Hatcher Village Condo

Owner’s Association

Declarations

Revised August 15, 2016

HATCHER VILLAGE CONDOMINIUM OWNERS ASSOCIATION DECLARATION

INDEX

ARTICLE TITLE

I Recitals

II Definitions

III Division of Project into Condominium Ownership

IV Condominium Map

V Owner’s Property Rights in Common Elements

VI Membership and Voting Rights in Association

VII The Association

VIII Assessments

IX Maintenance Responsibility

X Insurance and Fidelity Bonds

XI Conveyances and Taxation of the Condominium Units

XII Mechanics Liens

XIII Use Restrictions

XIV Easements

XV Association as Attorney-in-fact

XVI Damage and Destruction

XVII Obsolescence

XVIII Condemnation

XIX Revocation or Amendment of Declaration

XX Miscellaneous

CONDOMINIUM DECLARATION FOR

HATCHER VILLAGE CONDOMINIUMS

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**ARTICLE I**

**RECITALS**

**Section 1.1**: Property. Declarant is now the owner of a tract of land in Section 25, T 36N, R2 ½W NMPM in Archuleta County, State of Colorado, more particularly described as follows:

Beginning at a point whence the SE corner Section 25,

T36N, R2 ½ W, N.M.P.M., Archuleta County, Colorado, bears

S56o 16’15”E a distance of 2830.77 feet;

Thence running from said point of beginning N38o 46’37” W

a distance of 89.24 feet;

Thence N44o 55’08”W a distance of 57.64 feet;

Thence N47o 23’49”E a distance of 40.00 feet;

Thence S44o 55’08”E a distance of 60.31 feet;

Thence S38o 46’37”E a distance of 343.77 feet;

Thence along the arc of a tangent curve being concave to

the east, said arc having a radius of 1269.69 feet,

a delta angle of 17o 39’05”; a distance of 391.15 feet;

Thence S56o 25’42”E a distance of 140.05 feet;

Thence S51o 00’49”W a distance of 191.91 feet;

Thence N89o 05’30”W a distance of 84.00 feet;

Thence N44o 45’00”W a distance of 555.01 feet;

Thence S71o 33’13”W a distance of 47.00 feet;

Thence N44o 45’14”W a distance of 130.00 feet;

Thence N45o 10’40”E a distance of 232.63 feet to the point

of beginning and containing a 4.01 acres more or less.

**Section 1.2**: Purpose. The purpose of this Declaration is to submit the Condominium Project to the condominium form of ownership and use pursuant to the Condominium Ownership Act, being Article 33, Title 38, Colorado Revised Statutes, 1973 as amended.

**Section 1.3:** The property consists of a total of twenty Condominium Units with four Condominium Buildings.

**ARTICLE II**

**DEFINITIONS**

**Section 2.1:** Definitions. The following words when used in this Declaration shall have the following meaning unless the context shall expressly provide otherwise:

2.1.1: “Association” means the Hatcher Village Condominium Owners Association,

Inc., a nonprofit Colorado corporation, its successors and assigns, the Article of Incorporation and Bylaws of which shall govern the administration of the Condominium Property and the members of which shall be all Owners of the Condominium Units.

2.1.2: “Board of Directors” means the governing body of the Association as provided in this Declaration, the Articles of Incorporation, and Bylaws of the Association.

2.1.3: “Common Elements” means the totality of:

(A) The Property, and

(B) The Condominium Buildings, including but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, roofs, patios, balconies, halls, corridors, stairs, stairways, entrances and exits, lobbies, fire escapes, and mechanical installations of the Condominium Buildings consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating which exists for common uses, including pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith, except for the Individual Air Space Units; and

(C) The yards, sidewalks, walkways, paths, grass, shrubbery, trees, driveways, landscaping gardens, parking areas, storage spaces, and related facilities upon the Property; and

(D) The pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and in general, all apparatus, installations, and equipment of the Condominium Buildings existing for common use of the Owners; and

(E) The premises for lodging of custodians or persons in charge of the Property; and

(F) In general, all other parts of the Condominium Project existing for the common uses of the Owners.

The Common Elements shall be owned, as tenants in common, by the Owners of the separate Condominium Units, each Owner of a Condominium Unit having an undivided interest in such Common Elements as hereinafter provided.

2.1.4: “Common Expenses” means and includes (a) expenses of administration, operation and management, repair, or replacement of the General Common Elements of the Project except as such repairs and replacements are Owner responsibilities as delineated in Section 9.2 hereof; (b) expenses declared Common Elements by the provisions of this Declaration or the Bylaws of the Association; (c) all sums lawfully assessed against the Common Elements of the Project by the Board of Directors of the Association; (d) expenses agreed upon as Common Expenses by the members of the Association; and (e) expenses as are provided in any Management Agreement.

2.1.5: “Condominium Building” or “Building” means any building (including all fixtures and improvements therein contained) located on the Property, and within which one or more individual Air Space Units are located.

2.1.6: “Condominium Project” means all of the interests in the Property and additional land, and improvements initially and subsequently submitted to this Declaration.

2.1.7: “Condominium Unit” or “Unit” means the fee simple interest in and to an Individual Air Space Unit, together with all fixtures and improvements therein contained, and together with the undivided interest in the Common Elements appurtenant to the Individual Air Space Unit as shown in Exhibit A attached hereto and incorporated herein by this reference.

2.1.8: “Declarant” means Milford W. Parker and Sue Parker, their successors and assigns.

2.1.9: “Declaration” means this Condominium Declaration, together with any amendment hereto recorded in the office of the Clerk and Recorder of Archuleta County, Colorado.

2.1.10: “First Mortgage” means the unpaid and outstanding Mortgage or deed of trust having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

2.1.11: “First Mortgagee” means the Mortgagee under a First Mortgage.

2.1.12: “General Common Elements” means the Common Elements, except for Limited Common Elements.

2.1.13 “Individual Air Space Unit” means an individual air space consisting of enclosed rooms occupying part of a floor or floors in a Condominium Building and bounded by the unfinished perimeter walls, ceilings, floors, doors, and windows thereof. For the purpose of defining an individual Air Space Unit, the terms:

1. “Unfinished wall” means the studs, supports and other wooden, metal, or similar structural materials which constitute the interior face of a wall.
2. “Unfinished ceiling” means the beams, joists and wooden structures which constitute the ceiling of an individual Air Space Unit.
3. “Unfinished floor” means the beams, floor joists, and plywood deck or similar floor deck material which constitutes the floor of an individual Air Space Unit.

An individual Air Space Unit shall include the drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling or floor covering, windows and window frames, and doors and door frames. An Individual air Space Unit shall also include any fireplace hearth, fireplace flue, fireplace facing, brick, or tile or firebox. An Individual Air Space Unit shall further include fixtures and hardware and all improvements contained within the unfinished walls, ceilings, and floors; provided, however, that an Individual Air Space Unit shall not include any of the structural components of a Condominium Building or utility or service lines serving more than one individual Air Space Unit, located within the unit. Each Individual Air Space Unit as thus defined shall be shown on the Map to be filed for record.

2.1.14: “Limited Common Elements” means those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner or Owners of a particular Condominium Unit or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Condominium Units. Without limiting the foregoing, the Limited Common Elements shall include the balcony or patio adjacent to an Individual Air Space Unit, ski closets and/or storage space outside of and immediately adjacent to the front chimneys and flues in each Condominium Building, individual air conditioning units and fixtures, and individual water and sewer service lines and plumbing servicing the Individual Air Space Unit. The balcony or patio and the fireplace chimneys which are accessible from, associated with, and which adjoin a particular Individual Air Space Unit shall, without further reference thereto, be used in connection with such Individual Air Space Unit to the exclusion of the use thereof by the other Owners, except by invitation. No reference thereto need be made in any instrument of conveyance, encumbrance, or other instrument.

2.1.15: “Management Agreement” means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance, and management of the Condominium.

2.1.16: “Manager” means a person, firm, corporation, or other entity employed or engaged as an independent contractor to perform management service for the Condominium Project.

2.1.17: “Map or Condominium Map” means and includes the engineering survey or surveys of the Property locating thereon the Buildings, the floor plans, and other drawings or diagrammatic plans, including, without limitation, charts or schedules depicting all or part of the improvements on the Property and such other information as may be included thereon in the discretion of the Declarant.

2.1.18: “Mortgage” means any mortgage, deed of trust, or other security instrument recorded in the records of the office of the Clerk and Recorder of Archuleta County, Colorado, and by which a Condominium Unit or any part thereof is encumbered.

2.1.19: “Mortgagee” means any person named as a mortgagee or beneficiary under any Mortgage under which the interest of any Owner is encumbered, or any successor to the interest or any such person under such Mortgage.

2.1.20: “Owner” means any record owner having such an interest therein merely as a Mortgagee (unless such Mortgage has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).

2.1.21: “Pagosa Property Owners Association, Inc.” means the Pagosa Property Owners Association, Inc., a non-profit Colorado corporation, its successors and assigns, and the Articles of Incorporation and Bylaws of said Association. At least one Owner of each Condominium Unit shall be an automatic member of the Pagosa Property Owners Association, Inc. subject to the Articles and Bylaws of such corporation, with the right to use said corporation’s facilities designed to promote and enhance the welfare of the entire Pagosa community. Other Owners and residents of Units may elect to join said corporation or be granted automatic membership (pursuant to the rules and regulations of said corporation, which are subject to change.)

2.1.22: “Protective Covenants” means any covenants, conditions, or restrictions heretofore or hereafter recorded in the records of Archuleta County, Colorado, by the Pagosa Lakes Property Owners Association, Inc., to promote and enhance the welfare of the entire Pagosa community.

**ARTICLE III**

**DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP**

**Section 3.1:** Division Into Condominium Units. The Condominium Project is hereby divided into twenty-four Condominium Units, each consisting of a fee simple interest in a Condominium Unit and an undivided fee simple interest in the Common Elements in accordance with the respective undivided interest in Common Elements appurtenant to each Unit as set forth in Exhibit A attached hereto. Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units.

**Section 3.2:** Inseparability. No part of a Condominium Unit or of the legal rights comprising ownership of a Condominium Unit may be partitioned or separated from any other party thereof during the period of condominium ownership prescribed in this Declaration. Each Condominium Unit and the undivided interest in the Common Elements appurtenant to the individual Air Space Unit shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Condominium Unit. Every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition, as the case may be, of the entire condominium Unit, together all appurtenant rights and interests created by law or by this Declaration.

**Section 3.3** Non-Partitionability. The Common Elements shall be owned in common by all of the Owners and shall remain physically undivided, and no Owner shall bring any action for partition or division of the Common Elements. By acceptance of his deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived his right to institute and/or maintain a partition action or another cause of action designed to cause a division of the Common Elements, and this Section 3.3 may be pleaded as bar to the maintenance of such an action. An Owner who shall institute or maintain any such action shall be liable to the Association (and hereby agrees to reimburse the Association) for the Association’s costs, expenses, and reasonable attorney’s fees in defending any such action.

**Section 3.4:** Covenants Running With the Land. All provisions hereof shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon, and inure to the benefit of, the Declarant, the Association, and all Owners, and upon and to the their respective heirs, executors, administrators, personal representatives, successors, and assigns. Any right or any interest reserved or contained in this Declaration to or for the benefit of the Declarant may be transferred or assigned by the Declarant, either separately or with one or more such rights of interest, to any person, corporation, partnership, association, or other entity.

**ARTICLE IV**

**CONDOMINIUM MAP**

**Section 4.1:** Condominium Map. The Map shall be filled for recorded in the office of the County Clerk and Recorder of Archuleta County, Colorado. The map may be filed in whole or in parts or sections, from are substantially completed. Each section of the Map filed subsequent to the first or initially filed Map shall be termed a supplement to such Map and the numerical sequence of such supplements shall be shown thereon. The Map of any part or section thereof depicting Condominium Units shall not be filed for record until the Building in which the Condominium Units are located has been substantially completed in order to permit the location thereof, both horizontally and vertically, by registered engineers. The Map shall be filed for record prior to the conveyance of the Condominium Unit to a purchaser. The Map shall depict and show at least he following: the legal description of the Property and a survey thereof; the location of the Buildings on eh land; the floor and elevation plan; the location of the Condominium Units within the Buildings; and the Condominium Units within the Buildings, both horizontally and vertically; the thickness of the common walls between or separating the Condominium Units; the location of an structural components or supporting elements of the buildings; and the Condominium Unit designations; and the Building designations. The Map shall contain a certificate of a registered professional engineer or licensed architect or a licensed land surveyor certifying that the Map substantially depicts the location and the horizontal and vertical measurements of the Property, the Building or Buildings, the condominium Units, the dimensions of the condominium Units, the elevations of the unfinished floors and ceilings s constructed, the Building name or designation, and that such Map is prepared subsequent to the substantial completion of the improvements. Each supplement or amendment shall set forth a like certificate when appropriate.

**Section 4.2:** Interpretation. In interpreting the Map, the existing physical boundaries of each separate Condominium Unit as constructed shall be conclusively presumed to be its boundaries.

**Section 4.3:** Amendment. Declarant reserves the right to amend the Map, from time to time, to conform it to the actual location of and of the constructed improvements and to establish, vacate, and relocate outside the Building, or Buildings utility easements, access road easement, and parking areas.

**ARTICLE V**

**OWNER’S PROPERTY RIGHTS IN COMMON ELEMENTS**

**Section 5.1** Rights of Ingress and Egress. Every Owner, his family members, his guests, and licensees shall have a right and easement of ingress and egress over, across, and upon the General Common Elements for the purpose of getting to and from his Condominium Unit, his parking area, and the public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to the Owner’s Condominium Unit; provided, however, that such right and easement shall be subject to the following:

5.1.1 The covenants conditions, restrictions, easements, reservations, rights of way, and other provisions contained in this Declaration and contained in the Condominium Map and Protective Covenants, if any, and

5.1.2 The Right of the Association to assign specific parking spaces, storage spaces, or areas for the exclusive use of the Owners of particular Condominium Units or of particular Condominium Buildings; provided, however that each Condominium Unit will have the right to use one parking space for the purpose of automobile parking and each Owner of that Condominium Unit shall have the right to use such parking space; and

5.1.3 The right of the Association to adopt, from time to time, any and all rules and regulations concerning the Common Elements and the facilities located thereon as the Association may determine is necessary or prudent; and

5.1.4 The right of the Association to adopt, from time to time, any and all rules and regulations concerning vehicular traffic and travel upon, in, order, and across the Condominium Project.

**Section 5.2:** Limited Common Elements. Subject to the provisions of this Declaration, every owner shall have the exclusive right to use and enjoy the Limited common Elements appurtenant to this Condominium Unit.

**Section 5.3:** Major Recreational Facilities. All off-site recreational facilities are not part of the Condominium Project. Membership in the Association does not in itself create any right to the use of or membership in any recreational facility not located on the Property. Declarant or the Pagosa Property Owner’s Association, as the case may be, may grant or limit access to such facilities, charge such fees, and adopt such regulations with respect to such facilities it may own as it may in its sole discretion determine.

**Section 5.4:** Membership in the Pagosa Property Owners Association, Inc. The Protective Covenants and approved by the directors of the Pagosa Property Owners Association, Inc. have enabled the Condominium Units to obtain membership in said corporation. At least one Owner as herein defined of each Unit shall automatically be a member of Pagosa Property Owners Association, Inc. and shall abide by the rules and regulations of said corporation as defined in the Article of Incorporation and Bylaws of said corporation. Each Unit shall be assessed an annual fee for such membership which shall be determined by the Board of Directors of the Pagosa Property Owners Association, Inc. Other Owners and residents of units shall be entitled (pursuant to the rules and regulations of said corporation, and subject to change as contained therein) to apply for membership therein. Facilities owned or controlled by the Pagosa Property Owner’s Association, Inc. shall be available to Owners as members of said corporation subject to its regulations.

**ARTICLE VI**

**MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 6.1:** Membership. Every owner shall be a member of the Association and shall remain a member for the period of his ownership of a Condominium Unit; provided, however, that in no event shall the total exceed the total number of votes therefore as provided under Section 6.2 hereof. Membership in the association shall be appurtenant to, and may not be separated from, the ownership of a Condominium Unit, provided, however, that an Owner may appoint in writing furnished to the Association an agent or delegate to exercise the rights of the Owner in the Association and in the event of such appointment, the Delegate shall have the power to act on behalf of the Owner as a member of the Association.

**Section 6.2:** Classes of Membership and Voting Rights. There shall be one class of membership. Members shall be all Owners and each Condominium Unit owned by Members shall have one vote. When more than one person holds an interest in a Condominium Unit, they may appoint one of their Co-Owners as proxy to cast the vote for that Condominium Unit.

The vote for such Condominium Unit shall be cast as the Owners thereof agree, but the voting interest allocated to such Condominium Unit shall not be divided among Co-Owners.

**Section 6.3:** Owner’s and Associations’ Addresses for Notice. Unless an owner shall have notified the Association by registered or certified mail of a different address, any notice required to be given, or otherwise given, by the Association under this Declaration to any Owner, or any other written instrument to be given to any Owner, may be mailed to such Owner in a postage prepaid envelope and mailed by first class, registered or certified mail to the address of the Condominium Unit shown upon the Association’s records as being owned by such Owner. If more than one Owner owns a particular condominium Unit, then any notice or other written instrument may be addressed to all of such Owners, and may be mailed in one envelope in accordance with the foregoing. Any notice or other written instrument given by the Association in accordance with the foregoing will be deemed to have been given on the date that it is mailed. All notices by the Association may also be sent via email to owners.

**ARTICLE VII**

**THE ASSOCIATION**

**Section 7.1:** Management Duties and Duty to Establish Reserve Account. Subject to the rights and obligations of Owners as set forth in this Declaration, the Association shall be responsible for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements, (including facilities, furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order, and repairs; provided, however, that each Owner shall be responsible for maintaining and keeping in repair the Limited Common Elements designated for use of the Condominium Unit and for keeping the same in good, sanitary, and attractive condition. The Association shall be responsible for the maintenance and repair of exterior surfaces of the Condominium Buildings (including without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance and repair of roofs) maintenance, repair of General Common Elements and he Limited Common Elements, except as provided herein. The Association shall maintain in proper, first-class manner all grass, trees, shrubbery, flowers, and similar landscaping constituting part of the Common Elements. The Association shall establish and maintain, out of the monthly installments of the annual assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be replaced on a periodic basis. The foregoing specification of the duties of the Association with respect to particular Common Elements shall not be construed to limit its duties with respect to other Common Elements, as set forth in the first sentence of this Section 7.1. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Association assessment, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees.

**Section 7.2:** Owner’s Negligence. In the event that the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner’s family, or by an Owner’s guests or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner; and , if not repaid to the Association within seven days after the Association shall have given notice to the Owner of the total amount, or any portions thereof from time to time, of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Section 7.2, and such expenses, costs, and fees shall automatically become default assessment determined and levied against such Condominium Unit, and the Association may proceed in accordance with Section 8.11 hereof.

**Section 7.3:** Delegation of Management Duties. The Board of Directors may delegate all or any part of its powers and duties to a Manager or a managing agent, including the Declarant; however, the Board of Directors when so delegating, shall not be relieved of its responsibilities under this Declaration. Any management agreement entered into by the Association and any other contract providing for services by the Declarant shall be in writing, shall be terminable by either party without cause or payment of a termination fee on 90 days’ or less written notice and shall have a maximum term of three years, which may be renewable by agreement of the parties of successive three-year periods. In addition, the Association may employ independent contractors or such other employees or persons as it deems necessary to carry out the Association’s functions hereunder, and may prescribe their duties.

**Section 7.4:** Acquiring and Disposition of Personal Property. The Association may acquire, own, and hold for the use and benefit of all Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interest in the Common Elements. Such interests shall not be transferable except with the transfer of a Condominium Unit. A transfer of a Condominium Unit shall transfer to the transferee ownership of the transferor’s beneficial interest in such personal property without any reference thereto. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Condominium Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Condominium Unit.

**Section 7.5:** Promulgation of Rules and Regulations. The Board of Directors may make and amend reasonable rules and regulations governing the use of the Condominium Units and the Common Elements, which rules and regulations shall be substantially consistent with the rights and duties established in this Declaration. The Association or any aggrieved owner may take judicial action against any Owner to enforce compliance with such rules and regulations and with the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law.

**Section 7.6:** Identity of Board of Directors. From time to time, but no less than annually, there shall be mailed or posted by the Association on the website to each Owner a notice containing the names and email addresses of the members of the Board of Directors and the Managing Agent, if any.

**Section 7.7:** Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association shall receive upon the initial sale or leasing of each Condominium Unit an amount as specified in the Bylaws of the Association. This payment to the Association for working capital funds shall only apply to the first sale or first leasing by Declarant of each Condominium Unit, and the payment shall be in addition to any monthly installments of the annual assessment which may be due at the time of such sale or leasing.

**Section 7.8:** Implied Rights. The Association may exercise any and all other rights or privileges given to it by this Declaration, or by the Articles of Incorporation or Bylaws of the Association, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

7.8.1: By act or omission seek to abandon or terminate the condominium regime established hereby; or

7.8.2: Partition or subdivide any Condominium Unit; or

7.8.3: Except as provided in Section 16.5 hereof in case of substantial loss to the Condominium Units and/or to the Common Elements of the Condominium Project to use hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such Condominium Property.

**Section 7.9:** Books and Records of the Association. The Manager or Board of Directors, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the Common Elements and the Limited Common Elements. Owners and Mortgagees may inspect the records of receipts and expenditures of the Board of Managers pursuant to law at convenient weekday business hours. The other books, records, and papers of the Association shall at all times, during convenient weekday business hours, be subject to inspection by any Owner or Mortgagee. The Declaration, the Articles of Incorporation, and the Bylaws of the Association, as well as any Management Agreements shall be available for inspection by any Owner on the Association website.

**ARTICLE VIII**

**ASSESSMENTS**

**Section 8.1:** Covenant of Personal Obligation of Assessments. Every Owner, by acceptance of the deed or other instrument of transfer of his Condominium Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), is deemed to personally covenant and agree, jointly and severally, with every other Owner and with the Association, and hereby does so covenant and agree to pay to the Association the (a) annual assessments, (b) special assessments, and (c) default assessments applicable to his Condominium Unit; such assessments to be established and collected as hereinafter provided. No Owner may waive or otherwise escape personal liability for the payment of the assessments provided for herein by nonuse of the Common Elements of the facilities contained therein or by abandonment or leasing of his Condominium Unit. In addition to the foregoing, every Owner shall also have the obligation to pay the estimated prorated amount for hazard insurance premiums applicable to his Condominium Unit, real property ad valorem taxes and special assessments imposed by Colorado governmental sub-divisions applicable to his Condominium Unit, as well as all charges for telephone, electricity, or other utilities applicable to his Condominium Unit and any amount payable to the Pagosa Property Owners Association, Inc. pursuant to the Articles of Incorporation and Bylaws thereof.

**Section 8.2:** Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the health, safety, convenience, and the general welfare of the Owners, including the improvement and maintenance of the Property and of the services and facilities located thereon. Proper uses of the assessments levied by the Association shall include, but are not limited to, the expenditures of funds for taxes, fees, expenses, charges, levies, premiums, expenditures or other costs of the Association for:

8.2.1: Repairing, replacing, and maintaining the Common Elements;

8.2.2: Installing, maintaining, and repairing roads, driveways and underground utilities upon, across, over and under any part of the Condominium Project;

8.2.3: Furnishing garbage and trash pickup and water and sewer services to the Condominium Project;

8.2.4: Providing horticultural services to the Condominium Project such as mowing grass, caring for the grounds, walks and pathways, and landscaping the trees, shrubs and grass;

8.2.5: Obtaining and maintaining insurance in accordance with the provisions of Article X hereof;

8.2.6: Painting, repairing, replacing, and maintaining roofs, gutters, downspouts, exterior building surfaces, and other portions of the Common Elements;

8.2.7: Establishing and maintaining reserves for repairs, replacement, maintenance, taxes, capital improvements, and other purposes;

8.2.8: Carrying out all other powers, rights, and duties of the Association specified in this Declaration and the Articles of Incorporation and Bylaws of the Association, and;

8.2.9: Generally for any other purposes and uses that the Association shall determine

to be necessary to meet the primary purposes of the Association.

**Section 8.3:** Assessment Years. Annual assessment years shall thereafter commence on the first (1) day of July and continue until the following thirty (30) day of June.

**Section 8.4:** Amount of Total Annual Assessments. The total annual assessments against all Condominium Units 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, which estimates may include, among other things:

8.4.1: Expenses of management;

8.4.2: Taxes and special assessments (until the Condominium Units are separately assessed as provided in Section 11.4 hereof);

8.4.3: Premiums for all insurance which the Association is required or permitted to maintain as provided in Article X hereof;

8.4.4: Common lighting, heating, and other utility charges, water charges, trash collection, and sewer services charges;

8.4.5: Repairs and maintenance;

8.4.6: Wages for Association employees;

8.4.7: Legal and accounting fees;

8.4.8: Any deficit remaining from a previous assessment year;

8.4.9: The creation of reasonable contingency reserves, surpluses, and sinking funds; and

8.4.10: Any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Association for the benefit or the Owners under or by reason of this Declaration or the Articles of Incorporation or Bylaws of the Association.

**Section 8.5:** Apportionment of Annual Assessments. The Association’s total annual assessment for an assessment year shall be in the proportions set forth in Exhibit A to the respective undivided interests in the Common Elements appurtenant thereto as shown in Exhibit A attached hereto, and the Owner of each Condominium Unit shall be personally liable for each such assessment which is assessed against his Condominium Unit, and in case of multiple owners of a Condominium Unit, each such Owner shall be jointly and severally liable personally for each such assessment. The total annual assessment shall be apportioned among all Condominium Units as hereinabove provided in this Section 8.5 and shall not be apportioned between General Common Elements and Limited Common Elements.

**Section 8.6:** Determination of Amount of Annual Assessments. The Board of Directors shall determine, levy, and assess the Association’s annual assessments, which determination, levying and assessing may be made by the Board without the vote of the members of the Association.

**Section 8.7:** Special Assessments. In addition to the annual assessments authorized above, the Association may at any time and from time to time determine, levy, and assess in any assessment year, which determination, levying, and assessing may be made by the Board of Directors with or without the vote of the members of the Association, a special assessment applicable to that particular assessment year (and for any such longer period as the Board may determine) for the purpose of defraying in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacements, or maintenance of the Condominium Project or of any facilities located thereon, specifically including any fixtures and personal property related thereto. Any amounts determined, levied, and assessed pursuant hereto shall be assessed to the Condominium Units in proportion to the respective undivided interests in the Common Elements appurtenant thereto as shown in Exhibit A attached hereto; provided, however, that all of the Owners of a particular Condominium Unit shall be jointly and severally liable to the Association for the payment of all assessments against his particular Condominium Unit. Notice in writing of the amount of such special assessment per Condominium Unit and of the time for payment thereof shall be given to the Owners and no payment shall be due less than 30 days after such notice shall have been given. In the event that any of the special assessments levied by the Association pursuant to this Section 8.7 shall be used for the construction of the Condominium Project or of any facilities located thereon and if the total amount of special assessments levied for such construction shall exceed $5,000 (i.e., the total amount of such special assessments for all Condominium Units as an aggregate, and not $5,000 per Condominium Unit), then the use of special assessments for such construction shall require the approval of all of the Owners of at least two-thirds of the Condominium Units.

**Section 8.8:** Due Dates for Assessment Payments. Unless otherwise determined by the Association, the annual assessments and any special assessments which are to be paid in monthly installments shall be paid monthly in advance and shall be due and payable to the Association at its office, or as the Association may otherwise direct in any Management Agreement, without notice (except for the notices required by Section 8.6 and 8.7 hereof), on the first day of each month. If any such monthly installment shall not be paid within 15 days after it shall have become due and payable, then the Board may assess a “late charge” thereon in an amount not exceeding $50 to cover the extra expenses involved in handling such delinquent assessment installment. An Owner’s monthly assessment shall be prorated if the ownership of a Condominium Unit commences or terminates on a day other than the first day or last day, respectively, of a month

**Section 8.9:** Lien for Assessments. The annual and special assessments (including monthly installments thereof) provided for in this Article VIII and any and all default assessments arising under the provisions of Sections 3.3, 7.2, 12.2, or 13.4 hereof (together with any and all interest, costs, late charges, expenses, and reasonable attorney’s fees which may arise under the provisions of Section 8.11 hereof) shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Condominium Unit to which such assessments apply. To evidence such lien upon a specific Condominium Unit, the Association shall prepare a written lien notice setting forth the description of the Condominium Unit, the amount of assessment thereon which are unpaid as of the ate of such lien notice, the rate of default interest as set by the Bylaws and Section 8.11 hereof, the name of the Owner or Owners thereof, and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Directors or by an officer of the Association or by the Manager or any officer performing management services, and shall be recorded in the office of the Clerk and Recorder of Archuleta County, Colorado. Any such lien notice shall not constitute a condition precedent nor delay the attachment of the lien buy such lien is a perpetual lien upon the Condominium Unit and attaches without notice at the beginning of the first day of any period for which any assessment is levied or assessed.

**Section 8.11:** Effect of Nonpayment of Assessments. If any annual or special assessment (for any monthly installment thereof) is not fully paid within 30 days after the same become due and payable, or if any default assessment shall arise under the provisions of Sections 3.3,7.2, 12.2, or 13.4 hereof, then in any of such events and as often as the same may happen, interest shall accrue at the rate not exceeding 18% per annum provided in the Bylaws from the due date on any amount thereof which was not paid with such 30-day period or on the amount of assessment in default, whichever shall be applicable, and the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same and may also proceed to foreclose its lien against the particular condominium Unit in the manner and form provided by Colorado law for foreclosure of real estate mortgages in and through the courts. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments (or any monthly installment thereof) may be commenced and pursued by the Association without foreclosing or, in any way, waiving the Association’s lien therefore. In the event that any such assessment (or monthly installment thereof is not fully paid when due and the Association shall commence such an action (or shall counter claim or cross-claim for such relief in any action) against any Owner personally obligated to pay the same or shall proceed to foreclose its lien against the particular Condominium Unit, then all unpaid monthly installments or annual and special assessments and all default assessments (including any such installments or assessments arising during the proceedings of such action or foreclosure proceedings), and late charges under Section 8.8 hereof, any accrued interest under this Section 8.11, the Association’s costs, expenses and reasonable attorney’s fees incurred for any such action and/or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Condominium Unit in satisfaction of the Association’s lien. Foreclosure or 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 assessments (or monthly installments thereof) which are not fully paid when due or for any subsequent default assessments. The Association shall have the power and right to bid in or purchase any Condominium 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.

**Section 8.12:** Successor’s Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Condominium Unit to pay all the assessments thereof and notwithstanding the Association’s perpetual lien upon a Condominium Unit for such assessments, all successors in interest to the fee simple title of a Condominium Unit shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid assessments, interest, late charges, costs, expenses, and attorneys’ fees against such Condominium Unit, without prejudice to any such successor’s right to recover from any prior Owner any amounts paid thereon by such successor; provided, however, that a successor in interest to the fee simple title of a Condominium Unit shall be entitled to rely upon the existence and status, or absence thereof, of unpaid assessments, interest, late charges, costs, expenses and attorneys’ fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest pursuant to the provisions of Section 8.14 hereof. The foregoing liability of successors in interest for all unpaid assessments, interest, late charges, costs, expenses, and attorneys’ fees against his Condominium Unit shall not apply to an First Mortgagee or First Mortgagee’s nominee who shall, in good faith and not for the primary purpose of circumventing this Section 8.12, acquired the Condominium Unit through a deed in lieu of foreclosure proceedings or through foreclosure proceedings.

**Section 8.13:** Subordination of Association’s Lien for Assessments. The Association’s perpetual lien on a Condominium Unit for assessments shall be superior to the homestead exemption provided by Part 2, Article 41, Title 38, C.R.S.1973, as amended, and to all other liens and encumbrances except:

8.13.1: Real property ad valorem taxes and special assessment liens duly imposed by a Colorado government, political subdivision, or special taxing district;

8.13.2: Any lien created by the Protective Covenants, if any, or Articles of Incorporation or Bylaws of Pagosa Property Owners Association, Inc., which liens are in a parity with and not prior and superior to the liens existing or created under the terms of this Declaration.

**Section 8.14:** Statement of Status or Assessments. Upon ten days’ written notice to the Manager or Board of Directors and payment or a reasonable fee not to exceed $25.00, any Owner or Mortgagee shall be furnished a statement of the Owner’s account setting forth:

8.14.1: The amount of any unpaid assessments, interest, late charges, costs, expenses, and attorneys’ fees then existing against a particular Condominium Unit;

8.14.2: The amount of the current monthly installments of the annual assessment and the date that the next monthly installment is due and payable;

8.14.3: The date of the payment of any installments of any special assessments then existing against the condominium Unit.

Upon the issuance of such a certificate signed by a member of the Board of Directors or by an officer of the Association or by a Manager, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely thereon in good faith.

8.14.4: Any other information deemed proper by the Association including the amount of any unpaid lien created or imposed under the terms of the Protective Covenants, if any, or Articles of Incorporation or Bylaws of the Pagosa Property Owners Association, Inc.

Upon the issuance of such a certificate signed by a member of the Board of Directors or by an officer of the Association or by a Director, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely thereon in good faith.

**Section 8.15:** Liens. Except for annual, special, and default assessment liens as provided in this Declaration, mechanics’ liens, tax liens, and judgment liens, other liens arising by operation of law, and liens arising by operation of law, and liens arising under Mortgages, there shall be no other liens obtainable against the Common Elements or any interest therein of any Condominium Unit.

**ARTICLE IX**

**MAINTENANCE RESPONSIBILITY**

**Section 9.1:** Owner’s Right and Duties with Respect to Interiors. Each Owner shall have the exclusive right and duty to paint , tile, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, and doors forming the boundaries of his Individual Air Space Unit and all walls, floors, ceilings, and doors within such boundaries.

**Section 9.2:** By the Owner. The Owner shall have the obligation to maintain and keep in repair the interior of the Condominium Unit at his expense, including the fixtures and utilities located therein to the extent current repair shall be necessary in order to avoid damaging other Condominium Units or the Common Elements. All fixtures, equipment, and utilities installed within the Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness of the improvements or impair the proper functioning of the utilities, heating, or plumbing systems, or integrity of the Buildings or impair any easement or hereditament. An Owner shall also have the obligation to maintain and keep in repair all appurtenant Limited Common Elements at his or her expense including plumbing located within the General Common Elements but servicing an Owner’s Unit. An Owner shall not be responsible for repair occasioned by casualty as defined in Article XVI hereof unless such casualty is due to the act or negligence of the Owner, his guests, invitees, or tenants. An Owner shall reimburse the Association for any expenditure incurred for replacing or repairing of any Common Element and facility damaged through fault of an Owner, his guests, invitees, or tenants, and the Association shall be entitled to assess such Owner for such amounts which shall be payable, collectible, and enforceable in the same manner as assessments pursuant to Article VIII hereof. No Owner shall alter any Common Elements without the prior written consent of the Association.

**Section 9.3:** By the Association. The Association shall maintain and keep in good repair, replace, and improve as a Common Expense, all the Condominium Property not required to be maintained and kept in good repair by an Owner, without the requirement or approval of the Owners.

**ARTICLE X**

**INSURANCE AND FIDELITY BONDS**

**Section 10.1:** Duty to Obtain and Maintain Insurance. The Association shall obtain and maintain in full force and effect at all time the insurance coverage set forth in Sections 10.2, 10.3, 10.4, 10.5, 10.7, and 10.8 hereof, which insurance coverage shall be provided by companies duly authorized to do business in the State of Colorado.

**Section 10.2:** Hazard Insurance. The Association shall obtain, from an insurance carrier acceptable to the Federal Home Loan Mortgage Corporation, hazard insurance on the Condominium Project in the form of a “master” or “blanket” policy of property insurance in an amount equal to the full replacement value (i.e., 100% of the current “replacement cost” exclusive of land, foundation, excavation, and other items normally excluded from coverage) of the Condominium Project which shall include all building service equipment and the like and any fixtures or equipment within a Condominium Unit. Such master or blanket policy shall include an “Agreed Amount Endorsement” or its equivalent, a “Demolition of Construction Endorsement” or “Contingent Liability from Operation of Building Laws Endorsement” or the equivalent. In addition, such master or blanket policy shall afford protection against at least the following:

10.2.1: Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage;

10.2.2: Such other risks as shall customarily be covered with respect to projects similar in construction, location, and use to this Condominium Project.

**Section 10.3:** Liability Insurance. The Association shall obtain comprehensive policy of public liability insurance covering all of the Common Elements and commercial spaces, if any, in the Condominium Project. Such comprehensive policy of public liability insurance shall include a “Severability of Interest Endorsement” or equivalent coverage which would preclude the insurance company from denying the claim of any Owner because of the negligent acts of the Association or any other Owner, with such limits as may be considered acceptable by the Federal Home Loan Mortgage Corporation (but not less than $1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence). Such comprehensive policy of public liability insurance shall also include protection against water damage liability, liability for non-owned and hired automobiles liability for property of others, and, if applicable, elevator collision, garagekeeper’s liability, host liquor liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use to this Condominium Project.

**Section 10.4:** Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling funds of the Association. Such fidelity coverage or fidelity bonds shall meet the following requirements:

10.4.1: They shall name the Association as an oblige; and

10.4.2: They shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Condominium Project, including reserves, unless a greater amount is required by the Federal Home Loan Mortgage Corporation (or its Seller/Servicer).

**Section 10.5:** Flood Insurance. If the Condominium Project is located in an area indentified by the Secretary of Housing and Urban Development as an area having special flood hazards, a “blanket” policy of flood insurance on the Condominium Project must be maintained by the Association in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Condominium Units comprising the Condominium Project or the maximum limit of coverage available under National Flood Insurance Act of 1968, as amended, whichever is less.

**Section 10.6:** Provisions Common to Hazard Insurance, Liability Insurance, and Fidelity Insurance. Any Insurance Coverage obtained by the Association under the provision of Sections 10.2, 10.3, and, if applicable, 10.4 and 10.5 hereof shall be subject to the following provisions and limitations:

10.6.1: The named insured under any such policies shall be the Association, as a trustee for the Owners, or its authorized representative, including any trustee with which the Association may enter into any Insurance Trust Agreement, or any successor trustee (each of which is sometime referred to in this Section 10.6 as the “Insurance Trustee”) who shall have exclusive authority to negotiate losses under such policies;

10.6.2: In no event shall the insurance coverage obtained and maintained pursuant to such sections be brought into contribution with insurance purchased by the Owners or their Mortgagees;

10.6.3: The policies shall provide that coverage shall not be prejudiced by (a) any act or neglect of the Owners when such act or neglect is not within the control of the Association, or (b) by failure of the Association to comply with any warranty or condition with regard to any portion of the Condominium Project over which the Association has no control;

10.6.4: The policies shall provide that coverage may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least 30 days’ prior written notice to any and all insureds named therein, including the Federal Home Loan Mortgage Corporation (or its Seller/Servicer);

10.6.5: The policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association and any Owner and/or their respective agents, employees, or tenants, and of any defenses based upon a co-insurance or upon invalidity arising from the acts of the insured; and

10.6.6: All policies of property insurance shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any Insurance Trustee) or when in conflict with the provisions of any Insurance Trust Agreement to which the Association may be party, or any requirement of law.

**Section 10.7:** Officers’ and Directors’ Personal Liability Insurance. To the extent obtainable, at reasonable costs, appropriate officers; and directors’ personal liability insurance shall be obtained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors in behalf of the Association.

**Section 10.8:** Workmen’s Compensation Insurance. The Association shall obtain workmen’s compensation or similar insurance with respect to its employees in the amounts and forms as may be now or hereafter be required by law.

**Section 10.9:** Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Association’s responsibilities and duties.

**Section 10.10:** Insurance Premiums. Insurance premiums for the above provided Insurance shall be a common expense to be paid by monthly assessments levied by the Association. Subject to the provisions of Section 8.8 hereof, such payments shall be held in a separate trust account of the Association and used solely for the payment of the premiums for insurance hereinabove provided for as such premiums become due.

**Section 10.11:** Insurance Obtained by Owners. It shall be the responsibility of the Owners, and at their expense, to make arrangements in regard to title insurance on their Condominium Unit upon any resale, for hazard insurance on their personal property and furnishings, and for public liability insurance covering their individual Air Space Unit and, in addition, the Owner may obtain such other and additional insurance coverage on and in relation to this Condominium Unit as he in his sole determination shall conclude to be desirable; provided, however, that none of such insurance coverages obtained by an Owner shall affect any insurance coverage obtained by the Association nor cause the diminution or termination thereof. Any such insurance obtained by an Owner shall waive the particular insurance company’s right of subrogation against the Association and other Owners.

**ARTICLE XI**

**CONVEYANCE AND TAXATION OF CONDOMINIUM UNITS**

**Section 11.1:** Deemed to Describe an Undivided Interest in Common Elements. Every instrument of conveyance, mortgage, deed of trust, or other instrument affecting the title to a Condominium Unit which legally described said Condominium Unit in the manner set forth in Section 11.2 hereof shall be construed to describe the Individual Air Space Unit, together with the undivided interest in the Common Elements appurtenant thereto, together with all fixtures and improvements therein contained (unless any thereof shall be Common Elements), and to incorporate all the rights incident to the ownership of a Condominium Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, rights-of-way, reservations, and other provisions contained in this Declaration and the Protective Covenants, including the Owners’ membership in the Pagosa Property Owners Association, Inc., and the easement of enjoyment to use the Common Elements.

**Section 11.2:** Taxation. Each Condominium Unit shall be assessed separately for all taxes, assessments, and other charges of the State of Colorado or of any other taxing or assessing authority in accordance with the Condominium Ownership Act of the State of Colorado. For the purpose of such assessments, the valuation of the Common Elements shall be apportioned among the Condominium Units in proportion to the undivided interest in Common Elements appurtenant thereto. The Association shall furnish to the Tax Assessor of Archuleta County, Colorado, and to the all other appropriate persons and authorities all necessary information with respect to such apportionment. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

ARTICLE XII

MECHANICS’ LIENS

**Section 12.1:** Mechanic’s Liens. No labor performed or materials furnished for use and incorporated in any Condominium Unit with the consent of or at the request of the Owner thereof or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against a condominium Unit of any other Owner not expressly consenting to or requesting same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Individual Air Space Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanics’ lien against the Condominium Unit or against the Common Elements, or any part hereof, of any other Owner for labor performed or for materials furnished in work on the first Owner’s Condominium Unit.

**Section 12.2:** Enforcement by the Association. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper) the Association shall enforce the indemnity provided by the provisions of Section 12.1 hereof by collecting from the Owner of the Condominium Unit on which the labor was performed or materials furnished the amount necessary to discharge any such mechanics’ lien, including all costs and reasonable attorneys’ fees incidental thereto, and obtain a discharge of such lien. In the event that the Owner of the condominium Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven days after the Association shall have given notice to such Owner of the total amount, or any portions thereof from time to time, of the amount to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 12.2 and such amount to be indemnified shall automatically become a default assessment determined and levied against such Condominium Unit and the Association may proceed in accordance with Section 8.11 hereof.

**ARTICLE XIII**

**USE RESTRICTIONS**

**Section 13.1:** Compliance with Zoning. All Condominium Units shall be used for residential purposes only and shall not be used for any business manufacturing, or commercial purpose whatsoever; provided however, if the appropriate zoning so allows and if prior written approval of the Association is obtained, an Owner may use a specifically designated portion of his Condominium Unit as a home business office, which approval may thereafter be withdrawn or terminated by the Association at any time.

**Section 13.2:** Conveyance of Condominium Units. All Condominium Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements reservations, rights-of-way, and other provisions contained in this Declaration and the Protective Covenants, as the case may be, amended from time to time.

**Section 13.3:** Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association.

**Section 13.4:** Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Condominium Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on the Condominium Project, or any part there of, or increase in the rate of the insurance on the Condominium Project, or any part thereof, over what the Association, but for such activity, would pay, without the prior written approval of the association. Nothing shall be done or kept in any Condominium Unit or in or on the Common Elements, or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirements of any governmental body. No damage to, or waste of, the Common Elements or an part thereof shall be committed by any Owner, or by any member of the Owner’s family, or by any guest, invitee, or contract purchaser of any Owner, and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from any such damage or waste caused by him, the members of his family, or his guests, invitees, or contract purchasers. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity in the same manner as provided in Section 12.2 hereof with respect to an Owner’s indemnity against mechanics’ liens.

**Section 13.5:** Structural Alterations. No structural alterations to any Condominium Unit or any Common Element shall be done by any Owner without the prior written approval of the Association.

**Section 13.6:** Rules and Regulations. No Owner shall violate the rules and regulations, as adopted from time to time by the Association, for the use of the Condominium Units and the Common Elements.

**Section 13.7:** Antennas or Satellite Dishes. Without the prior written approval of the Association, no exterior television, radio, or other communication antennas or satellite dishes of any type shall be placed, allowed or maintained on any portion of the Common Elements or the Condominium Project.

**Section 13.8:** Signs. No signs, billboards, posterboards, or advertizing structure of any kind shall be erected or maintained for any purpose whatsoever except such signs as have been approved by the Association. Any signs which are permitted under the forgoing restrictions shall be erected or maintained on the Condominium Project only with the prior written approval of the Association, which approval shall be given only if such signs shall be of attractive design and shall be as small as a size as reasonable possible and shall be placed or located as directed or approved by the Association.

**Section 13.9:** Water and Sewage. Each structure designed for occupancy or use by human beings shall connect with the water and sewage facilities of the Pagosa Area Water and Sanitation District or such water and/or sewer systems as the Association may approve. No private well shall be used as a source of water for human consumption or irrigation, nor shall any facility other than those provided as set out above be used for disposal of sewage.

**Section 13.10:** Trash. No trash, ashes, or other refuse or debris may be thrown or dumped on the Property. The burning of refuse out of doors shall not be permitted. No incinerators or other device for the burning of refuse indoors shall be constructed, installed, or used by any person except as approved by the Association. Waste materials, garbage, and trash shall be kept in sanitary containers and shall be enclosed and screened from public view and protected from disturbance and shall be disposed of with reasonable promptness. The owner of any Condominium Unit subject to these covenants shall keep the promises free of trash, refuse, or debris of any kind, whether said Condominium Unit is vacant or occupied.

**Section 13.11:** Pets. Dogs, cats, or other customary household pets may be kept on the Property, not to exceed two per species per Condominium Unit without the written approval of the Board of Directors. However, no pet may be kept which abnormally interferes with the rights, comforts, or convenience of other Owners. Breeding of any animals on the Property is specifically prohibited. All pets must be under the control of their owner when outside its Owner’s Unit and Owner with confine his pet(s) to designated fenced areas, if any, for the purposes of excreting.

**Section 13.12:** Trade Names. No word, name, symbol, or combination thereof shall be used to identify for commercial purposes a structure, business, or service, unless the same shall have been first approved in writing by the Board of Directors.

**Section 13.13:** Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Condominium Unit, nor shall anything be done or placed upon the Property which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others.

**Section 13.14:** Abandoned, Inoperable or Oversized Vehicles. Abandoned or inoperable automobiles or vehicle or any kind, except as hereinafter provided, shall not be stored or parked on any portion of the Condominium Project. “Abandoned or inoperable vehicle” shall be defined as any vehicle which has not been driven under its own propulsion for a period of three weeks or longer; provided; however, this shall not include vehicles parked by Owners while on vacation. A written notice describing the “abandoned or inoperable vehicle” and requesting removal thereof may be personally served upon the Owner or posted on the unused vehicle; and if such vehicle has not been removed within 75 hours thereafter, the Association shall have the right to remove the same without liability to it, and the expense thereof shall be charged against the Owner. All unsightly or oversized vehicles, snow removal equipment, garden maintenance equipment, and all other unsightly vehicles, equipment and machinery may be required by Declarant or the Board of Directors to be stored at location or locations designated.

**Section 13.15:** Annoying Lights, Sounds, or Odors. No lights shall be emitted from any Condominium Unit which are unreasonable bright or cause unreasonable glare; no sound shall be emitted from any Condominium Unit which is unreasonably loud or annoying; and no odor shall be emitted from any Condominium Unit which is noxious or offensive to others.

**Section 13.16:** Trailers and Recreational Vehicles. No mobile home, trailer, automobile, truck, pickup, camper, or other vehicle may be used for temporary or permanent sleeping or living purposes while it is on the Property.

**Section 13.17:** Leasing of Condominium Units. The Owner of a Condominium Unit shall have the right to lease his Condominium Unit under the following conditions:

13.17.1: No Owner may lease less than his entire Condominium Unit;

13.17.2: All leases shall be in writing; and

13.17.3: All leases shall provide that the terms of the lease, and lessee’s occupancy of the Condominium Unit, shall be subject in all respects to the provisions of this Declaration and the Protective Covenants and to the provisions of the Articles of Incorporation and Bylaws of the Association and the Article of Incorporation and Bylaws of the Pagosa Property Owners Association, Inc., and that any failure by the lessee to comply therewith shall be a default under the lease.

**ARTICLE XIV**

**EASEMENTS**

**Section 14.1:** Recorded Easements. The Property shall be subject to any easements as shown on any recorded plat affecting the Property, or any portion thereof, and as shown on the recorded Condominium Map.

**Section 14.2:** Easements for Encroachments. The Condominium Project, and all portions thereof, shall be subject to an easement for encroachments created by construction and overhangs and for settling, shifting, and movement of any portion of the Condominium Project. A valid easement for said encroachments and for the maintenance thereof shall exist. In the event that a Condominium Building or a Condominium Unit is partially or totally destroyed, and then rebuilt, the Owners of the Condominium Units so rebuilt hereby agree that minor encroachments of the rebuilt Individual Air Space Units upon the Individual Air Space Units of other rebuilt Condominium Units, and all Owners and the Association or Individual Air Space Units upon the Common Elements shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Such encroachments shall not be considered to be encumbrances upon any part of the Condominium Project. Encroachments referred to herein include, but not limited to, encroachments caused by error in the original construction of any Condominium Building or Condominium Unit constructed on the Property, by error in the Condominium Map, by settling, rising, or shifting or the earth, or by changes in position caused by repair or reconstruction of any part of the Condominium Project.

**Section 14.3:** Utility Easements. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to water, sewer, gas, telephone, electrical, and a master television antenna system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical and telephone services to erect and maintain the necessary poles and other necessary equipment on the Property and to affix and maintain electrical and telephone wires, circuits, and conduits on, above, across, and under the roofs and exterior walls of the Condominium Buildings and the other buildings. Should any utility company furnishing a service covered by the general easement herein created request a specific easement by separate recordable document, Declarant shall have, and is hereby given, the right and authority to grant such easement upon, across, over, or under any part of all of the Property without conflicting with the terms hereof. The easement provided for in this Section 14.3 shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

**Section 14.4:** Reservation of Easements, Exceptions, and Exclusions. The Association has the concurrent right to establish from time to time by declaration or otherwise, utility and other easements, for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions consistent with the condominium ownership of the Condominium Project for the best interest of all the Owners and the Association in order to serve all the Owners within the Condominium Project as initially built and as expanded. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, and to create other reservations, exceptions, and exclusions convenient or necessary for the use and operation of any other property of the Declarant, as long as it does not hamper the enjoyment of the Condominium Project, as built or expanded, by the Owners.

**Section 14.5:** Emergency Easement. A general easement is hereby granted to al police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

**Section 14.6:** Maintenance Easement. A general easement is hereby granted to the Association, and any Manager, and their respective officers, agents, employees, and assigns upon, across, over, in, and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain on the common Elements maintenance and storage facilities for use by the Association.

**Section 14.7:** Drainage Easement. An easement is hereby granted to the Association, its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Condominium Project for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.

**Section 14.8:** Walkway Easements. Owners of property within the Pagosa Community, and all other persons present thereon have a perpetual easement and right-of-way to use the system of walkways now or hereafter constructed upon the Property for access purposes to or across the Property.

**Section 14.9:** Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Individual Air Space Units or may be conveniently accessible through Individual Air Space Units. The Owners of the other Individual Air Space Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Individual Air Space Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Individual Air Space Unit. The Association shall also have such right independent of any agency relationship. Subject to the Provisions of Section 7.2 hereof, damage to the interior of any part of an Individual Air Space Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Individual Air Space Unit at the instance of the Association or Owners shall be an expense of all the Owners.

**Section 14.10:** Declarant’s Rights Incident to Construction. The Association retains a right and easement of ingress and egress over, in, upon, under, and across the Common Elements and the Property and the right to store material thereon and to make such other use thereof as may be reasonably necessary or incident to the complete construction of the Condominium Project; provided, however, that no such rights shall be exercised by the Association in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Condominium Unit Owner, his family members, guests, or invitees to or of his Condominium Unit.

**Section 14.11:** Rights of Association to Own Units and to Use Common Elements. The Association shall have the right but not the obligation to purchase and own any Condominium Unit for the purpose of maintaining an office for the Association, for any resident managers or caretakers employed by the Association, for a storage, recreation, or conference area, or for the other use which the Association determines is consistent with the operation of the residential Condominium. The Association may also maintain offices, storage areas, conference areas, and recreation areas elsewhere within the General Common Elements. The costs, expenses, and carrying charges incurred by the Association in purchasing and owning said Condominium Unit shall be part of the Common Expenses.

**Section 14.12:** Easements Deemed Created. All conveyances of Condominium Units hereafter made shall be construed to grant and reserve the easements contained in this Article XIV, even though no specific reference to such easements or to this Article XIV appears in the instrument for such conveyance.

**ARTICLE XV**

**ASSOCIATION AS ATTORNEY IN FACT**

**Section 15.1:** Appointment. Each and every Owner hereby irrevocably constitutes and appoints the Association and his, its, and their true lawful attorney in fact in his, its, and their name, place and stead for the purpose of dealing with the Condominium Project upon its damage, destruction, or obsolescence as hereinafter provided in Articles XVI and XVII. Acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from an Owner shall constitute appointment of the attorney in fact as herein provided.

**Section 15.2:** General Authority. As attorney in fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any granted to the Association as attorney in fact.

**ARTICLE XVI**

**DAMAGE OR DESTRUCTION**

**Section 16.1:** Estimate of Damage or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Condominium Project, the Association 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 of that part of the Condominium Project so damaged or destroyed. “Repair and reconstruction” as used in this Article XVI shall mean restoring the damaged or destroyed part of the Condominium Project to substantially the same condition in which it existed prior to the damage or destruction, with each Individual Air Space Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before.

**Section 16.2:** Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the part of the Condominium Project damaged or destroyed. As attorney in fact for the Owners, the Association mat take any and all necessary or appropriate action to effect repair and reconstruction and no consent or other action by any Owner will be necessary in connection therein.

**Section 16.3:** Funds for Repair and Reconstruction. Subject to the provisions of Section 10.2 and 10.6 hereof, the proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction.

**Section 16.4:** Insurance Proceeds Sufficient to Repair. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement, shall be applied by the Association, as attorney in fact, to such reconstruction, and the improvement shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power as attorney in fact to cause the repair and restoration of the improvement. Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

**Section 16.5:** Insurance Proceeds Insufficient to Repair. If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is not more than 70% of the total replacement cost of all of the Condominium Units in the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney in fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Condominium Unites. Such special assessment shall be a Common Expense and made pro rata according to each Owner’s percentage of responsibility and shall be due and payable within 30 days after written notice thereof. The Association shall have full authority, right, and power as attorney in fact to cause the repair, replacement, or restoration of the improvement using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in Article VIII hereof. In addition thereto, the Association, as attorney in fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency assessment with the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association, as attorney in fact, a pursuant to the provisions of this paragraph. Assessments for the Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay the Association the costs and expenses for filing the notice, interest at a rate of 12% per annum, on the amount of the assessment and all reasonable attorneys’ fees. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney in fact, in the following order:

16.5.1: For payment of real property ad valorem taxes, special assessment liens duly imposed by a governmental subdivision, and customary expenses of sale;

16.5.2: For payment of the balance of the lien of any First Mortgage;

16.5.3: For payment of unpaid Association and Pagosa Property Owners Association, Inc., assessments, interest, costs, late charges, expenses, and attorneys’ fees;

16.5.4: For payment of junior mortgages in the order of and to the extent of their priority; and

16.5.5: The balance remaining, if any, shall be paid to the Owner of the Condominium Unit.

If the insurance proceeds are insufficient to repair and reconstruct the improvement, and if such damage is more than 70% of the total replacement cost of all of the Condominium Unit in this Condominium Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney in fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Condominium Units, provided, however, that Owners representing an aggregate ownership interest of 66 2/3% or more of the Common Elements and 66 2/3% of the First Mortgagees of record may agree not to repair or reconstruct the improvement; and in such event , the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association’s President and Secretary or Assistant Secretary, the entire Condominium Project shall be sold by the Association pursuant to the provisions of this paragraph, as attorney in fact, for all of the owners, free and clear of the provisions contained in this Declaration, the Map, Articles of Incorporation, and Bylaws. Assessments for Common Expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Owner’s interest in the Common Elements, and such divided proceeds shall be then paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner and designated as an agency account. From each separate account the Association, as attorney in fact, shall forthwith use and disburse the total amount of each of such accounts, without contributions from one account to another, toward the partial or full payment of the lien of any First Mortgagee encumbering the Condominium Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire Property. Such apportionment shall be based upon each Condominium Unit Owner’s interest in the Common Elements. The total funds of each account shall be used and disbursed, without contribution, from one account to another by the Association, as attorney in fact, for the same purposes and in the same order as is provided in Section 16.5.1 through 16.5.5 hereof.

**Section 16.6:** Notice of Loss to First Mortgagees. In the event that there shall be any damage or destruction to, or loss or taking of:

16.6.1: Any Condominium Unit which shall be in excess of $1,000.00, then notice of such damage, loss, or taking shall be given by the Association to the First Mortgagee on that Condominium Unit; and

16.6.2: The Common Elements which shall be in excess of $10,000.00 then notice of such damage, loss, or taking shall be given by the Association to each First Mortgagee.

**ARTICLE XVII**

**OBSOLENCENCE**

**Section17.1:** Adoption of Plan. The Owners representing a aggregate interest of 66 2/3% or more may agree that the Condominium Project is obsolete and adopt a written plan for the renewal and reconstruction thereof, which plan must have the unanimous approval of at least 66 2/3% of all First Mortgagees on all Condominium Units of the time of the adoption of such plan. Written notice of the adoption of such a plan shall be given to all Owners and a copy of such plan shall be recorded in the Office of the Clerk and Recorder of Archuleta County, Colorado, and the expense of renewal and reconstruction shall be payable by all of the Owners as Common Expenses; provided, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within 15 days after the date of adoption of such plan that his Condominium Unit shall be purchased by the Association for the fair market value thereof. The Association shall then have 30 days within which to cancel such plan. If such plan is not cancelled, the Condominium Unit of the requesting Owner shall be purchased according to the following procedures. If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within 30 days after such agreement. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the holder shall be the “commencement date” from which all periods of time mentioned hereafter shall be measured. Within 10 days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an appraiser. If either party fails to make such a nomination, the appraiser nominated shall, within five days after default by the other party, appoint and associate with him another appraiser. If the two designated or selected appraisers are unable to agree they shall appoint another appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, each appraiser previously appointed shall nominate two appraisers, and from the name of the four appraisers so nominated one shall be drawn by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be admitted within 10 days of the failure of the two appraisers to agree, which, in any event, shall not be later than 20 days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire shall be final and binding and a judgment based upon the decision rendered by be entered in any court having jurisdiction thereof. The expenses and fees of such appraiser shall be borne equally by the Association and the Owner. The sale shall be consummated within 15 days thereafter, and the Association, as attorney in fact, shall disburse such proceeds from the same purposes and in the same order as is provided in subparagraphs (1) through (5) of Section 16.5.

**Section 17.2** Sale of Obsolete Units. The Owners representing an aggregate interest of 66 2/3% of more may agree that the Condominium Units are obsolete and that the Condominium Project should be sold. Such an agreement must have the approval of at least 66 2/3% of all the First Mortgagees on all Condominium Units at the time such agreement is made. In such instances the Association shall forthwith record in the office of the Clerk and Recorder of Archuleta County, Colorado a notice setting forth such fact or facts, and upon the recording of such notices by the Association, the Condominium Project shall be sold by the Association, as attorney in fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Condominium Map, and the Articles of Incorporation and Bylaws of the Association and the Articles of Incorporation and Bylaws of the Pagosa Property Owners Association, Inc. Unless otherwise agreed in writing by al the Owners and First Mortgagees, the sale proceeds (and any insurance proceeds under Section 16.5) shall be apportioned among the Owners in proportion to each Owner’s undivided interest in the Common Elements and such apportioned proceeds shall be paid into separate accounts, each such account representing on Condominium Unit. Each such account shall be in the name of the Association and shall be further identified by the Condominium Unit designation and the name of the Owner and designated as an agency account. From each separate account the Association, as attorney in fact, shall use and disburse the total amount of such accounts, without contribution from one account to another, as follows:

17.2.1: For payment of real property ad valorem taxes, special assessment liens duly imposed by a governmental subdivision, and customary expenses of sale;

17.2.2: For payment of the balance of the lien of any First Mortgagee;

17.2.3: For payment of unpaid Association and Pagosa Property Owners Association, Inc. assessments, interest, costs, late charges, expenses, and attorneys’ fees;

17.2.4: For payment of junior mortgages in the order of and to the extent of their priority; and

17.2.5: The balance remaining, if any, shall be paid to the Owner of the Condominium Unit.

**ARTICLE XVIII**

**CONDEMNATION**

**Section 18.1:** Consequences of Condemnation. If, at any time or times during the continuance of the Condominium Project pursuant to this Declaration, all or any part of the Condominium Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu thereof or in avoidance thereof, then all compensation, damages, or other proceeds there from, the sum of which is hereinafter referred to as the “Condemnation Award,” shall be payable to the Association, and the provisions of this Article XVIII shall apply.

**Section 18.2:** Complete Taking. In event that the entire Condominium Project is taken or condemned or sold or otherwise disposed of in lieu or in avoidance thereof, the Condominium ownership pursuant thereto shall terminate. The Condemnation Award shall be apportioned among the Owners on the basis of each Owner’s undivided interest in the Common Elements; provided, however, that if a standard different from the value of the Condominium Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such apportionment the same standard shall be employed. The Association shall , as soon as practical, determine the share of the Condemnation Award to which each Owner is entitled, and such shares shall be paid into separate accounts and disbursed as soon as practical for the same purposes and in the same order as is provided in Sections 17.2.1 through 17.2.5 hereof.

**Section 18.3:** Partial Taking. In the event that less than the entire Condominium Project is taken or condemned or sold or otherwise disposed in of in lieu thereof or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined under the following provisions. As soon as practical, the Association shall reasonably and in good faith allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts allocated among the Owners, as follows:

18.3.1: The total amount allocated to taking of or injury to the Common Elements shall be apportioned among Owners on the basis of Each Owner’s undivided interest in the Common Elements.

18.3.2: The total amount allocated to severance damages shall be apportioned to the Owners of those Condominium Units which were not taken or condemned.

18.3.3: The respective amounts allocated to the taking of or injury to a particular Condominium Unit or to improvements an Owner has made with his own Condominium Unit shall be apportioned to the Owner of that particular Condominium Unit involved; and

18.3.4: The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable under the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation Distribution of apportioned proceeds shall be made by check payable jointly to the respective Owners and their respective First Mortgagees.

**Section 18.4:** Reorganization. In event a partial taking results in the taking of an Individual Air Space Unit, the Owners thereof shall automatically cease to be members of the Association, and their ownership interest in the Common Elements shall terminate and vest in the Owners of the remaining Condominium Units. Thereafter, the Association shall reallocate the ownership, voting rights, and assessment ratios determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception (including any extension), and shall submit such reallocation to the Owners and the First Mortgagees of the remaining individual Air Space Units for the amendment of this Declaration.

**Section 18.5:** Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the procedures contained in Article XVI hereof.

**Section 18.6:** Notice of Condemnation to First Mortgagee. In event that any portion of the Condominium Project shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemnation authority, the timely written notice of such condemnation shall be given by the Association to each Owner and First Mortgagee.

**ARTICLE XIX**

**REVOCATION OR AMENDMENT OF DECLARATION**

**Section 19.1:** Revocation. The Declaration shall not be revoked unless the Owners representing an aggregate interest of 66-2/3% or consent and agree to such revocation by instrument(s) duly recorded.

**Section 19.2:** Amendment. The provisions of this Declaration may be amended or terminated, in whole or in part, at any time and from identical counterparts, (in which event all of the such counterparts shall be taken as one and the same instrument of amendment), approved as follows:

19.2.1: Any amendment to or termination of this Declaration will require the approval of 66-2/3% of the Condominium Owners.

**Section 19.3:** Recording of Amendments. To be effective , all amendments to or termination of this Declaration must be recorded in the office of the Clerk and Recorder of Archuleta County, Colorado, and must contain evidence of approval thereof showing the acknowledged and notarized signatures of all the necessary approving parties.

**ARTICLE XX**

**MISCELLANEOUS**

**Section 20.1:** Period of Condominium Ownership. The condominium ownership created by this Declaration and the Condominium Map shall continue until this Declaration is terminated in the manner provided in Article XIX hereof.

**Section 20.2:** Supplement to Condominium Ownership Act. The provisions of this Declaration shall be in addition to and supplemental to the Condominium Ownership Act of the State of Colorado, as it may be amended from time to time, and to all other provisions of law.

**Section 20.3:** Enforcement. Enforcement of the covenants, conditions, restrictions, rights-of-way, and other provisions contained in this Declaration shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate such provisions to enjoin or restrain such violation or attempted violation or to recover damages.

**Section 20.4:** Non-Waiver. Failure by the Declarant, the Association, or any Owner or First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

**Section 20.5:** Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect. Any provision hereof which would violate the rule against perpetuities and the rule prohibiting unlawful restraints on alienations shall be construed in a manner to make this Declaration valid and enforceable.

**Section 20.6:** Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

**Section 20.7:** Captions. The captions to the Articles and Sections at the beginning of this Declaration are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define limit, or otherwise describe the scope of this Declaration not the intent of any provisions hereof.

**Section 20.8:** Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the Articles of Incorporation of the Association and the Bylaws of the Association, this Declaration shall

control.

**Section 20.9:** Minimum Temperature. Each and every condominium Owner shall maintain a minimum temperature of 50 degrees Fahrenheit on each wall thermostat which controls a heating unit of an individual condominium unit during the 7 month period of October 1 of each year until April 30 of the following year.

In case of conflicts in the provisions in the Articles of Incorporation of the Association and the Bylaws of the Association, the Articles of Incorporation shall control.

EXHIBIT “A”

A tract of land being a portion of Hatcher Village condominium Phase I according to the maps thereof filed for record March 13, 1981, Reception No. 103481, Archuleta County Records, more particularly described as follows:

A tract of land in Section 25, Township 36 North, Range 2-1/2 West, N.M.P.M., Archuleta County, Colorado, being more particularly described as follows:

BEGINNING at a point whence thee SE corner of Section 25, Township 36 North, Range 2-1/2 West, N.M.P.M. bears South 59o 52’ 06”

East, a distance of 2108.10 feet;

Thence running South 89o 05’ 30” West, a distance of 84.00 feet;

Thence North 44o 45’ West, a distance of 105.02 feet along the Southerly boundary line to the Southwesterly corner of Hatcher Village Condominium Complex, according to plat filed for record June 30, 1981 under Reception No. 105156 to the true point of beginning;

Thence North 39o 51’ 32” East, a distance of 137.38 feet along the Northwesterly boundary line of Hatcher Village Condominium Complex, according to the plat file for record June 30, 1981 under Reception No. 105156 to the Southerly boundary line of a 25 foot wide road right of way as shown on the map filed for record August 21, 1981 under Reception No. 106070;

Thence Northwesterly along the Southwesterly boundary of a 25 foot private roadway easement as shown on the map for Hatcher Village Condominium Phase I, Supplement No. 1 to Hatcher Village Condominium Complex filed for record July 27, 1983 under Reception No. 117643, which private roadway easement was dedicated to the public by map entitled Hatcher Village Condominiums Phase I recorded August 21, 1981, Reception No. 106070, for a distance of 150.00 feet, more or less, to a point on the Southeasterly boundary line of Hatcher Village Condominium Phase I, Supplement No 1 to Hatcher Village Condominium Complex, according to the plat filed for record July 27, 1983 under Reception No. 117643;

Thence South 45o 15’ 00” West, a distance of 122.75 feet, more or less, along the Southeasterly boundary line of Hatcher Village Condominium Phase I Supplement No. 1 to Hatcher Village Condominium Complex, according to plat filed for record July 27, 1983 under Reception No. 117643 to the most Southerly corner thereof;

Thence South 44o 45’ 00” East, a distance of 164.30 feet, more or less, to the most Southwesterly corner of Hatcher Condominium Complex, according to the plat filed for record June 30, 1981 under Reception No. 105156 and the point of beginning.

TOGETHER with an undivided 16.6% interest in the Common Elements as defined and described in the Condominium Declaration for Hatcher Village Condominiums, Phase I, recorded March 13, 1981 in Book 178 at Page 497.

ALSO TOGETHER with a non-exclusive access and utility easement over the 25 foot private roadway, easement to Piedra Road as shown on the map filed for record August 21, 1981 under Reception No. 106070.

The property is also described as follows:

Building 2 Site of Hatcher Village Condominium Complex Phase I as shown on the following maps;

1. Hatcher Village Condominium Phase I recorded March 13, 1981, Reception No. 103481.
2. Condominium Plat for Hatcher Village Condominium Complex recorded June 30, 1981, Reception No. 105156.
3. Hatcher Village condominiums Phase I recorded August 21, 1981, Reception No. 106070.
4. Hatcher Village Condominiums Phase I Supplement No. 1 recorded July 27, 1983, Reception No. 117643.

TOGETHER WITH a non-exclusive access and utility easement over the 25 foot wide roadway easement to Piedra Road as shown on the map file for record August 21, 1981 under Reception No. 106070 and all other easements shown on the above described maps.