# AMENDED AND RESTATED GENERAL DECLARATION

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AMENDED AND RESTATED
GENERAL DECLARATION
FOR
THE TELLURIDE MOUNTAIN VILLAGE
MOUNTAIN VILLAGE, COLORADO

This Amended and Restated General Declaration is made this ___ day of __________, 2002 by Telluride Mountain Village Resort Company, a Colorado non-profit corporation doing business as Mountain Village Metropolitan Services, Inc. ("Metro Services").

RECITALS

WHEREAS, The Telluride Company, ("Telco"), as the Declarant, executed and recorded the General Declaration for the Telluride Mountain Village in Book 409 at Page 714 of the records of the Clerk and Recorder for San Miguel County, Colorado (the "General Declaration").

WHEREAS, Telco assigned all of its rights as Declarant and delegated all of its obligations, duties and responsibilities as Declarant to Metro Services (hereinafter sometimes also referred to as Declarant), all in accordance with the Assignment from Telco to Metro Services as set forth in the Twelfth Amendment to the General Declaration.

WHEREAS, Metro Services desires to amend and restate the General Declaration.

I. DECLARATION - PURPOSES:

1.1 General Purposes.

(a) At the time of the execution and recordation of the General Declaration, Telco was the owner of the real property hereinafter defined as the Telluride Mountain Village and thereafter, in accordance with its stated intentions, commenced development of said property as a residential community and a self-contained, village-like area designed to contain facilities and provide services, including lodging, food and beverage services, shops and merchandising areas, and entertainment and recreation opportunities, for all persons residing, visiting or doing business within the Telluride Mountain Village.

(b) Metro Services was formed to perform certain functions and to hold and manage certain property for the common benefit of some or all Owners or Lessees within the Telluride Mountain Village with respect to Metro Services and with respect to Functions undertaken and Facilities held by Metro Services. Metro Services may perform all tasks and functions whether or not specifically set forth herein which it deems necessary to foster and preserve the health, safety and welfare of persons in the Telluride Mountain Village, preserve property, property rights and property values and to maintain the Telluride Mountain Village as a pleasant and desirable environment for all persons residing, visiting or doing business therein.

1.2 Declaration. To further the general purposes herein expressed, Declarant, for itself, its successors and assigns, hereby declares that all real property herein defined as the Telluride Mountain Village, including any property added to the Telluride Mountain Village as hereinafter provided, at all times, shall be owned, held, used and occupied subject to the provisions of this Amended and Restated
General Declaration (hereinafter referred to as the Declaration) and to the covenants, conditions and restrictions herein contained.

II. DEFINITIONS:

2.1 Consideration. Consideration means the gross consideration paid for the Site affected by the Transfer and shall include actual cash paid, the fair market value of real and personal property delivered or conveyed in exchange for the Transfer, or contracted to be so paid or delivered or conveyed, in return for the Transfer, and shall include the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of the Transfer. The term Consideration does not include as an addition to gross consideration the amount of any outstanding lien or encumbrance in favor of the United States, the State of Colorado, or of a municipal or quasi-municipal corporation or district for taxes, or special or local benefits or improvements. In the event the transaction or Transfer is by lease agreement not specifically exempted in paragraph 5.3(c), the Consideration shall be deemed to be the capitalized value of the average annual rental unit of the lease, computed as follows: the average annual rental over the entire term of the lease, (including any renewal term, plus the actual consideration, other than rent, paid or to be paid), shall be computed and the average annual rental shall be 10% of the capitalized value. The payment of ad valorem real property taxes, insurance and the assumption of maintenance obligations under any lease agreement shall not be included in the annual rent-capitalization computation; however capital improvements required to be made shall be part of the actual consideration. When the average annual rental cannot be determined for a lease agreement, the Consideration therefore shall be based upon the appraised total value of the property covered by the lease as determined by an independent appraisal obtained by Metro Services and paid for by the Purchaser, or the capitalized value of the rentals and other consideration in terms of the present worth of the stream of rentals and other consideration under the lease and any other economic considerations to reflect the capitalized value of the transferred or leased property.

2.2 Declarant. Declarant shall mean the Telluride Mountain Village Resort Company, a Colorado non-profit corporation doing business as Mountain Village Metropolitan Services, Inc. Any reference in this Amended and Restated General Declaration to Declarant is to Telluride Mountain Village Resort Company, a Colorado non-profit corporation doing business as Mountain Village Metropolitan Services, Inc. ("Metro Services")

2.3 Declaration. Declaration shall mean this instrument and all Amendments or Supplements hereto hereafter recorded in the real property records of San Miguel County, Colorado.

2.4 Facilities. Facilities shall mean all property (i) owned or leased by Metro Services or otherwise held or used by Metro Services; (ii) under Metro Services' management and control by, through or under contractual arrangements, licenses or other arrangements; or (iii) financed by, or secured by the assets of, Metro Services (which assets include, without limitation, Metro Services right to levy and/or collect assessments, charges, fines and penalties pursuant to this Declaration, and all amounts so collected). Such property includes, without limitation, real property or any interest therein, improvements on real property, and personal property and equipment.

2.5 Function. Function shall mean (i) any activity, function or service required or permitted under this Declaration to be undertaken or performed by Metro Services (including, without limitation, those activities, functions and services which Metro Services has designated, contracted with, or otherwise engaged a private or public entity to perform); and (ii) any activity, function or service
otherwise undertaken or performed by Metro Services, or any public or private entity whom Metro Services has designated, contracted with or otherwise engaged to perform such activity, function or service.

2.6 Guest. Guest shall mean any customer, agent, employee, guest or invitee of an Owner, Lessee, Subowner, Declarant or the Mountain Special Member 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.

2.7 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 hereinafter referred to as the Leased Premises). Each Lessee shall be the holder or holders of a particular class of membership in Metro Services as set forth in the Amended and Restated Articles of Incorporation of Metro Services (hereinafter referred to as the Articles of Incorporation).

2.8 Mountain Facility. Mountain Facility shall mean the existing Telluride Ski Area and as it may be expanded from time to time (by whatever name it may from time to time be known) located in part on land owned by Telluride Ski & Golf Company, LLLP ("Telski") adjacent to the Telluride Mountain Village and in part on National Forest lands adjacent thereto.

2.9 Mountain Special Member. The operator of the Mountain Facility shall have and be deemed to hold a Mountain Special Membership in Metro Services. The holder of the Mountain Special Membership shall have, in addition to all other rights granted to it hereunder, the right to appoint certain directors, and to vote, and it may grant its customers, agents, employees, guests, and invitees, the same easements for access, ingress and egress to and from the Mountain Facility, over, upon and across Facilities, as an Owner would have.

2.10 Owner. Owner shall mean the person or persons, entity or entities who own of record, according to the real property records of San Miguel County, Colorado, fee simple title to a Site. Each Owner shall be the holder or holders of a particular membership in Metro Services, as set forth in the Articles of Incorporation.

2.11 Person. Person means any individual, corporation, business trust, estate, trust, partnership, association or any other legal entity.

2.12 Purchaser. Purchaser means any Person to whom a Transfer of a Site is made.

2.13 Site. Site shall mean each parcel of real property within the Town of Mountain Village (the "Town") the fee simple interest of which may be conveyed in its entirety to a third party without violating the Town Land Use Ordinance ("LUO") and other applicable ordinances and regulations of the Town, as in effect from time to time, including (i) each condominium unit as that term is defined in the Condominium Ownership Act of the state of Colorado (C.R.S. § 38-33-101, et seq.), (ii) each Unit, as that term is defined in the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101, et seq.), and (iii) an estate above the surface (as defined in C.R.S. § 38-32-101, et seq.). Not withstanding the foregoing, a parcel of real property, a condominium unit, a unit, or an estate above surface owned, held or used in its entirety by Metro Services, 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 the Town, or for or in connection with the Mountain Facility shall not be considered a Site.
2.14 **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.

2.15 **Telluride Mountain Village.** The Telluride Mountain Village shall mean all of the real property located in the Town, whose boundaries are coterminal with those of the Town as those boundaries may be extended from time to time by annexation or otherwise.

2.16 **Transfer.** Transfer, whether or not the same is in writing or is recorded, means and includes: (i) any grant assignment, transfer, exchange, conveyance or consummated sale of any ownership or title to a Site situated in or zoned density in the Telluride Mountain Village; or (ii) the leasing, letting, conveyance, assignment, transfer or consummated sale of a possessory interest in a Site or zoned density; subject to the exemptions provided in Section 5.3 (C) of this Declaration. For purposes of Section 5.3, a Transfer subject to assessment shall also include a sale, conveyance, or transfer of majority or controlling interest in a corporation, limited liability company, partnership, limited partnership, joint venture, trust or other association or organization where such organization or association owns a Site or Sites or zoned density located in Telluride Mountain Village, and the fair market value of that Site or Sites or zoned density represents more than one half of the total fair market value of all tangible assets of such entity, organization or association. Real Estate Transfer Assessment for such Transfers shall be based upon the fair market value of the Site or Sites or zoned density at the time of the Transfer. Said Real Estate Transfer Assessment shall be due and payable at the time of any such Transfer and contemporaneously therewith.

III. **CERTAIN OBLIGATIONS AND RIGHTS OF METRO SERVICES:**

3.1 **Membership, Duties and Obligations of Lessees and Owners.**

(a) Every Owner and Lessee is a member of Metro Services. Said membership is appurtenant to the Site of said Owner or Lessee and the membership shall automatically pass with fee simple title or the leasehold interest to the Site. If title or the leasehold of a Site is held by more than one person, the membership related to that Site shall be shared by all such persons in the same proportionate interest and by the same type of interest in which the title or leasehold of a Site is held. If title to a Unit is held in fractional ownership, the membership related to that Unit shall be shared by all such fractional owners in the same proportionate interest as their fractional ownership. An Owner or Lessee shall be entitled to one membership for each Site leased or owned by him. If title or the leasehold of a Site is held by a corporation, the membership related to that Site shall be issued in the name of the corporation, and the corporation shall designate to Metro Services in writing the name of one natural person 18 years of age or older who shall have the power to vote said membership at any meeting of members, and to serve if elected as a member of the Board of Directors of Metro Services in the name of the corporation. The memberships of an Owner or Lessee in Metro Services may not be transferred except in connection with the transfer of the title or the leasehold of the Site; provided, however, that the rights of membership may be assigned to a mortgagee as further security for a loan secured by a lien of a Site.

(b) Each Owner or Lessee by acceptance of his interest in a Site agrees to accept and be bound by the Articles of Incorporation, the Bylaws and any rules and regulations of Metro Services that are in effect from time to time.
(c) No Owner or Lessee may reject, repudiate, disown, renounce or disclaim his membership in Metro Services and the rights, duties and obligations attendant to the membership.

3.2 Property Maintenance Function. Metro Services shall provide for the care, operation, management, maintenance, repair and replacement of all Facilities. Said obligation shall include, but not be limited to, removal of snow from and application of sand and de-icing agents to parking areas, roads, walks, bridges, drives, malls, stairs and other similar Facilities as necessary for their customary use and enjoyment; maintenance and care of all open space or unimproved areas included in the Facilities 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 Facilities. Said obligations may also include maintenance of roads, walks, bridges, drives and loading areas which are not Facilities but are necessary or desirable for access to the boundary of or full utilization of any Site or any improvements within the Telluride Mountain Village.

3.3 Transportation Function. Metro Services may own or fund, the construction, operation, maintenance and repair of a transportation system between the designated parking areas within the Telluride Mountain Village and the commercial, residential and recreational areas of the Telluride Mountain Village and between noncommercial, non-recreational areas within the Telluride Mountain Village and the commercial, residential and recreational areas of the Telluride Mountain Village. Metro Services, as it deems necessary, may extend such transportation system to areas outside of the Telluride Mountain Village to provide transportation for Owners, Lessees, Subowners or Guests and others. Such transportation system may include but is not limited to a bus, auto, gondola, funicular, helicopter, tram, airplane or rail system and any other Facilities deemed necessary or appropriate for the proper operation and maintenance of such system.

3.4 Solid Waste Collection and Disposal Function. Metro Services may provide for the collection, removal and disposal of all solid waste in the Telluride Mountain Village, 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. Metro Services shall have the power to charge for the service and to adopt, amend and enforce rules and regulations applicable within the Telluride Mountain Village to provide for the orderly collection and disposal of such waste and for the sale of any energy generated in connection therewith and the distribution of such energy.

3.5 Post Office. Metro Services may own or fund the construction, operation and maintenance of a post office in cooperation with the United States Postal Service.

3.6 Operation Function. Metro Services may do all things that are within the power of the Mountain Village Metropolitan District or the Town and which are not being performed by those organizations which may be reasonably necessary or desirable to keep and maintain the Telluride Mountain Village as a safe, attractive and desirable community.

3.7 Marketing Function. Metro Services may provide a suitable and continuing program to promote the Telluride Mountain Village as a desirable, year-round, destination resort, including but not limited to advertising the Telluride Ski Area, stimulating and coordinating special 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, providing and operating reception and information centers and buying space for the accommodation of Guests. Metro Services may undertake or fulfill the functions
contemplated 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, golf and other recreational industries.

3.8 Central Reservations Function. Metro Services may make available a central reservation service for Owners or Lessees which service may include the administration of a complimentary room pool and the ability to reserve other resort services. Owners and Lessees shall comply with all reasonable rules and regulations of Metro Services in connection with the central reservation service as may be in effect from time to time. Such rules and regulations may, among other things, provide for the submission of specified information to Metro Services on a daily (or other regular) basis relating to proposed and actual occupancy, type of facilities available, type of services or goods available, booking time and other information necessary for the proper functioning of the service and relating to the marketing and promotion of the Telluride Mountain Village as a year-round destination resort; may require the payment of specified fees and charges for setup, administration and use of the service; provide for the assignment of rooms or services by Metro Services on a first-come, first-serve (free sell) or other reasonable basis, and require the Owner or Lessor to be connected to an on line, real time computer facility.

3.9 Recreation Function. Metro Services may provide or fund a year-round recreational program of suitable variety with such miscellaneous equipment as may be necessary. The recreational program may include but is not limited to, informing visitors of recreation available and stimulating their participation therein; conducting, financing, operating, managing and maintaining programs for children, including but not limited to daycare facilities and such miscellaneous equipment as may be appropriate for use in connection therewith; conducting, operating, managing, maintaining, repairing and replacing within the Telluride Mountain Village swimming pools, ice rinks, sauna or steam baths or other spa related facilities and services, golf courses, horseback riding stables, equestrian facilities, tennis courts, game courts, game areas, other indoor or outdoor recreational amenities, and such miscellaneous equipment as may be appropriate for use in connection therewith; and removing snow from and cleaning such Facilities as necessary to permit their full use and enjoyment.

3.10 Conference and Performing Arts Function. Metro Services may finance, lease, construct, build, acquire, operate, maintain, and otherwise assume responsibility for a Conference Center, a Performing Arts theater, a “Guild” Center, a movie theater, a learning center, and other facilities and/or programs which will increase the attractiveness of the Telluride Mountain Village as a year-round, destination resort.

3.11 Property Management Function. Metro Services may own, finance, lease, acquire, operate, maintain, and otherwise be responsible for a property management service which shall include, but shall not be limited to, condominium rental management services, association management services, the care of private residences, and other services which generally relate to the management of private or commercial properties.

3.12 Other Functions. Metro Services may undertake and perform other Functions as it deems reasonable or necessary to carry out the provisions of this Declaration.

3.13 Contract for Functions. Metro Services may contract with any public or private entity or person to provide the functions described in this Declaration.

3.14 Insurance. Metro Services 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
Facilities, insuring such Facilities for the full replacement value thereof, and including coverage for fire and extended coverage, (b) broad form comprehensive liability coverage, vandalism and malicious mischief; and (c) 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 $2,000,000 for each occurrence, and with property damage limits of not less that $500,000 for each accident. All insurance may contain such deductible provisions as good business practice may dictate. All insurance shall be properly structured to insure Metro Services in the manner it deems appropriate within the limits contemplated herein and shall, to the extent reasonably possible, cover each Owner and Lessee without each Owner and Lessee being specifically named.

3.15 Right to Make Rules and Regulations. Metro Services shall have the power to adopt, amend and enforce rules and regulations applicable within the Telluride Mountain Village with respect to any Facility or Function, and to implement the provisions of this Declaration, the Articles of Incorporation or Bylaws of Metro Services. All rules and regulations adopted by the Metro Services shall be reasonable and shall be uniformly applied, except such rules may differentiate between reasonable categories of Sites, Owners, Lessees, Subowners or Guests. Metro Services may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from Facilities or from enjoyment of any Functions, 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, damages 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.

3.16 Charges for Use of Facilities. Notwithstanding the provisions of Section 3.15, Metro Services may establish and modify charges for the use of Facilities to assist Metro Services in offsetting the costs and expenses of Metro Services, including, but not limited to, depreciation, operation, maintenance, capital replacement and capital expenses. All charges established under this Section 3.16 shall be reasonable and shall be uniformly applied, except such charges may differentiate between reasonable categories of Sites, Owners, Lessees, Subowners or Guests. Each Owner, Lessee, Subowner and Guest shall be obligated to and shall pay any such charges for use.

3.17 Charges for Functions. Notwithstanding the provisions of Section 3.15, Metro Services may establish and modify charges for providing any service as required or permitted by any Function on a regular or irregular basis to an Owner, Lessee, Subowner or Guest to assist Metro Services in offsetting the costs and expenses of Metro Services, including, but not limited to, depreciation, operation, maintenance, capital replacement and capital expenses. All charges established under this Section 3.17 shall be reasonable and shall be uniformly applied, except such charges may differentiate between reasonable categories of Sites, Owners, Lessees, Subowners or Guests. Each Owner, Lessee, Subowner and Guest shall be obligated to and shall pay any such charges for such services.

3.18 Taxes. Metro Services shall pay all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any governmental or public authority which shall be imposed, assessed or levied upon, or arise in connection with any Facilities or Functions.

3.19 Right to Dispose of Facilities. Metro Services shall have full power and authority to sell, lease, grant rights in, transfer, encumber, abandon or dispose of any Facilities.
3.20 Governmental Successor. Any Facility and any Function may be turned over to a governmental entity which is willing to accept and assume the same upon such terms and conditions as Metro Services shall deem to be appropriate.

3.21 Implied Rights of Metro Services. Metro Services shall have and may exercise any right or privilege given to it expressly in this Amended and Restated Declaration or, except to the extent limited by the terms and provisions of this Amended and Restated 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, but not limited to, 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 Function by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be necessary or desirable.

IV. MEMBERSHIP:

4.1 Membership.

(a) There shall be one membership in Metro Services attributable to the fee simple ownership and one membership attributable to the lease of each Site within the Telluride Mountain Village. Each such membership shall be appurtenant to the fee simple title or lease interest to such Site. The Owner or Lessee of a Site shall automatically be the holder of the membership appurtenant to that Site and title to and ownership of the membership for that Site shall automatically pass with fee simple title to the Site or the Lessee’s interest in the Site. Each Owner or Lessee of a Site shall automatically be entitled to the benefits and subject to the burdens relating to the membership for his Site as set forth in this Amended and Restated General Declaration, the Amended and Restated Articles of Incorporation, the Amended and Restated Bylaws and all rules and regulations of Metro Services as from time to time are in force and effect. If fee simple title or the Lessee’s interest to a Site is held by more than one person or entity, the 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 or leasehold interest to the Site is held. If fee simple title to a Unit is held in fractional ownership, the membership related to that Unit shall be shared by all such fractional owners or lessees in the same proportionate interest as their fractional ownership.

(b) Membership in Metro Services shall be limited to Owners and Lessees. A party may hold more than one membership and may also hold other forms of membership.

4.2 Special Membership for Operator of Mountain Facility. Notwithstanding the foregoing and subject to the conditions set forth in the Articles of Incorporation, Telski, as operator of the Mountain Facility shall have and be deemed to hold a Mountain Special Membership in Metro Services. The Mountain Special Member may assign its Mountain Special Membership with the assignment of substantially all its rights to own, develop or operate such Mountain Facility. In the event of such assignment, Telski’s assignee shall assume all of the obligations of such membership and Telski shall thereafter be released from all obligations by reason of the Mountain Special Membership. The holder of the Mountain Special Membership shall automatically be entitled to the benefits and subject to the burdens relating to its Mountain Special Membership as set forth in this Declaration, the Articles of Incorporation, Bylaws and all rules and regulations of Metro Services as from time to time are in force and effect.
V. ASSESSMENTS AND OTHER AMOUNTS:

5.1 Obligation for Assessments and Other Amounts. Each Owner, by acceptance of a deed for his Site, whether or not expressed in any deed or other conveyance, shall be deemed to covenant and agree to pay to Metro Services the Monthly Assessment, Real Estate Transfer Assessment and Special Assessments, as more fully described and defined in the Bylaws of Metro Services, and the charges, fines, liquidated damages, penalties or other amounts, to be levied, fixed, established and collected as set forth in this Declaration and the Articles of Incorporation, Bylaws and rules and regulations of Metro Services.

5.2 Purpose of Assessments and Other Amounts. All assessments levied in accordance with the Bylaws and any charge, fine, penalty or other amount collected by Metro Services shall be used exclusively to pay expenses that Metro Services may incur in performing any actions permitted or required under this Declaration, or its Articles of Incorporation or Bylaws as from time to time are in force and effect, including but not limited to operating expenses and the costs of constructing or purchasing Facilities and performing Functions. However, this Section 5.2 shall not prohibit Metro Services from establishing appropriate reserves to defray anticipated expenses, investing all excess cash in a prudent manner.

5.3 Real Estate Transfer Assessment.

(a) (i) There is hereby imposed a Real Estate Transfer Assessment (RETA) on all Transfers whether by deeds, instruments, writings, leases, or any other documents or otherwise by which any lands, tenements or zoned density located in the Telluride Mountain Village are sold, granted, let, assigned, transferred, exchanged or otherwise conveyed to or vested in a Purchaser, or Purchasers thereof, or any other Person or Persons, except as may be specifically exempted by this Declaration. Said RETA shall be due and payable at the time of any such Transfer and contemporaneously therewith as hereinafter specified.

(ii) For purposes of Section 5.3(a)(i), a Transfer subject to RETA shall also include a sale, conveyance, or Transfer of a majority or controlling interest in a corporation, limited liability company, partnership, limited partnership, joint venture, trust or other association or organization where such organization or association owns a Site or Sites located in Telluride Mountain Village, and the fair market value of that Site or Sites represents more than one half of the total fair market value of all tangible assets of such entity, organization or association. The RETA for such Transfers shall be based upon the fair market value of the Site or Sites at the time of the Transfer. Said RETA shall be due and payable at the time of any such Transfer and contemporaneously therewith as hereinafter specified.

(iii) Taxable Lease. Taxable Lease means any lease of a Site with a term, or initial term and all renewal terms, which aggregate in length 29 years or more; provided lessee has possession or the right to possession on payment of rents. Taxable Lease also means any lease of a Site for less than 29 years of term, or initial term and all renewal terms aggregated, if lessee has a clause which would permit lessee at its discretion to extend the lease beyond 29 years or if lessee has an option to purchase some or all of the Site leased. If lessee has a lease with such an option to purchase which option may be exercised only within 3 years after the date the lease and option is entered into, then the RETA shall not be due and payable unless and until the exercise and consummation of such option. If any other lease with such an option to purchase is entered into, the RETA shall be due and payable at the time of such Transfer.
(b) The amount of RETA payable in each case shall be as follows:

(i) Where there is no Consideration or when the Consideration is Five Hundred Dollars ($500) or less, no RETA shall be payable.

(ii) Where the Consideration shall exceed Five Hundred Dollars ($500.00), the RETA payable shall be three percent (3%) of the Consideration, or three percent (3%) of the fair market value of the Property where fair market value is specified elsewhere in this Section 5.3 as the basis for the RETA.

(iii) Where fair market value is the basis for a RETA, fair market value of the Site shall be determined by Metro Services. A transferee may make written objection to Metro Services’ determination of fair market value of a Site within fifteen (15) days after Metro Services has given notice of such determination, in which event Metro Services shall obtain a written appraisal, at the transferee’s sole expense, from a certified MAI Real Estate Appraiser who is familiar with San Miguel County real estate values, and who shall be selected by Metro Services. The appraisal so obtained shall be binding on both Metro Services and the transferee. In the event a transferee fails to object to a determination of fair market value by Metro Services within fifteen (15) days following notice to the transferee of such a determination, the transferee shall be deemed to have waived all right of objection concerning fair market value, and Metro Services’ determination of such value shall be binding.

(c) The RETA imposed by this Declaration shall not apply to any of the following, except to the extent that Metro Services determines they are being used for the purpose of improperly avoiding the RETA:

(i) (a) Any Transfer wherein the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivisions of this State, is either the grantor or grantee, and (b) any Transfer wherein Metro Services is the grantor or grantee, as long as such Transfer is made within the ordinary course of Metro Services business as contemplated by this Declaration, and excluding any Transfer by Metro Services, as grantor, of property obtained by Metro Services through the exercise of its right to foreclose any liens imposed pursuant to this Declaration.

(ii) The Transfer of a Site or zoned density, to an organization which is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended, provided that the Board of Directors specifically approves such exemption in each particular case.

(iii) Any Transfer by document, decree or agreement partitioning, terminating or evidencing termination, of a joint tenancy, tenancy in common or other co-ownership in a Site; however, if additional Consideration or value is paid in connection with such partition or termination, the Assessment shall apply and be based upon such additional Consideration.

(iv) Any Transfer of title or change of interest in real property by reason of death, pursuant to a will, the law of descent and distribution, or otherwise.

(v) Transfers made pursuant to reorganization, merger or consolidation of
corporations, or by a subsidiary to a parent corporation for no Consideration other than
cancellation or surrender of the subsidiary's stock, or Transfers made to a corporation, limited
liability company, partnership, limited partnership, joint venture, trust or other association or
organization if that association or organization is owned by the Persons by whom such Transfer
was made and such owners have the same relative interest in said association or organization as
they had in the real property immediately prior to said Transfer and there is no Consideration
other than their respective interests in the new association or organization.

(vi) Any Transfer made and delivered without Consideration for the purpose of:
confirming, correcting, modifying or supplementing a Transfer previously made; making minor
boundary adjustments; removing clouds of titles; or granting rights-of-way, easements or
licenses.

(vii) Any decree or order of a court of record quieting, determining or resting
title, except for a decree of foreclosure, including a final order awarding title pursuant to a
condemnation proceeding.

(viii) Any Transfer of cemetery lots.

(ix) Any lease of any Site (or assignment or Transfer of any interest in any such
lease) provided the terms and conditions of such lease do not constitute a Taxable Lease of the
property, as defined herein.

(x) Transfers to secure a debt or other obligation, or releases other than by
foreclosure of a Site which is security for a debt or other obligation.

(xi) An executory contract for the sale of a Site of less than three years'
duration, under which the purchaser is entitled to or does take possession thereof without
acquiring title thereto, or any assignment or cancellation of any such contract.

(xii) A Transfer of title or any lesser interest for the purpose of obtaining
financing, or in connection with the design, construction, maintenance or operation of
improvements, not intended to effect a permanent alienation of the grantor's interest.

(xiii) Transfers to spouses, natural children and adopted children.

(xiv) Transfers made to a corporation, limited liability company, partnership,
limited partnership, joint venture, trust or other association or organization to the extent that the
transferee is owned by the transferor or the transferor is owned by the transferee.

(xv) Transfers to a trust if the donor(s) has/have the same relative interest in the
trust as they had prior to the Transfer; or if there is no Consideration other than love and
affection or charitable donation. Transfers from such a trust conveying or releasing the property
from the trust are also exempt where there is no Consideration.

(xvi) Any Transfer which fulfills all of the following three conditions:

(A) The Transferor obtained title to the property from the transferee.
(B) The Transfer occurred pursuant to a written agreement entered into on or before the date of the deed which conveyed title from the transferee to the transferor. At a minimum the agreement shall either (a) allow the transferor to require the transferee to reacquire the property, or (b) allow the transferee to require the transferor to reconvey the property to the transferee.

(C) The Transfer occurred on or before 365 days after the transferor obtained title from the transferee.

(xvii) Any of the following Transfers related to foreclosures of security interest in a Site:

(A) A Transfer pursuant to purchase at a foreclosure sale, whereby the mortgagee under a first priority mortgage (or a qualifying assignee of such a mortgage who acquires rights under such mortgage in the ordinary course of business and prior to any default) or the beneficiary under a first priority deed of trust (or the qualifying assignee of such a beneficiary who acquires rights under such deed of trust in the ordinary course of the assignee's business and prior to any default) takes title to Site. For purpose of this Section 5.3(c)(xvii), a qualifying assignee shall be defined as and limited to a Person or entity whose ordinary and regular course of business prior to the Transfer involved acquisition and sale of promissory notes or indebtedness secured by mortgages or deeds of trust. Purchase at foreclosure sale by any Person or entity other than the mortgagee under a first priority deed of trust (or the qualifying assignee of such a beneficiary) shall not be exempt from the Real Estate Transfer Assessment.

(B) A Transfer by voluntary conveyance in lieu of foreclosure, whereby the mortgagee, under a first priority mortgage (or the qualifying assignee of such a mortgage who acquires rights under such mortgage in the ordinary course of the assignee's business) or a beneficiary under a first priority deed of trust (or the qualifying assignee of such a beneficiary who acquires rights under such deed of trust in the ordinary course of the assignee's business) takes title to a Site. Such a Transfer shall be deemed a qualifying deed in lieu of foreclosure for purposes of this Section 5.3(c)(xvii)(B), provided that, the transferee submits a sworn affidavit to Metro Services certifying that the Owner of the Site to be transferred is in default of the obligation which is secured by the Site and that no consideration, other than the forgiveness of the obligation which is secured by the Site, is being given for the Transfer. No other conveyances in lieu of foreclosure shall be exempt from RETA.

(C) Redemption from foreclosure by the Owner of a Site shall be exempt from RETA. Redemption from foreclosure sale by any Person or entity other than the Owner of the Property subject to foreclosure shall not be exempt from RETA.

(xviii) Transfers pursuant to a decree of separation or divorce.
(xix) Transfers to intermediaries for no consideration for a period not to exceed six (6) months or the time allowed by the Internal Revenue Service to complete a Section 1031 tax free exchange, where such transfer is for lawful and legitimate business purposes, and provided the Board of Directors specifically approves such exemption in each particular case.

(xx) Transfers of employee housing zoned density and real property that is deed restricted as employee housing.

(xxii) A transfer of a Site, pursuant to an exchange of property that is tax-free for Internal Revenue Services purposes, which is the lower-valued property in the trade as determined by the Metro Services Board of Directors at their discretion.

(d) Each Purchaser and any other Person and Persons to whom a Transfer is made, which Transfer is subject to RETA, shall be jointly and severally liable for payment of the RETA. The Purchaser or Person to whom a Transfer is made shall remit the RETA to Metro Services at the time of the closing of the transaction.

(e) In the event of any Transfer claimed to be exempt from the RETA herein imposed, the grantor or Purchaser shall apply for and attempt to obtain from Metro Services a Certificate of Exemption, which may be affixed to the deed or other instrument of Transfer. Any request for an exemption shall be in writing on forms prescribed by Metro Services, shall identify the section under which the exemption is claimed, and shall include a complete and accurate written description of the Transfer, including a true and complete statement of the actual Consideration for the Transfer, the names of the parties thereto, the legal description of the Site, and shall also include any other documentation regarding the Transfer which Metro Services may request. The burden of proving any exemption shall in all cases be upon the Person claiming it, and Metro Services determination as to whether a Transfer falls within any of the exemptions provided above shall be final. Metro Services shall assess a RETA on all Transfers except those falling specifically within the exemptions set forth above. The exemptions provided in Section 5.3(c) hereof shall be allowed only upon issuance of a Certificate of Exemption by Metro Services prior to the date the RETA is payable to Metro Services.

(f) In the case of any application for an exemption which is not granted before the Transfer takes place, the RETA shall be paid as required by this Declaration, and payment of that RETA to Metro Services shall be a mandatory prerequisite to filing an application for exemption from the RETA. Thereafter, if the application for exemption is allowed, upon written request to Metro Services, the Person who has paid said RETA shall be entitled to a refund thereof, without any interest, or for so much of said RETA which shall qualify for refunding pursuant to the exemption granted. On a case by case basis, escrow of said RETA with a title company may be acceptable, at Metro Services sole discretion.

(g) When a Transfer subject to this Declaration includes Property located elsewhere, the RETA imposed under the authority of this Declaration shall be computed only with respect to that portion of the transfer located within the Telluride Mountain Village, and the RETA shall be assessed based on that part of the Consideration fairly attributable to such Site.

(h) The RETA imposed herein is due and payable at the time of any Transfer subject to this Declaration, and shall be delinquent if not paid at that time. In the event that the RETA becomes delinquent, a delinquency penalty of fifteen percent (15%) of the amount of the RETA shall be imposed. In the event a portion of the RETA becomes delinquent, the penalty shall only be imposed on that
portion which is delinquent. In addition, interest shall accrue at the rate of one and one-half percent (1.5%) per month, or fraction thereof, on the amount of the RETA, exclusive of penalties, from the date the RETA becomes delinquent to the date of payment. Penalty and interest accrued shall become part of the RETA.

(i) In the event any portion of this Section 5.3 is held to be invalid by a court of competent jurisdiction, then the invalid portion shall be deemed to be removed from this Section and all remaining portions of Section 5.3 shall remain in full force and effect.

5.4 Time for Payments. Except as provided in Section 5.3(i), the amount of any assessment, charge, fine, liquidated damage, penalty or 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 this Declaration, the Articles of Incorporation or Bylaws of Metro Services as from time to time are in force and effect. Metro Services may charge interest on such amounts at the rate of 18% per annum from the date due and payable until paid. In addition, the Bylaws of Metro Services authorize Metro Services, during the period of any delinquency, to suspend an Owner or Lessee's voting privileges or any other privileges.

5.5 Lien for Assessments and Other Amounts. Metro Services shall have a lien against each Site to secure payment of any assessment, charge, fine, penalty, liquidated damages, or other amount due and owing to Metro Services by the Owner of such Site or with respect to such Owner's, Lessees, Subowners, Guests or Site plus interest at the rate of 18% per annum 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.

5.6 Liability of Owners, Purchasers and Encumbrancers. The amount of any assessment, charge, fine, liquidated damages, or penalty, payable by any Owner or with respect to such Owner's, Lessee's, Subowner's, or Guest's Site shall be a joint and several obligation to Metro Services 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 Metro Services without foreclosing or waiving any lien securing the same. Notwithstanding the foregoing, the holder of a first priority mortgage, first priority deed of trust or other first lien on a Site shall not be liable for any such assessment, charge, fine or penalty and the lien for any such assessments, charges, fines, liquidated damages or penalties shall be junior to any first lien on a Site taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of San Miguel County, Colorado, prior to the time a notice of failure to pay any such amount is recorded in said office, describing the Site and naming the Owner of the Site.

VI. CERTAIN RIGHTS OF OWNERS AND LESSEES:

6.1 Easements of Owners with Respect to Facilities. Each Owner, and Owner's Lessees, Subowners and Guests shall have a non-exclusive easement over, upon, across and with respect to any Facilities as appropriate and necessary for: access, ingress and egress to the Site of such Owner, Lessee, Subowner or Guest; encroachment of 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 Metro Services may impose to assure reasonable use and enjoyment of Facilities by all persons entitled to such use and enjoyment.

6.2 Owner's Enjoyment of Functions and Facilities. Each Owner, Lessee, Subowner and Guest shall be entitled to use and enjoy any Facilities suitable for general use or the services provided by any Functions, subject to such reasonable rules and regulations which Metro Services may adopt and subject to such reasonable and uniformly applied charges which Metro Services may impose to offset costs and expenses, depreciation, capital replacement 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 categories of Owners, Lessees, Subowners or Guests as established by Metro Services'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 Facility nor shall anything be stored in or any part of any Facility without the prior written consent of Metro Services. Nothing shall be altered on, constructed in or removed from any Facilities except with the prior written consent of Metro Services. Nothing shall be done or kept on or in any Facilities which would result in the cancellation of the insurance or any part thereof which Metro Services is required to maintain pursuant hereto or increase the rate of the insurance or any part thereof over what Metro Services, but for such activity, would pay, without the prior written consent of Metro Services. Nothing shall be done or kept on or in such Facilities which would be in violation of any statute, rule, ordinance, regulation, permit or other requirements of any governmental body. No damage to, or waste of, Facilities shall be committed, and each Owner shall indemnify and hold Metro Services and the other Owners harmless against all loss resulting from any such damage or waste caused by such Owner or such Owner's Lessees, Subowners or Guests.

6.3 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 Metro Services 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 Section 4.1 and 6.2, 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.

6.4 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 Metro Services 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 Metro Services. Metro Services shall recognize any such assignment or delegation of rights or arrangements for assumption of obligations, provided that, to be effective, the assignment or delegation of rights or arrangement for assumption of obligations shall be in writing, shall be in terms deemed satisfactory by Metro Services, and a copy thereof shall be filed with and approved by Metro Services. 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.

6.5 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 Metro Services under this Declaration are hereby declared to be and shall be appurtenant to the lease to the Leased
Premises leased by such Lessee, and may not, except as provided in Section 6.6, 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.

6.6 Transfer of Rights or Obligations to a 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 Metro Services during the term of such sublease, and the sublessee shall automatically be deemed a Lessee and a member of Metro Services 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 Metro Services as to such subleased portion and such sublessee shall automatically be deemed a Lessee and a member of Metro Services upon commencing to own and operate a business upon his subleased portion of the Lease Premises. Such sublessor shall maintain his rights and obligations as a Lessee and as a member of Metro Services 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 Restricted on Solid Fuel Burning Devices. The number of permits for wood-burning fireplaces or other Solid Fuel Burning Devices shall be limited to one hundred (100) plus the number of permits actually issued by San Miguel County prior to March 10, 1995 (which the County believes is ninety-four (94)).

VIII. DENSITY LIMITATIONS AND OPEN SPACE:

8.1 Density Limitation. The total Density within the boundaries of the original PUD, as described on the “Zoning Map and Preliminary Plat-Master Plan”, as approved by the San Miguel County Board of Commissioners on December 17, 1992 and recorded in the real estate records of the San Miguel County Clerk and Recorder's Office at Reception #282099, Plat Book #2, pages 1386-1397, on January 7, 1993, (“Original P.U.D.”) either platted or banked is 8,027 (8,015 persons from the original P.U.D. and 12 persons of bonus Employee Density). Density Transfers, Platting/Replating, and Zoning/Rezoning shall not increase the total density above that cap, except to allow for the creation of additional Multi-Unit Employee Housing, subject to the Town of Mountain Village Employee Housing Restriction. Density allocations for specific uses and parcels within the area encompassed by the Original P.U.D. shall be determined as set forth in Section 2-10 of the Town of Mountain Village Land Use Ordinance as in effect on March 31, 1999, a copy of which is attached hereto as Exhibit D-1.

8.2 Open Space. Active and Passive Open Space shall be preserved as to acreage and general location, as it presently exists in the Town, and as it is shown on the Town Open Space Map, dated June 16, 1999 and recorded in Book 1, at Page 2603, in the records of the Clerk and Recorder for San Miguel County, subject to an approved but not yet recorded replat of Lots 161A, 161A-1, 161B and 161D. Platted Open Space within the Original P.U.D. shall not be less than sixty percent (60%) of the total acreage within the Original P.U.D., exclusive of the Village Core, which consists of those parcels of real property described on Exhibit D-2, a copy of which is attached hereto and incorporated herein by reference, as verified by the Town Open Space Recap dated April 16, 1999 and recorded at Reception
No. 328115 in the records of the Clerk and Recorder for San Miguel County. Passive Open Space within the Original P.U.D. shall not be reduced below the one hundred fifty one and three hundred thirty four thousandths (151.334) acres platted as of July 1, 1999 within the Original P.U.D., but Active Open Space may be reduced if it is replatted as Passive Open Space. Lot line adjustments that affect Open Space are permitted, subject to approval of the Town Council of the Town of Mountain Village and the owner(s) of the affected property, but only to the extent there is no net loss of Open Space within the Original P.U.D.

IX. AIR QUALITY:

9.1 No Coal. No coal may be burned within the Telluride Mountain Village. This Section 9.1 shall not preclude the burning of charcoal used only for cooking purposes.

9.2 Emission Limits. The emission limit for solid fuel burning devices located within the Telluride Mountain Village shall be 150% of the emission rate for the solid fuel burning device having the lowest emission rate under normal operating conditions; provided that such device is determined by Metro Services to be safe, durable, reasonable, attractive, commercially available and within reasonable expense.

X. MISCELLANEOUS:

10.1 Duration of Declaration. This Declaration shall continue and remain in full force and effect until January 1 in the year 2099 A.D. and thereafter for successive periods of ten years each, unless and until this Declaration is terminated by recorded instrument, directing termination, signed by Metro Services upon the Affirmative Vote of a Majority of the Classes (as that term is defined in the Articles of Incorporation of Metro Services as presently in effect) and the Town, subject however, to the provisions of Section 10.14 (a) or 10.14(b).

10.2 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, lease or other instrument by which any right, title or interest in any real property within the Telluride Mountain Village is granted, devised, leased or conveyed, whether or not set forth or referred to in such deed, lease or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Telluride Mountain Village by an Owner, Lessee or Metro Services, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, Lessee or Metro Services, as the case may be, and, as a personal covenant, shall be binding on such Owner, Lessee or Metro Services and such Owner's, Lessee's or Metro Services's respective heirs, personal representatives, successors, lessees and assigns, and, as a personal covenant of an Owner or Lessee shall be deemed a personal covenant to, with and for the benefit of Metro Services but not to, with and for the benefit of any other Owner or Lessee and, if a personal covenant of Metro Services, shall be deemed a personal covenant to, with and for the benefit of each Owner or Lessee; (c) shall be deemed an equitable servitude, running, in each case, as a burden with and upon the title to each parcel of real property within the Telluride Mountain Village, and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of all other real property within the Telluride Mountain Village; 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 the Telluride Mountain Village which lien with respect to any Site shall be deemed a lien in favor of Metro Services.
10.3 Enforcement and Remedies. Each provision of this Declaration with respect to an Owner or Lessee or property of an Owner or Lessee shall be enforceable by Metro Services or by any Owner or Lessee who has made written demand on Metro Services to enforce such provision and 30 days have lapsed without appropriate action having been taken by Metro Services, by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages, or, in the discretion of Metro Services, for so long as any Owner or Lessee fails to comply with any such provisions, by exclusion of such Lessee or Owner and such Owner's Lessee, Subowners and Guests from use of any Facility and from enjoyment of any Function. 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.

10.4 Liquidated Damages. Any Owner who is adjudged by a Colorado court of competent jurisdiction to be in violation of this Declaration, the Articles of Incorporation, Bylaws or rules or regulations of Metro Services, as they exist from time to time shall be liable to Metro Services for liquidated damages in the amount of Two Hundred Dollars ($200.00) per day per violation for each day the violation was adjudged to exist.

10.5 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, first deed of trust or other first lien on any property taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of San Miguel 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 first mortgage, first deed of trust, or other first lien or title or interest acquired by any purchaser upon foreclosure of any such first mortgage, first deed of trust or other first 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.

10.6 Limited Liability. Neither San Miguel County, Metro Services, the Board of Directors of Metro Services nor any member, agent or employee of any of the same shall be liable to any party for any action 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.

10.7 Use of Trademark Each Owner, by acceptance of a deed for his Site, or Lessee whether or not it shall be so expressed in any such deed, lease or other conveyance, shall be deemed to acknowledge that the "Telluride Mountain Village" is a service mark and trademark of Metro Services, or its licensees, and covenants that he shall not use the term "Telluride Mountain Village" without the prior written permission of Metro Services.

10.8 Successors and Assigns. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Metro Services, each Lessee and each Owner and their respective heirs, personal representatives, successors and assigns.
10.9 **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.

10.10 **Captions.** The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision of the Declaration.

10.11 **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.

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

10.13 **Notices.** Within thirty (30) days after receiving any right, title or interest in any Site within the Telluride Mountain Village each Owner or Lessee shall furnish to Metro Services a mailing address to which all notices shall be sent pursuant to this Section 10.13. All notices, demands, or writings in this declaration provide to be given or made or sent that may be given or made or sent by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, certified and postage pre-paid, and addressed to the party at the address filed with Metro Services pursuant to this Section 10.13. The address to which any notice, demand, or writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

10.14 **Additions, Modifications or Annulment of Declaration.**

(a) Declarant, San Miguel County and Town of Mountain Village: Nothing to the contrary withstanding, the covenants, agreements, conditions, reservations, restrictions and charges created and established in Sections 2.1, 2.11, 2.12, 2.13, 2.15, 2.16, 5.3, 5.4, 5.5, 7.1, 8.1, 8.2, 9.1, 9.2, 10.14(a), and 10.15 for the benefit of the parties named herein, San Miguel County and the Telluride Mountain Village may only be changed, waived, terminated, modified, supplemented, or annulled by the Declarant, San Miguel County and the Town upon their mutual agreement. The waiver, change, termination, modification, supplementation or annulment shall become effective upon the recordation in the office of the San Miguel County Clerk and Recorder of a written instrument properly executed by Declarant, the duly authorized Chairman of the San Miguel County Board of Commissioners, and the Mayor of the Town.

(b) Declarant and Town Nothing to the contrary withstanding, the covenants, agreements, conditions, reservations, restrictions and charges created and established in Sections 2.2, 2.4, 3.19, 7.2, and 10.14(b) for the benefit of the parties named herein and the Telluride Mountain Village may only be changed, waived, terminated, modified, supplemented or annulled by Declarant and the Town upon their mutual agreement. The waiver, change, termination, modification, supplementation or annulment shall become effective upon the recordation in the office of the San Miguel County Clerk and Recorder of a written instrument properly executed by Declarant and the Mayor of the Town.

(c) Declarant. Except as provided in this section 10.14 (a) and (b), all other covenants, agreements, conditions, reservations, restrictions and charges created and established herein for the benefit of the parties named herein and the Telluride Mountain Village may be changed, waived, terminated, modified, supplemented or annulled by Declarant. The waiver, change, termination,
modification, supplementation or annulment shall become effective upon the recordation in the office of
the San Miguel County Clerk and Recorder of a written instrument properly executed by Declarant.

10.15 Declarant's Continuing Responsibility. Metro Services shall be responsible for all of
Declarant's obligations, duties or responsibilities imposed upon Declarant pursuant to this Declaration.
If Metro Services assigns or delegates any obligations, duties or responsibilities imposed upon it
pursuant to this Declaration, Metro Services shall nevertheless remain responsible for all such
obligations, duties and responsibilities imposed upon Declarant pursuant to this Declaration.
IN WITNESS WHEREOF Declarant has executed this Declaration the day and year first above written.

TELLURIDE MOUNTAIN VILLAGE RESORT COMPANY, INC., a Colorado non-profit corporation, dba MOUNTAIN VILLAGE METROPOLITAN SERVICES, INC.

By: [Signature]
A. J. Wells, President

ATTEST:
[Signature]
David C. Flatt, Secretary

STATE OF COLORADO )
COUNTY OF SAN MIGUEL )

The foregoing instrument was acknowledged before me on the 21st day of November, 2002, by A. J. Wells, as President of TELLURIDE MOUNTAIN VILLAGE RESORT COMPANY, a Colorado non-profit corporation, d.b.a. MOUNTAIN VILLAGE METROPOLITAN SERVICES, INC., and by David C. Flatt, as Secretary.

WITNESS my hand and official seal.

My Commission Expires: 03-15-03
[Signature]
Notary Public

BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, COLORADO

By: [Signature]
Art Goodtimes, Chairman

ATTEST:
[Signature]
Marie A. Thomas, Chief Deputy Clerk

Amended and Restated General Declaration - Page 21 of 22
STATE OF COLORADO  
COUNTY OF SAN MIGUEL 

The foregoing instrument was acknowledged before me on the 27th day of November, 2002, by Art Goodtimes, as Chairman of SAN MIGUEL COUNTY BOARD OF COMMISSIONERS, and by MARIE A. THOMAS, as Chief Deputy Clerk.

WITNESS my hand and official seal.

My Commission Expires: 09-01-03

[Signature]
Notary Public

TOWN OF MOUNTAIN VILLAGE, COLORADO, a Colorado home rule municipality

By: [Signature]
David C. Flatt, Mayor

ATTEST:

[Signature]
Linda L. Check, Town Clerk

STATE OF COLORADO  
COUNTY OF SAN MIGUEL 

The foregoing instrument was acknowledged before me on the 27th day of November, 2002, by David C. Flatt, as Mayor, of the TOWN OF MOUNTAIN VILLAGE, and by Linda L. Check, as Town Clerk.

WITNESS my hand and official seal.

My Commission Expires: 08-12-04

[Signature]
Notary Public

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