

1st Amended
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE CLIFFS
of Durango



RETURN TO: Crane, Leake & Ehlers, P.C.
102 West 18th Street
Durango, Colorado 81301

**FIRST AMENDED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE CLIFFS OF DURANGO**

THIS DECLARATION is made this ____ day of July, 2005, by **Fandalar, LLC, a Colorado Limited Liability Company** (hereinafter referred to as "Fandalar"), **Cliffs of Durango, Inc.** ("Declarant"), **Ventana Partners, LLC** (hereinafter referred to as "Ventana"), **Gandalf, LLC** (hereinafter referred to as "Gandalf").

ARTICLE 1
INTRODUCTION, PURPOSE AND DECLARATION

- 1.1 Description of the Property. Declarant, Fandalar, Ventana, and Gandalf are the owners of all of the property that is more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").
- 1.2 1st Amended Declaration. Fandalar as original declarant, executed and recorded the Covenants, Conditions and Restrictions for The Cliffs of Durango, Inc., recorded on December 7, 2004 as Reception No. 898694 of the records of the La Plata County, Colorado Clerk and Recorder's office ("Original Declaration"). This 1st Amended Declaration of Covenants, Conditions and Restrictions of the Cliffs of Durango (hereinafter "Declaration") amends, replaces and supercedes in its entirety the Original Declaration.
- 1.3 Assignment of Declarant Rights. Fandalar hereby assigns all of its reserved declarant rights in the Original Declaration to Declarant (Cliffs of Durango, Inc.), and Declarant accepts such assignment and undertakes and assumes all Declarant responsibilities.
- 1.4 Consent to Assignment. Ventana and Gandalf, the owners of all of the Property except portions of the Property owned by Declarant, hereby consent to the assignment of reserved declarant rights (Declarant Rights contained herein) to Declarant.
- 1.5 Declarant's Purposes. Fandalar created a residential community in accordance with the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-117(2) as the same may be amended from time to time, (the "Act") consisting of 15 Tracts, collectively referred to as "The Cliffs of Durango". Each Owner shall have access to the Private Road known as Durango Cliffs Drive and the Trail Easement between Tract 12 and 14 all as shown on the recorded Plat of The Cliffs of Durango. The purposes of this Declaration are to set forth limitations and restrictions with respect to the use, density and design of improvements on the Property in order to preserve the

natural beauty of the Property and it's setting, to preserve, protect and enhance the values and amenities of the Property, and to maintain the Property as a pleasant and desirable community. Declarant shall construct the Private Road and install electric and telecommunication lines to each Tract, at Declarant's cost and expense and without reimbursement from the Association.

- 1.6 Imposition of Declaration. To further the general purposes herein expressed, Fandalar, Ventana, Gandalf and Declarant, for themselves, their successors and assigns, hereby declares that the Property shall at all times, be owned, held, used, occupied, sold and conveyed subject to the provisions of this Declaration and to the covenants, conditions and restrictions, easements, reservations, assessments and charges herein contained, which will run with the Property and bind all parties having any right, title or interest in the Property, or any portion thereof, and their respective successors, assigns, heirs and personal representatives.

ARTICLE 2 DEFINITIONS

The following terms as used in this Declaration, are defined as follows:

- 2.1 "Allocated Interests" shall mean the interest of each Tract in any Common Elements owned by the Association, which interest shall be a fraction the numerator of which is one and denominator of which is the number of the number of Tracts or units in The Cliffs of Durango.
- 2.2 "Articles of Incorporation" or "Articles" means the Articles of Incorporation of the Association which shall be filed with the Secretary of State of Colorado to create the Association of Owners of The Cliffs of Durango, as such Articles may be amended and supplemented from time to time.
- 2.3 "Assessments" means the Annual, Special and Default Assessments levied pursuant to and defined in Article 5 below to meet the estimated cash requirements of the Association.
- 2.4 "Association" means the Association of Owners of The Cliffs of Durango, a Colorado Nonprofit Corporation, or any successor to the Association of Tract Owners of The Cliffs of Durango by whatever name, charged with the duties and obligations set forth in this Declaration, the Articles, and the Bylaws.
- 2.5 "Association Documents" means the Declaration, the Articles, the Bylaws and the Rules and Regulations, as the same may be amended from time to time.
- 2.6 "Building Envelope" means the area designated on the Plat for each Tract within which all residential structures to be built on a Tract must be contained.

- 2.7 “Bylaws” means the Bylaws of the Association, which establish the methods and procedures of it’s operation, as such bylaws may be amended and supplemented from time to time.
- 2.8 “Common Expenses” means (a) all costs, expenses and liabilities incurred by or on behalf of the Association, including, but not limited to, costs, expenses and liabilities for (i) managing, maintaining, repairing, altering and improving the Private Road to all Tracts and the Trail Easement between Tracts 12 and 14 as shown on the Plat and Other Common Facilities as defined herein; (ii) administering and maintaining The Cliffs of Durango; (iii) levying, collecting and enforcing the assessments, charges and liens due the Association pursuant hereto, (iv) regulating and managing The Cliffs of Durango; and (v) operating the Association; and (b) allocations to reserves.
- 2.9 “Declarant” means Cliffs of Durango, Inc., a Colorado corporation, or its successors and assigns and any Person that (a) acquires from Declarant all or substantially all of the Property and (b) prior to or at the time of such acquisition is designated by a written instrument signed by Declarant as a successor or as assignee of Declarant under this Declaration. Such instrument may specify the extent and portion of the rights or interest as a Declarant that are being assigned, in which case Declarant, shall retain all other rights as a Declarant.
- 2.10 “Default Rate” means 18% interest per annum, or such other rate as shall have been established by the Executive Board.
- 2.11 “Design Guidelines” means the guidelines and rules published and amended and supplemented from time to time by the Declarant or the Design Review Committee.
- 2.12 “Design Review Committee” or “Committee” means the committee formed pursuant to Article 6 to maintain the quality and architectural harmony of improvements in The Cliffs of Durango.
- 2.13 “Driveways” means the private and shared driveways shown on the plat of The Cliffs of Durango.
- 2.14 “Executive Board” or “Board” means the Executive Board of the Association, which is the executive board designated in this Declaration to act on behalf of this Association in all matters not reserved to the Owners or by law.
- 2.15 “Limited Use Areas” means the area designated on the Plat for each Tract within which all garages, barns, and accessory structures to be built on a Tract, other than those constructed within the Building Envelope, must be contained.

- 2.16 “Member” means any person holding membership in the Association. There shall be one Member for each Tract.
- 2.17 “Mortgage” means any mortgage, deed of trust or other document which is recorded in the Office of the Clerk and Recorder of La Plata County, Colorado, and which encumbers any portion of the Property or interest in it as the security of the payment of a debt or obligation.
- 2.18 “Mortgagee” means any person named as a beneficiary or mortgagee under a Mortgage, or any successor to the interest of any such person under such mortgage.
- 2.19 “Natural Areas” means the area designated on the Plat for each Tract which is designated to remain in a natural state except for the allowance of driveways, utilities, wells, and forest landscape management.
- 2.20 “Other Common Facilities” means other common improvements accomplished by the Declarant or the Association, possibly including, but not limited to, mailbox kiosk, refuse collection area, newspaper tubes, and trailhead improvements for the Trail Easement.
- 2.21 “Owner” means the owner of record of a Tract. If there is more than one record holder of legal title to a Tract, each shall be an Owner. The term Owner shall include Declarant to the extent Declarant is the holder of fee simple title to a Tract. Owner shall not mean or refer to any person who holds an interest in a Tract merely as security for the performance of a debt or other obligation, including a Mortgage, unless and until such person has acquired a fee simple title pursuant to foreclosure, a deed in lieu of foreclosure or other proceedings.
- 2.22 “Pasture Area” means the area designated on the Plat for each Tract which allows for the grazing of livestock. A perimeter fence, ponds, driveways and utilities are allowed but no other structures or corrals are allowed.
- 2.23 “Person” (whether or not in capitalized form) means any natural person, corporation, partnership, limited liability company, association, trustee or any other entity recognized as being capable of owning real property under the laws of the State of Colorado.
- 2.24 “Plat” shall mean and refer to the plat or supplemental plat that has been or will be filed in the Office of the Clerk and Recorder of La Plata County, Colorado, which plat is identified as The Cliffs of Durango and includes surveys of all or a part of the Property. The boundaries of each Tract shall be designated on the Plat, with each Tract to be identified by the number noted on the Plat.

- 2.25 “Private Road” means the private road and utility easement as shown on the Plat of The Cliffs of Durango and labeled as Durango Cliffs Road.
- 2.26 “Property” means and includes the property described on Exhibit A and subjected to this Declaration and any subsequent additions to the property.
- 2.27 “Rules and Regulations” means any instruments adopted by the Association or the Design Review Committee for the regulation and management of The Cliffs of Durango, as such instruments may be amended from time to time.
- 2.28 “The Cliffs of Durango” means the planned community created by this Declaration, and depicted on the Plat, consisting of the Property and all of the improvements constructed on it.
- 2.29 “Tract” means any legal parcel or unit within the Property created in accordance with applicable government laws, rules and regulations and in conformance with the restrictions of this Declaration, and as designated on the Plat or any supplement plat placed of record.
- 2.30 “Trail Easement” means the trail easement between Tracts 12 and 14 as shown on the Plat of The Cliffs of Durango.

ARTICLE 3 **THE ASSOCIATION**

- 3.1 Formation of the Association. On or before the date on which Declarant conveys to any Person other than Declarant fee simple to the first Tract within The Cliffs of Durango, Declarant shall form the Association.
- 3.2 Executive Board. The Association shall be governed by an Executive Board of not less than three and not more than five members. Members of the Executive Board shall be Members or partners of the Declarant. The selection of the Executive Board shall be by election as set forth in the By-Laws of the Association, subject to the Reserved Declarant Right to appoint Directors pursuant to Section 16.2. The meetings and procedures of the Executive Board shall be as set forth in the By-Laws of the Association. The Executive Board shall have all of the powers of the Association not expressly reserved herein to the Members.
- 3.3 Purposes and Powers.
- (a) The Association’s purposes are to: (i) manage, operate, improve and maintain the Private Road (Durango Cliffs Drive) within The Cliffs of Durango (ii) administer and enforce the covenants, conditions, restrictions, reservations and

easements created hereby; (iii) levy, collect and enforce the assessments, liens, charges and penalties imposed pursuant hereto; (iv) preserve and enhance the water rights and water features to be located on the Property; (v) appoint a Design Review Committee with the goal of ensuring that all improvements within The Cliffs of Durango are constructed in accordance with the Design Guidelines adopted by such Design Review Committee; (vi) take any action necessary or appropriate to protect the general welfare and safety of Owners and residents of The Cliffs of Durango and their guests, and (vii) regulate and manage The Cliffs of Durango with the goal of enhancing and protecting its value.

- (b) Unless expressly prohibited by law or any of the Association Documents, the Association may take any and all actions that it deems necessary or advisable to fulfill its purposes. Without in any way limiting the foregoing, the Association may:
- (1) adopt and amend Bylaws and Rules and Regulations;
 - (2) adopt and amend budgets for revenues, expenditures and reserves;
 - (3) collect assessments for Common Expenses from Owners;
 - (4) hire and terminate Managing Agents and other employees, agents, and independent contractors;
 - (5) institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association;
 - (6) make contracts and incur liabilities, including but not limited to acquisition, perfection, and enhancement of water rights;
 - (7) regulate the use, maintenance, repair, replacement, modification, and administration of the Private Road, the Trail Easement and Other Common Facilities;
 - (8) cause additional improvements to be made to the Private Road, the Trail Easement and Other Common Facilities;
 - (9) acquire, hold, encumber, and convey in the Association's name any right, title, or interest to real property or personal property;
 - (10) impose charges for late payment of assessments, recover reasonable attorney fees and other legal costs for collection of assessment, and other

actions to enforce the powers of the Association, regardless of whether or not suit was initiated;

- (11) impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments;
- (12) provide for the indemnification of the Association's officers and Executive Board and maintain Executive Board' and officers' liability insurance;
- (13) exercise any other powers conferred by this Declaration or the Bylaws;
- (14) exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and
- (15) exercise any other powers necessary and proper for the governance and operation of the Association.

3.4 Membership. Every Owner, by virtue of being an Owner, and for so long as he or she is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Tract. No Owner, whether one or more persons, shall have more than one membership per Tract owned, but all of the persons owning each Tract shall be entitled to rights of membership and of use and enjoyment appurtenant to such Ownership. An Owner shall not transfer, pledge or alienate his membership in the Association in any way except upon the sale or encumbrance of a Tract, and then only to the purchaser or Mortgagee of the Tract.

3.5 Classes of Membership. The Association shall have one class of voting membership composed of all Owners, including Declarant.

3.6 Voting Rights. All Members shall be entitled to vote on Association matters subject to Member approval on the basis of one vote for each Tract, as each Tract is originally platted as The Cliffs of Durango.

When more than one person is an Owner of any Tract, all such persons shall be Members. The vote for such Tract may be exercised by one person or alternative persons as the Owners themselves determine. If more than one of the multiple Owners are present at a meeting in person or by proxy, the vote allocated to their Tract may be cast only by agreement of a majority in interest of the Owners. There is a majority agreement if any one of the multiple Owners casts the vote allocated to the Tract without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Tract.

Any Owner of a Tract which is leased may assign his or her voting right to a tenant, provided that a copy of the instrument of assignment is furnished to the

Secretary of the Association two business days prior to any meeting in which the tenant exercises the voting right.

Any party, on becoming a Member, shall furnish to the Secretary of the Association a photocopy or certified copy of the recorded instrument, or a copy of the lease or sublease, or such other evidence as may be specified by the Board under the Bylaws or The Cliffs of Durango Rules, to entitle the party to membership or voting rights in the Association. At the same time, the party shall provide the Association with the single name and address to which the Association shall send any notices given pursuant to the Association. The Member (or tenant) shall state in such notice the number of votes in the Association to which the Member (or tenant) believes he is entitled and the basis for that determination. In the event of any change in the facts reported in the original written notice, including any change of Ownership, the Member (or tenant) shall give a new written notice to the Association containing all of the information required to be covered in the original notice. The Association shall keep and preserve the most recent written notice received by the Association with respect to each Member (or tenant).

A quorum is deemed present throughout any meeting of the Members if persons entitled to cast at least two thirds (2/3) of the votes in the Association are present, in person or by proxy, at the beginning of the meeting.

Provided a quorum of Members entitled to vote is present in person or by proxy, the affirmative vote of a majority of the Members so present shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the Act, this Declaration, any Supplemental Declaration, the Articles, or the Bylaws.

3.7 Owner's and Association's Addresses for Notices. All Owners of each Tract shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands and all other communications regarding Association matters. The Owner or Owners of a Tract shall furnish the registered address to the Secretary of the Association within five days after receiving title to the Tract. The registration shall be in written form and signed by all of the Owners of the Tract or by such persons as are authorized by law to represent the interests of all Owners of the Tract.

If no address is registered or if all of the Owners cannot agree, then the address of the Tract shall be deemed the address on the recorded vesting deed until another registered address is furnished as required under this Section.

If the address of the Tract is the registered address of the Owners, then any notice shall be deemed duly given if delivered to any person occupying the Tract or sent to the Tract by any other means specified for a particular notice in any of the Association Documents, or if the Tract is unoccupied, if the notice is held and available

for the Owners at the principal office of the Association. All notices and demands intended to be served upon the Executive Board shall be sent to the address of the Association or such other address as the Board may designate from time to time by a notice delivered to all Owners in accordance with this Section.

Unless any Section of this Declaration expressly provides otherwise, all notices given under this Declaration shall be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit with a courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three days after deposit in the U.S. mail.

- 3.8 Rules and Regulations. The Association, from time to time and subject to the provisions of the Association Documents and subject to approval by a vote of 70% of the Members, may adopt, amend and repeal rules and regulations, to be known as the "Rules for The Cliffs," governing, among other things and without limitation, the use of the Private Road, Entrance, Trail Easement and Other Common Facilities.

A copy of the Rules for The Cliffs in effect shall be distributed to each Member, and any change in the Rules for The Cliffs shall be distributed to each Member within a reasonable time following the effective date of the change. The Executive Board shall provide for the enforcement of Rules for the Cliffs, as set forth in the Bylaws. Without limiting the generality of the foregoing, the Board may suspend voting rights of a Member after notice and hearing as provided in the Bylaws for an infraction of Rules for the Cliffs.

- 3.9 Manager. The Association may employ or contract for the services of a Manager to act for the Association, the Board and the officers of the Association according to the powers and duties delegated to the Manager under the Bylaws or a resolution of the Board, provided that no such employment shall be by a contract having a term of more than three years, and each such contract shall be subject to cancellation by the Association on 90 days or less prior notice without cause and without payment of a termination fee. The Manager shall not have the authority to make expenditures for additions or improvements to the Property except upon specific prior approval and direction by the Board. The Board or any officer of the Association shall not be liable for any omission or improper exercise by a Manager of any such duty, power or function so delegated by written instrument executed by or on behalf of the Board.

- 3.10 Delegation by Association. The Association may delegate any of its rights, duties or responsibilities to any committee or other entity which it may choose to form. Any delegation by the Board under this Section is subject to compliance with the Bylaws and the requirement that the Board, when so delegating, shall not be relieved of its responsibilities under the Association Documents.

- 3.11 Ownership of Personal Property and Real Property for Common Use. The Association, through action of the Executive Board, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within The Cliffs of Durango which are conveyed to the Association by Declarant.
- 3.12 Private Road and Trail Easement Maintenance. The Association shall be responsible for maintenance of the Private Road and Trail Easement within the Property, as distinguished from individual Tract driveways or shared Tract driveways, as shown on the Plat, or which may be located in the future in accordance with this Declaration. In any case, such maintenance shall include periodic maintenance of the surface and regular snow, ice and trash removal from the Private Road.
- 3.13 Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and Mortgagees, current copies of the Association Documents, and the books and accounting records of the Association prepared pursuant to the Bylaws. Any Owner or Mortgagee may make a written request to the Association for a copy of the accounting records for the preceding year. The Association may charge a reasonable fee for copying such materials.
- 3.14 Reserve Account. The Association may establish reserve accounts for the repair, maintenance or improvement of the Private Road or Other Common Facilities as the Executive Board deems appropriate from time to time.
- 3.15 Grazing Leases. In order to maintain the agricultural/ranch operations on The Cliffs of Durango, the Association may enter into a grazing lease for the portions of the Ranch other than Building Envelopes for a period that terminates no later than December 31, 2015, and subject to such other and further restrictions as the Association deems appropriate. The grazing lease shall be restricted to not more than 50 head of livestock. Any renewal, extension or new lease thereafter shall require the advance written consent of the Owners.

ARTICLE 4 OWNER'S OBLIGATIONS FOR MAINTENANCE

- 4.1 Owner's Responsibility for the Tract. Except as provided in the Association Documents or by written agreement with the Association, all maintenance of a Tract and the improvements located on it shall be the sole responsibility of the Owner of the Tract. Each Owner shall be responsible for maintenance, snow plowing and improvement of his or her driveway. Each Owner shall maintain his Tract in accordance with the community-wide standard of The Cliffs of Durango. The Association acting, in the

discretion of the Board, shall assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board shall notify the Owner in writing of its intention to do so, and if the Owner has not commenced and diligently pursued remedial action within 30 days after the mailing of such written notice, then the Association shall proceed. The expenses of the maintenance by the Board shall be reimbursed to the Association by the Owner within 30 days after the Association notifies the Owner of the amount due, and any sum not reimbursed within that 30 day period shall bear interest at the Default Rate from the date of the expenditure until payment in full. Such charges shall be a Default Assessment enforceable as provided in Article 5.

- 4.2 Owner's Negligence. If the need for maintenance, repair or replacement of any portion of the Private Road, utilities, drainages, or Other Common Facilities arises because of the negligent or willful act or omission of an Owner or his family member, guest, invitee or tenant, then the expenses incurred by the Association for the maintenance, repair or replacement shall be a personal obligation of that Owner. If the Owner fails to repay the expenses incurred by the Association within 30 days after the notice to the Owner of the amount owed, then those expenses shall bear interest at the Default Rate from the date of the advance by the Association until payment by the responsible Owner in full, and all such expenses and interest shall become a Default Assessment enforceable in accordance with Article 5.

ARTICLE 5 ASSESSMENTS

- 5.1 Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Tract, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, are deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges as provided in this Declaration to generally carry out the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration, such Annual and Special Assessments to be fixed, established and collected from time to time as provided below; (3) Default Assessments which may be assessed against a Tract pursuant to the Association Documents for the Owner's failure to perform an obligation under the Association Documents or because the Association or the Committee has incurred an expense on behalf of the Owner under the Association Documents; and (4) contributions to a reserve account (collectively "Contributions").

The Annual, Special, Default Assessments, and Contributions together with fines, interest, costs and reasonable attorney (and legal assistant) fees, shall be a charge on the land and shall be a continuing lien upon the Tract against which each such Assessment or Contribution is made until paid.

Each such Assessment or Contribution, together with fines, interest, costs and reasonable attorneys' (and legal assistants') fees shall also be the personal and individual obligation of the Owner of such Tract as of the time the Assessment or Contribution falls due, and two or more Owners of a Tract shall be jointly and severally liable for such obligations. No Owner may exempt himself from liability for any Assessments or Contributions by abandonment of his Tract or by waiver of the use or enjoyment of the Private Road or Other Common Facilities. Suit to recover a money judgment for unpaid Assessments and related charges as listed above may be maintained without foreclosing or waiving the Assessment liens provided in this Declaration.

5.2 Purpose of Assessments and Contributions. The Assessments and Contributions levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of The Cliffs of Durango, to improve and maintain the Private Road or Other Common Facilities by actions including, but not limited to payment for repair, replacement and additions to any improvements on the Private Road or Other Common Facilities; repair, replacement and establishment of reserve accounts for the Private Road or Other Common Facilities; establishment of reserve accounts; and payment of the cost of labor, equipment, materials, management and supervision and the salary or fee of a manager.

5.3 Calculation and Apportionment of Annual Assessments, Contributions and Common Expenses. The Executive Board shall prepare a budget before the closing of each fiscal year of the Association and adopt the budget and impose necessary assessments and Contributions to fund the budget. Annual Assessments for Common Expenses shall be based upon the estimated net cash flow for the Association to cover items including, without limitation, the cost of routine maintenance, repair and operation of the Private Road and Other Common Facilities; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Association; snow removal, landscaping, care of grounds and common lighting within the Private Road and Other Common Facilities; wages; common water and utility charges for the Private Road and Other Common Facilities; legal and accounting fees; management fees; taxes and capital improvements; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any deficit remaining from a previous assessment period; and the supplementing of the Association's funds for general, routine maintenance, repairs and replacement of improvements within the Private Road and Other Common Facilities on a periodic basis and Working Capital and Reserve Accounts, as needed.

Each Owner shall be responsible for that Owner's share of the Common Expenses, which, except as specifically provided in this Declaration, shall be divided equally among the Tracts included in the Property under this Declaration from time to time. Accordingly, at any given time, an Owner's share of Common Expenses shall be

determined as a fraction, the numerator of which is the number of Tracts owned by the Owner, and the denominator of which is the number of Tracts in the Property.

Notwithstanding the foregoing, the cost for maintenance and repair of the Private Road including without limitation, removal of snow and resurfacing shall be shared by the Owners of the Tracts as follows:

Tracts 1 and 2 shall each pay 5% of the total costs.

Tracts 3, 4, 5, 6, 7, and 8 shall each pay 6% of the total costs.

Tracts 9 and 10 shall each pay 7% of the total costs.

Tracts 11, 12, 13, 14, and 15 shall each pay 8% of the total costs.

The above allocations shall not change as a result of any resubdivision of Tract 1.

- 5.4 Special Assessments. In addition to the Annual Assessments authorized by Sections 5.1 and 5.3 above, the Executive Board may levy in any fiscal year one or more Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the Private Road or Other Common Facilities, repair, replacement and establishment of reserve accounts for the Private Road or Other Common Facilities including the necessary fixtures and personal property related thereto, or to make up any shortfall in the current year's budget. Special Assessments shall be allocated with the same formula as utilized for Annual Assessments unless the assessment is for the sole purpose of maintenance or repair of the Private Road, in which case the assessment shall be allocated using the road formula at the end of Section 5.3.

Notice of the amount and due dates for such Special Assessments must be sent to each Owner at least 30 days prior to the due date.

If any of the Special Assessments levied pursuant to this Section shall be used for the construction of new facilities (as opposed to repair and reconstruction of existing facilities) in The Cliffs of Durango and if the total amount of Special Assessments levied for such construction exceeds 25% of the gross annual budget for the Association for that year, then the use of Special Assessments for such construction shall require the approval of the Owners representing at least a majority vote of the Members. The use of Special Assessments pursuant to this Section for constructing the Private Road or Other Common Facilities shall not apply to the construction of any Private Road improvements to be completed by Declarant as part of its development of The Cliffs of Durango.

- 5.5 Collection and Refunds. Assessments shall be collected on a periodic basis as the Executive Board may determine from time to time, but until the Board directs otherwise, Assessments shall be payable in advance on the first day of each calendar year.

The Association will have the right, but not the obligation, to make pro rata refunds of any Assessments in excess of the actual expenses incurred in any fiscal year. Any such excess funds not refunded will be applied to the next installment(s) of Annual Assessments due.

- 5.6 Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.
- 5.7 Default Assessments. Except annual and special assessments as set forth above, all monetary fines, penalties, interest or other charges or fees assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents and any expense (including, without limitation, attorneys' and legal assistants' fees) incurred by the Association as a result of the failure of an Owner to abide by the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Tract which may be foreclosed or otherwise collected as provided in this Declaration.
- 5.8 Effect of Nonpayment of Assessment or Contributions; Lien, Remedies of Association. Any installment of an Annual, Special or Default Assessment or Contribution which is not paid within 30 days after its due date shall be delinquent, provided, however, that any interest accruing at the Default Rate and constituting a Default Assessment under this Declaration will be due immediately in accordance with the specific provisions of this Declaration, without 30 days' grace otherwise allowed by this Section above. In the event that an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:
- (a) assess a late charge for each delinquency at uniform rates set by the Executive Board from time to time;
 - (b) assess an interest charge from the date of delinquency at the Default Rate;
 - (c) suspend the voting rights of the Owner during any period of delinquency;
 - (d) accelerate all remaining Assessment or Contribution installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

- (e) bring an action at law against any Owner personally obligated to pay the delinquent installments; and
- (f) file a statement of lien with respect of the Tract, and foreclose as set forth in more detail below.

The remedies provided under this Declaration shall not be exclusive, and the Association may enforce any other remedies to collect delinquent Assessments or Contributions as may be provided by law.

Any Assessment or Contribution chargeable to a Tract shall constitute a lien on the Tract, effective the due date of the Assessment or Contribution. To evidence the lien, the Association may, but shall not be obligated to, prepare a written lien statement with respect to the Tract, setting forth the name of the Owner, the legal description of the Tract, the name of the Association, and the delinquent Assessment or Contribution amounts then owing. Any such statement shall be duly signed and acknowledged by the President or a Vice-President of the Association or by the Manager, and shall be served upon the Owner of the Tract by mail to the address of the Tract or at such other address as the Association may have in its records for the Owner. At least 10 days after the Association mails the statement to the Owner, the Association may record the statement in the office of the Clerk and Recorder of La Plata County, Colorado. Thirty days following the mailing of such notice to the Owner, the Association may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In either a personal action or foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs and reasonable attorney fees (including legal assistants' fees) with respect to the action. The Association shall have the power to bid on a Tract at foreclosure sale and to acquire, hold, lease, mortgage and convey the Tract.

- 5.9 Successor's Liability for Assessments and Contributions. In addition to the personal obligation of each Owner to pay all Assessments and Contributions and the Association's perpetual lien for such Assessments and Contributions, all successors to the fee simple title of a Tract, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments or Contributions, interest, late charges, costs, expenses and attorneys' fees and legal assistants' fees against such Tract without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Tract. In addition, such successor shall be entitled to rely on the statement of status of Assessments and Contributions given by or on behalf of the Association under Section 5.11 below.

5.10 Waiver of Tract Exemption, Subordination of the Lien. The lien of the Assessments and Contributions shall be superior to and prior to any Tract exemption provided now or in the future by any federal law or the laws of the State of Colorado. The Association's perpetual lien on a Tract for Assessments shall be superior to all other liens and encumbrances except the following:

- (a) liens and encumbrances recorded before the date of the recording of this Declaration; and
- (b) liens for real estate taxes and other governmental assessments or charges duly imposed against the Tract by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute.

All persons who hold a lien or encumbrance not described in subpart 5.10(a) and 5.10(b) above shall be deemed to consent that any such lien or encumbrance shall be subordinate to the Association's future liens for Assessments, interest, late charges, costs, expenses and attorneys' (and legal assistants') fees, as provided in this Article 5, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

Sale or transfer of any Tract to enforce any of the liens to which the lien for Assessments is subordinate shall extinguish the lien of such Assessments and Contributions as to installments which became due prior to such sale. The amount of such extinguished lien may be reallocated and assessed to all Tracts as a Common Expense at the direction of the Executive Board. However, no such sale or transfer shall relieve the purchaser or transferee of a Tract from liability for, or the Tract from the lien of, any Assessments made or Contributions required after the sale or transfer.

5.11 Statement of Status of Assessments. The Association shall furnish to an Owner or his designee or to any Mortgagee a statement setting forth the amount of unpaid Assessments and Contributions then levied against the Tract in which the Owner, designee or Mortgagee has an interest. The Association shall deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party within 14 calendar days after the registered agent of the Association receives the request by personal delivery or by certified mail, first class postage prepaid, return receipt requested. The information contained in such statement, when signed by the Treasurer of the Association or the Manager, shall be conclusive upon the Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith.

5.12 First Mortgagee. Notwithstanding any other provision in this Article 5, to the extent permitted by law, any First Mortgagee whose deed of trust is of record prior to this Declaration ("First Mortgagee") shall not be obligated for any past or current Assessments or Contributions in the event the First Mortgagee forecloses or otherwise

becomes the owner of a Tract. The obligation for Assessments will begin to accrue only at such time as the First Mortgagee transfers the entire property foreclosed on or a Tract to a third party. It is further acknowledged that the Association consents to the collateral assignment to Community Banks of The Rockies of the Declarant's Reserved Rights pursuant to this Declaration

ARTICLE 6
DESIGN REVIEW COMMITTEE

6.1 Committee and Guidelines. The Executive Board may establish a Design Review Committee, which shall be responsible for the establishment and administration of Design Guidelines to facilitate the purposes and intent of this Declaration. In the absence of the establishment of the Design Review Committee the Executive Board shall have all authority and responsibilities of the Design Review Committee. The Committee may amend, vary, repeal and augment the Design Guidelines from time to time, in the Committee's sole discretion based on concerns for good planning and design, the aesthetic, architectural and environmental harmony of The Cliffs of Durango or other factors as necessary or desirable to fulfill the intent of the Design Guidelines. However, no such amendment, variance, repeal or augmentation of the Design Guidelines shall operate to revoke or otherwise impair any approval issued by the Design Review Committee with respect to any improvements before the date of the amendment, variance, repeal or augmentation. The Design Guidelines shall be binding on all Owners and other persons governed by this Declaration.

The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

- (a) Standards establishing an architectural theme and requirements pertaining to building style and design, construction materials and site planning.
- (b) Procedures for making application to the Committee for design review and approval, including the documents to be submitted and the time limits in which the Committee must act to approve or disapprove any submission.
- (c) Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under the Design Guidelines.
- (d) Limitations on the height of any building or other improvement.
- (e) Designation of approved utility suppliers and utility connections.

- (f) Specifications for the location, dimensions and appearance or screening of any fences, corrals, equestrian/livestock facilities, well houses, driveways, accessory structures, antennae or other such improvements.
- (g) Landscaping regulations, a forest management plan, and time limitations within which all landscaping must be completed; limitations and restrictions prohibiting the removal or requiring the replacement of existing trees; guidelines encouraging the use of plants indigenous to the locale and compatible with the design theme of The Cliffs of Durango; requirements for the restriction of the Tract, following completion of construction on it, to conform, to the greatest extent possible, to the condition of the Tract before construction; and other practices benefiting the protection of the environment, aesthetics and architectural harmony of The Cliffs of Durango.
- (h) General instructions for the construction, reconstruction, refinishing or alteration of any improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation of utility lines or conduits on the Property, addressing matters such as loading areas, waste storage, trash removal, equipment and materials storage, vehicle storage, grading, transformers and meters.
- (i) Outdoor and yard lighting standards.
- (j) Equestrian and Livestock management plan.
- (k) Application submittal requirements. The Committee shall not be bound by any preliminary or informal approvals or disapprovals. All submittals may be disapproved if such submittals do not contain sufficient information for the Committee to exercise the judgment required of it. If any plans submitted to the County for building permits differ in any way from the plans approved by the Committee, all approvals of the Committee shall be deemed automatically revoked

6.2 Committee Membership and Organization. So long as the Declarant retains the authority to appoint the Directors, Declarant shall appoint, remove or replace the members of the Committee. Thereafter, the Executive Board shall appoint, remove or replace the members of the Committee. The Committee shall be composed of not less than three and not more than five members. Members of the Committee shall be Owners or partners of the Declarant.

6.3 Purpose and General Authority. The Committee shall review, study and either approve or reject proposed improvements, all in compliance with this Declaration and as further

set forth in the Design Guidelines and such rules and regulations as the Committee may establish from time to time to govern its proceedings. No improvement shall be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor shall any construction, repair or reconstruction be commenced until plans for the improvements shall have been approved by the Committee. All improvements shall be constructed only in accordance with approved plans.

- (a) Committee Discretion. The Committee shall exercise its reasonable judgment to see that all improvements conform and harmonize with any existing structures as to external design, quality and type of construction, seals, materials, color, location on the Tract, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Design Guidelines and the other Association Documents. The Committee, in its sole discretion based on concerns for good planning and design, the aesthetic, architectural and environmental interests of The Cliffs of Durango, or other factors as necessary or desirable to fulfill the intent of the Design Guidelines, may excuse compliance with such requirements in specific situations and may permit compliance with different or alternative requirements. No variance or other allowance granted by the Committee will excuse the particular Owner receiving the grant or any other Owner from compliance with the Design Guidelines in all other instances.
- (b) Binding Effect. The actions of the Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

6.4 Organization and Operation of Committee.

- (a) Term. The term of office of each member of the Committee, subject to Section 6.2, shall be one year, commencing January 1 of each year, and continuing until his successor shall have been appointed. Should a Committee member die, retire or become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed by the party entitled to designate the Committee, as provided in Section 6.2.
- (b) Chairman. So long as Declarant appoints the Committee, Declarant shall appoint the chairman. At such time as the Committee is appointed by the Executive Board, the chairman shall be elected annually from among the members of the Committee by a majority vote of the members. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, an interim chairman.
- (c) Operations. The Committee chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the

Committee prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member.

- (d) Voting. The affirmative vote of a majority of the members of the Committee shall govern its actions and be the act of the Committee.
- (e) Expert Consultation. The Committee may avail itself of other technical and professional advice and consultants as it deems appropriate, and the Committee may delegate its plan review responsibilities, except final review and approval, to one or more of its members or to consultants retained by the Committee. Upon that delegation, the approval or disapproval of plans and specifications by such member or consultant shall be equivalent to approval or disapproval by the entire Committee.

6.5 Expenses. Except as provided in this Section below, all expenses of the Committee shall be paid by the Association and shall constitute a Common Expense. The Committee shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Committee from time to time, and such fees shall be collected by the Committee and remitted to the Association to help defray the expenses of the Committee's operation.

6.6 Other Requirements. Compliance with The Cliffs of Durango design review process is not a substitute for compliance with the La Plata County or local building, zoning and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses and permits as may be required prior to commencing construction of improvements.

Further, the establishment of the Design Review Committee and procedures for architectural review shall not be construed as changing any rights or restrictions upon Owners to maintain and repair their Tracts and improvements as otherwise required under the Association Documents.

6.7 Limitation of Liability. The Committee shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee nor any individual Committee member shall be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Committee or any individual Committee member acted with malice or wrongful intent. Approval by the Committee does not necessarily assure approval by the appropriate governmental board or commission for La Plata County or any municipal government having jurisdiction in such matters. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members shall be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the construction of the improvements. Neither the Board, the Design

Review Committee, nor any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Association Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Committee shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Committee's decision. The Association, however, shall not be obligated to indemnify each member of the Committee to the extent any such member of the Committee is adjudged to be liable for gross negligence or willful misconduct in the performance of his duty as a member of the Committee, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

6.8 Enforcement.

- (a) Inspection. Any member or authorized consultant of the Design Review Committee, or any authorized officer, Director, employee or agent of the Association may enter upon any Tract at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction on the Tract to determine whether the improvements have been or are being built in compliance with the Association Documents and the plans and specifications approved by the Design Review Committee.
- (b) Completion of Construction. Before any improvements on a Tract may be occupied, the Owner of the Tract shall be required to obtain a temporary certificate of compliance issued by the Design Review Committee indicating substantial completion of the improvements in accordance with the plans and specifications approved by the Committee, and imposing such conditions for issuance of a final certificate of compliance as the Committee may determine appropriate in its reasonable discretion. If the conditions are not satisfied as scheduled, the Committee may apply the deposit to cover the cost of completing the work and enforce such other remedies as are available to the Association for the failure of the Owner to comply with these covenants.
- (c) Certificate of Compliance. Upon payment of a reasonable fee established from time to time by the Design Review Committee, and upon written request of any Owner or his agent, an existing or prospective Mortgagee, or a prospective grantee, the Committee shall issue an acknowledged certificate, in recordable form, setting forth generally whether, to the best of the Committee's knowledge, the improvements on a particular Tract are in compliance with the terms and conditions of the Design Guidelines.

(d) Deemed Nuisances. Every violation of this Declaration is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against a Member shall be applicable. Without limiting the generality of the foregoing, this Declaration may be enforced as provided below.

(1) Fines for Violations. The Committee may adopt a schedule of fines for failure to abide by the Committee rules and the Design Guidelines, including fines for failure to obtain any required approval from the Committee.

(2) Removal of Nonconforming Improvements. The Association, upon request of the Committee and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Tract at any reasonable time after notice to the Owner, without being deemed guilty of trespass or theft, and remove any improvement constructed, reconstructed, refinished, altered or maintained in violation of this Declaration. The Owner of the improvement shall immediately reimburse the Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Association within 30 days after the Association gives the Owner notice of the expenses, the sum owed to the Association shall bear interest at the Default Rate from the date of the advance by the Association through the date of reimbursement in full, and all such sums and interest shall be a Default Assessment enforceable as provided in Article 5.

6.9 Continuity of Construction. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 18 months after commencement, unless an exception is granted in writing by the Committee. If an improvement is commenced and construction is then abandoned for more than 90 days, or if construction is not completed within the required 18-month period, then after notice and opportunity for hearing as provided in the Bylaws, the Association may impose a fine of not less than \$100 per day (or such other reasonable amount as the Association may set) to be charged against the Owner of the Tract until construction is resumed, or the Improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Executive Board that such abandonment is for circumstances beyond the Owner's control. Such charges shall be a Default Assessment and lien as provided in Article 5.

6.10 Reconstruction of the Private Road . The reconstruction by the Association after destruction by casualty or otherwise of the Private Road improvements that is accomplished in substantial compliance with "as built" plans for such Private Road

improvements shall not require compliance with the provisions of this Article or the Design Guidelines.

ARTICLE 7
EASEMENTS AND PROPERTY RIGHTS OF OWNERS

- 7.1 Owners' Easements of Access and Enjoyment. Every Owner has, and the Declarant hereby grants, a perpetual, non-exclusive easement for access to and from his or her Tract and for the Private Road as shown on the Plat. Every Owner shall have, and the Declarant hereby grants, a perpetual, non-exclusive right and easement in common with all of the other Owners to reasonably use and enjoy the Private Road within such easement, subject to regulation by the Board and restrictions as stated in Articles 8 and 9. The easement granted hereunder is appurtenant to and shall pass with the title to every Tract, subject to the provisions set forth in this Article and the Declarant reserved rights set forth in Article 16.
- 7.2 Private Road .The Private Road (Durango Cliffs Drive) specifically includes all areas within the Private Roads described in Section 7.2 and described on the Plat. Notwithstanding anything herein to the contrary, the Private Road is a private amenity that is for the common use, benefit, and enjoyment of utility providers for the purpose of providing utility service to the Tracts, the Owners and their permitted guests (as provided in this Declaration) and such other persons as may be permitted to use the Private Road by Declarant or the Association (based upon reciprocal easements), as such rights may exist before the Property is conveyed or designated as Private Road, or as Declarant may specify in this Declaration or in any grant of easements to the Association or other legal document affecting the Property. Subject to the foregoing, the Private Road may be used only by utility providers for the purpose of providing utility service to the Tracts, Owners and guests of Owners that are physically residing at or that are accompanied by the Owner during such use of the Private Road (except that the right to use of the Private Road may be granted to adjacent property owners by the Declarant or the Association). Employees, contractors and other licensees and guests of Owners are not entitled to use the Private Road for any purpose without the express written consent of the Association and, during the Period of Declarant Control, the Declarant, which consent may be withheld in the sole discretion of such parties. Nothing in this Declaration or the other Association Documents shall be construed as a dedication of the Private Road to public use, or a grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any by such authority or utility, absent and express written agreement to that effect.
- 7.3 Delegation of Use. Subject to Section 7.1 above, any Owner may delegate, in accordance with and as limited by the Association Documents, including specifically, but without

limitation, the rules adopted by the Board, his or her rights of access and enjoyment described above to his or her tenants, family, guests or invitees.

- 7.4 Association's Easements Over Tracts. Every Owner and Declarant hereby grants the Association and the Design Review Committee an easement over, across, through and under each Tract to (a) exercise any right held by the Association or the Design Review Committee under this Declaration or any other Association Document and (b) perform any obligation imposed by the Association or the Design Review Committee by this Declaration or any other Association Document. Notwithstanding the foregoing, neither the Association nor the Design Review Committee shall enter upon any Tract without reasonable prior notice to the Owner of the Tract, except in cases of emergency.
- 7.5 Recorded Easements. The Property shall be subject to all easements as shown on any recorded Plat and to any other easements of record or of use as of the date of recordation of this Declaration. In addition, the Property is subject to all easements created by this Declaration.

ARTICLE 8 PROPERTY USE RESTRICTIONS

- 8.1 Residential and Recreation Uses. Each Tract designated on the Plat shall be used for residential purposes. No business or commercial building may be erected on any Tract, and no businesses or commercial enterprise or other non-residential use may be conducted on any part of the Property except for home occupation businesses. Residential purposes may include (i) home occupations, and (ii) lease option tenants, so long as such home occupation or rental activity does not: create more than six (6) additional average daily vehicular trips; employ more than two persons at such Tract other than those residing at such Tract; require delivery or storage of any significant materials, machinery, inventory or other items; require additional parking at such Tract, whether for customers, delivery or otherwise; interfere with the residential character of the dwelling or neighborhood; have no outward appearance of a business or commercial use; allow for public access through the entrance gate; or otherwise violate any provision of this Declaration. Businesses requiring on-site retail on the Property are strictly prohibited.
- 8.2 Motorized Vehicles. No trucks, trail bikes, all terrain vehicles, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers or similar vehicles (other than passenger automobiles or pickup or utility trucks with a capacity of one ton or less) or any other motorized vehicles which are not in use shall be parked, stored or in any manner kept or placed on any portion of the Property except in an enclosed garage or in a pre-approved, and screened parking facility within the Building Envelope or Limited Use Area that has been approved by the Design Review Committee and that is not visible from any other Tract or the Private Road. Any

vehicles that are not required to be parked within enclosed garages or the permitted screened parking facility pursuant to this Section shall be parked otherwise only on driveway areas (located on each Tract in accordance with Design Guidelines regarding set-back requirements). This restriction, however, shall not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing services to the Property for Declarant or the other Owners. Owners may store recreational vehicles on driveway areas for temporary use on the Property for periods not to exceed 14 days at a time or 28 days per year. Without limiting the generality of the above, certain recreational vehicles may be used within the Tract, but shall be subject to regulation, including hours and areas of permitted operation, under the Rules for The Cliffs. However, motorized dirt bike, ATV, or snowmobile use outside of the Building Envelope, Limited Use Area, driveways or the Private Road is strictly prohibited.

- 8.3 Excavation. No excavation shall be made except in connection with improvements approved as provided in this Declaration. For purposes of this Section, "excavation" means any disturbance of the surface of the land that results in a removal of earth, rock, or other substance a depth of more than 18 inches below the natural surface of the land.
- 8.4 No Illegal, Noxious or Offensive Activity. No illegal, obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public or private nuisance. No unlicensed or inoperable autos or inoperable equipment, trucks or car bodies will be allowed to be stored on the Property except within enclosed structures. Owners shall dispose of all refuse and garbage accumulated by them in a neat and sanitary manner, inoffensive to neighbors, and in conformity with State and County laws, rules, and regulations, and they will further comply with all such laws, rules and regulations relating to control of noxious weeds, rodents, and predators. Exterior lighting shall not cause glare to any adjacent Tract or Property. No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Property or improvements, shall be placed or used on any portion of the Property.
- 8.5 Animals, Pets and Grazing. The Board and/or the Declarant may adopt Rules and Regulations concerning animals and pets on the Property, including without limitation their types and numbers. To the extent there are no such Rules for The Cliffs adopted by the Board, or to the extent they do not conflict, the following provisions shall apply to all Owners. In the event of conflict, the Rules for The Cliffs shall prevail. No animals, livestock or poultry of any kind shall be kept, raised, or bred on any portion of the Property by Owners, except (i) dogs, cats or other interior confined household pets and only if they are kept, and raised solely as household pets and not for commercial purposes, (ii) horses, llamas, mules, sheep, goats, or cattle, not to exceed the livestock limits outlined below, (iii) fish and water fowl. The keeping of any pets, horses, or livestock shall not be conducted in any way that constitutes a nuisance to the Owners of other Tracts within the Property. The maximum number of horses and/or other

livestock per Tract shall be: Tract 1 is not allowed to have livestock, Tracts 2 and 3 are limited to two (2), Tract 4 is limited to three (3); Tracts 7, 8, 9, 10, 11, 12, and 13 are limited to four (4), Tracts 5, 6 and 14 are limited to five (5), and Tract 15 is limited to six (6). The maximum combined number of dogs, cats or other household pets is 4, except for fish which shall have no maximum. Household pets, such as dogs and cats, must be contained within fenced areas in the Building Envelope, Limited Use Area, or Pasture Area of the Owner's Tract, or on a leash or immediately responsive to voice command and not a nuisance to neighbors, and such animals may not be permitted to run at large at any time. Owners must insure that their pets, animals or guests shall not harass wildlife at any time. Barking, howling or aggressive dogs are expressly considered a nuisance and shall not be allowed anywhere within the Property. Other than bird feeders, no feeding of wildlife within the ranch shall be permitted.

- 8.6 Abandoned and Inoperable Vehicles. No abandoned or inoperable vehicles of any kind shall be stored or parked on any portion of the Property, except in a garage. "Abandoned or inoperable vehicle" is defined as any vehicle, which has not been driven under its own propulsion for a period of six weeks or longer; provided, however, this shall not include vehicles parked by Owners while on vacation or residing away from The Cliffs of Durango, or operational vehicles parked and stored during winter months. A written notice describing the "abandoned or inoperable vehicle" and requesting its removal may be personally served upon the Owner or posted on the unused vehicle by the Association. If such vehicle has not been removed within 72 hours after notice has been given, the Association shall have the right to remove the vehicle without liability, and the expense of removal shall be a Default Assessment charged against the Owner. All work on automobiles or other vehicle repair shall be performed in an enclosed garage except in emergencies.
- 8.7 General Practices Prohibited. The following general practices are prohibited at The Cliffs of Durango:
- (a) Allowing construction suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Committee;
 - (b) Removing any rock, plant material, top soil or similar items from any property of others;
 - (c) Use of surface water for construction;
 - (d) Impair or adversely affect the natural drainage on any Tract or divert drainage onto another Tract. Each Owner shall install culverts where driveways cross the Private Road drainage ditch and any other drainage ways, the minimum size shall be approved by the Committee;
 - (e) Violation of any state, federal, or local law, ordinance, rule or regulation.

- 8.8 Signs. No signs of any kind shall be displayed on any portion of the Property except, (i) during the Special Declarant Rights Period (which Period expires December 31, 2015), signs of Declarant or its affiliates or assigns, (ii) signs required by law, (iii) no more than two temporary "For Sale" or "For Rent" signs, the size of which shall be no larger than 10 square feet each, (iv) address markers which shall be obvious and easy to find, but the numbers or letters depicting the address shall be no larger than 8 inches tall, and (v) no trespassing or no hunting signs which shall be no larger than 2 square feet each, and shall contain only the colors of black, white and green, and shall be placed only near the perimeter of The Cliffs of Durango Property at intervals no more frequent than every 300 feet. No trespassing signs are not allowed at individual driveways or on Tract boundaries that are not on the perimeter of The Cliffs of Durango Property.
- 8.9 No Hazardous Activities. No activities shall be conducted on any portion of the Property and no improvements may be constructed on any portion of the Property which are or might be illegal, unsafe or hazardous to any person or Property; provided, however that construction activities for which all applicable permits and Review Board approval have been obtained and which are conducted in accordance with industry standards shall not violate this Section. Without limiting the generality of the foregoing (a) no firearms shall be discharged upon any portion of the Property, unless specifically approved by the Association or Declarant, (b) no open fires shall be lighted or permitted on the Property except in a contained barbeque unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace, except for controlled picnic fires and attended fires in fire pits or outdoor fireplaces authorized in writing by Declarant or the Association, or except for outdoor slash/cleanup fires approved by Declarant or the Association and permitted in accordance with the county regulations, (c) no careless disposition of cigarettes or other flammable materials are permitted, and (d) no hunting by any method shall be permitted within the Property.
- 8.10 Antenna. No exterior radio, television, internet, microwave, communication, or other antenna or antenna dish or signal capture and distribution device or other such equipment shall be permitted without the prior written consent of the Committee and appropriate screening as required by the Design Guidelines. Any antenna or dish must be contained within the Building Envelope or Limited Use Area and they must not be visible from any other Tract or the Private Drive.
- 8.11 Grant of Access and/or Utility Easements to other Properties. No Tract Owner, except Declarant, shall have the right to grant access or utility easements across such Owner's Tract to any other parcel or property not within The Cliffs of Durango.
- 8.12 No Mining or Drilling. No property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing of oil, gas, or other hydrocarbons, mineral, rocks, stones, gravel, or earth, except that the Association may permit, grant, license or easement, allow the drilling of wells for the extraction of water for domestic

use and landscape irrigation if such use is in accordance with applicable governmental authorities, and except that Declarant may mine, excavate, manufacture and store rock and gravel for use on the Entrance, Private Road and driveways within The Cliffs of Durango for a period of time not to exceed December 31, 2015.

- 8.13 Noxious Plant Abatement. Tract Owners shall be responsible for noxious weed or plant abatement. Any plant listed on the La Plata County's list of noxious weeds must be sprayed or removed to minimize or eradicate the spread of noxious weeds. All spraying must be done in accordance with the EPA standards. Precaution must be taken to keep from damaging existing native vegetation and to keep from impacting the neighboring Tracts. Declarant shall be exempt from this requirement for the period prior to December 31, 2015.
- 8.14 Timber and Forest Management. A timber, brush and forest management plan shall be adopted by the Association and any removal of native vegetation or trees must be in compliance with the forest management plan. Plans for timber and existing vegetation removal for building construction, driveway corridors, and view corridors must be submitted for review and approval by the Design Review Committee prior to any removal activity and shall comply with the forest management plan. Each Owner shall be responsible for the creation of a wildfire defensible space surrounding all of their buildings in accordance with the Forest Management Plan and the guidelines of the Colorado State Forest Service.
- 8.15 Refuse Containers. All refuse containers within the Property shall be shielded from view from the Private Road and from adjacent Tracts and be kept in a clean, sanitary and animal proof shelter. Refuse containers shall comply with Wildlife Proof Refuse Container (WPRC) requirements as approved by the Colorado Division of Wildlife. Refuse containers are allowed to be kept outside only on the days for refuse pickup and they must be kept inside during night time hours. No unsightly lumber, metals, scrap, refuse, trash, or the like shall be kept, stored or allowed to accumulate on any Tract so as to be visible from roadways or other Tracts.
- 8.16 Trail Easement and Parking Lot. A trail and parking lot easement has been established along the boundary line between Tracts 12 and 14. Additionally a trail is allowed to be placed within the Private Road easement. The use of this trail is for access to the National Forest Service property by the Owners, their guests and invitees by means of hiking, biking, horseback riding, and snowmobiling. Parking is permitted for vehicles, horse trailers, and snowmobile trailers for a period of no longer than 5 days at one time. The parking facility and trail are to be maintained by the Association. No Owner shall grant to any third-party access through The Cliffs of Durango to the National Forest or Bureau of Land Management, or other public lands unless said third-party is accompanied by Owner or a tenant of Owner residing within The Cliffs of Durango.

- 8.17 Gate and Entry Area. Maintenance and uses. The entrance and common facilities shall be maintained by Association. Tract Owners will be given the entrance code or keys and they shall be discretionary as to how the code or access is given to guests and invitees.
- 8.18 Limitations on Lawns and Irrigation. Tract Owners are encouraged to use native plants and vegetation that does not require irrigation. Lawns and irrigated landscape shall be limited to 15,000 square feet per Tract.
- 8.19 Geologic Hazards. Geologic Hazards may exist on the Tracts and within the Building Envelopes and Limited Use Areas. Prior to construction of any structures, the Owner is required to obtain a geology/engineering report from a qualified professional engineer or geologist verifying the constructability and safety of the proposed structure. Declarant, the Board, the Committee, or the Association do not represent, guarantee or warrant the feasibility or ability to construct structures or other improvements within any portion of the Tracts and assume no liability by platting the Property or approving any plans presented by the Owner.
- 8.20 Nuisances. No activity that creates noxious odors or excessive noise detectable from the other Tracts is permitted.
- 8.21 Speed Limit. Operating any vehicle at excessive speeds is prohibited. The Board is empowered to post and enforce maximum speed limits on the Private Road.
- 8.22 Leasing of Residences. No residential or other structure shall be rented or leased for a period of less than 12 consecutive months. All leases must be made subject to this Declaration, and the Rules of The Cliffs and any amendments thereto.
- 8.23 Fractional or Timeshare Ownership. No fractional or timeshare-like ownership of the Tracts are permitted.
- 8.24 Restriction on Resubdivision. No Tract, except Tract 1, shall be resubdivided.

ARTICLE 9
LIMITATION AND RESTRICTIONS ON BUILDING IMPROVEMENTS

- 9.1 Permitted Improvements . The following improvements, and none other, are permitted on each Tract subject to any required approvals or permits from La Plata County:
- (a) Tracts 2 through 15 are permitted one single-family structure, along with a garage and/or the construction of no more than one guest house, and one maid/caretakers quarters, and one barn, and one detached garage, and 2 accessory buildings no larger than 600 sq. ft. total , and one detached office or studio, the designs of which are restricted and defined by the Design Guidelines,

- and no more than a total of five buildings may be constructed on a Tract (dwelling units other than the principal residence are subject to County land use regulations, water rights decrees and permits). The single family structure, guest house, maid/caretakers quarters, detached office or studio, or other building primarily occupied by humans, shall be built within the Building Envelope as identified on the plat. The barn, detached garage, and accessory buildings shall be built within the Building Envelope or the Limited Use Area as identified on the plat;
- (b) Tract 1 shall be permitted to be resubdivided by Declarant in accordance with the Declarant Reserved Rights in Article 16. The maximum number of Tracts to be created from Tract 1 is 16, which shall all be limited to residential use, but may be in the form of multifamily dwelling units.
 - (c) Such enclosed service areas for garbage, trash, utilities and other maintenance facilities as may be approved in writing by the Design Review Committee;
 - (d) Corrals, walls, equestrian facilities, recreation facilities, and parking areas as may be approved in writing by the Design Review Committee, said facilities shall be contained within the Building Envelope or Limited Use Area;
 - (e) Landscaping improvements, including ponds and other water features approved in writing by the Design Review Committee, and, as may be required by law or regulation, the Colorado Division of Water Resources; and
 - (f) Swimming pools, hot tubs, ponds, tennis courts, solar devices and greenhouses approved in writing by the Design Review Committee and, as may be required by law or regulation, the Colorado Division of Water Resources, said facilities shall be contained within the Building Envelope or the Limited Use Area.
 - (g) Fencing, driveways, drainage structures, and underground utilities approved in writing by the Design Review Committee.
 - (h) The only improvements allowed in the Natural Area as identified on the Plat are the one non-looping driveway which shall generally follow the alignment shown on the Plat, water wells and associated facilities, underground utilities, forest vegetation management and landscape enhancements in accordance with the Forest Management Plan, all as approved in writing by the Design Review Committee.
 - (i) The Association may construct and maintain, as a common facility, community mail boxes, package delivery, and newspaper delivery boxes near the entrance to the project. Additionally, a community refuse pickup, an entry gate, a school bus stop, and the like may be constructed and maintained by the association.

9.2 Prohibited Improvements.

- (a) No structures or buildings of a temporary character (except a temporary storage facility for Declarant's use in constructing infrastructure improvements benefiting Tracts within The Cliffs of Durango), nor any mobile home, house trailer, manufactured home, tent, shack or other such structure shall be placed or used within The Cliffs of Durango, either temporarily or permanently, without prior written approval of the Design Review Committee, which approval may be withheld in its sole discretion. Notwithstanding the preceding sentence, necessary appurtenances, modest construction trailers or structures of a temporary nature may be used without the Design Review Committee's approval during the period of performance of construction of any improvement for which necessary government permits and Committee approval have been obtained, provided that no overnight occupancy shall be permitted in any such appurtenance, trailer or structure and such appurtenances, trailers or structures shall be removed from the Property on the earlier of the date that is 12 months after the initial use thereof or the date of substantial completion of said improvement. Not more than one tent, camper, or Recreational Vehicle may be used by Owners for recreational camping and temporary residence (not to exceed 14 days at a time or 28 days per year) prior to or after construction of improvements. Mobile and modular homes are specifically and expressly prohibited.
- (b) No Owner shall do or permit any work, place any landscaping or install any other improvements or allow the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Property, except to the extent such alteration and drainage pattern is approved in writing by the Committee, and except for rights reserved to Declarant to alter or change drainage patterns.
- (c) Outdoor lighting of tennis courts, ball fields, or other facilities requiring bright lights is expressly prohibited.
- (d) No laundry or wash shall be dried or hung outside.

9.3 Location of Buildings. All residences, offices, studios or other structures and buildings occupied by humans must be contained within the specific Building Envelope as specified on the Plat. All other structures including without limitations, garages, barns, accessory buildings, septic systems, fences, corrals, equestrian and livestock facilities, ponds, and recreation facilities must be constructed within the Limited Use Area or Building Envelope, except the driveway, wells, drainage structures, and buried utility lines.

- 9.4 Gates and Fences. Fences will be subject to the Design Guidelines and will be constructed so as to allow, to the extent reasonably possible, the movement of big game, including elk, on the Property. No gates, fences, or other obstructions shall be placed upon or across the Private Road or any shared driveway, or the Natural Areas as depicted on the Plat. Only a perimeter fence and no internal fences or corrals are allowed in the Pasture Area as depicted on the Plat. This restriction shall not prevent an Owner from placing a gate on a driveway on his or her Tract, so long as all Owners using the driveway consent, and all gate and associated entrance structures and fencing shall be contained within an area that is 75 feet wide by 75 feet long at the point where the driveway leaves the main Private Road (Durango Cliffs Drive), or at the point where a shared driveway only serves one Tract.
- 9.5 Utilities. Owners shall be responsible for utility installation and maintenance in accord with local and state regulations. Each structure designed for occupancy shall connect to a private individual domestic well or a shared domestic well and shall connect to an Individual Septic Disposal System (ISDS) constructed at the sole expense of the Tract Owner in conformance with regulations imposed by the State of Colorado, La Plata County or other regulatory agencies. All new utility lines, cables, pipelines and tanks shall be underground.
Owners shall be responsible for the design of their ISDS with due regard for specific soil conditions, percolation rates and the like. All systems shall meet the minimum requirements of San Juan Basin Health Department or its successor. ISDS's shall be not be located within any Natural Areas depicted on the Plat, and it must be entirely buried with no exposed lagoons or ponds. ISDS's shall be constructed so as to not encroach upon or affect in any way the source for domestic water wells.
- 9.6 Restriction on the Creation of Additional Tracts. No Tract shall be further subdivided or separated into smaller Tracts by any Owner except for Tract 1. Any Tracts may be consolidated into a single Tract. Any Tracts may have their boundary lines adjusted so long as all resulting parcels are larger than 35 acres and there is no net increase in the size of any Building Envelope, Limited Use Area, or Pasture Area. Tract 1 is exempt from this restriction and it may be further subdivided in accordance with La Plata County Codes and Regulations.
- 9.7 Building Design and Height. All buildings, structures, and improvements must be built in total conformance with the Design Review Guidelines and all improvements must have written approval by the Design Review Committee prior to the commencement of construction of said improvements.
- 9.8 Lighting. All lighting within the Tracts, and on all buildings shall conform to the lighting guidelines described in the Design Review Guidelines. It is the Declarant's desire to protect the nighttime appearance of the Property and adopt Dark-Sky type lighting restrictions as part of the Design Review Guidelines regulating the location, style and intensity of all lighting within the Property.

- 9.9 Amendments to Building Envelope, Limited Use Area, or Pasture Area. Any changes to the location, shape or boundaries of the Building Envelopes, Limited Use Areas, or Pasture Areas shall require approval by 75% of all Tract Owners and in addition the unanimous approval of all Tract Owners with 500 feet of any proposed change.

ARTICLE 10
INSURANCE AND FIDELITY BONDS

- 10.1 Authority to Purchase. All insurance policies relating to the Private Road or Other Common Facilities shall be purchased by the Executive Board or its duly authorized agent. The Executive Board, the Manager and Declarant shall not be liable for failure to obtain any coverage required by this Article 10 or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable costs. Notwithstanding the foregoing, if the insurance described in Sections 10.3 and 10.4 below is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or otherwise delivered to all Owners.
- 10.2 General Insurance Provisions. All such insurance coverage obtained by the Executive Board shall conform to the following provisions:
- The deductible, if any, on any insurance policy purchased by the Executive Board may be treated as a Common Expense payable from Annual Assessments or Special Assessments allocable to all of the Tracts or to only some of the Tracts, if the claims or damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners) or as an item to be paid from working capital reserves established by the Executive Board.
- 10.3 Physical Damage Insurance on Private Road . The Association may obtain insurance for all insurable improvements, if any, on the Private Road and Other Common Facilities in an amount equal to the full replacement value, (i.e., 100% of the current "replacement cost" exclusive of land, foundation, excavation, depreciation on personal property, and other items normally excluded from coverage), which shall include all building service equipment and the like, common personal property and supplies, and any fixtures or equipment within the Private Road or Other Common Facilities.
- 10.4 Liability Insurance. The Association may obtain a comprehensive policy of commercial general liability insurance (including bodily injury, libel, slander, false arrest, and invasion of privacy coverage) and property damage insurance with such limits as the Executive Board may from time to time determine, insuring each member of the Executive Board, the Association, its officers, the Manager, each Owner and the

respective employees, agents and all persons acting as agents of the Association against any liability to the public or the Owners (and their guests, invitees, tenants, agents, and employees) arising in connection with the ownership, operation, maintenance, or use of the Private Road or Other Common Facilities within The Cliffs of Durango and any other areas under the control of the Association. The Owners shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Private Road and Other Common Facilities.

Such comprehensive policy of public liability insurance shall include the following:

- (a) coverage for contractual liability, liability for non-owned and hired automobiles, and, if applicable, host liquor liability, employer's liability, and such other risks as shall customarily be covered with respect to developments similar to The Cliffs of Durango in construction, location, and use;
- (b) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another insured; and
- (c) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to an Owner because of the negligent acts of the Association or another Owner.

The Executive Board shall review the coverage limits at least once every two years, but, generally, the Board shall carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to The Cliffs of Durango and in no event shall such coverage be less than \$ 1,000,000 for all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than \$2,000,000.

- 10.5 Fidelity Insurance. Fidelity bonds may be maintained by the Association 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 the funds of or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bonds shall be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity coverage shall name the Association as an obligee and shall be written in such an amount as the Board may determine appropriate. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons, serving without compensation from the definition of "employees," or similar terms or expressions. Such bonds shall cover the maximum funds that will be in the custody of the Association or any management agent at any time while the bond is in force, and such coverage will be not less than two months'

current assessments plus reserves, as calculated from the current budget of the Association. The maximum deductible amount shall be the lesser of \$5,000 or 1% of the policy face amount.

10.6 Provisions Common to Physical Damage Insurance, Liability Insurance, Fidelity Insurance and Flood Insurance. Any insurance coverage obtained by the Association under the provisions of this Article above shall be subject to the following provisions and limitations:

- (a) the named insured under any such policies shall include Declarant, until all of the Tracts in The Cliffs of Durango have been conveyed, and the Association, as attorney-in-fact for the use and benefit of the Owners, or the authorized representative of the Association (including any trustee with whom the Association may enter into an insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under such policies;
- (b) each Owner shall be an insured person with respect to liability arising out of the Owner's interest in the Private Road or membership in the Association;
- (c) in no event shall the insurance coverage obtained and maintained pursuant to this Article be brought into contribution with insurance purchased by the Owners or their Mortgagees;
- (d) the policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Owner (including an Owner's family, tenants, servants, agents, invitees, and guests) when such act or neglect is not within the control of the Association, or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control; or (iii) conduct of any kind on the part of an Owner (including the Owner's family, tenants, servants, agents and guests) or any Director, officer, employer, or Manager of the Association, without prior demand to the Association and a reasonable opportunity to cure the matter;
- (e) the policies shall contain a waiver by the insurer of any right to claim by way of subrogation against Declarant, the Executive Board, the Association, the Manager, and any Owner and their respective agents, employees, or tenants, and in the case of Owners, members of their households, and of any defenses based upon co-insurance; and
- (f) the policies described in Sections 10.3 and 10.4 above shall provide that any "no other insurance" clause shall expressly exclude individual Owners' policies from its operation so that the physical damage policy or policies purchased by the

Board shall be deemed primary coverage, and any individual owners' policies shall be deemed excess coverage.

- 10.7 Personal Liability Insurance of Officers and Directors. To the extent obtainable at reasonable cost, 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 on behalf of the Association.
- 10.8 Workmen's Compensation Insurance. The Association shall obtain workmen's compensation or similar insurance with respect to its employees, if any, in the amounts, and forms as may now or hereafter be required by law.
- 10.9 Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it deems appropriate with respect to the Association's responsibilities and duties.
- 10.10 Insurance Obtained by Owners. Each Owner shall have the right to obtain insurance for such Owner's benefit, at such Owner's expense, covering the Owner's personal property. In addition, each Owner may obtain such other and additional insurance coverage on and in relation to his Tract as such Owner concludes to be desirable; provided, however, that no insurance coverage obtained by an Owner shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that coverage. Any such insurance obtained by an Owner shall include a waiver of the particular insurance company's right of subrogation against the Association and other Owners.

ARTICLE 11 ASSOCIATION AS ATTORNEY-IN-FACT

Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the improvements on the Private Road and Other Common Facilities upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article 13 below. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointment of the Association as attorney-in-fact as provided in this Article. 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 Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE 12
DAMAGE OR DESTRUCTION

- 12.1 Estimate of Damage or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Private Road or other common facility, 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 Private Road or other common facility so damaged or destroyed. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction.
- 12.2 Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed improvements. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.
- 12.3 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Section 5.4 above, levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners, except as provided in Section 5.4, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.
- 12.4 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for in Section 5.4 above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Association under Section 5.4 above, or, if no Special Assessments were made, then equally to the Owners, as their interests appear.
- 12.5 Decision Not to Rebuild. If Owners representing at least 80% of the votes in the Association, including the vote of every Owner of improvements that will not be restored and including, during the Special Declarant Rights Period, the vote of

Declarant, agree in writing not to repair and reconstruct and no alternative improvements are authorized, then and in that event the Property shall be restored to its natural state and maintained as an undeveloped portion of the Private Road or other common facility by the Association in a neat and attractive condition.

- 12.6 Damage or Destruction Affecting Tracts. In the event of damage or destruction to the improvements located on any of the Tracts, the Owner thereof shall promptly repair and restore the damaged improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within 180 days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than 90 days, then the Association may, after notice and hearing as provided in the Bylaws, impose a fine accruing at the rate of \$100 per day or such other rate imposed by the Board, charged against the Owner of the Tract until repair and reconstruction is commenced, unless the Owner can prove to the satisfaction of the Association that such failure is due to circumstances beyond the Owner's control. Such fine shall be a Default Assessment and lien against the Tract as provided in Section 5.7 above.

ARTICLE 13 **CONDEMNATION**

- 13.1 Rights of Owners. Whenever all or any part of the Private Road shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.
- 13.2 Partial Condemnation, Distribution of Award, Reconstruction. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Private Road on which improvements have been constructed, then, unless, within 60 days after such taking, Owners representing at least 80% of the votes in the Association, including during the Special Declarant Rights Period, the vote of Declarant, shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Private Road to the extent lands are available therefor, in accordance with plans approved by the Committee. If such improvements are to be repaired or restored, the provisions in Article 13 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Private Road, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is

completed, then such award or net funds shall be distributed on the basis of the Common Expenses allocated equally to the Owners, as their interests appear.

- 13.3 Complete Condemnation. If all of The Cliffs of Durango is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Private Road shall be distributed as provided in Section 13.2 above.

ARTICLE 14 **ENFORCEMENT OF COVENANTS**

- 14.1 Violations Deemed a Nuisance. Every violation of this Declaration or any other of the Association Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement or correction of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of this Declaration shall be available.
- 14.2 Compliance. Each Owner or other occupant of any part of the Property shall comply with the provisions of the Association Documents as the same may be amended from time to time.
- 14.3 Failure to Comply. Failure to comply with the Association Documents shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing if provided in the Bylaws shall be given to the delinquent party prior to commencing any legal proceedings.
- 14.4 Who May Enforce. Any action to enforce the Association Documents may be brought by the Board, the Design Review Committee, or the Manager in the name of the Association on behalf of the Owners. If, after a written request from an aggrieved Owner, none of the foregoing persons or entities commences an action to enforce the Association Documents, then the aggrieved Owner may bring such an action.
- 14.5 Remedies. In addition to the remedies set forth above in this Article, any violation of the Association Documents shall give to the Board, the Manager, or the Design Review Committee on behalf of the Owners, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify, or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest of the Owners and meaning of the Association Documents. If the offense occurs on any easement, the Private Road or the like, the cure shall be at the expense of the Owner or other person responsible for the offending condition.
- 14.6 Nonexclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.

- 14.7 No Waiver. The failure of the Executive Board, the Design Review Committee, the Manager, or any aggrieved Owner to enforce the Association Documents shall not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Association Documents at any future time.
- 14.8 No Liability. No member of the Executive Board, Declarant, the Design Review Committee, the Manager or any Owner shall be liable to any other Owner for the failure to enforce any of the Association Documents at any time.
- 14.9 Recovery of Costs. If legal assistance is obtained to enforce any of the provisions of the Association Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Association Documents or the restraint of violations of the Association Documents, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees (and legal assistants' fees) as may be incurred, or if suit is brought, as may be determined by the court.

ARTICLE 15
DURATION OF THESE DECLARATIONS AND AMENDMENT

- 15.1 Term. This Declaration and any amendments or supplements hereto shall remain in effect from the date of recordation until the 21st anniversary of the date this Declaration is first recorded in the office of the Clerk and Recorder of La Plata County, Colorado. Thereafter this Declaration shall be automatically extended for successive periods of 10 years each, unless otherwise terminated or modified as provided below.
- 15.2 Amendment. Except as otherwise provided in this Article 15, this Declaration, or any provision of it, may be, at any time, terminated, extended, modified, supplemented or amended, or revoked as to the whole or any portion of the Property, upon the written consent of Owners holding a two thirds majority of the votes in the Association, and the written consent of the Declarant, so long as the Declarant owns a Tract within the Property. Amendments made pursuant to this Section shall inure to the benefit of and be binding upon all Owners of any part of the Property, their family, tenants, guests, invitees and employees, and their respective heirs, successors and assigns. A certificate of a licensed abstract or title company showing record ownership of the Property and a certificate of the Secretary of the Association documenting votes held and voting rights exercised on the basis of such ownership records shall be evidence of such ownership and voting representation for the purposes of any such amendment.
- 15.3 Notice of Amendment. No amendment or revocation of this Declaration shall be effective unless a written notice of the proposed amendment is sent to every Owner at the last known address as is on file with the Association reasonably in advance of any

action taken or purported to be taken and such Owner has been given the opportunity to vote or give its consent thereto.

- 15.4 Effective on Recording. Any modification, supplement, amendment or revocation shall be immediately effective upon recording in La Plata County, Colorado, a copy of such amendment, modification, supplement or revocation executed and acknowledged by the necessary number of Owners (and by Declarant, as required), accompanied by a certificate of a licensed abstract or title company as to ownership, or alternatively, upon the recording in La Plata County, Colorado, of a copy of the amendment, modification or revocation together with a duly authenticated certificate of the Secretary of the Association stating that the required number of consents of Owners were obtained, as evidenced by a certificate of a licensed title or abstract company or other authoritative evidence of compliance with the requirements of this Declaration regarding amendments, which shall be placed on file in the office of the Association.

ARTICLE 16
RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

- 16.1 Termination of Reserved Development and Special Declarant Rights. Declarant's reserved development and special declarant rights shall expire upon providing written notice of relinquishment of such rights to the Association or, if not sooner terminated, December 31, 2015.
- 16.2 Declarant's Reserved Right to Appoint Members of the Executive Board. The Declarant reserves the right to appoint the members of the Executive Board so long as the Declarant owns a Tract within the Property.
- 16.3 Declarant Reserved Right to Make Boundary Adjustments. The Declarant reserves the right to make boundary adjustments to portions of the Property owned by the Declarant, Fandalar, Ventana and Gandalf and minor plat amendments related thereto. This Declarant Reserved Right shall include the right to make boundary adjustments and minor plat amendments with the portions of the Property described in this Section 16.3 and with adjacent properties not part of the Property. Further, this Declarant Reserved Right shall include the right to annex property added to Tracts from properties outside the Property and to withdraw portions of Tracts removed from Tracts and added to outside properties through such boundary adjustment(s). Such annexation or withdrawal shall be by the filing of an Amended Plat, but will not affect the Allocated Interests of the Tracts.

ARTICLE 17
MISCELLANEOUS PROVISIONS

- 17.1 Severability. This Declaration, to the extent possible, shall be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.
- 17.2 Construction. In interpreting words in this Declaration, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.
- 17.3 Headings. The headings are included only for purposes of convenient reference, and they shall not affect the meaning or interpretation of this Declaration.
- 17.4 Waiver. No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver shall be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.
- 17.5 Limitation of Liability. Neither the Association nor any officer or member of the Board shall be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Association Documents if the action or failure to act was made in good faith. The Association shall indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.
- 17.6 Conflicts Between Documents. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

DECLARANT & OWNER

Cliffs of Durango, Inc.

By _____
Frederick J. Grimes, Secretary

OWNERS

Fandalar, LLC

By _____
Daryl Z. Crites, Member/Manager of
Kala, LLC, Manager of Fandalar, LLC

Ventana Partners, LLC

By _____
Frederick J. Grimes, Manager of
Ventana Partners, LLC

Gandalf, LLC

By _____
Terence L. Klingman, Manager of
Klingman Wellington, LLC, Manager of
Gandalf, LLC

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The foregoing instrument was acknowledged before me this ___ day of July, 2005, by Frederick J. Grimes, Secretary of Cliffs of Durango, Inc.

Witness my hand and official seal.

My commission expires:

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The foregoing instrument was acknowledged before me this ___ day of December, 2005, by Daryl Z. Crites, Member/Manager of Kala, LLC, Manager of Fandalar, LLC.

Witness my hand and official seal.

My commission expires:

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The foregoing instrument was acknowledged before me this ___ day of July, 2005, by Frederick J. Grimes, Manager of Ventana Partners, LLC.

Witness my hand and official seal.

My commission expires:

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

The foregoing instrument was acknowledged before me this ___ day of July, 2005, by Terence L. Klingman, Manager of Klingman Wellington, LLC, Manager of Gandalf, LLC.

Witness my hand and official seal.

My commission expires:

Notary Public

EXHIBIT A
DESCRIPTION OF THE PROPERTY

Tracts 1 through 15, The Cliffs of Durango, according to the recorded plat thereof filed in the office of the Clerk and Recorder on December 7, 2004 under Reception Number 898693, County of La Plata, State of Colorado.