOA, if appointed by the Declarant, in the performance of their duties, the officers and Members of the Executive Board are required to exercise the care required of a fiduciary of the Owners. If the officers and Members of the Executive Board are not appointed by the Declarant, then no Member of the Executive Board and no officer shall be liable for actions taken or omissions made in performance of such Member's duties, except for wanton and willful acts or omissions. Actions taken by officers or Members of the Executive Board 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 to have met the care required under CCIOA.

4.5 Membership. The Association shall be a membership association without certificates or shares of stock. The members of the Association shall be those persons or entities, including Declarant, who are the Owners, from time to time, of Lots within the Black Bear Project. Membership in the Association shall automatically terminate when a member ceases to be an Owner of a Lot. There shall be one class of membership that is a voting membership by Owners of

Lots.

4.6 Voting. A member shall have one vote for each Lot owned. Except as otherwise provided herein and in the Land Use Declaration, the affirmative vote of a majority of the Owners of Lots entitled to vote on any matter shall constitute approval of such matter. Where there are multiple Owners of a Lot, there shall remain only one vote for each Lot. If only one of the multiple Owners of a Lot are present at a meeting of the Association, such Owner shall be entitled to cast the vote allocated to such Lot. If more than one of the multiple Owners are present, the vote allocated to the Lot may be cast only in accordance with the agreement of a majority in interest of the Owners of such Lot. The provisions of Section 310 of CCIOA regarding voting shall apply to Lots with multiple Owners.

For the election of Executive Board members, those candidates receiving the highest number of votes shall be deemed elected. Lessees of Lots shall have no voting rights.

4.7 Enforcement. The Association shall each have the right and power to bring suit in its name for legal or equitable relief for the failure to comply with any provision of this Declaration or rules promulgated by the Executive Board. In addition, the Association shall have the right to impose on any Owner monetary fines for any lack of compliance with provisions of this Declaration or rules promulgated by the Executive Board and where such fines are not paid within the time provided, such fines may be collected as an Assessment Lien. The failure of the Association to insist upon the strict performance of any such provisions or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or relinquishment for the future of any such provision or the enforcement thereof. Any Owner aggrieved by a lack of compliance by another Owner may also bring suit for legal and equitable remedies. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to reimbursement of its costs and expenses, including reasonable attorney's fees, in connection therewith.

4.8 Power of Association. Each Owner agrees that the Association has all the powers granted to it by the Colorado Revised Nonprofit Corporation Act and CCIOA, and any amendments thereto or replacements thereof. Such powers shall include, without limitation, levying Assessments against Owners, imposing a lien on Lots for any unpaid or uncollected Assessments or penalties, and foreclosing any such liens, enforcing any deed restrictions and this Declaration, acquiring, holding, owning, leasing, mortgaging and disposing of property (except as such disposition of property may be limited in accordance with Section 4.12 below), the adoption of rules and regulations, the defending, prosecuting or intervention in litigation on behalf of all members, the borrowing of monies for Association purposes and the right to pledge future income in order to secure such borrowings. The term "pledge of future income" shall include the right to impose a Special Assessment for repayment of such borrowings and to assign such Special Assessment (and all lien and collection rights appurtenant thereto) to the lender as security for repayment thereof. The Association may exercise any other right, power or privilege, given to it by this Declaration, the

Articles and Bylaws of the Association, or by law.

4.9 Other Association Functions. Subject to the pre-existing rights of the Master Association, the Association shall undertake those functions and provide those services to the Black Bear Project as described in this section or otherwise set forth in this Declaration. Further, the Association may undertake, to the extent the Executive Board in its sole discretion so elects, to provide the Black Bear Project certain other functions or services for the benefit of its members on such bases as the Executive Board may reasonably determine. Such functions may be provided by the Association's employees or an independent contractor retained by the Association. With respect to any of the Black Bear Project functions or services, the Executive Board shall have the authority to make common expense Assessments consistent with the provisions of Section 315 of CCIOA.

Subject to the pre-existing rights of the Master Association, the Association shall provide, but shall not be limited to providing, the following functions or services: (i) the maintenance, and repair of Roads; (ii) maintenance, repair, and operation of all Utilities up to Lot entrances; (iii) snow removal on Roads; (iv) the installation, maintenance, repair and replacement of all improvements and landscaping on the General Common Elements; and (v) all powers and functions permitted by the Act. The Association agrees to cooperate and coordinate with the Master Association regarding maintenance, services, and other matters of mutual interest.

4.10 Notice to Maintain. An Owner shall immediately report to the Association, in writing, the need for any maintenance, repair or replacement that is the Association's responsibility to provide. In the event of any disagreement as to the need for or the responsibility of the Association to provide the said maintenance, repair or replacement, the good faith decision of the Executive Board shall be final.

4.11 Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and discretion by the Executive Board.

4.12 Special Provisions Regarding Association Property.

4.12.1 General Common Elements. All General Common Elements shall be owned by the Association and shall, at all times, be owned, managed, operated and maintained by the Association consistent with the provisions of this Declaration and in trust for the use, benefit, and enjoyment of all or some of the Owners of Lots, together with their family members, permitted guests and permitted invitees. Conveyancing or encumbrance of Association property can only occur consistent with the provisions of Section 312 of CCIOA.

4.12.2 Limited Common Elements. The Limited Common Elements described on the Plat, which are areas for driveways and for parking of vehicles benefiting each of

the Lots, shall be owned by the Association consistent with the provisions of this Declaration and in trust for the use, benefit, and enjoyment of the benefited Owners, together with their family members, permitted guests, and permitted invitees, and permitted licensees. Parking in these areas must be done so as not to block access to any Lot. All costs associated with maintaining these Limited Common Elements shall be paid for by the Association and shall be a Common Expense.

5. ARCHITECTURAL CONTROLS.

5.1 Design Review. Design review of the construction of the infrastructure improvements for the Project and the construction of Townhomes on Lots shall be submitted to and approved in writing by the Master Association consistent with the Land Use Declaration and any design guidelines that may be adopted from time to time.

Following the initial construction of Townhome improvements on a Lot, no exterior addition to or change or alteration to a Townhome shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials and location of the same have been submitted to the Association and the Master Association for approval in writing as to harmony of external design and location in relation to surrounding structures and topography. The applicant shall first submit the plans and specifications for the proposed addition or alteration to the Association for review. After reviewing such plans and specifications, the Association shall adopt a resolution recommending to the Master Association that the applicant's proposed addition or alteration be approved or disapproved. The applicant shall then submit the plans and specifications to the Master Association for review and final approval or disapproval.

5.2 Authority. After receiving the approval of the Master Association as required by Section 5.1 above, the Owner required to obtain such approvals shall thereafter obtain all other approvals as may be required by the Land Use Declaration and by any governmental or quasi-governmental body having jurisdiction over the Black Bear Project.

6. ASSESSMENTS.

6.1 Purpose of Assessments; Assessment Lien. All members of the Association hereby covenant and agree, and each Owner by acceptance of a deed to a Lot, including public trustee or sheriff's deed, is deemed to covenant and agree, to pay the Association Annual Assessments, Special Assessments, and Default Assessments, all such Assessments and charges to be established and collected as hereinafter provided. Annual Assessments, Special Assessments, and Default Assessments, together with interest, costs, and reasonable attorney's fees, shall be secured by a lien (the "Assessment Lien") on the Lot to which they relate in favor of the Association, which shall be a continuing servitude and lien upon the Lot against which each such Assessment or charge is made. The Assessment Lien, including, but not limited to, its enforcement and priorities, shall be consistent with, and shall contain, all of the provisions set forth in Section 316 of CCIOA. The Assessment Lien shall be the personal obligation of the Owner of a Lot.

Where there is more than one Owner, each shall be jointly and severally liable for all assessments. Declarant and the Association shall be entitled to purchase a Lot at any Assessment Lien foreclosure sale.

6.2 Annual Assessments.

(a) Prior to the first levy of an Assessment, and thereafter on or before a date of each fiscal year set by the Executive Board, the Executive Board shall adopt a proposed annual budget for the Association for the following fiscal year that sets forth:

(i) the Executive Board's estimates of Common Expenses for the next fiscal year;

(ii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Assessments; and

(iii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Special Assessments.

(b) Within thirty (30) days after adopting a proposed budget, the Executive Board shall deliver a summary of the proposed budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed budget. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed budget to the Owners. Unless at that meeting a majority of the votes allocated to all Lots, whether or not a quorum is present, rejects the proposed budget, the proposed budget shall be deemed ratified. If the proposed budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

(c) If the Executive Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under this Section 6.2, the Executive Board may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed amendment. Unless at that meeting a majority of the votes allocated to all Lots, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

6.3 Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment period, as defined in Section 6.6 hereafter, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, or for other extraordinary expenses,

provided that any Special Assessment in excess of Five Thousand Dollars (\$5,000.00) shall (except in the event of an emergency where there shall be no such limit) require a majority approval of those voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present pursuant to the Bylaws of the Association. If any Common Expense is caused by the misconduct of any Lot Owner, the Association, at its discretion, may assess that expense exclusively against such Owner's Lot.

6.4 Default Assessments. All monetary fines assessed against an Owner pursuant to this Declaration and the Land Use Declaration, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to this Declaration and the Land Use Declaration, shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration or the Land Use Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such assessment at least ten (10) days prior to the due date.

6.5 Rate of Assessment. Annual Assessments, Special Assessments and Default Assessments shall be fixed in accordance with the Allocated Interests. Assessments may be collected on a yearly basis or more often as the Executive Board so determines. .

6.6 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be from May 1 to April 30 of each year, except that the first Assessment Period shall commence upon the recording of this Declaration and terminate on the next April 30 date. The Executive Board in its sole discretion from time to time may change the Assessment Period. The Executive Board shall fix the amount of the Annual Assessment against each Lot at least thirty days in advance of the end of each Assessment Period. Written notice of the Annual Assessment shall be sent to each Owner. Failure of the Association timely to fix the Annual Assessment or to send a bill to any Owner shall not relieve the Owner of liability for payment of any Assessment or charge. The due dates for payment of any Assessments shall be established by the Executive Board.

6.7 Effect of Nonpayment. Any Assessment, Assessment charge, or installment thereof, not paid when due, shall be deemed delinquent. Fees, charges, late charges, attorney's fees, fines, and interest shall be applicable to such delinquent Assessment pursuant to the provisions of Section 316 of CCIOA. The Executive Board may, but shall not be required to, record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent. Such notice shall be executed by an officer of the Executive Board, shall set forth the amount of the unpaid assessment, the name of the delinquent Owner(s), and a description of the Lot. The Association may bring an action at law against the Owner(s) obligated to pay the delinquent Assessment and/or may foreclose the Assessment Lien in conformance with the provisions of Section 316 of CCIOA.

6.8 Priority of Lien. The priority of an Assessment Lien shall be consistent with

the provisions of Section 316 of CCIOA.

6.9 Statement from Association. Upon written request and payment of such reasonable fee as may be set by the Association, the Association shall issue a written statement to any grantee or First Lienor verifying the status of all Assessments or charges affecting the Lot. Any statement as to the existence or amount of any delinquencies shall, absent manifest error, conclusively bind the Association.

6.10 Assessments for Tort Liability. In the event of any tort liability against the Association which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a Special Assessment. The Association may, however, require a larger contribution from fewer than all Owners under any legal or equitable principles regarding liability for negligent or willful acts or omissions.

6.11 Declarant Responsibility. Until a Common Expense Assessment or budget has been duly adopted by the Association, Declarant shall pay all Association Common Expenses related to the Black Bear Project.

6.12 Master Association Assessments. The assessments called for in this Article 6 of the Declaration shall be supplemental and additional to the assessment and assessment rights afforded the Master Association within the Land Use Declarations. In its discretion, the Master Association may elect to collect its assessments directly from the Black Bear Association, which charges may then be passed on to individual owners.

7. INSURANCE.

7.1 Townhome Insurance. The Association shall, on behalf of the Owners: (i) keep all Townhome improvements, including all fixtures and equipment therein, (but not including furniture, furnishings or other personal property supplied or installed by Owners), insured against loss or damaged by fire, with extended coverage, (including insurance against loss for damage by vandalism or malicious mischief), in approximately the amount of the maximum replacement value thereof as properly determined from time to time; (ii) provide and keep in force, for the protection of the Association, its officers and directors, and all the Owners and First Lienors, Commercial General Liability insurance against claim for bodily injury or death or property damage occurring upon or in the General Common Elements and Limited Common Elements, in an amount of not less than \$5,000,000.00 in respect to bodily injury and/or property damage arising out of one accident or disaster, and if higher limits shall at any time be customary to protect against possible tort liability, such higher limits shall be carried; (iii) carry insurance required by CCIOA and such other insurance as the Executive Board may, within its discretion, determine desirable for the protection of the General Common Elements and Limited Common Elements, if any; and (iv) assure that all such insurance shall conform with the requirements set forth in Section 313 of CCIOA.

7.2 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses, notwithstanding the fact that the Owners may have disproportionate liability or that some Townhomes may have greater risk of loss than others. All insurance required to be carried under this paragraph shall be carried in favor of the Association, the Owners and all First Lienors, as their respective interests may appear.

7.3 Owner Insurance. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Each Owner shall be responsible for all insurance covering loss or damage to personal property in his Townhome and liability for injury, death or damage occurring outside his Townhome. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

7.4 Fidelity Insurance. In addition, if responsibility for handling funds is delegated to a Manager, fidelity insurance or fidelity bonds may be obtained by or for the Manager, and its officers, employees and agents, as applicable, if such fidelity insurance or bond is available at a reasonable cost. Any such fidelity insurance or bond shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

7.5 Workmen's Compensation Insurance. The Executive Board shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

8. MAINTENANCE.

8.1 Maintenance By Owners. Each Owner shall maintain and keep in repair the interior of his Townhome, including the fixtures thereof, and all windows on the exterior of his Townhome, to the extent current repairs shall be necessary in order to avoid damaging other Townhome Owners. In performing such maintenance or repairs, or in improving or altering his Townhome, no Owner shall do any act or work which impairs the structural soundness of any Party Wall.

8.2 Owner's Failure To Maintain or Repair. In the event that a Townhome is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Townhome lies with the Owner of the Townhome, or in the event the Townhome is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Townhome for which the Owner is responsible to substantially restore those portions damaged or destroyed to the same condition on which they existed prior to the damage or destruction, then the Association, after notice to Owner and with the approval of the Executive Board shall have the right

to enter upon the Townhome to perform such work as is reasonably required to restore the Townhome to a condition of good order and repair. All costs incurred by the Association in connection with such restoration shall be reimbursed to the Association by the Owner of the Townhome, upon demand. All unreimbursed costs shall be a lien upon the Townhome until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with Article 6 of this Declaration.

8.3 Maintenance By Association. The Association shall be responsible for the maintenance and repair of the exterior of all Townhomes (except for windows) and all General and Limited Common Elements (unless necessitated by damage caused by the negligence, misuse or tortious act of an Owner or Owner's agent), and such maintenance and repairs shall be the Common Expense of all Owners. The maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all Roads, Utilities, easements, landscaping, walls, fences (if any), gates, signage, irrigation systems, sidewalks, and improvements, if any (which shall include without limitation snow removal services unless performed by another private or public organization formed for such purposes), located in the Common Elements. In the event the Association does not maintain or repair the Common Elements, Declarant, or an Owner or Owners, shall have the right, but not the obligation, to do so at the expense of the Association. Maintenance of all areas within any Lot (other than the exterior of the Townhomes), including replacing glass, shall be the responsibility of the individual Owner of the Townhome.

8.4 Easement For Maintenance. Each Owner in the Association shall have the irrevocable right, to be exercised by the Manager, the Executive Board or officers or employees of the Association, to have access to each Townhome from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the General Common Elements or Limited Common Elements therein or accessible therefrom, or at any hour, for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the General Common Elements, Limited Common Elements, or another Townhome. In the event insurance proceeds under Article 7 are payable to an Owner, but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

8.5 Limited Common Elements Damage. In the event of damage or destruction of a Limited Common Element from any cause other than the negligence or tortious acts of an Owner or Owner's agents, the then Owners of the Units to which the Limited Common Elements is attributable shall bear equally the expense to repair or rebuild the Limited Common Elements to its previous condition. The Owner shall bear the cost of such damage to the extent of such Owner's or Owner's agent's negligence.

8.6 Association Power. The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptibility from another Townhome, the General Common Elements

or Limited Common Elements. No Owner shall make any addition or other alteration to any portion of the General Common Elements or Limited Common Elements without the express consent of the Executive Board.

9. EASEMENTS.

9.1 Recorded Easements. The Property shall be subject to and is benefited by: all easements as shown on the Plat, including, but not limited to, the snow storage, utility, mailbox cluster, and entry statement easements shown on and created by the Plat; those easements of record; those easements provided in CCIOA (including easements for encroachments set forth in Section 214 of CCIOA and an easement for maintenance of any such encroachment); and other easements as set forth in this Article.

9.2 Created Easements.

9.2.1 Utility Easements. There is hereby created an easement upon, across, over, in, and under all General Common Elements for ingress and egress, installation, replacing, repairing and maintaining all Utilities, including, but not limited to, water, sewer, gas, propane tanks, telephone, cable T.V., and electricity. Said easement includes future Utility services not presently available to the Lots that may be reasonably required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing Utilities to erect and maintain the necessary equipment on any of the Lots or General Common Elements and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Master Association and this Association as to locations. All Utilities, with the possible exception of propane tanks, shall be buried underground.

9.2.2 Road Easement. There is hereby created a general access easement over and across the road named Limestone Court, the precise scope and location of which easement is set forth on the Plat.

9.3 Reservation of Easements, Exceptions and Exclusions. The Master Association and the Association are hereby granted the right to establish from time to time, by declaration or otherwise, utility, road or other easements, permits or licenses over the General Common Elements for the best interest of all Owners, members and future members of the Master Association, the Declarant, owners of Durango Mountain Resort and this Association.

9.4 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

9.5 Ownership of Easements. All General Common Elements, including all easements described herein and on the Plat, are generally intended to be owned by the Association, and, with the exception of Limited Common Elements, are for the benefit of all Lots and the Owners thereof. No amendment to this Declaration may preclude a Lot from having an access road and utility easement necessary to permit the use of such Lot for the purposes set forth in this Declaration.

10. DAMAGE OR DESTRUCTION.

10.1 The Role of the Executive Board. In the event of damage or destruction to all or any part of any General Common Elements, Limited Common Elements and any improvements existing thereon, or other property covered by insurance written in the name of the Association (the "Association-Insured Property"), the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property unless any of the provisions of Section 313(9)(a) of CCIOA are met.

10.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.

10.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

10.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and First Lienors.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 10.5, if permitted under the Act, levy, assess and collect in advance from the Owners,

without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

10.5 Disbursement of Funds for Repair and Reconstruction. The insurance held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contribution such Owner made as Special Assessments, the remainder to be divided among the Lots, first to the First Lienors, and then to the Owners, as their interests appear.

11. CONDEMNATION.

11.1 Rights of Owners. When all or any part of the General Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the General Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

11.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such a taking shall be payable to the Association for the benefit of the Owners and First Lienors and, unless otherwise required under the Act, the award shall be disbursed as follows:

(a) if the taking involves a portion of the General Common Elements on which improvements have been constructed, then, unless within 60 days after such taking Declarant and Owners who represent at least 67% of the votes of all the Owners shall otherwise agree, the Association shall restore or replace such General Common Elements so taken on the remaining land included in the General Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the DMMA Design Review Board and the Association. If such General Common Elements are to be repaired or restored, the provisions in Articles 7 and 10 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any General Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed equally among the Lots, first to the First Lienor and then to the Owners, as their interests

appear.

11.3 Complete Condemnation. If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate provided that the approval is first obtained of 51% of all First Lienors of Lots (which percentage is measured by votes allocated to such Lots), and the portion of the condemnation award attributable to the General Common Elements shall be distributed as provided in Section 11.2 above.

12. ASSOCIATION AS ATTORNEY-IN-FACT.

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of purchasing and maintaining insurance pursuant to Article 7 including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 7 upon their damage or destruction as provided in Article 10 or a complete or partial taking as provided in Article 11. The Association, through its Executive Board, shall also be the attorney-in-fact for all voting matters and dealings with the Master Association. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authority, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

13. RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS.

13.1 Reservation of Withdrawal Rights. Declarant reserves the right for itself and any successor declarant at any time and from time to time to withdraw Property from the provisions of this Declaration, including General and Limited Common Elements, provided however that none of the Property may be withdrawn after any Lot has been conveyed by Declarant to an Owner.

13.2 Reservation of Development Rights. Declarant reserves the following Development Rights:

(a) the right by amendment to create Lots, General Common Elements, and Limited Common Elements on the "Future Development Property";

(b) the right by amendment to allocate Limited Common Elements and to assign them to particular Lots; and

(c) the right to construct utility lines, pipes, wires, ducts, conduits, and other facilities across any portion of the Property for the purpose of furnishing utility and other services to buildings and improvements to be constructed on the Property. Declarant also reserves the right to withdraw and grant easements and licenses to public utility companies and to convey improvements within those easements anywhere in the Project not occupied by buildings, for the purposes mentioned above.

No assurances are made by Declarant as to whether Declarant will exercise its Development Rights or the order in which such Development Rights will be exercised. The exercise of Development Rights as to some portions of the Property will not obligate Declarant to exercise them as to other portions.

13.3 Other Reserved Rights. Subject to the terms of the Land Use Declaration, Declarant reserves the right for itself and any successor declarant at any time and from time to time to:

(a) maintain and relocate sales offices, management offices, signs advertising the project, of any size, on one or more Lots or Townhome improvements and within the General Common Elements so long as Declarant or successor declarant continues to be an Owner of a Lot or the period of Declarant control has not terminated;

(b) construct fences throughout the Property during any time of the development and improvement of the Project;

(c) dedicate any access roads and utility easements, including Roads and Utilities within the Project, to public use, District use, Master Association use as allowed by the Land Use Declaration, and to the owner or owners of Durango Mountain Resort for use in the development and subdivision of all real property contained within the Durango Mountain Resort;

(d) establish easements, reservations, exceptions and exclusions consistent with the ownership of this Project and for the best interest of Owners, the Association, Master Association, and the owner or owners of the Durango Mountain Resort, including road and utility easements, ski facilities easements, and pedestrian easements;

(e) develop, install, and construct all improvements anticipated by, and included in, a Development Agreement between DSC/Purgatory, LLC and the County for the full and complete development of the Durango Mountain Resort as anticipated, permitted, and allowed in the Development Agreement, and as it may be subsequently amended thereafter; and

(f) enter into agreements with the Master Association, the District, the County, and any other third parties, for the purpose of planning and fully developing Durango Mountain Resort.

13.4 Termination of Rights. As to all Declarant rights reserved in this Declaration, Declarant offers no assurances regarding the manner or order in which it may exercise such reserved development rights enumerated. The time limits within which each of these rights must be exercised are the later in time of: (i) the time limit set forth in the applicable section of this Declaration; or (ii) January 1, 2050.

13.5 Transfer of Records. Within 60 days after the Owners, other than Declarant, elect a majority of the Members of the Executive Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including the following:

- (a) a copy of this recorded Declaration;
- (b) an accounting for Association funds and financial statements for the period the Association received funds and ending on the date the period of Declarant control ended;
- (c) the Association funds or control thereof;
- (d) a copy of any plans and specifications used in the construction of any Common Elements;
- (e) all insurance policies in force;
- (f) all permits issued by governmental bodies applicable to the common interest community and which are currently in force;
- (g) written warranties of any contractors, subcontractors, suppliers and manufacturers that are still effective;
- (h) a roster of Owners and First Lienors and their addresses and telephone numbers, if known, as shown in the Declarant's records;
- (i) employment contracts in which the Association is a contracting party; and
- (j) any service contract in which the Association is a contracting party or in which the Association or Owner have an obligation to pay a fee to the persons performing the service.

14. VILLAGE MATTERS.

Each Owner, by accepting a deed to a Lot, recognizes that (a) the Black Bear Project is located within Tacoma Village at Durango Mountain Resort and is subject to the Land Use Declaration, (b) by virtue of his ownership, he has become a member of the Master Association, (c) such Owner is subject to any rules and regulations of the Master Association, and (d) pursuant to Article VI of the Master Association's Articles of Incorporation, Owner is a Class A member of the Master Association and is entitled to all the benefits and is subject to all the burdens of such membership. Each Owner, by accepting a deed to a Lot, acknowledges that he has received a copy of the Land Use Declaration, Articles of Incorporation and Bylaws of the Master Association. Owner agrees to perform all of his obligations as a member of the Master Association as they may from time to time exist, including, but not limited to, the obligation to pay property, sales and Special Assessments (including any Master Association Real Estate Transfer Assessment which constitutes a Special Assessment). Notwithstanding any other provision of this Declaration, the Master Association may determine from time to time what powers it shall exercise, including but not limited to design review, snow removal, road repair and maintenance, general upkeep and creation of easements. No later than the expiration of the period of Declarant control, the Executive Board of the Black Bear Association may participate in the election (and cast such votes on behalf of all Owners) of a specified member of the Master Association's executive board, (currently the Class A board member of the Master Association) pursuant to Section 220 of CCIOA.

15. TERM, AMENDMENT AND TERMINATION OF COVENANTS.

15.1 Term. The term of this Declaration shall be perpetual.

15.2 Amendments. This Declaration may, except as limited by Section 15.4, be amended with the approval of a majority of the votes entitled to be cast by members of the Association; provided that such amendment shall not adversely affect marketable title to any Lot. During the period of Declarant control, any amendment to this Declaration must also receive the approval of Declarant. Consent of First Lienors shall not be required; provided, however, that no such amendment may substantively and adversely affect such First Lienor's security interest. The Declaration shall be amended at a meeting called for that purpose, and within 6 months of such meeting there shall be recorded in the real estate records of the County an instrument evidencing such amendment. Any instrument amending this Declaration shall be duly executed by the Declarant or President and Secretary of the Association, as the case may be. Notwithstanding the preceding, no amendment shall be permitted that is inconsistent with any of the rights granted, retained or reserved to Declarant hereunder or which attempts to enlarge or expand any obligation of Declarant hereunder unless such amendment is consented to in writing by Declarant. Further, notwithstanding the preceding, no amendment shall be permitted that is substantively adverse to any right granted to or reserved by the Master Association hereunder or under the Land Use Declaration. All amendments shall be consistent with the provisions of Section 217 of CCIOA, as amended, which currently requires 67% of the votes of the members in specified instances. This Declaration

may not be amended in any manner which is inconsistent with the terms of the Land Use Declaration, as amended from time to time.

15.3 Rule Against Perpetuities. If any of the terms, covenants, conditions, easements, restrictions, uses, limitations or obligations created by this Declaration shall be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provision, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing like or similar time limits, such provision shall continue only for the period of the life of George W. Bush, his now living descendants, and the survivor of them, plus 21 years.

15.4 Termination. This Declaration, and the common interests of the Owners in Association-owned property, may be terminated only if all Owners and First Lienors agree to such termination by an executed, acknowledged instrument duly recorded in the real estate records of La Plata County, Colorado; however, any such voluntary termination must be approved by the Master Association. This Declaration shall also terminate in the event of a taking of all of the Black Bear Project by condemnation, eminent domain, or termination as otherwise (except for voting) provided by Section 218 of CCIOA.

15.5 Disbursement of Proceeds. Upon the termination of this Declaration all property owned by the Association shall be disposed of, with the proceeds generated being disbursed, as provided by Section 218 of CCIOA.

16. GENERAL PROVISIONS.

16.1 Sales Activity. Declarant may conduct, on the Black Bear Project, sales activities, including, the showing of Lots by Declarant and their designated sales agents, maintaining sales and management offices, promoting or marketing events, and maintaining signs advertising the Black Bear Project.

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

16.3 Conflict With Land Use Declarations. In the event of any conflict with the plat or Land Use Declaration, the Plat (including plat notes) or the Declaration, as the case may be, the Land Use Declaration shall govern and control and this Plat and this Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of the Land Use Declaration.

16.4 Rights of First Lienors. First Lienors shall be entitled to:

(a) upon request, inspect the books and records of the Association during normal business hours;

(b) receive written notice of meetings of the Association where the consent of any First Lienor is required;

(c) upon request, obtain copies of Association financial statements; and

(d) where the Owner of any Lot shall be deemed delinquent in the payment of any Assessment, any First Lienor of said Lot shall be given written notice of such delinquency.

16.5 Provisions Incorporated in Deeds. Each provision contained in this Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument. Upon the recording of this Declaration in the office of the Clerk and Recorder, every contract, deed, lease, mortgage, trust deed, or other applicable instrument may legally describe a Lot by reference to its corresponding number on the recorded Plat as follows:

Lot ____, Black Bear Townhomes, according to the Plat filed for record in La Plata County on ____, 2005, under Reception No. ____.

plat #

This legal description shall be considered to include, without the requirement of specific reference, any and all General or Limited Common Elements appurtenant to the Lot described and to incorporate all rights incident to ownership of a Lot and all limitations of ownership as described in the Plat, and in this Declaration.

16.6 Number and Gender. Unless the context shall otherwise provide, a singular number shall include the plural, a plural number shall include the singular, and the use of any gender shall include all genders.

16.7 No Dedication. Unless expressly provided, nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Black Bear Project to the public or for any public use.

16.8 Registration By Owner of Mailing Address and Notices. Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent either by registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the

Association shall be sent certified mail, postage prepaid, to the address of the Association as designated in the Bylaws of the Association.

16.9 Applicable Law, Jurisdiction and Venue. The interpretation, enforcement or any other matters relative to this Declaration shall be construed and determined in accordance with the laws of the State of Colorado. All parties to this Declaration, or those parties who are benefited by this Declaration, hereby consent to venue for any action commenced with respect to this Declaration being in the District Court in and for the County of La Plata, State of Colorado.

16.10 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.

16.11 References to Standards. Wherever in this Declaration there is reference to County standards, or other federal, state or local rules, laws or regulations, such references shall automatically be waived, released, modified or amended, as the case may be, to correspond with any subsequent waiver, release, modification or amendment of such rules, laws, regulations or standards.

16.12 Run with the Land. Declarant, for itself, its successors and assigns, hereby declares that all of the Black Bear Project shall be held, used and occupied subject to the provisions of this Declaration, and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Owner of any interest in the Black Bear Project.

16.13 CCIOA Provisions. In the event of any conflict between the provisions of CCIOA and the provisions of the Plat, this Declaration, or the Association Documents, the provisions of CCIOA shall control.

16.14 Binding Effect. Declarant, Owners, lessees, First Lienors, permitted guests and invitees, and their heirs, personal and legal representatives, successors and assigns, or any other person using or occupying the Black Bear Project, shall be bound by, and shall strictly comply with the provisions of this Declaration, the Bylaws, the Articles, any deed restrictions, and all rules, regulations and agreements lawfully made by the Association.

16.15 No Use of Trademark. DSC/Purgatory, LLC owns the service marks "Tacoma Village", "Purgatory Ski Area", "Durango Mountain Resort", "Durango Mountain Realty", and derivatives therefrom. Without first obtaining written authorization or a license from DSC/Purgatory, LLC, no Owner shall use any such trade names or trademarks or other derivatives therefrom in any manner.

16.16 Access. Each Owner acknowledges that roads within Tacoma Village (other

than the Roads) are private, limited access roads maintained by the District, a quasi-municipal corporation, on nonexclusive easements granted by other declarants to the District. Each Owner accepting a deed to a Lot, acknowledges that he has reviewed a copy of such easements governing the use of private roads.

16.17 Limit on Time Sharing. No Owner of any Lot shall offer or sell any interest in such Lot under a "timesharing" or "interval ownership" plan, or any similar plan without the specific prior written consent of the Master Association and this Association.

16.18 Estoppel Statement. Upon the written request of any Owner, Mortgagee, prospective Mortgagee, Purchaser, or other prospective transferee of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid common assessments, if any, with respect to such Lot, the amount of the current monthly assessment, the date on which such assessment became or shall become due and the amount of any credit for prepaid expenses. Such statement, for which a reasonable fee may be charged, shall be binding upon the Association in favor of any person who may rely thereon in good faith. Unless a request for such statement shall be complied with within thirty (30) days after receipt thereof, all unpaid common assessments which become due prior to the date of making such a request shall be subordinated to the lien or other interest of the person requesting such a statement.

17. CONSENT OF TRUST DEED BENEFICIARIES.

By their signatures below, the beneficiaries of the existing Deeds of Trust encumbering the Black Bear Project, hereby consent to this Declaration.

Beneficiary: Bank of the San Juans

By:


Authorized Agent

IN WITNESS WHEREOF, Declarant has executed this Declaration of Covenants and Restrictions for the Black Bear Townhomes this 27th day of January, 2005.

Merritt Tacoma, LLC, a Maryland Limited Liability Company

By: [Signature]

Robb Merritt, Manager

STATE OF Maryland
COUNTY OF Baltimore ss.

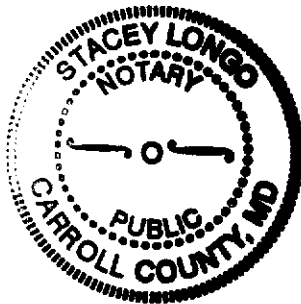
The foregoing instrument was acknowledged before me this 27th day of January 2005 by Robb Merritt, Manager.

Witness my hand and official seal.

My commission expires: 9-17-2008

STACEY LONGO, Notary Public
Carroll County, Maryland
My Commission Expires Sept. 17, 2008

[Signature]
Notary Public



My Commission Expires 9-17-2008

EXHIBIT A

Legal Description of Existing Property

Lot A-1 of Durango Mountain Resort, Tacoma Village Unit I, Final Plat, Project 2003-0207, according to the plat thereof filed for record October 17, 2003 as Reception No. 870276

EXHIBIT B

Description of Future Development Property

Those unsubdivided tracts, currently referred to as Lots A-2, A-3, A-4, A-5, and A-6, Tacoma Village, as generally depicted on the Plat.