

**AMENDED AND RESTATED**  
**LAND USE DECLARATION**  
**FOR DURANGO MOUNTAIN RESORT**

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AMENDED AND RESTATED  
LAND USE DECLARATION

FOR

DURANGO MOUNTAIN RESORT

This Amended and Restated Land Use Declaration has been executed as of this \_\_\_\_ day of \_\_\_\_\_, 2003, by DSC/Purgatory, LLC, Declarant, Durango Mountain Land Company, LLC, a Colorado limited liability company and the Durango Mountain Master Association.

I. PURPOSE:

1.1 General:

(a) DSC/Purgatory, LLC, is the Declarant pursuant to the Assignment of Declarant Rights and Status dated effective May 1, 2000, and recorded May 4, 2000, in the real estate records of La Plata County, Colorado, at Reception No. 785894. Durango Mountain Land Company, LLC, is the owner of some of the real property hereinafter defined as Durango Mountain Resort and both intend to develop said property as a first class resort which will include condominiums, residences, lodges, food and beverage services, shops and merchandising areas, and entertainment and recreation opportunities, for all persons residing, visiting or doing business within Durango Mountain Resort.

(b) Durango Mountain Master Association (fka Purgatory Village Owners' Association), a Colorado nonprofit corporation, has been formed to perform certain functions and to hold and manage certain property for the common benefit of some or all Owners or Lessees within Durango Mountain Resort. This Declaration defines certain rights and obligations of Owners and Lessees within Durango Mountain Resort with respect to the Association and with respect to Services undertaken and property held by the Association.

(c) By this Amended Declaration, DSC/Purgatory, LLC, Durango Mountain Master Association, Durango Mountain Land Company, LLC, also intend to continue providing for and maintaining the area within Durango Mountain Resort as a pleasant and desirable environment for all persons residing, visiting or doing business therein.

(d) Declarant desires to consolidate and amend the existing Land Use Declaration, as previously amended, into one comprehensive new Amended and Restated Land Use Declaration describing the covenants, conditions, restrictions and easements for Durango Mountain Resort, and such property as may later become a part of Durango Mountain Resort. Durango Mountain Resort is part of the property and development at the Ski Area and community known as Durango Mountain Resort ("DMR"). Notwithstanding the use of the term Durango Mountain Resort, this Declaration shall only apply to that real property that is expressly made subject to this Declaration, from time to time.

(e) The Land Use Declaration(s) being amended and superseded hereby include the Land Use Declaration for Purgatory Village recorded November 24, 1982 at Reception No. 476568, re-recorded August 20, 1984 at Reception No. 504336, and all

supplements and amendments thereto, including supplements and amendments recorded at Reception Nos. 501005, 507434, and 740850.

(f) This Amended and Restated Land Use Declaration is a permitted amendment to a preexisting, governing instrument pursuant to C.R.S. § 38-33.3-120, and is an amendment to the declaration of a common interest community created prior to July 1, 1992, that does not elect treatment under the Colorado Common Interest Ownership Act, and the substantive result accomplished by this Amended and Restated Land Use Declaration was and is permitted by law in effect prior to July 1, 1992, and the amendment is made in accordance with that law.

(g) Declarant intends that the property generally known as Durango Mountain Resort shall contain six (6) villages, those being Purgatory Village, Engineer Village, Tacoma Village, Gray Rock Village, Boyce Lake Village, and Base Camp Village, which villages are further set forth and described in the Durango Mountain Resort Master Plan recorded at Reception No. \_\_\_\_\_.

1.2 Amended Declaration: To further the general purposes herein expressed, DSC/Purgatory, LLC, Durango Mountain Master Association and Durango Mountain Land Company, LLC, for themselves, their successors and assigns, hereby amend the declarations affecting all real property hereinafter defined as Durango Mountain Resort, including the existing Purgatory Village, including any property added to Durango Mountain Resort, and that such properties shall, at all times, be owned, held, used and occupied subject to the provisions of this Declaration and to the covenants, conditions and restrictions herein contained.

1.3 In addition to this Amended and Restated Land Use Declaration, portions of the property shall be subject to and part of the current DMR Land Use Regulations as set forth in the Development Agreement and recorded in the office of La Plata County, Colorado, Clerk and Recorder on August 23, 2002 at Reception No. 836596 and First Amendments recorded February \_\_\_\_\_, 2003 at Reception No. \_\_\_\_\_, which regulate development in the Durango Mountain Resort in its entirety, as well as to the DMR Infrastructure Master Plans (Reception No. \_\_\_\_\_) and DMR Air Quality Management Plan Plans (Reception No. \_\_\_\_\_).

## II. DEFINITIONS:

2.1 Association: Association shall mean Durango Mountain Master Association (fka Purgatory Village Owners' Association), a Colorado nonprofit corporation, formed and incorporated to be and constituting the Association to which reference is made in this Declaration and to further the common interests of all Owners or Lessees or of particular classes of Owners or Lessees of Sites within Durango Mountain Resort.

2.2 Association Properties: Association Properties shall mean all property owned or leased by the Association or otherwise held or used by the Association, or under the Association's management or control by, through or under contractual arrangements, licenses or other arrangements, including Special Property, real property or interests therein, improvements on real property, and personal property and equipment.

2.3 Commercial Site: Commercial Site shall mean any site upon which any service or retail business, except a Lodge, is being operated.

2.4 Declarant: Declarant, shall mean DSC/Purgatory, LLC, a Colorado limited liability company, and any party which (a) acquires from Declarant all or a substantial portion of the property at Durango Mountain Resort, including Durango Mountain Land Company, LLC, and (b) prior to or at the time of such acquisition is designated by a written instrument signed by Declarant as a successor or assignee of Declarant under this Declaration. Such instrument may specify the extent and portion of the rights or interests as a Declarant which are being assigned, in which case DSC/Purgatory, LLC, shall retain all other rights as Declarant.

2.5 Declaration: Declaration shall mean this instrument and all Amendments or Supplements hereto hereafter recorded in the real property records of La Plata County, or San Juan County, Colorado.

2.6 Durango Mountain Resort: Durango Mountain Resort shall mean all of the real property located in La Plata or San Juan County, Colorado, described in Exhibit A attached hereto, as well as all real property which hereafter becomes part of Durango Mountain Resort as provided in this Section 2.6 and excluding all real property deleted from Durango Mountain Resort as provided in this Section 2.6. Additional real property with a boundary within ten miles of any boundary of Durango Mountain Resort (including but not limited to non-contiguous property) may become part of Durango Mountain Resort and, in such event, shall be deemed to be within Durango Mountain Resort and subject to all of the provisions contained in this Declaration upon the recording in the office of the County Clerk and Recorder of La Plata or San Juan County, Colorado, of a written instrument signed by Declarant and the owner of the fee simple interest in such property, containing a legal description of said additional real property and declaring that said additional real property shall become part of and shall be deemed to be within Durango Mountain Resort. Said property shall include, but not be limited to, that property delineated in the Durango Mountain Resort Master Plan recorded in the real estate records of La Plata and San Juan County, Colorado. Any real property included in the definition of Durango Mountain Resort pursuant to this Section 2.6 which is hereafter incorporated as or becomes a part of a municipal corporation may be excluded from and be deemed outside of Durango Mountain Resort by the action of the Board of Directors of the Association and the written consent of Declarant upon the recording in the office of the Clerk and Recorder of La Plata or San Juan County, Colorado, of a written instrument signed by Declarant and the Association containing a legal description of the real property to be excluded and declaring that said real property shall be deemed to be outside Durango Mountain Resort.

In addition, there shall be separate individual villages located within Durango Mountain Resort, as set forth in Paragraph 1.1(g); however, nothing herein shall require that any specific property be annexed into Durango Mountain Resort by Declarant or other Owner.

2.7 Guest: Guest shall mean any customer, agent, employee, guest or invitee of an Owner, Lessee, Sub-owner or Declarant and any person or persons, entity or entities who have any right, title or interest in a Site which is not the fee simple title to the Site (including a lessee or Subowner other than a Lessee) and any customer, agent, employee, guest or invitee of such person or persons, entity or entities.

2.8 Lessee: Lessee shall mean the person or persons, entity or entities who are the lessees under a ground lease of any part or all of a Site or the lessees of any space within a building on any Site. All such leased property is hereinafter referred to as the Leased Premises. Each Lessee shall also be the holder or holders of a particular class of First Class Membership in the Association, as set forth below, which is appurtenant to ownership of his interest in the Leased Premises. The term Lessee shall include Declarant to the extent it is a Lessee as defined above and shall include a sublessee to the extent he becomes a Lessee pursuant to Section 6.8, but it shall not include the Association or any governmental entity (which term shall include but is not limited to Special Districts formed pursuant to Colorado law).

2.9 Lodge: A Lodge shall mean a building used for the accommodation of tourists, transients, or permanent guests for compensation, and in which no provision is generally made for cooking in individual rooms or suites of rooms, however such building may be designated (i.e. as a hotel), but shall not include a Residential Site.

2.10 Metro District: Metro District shall mean the Purgatory Metropolitan Service District.

2.11 Owner: Owner shall mean the person or persons, entity or entities who own of record, according to the real property records of La Plata or San Juan County, Colorado, fee simple title to a Site. Each Owner shall also be the holder or holders of a particular First Class Membership in the Association, as set forth below, which is appurtenant to ownership of such Site. The term Owner shall include Declarant to the extent it is the owner of fee simple title to a Site.

2.12 Residential Site: Residential Site shall mean any Site that is zoned for a single family residence, townhome or a residential duplex, or which is being used as a residential condominium.

2.13 Design Review Board: Design Review Board shall mean the Design Review Board established pursuant to Section VIII hereof.

2.14 Service: Service shall mean any activity, function or service required under this Declaration to be undertaken or performed by the Association as well as any activity, function or service otherwise undertaken or performed by the Association.

2.15 Site: Site shall mean each parcel of real property within Durango Mountain Resort that is subject to this Declaration, the fee simple interest of which may be conveyed in its entirety to a third party without violating the subdivision regulations of La Plata or San Juan County, Colorado, as in effect from time to time, including each condominium unit as that term is defined in the Condominium Ownership Act of the State of Colorado, and including any such parcel or condominium unit owned by Declarant. If at any time La Plata or San Juan County, Colorado, has no subdivision regulations in effect or modifies its subdivision regulations as in effect on the date hereof, in a manner which in the reasonable judgment of Declarant would materially affect the rights of Owners hereunder to be represented on the Board of Directors of the Association, Declarant may by written instrument recorded in the real property records of La Plata or San Juan County, Colorado, designate each parcel in Durango Mountain Resort which from time to time constitutes a Site. Notwithstanding the foregoing, a parcel of property owned, held or used in its entirety by the Association, or by any governmental entity (which term

shall include but is not limited to Special Districts formed pursuant to Colorado law), or for or in connection with the distribution of electricity, gas, water, sewer, telephone, television or other utility service or for access to any property within or without Durango Mountain Resort, or to the extent used for or in connection with the Ski Facility (as hereinafter defined), shall not be considered a Site. Moreover, a parcel of real property containing 35 acres or more shall be considered as only one Site, even though various parts thereof might be conveyed without violating the subdivision regulations of La Plata or San Juan County, Colorado.

2.16 Ski Facility: Ski Facility shall mean the Durango Mountain Resort Ski Area (also known as Purgatory Ski Area ) (by whatever name it may from time to time be known) located in part on real property adjacent to Durango Mountain Resort and in part on National Forest lands adjacent thereto, including, but not limited to, all ski tows or lifts, including towers, cables and structures or facilities used in direct connection with operation of such tows or lifts; ski trails or runs; roads used in connection with maintenance or operation of tows, lifts, trails or runs; areas occupied or used for tow or lift lines; areas which are occupied by racks for skis which are available for use by the public; ski school meeting areas; ski patrol facilities and first aid facilities for skiers; restrooms; lockers; nursery facilities; storage and warehouse facilities; lobbies; meeting rooms; areas or facilities occupied or used for sale of ski tow or lift tickets, ski school lessons, ski touring tickets, skiing instruction, helicopter tours, snowcat tours or similar activities, or for maintenance shops or for offices of the owner or operator of the Ski Facility or others primarily engaged in operating or promoting its activities on the resort.

2.17 Special Majority Vote: The Special Majority Vote shall be achieved on any particular matter if (and only if) (a) both the Class D member and the Class E member vote in favor of such matter, and (b) at least one of the three other classes of members which may have members entitled to vote on such matter, voting as classes, vote in favor of such matter. For the purpose of determining the vote of a class, the votes of a majority of the members of such class present at such meeting in person or by proxy and entitled to vote on such matter shall be deemed the vote of such class. Notwithstanding the foregoing, upon the effective resignation of the Class D member or the Class E member, the favorable vote of such resigned member shall no longer be required.

2.18 Special Property: Special Property shall mean any real property, any improvement or portion of any improvement on real property and any personal property or equipment with respect to which Declarant grants, assigns or conveys to the Association title, interests in, or rights of use, or with respect to which Declarant permits use by the Association or some or all Owners, Lessees, Guests or Subowners and any replacement of or substitute for any of the foregoing. Special Property may include, but is not limited to, the access road or roads serving Durango Mountain Resort; open space or unimproved areas within Durango Mountain Resort; walks, drives, malls, commons, bike paths, stairs, landscaping, trees, shrubs, ponds, seating benches, aesthetic structures, lighting, walk coverings and other open space improvements; parking areas or structures or facilities; swimming pools, golf courses, ice rinks, sauna or steam baths, horseback riding stables, tennis courts, game courts, game areas or other recreational facilities; conference facilities; cars and trucks or snow removal, maintenance or other equipment; and office space and office furnishings, furniture or fixtures. The Association shall be obligated to and shall accept the title to, interests in, or rights of use with respect to any Special Property which may be assigned, granted, or conveyed to the Association by Declarant, subject to such reservations, restrictions and conditions as Declarant may reasonably request. The Special Property shall include those portions of Durango Mountain Resort referred to as

Common Elements or Limited Common Elements, as applicable, to the extent that such common elements are dedicated to, or are the responsibility of, the Association.

2.19 Subowner: Subowner shall mean any person or persons, entity or entities who occupy or use a Site or portion thereof pursuant to a license, concession agreement or other arrangement with an Owner or Lessee or who have any right, title or interest in a Site, including a mortgagee or beneficiary, as the case may be, under a mortgage or deed of trust encumbering a Site.

### III. CERTAIN OBLIGATIONS AND RIGHTS OF ASSOCIATION:

3.1 Property Maintenance: The Association shall provide for the care, operation, management, maintenance, repair and replacement of all Association Properties. Said obligation shall include, without limitation, removal of snow from and application of sand and salt to parking areas, roads, walks, drives, malls, stairs and other similar Association Properties as necessary for their customary use and enjoyment; maintenance and care of all open space or unimproved areas included in the Association Properties and of plants, trees and shrubs in such open space or unimproved areas; maintenance of lighting provided for parking areas, roads, walks, drives, malls, stairs, and other similar Association Properties, and maintenance of signage within Durango Mountain Resort. The Association may also perform maintenance of roads, walks, drives and loading areas which are not Association Properties as may be necessary or desirable for access to the boundary of or full utilization of any Site or any improvements within Durango Mountain Resort. The Association's duties hereunder shall include the right, but not the obligation, to undertake maintenance and other duties that are the primary responsibility of the Metro District, or of a sub-association within a village.

#### 3.2 Exterior Maintenance:

(a) If any Owner or Lessee fails to maintain his Site or improvements on such Site or fails to perform any acts of maintenance or repair required under this Declaration, the Association may provide Exterior Maintenance and repair upon such Site and improvements thereon pursuant to the provisions of Section 8.7. In addition, the Association may, without notice, make such emergency repairs and maintenance as may in its judgment be necessary for the safety of any person or to prevent damage to any other property. The cost of such exterior maintenance and repair shall be assessed against the Owner of such Site and shall be a lien and obligation of the Owner pursuant to Section 5.4 herein and shall become due and payable in all respects as set forth in Section 5.3 herein. For the purpose of performing the exterior maintenance authorized by this Section 3.2, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to any Owner, to enter upon such Site during reasonable hours on any day. The Association or its designee is hereby granted an irrevocable license over all property in Durango Mountain Resort that is subject to this Declaration, to inspect (in a reasonable manner) property within Durango Mountain Resort in order to determine whether any maintenance or repair is necessary under this Section 3.2.

(b) Neither Declarant, the Association, nor any of their respective directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any Site or improvements or portion thereof or to repair or maintain the same, Declarant, the Association or any other person, firm or corporation undertaking such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential

damages occasioned by any act or omission in the repair or maintenance of any Site, improvements or portion thereof.

3.3 Operations: The Association may do all things that in the judgment of its board of directors are for the benefit of or promote the health, safety and welfare of the Association or its members, including but not limited to (a) all things are within the power of the Metropolitan District or a sub-association and which are not being performed by that organization which may be reasonably necessary or desirable to keep and maintain Durango Mountain Resort as a safe, attractive and desirable community, (b) public health and safety services including but not limited to, providing health care services and facilities, security system, fire protection facilities, and a fire watch system which may include periodic fire prevention inspections and equipment certifications, (c) construction, purchase, lease, care for, operation, management, maintenance, repair or replacement of parking areas to accommodate Owners, Lessees, Guests and Subowners, including but not limited to, signs, landscaping and other similar facilities appurtenant to said parking areas and the removal of snow from and the cleaning of any of said parking areas, (d) operation, maintenance and repair of a transportation system, (e) a recreational program of suitable variety and such miscellaneous equipment as may be necessary therefor, (f) a central reservation service for Owners or Lessees, (g) a suitable and continuing program to promote Durango Mountain Resort and the as a desirable year-round destination resort, including but not limited to, advertising the Durango Mountain Resort, stimulating and coordinating major events, advertising and placing articles; in news media, establishing uniform standards for promotional programs of individual members, involvement in lecture tours and ski shows, encouraging responsible groups to hold conferences and negotiating arrangements and accommodations for such groups, conducting tour operations, publishing a newsletter and providing and operating reception and information centers. The Association may undertake or fulfill its obligations hereunder in whole or in part in conjunction with or through any organization which may be engaged in the promotion of the state or local area ski industry, (h) the collection, removal and disposal of all solid waste in Durango Mountain Resort, including but not limited to, the construction, operation and maintenance of a central waste disposal facility, and the possible production and sale of any energy generated in connection therewith, (i) a central billing service to facilitate purchasing by Guests within Durango Mountain Resort, and (j) other Services as it deems reasonable or necessary to carry out the provisions of this Declaration, including without limitation, providing the following services for some or all Owners or Lessees: a cooperative purchasing service, a telephone answering service, warehousing and delivery, a central laundry, employee training, a central communications operation which may include a central dispatch system, and a data information center and central monitoring of fire safety and property security.

3.4 Marketing: An important service can be performed by the Association is the marketing of Durango Mountain Resort and the Ski Facility as a year-round resort. In this connection, the Association is hereby authorized to participate in marketing and promotional activities conducted by the operator of the Ski Facility and to advance funds to or reimburse the operator of the Ski Facility for such portion of such Operator's promotional and marketing expense as the Associations board of directors in their reasonable judgment determine benefits the Owners and Lessees.

3.5 Insurance: The Association shall obtain in its name and keep in full force and effect at all times at least the following insurance coverage: (a) casualty insurance with respect to all insurable Association Properties, insuring such Association Properties for at least

90 percent of the full replacement value thereof, and including coverage for fire and extended coverage, vandalism and malicious mischief; and (b) broad form comprehensive liability coverage, covering both public liability and automobile liability, with limits of not less than \$1,000,000 for each person and not less than \$3,000,000 for each occurrence, and with property damage limits of not less than \$5,000,000 for each accident. All insurance may contain such deductible provisions as good business practice may dictate. All insurance shall name Declarant as an additional insured and shall, to the extent reasonably possible, cover each Owner and Lessee without each Owner and Lessee being specifically named. The Association shall provide to Declarant, upon request, certificates evidencing such insurance and copies of the insurance policies.

3.6 Indemnification: The Association shall be obligated to and shall indemnify Declarant and hold it harmless from all liability, loss, cost, damage and expense, including attorneys' fees, arising with respect to any operations of the Association or any Association Properties or Services.

3.7 Right to Make Rules and Regulations: The Association shall be authorized to and shall have the power to adopt, amend and enforce rules and regulations applicable within Durango Mountain Resort with respect to any Association Property or Service, and to implement the provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association, including but not limited to, rules and regulations to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate pedestrian and vehicular traffic; to regulate animals; to regulate signs; to regulate use of any and all Association Properties to assure fullest enjoyment of use by the persons entitled to enjoy and use the same; to facilitate any central reservation system operated by the Association, to promote the general health, safety and welfare of persons within Durango Mountain Resort; and to protect and preserve property and property rights. All rules and regulations adopted by the Association shall be reasonable and shall be uniformly applied, except such rules may differentiate between reasonable categories of Sites, Owners, Lessees, Subowners or Guests. The Association may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from Association Properties or from enjoyment of any Services, or otherwise. Each Owner, Lessee, Subowner and Guest shall be obligated to and shall comply with and abide by such rules and regulations and pay such fines or penalties upon failure to comply with or abide by such rules and regulations and such unpaid fines and penalties shall be enforceable in accordance with Section 5.4. These rules and regulations shall specifically include, but not be limited to, the residential design guidelines of Durango Mountain Resort and the provisions set forth therein, including regulations regarding administrative procedures and review, site planning, landscape, architecture, details and construction regulations.

3.8 User Charges: Notwithstanding the provisions of Section 3.7, the Association may establish charges for use of Association Properties to assist the Association in offsetting the costs and expenses of the Association, including but not limited to depreciation and capital expenses. All charges established under this Section 3.8 shall be reasonable and shall be uniformly applied, except such charges may differentiate between reasonable categories of Sites, Owners, Lessees, Subowners or Guests, and the Association may agree to reduce or waive charges to owners of real property subjecting additional land to the Declaration as provided in paragraph 2.7 hereof. Each Owner, Lessee, Subowner and Guest shall be obligated to and shall pay any such charges for use.

3.9 Service Charges: Notwithstanding the provisions of Section 3.7, the Association may establish charges for providing any service as required or permitted herein on a regular or irregular basis to an Owner, Lessee, Subowner or Guest to assist the Association in offsetting the costs and expenses of the Association, including but not limited to depreciation and capital expenses. All charges established under this Section 3.9 shall be reasonable and shall be uniformly applied, except such charges may differentiate between reasonable categories of villages, Sites, Owners, Lessees, Subowners or Guests, and the Association may agree to reduce or waive charges to owners of real property subjecting additional land to the Declaration as provided in paragraph 2.6 hereof. Each Owner, Lessee, Subowner and Guest shall be obligated to and shall pay any such charges for such services.

3.10 Right to Dispose of Association Properties: Subject to the provisions of this Declaration requiring the consent of Declarant with respect to Special Property, the Association shall have full power and authority to sell, lease, grant rights in, transfer, encumber, abandon or dispose of any Association Properties. In addition, the Association will have the power to cause additional improvements to be made as part of the Common Elements or Association Properties, to acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property, to grant easements, leases, licenses and concessions through or over the Common Elements or Association Properties, and to assign its right to future income, including the right to receive Common Expense or any other assessments.

3.11 Governmental Successor: Any Association Property and any Service may be turned over to a governmental entity which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate with the consent of a majority of the directors of the Association.

3.12 Implied Rights: The Association shall have and may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under this Declaration, including the right to engage labor and acquire use of or purchase property, equipment or facilities; employ personnel; obtain and pay for legal, accounting and other professional services; and to perform any Service by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be necessary or desirable.

3.13 Common Expenses: All members of the Association shall be liable for the Common Expenses of the Association, as set forth in this Declaration, the Articles of Incorporation and the Bylaws, and the Common Expenses shall include all expenditures or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

#### IV. ASSOCIATION MEMBERSHIP:

4.1 First Class Membership: First Class Memberships in the Association include Class A Residential Members, Class B Lodge Members and Class C Commercial Members, within Durango Mountain Resort, as further set forth below:

(a) There shall be one First Class Membership in the Association attributable to fee simple ownership of each Site within Durango Mountain Resort. Each such First Class

Membership shall be appurtenant to the fee simple title to such Site. The Owner of a Site shall automatically be the holder of the First Class Membership appurtenant to that Site and title to and ownership of the First Class Membership for that Site shall automatically pass with fee simple title to the Site. Each Owner of a Site shall automatically be entitled to the benefits and subject to the burdens relating to the First Class Membership for his Site as set forth in this Declaration, the Articles of Incorporation, Bylaws and all rules and regulations of the Association as from time to time in force and effect. If fee simple title to a Site is held by more than one person or entity, the First Class Membership appurtenant to that Site shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership as fee simple title to the Site is held.

(b) There shall be at least one First Class Membership in the Association attributable to each Leased Premises within Durango Mountain Resort which First Class Membership shall be appurtenant to the Lessee's interest in such Leased Premises. The Lessee of the Leased Premises shall automatically be the holder of the First Class Membership appurtenant to the Leased Premises and title to and ownership of the First Class Membership for such Leased Premises shall automatically pass, with the Lessee's interest in the Leased Premises and shall terminate upon the termination of Lessee's interest in such Leased Premises. Each Lessee shall automatically be entitled to the benefits and subject to the burdens relating to the First Class Membership for his Leased Premises as set forth in this Declaration, the Articles of Incorporation, Bylaws and all rules and regulations of the Association as from time to time in force and effect. If a Lessee's interest to a Leased Premises is held by more than one person or entity, the First Class Membership appurtenant to such Leased Premises shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership as the leasehold interest to such Leased Premises is held.

(c) First Class Membership in the Association shall be limited to Owners and Lessees. A party may hold more than one First Class Membership and may also hold other forms of membership.

4.2 Declarant Membership: Declarant at all times shall have and be deemed to hold a Declarant Membership (which shall be known as a Class D Membership) in the Association whether or not Declarant is an Owner or a Lessee. Declarant shall automatically be entitled to the benefits and subject to the burdens relating to its Declarant Membership as set forth in this Declaration, the Articles of Incorporation, Bylaws and all rules and regulations of the Association as from time to time in force and effect.

4.3 Membership for Operator of Ski Facility: Subject to the condition set forth in the Articles of Incorporation of the Association, as owner and operator of the Ski Facility shall have and be deemed to hold a Mountain Membership (which shall be known as a Class E Membership) in the Association. The Mountain Member may assign its Mountain Membership with the assignment of substantially all its rights to own, develop or operate such Ski Facility. In the event of such assignment, the assignee must assume all of the obligations of such membership and Durango Ski Corporation, the present operator, shall thereafter be released from all obligations by reason of the Mountain Membership. The holder of the Mountain Membership shall automatically be entitled to the benefits and subject to the burdens relating to its Mountain Membership as set forth in this Declaration, the Articles of Incorporation, Bylaws and all rules and regulations of the Association as from time to time in force and effect.

## V. ASSESSMENTS AND OTHER AMOUNTS:

5.1 Obligation for Assessments and Other Amounts: Declarant for each Site it owns hereby covenant and each Owner by acceptance of a deed for his Site, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association the General, Property, Sales and Special Assessments and charges, fines, penalties or other amounts, to be levied, fixed, established and collected as set forth in this Declaration and the Articles of Incorporation, Bylaw and rules and regulations of the Association as from time to time in force and effect. Notwithstanding the foregoing, the Association may enter into contracts with persons subjecting additional land to this Declaration as provided in paragraph 2.7 hereof, which contracts may exempt such properties from any or all assessments for a period of up to ten years.

5.2 Purpose of Assessments and Other Amounts: The assessments levied and any charge, fine, penalty or other amount collected by the Association shall be used exclusively to pay expenses that the Association may incur in performing any actions permitted or required under this Declaration, or its Articles of Incorporation or Bylaws as from time to time in force and effect, including but not limited to, operating expenses and the costs of construction or purchasing Association Properties and performing Services. However, this Section 5.2 shall not prohibit the Association from establishing appropriate reserves to defray anticipated expenses and investing all excess cash in a prudent manner. Notwithstanding anything to the contrary in this Declaration, the Articles of Incorporation, or Bylaws, the Association shall have the authority to implement differential assessments against individual lots or units, so long as there is a justification for such differential assessment, and so long as such assessments are implemented equitably. This right to provide differential assessments shall include, but not be limited to, differential assessments based upon the particular village that the unit or lot is located in, including based upon the size or value of any structures thereon. In addition, the Association shall have the right to assess units within individual villages, based upon expenses attributable to that village.

5.3 Time for Payments: The amount of any assessment, charge, fine, penalty other amount payable by any Owner or with respect to such Owner's Lessees, Subowners, Guests or Site shall become due and payable as specified in the Articles of Incorporation or Bylaws of the Association as from time to time in force and effect. The Association may charge interest on such amounts at any rate which does not exceed the maximum legal rate as then in effect in Colorado from the date due and payable until paid. In addition, the Bylaws of the Association may authorize the Association, during the period of any delinquency, to suspend an Owner or Lessee's voting privileges or any other privileges.

5.4 Lien for Assessments and Other Amounts: The Association shall have a lien against each Site to secure payment of any assessment, charge, fine, penalty or other amount due and owing to the Association by the Owner of such Site or with respect to such Owner's, Lessees, Subowners, Guests or Site plus interest at any rate which does not exceed the maximum legal rate then in effect in Colorado from the date due and payable, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. The lien may be foreclosed in the manner for foreclosures of mortgages in the State of Colorado, and the Owner shall be required to pay the costs and expenses of such proceedings, including but not limited to, reasonable attorneys' fees.

5.5 Liability of Owners, Purchasers and Encumbrances: The amount of any assessment, charge fine or penalty payable by any Owner or with respect to such Owner's Lessees, Subowners, Guests or Site shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, personal representatives, successors and assigns. A party acquiring fee simple title to a Site shall be jointly and severally liable with the former Owner of the Site for all such amounts which had accrued and were payable at the time of the acquisition of fee simple title to the Site by such party, without prejudice to such party's right to recover any of said amounts paid from the former Owner. Each such amount, together with interest thereon, may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same.

## VI. CERTAIN RIGHTS OF DECLARANT, OWNERS AND LESSEES:

6.1 Reserved Rights with Respect to Special Property: Whether or not expressed at the time, all Special Property shall be deemed accepted by the Association and shall at all times remain subject to existing easements for utilities, including gas, electricity, water, sewer, telephone, television or other utility services, and for telecommunication, alarm or other similar systems; existing easements for parking purposes; existing easements for the Ski Facility; existing easements for ingress, egress and access for the benefit of other property in the vicinity of Durango Mountain Resort; and easements as provided in Section 6.3.

6.2 No Sale or Abandonment of Special Property: No Special Property may be sold, conveyed, encumbered, leased, transferred, abandoned or otherwise disposed of without the prior written consent of Declarant. No improvements which may be included in Special Property may be destroyed, permitted to deteriorate or waste, or disposed of by the Association without the prior written consent of Declarant.

6.3 Easements of Owners with Respect to Association Properties: Each Owner, Owner's Lessees, Subowners and Guests shall have a non-exclusive easement over, upon, across and with respect to any Association Properties as reasonably appropriate and necessary for access, ingress and egress to the Site of such Owner, Lessee, Subowner or Guest; encroachment by improvements caused by the settling, rising or shifting of earth and horizontal and lateral support of improvements; subject, however, in the case of easements for access, ingress and egress, to such reasonable and uniformly applied rules and regulations as the Association may impose to assure reasonable use and enjoyment of Association Properties by all persons entitled to such use and enjoyment.

6.4 Owner's Enjoyment of Association Properties and Services: Each Owner, Lessee, Subowner and Guest shall be entitled to use and enjoy any Association Properties suitable for general use or the services, subject to such reasonable rules and regulations which the Association may adopt and subject to such reasonable and uniformly applied charges which the Association may impose to offset costs and expenses, depreciation and capital expenses, subject to the provisions of this Declaration and subject to the following specific limitations. Such rules and regulations and charges may differentiate between different categories of Owners, Lessees, Subowners or Guests as established by the Association's Board of Directors from time to time; however, the rules, regulations and charges must be uniformly applied within such categories. There shall be no obstruction of any Association Properties nor shall anything be stored in or on any part of any Association Properties without the prior written consent of the

Association. Nothing shall be altered on, constructed in or removed from any Association Properties except with the prior written consent of the Association.

6.5 Owner's Rights and Obligations Appurtenant: All rights, easements and obligations of an Owner under this Declaration and all rights of an Owner with respect to membership in the Association under this Declaration are hereby declared to be and shall be appurtenant to the title to the Site owned by such Owner and may not, except as provided in Sections 4.1 and 6.6, be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Site. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Site shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such rights and obligations.

6.6 Assignment of Rights or Obligations to a Subowner: An Owner may assign or delegate to a Subowner all (but not less than all) of his rights under this Declaration as an Owner or as a member of the Association and may enter into an arrangement with such Subowner under which the Subowner shall agree to assume all of such Owner's obligations hereunder as an Owner or member of the Association. The Association shall recognize any such assignment or delegation of rights or arrangement for assumption of obligations provided that, to be effective with respect to the Association, Declarant or any other Owner, the assignment or delegation of rights or arrangement for assumption of obligations shall be in writing, shall be in terms deemed satisfactorily specific by the Association, and a copy thereof shall be filed with and approved by the Association. Notwithstanding the foregoing, no Owner shall be permitted to relieve himself of the ultimate responsibility for fulfillment of all obligations hereunder of an Owner arising during the period he is an Owner.

6.7 Lessee's Rights and Obligations Appurtenant: All rights, easements and obligations of a Lessee under this Declaration and all rights of a Lessee with respect to a membership in the Association under this Declaration are hereby declared to be and shall be appurtenant to the Leased Premises leased by such Lessee, and may not, except as provided in Section 6.8, be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separately or apart from the lease to the Leased Premises. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Leased Premises shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such rights and obligations.

6.8 Transfer of Rights or Obligations to Sublessee: A Lessee, upon subleasing his entire Leased Premises, shall automatically be deemed to have given up all of his rights and obligations as a Lessee and as a member of the Association during the term of such sublease, and the Sublessee shall automatically be deemed a Lessee and a member of the Association upon commencing to own and operate a business on the Leased Premises. If a Lessee subleases only a portion of his Leased Premises, the Lessee shall automatically be deemed to have given up all rights and obligations as a Lessee and as a member of the Association as to such subleased portion and such sublessee shall automatically be deemed a Lessee and a member of the Association upon commencing to own and operate a business upon his subleased portion of the Leased Premises. Such sublessor shall maintain his rights and obligations as a Lessee and as a member of the Association with respect to any retained portion of the Leased Premises. Notwithstanding the foregoing, no sublessor shall be permitted to relieve himself of the ultimate

responsibility for fulfillment of all obligations hereunder as a Lessee arising during the period he is a Lessee.

VII. RESTRICTIONS APPLICABLE TO PROPERTY:

7.1 Property: Property as used in Section VII and VIII of this Declaration shall mean any and all real property which is now or may hereafter be included within Durango Mountain Resort, including public or private streets, roads and any public or private easements or rights-of-ways and including any and all improvements on any of the foregoing.

7.2 Land Use Restrictions: In addition to the restrictions found in this Section VII, all or any portion of the Property to be sold or leased by Declarant may be further restricted in its use, density or design according to one or more Supplemental Declarations of Land Use Restrictions for Durango Mountain Resort, or portions thereof, recorded with the Clerk and Recorder of La Plata or San Juan County, Colorado, prior to the time Declarant transfers or conveys any such Property to the Association or to any third party. Declarant shall also have the right to review and approve any proposed supplemental declarations and association governing documents to insure their consistency and compatibility with this Declaration.

7.3 Occupancy Limitations: No portion of any property shall be used as a residence or for living or sleeping purposes other than a room designed for living or sleeping in a completed structure for which a certificate of occupancy has been issued. No room in any structure shall be used for living or sleeping purposes by more persons than it was designed to accommodate comfortably. Except as expressly permitted in writing by the Design Review Board, no trailers or temporary structures shall be permitted on any Property. Mobile homes, modular homes or manufactured homes shall not be permitted on any Lot within Durango Mountain Resort, except as may be permitted for construction or sales office purposes.

7.4 Maintenance of Property: All Property, including all Improvements on any Property, shall be kept and maintained by the Owner thereof in a clean, safe, attractive and slightly condition and in good repair.

7.5 No Illegal Activity: No illegal activity shall be carried on upon any Property nor shall anything be done or placed on any Property which is or may become a nuisance.

7.6 No Hazardous Activities: No activities shall be conducted on any Property and no improvements constructed on any Property which are or might be unsafe or hazardous to any person or Property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property; and no open fires shall be lighted or permitted on any Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace (except campfires or picnic fires on Property designated for such use by Declarant or by the Association and controlled and attended fires authorized in writing by Declarant or the Association and required for clearing or maintenance of land).

7.7 No Unsightliness: No unsightliness shall be permitted on any Property. Without limiting the generality of the foregoing: (a) all unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure; (b) trailers, mobile homes, trucks (including pickups), boats, tractors, all vehicles (including automobiles), campers not on a truck, snow removal equipment and garden or maintenance equipment shall be

kept in an enclosed structure at all times, except when in actual use; provided that such equipment may be parked on parking lots or other areas specifically designated by the Design Review Board for such equipment; (c) refuse, garbage and trash shall be kept in a covered container at all times and any such container shall be kept within an enclosed structure (as defined by the Design Review Board from time to time); (d) service areas and facilities for hanging, drying or airing clothing or fabrics shall be kept within an enclosed structure; (e) pipes for water, gas, sewer, drainage or other purposes, wires, poles, antennas and other facilities for the transmission or reception of audio or visual signals or electricity, utility meters or other utility facilities, gas, oil, water or other tanks, and sewage disposal systems or devices shall be kept and maintained within an enclosed structure or below the surface of the ground except as may be permitted the Design Review Board from time to time; and (f) no lumber, grass, shrub or tree clippings or plant waste, compost, metals, bulk materials or scrap or refuse or trash or unused items of any kind shall be kept, stored or allowed to accumulate on any Property. All enclosed structures shall comply with the rules and regulations of the Design Review Board as in effect from time to time. The Design Review Board shall have the power to grant a variance from the provisions of this Section 7.7 from time to time as it deems necessary or desirable.

7.8 Restriction on Animals: No animals shall be kept on any Property except as may be permitted from time to time by the Association. Except as specifically permitted below or by the Rules and Regulations, no animals, reptiles, primates, fish, fowl or insects of any kind shall be kept, raised, bred, maintained or boarded within or upon any part of Durango Mountain Resort.

Notwithstanding the foregoing, each Lot shall be entitled to a reasonable number of Household Pets, so long as such pets are not kept for any commercial purpose, are not kept in unreasonable numbers, do not cause an unreasonable amount of noise or odor, or do not become a nuisance to other Lot Owners or Occupants. Pets must be restrained such that they cannot leave the parcel when left unattended, and must be restrained and on a leash at all times when taken from the home site. All Household Pets shall be properly immunized and otherwise maintained and cared for as required by applicable laws.

The Owner of a Lot where a Household Pet is kept, as well as the legal owner of the pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the pet. Pet Owners may be subjected to fines as imposed by the Colorado Division of Wildlife if domestic pets are caught harassing or destroying wildlife. In addition to fines imposed by the Colorado Division of Wildlife, the Board of Directors shall have the authority to levy fines against a Lot Owner or Occupant if their domestic pet is caught harassing or destroying wildlife. The amount of the fines shall be determined by the Board of Directors.

The Board of Directors shall have, and is hereby given, the right and authority to determine in its sole discretion that Household Pets are being kept for commercial purposes, or are being kept in unreasonable numbers, or are causing an unreasonable amount of noise or odor, or are otherwise a nuisance to other Lot Owners or Occupants, or that a Lot Owner or Occupant is otherwise in violation of this Section, and to take such action or actions as it deems reasonably necessary to remedy the violation. Without limiting the generality of the foregoing, the Board of Directors may require the owner or custodian of a dog that barks or howls excessively, or of a Household Pet with other offensive habits, to confine such animal indoors.

All Household Pets must be confined to the Owner's Lot and, when not within an approved enclosure, on a leash at all times. Additional Rules and Regulations regarding pets are located in the Design Review Guidelines. This provision shall not prohibit the provision of approved horseback riding or related services if permitted by Declarant.

7.9 Restriction on Signs: No signs or advertising devices of any nature shall be erected or maintained on any Property except signs approved by the Design Review Board, signs required by law or legal proceedings, identification signs for work under construction (not to exceed nine square feet), temporary signs to caution or warn of danger or Association signs necessary or desirable to give directions or advise of rules or regulations. The Design Review Board shall have the authority to prohibit or limit "For Sale" or "For Rent" or similar signs on Sites other than those being used for real estate offices. Additional Rules and Regulations regarding signs are located in the Design Review Guidelines. This provision shall not prohibit a common entryway sign at the entrance to the various individual villages.

7.10 Restriction on Parking: Parking of vehicles on Property is permitted with respect to a Site only within parking spaces constructed with the prior approval of the Design Review Board and such parking shall be used only by the Owner or Lessee of such Site or their Subowners and Guests for the parking of personal vehicles. Notwithstanding the above, the Association may designate areas for off-street parking on Property for the temporary parking of maintenance and delivery vehicles, for the purpose of assisting in a maintenance operation or to provide for the loading or unloading of such vehicles, or to accommodate special circumstance.

7.11 Restriction on Recreational Vehicles: No motorcycle, motorbike, ski mobile, golf cart or other motorized recreational vehicle shall be operated within or on Property except as otherwise specifically permitted by rules and regulations of the Association.

7.12 No Wells: No water wells shall be permitted on any Property without the prior written approval of the Association.

7.13 Landscape Restriction: No tree of three inches or greater diameter or fifteen feet or greater height may be removed from any Property without the prior written approval of the Design Review Board. Vegetation on all Property must be maintained to minimize erosion and encourage growth of around cover and all tree and shrub planting must be consistent with the landscaping plan approved by the Design Review Board. Any landscape fertilizer to be used must be of a type and quantity approved by the Design Review Board.

7.14 No Mining and Drilling: No Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

7.15 No Cesspools or Septic Tanks: No cesspools or septic tanks shall be permitted on any Property without the prior written approval of the Association. Sewage disposal systems shall be installed pursuant to the regulations of the applicable municipal district.

7.16 No Fences: Fences shall not be erected on any parcel within the Association without the approval and consent of the Design Review Board ("Design Review Board" or "DRB"). Buried wire and hidden pet control fences transmitting an electric or high frequency signal detectable only through a transmitter are expressly permitted, and only their location must

be approved. All fences, including underground fences, must be placed or constructed within the Building Envelope as shown on the plat (if applicable); however, in no case shall site walls, screens or fences be permitted to delineate the Building Envelope or property lines or to be ornamental in nature. The cost of constructing and maintaining the fence shall be borne by the Owner. Additional Rules and Regulations regarding fencing are located in the Design Review Guidelines.

7.17 Construction Period Exception: During the course of actual construction of any permitted structures or Improvements on any Property, the Design Review Board may, by written instrument, waive certain provisions contained in this Section VII to the extent necessary to permit such construction, provided that, during the course of such construction, nothing is done which will result in a violation of any of such provisions upon completion of construction.

7.18 Compliance With Law: No Property shall be used, occupied, altered, changed, improved or repaired except in compliance with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America, State of Colorado, County of La Plata, and all other municipal, governmental or lawful authority whatsoever, affecting the Property or the improvements thereon or any part thereof, and of all their departments, bureaus and officials.

7.19 Condominium Ownership: Prior to the recording in the real property records of La Plata or San Juan County, Colorado, of an instrument submitting any portion of the Property to condominium ownership, the Owner of such property shall submit to the Association and Declarant for their review and approval, copies of the proposed Condominium Declaration, Articles of Incorporation and Bylaws of the condominium owners' association. On or before 30 days after the submittal of such documents to such parties, each of such parties shall approve or disapprove the documents by written notice to such owner of such approval or disapproval. If such documents are disapproved by either party, such party shall set forth the specific reasons for such disapproval. If notice of approval or disapproval is not given on or before the end of such 30-day period, such documents shall be deemed to be approved. The approval of the Association and Declarant under this Section 7.190 shall not be unreasonably withheld.

7.20 Municipal Corporation: Durango Mountain Resort is being developed as an integrated year-round resort community. In order to develop as planned, it is not deemed to be in the best interest of Owners to have all or a part of Durango Mountain Resort become a Town, City or other incorporated area, unless the Association and the Declarant consent thereto, Consequently, each Owner by accepting a deed to a Site, covenants and agrees with the Association, Declarant and each other Owner, that he or she will not take any action which would result in all or any part of Durango Mountain Resort becoming a Town, City or similar type of municipal corporation.

7.21 Wildlife: The outdoor use of chemicals that might be toxic to any wildlife, including fish habitat, is strictly prohibited. Additional Rules and Regulations regarding wildlife mitigation are located in the Design Review Guidelines.

7.22 Trash and Rubbish: Rubbish, garbage or other waste shall be kept and disposed of in a sanitary manner, and all containers shall be animal proof, and shall be kept in a clean, sanitary condition. Trash enclosures and maintenance structures shall be designed to be

compatible in style, materials and colors with the main building and shall be of masonry type construction.

7.23 Single Family Residential Use/Home Occupations: Except for those Lots designated for commercial use, the use of all Lots is expressly limited to single family residential uses, and no commercial activity shall be allowed on any such Lot. However, this limitation shall not be construed to prohibit home occupations so long as all such activity is limited to in-home and no more than one employee, other than residents, are involved. This provision shall not apply to Lots that Declarant or its permitted assigns elects to create a commercial lot, or for some similar purpose (i.e., Bed and Breakfast facility).

7.24 Motor Vehicles: No motorized vehicle which is either non-operational or non-licensed shall be kept or stored in Durango Mountain Resort, unless said vehicle is kept or stored in an approved, enclosed structure.

7.25 Building Envelopes/Open Space: No building, structure or fence of any kind, except driveways, shall be constructed outside of the Building Envelope as finally determined by the DRB. All areas outside the Building Envelopes shall be considered Natural Area. The removal of any vegetation outside of the Building Envelope or for the construction of the driveway to the Building Envelope is expressly prohibited without the advance written consent of the Design Review Board. The planting of any vegetation outside of the Building Envelope shall be limited to native vegetation or species consistent with native vegetation and the use of the Natural Area as wildlife habitat. Any violation of the provisions of this Section shall subject the offending Lot Owner to such penalties and/or fines and other sanctions which are in accordance with the Design Review Guidelines. The Building Envelopes as shown on the plat are for demonstrative purposes only and should not be relied upon as the fixed position of the Building Envelope. All final Building Envelopes are subject to the final approval of the DRB. This provision, or portions of it, shall not apply to Lots that do not have building envelopes.

7.26 Storage of Boats, Motorhomes, Travel Trailers: No storage or keeping of boats, travel trailers or motor homes shall be allowed on the Property except within an approved, enclosed structure.

7.27 Diversion of Water: Diversion of water by Owners from surface creeks, streams, springs, ponds or other channels, or through underground wells is expressly prohibited.

7.28 Utilities Underground: All utility lines, including, but not limited to, telecommunication, cable television, natural gas, and electric lines installed or maintained on the Property shall be buried underground.

7.29 Discharge of Firearms: The discharge of firearms is expressly prohibited.

7.30 Outdoor Lighting: Large outdoor mercury vapor and sodium lights and "farm lights" are prohibited on the Property. All outdoor lighting shall be such that the source of the light is not directly visible from other Tracts, which may require downward directed or shielded lights. Sensors are encouraged and may be required. Additional Rules and Regulations regarding exterior lighting are located in the Design Review Guidelines.

7.31 Noise: No outdoor speakers, use of off-road vehicles or other activity shall be conducted or used in such a manner that would disturb people or animals on other Lots. Sound cannot be amplified in any way on the exterior of any residence, if in the judgment of the DRB, it can be heard by neighboring residents, or anyone on adjoining roadways skiways, or common areas. Speakers must be designed into the home so that they cannot be seen. Additional Rules and Regulations regarding noise and exterior speakers are located in the Design Review Guidelines.

7.32 Antennae, Satellite Dishes and Roof Top Appurtenances: Such items are discouraged. No satellite dishes exceeding 1 meter in diameter shall be maintained on any Lot. No other antennae, radio or television signal distribution or capturing device shall be allowed on any Lot except for conventional television or FM radio antennae which are not visible from another Lot. The location of any such appurtenance must be approved by the DRB. Additional Rules and Regulations regarding antennae, satellite dishes and roof top appurtenances are located in the Design Review Guidelines.

7.33 Continuity of Construction: All construction, reconstruction, alterations or improvements shall be prosecuted diligently to completion. All exterior construction shall be completed within 365 days from the issuance of the building permit.

7.34 Setbacks: Except for driveways, all development is restricted to the Building Envelope.

7.35 Design Review Guidelines: The restrictions and requirements set forth in the Design Review Guidelines, as amended from time to time, are hereby incorporated by reference, including provisions for administrative procedures and review, site planning, landscape, architecture, details and construction regulations.

7.36 Proviso: The development at Durango Mountain Resort, including in all of the individual villages, will contain various types of development, including commercial, single-family residential, townhomes, and/or duplexes, as well as condominiums. It is recognized that not all of the above restrictions have the same applicability to each and every type of development. Notwithstanding anything in this Declaration to the contrary, it is acknowledged that some of the use limitations may not have specific applicability to a given project. The Association, or the Design Review Board, as applicable, shall have the sole and exclusive authority to determine whether any particular restriction applies to a particular development and/or whether a waiver of any type of restriction is appropriate based upon the specific development.

## VIII. DESIGN REVIEW:

8.1 Purpose: In order to preserve and enhance the natural beauty of Durango Mountain Resort and its setting, to maintain and improve Durango Mountain Resort as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, and to protect and promote the value of Property, exterior design, landscaping and use of all new development and additions, changes or alterations to existing use, landscaping and exterior design and development shall be subject to design review by the Association's Design Review Board.

8.2 Objectives: Design review shall be directed towards attaining the following objectives for Durango Mountain Resort:

(1) Preventing excessive or unsightly grading, indiscriminate earthmoving or clearing of Property, removal of trees and vegetation which could cause disruption of natural watercourses or scar natural landforms.

(2) Ensuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the Site and with surrounding Sites and structures.

(3) Ensuring that the architectural design of structures built or remodeled after the recording of this Declaration and their materials and colors are visually harmonious, are appropriate for the natural landforms and native vegetation, and comply with development plans, zoning requirements and other restrictions officially approved by Declarant, the Association or any government or public authority, if any, for the areas in which the structures are proposed to be located.

(4) Ensuring that plans for the landscaping of open spaces provide visually pleasing settings for structures on such Sites and on adjoining and nearby Sites and blend harmoniously with the natural landscape.

(5) Ensuring that any development, structure, building or landscaping complies with the provisions of this Declaration, including but not limited to, those provisions set forth in Section VII.

(6) Ensuring that building design and construction techniques respond to energy consumption and environmental quality considerations such as heat loss, air emissions, and run-off water quality.

8.3 Existing Structures: Structures existing on the date this Declaration is recorded in the real property records of La Plata or San Juan County, Colorado, shall not be subject to the DRB's Design Review Guidelines ("DRGs") until there is a material change in the size, configuration or exterior appearance of any such structure, at which time all of the Design Review Guidelines shall apply to such structure; however, the Design Review Board may in its sole discretion, waive any Design Regulation which it deems inappropriate under the circumstances.

8.4 Design Review Board:

(a) The Association shall establish a Design Review Board which shall consist of either three or five members appointed by the Board of Directors of the Association. The regular term of office of each member shall be one year, coinciding with the fiscal year of the Association. Any such member may be removed with or without cause by the Board of Directors of the Association at any time by written notice to such appointee. A successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member.

(b) The Design Review Board shall select its own chairman and vice-chairman from among its members. The chairman or in his absence the vice-chairman shall be the presiding officer of its meetings. In the absence of both the chairman and the vice-chairman from a meeting, the members present shall appoint a member to serve as acting chairman at such meeting. Meetings shall be held upon call of the chairman or vice-chairman; all meetings shall be held in La Plata or San Juan County, Colorado. A majority of members shall constitute a quorum for the transaction of business, but in the absence of a quorum a lesser number may adjourn any meeting to a later time or date, and in the absence of all members any staff member may adjourn any meeting to a later time or date. The affirmative vote of a majority of the members of the Design Review Board shall constitute the action of the Design Review Board on any matter before it, the Design Review Board shall operate in accordance with its own Design Review Guidelines which shall be filed with the Association and maintained in the records of the Association and shall be subject to inspection by members of the Association.

(c) The Design Review Board is hereby authorized to retain the services of one or more consulting architects, landscape architects or urban designers, who need not be licensed to practice in the State of Colorado, to advise and assist the Design Review Board in performing the design review functions prescribed in this Section VIII and in carrying out the provisions of Section VII. Such consultants may be retained to advise the Design Review Board on a single project, on a number of projects, or on a continuing basis.

#### 8.5 Design Review Board Approval and Control:

(a) Except as set forth in Paragraph 8.3, no Owner, Lessee, Subowner or Guest or the Association shall perform: site preparation; landscaping; building construction; sign erection; exterior change, modification, alteration or enlargement of any existing structure; paving; fencing; planting or other improvements to any Site or other property or building or structure thereon; change the use of any Site or other property or building or structure thereon unless the Design Review Board has approved the plans and specifications for the project and the construction procedures to be used to insure compliance with Section VII, including compliance with land use restrictions created pursuant to Section 7.2. Alterations or remodeling which are completely within a building or structure and which do not change the exterior appearance and are not visible from the outside of the structure may be undertaken without Design Review Board approval. All actions taken by the Design Review Board shall be in accordance with Design Review Guidelines established by the Design Review Board which shall be published as set forth in Section 8.6 and shall be in accordance with the purposes and intent of the Declaration. Such Design Review Guidelines may be amended from time to time by action of the Design Review Board that is consistent with and fulfills the purpose of this Declaration. The approval or consent of the Design Review Board on matters properly coming before it shall not be unreasonably withheld, actions taken shall not be arbitrary or capricious and decisions shall be conclusive and binding on all interested parties, subject only to the right of appeal and review by the Board of Directors of the Association as set forth below; and such Approval or consent shall not prohibit enforcement of the provisions of this Declaration under Section 9.4. The Design Review Board or its designated representative shall monitor any approved project to the extent required to insure that the construction or work on such project compares with any and all approved plans and construction procedures. The Design Review Board or its designated representatives may enter upon any Property at any reasonable time or times to inspect the progress, work status, or completion of any project. In addition to the remedies described in Section 9.4, the Design Review Board may withdraw approval of any project and require all

activity at such project to be stopped, if deviations from the approved plan or approved construction practices are not corrected or reconciled within 24 hours after written notification to the Owner specifying such deviations.

(b) Any material to be submitted or notice to be given to the Design Review Board shall be submitted at the offices of the Design Review Board in La Plata County, Colorado.

(c) All actions requiring approval of the Association pursuant to the provisions of Sections VII or VIII shall be deemed approved if such approval is obtained in writing from the Design Review Board.

8.6 Design Review Guidelines and Construction Procedures: The DRB shall promulgate and publish Design Review Guidelines that shall state the general design theme of all projects in Durango Mountain Resort, specific design requirements and the general construction procedures that will or will not be allowed in Durango Mountain Resort. (Such rules and regulations are referred to as the Design Review Guidelines or Residential Design Guidelines.) The Design Review Guidelines shall set forth the procedures to be followed and material which must be provided by any member of the Association or his authorized agents in order to obtain review of proposed construction by the DRB. The Association shall be obligated for the cost of such publications and the DRB shall make such publications available to members of the Association.

8.7 Exterior Maintenance: Pursuant to the provisions of Section 3.2, the DRB may, by vote of a majority of the members present at any meeting, after 30-days notice of such failure, request that the Association provide exterior maintenance and repair upon any Site.

8.8 Review Fee: The DRB may set a reasonable review fee. Applicants for design review may be required to deposit such fee with the DRB prior to seeking approval of any matter.

8.9 Building Permits; Certificates of Occupancy: No Owner or Lessee shall apply to La Plata or San Juan County, Colorado, for a building permit unless the project for which such building permit pertains, has been approved by the DRB. The DRB may establish procedures with the La Plata or San Juan County Building Department to enforce this provision. No Owner or Lessee shall apply to La Plata or San Juan County for a Certificate of Occupancy unless the DRB has inspected the project and certified that it conforms with the plans which the DRB approved for the project. The DRB may establish procedures with the La Plata or San Juan County Building Department to enforce this provision.

8.10 Enforcement of Restrictions: Prior to the completion of construction or action subject to review under Section 8.5, the DRB shall have primary responsibility to enforce the restrictions set forth in Section VII of this Declaration, the Design Review Guidelines and restrictions set forth in any Supplemental Declaration recorded in the records of La Plata County, Colorado, pursuant to Section 7.2 hereof; provided, however, that such responsibility shall not limit the right of Declarant or the Association to act under Section 9.4. If the DRB does not take action to enforce such restrictions within 15 days after being requested to do so by the Association's Board of Directors, the Association may assume responsibility for enforcing such restrictions in any case in which the DRB declined to act. Subsequent to the completion of

construction or action subject to review under Section 8.4, the Association shall have primary responsibility to enforce such restrictions.

8.11 Reconsideration, Review and Appeal: Within ten days following a decision of the Review Board, its decision to disapprove the project design may be appealed by the Owner by filing a written notice of appeal with the Secretary of the Association. The decision shall become final if no notice of appeal is made within 10 days following the decision of the DRB. Not more than 30 days following the filing of an appeal by the aggrieved party, the Association shall review the action of the DRB and shall, in writing, confirm, modify or reverse the decision of the DRB. If the Association deems insufficient information is available to provide the basis for a sound decision, the Association may postpone final action for not more than 30 additional days. Failure of the Association to act within 60 days from the date of the filing of the appeal shall be deemed approval by the Association of the design of the project unless the applicant consents to a time extension.

8.12 Lapse of Design Review Approval: Approval of the design of a project shall lapse and become void one year following the date of final approval of the project, unless prior to the expiration of one year, a building permit is issued and construction is commenced and diligently pursued toward completion.

8.13 Liability: Neither Declarant, the Association, nor the DRB nor any of their respective officers, directors, employees or agents shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved under this Section VIII nor for any defects in construction pursuant to such plans and specifications. Approval of plans and specifications under this Section VIII shall not be deemed in lieu of compliance by Owners or Lessees with applicable governmental laws or regulations.

8.14 Failure to Complete: If construction on any project is suspended for a period of 30 consecutive days. The DRB may, after 10 days written notice to the Owner of the Site, take possession and control of the Site for the purpose of (a) completing all or a portion of the project, (b) improving the physical appearance of the project, or (c) preventing any unsafe condition. All costs of such work (including but not limited to out of pocket expenses, general and administration charges and a fair interest charge on funds advanced) shall be charged to and shall become a debt of the Owner of the Site. The Association shall be entitled to a lien on the Site to secure such debt.

## IX. MISCELLANEOUS:

9.1 Duration of Declaration: The term of this Declaration shall be perpetual, however, in the event any provision of this Declaration, or the Declaration itself is challenged pursuant to the rule against perpetuities, then each provision contained in this Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints or alienation shall continue and remain in full force and effect for the period of 21 years following the death of the survivor or Gary Derck, and the now living children of said person, or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect until January 1 in the year 2020 AD, and thereafter for successive periods of ten years each, unless at least one year prior to January 1, 2020 AD, or at least one year prior to the expiration of any such ten year period of extended duration, this Declaration is terminated by

recorded instrument, directing termination, signed by the Declarant and the Mountain Member and the Association.

9.2 Amendment: Any provision contained in this Declaration may be amended or repealed, at any time, by the recording of a written instrument or instruments specifying the amendment or the repeal, executed by the Declarant and the Mountain Member and the Association, upon obtaining a Special Majority Vote.

9.3 Effect of Provisions of Declaration: Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within Durango Mountain Resort is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within Durango Mountain Resort by an Owner or the Association, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner or the Association, as the case may be, and, as a personal covenant, shall be binding on such Owner or the Association and such Owner's or the Association's respective heirs, personal representatives, successors and assigns, and, as a personal covenant of an Owner, shall be deemed a personal covenant to, with and for the benefit of Declarant and to with and for the benefit of the Association but not to, with or for the benefit of any other Owner, and, if a personal covenant of the Association, shall be deemed a personal covenant to, with and for the benefit of Declarant and to, with and for the benefit of each Owner; (c) shall be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to each parcel of real property within Durango Mountain Resort, and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of any real property now or hereafter owned by Declarant within Durango Mountain Resort and for the benefit of any and all other real property within Durango Mountain Resort; and (d) shall be deemed a covenant, obligation and restriction secured by a lien, binding, burdening and encumbering the title to each parcel of real property within Durango Mountain Resort which lien with respect to any Site shall be deemed a lien in favor of Declarant and the Association, jointly and severally, and, with respect to any real property owned by the Association, shall be deemed a lien in favor of Declarant.

9.4 Enforcement and Remedies: Each provision of this Declaration with respect to the Association or property of the Association shall be enforceable by Declarant, or by any Owner who has made written demand on Declarant to enforce such provision and 30 days have lapsed without appropriate action having been taken by Declarant, by a proceeding for a prohibitive or mandatory injunction. Each provision of this Declaration with respect to an Owner or properly of an Owner shall be enforceable by Declarant or the Association by a proceeding for a prohibitive or mandatory injunction or by suit or action to recover damages, or, in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, by exclusion of such Owner and such Owner's Lessees, Subowners and Guests front use of any Association Properties and from enjoyment of any Service. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees.

9.5 Protection of Encumbrancer: No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage, deed of trust or other lien on any property taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of La Plata County, Colorado, prior to the time of recording in said office of an instrument describing such property and listing the name or names of the Owner or Owners of fee simple title to the property and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage, deed of trust, or other lien or title or interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust or other lien or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser upon foreclosure shall, however, take subject to this Declaration with the exception that violations or breaches of, or failures to comply with, any provisions of this Declaration which occurred prior to the vesting of fee simple title in such purchaser shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such purchaser, his heirs, personal representatives, successors or assigns.

9.6 Limited Liability: Neither Declarant, the Association, the DRB, the Board of Directors of the Association nor any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

9.7 Successors and Assigns: Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

9.8 Severability: Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

9.9 Captions: The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

9.10 Construction: When necessary for proper construction, the masculine of any word used in this Declaration shall include the feminine or neuter gender, and the singular the plural, and vice versa.

9.11 No Waiver: Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

9.12 Choice of Law: This Declaration shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF the undersigned have executed this Land Use Declaration the day and year first above written.

DECLARANT: DSC/Purgatory, LLC

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By:  
Its:

Durango Mountain Master Association

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By:  
Its:

Durango Mountain Land Company, LLC

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By:  
Its:

EXHIBIT A

(Attached to and forming a part of the Land Use  
Declaration for Durango Mountain Resort dated.)

LEGAL DESCRIPTION OF DURANGO MOUNTAIN RESORT