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**305843**

06/18/96

DECLARATION

OF

TELECAM/ILIUM PARK  
SAN MIGUEL COUNTY, COLORADO

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DECLARATION  
OF  
TELECAM/ILIUM PARK  
SAN MIGUEL COUNTY, COLORADO

THIS DECLARATION is made this 18 day of June, 1996, by Telecam Partnership II, Limited, a Colorado limited partnership, with an address of 141 Society Drive, Telluride, Colorado ("Declarant").

ARTICLE 1. DECLARATION - GENERAL PURPOSES:

Section 1.01 - Declaration.

a) Declarant is the owner of certain property in the County of San Miguel, State of Colorado, which property is more particularly described as set forth in Exhibit A attached hereto and by reference made a part hereof.

b) Declarant desires to create a "Planned Community" type of "Common Interest Community" on the Real Estate (as "Real Estate" is defined herein) under the name of Telecam/Ilium Park, in which portions of the Real Estate will be designated for separate ownership and uses of a multipurpose nature, and in which portions of the Real Estate will be designated for ownership by an Owners' Association.

c) Declarant has caused "Telecam/Ilium Park Association, Inc.," a Colorado nonprofit corporation ("Association"), to be incorporated under the laws of the State of Colorado, as an Owners' Association, for the purpose of performing certain functions as set forth herein and to hold and manage certain property for the common benefit of all Owners within the Planned Community to be known as Telecam/Ilium Park. The Association 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 Telecam/Ilium Park and to preserve property, property rights and property values within the Telecam/Ilium Park.

d) Declarant hereby submits the property described in Exhibit A, and such additional property as may be subsequently added to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101 et seq., (the "Act"), as the Act may be amended from time to time, and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Declarant hereby declares that all of the Real Estate shall be held or sold, and conveyed subject to the following easements, restrictions, covenants, and

conditions. From this day forward, the Real Estate shall be held, sold and conveyed subject to the terms and conditions of this Declaration. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Real Estate, that this Declaration shall run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Unit Owner thereof.

Section 1.02 - Statement of Purpose. This Declaration is imposed for the benefit of all owners of Units and parcels of land located within the Real Estate. This Declaration creates specific rights and privileges which may be shared and enjoyed by all owners and occupants of any part of the Real Estate.

Section 1.03 - Declarant's Intent. Declarant desires to ensure the attractiveness of the individual Units and parcels and facilities developed within the Real Estate; to prevent any future impairment of the value of Units or of the Real Estate; and to preserve, protect, and enhance the values and amenities of the Real Estate. It is the intent of Declarant to guard against the construction on the Real Estate of Improvements or structures built of improper or unsuitable materials or with improper quality or methods of construction. Declarant intends to encourage the construction of permanent improvements appropriately located to preserve the harmonious development of the Real Estate. Declarant desires and intends to develop a quality mixed use project on the Real Estate to consist of light industrial, heavy commercial, neighborhood commercial, multi-family dwellings which include dormitories and transient type accommodations, a fishing and water sports lodge including hotel efficiency and/or dormitory units and residential facilities of all types, and parking and amenities therefor.

Section 1.04 - Compliance with Documents. All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the covenants, terms and conditions of this Declaration, all supplements and amendments hereto, the Plats and Maps recorded in connection with this Declaration, the Bylaws and the Rules ("Documents"). The acceptance of a deed or the exercise of any incident of ownership or the entering into a lease or the occupancy of a Unit constitutes agreement that the provisions of the Documents are accepted and ratified by that Unit Owner, tenant, mortgagee or occupant. All provisions of the Documents recorded in the records of the Clerk and Recorder of the County in which the Real Estate is located are covenants running with the land and shall bind any individual, corporation, limited liability company, partnership, association, business trust, estate, trust or any other legal entity ("Person") having at any time any interest or estate in any Unit.

**Article 2. DEFINITIONS:**

Each capitalized term in this Declaration or in the Map or plat shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration.

- a) Bylaws are the Bylaws of the Association, as they may be amended from time to time.
- b) Common Elements means the property within this Common Interest Community owned by the Association, other than a Unit; which property is designated in a recorded plat and in this Declaration.
- c) Common Expense Assessment(s) shall include, in supplementation to the definition of Common Expense Assessments included in the Act, late charges, attorneys' fees, fines and interest charged by the Association.
- d) Consideration means the gross consideration paid for the Unit 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 the gross consideration the amount of any outstanding lien or encumbrance in favor of the United States, the state of Colorado, or a municipal or quasi-municipal corporation or district for taxes, or special or local benefits.
- e) Declarant Control shall mean the reserved power of the Declarant, pursuant to Section 303(5) of the Act, to appoint and remove officers and members of the Executive Board.
- f) Design Review Board means the committee created by the Declarant for the purpose of establishing architectural controls over the Common Interest Community to insure the proper use and appropriate development and improvement of the Common Interest Community so as to provide for harmonious development and improvement of the Common Interest Community.
- g) Development Rights are the rights reserved by the Declarant under this Declaration to create Units, Common



Elements and Limited Common Elements within the Common Interest Community.

- h) Director is a member of the Executive Board of the Association.
- i) Executive Board or Board of Directors is the board of directors of the Association.
- j) Facilities shall mean all the real or personal property, including but not limited to all common open space and landscaping installed by the Declarant, 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 real property, improvements thereon, personal property, equipment or use thereof and such property conveyed to the Association by Declarant.
- k) Improvement(s) means structures or landscaping installed within or upon a Unit.
- l) Limited Common Elements means those portions of the Common Elements, designated by Declarant or the Association for the exclusive use of one or more but fewer than all of the Units.
- m) Manager is a Person employed or engaged to perform management services for the Common Interest Community and the Association.
- n) Map means a Plat as defined herein.
- o) Metro District means a political subdivision of the State of Colorado formed pursuant to Title 32 of the Colorado Revised Statutes for the purpose of serving the public use and promoting the health, safety, prosperity, security, and general welfare of the inhabitants of Telecam/Ilium Park Common Interest Community.
- p) Plat means a map or plat filed for record in connection with the creation of the Common Interest Community created by this Declaration or the addition of real property to the Property.
- q) Open Space Tract means the tract designated on the Plat creating open space as such and shall be utilized only for those uses and purposes, and subject to the procedures for effecting such uses and purposes, as may be described in such Plat and/or amendment or supplement

to this Declaration which makes such tract subject to the provisions hereof.

- r) Real Estate means the property described in Exhibit A, and such additional property as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon. All easements and licenses which the Common Interest Community is subject to as of the date of this Declaration are recited in Exhibit A.
- s) Special Declarant Rights are rights reserved for the benefit of a Declarant to (1) complete improvements indicated on Plats and plans filed with the Declaration; (2) exercise any Development Right ; (3) maintain sales offices, management offices and signs advertising the Common Interest Community; (4) use easements through the Common Elements for the purpose of making improvements within the Common Interest Community or within real estate that may be added to the Common Interest Community; or (5) appoint or remove an officer of the Association or any Executive Board member during any period of Declarant control.
- t) Transfer means and includes (1) any grant, assignment, transfer, exchange, conveyance or consummated sale of any ownership or title to a Unit situated in Ilium Industrial Park; or (2) the leasing, letting, conveyance, assignment, transfer or consummated sale of a possessory interest in a Unit; subject to the exceptions provided in Article 6 of this Declaration.
- u) Unit or Lot means a physical portion of the Common Interest Community, designated for separate ownership, shown as a Lot or Unit on the recorded Plat or Map for the Common Interest Community, the boundaries of which are defined in the Map or Plat and in Article 5 of this Declaration.
- v) Unit Owner or Owner means the Declarant, or any other Person that owns a Unit.

### ARTICLE 3. EASEMENTS/USE OF REAL ESTATE:

Section 3.01 - Utility and Plat Easements. Easements for utilities and other purposes over and across the Units and Common Elements may be as shown on the recorded Plat of the Common Interest Community, and as may be established pursuant to the

provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 3.02 - Easements for the Executive Board. Each Unit shall be subject to an easement in favor of the Executive Board (including its agents, employees and contractors) to allow for the performance of their obligations as set forth in this Declaration.

Section 3.03 - Unit Owners' Easements of Enjoyment. Every Unit Owner shall have a right and easement access to their Unit and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- (a) The right of the Association to promulgate and publish rules and regulations which each Unit Owner, resident, occupant, tenant, invitee and guest of the Common Interest Community and member of the Association shall strictly comply with.
- (b) The right of the Association to suspend the voting rights of an Unit Owner for any period during which any assessment against their Unit remains unpaid; and for a period not to exceed sixty days for any infraction of its published rules and regulations.
- (c) The right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act.
- (d) The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.
- (e) The Development Rights and Special Declarant Rights of the Declarant reserved in this Declaration.

Section 3.04 - Delegation of Use. Any Unit Owner may delegate their right of enjoyment to the Common Elements and facilities to their employees and agents, members of their family, their tenants, invitees, guests, or contract purchasers who are at their Unit.

Section 3.05 - Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, utility suppliers, and other similar emergency agencies or persons, now or hereafter servicing the Common Interest Community, to enter upon any part of the Common Interest Community in the performance of their duties.

Section 3.06 - Drainage Easements. An easement is hereby granted to the Association, its officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the real estate subject to this Declaration for the purpose of changing, correcting or otherwise modifying the grade of the Real Estate, the Units or drainage channels so as to improve the drainage of water.

Section 3.07 - Easements for Telluride Regional Area Trails Plan. Public easements for trails within the Telluride region may be as shown on the recorded Plat of the Common Interest Community.

#### **ARTICLE 4. THE ASSOCIATION:**

##### Section 4.01 - Membership.

(a) Every person who is a record Unit Owner of any Unit which is subject to this Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for such membership. Where more than one person holds an interest in any Unit, the membership related to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of interest in which the title to the Unit is held. An owner of a Unit shall be entitled to one membership for each Unit owned by him. If title to a Unit is held by a corporation, the membership related to that Unit shall be issued in the name of the corporation, and the corporation shall designate to the Association 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.

(b) Each Unit Owner by acceptance of his interest in a Unit agrees to accept and be bound by this Declaration, the Articles of Incorporation of the Association, Bylaws and Rules and Regulations of the Association that are in effect from time to time.

(c) No Unit Owner may reject, repudiate, disown, renounce or disclaim his membership in the Association and the rights, duties and obligations attendant to the membership.

Section 4.02 - General Purposes and Powers of the Association. The Association, through its Executive Board, shall perform functions and manage the Common Interest Community as provided in this Declaration so as to further the interests of the residents, occupants, tenants and guests of the Common Interest Community and members of the Association. All Unit Owners, residents, occupants, tenants, guests and members of the Association shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes. The Declarant shall have the

reserved power (Declarant Control), pursuant to Section 303(5) of the Act, to appoint and remove officers and members of the Executive Board.

Section 4.03 - Authority of the Association. The business affairs of the Common Interest Community shall be managed by the Association. The Association shall be governed by the Colorado Common Interest Ownership Act, this Declaration, its Articles of Incorporation and Bylaws, as amended from time to time, and any rules and regulations adopted by the Executive Board. The Executive Board may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility.

Section 4.04 - Specific Powers. The Association shall have the powers, authority and duties as follows and as necessary and proper to manage the business and affairs of the Common Interest Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act. In addition, by way of enumeration without obligation, the Association has the following specific powers:

- (a) Adopt and amend Bylaws and Rules and Regulations;
- (b) Adopt and amend revenue, expenditure and reserve budgets;
- (c) Assess and collect expenses assessments and reserves for expenses and capital improvements;
- (d) Hire and discharge managing agents, independent contractors, employees, and agents;
- (e) Institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Association's Declaration, Bylaws or Rules and Regulations in the Association's name, on behalf of the Association or two or more Unit Owners on matters affecting the Common Interest Community;
- (f) Make contracts and incur liabilities;
- (g) Regulate the use and provide for the maintenance, care, repair, replacement and modification of the Common Elements and Facilities;
- (h) Provide exterior repair, maintenance and landscaping, without notice, for any Unit for which, solely in the judgment of the Association, the Unit Owner has failed to maintain his Unit or improvements or landscaping as required under this Declaration;

- (i) Regulate and control the locations for parking vehicles, including but not limited to automobiles, trucks, recreational vehicles, campers, motorcycles, trailers and boats, and the enclosure, method of enclosure and accessways for all such vehicles;
- (j) Provide for the collection, removal and disposal of all solid waste in Telecam/Ilium Park, including the construction, operation and maintenance of waste disposal facilities;
- (k) Adopt, amend and enforce rules and regulations applicable within Telecam/Ilium Park to provide for the orderly collection and disposal of solid waste;
- (l) Regulate and enforce animal control or a ban on animals in Telecam/Ilium Park;
- (m) Cause additional improvements to be made as part of the Common Elements;
- (n) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real or personal property, however, Common Elements may be conveyed or encumbered only pursuant to C.R.S. Section 38-33.3-312;
- (o) Grant easements of any type through or over the Common Elements;
- (p) Obtain and maintain insurance coverage, which in its sole discretion is necessary, with limits and in amounts deemed appropriate by the Executive Board;
- (q) Determine, impose and collect a payment, fee or charge for the use, rental or operation of the Common Elements and for services provided to or for the Unit Owners and Common Elements;
- (r) Impose a reasonable charge for late payment of assessments, and after notice and hearing as set forth at Article 6, levy reasonable fines for violations of this Declaration, the Bylaws and the Rules and Regulations;
- (s) Impose a reasonable charge for the preparation and recordation of supplements and amendments to this Declaration and for statements of unpaid assessments;
- (t) Provide for the indemnification of the Association's officers and Executive Board and maintain Directors' and officers' liability insurance;
- (u) Assign the Association's right to future income, including the right to receive common expense assessments, but only upon

the affirmative vote of the Unit Owners of Units to which at least fifty-one percent (51%) of the votes in the Association at a meeting called for that purpose;

(v) Exercise any other powers conferred by this Declaration or the Bylaws;

(w) Exercise any other power that may be exercised in this state by legal entities of the same type as the Association;

(x) Exercise any other power necessary and proper for the governance and operation of the Association; and

(y) By resolution, establish permanent and standing committees of Directors to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within 45 days of publication of the notice. If an appeal is made, the committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

(z) Operate, maintain and regulate a water treatment and distribution facility and system and a waste water treatment and collection facility and system.

Section 4.05 - Domestic Water Treatment Facility. Declarant shall cause to be constructed, on a Unit or portion thereof owned by it, a water treatment and distribution facility of sufficient capacity to provide potable water to the Common Interest Community ("Water Facility"). Upon completion of its construction, Declarant may convey the Water Facility to the Association in consideration of its promise to pay to Declarant any and all "Tap Fees" imposed and collected for connection of a Unit or lot to the Water Facility. Tap Fees will be in amount set by the Declarant, which amount may reasonably retire the obligation for construction of the Water Facility. In the event that "Tap Fees" are estimated to be insufficient to retire the Association's construction obligation, otherwise uncommitted portions of the Real Estate Transfer Assessment and Retail Sales Assessment may, in the discretion of the Board of Directors, be used to retire such construction obligations. In addition, the Association may in its discretion impose use fees or other charges on individual Units, Common Elements and Limited Common Elements for potable water used or consumed on its premises from the Water Facility. The Association will regulate, set and collect charges and control the delivery and usage of any and all water which is the product of the Water Facility.

Section 4.06 - Waste Water Treatment Facility. Declarant shall cause to be constructed, on a Unit or portion thereof owned by it, a waste water treatment and collection facility of sufficient capacity to provide waste water treatment to the Common Interest Community ("Waste Treatment Facility"). Upon completion of its construction, Declarant may convey the Waste Treatment Facility to the Association in consideration of its promise to pay to Declarant any and all "Tap Fees" imposed and collected for connection of a Unit or lot to the Waste Treatment Facility. Tap Fees will be in amount set by the Declarant, which amount may reasonably retire the obligation for construction of the Waste Treatment Facility. In the event that "Tap Fees" are estimated to be insufficient to retire the Association's construction obligation, otherwise uncommitted portions of the Real Estate Transfer Assessment and Retail Sales Assessment may, in the discretion of the Board of Directors, be used to retire such construction obligations. In addition, the Association may in its discretion impose use fees or other charges on individual Units, Common Elements and Limited Common Elements for use of the Waste Treatment Facility. The Association will regulate, set and collect charges for and control the use of the Waste Treatment Facility.

Section 4.07 - Allocated Interests.

The votes in the Association shall be allocated to each member of the Association as follows:

(a) Each Unit Owner within the Industrial Zone, Forestry Zone and AHPUD Zone shall have one (1) vote for each 1000 square feet of total allowable area of enclosed building space which could be constructed and maintained on such Unit (whether then constructed and maintained or not). In the AHPUD Zone, each dwelling space and related facility with less than 1000 square feet shall have one (1) vote.

(b) The owner of the small hydro easement within lot 503 shall have one (1) vote for each 1000 square feet of total allowable area of enclosed building space which could be constructed and maintained on said easement.

Any Common Expense Assessment(s) assessed pursuant hereto by the Board of Directors against all Unit Owners shall be assessed on an equal basis to all Unit Owners, in accordance with a supplement or amendment to this Declaration or in accordance with such formulations applied to reasonably established categories of Unit Owners as may be determined by the Board of Directors. Any Common Expense Assessment assessed to Unit Owners of unimproved property shall be assessed in the amount of 50% of what such assessment would be if such real estate were then improved.



When Units are added to or withdrawn from the Common Interest Community, pursuant to the provisions of this Declaration or the Act, the formulas set forth above shall be used to reallocate the Allocated Interests.

Section 4.08 - Association Agreements. Any agreement for professional management of the Common Interest Community or any contract providing for services of the Declarant, may not exceed three years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty days' written notice. The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Declarant Control period unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the turnover date upon not more than thirty days' notice to the other party thereto.

Section 4.09 - Right to Notice and Comment/Generally and in regard to amendment of the Bylaws and/or Rules and Regulations. Pursuant to C.R.S. § 38-33.3-205(1)(o), before the Board amends the Bylaws or amends Rules and Regulations, and under other circumstances as set forth in the Act or this Declaration where the Act or this Declaration require that an action be taken after "Notice and Comment," and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Further, any Unit Owner may give "Notice and Comment" to the Unit Owners of any matter affecting the Common Interest Community, and Unit Owners shall then have the right to comment, orally or in writing, on the matter. Notice shall be given to each Unit Owner in writing, delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or notice shall be published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than three days before proposed action is to be taken. The Notice shall invite comment to the Executive Board or a Unit Owner, orally or in writing before the scheduled time of any meeting.

Section 4.10 Indemnification. To the full extent permitted by law, each officer and director of the Association shall be and are hereby indemnified by the Unit Owners and the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not they are an officer or director of the Association at the time such expenses are incurred; except in such cases wherein such officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a

settlement the indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interests of the Association.

## **ARTICLE 5. UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

Section 5.01 - Number of Units. The number of Units initially included in the Common Interest Community is twenty-four (24). The Declarant reserves the right to create and add additional Units, for up to a total of five hundred (500) Units for the Common Interest Community, or such higher number of Units for the properties subject to this Declaration as allowed by any governmental entity having jurisdiction.

Section 5.02 - Identification of Units/Unit Descriptions. The identification number of each Unit is shown on the Map or Plat. Every contract for sale, deed, lease, Security Interest, will or other legal instrument shall legally describe a Unit by its identifying Unit number, the name of the Common Interest Community, with reference to the Declaration. An illustrative description is as follows:

Unit \_\_\_\_\_, Telecam/Ilium Park, Lawson Hill P.U.D., a Planned Community, in accordance with the recorded Plat and Declaration, County of San Miguel, Colorado.

Reference to the Declaration and Map or Plat in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration and Map or Plat, without specific references thereto.

Section 5.03 - Title to the Common Elements. The Common Elements designated in Exhibit B are to be conveyed to the Association. Declarant may hereafter deed to the Association certain additional property as Common Elements intended for common use by the Owners. All Common Elements are dedicated hereby to the common use and enjoyment of Owners, and their family, tenants, employees, guests and invitees, and not to the use of the general public. Declarant hereby discloses for itself, its successors and assigns, that it or its agents may convey easements, licenses, rights to use or title to the Common Elements, by one or more deeds or other instruments.

Section 5.04 - Unit Maintenance. Unit Owners are responsible for the maintenance, repair and replacement of the Improvements and properties located within their Unit boundaries and all Limited Common Elements appurtenant to his Unit exclusively.. Each Unit Owner will reimburse the Association for any damages to any other Unit or to the Common Elements caused intentionally or unintentionally or through the Unit Owner's negligent failure to properly maintain, repair or make replacements to his Unit or to

those Limited Common Elements for which he is responsible under this section.

Section 5.05 - Boundaries. Boundaries of each Unit created by the Declaration are shown on the Plat or Maps as may be recorded. Boundaries of each Unit created by subdivision of an original Unit or by submission of an original Unit to a common interest ownership regime pursuant to the Act, will be shown on Plats or Maps as may be recorded.

(a) Inclusions: Each Unit will include the spaces and Improvements lying within the boundaries described above and also includes the utilities and utility meters and communications, television, telephone and electrical receptacles and boxes serving that Unit exclusively, whether or not in the boundaries or contiguous to the Unit, unless the same are maintained by the Association or by a governmental agency or entity.

(b) Exclusions: The Common Elements are excluded from each Unit and any utilities or other facilities running through or within any Unit for the purpose of furnishing utility and other service to other Units and/or the Common Elements are also excluded.

(c) Inconsistency with Plat: If this definition of unit boundaries is inconsistent with the Plat, then this definition will control.

Section 5.06 - Association Maintenance. The Executive Board of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance responsibilities.

(a) The Association shall be responsible for: the improvement, maintenance, repair and replacement of any Common Elements, including landscape care; the improvement, upkeep and maintenance, repair and reconstruction of landscaped areas in dedicated public right of ways or public easements or for the payment of expenses which may be incurred by virtue of agreement with or requirement of any local governmental authority; trash removal, on a weekly or other similar periodic basis; the improvement, upkeep and maintenance, repair and reconstruction of the Waste Water Treatment Facility; the improvement, upkeep and maintenance, repair and reconstruction of the Water Treatment Facility, and for such other maintenance and repair as set forth herein.

(b) Any person authorized by the Executive Board shall have the right of access to all portions of the Real Estate for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Common

Interest Community, for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing and replacing utility meters and related pipes, valves, wires and equipment, provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Unit Owner is present at the time.

#### **ARTICLE 6. COVENANT FOR COMMON EXPENSE ASSESSMENTS, SPECIAL ASSESSMENTS AND OTHER ASSESSMENTS:**

Section 6.01 - Creation of Association Lien and Personal Obligation to Pay Assessments. Declarant, for each Unit, shall be deemed to covenant and agree for each Unit owned by them, and each Unit Owner, by acceptance of a deed therefor, 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 annual Common Expense Assessments and such other assessments as imposed by the Association. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Unit Owner of such Unit at the time when the assessment or other charges became or fell due. The Association's annual Common Expense Assessments and such other assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such assessment or charge is made. If any Assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Unit Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration.

Section 6.02 - Apportionment of Common Expenses. Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Units in accordance with formula for Allocated Interests as set forth in section 4.07 hereof.

Section 6.03 - Purpose of Assessments. The assessments levied by the Association through its Executive Board shall be used exclusively for the purposes of promoting the health, safety, and welfare of the residents and guests of the Common Interest Community and the members of the Association. The assessments may also be used to provide insurance of various types, and in such amounts deemed appropriate by the Executive Board. Also, a portion of the assessments may be used to provide a reserve fund for the replacement, repair, and maintenance of Common Elements or other improvements which must be replaced on a periodic basis. Some assessments, if deemed appropriate by the Executive Board, may be used to pay for or fund the costs of the common Interest Community's impact on San Miguel County and the Town of Telluride.

Section 6.04 - Annual Assessment/Commencement of Common Expense Assessments. The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Executive Board. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 6.05 - Special Assessments. In addition to the Common Expense Assessments authorized by this Declaration, the Association may levy Special Assessments, payable over such periods as the Executive Board of the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or re-construction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant hereto against all Owners shall be assessed on an equal basis to all Owners in accordance with such formulations applied to reasonably established categories of Owners as may be determined by the Executive Board. Any amounts assessed pursuant hereto against less than all of the Owners shall be assessed in the same manner as set forth in section 4.07. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and payment shall be due 30 days after such notice shall have been given. A special assessment shall bear interest at the rate of 18% per annum from the date it becomes due and payable if not paid within 30 days after such due date. The Executive Board shall determine, apportion, levy and assess the Association's Special Assessments subject only to such vote of the members of the Association as may be provided for in this

Declaration, in the Articles of Incorporation or in the By-laws of the Association.

Section 6.06 - Assessment Reserves. The Association may require an Owner, other than Declarant, to deposit with the Association an amount not exceeding one half (1/2) of the amount of the then current annual total of the Common Expense Assessment, which sum shall be held, with interest, by the Association as a reserve to be used for paying such Owner's Common Expense Assessment and for working capital. Such an advance payment shall not relieve an Owner from making the regular periodic payment of the Common Expense Assessment as the same comes due. Upon the transfer of his Unit, an Owner shall be entitled to a credit from his transferee for any unused portion thereof. This account may be updated annually by the Association, and in that event, notice shall be given to all Unit Owners whose individual account does not equal one half (1/2) of the current annual assessment. Payment of any shortage shall be due with the next regular assessment payment, following written notice.

Section 6.07 - Real Estate Transfer Assessment. This Declaration herewith creates a Real Estate Transfer Assessment to be paid to the Association on all transfers of any ownership or title, whether by deeds, instruments, writings, leases, or any other documents or otherwise, by which any lands, tenements or other interests in a Unit located in Telecam/Ilium Park 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 ("Transfer"), except as may be specifically exempted by this Declaration. Said Assessment shall be due and payable at the time of any such Transfer and contemporaneously therewith as hereinafter specified.

I. The amount of Real Estate Transfer Assessment payable in each case shall be as follows:

(a) Where there is no Consideration or when the Consideration is Five Hundred Dollars (\$500.00) or less, no Real Estate Transfer Assessment shall be payable.

(b) Where the Consideration shall exceed Five Hundred Dollars (\$500.00), the Real Estate Transfer Assessment payable shall be as established from time to time by the Board of Directors. The initial Real Estate Transfer Assessment shall be three (3%) percent of the Consideration.

(c) In the event that the Real Estate Transfer Assessment shall be payable as a result of a non-exempt lease or lease option, the Board of Directors shall determine the method by which said lease shall be valued, which method shall be uniformly applied to all such similar transfers.

II. The Real Estate Transfer Assessment imposed by this Declaration shall not apply to:

(a) Any Transfer wherein the Association or the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivision of this State, is either the grantor or grantee.

(b) Any Transfer by gift of a Unit, where there is no Consideration other than love and affection or charitable donation.

(c) 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 Unit; however, if additional Consideration or value is paid in connection with such partition or Consideration or value is paid in connection with such partition or termination, the assessment shall apply and be based upon such additional Consideration.

(d) Any Transfer of title or change of interest in a Unit by reason of death, pursuant to a will, the law of decent and distribution, or otherwise.

(e) Transfers made pursuant to reorganization, merger or consolidation of corporations or partnerships, or by a subsidiary to a parent corporation or partnership for no Consideration other than cancellation or surrender of the subsidiary's stock or partnership interest, or Transfers made to or from a corporation, partnership, limited partnership, joint venture, business trust or other association or organization to the extent that the new entity is owned by the persons by whom such Transfer was made with respect to the interests they had in the real property immediately prior to said Transfer and there is no Consideration other than their respective interest in the new association or organization.

(f) Transfers to make effectuate any plan confirmed or ordered by a court of competent jurisdiction under the Bankruptcy Code or in an equity receivership proceeding.

(g) 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.

(h) 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.

(i) Any Transfer of cemetery lots.

(j) Any lease of any Unit (or assignment or Transfer of any interest in any such lease) provided the terms and conditions of such lease does not contain a term, or initial term and all renewal terms, which aggregate in length 15 years or more; provided lessee has possession or the right to possession on payment of rents. A lease upon which the Real Estate Transfer Assessment is due also means any lease of a Unit for less than 15 years of term, or initial term and all renewal terms aggregated, if lessee has an option to purchase some or all of the Unit leased. However, 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 Real Estate Transfer Assessment shall not be due and payable unless and until the exercise and consummation of such option.

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

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

(m) A transfer of title or any lesser interest for purposes of obtaining financing, or otherwise, not intended to effect a permanent alienation of the grantor's interest.

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

(o) Transfers made to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization to the extent that the transferee is owned by the transferror or the transferror is owned by the transferee.

(p) 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.

(q) Any Transfer which fulfills the following two conditions:

(i) The transferror previously obtained title to the property from the transferee.

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

(r) A transfer under foreclosure or power of sale, or a voluntary conveyance in lieu of foreclosure, whereby the secured party takes back the property or the property is redeemed. However, a purchaser at a foreclosure sale who holds no security interest or redemption rights in the property, and who acquires title to the property upon expiration of all redemption periods, is required to pay the Real Estate Transfer Assessment.

(s) Exchanges of real property where (i) one of the parties to the exchange is Declarant and (ii) the exchange occurs pursuant to a contract entered into before the date of recording the final Plat creating the Property being exchanged.

(t) Transfers pursuant to a decree of separation or divorce.

(u) Transfers to intermediaries for no consideration for a period not to exceed six months.

(v) Any wholesale transfer by Declarant of multiple Units to a person or entity who intends to resell such Units on a retail basis.

III. Each Purchaser and any other Person to whom a Transfer is made, which Transfer is subject to the Real Estate Transfer Assessment imposed under this section 6.07, shall be jointly and severally liable for payment of the assessment. The Purchaser or Person to whom a Transfer is made shall remit the Real Estate Transfer Assessment to the Association.

IV. Nothing to the contrary withstanding, the Declarant, in its sole discretion, shall require the Association to remit to San Miguel County Housing Authority ("SMCHA") or a regional housing authority formed to succeed to the function of SMCHA, equal to 25 percent (25%) of the Real Estate Transfer Assessment.

V. Nothing to the contrary withstanding, the Declarant, in its sole discretion, shall require the Association to remit equal to 33 1/3 percent (33 1/3%) of the Real Estate Transfer Assessment to San Miguel County, Colorado, to fund regional transportation within the Telluride, Colorado, region or to an authority created for such purpose.

VI. In the event that "Tap Fees" imposed and collected in connection with the connection of a Unit or lot to the Water Facility or Waste Treatment Facility are insufficient, or projected to be insufficient, to retire the obligation of the Association for construction of the Water Facility (Section 4.05 hereof) and Waste Treatment Facility (Section 4.06 hereof), the Board of Directors may, in its sole discretion, allocate an otherwise uncommitted portion of the Real Estate Transfer Assessment to retire said obligation of the Association.

VII. In the event of any transaction claimed to be exempt from the Real Estate Transfer Assessment herein imposed, the grantor or Purchaser shall apply for and attempt to obtain from the Association a Certificate of Exemption, which may be affixed to the deed or other instrument of Transfer. The burden of proving any exemption shall in all cases be upon the Person claiming it. The exemptions provided in section 6.07 (II) hereof shall be allowed only upon issuance of a Certificate of Exemption by the Association prior to the date the Real Estate Transfer Assessment is payable to the Association.

VIII. In case of any application for an exemption which is not granted before the Transfer takes place, the Real Estate Transfer Assessment shall be paid as required by this Declaration. Thereafter if the exemption shall be allowed, upon application to the Association, the Person who has paid said assessment shall be entitled to a refund thereof or for so much of said assessment which shall qualify for refunding pursuant to the exemption granted.

IX. When a Transfer subject to this Declaration includes a Unit located within Telecam/Ilium Park as well as property located elsewhere, the assessment imposed under the authority of this Declaration shall be computed only with respect to the Unit located within Telecam/Ilium Park and the Real Estate Transfer Assessment shall be assessed based on that part of the Consideration fairly attributable to such Unit.

X. The Real Estate Transfer Assessment imposed herein is due and payable at the time of the Transfer of a Unit, and is delinquent if it remains unpaid for thirty days thereafter. In the event that the Real Estate Transfer Assessment is not paid prior to becoming delinquent, a delinquency penalty of fifteen percent (15%) of the amount of Real Estate Transfer Assessment shall accrue. In the event a portion of the Real Estate Transfer Assessment is paid prior to becoming delinquent, the penalty shall only accrue as to the portion which is delinquent. Interest shall accrue at the rate of 1 1/2 percent (1.5%) per month, or fraction thereof, on the amount of Real Estate Transfer Assessment exclusive of penalties, from the date the Real Estate Transfer Assessment becomes delinquent to the date of payment. Interest and penalty accrued shall become part of the Real Estate Transfer Assessment.

Section 6.08 - Retail Sales Assessment. This Declaration herewith creates a Retail Sales Assessment on all sales of tangible personal property made, consummated, conducted, transacted or occurring, services rendered and short-term accommodations rental of any Unit or portion thereof by any Owner, Lessee or other Person within the geographical boundaries of Telecam/Ilium Park (all of which are referred to herein as "Local Sales") which are subject to the Colorado Emergency Retail Sales Tax Act of 1935 (Colorado Revised Statutes, 1973, Title 39, Article 26), as amended (the "Colorado Sales Tax"). However, the Association or its Executive Board may in its sole discretion exempt the rentals paid for and in connection with the transient workers' dormitory from the assessment of a Retail Sales Tax Assessment. Each Owner's Retail Sales Tax Assessment shall be determined by multiplying (A) the Colorado Sales Tax which an Owner, Lessee or other Person is required to collect and remit or pay to the State of Colorado in accordance with said Act in regard to Local Sales made, consummated, conducted, transacted or occurring at a Unit ("Unit Local Sales"), times (B) the Retail Sales Assessment Rate. Each such Owner's Retail Sales Assessment shall be due and payable without notice to the Association each time and at such time as an Owner, Lessee or other Person is required to remit or pay Colorado Sales Tax to the State of Colorado with respect to Unit Local Sales. Each such Owner, Lessee or other Person shall also deliver to the Association without notice true and complete copies of all written reports, returns, statements, records and declarations, including any supplements or amendments thereto (all of which are referred to herein as "Reports") made or provided to the State of Colorado by such Owner, Lessee or other Person in connection with any Unit Local Sales under the provisions of said Act at such time as such Reports are required to be made to the State of Colorado. If any subsequent adjustments, additions or modifications are made to any Colorado Sales Tax remitted or paid or Report made by such Owner, Lessee or other Person to the State of Colorado, such Owner, Lessee or other Person shall within 30 days thereafter so notify the Association and provide it with true and complete copies of all

Reports or other written material issued or received by such Owner, Lessee or other Person in regard thereto. If any adjustment increases the amount of Colorado Sales Tax any Owner, Lessee or other Person is required to remit or pay with respect to Unit Local Sales or results in a refund of such tax, such Owner, Lessee or other Person shall accordingly pay an appropriate additional Retail Sales Assessment or receive an appropriate refund from the Association of any excess Retail Sales Assessments previously paid. Any portion of any Retail Sales Assessment not paid by or on behalf of any Owner when due and payable shall become a lien on and against all of the real property owned or leased by such Owner in Telecom/Ilium Park. The Board of Directors in cases of extreme hardship may release any such lien if it receives other security for the payment of the delinquent Retail Sales Assessments which it deems sufficient to protect the interest of the Association.

I. Anything to the contrary notwithstanding, there shall be excluded from the calculation of Unit Local Sales any Local Sales which, when made, are subject to a "Use" tax or assessment imposed by any municipality or homeowners' or property owners' association or company.

II. The Retail Sales Assessment Rate shall be as established from time to time by the Board of Directors, but in no event in an amount greater than the Municipal Retail rate from time to time in effect within the Town of Telluride, Colorado. The initial Retail Assessment Rate shall be 133.33%.

III. Nothing to the contrary withstanding, the Declarant, in its sole discretion, shall require the Association to remit to SMCHA or a regional housing authority formed to succeed to the function of SMCHA, equal to 12.5 percent (12.5%) of the Retail Sales Assessment.

IV. In the event that "Tap Fees" imposed and collected in connection with the connection of a Unit or lot to the Water Facility or Waste Treatment Facility are insufficient, or projected to be insufficient, to retire the obligation of the Association for construction of the Water Facility (Section 4.05 hereof) and Waste Treatment Facility (Section 4.06 hereof), the Board of Directors may, in its sole discretion, allocate an otherwise uncommitted portion of the Retail Sales Assessment to retire said obligation of the Association.

#### Section 6.09 - Water and Waste Water Connection and Use Assessments.

I. This Declaration herewith creates a one time assessment ("Tap Fee") payable by a Unit Owner at the time of connection of any facility or improvement located on a Unit, Common Element or Limited Common Element to the Domestic Water Treatment Facility

("Water Facility") or Waste Water Treatment Facility ("Waste Treatment Facility").

II. This Declaration herewith creates a periodic assessment ("Use Fee") payable by the Unit Owner on a regular basis based on actual usage of the Water Facility and Waste Treatment Facility.

III. The amount and method of calculating the Tap Fee shall be as established from time to time by the Declarant.

IV. The Association may regulate usage of, set Use Fees, determine methods of calculating and collecting such fees and in any other way control the usage of the Water Facility and Waste Treatment Facility.

V. The entire Tap Fee whenever assessed or collected will be payable to the Declarant immediately upon its receipt.

Section 6.10 - Effect of Non-Payment of Assessments. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Executive Board, shall bear interest at the rate of eighteen percent, on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Executive Board. Failure to make payment within sixty days of the due date thereof shall cause the total amount of such Unit Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Association against a Unit Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and a Unit Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Unit Owner. The

rights of the Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 6.11 - Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien Security Interest on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under State or Federal law. Sale or transfer of any Unit shall not affect the lien for said assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by applicable State law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

#### **ARTICLE 7. RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY:**

All Real Estate within the Common Interest Community shall be held, used and enjoyed subject to the following limitations and restrictions and subject to the exemptions of Declarant set forth in this Declaration.

Section 7.01 - Use/Occupancy. All Units within the Common Interest Community shall be used only for the purposes allowed by San Miguel County, Colorado, zoning, control and regulation. The uses to which the designated units are restricted may only be changed pursuant to Colorado Common Interest Ownership Act section 38-33.3-217. Each Unit Owner (a) will comply with the provisions of this Declaration; (b) will not engage in any activity which violates any provision of this Declaration; (c) will obtain and pay for all licenses and permits which may be necessary in connection with the conduct of its business or use at or in the Common Interest Community; and (d) will comply with all legal requirements applicable to the use of the Common Interest Community.

Section 7.02 - Restrictions on Leases and Alienation. All leases and rental agreements shall be in writing and subject to the Declaration, Bylaws and Rules and Regulations. All leases of a Unit or portion thereof shall be filed with the Association prior

to occupancy thereunder and include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Declaration, Bylaws and Rules and Regulations against the tenant, provided the Association gives the landlord notice of its intent to so enforce and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

Any purported lease of a Unit in violation of the Declaration will be voidable within thirty days of the date the document evidencing the purported lease is recorded in San Miguel County, at the election of the Association. The Association may take any other actions against the parties to the transaction which are permitted by law.

A Unit may not be conveyed or occupied pursuant to a time-share plan as defined by statutes of the state of Colorado.

Section 7.03 - No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions on a Unit shall be enclosed within an approved structure constructed on a Unit. In addition, this restriction shall include and shall not be limited to the following: (a) Trailers, mobile homes, trucks (other than pickups), boats, bicycles, motorcycles, snowmobiles, mowers, tractors, campers not on a truck, snow removal equipment, trash storage containers and garden or maintenance equipment, shall be stored or parked only in areas designated by the Design Review Board; (b) Refuse, garbage and trash shall be kept in a bear proof (as required and approved by the Colorado Department of Wildlife) covered container at all times; (c) Service areas and facilities shall be kept within an approved enclosure; (d) Pipes for water, gas, sewer, drainage or other purposes, utility facilities, gas, oil, water or other tanks (not including propane gas tanks which shall in all cases be prohibited), and sewage disposal systems or devices shall be kept and maintained within an approved area or below the surface of the ground; and (e) No lumber, except split and stacked fireplace logs located and included in areas approved by the Design Review Board, 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 Real Estate than on a Commercial Unit or a Light Industrial Unit and then only in accordance with the requirements of the Design Review Board. 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 from time to time as it deems necessary or desirable.

Section 7.04 - Restrictions on Dogs and Animals. No dog shall be allowed within Telecam/Ilium Park at any time. Animals may not be kept for any commercial purposes. Owners or persons having

control of an animal, shall, while the animal is in the Common Interest Community, hold the Association and other Owners harmless from any claim resulting from any action of their animal and any costs incurred by the Association. Provided, however, that a veterinarian clinic and/or animal pound, built, maintained and operated according to a plan approved by the Declarant.

Section 7.05 - Landscaping Requirements and Restrictions. No lawns shall be allowed and only native species of vegetation shall be allowed. No tree of three inches or greater in diameter (measured at a point 54 inches above grade) or ten feet or greater in height may be removed from any Real Estate without the prior written approval of the Design Review Board. Vegetation on all Property must be maintained to minimize erosion and encourage growth of ground cover and all tree and shrub planting must be consistent with the landscaping plan approved by the Design Review Board. No construction may occur on a Unit unless a landscaping plan, approved by the Design Review Board, has been approved for the Unit in conjunction with the proposed construction.

Section 7.06 - Restriction on Garbage Collection. If garbage collection is a service of the Association to the Units in the Common Interest Community, no Owner shall have the right to engage or contract for garbage removal from their Unit, on a regular basis, other than through the service provided by the Association.

Section 7.07 - Nuisances. No Nuisance shall be permitted within the Common Interest Community, nor any use, activity or practice which is the source of unreasonable disturbance, annoyance or embarrassment to, or which unreasonably offends or disturbs, any Unit Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Unit or Common Element, or any portion of the Common Interest Community by Unit Owners. No immoral, improper, offensive or unlawful use shall be permitted within the Common Interest Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Common Interest Community or a portion thereof shall be observed. As used herein, the term nuisance shall not include any activities of Declarant or its successors and assignees which are reasonably necessary to the development and construction of Improvements within this Common Interest Community; provided, however, that such activities shall not reasonably interfere with any Unit Owner's use and enjoyment of their Unit, or any Unit Owner's ingress and egress to or from their Unit and a public way.

Section 7.08 - Vehicular Parking, Storage, and Repairs. Parking of vehicles, including but not limited to those items set forth in section 7.03 (a), is permitted only within and at designated parking spaces on Units and such other spaces as may be approved by the Design Review Board; such parking space shall be



used only by the Unit Owner or Lessee of such Unit or their guests for the parking of personal vehicles. No vehicle, including but not limited to those items set forth in section 7.03 (a), may be parked on any roadway, access tract, open-space tract or other common areas without the prior written consent of the Association. No oversized vehicles, trailers, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck, self contained motorized recreational vehicle, or other oversized type of vehicle or equipment, may be parked or stored within the Common Interest Community unless such parking or storage is within a parking area, garage or structure approved by the Design Review Board located on a Unit; except, that any such oversized vehicle may be otherwise parked as a temporary expedience for loading, delivery of goods or services, or emergency. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Common Interest Community which are necessary for construction or for the maintenance of the Common Elements, Units, or any Improvement located thereon.

Section 7.09 - No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Common Interest Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Common Interest Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Common Interest Community except with the prior written approval of the Design Review Board. The Association expressly reserves the right to replace or remove any light or lightsource not approved by the Design Review Board upon ten days written notice to the Unit Owner. The cost of such replacement or removal shall be borne by the Unit Owner and payable pursuant to the terms and conditions set forth in Article Six hereof.

Section 7.10 - No Hazardous Activities. No activity shall be conducted on any portion of the Common Interest Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no hunting shall be allowed and no firearms shall be discharged upon any Real Estate; and no open fires shall be lighted or permitted on any Real Estate. This section shall not be construed to prevent the use of explosives, approved by the Design Review Board, required for the preparation of a Unit to allow the construction of approved improvements on the Unit.

Section 7.11 - Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Common Interest Community, except as may be approved in writing by the Design Review Board. Approval will not be unreasonably withheld.

Section 7.12 - Temporary Structures/ New Construction/ Excavation. No trailer, mobile home, tent or shack or other temporary building, Improvement or structure shall be placed upon any property without the prior written approval of the Design Review Board, such approval to include the nature, size and location of such structure. 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 Article 7 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. No excavation shall be made except in connection with Improvements approved as provided in this Declaration.

Section 7.13 - Water and Sanitation. Each structure designed for occupancy or use by humans shall connect with water and sanitation facilities as shall be made available from time to time by the approved person or entity.

Section 7.14 - Wells. No well from which water, oil, or gas is produced shall be dug, nor shall storage tanks, reservoirs, or any installation of power, telephone, or other utility lines (wire, pipe, or conduit) be made or operated anywhere on the Real Estate except in connection with water wells and works operated by the Declarant or its agents or assigns, the Association, a Metro District, public agencies or duly certified public utility companies.

Section 7.15 - Camping and Picnicking. No camping or picnicking shall be allowed within the Real Estate except in those areas designated for those purposes. The Executive Board, in its discretion, may ban or permit public assemblies and rallies within the Real Estate.

Section 7.16 - Destruction of Improvements. No improvement which has been partially or totally destroyed by fire, earthquake or otherwise, shall be allowed to remain in such state for more than six (6) months from the time of such destruction.

Section 7.17 - Occupancy Limitations. No portion of any Property shall be used as a residence or for living or sleeping purposes other than in a room designed for living or sleeping in a completed structure for which a certificate of occupancy has been issued or final inspection has been made. No room in any structure shall be used for living or sleeping purposes by more persons than it was designed to accommodate. Except as expressly permitted in writing by the Design Review Board, no mobile homes, trailers or temporary structures shall be permitted on any Real Estate.

Section 7.18 - Restriction on Use of Vehicles. No motorcycle, motorbike, snowmobile, golf cart or other motorized vehicle shall

be operated within or on the Real Estate, except on designated roads or except as otherwise specifically permitted by rules and regulations of the Association.

Section 7.19 - No Water Wells. No water wells shall be permitted on any Property without the prior written approval of the Association and Declarant.

Section 7.20 - Limitations on Irrigation. No Unit may utilize water for irrigation in any amount without specific approval of the Association.

Section 7.21 - Cesspools or Septic Tanks. No cesspools or septic tanks are allowed within the Common Interest Community.

Section 7.22 - No Fences. No fences, walls or other barriers shall be permitted without the prior written approval of the Design Review Board.

Section 7.23 - Compliance With Law. No Real Estate 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 San Miguel, and all other municipal, governmental or lawful authority whatsoever, affecting the Real Estate or the improvements thereon or any part thereof, and of all their departments, bureaus and officials.

Section 7.24 - Flow Meter and Pressure Reducing Valve. The user of each water service line within Telecam/Ilium Park, if required by the entity furnishing water, shall equip each water service line with a flow meter and pressure reducing valve. The flow meter and pressure reducing valve shall meet the specifications determined by the Association, if any, and shall be installed pursuant to the specifications of the Association, if any.

Section 7.25 - Toilet Restriction. The only toilets permitted to be installed on the Real Estate are toilets with 1.6 gallon or less capacity.

Section 7.26 - Clotheslines. No clotheslines may be constructed or used on any Unit without the prior written consent of the Design Review Board.

Section 7.27 - Antennas. No antennas, dishes or similar facilities for the transmission or reception of audio or visual signals may be constructed on any Unit without the prior written consent of the Design Review Board.

Section 7.28 - Swimming Pools. No swimming pool shall be allowed on any Unit.

Section 7.29 - Restriction on Solid Fuel Burning Devices. No solid fuel burning device shall be allowed on any Unit; provided however that up to three solid fuel burning devices may be located within Lawson Hill PUD upon receipt of approval from the Design Review Board for each such device. No solid fuel burning device shall be operated during periods of adverse meteorological conditions or adverse air pollution conditions as determined by the Association. Use of solid fuel burning devices shall be subject to applicable governmental regulations.

Section 7.30 - Height Limitations. Among other things, the Design Review Board shall establish height limitations for the construction of all improvements on any Real Estate.

Section 7.31 - Recycling Program. Unit Owners will participate in any recycling program implemented in the Telluride region and pay their pro rata share of any costs associated with such program.

Section 7.32 - No Hunting. No hunting shall be allowed within Telecam/Ilium Park.

Section 7.33 - Hold Harmless/Indemnification. Each Owner agrees to indemnify and hold the Association, the Declarant and the Colorado Division of Wildlife harmless for any damage that they may incur, to person or property, which results from either the actions or inactions of any wildlife within Telecam/Ilium Park.

Section 7.34 - No Mining or Drilling. Except as otherwise specified on the final Plat therefore or as approved by the Board of Directors upon the application of the Unit Owner, no Unit 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.

Section 7.35 - Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, rules and regulations concerning and governing the Common Interest Community or any portion thereof may be adopted, amended, or repealed, from time to time, by the Executive Board, or its successors and assigns, subject to the Notice and Comment provisions of this Declaration. The Executive Board may establish and enforce penalties for the infraction thereof.

## **ARTICLE 8 - DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS**

Section 8.01 - Development Rights and Special Declarant Rights. The Declarant reserves, through twenty (20) years after the recording of this Declaration, the following Development Rights and Special Declarant Rights with respect to Common Elements, Units not owned or leased by third parties, and Limited Common Elements

not designated to the exclusive use of one or more Units owned or leased by third parties:

- (a) the right to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements, subdivide Units, re-subdivide Units or complete or make Improvements, as the same may be indicated on Maps or Plats filed of record or filed with the Declaration;
- (b) the right to create or construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements;
- (c) the right to exercise any development rights reserved or allowed in the Act;
- (d) the right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary;
- (e) the right to make the Common Interest Community subject to a master association and master declaration;
- (f) the right to merge or consolidate the Common Interest Community with another Common Interest Community;
- (g) the right to appoint or remove any officer of the Association or any Director during the Declarant Control period;
- (h) the right to add Units and to subject all or any part of the property described in Exhibit C attached hereto and hereby incorporated by reference and additional unspecified property to the provisions of this Declaration;
- (i) the right to amend the Declaration in connection with the exercise of any development right; and,
- (j) the right to amend the Maps or Plat in connection with the exercise of any development right.

Section 8.02 - Additional Reserved Rights. In addition to the rights set forth above, Declarant also reserves the following additional rights:

- (a) Sales. The right to maintain multiple and different sales offices, management offices and models on Units or on the Common Elements.

- (b) Signs. The right to maintain multiple and different signs and advertising on the Common Interest Community to advertise the Common Interest Community or other communities developed or managed by, or affiliated with the Declarant.
- (c) Dedications. The right to establish, from time to time, by dedication or otherwise, public streets, utility and other easements for purposes including but not limited to public access, access, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions.
- (d) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of parking and/or recreational facilities and/or Common Elements, which may or may not be a part of the Common Interest Community.
- (e) Construction Easement. Declarant and its successors and assignees expressly reserve the right to perform warranty work, and repairs and construction work and to store materials in secure areas, in Units and in Common Elements, and the future right to control such work and repairs, and the right of access thereto, until completion. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Real Estate.
- (f) Limited Common Elements. The Declarant reserves, for itself, through twenty (20) years after the recording of this Declaration, and to the Association, after the expiration of Declarant's twenty (20) year period, as that period may be extended, the right to allocate areas which constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the owners of Units to which those specified areas shall or may become appurtenant. The Declarant or Association may allocate or assign Common Elements or Limited Common Element areas (i) by making such an allocation in a recorded instrument, or (ii) in the deed to the Unit to which such Limited Common Element shall be appurtenant, or (iii) by recording an appropriate amendment or supplement to this Declaration or (iv) by recording a supplement to the Map. Such allocations by the Declarant or by the Association may be made as a matter of reserved right.

- (g) Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration.

Section 8.03 - Rights Transferable/Rights Transferred. Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the County. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Unit Owners or any holders of Security Interest.

Section 8.04 - No Further Authorizations Needed. The consent of Unit Owners or holders of Security Interests shall not be required for exercise of any reserved rights, and Declarant or its successors and assignees may proceed without limitation at their sole option. Declarant or its successors and assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its successors and assignees shall not be obligated to exercise any reserved rights or to expand the Common Interest Community beyond the number of Units initially submitted.

Section 8.05 - Exercise of Reserved Rights. If Declarant or its successors and assignee elects to exercise any reserved rights, that party shall comply with the Act.

Section 8.06 - Interpretation. Recording of amendments to the Declaration and the Map or Plat pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically: i) vest in each existing Unit Owner the reallocated Allocated Interests appurtenant to their Unit; and ii) vest in each existing Security Interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Common Interest Community as expanded and to any additional Improvements, and the same shall be added to and become a part of the Common Interest Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration or Map. Reference to the Declaration and Map in any instrument shall be deemed to include all Amendments to the Declaration, and the Map without specific reference thereto.

Section 8.07 - Termination of Reserved Rights. The rights reserved to Declarant, for itself, its successors and assigns,

shall expire as set forth above or in the Act, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law or, (iii) terminated by written instrument executed by the Declarant, recorded in the records of the Clerk and Recorder of the County, Colorado.

Section 8.08 - Additions by Others. Additions of Units to the Common Interest Community may be made by others than the Declarant, or its successors and assigns or Owners, upon approval of the Association pursuant to a vote of a majority of a quorum of its members.

## ARTICLE 9 - ARCHITECTURAL APPROVAL/DESIGN REVIEW

Section 9.01 - Required Approvals and Design Criteria. Improvements to the exterior of a Unit, all fences, landscaping changes and signs are restricted without the prior written approval of the Design Review Board. Specifically, no structure or any attachment to the exterior of the Improvements on a Unit and no fence, sign or landscaping shall be constructed, erected, placed or installed, including, but not limited to, a change in painting and/or staining of exterior siding, unless complete plans and specifications thereto (said plans and specifications to show exterior design, height, materials, color, location of the structure or addition to the structure, plotted horizontally and vertically, location and size of driveways, general plan of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the committee and) shall have been first submitted to and approved in writing by the Design Review Board. The Design Review Board shall exercise its reasonable judgment to the end that all attachments, Improvements, construction, landscaping and alterations to Units shall comply with the requirements set forth herein. The approval or consent of the Design Review Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious; decisions shall be conclusive and binding on all interested parties. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of Improvements on nearby Units, preservation of aesthetic beauty, compliance with the restrictions contained in this Declaration and conformity with the specifications and purposes generally set out in this Declaration. No Owner or their agent or assign shall apply for an excavation permit, building permit or similar permit from San Miguel County unless he has received final approval from the Design Review Board. No Owner or their agent or assign shall apply for a certificate of occupancy, final building approval, temporary certificate of occupancy, temporary final building approval, or other similar



occupancy approvals from San Miguel County unless he has received a certificate of compliance or written permission to apply to so apply to San Miguel County from the Design Review Board. Prior to its review of any plans, specifications and submittals, the Design Review Committee may require that the applicant(s) deposit with the Design Review Committee a fee which it deems sufficient to cover the costs of the design review and approval process. The Design Review Committee may require the applicant to supplement the deposit required herein. The Design Review Committee may impose such additional reasonable fees and bonds which it deems necessary to insure that the intent and purpose of the Declaration and the Design Regulations are fulfilled.

Section 9.02 - Establishment of the Design Review Board. The Design Review Board is hereby established and shall consist of three (3) regular members and five (5) alternate members. Until twenty (20) years from the date this Declaration is recorded or, as otherwise provided by the Act, Declarant shall appoint all members of the Design Review Committee. After expiration of Declarant's appointment rights, the Design Review Board may then be comprised completely of Unit Owners without regard to special qualifications and the members shall then be appointed by the Association. Until that date, Declarant, in its sole discretion, may at any time grant the power of appointment of the members of the Design Review Board, and the chairman thereof, to any entity succeeding to the assets of the Declarant, or to the Association. The regular term of office for each member shall be two years, coinciding with the fiscal year of the Association; however, one member of the initial Design Review Board shall be appointed for an initial term of three years to ensure that one of the three members serve on staggered terms. Until twenty (20) years from the date this Declaration is recorded or, as otherwise provided by the Act, the Declarant may remove any appointee at any time upon written notice to such appointee. Subsequent to Declarant's power to appoint and remove, any such member may be removed only by the board of directors of the Association for cause by written notice to such appointee. A successor or successors appointed to fill any vacancy created for any reason shall serve the remainder of the term of the former member.

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. All business of the Design Review Board, except business reasonably required to be transacted in an executive session, shall be conducted at meetings which are open to members of the Association. Meetings shall be held as necessary and as established by The Design Review Board. All meetings shall be held at the offices of the Association, in the Telluride area, unless otherwise permanently or temporarily

changed to another location by notice to the members of the Association. Three 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 place, and in the absence of all members any staff member of the Association may adjourn any meeting to a later time or date. The affirmative vote of a majority of the members of the Design Review Board present 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 rules of procedure that it may establish and modify from time to time, said rules 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.

The Design Review Board is hereby authorized to retain the services of adequate staff personnel and one or more consultants which shall include but are not limited to engineers, architects or landscape architects 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. 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.

Section 9.03 - Design Regulations. To supplement the provisions of this Article, and this Declaration, the Design Review Committee may adopt guidelines and promulgate and publish rules and regulations (the "Design Regulations") that shall state the general design theme of all projects in Telecam/Ilium Park, specific design standards, and the general construction guidelines that will or will not be allowed in Telecam/Ilium Park. The Design Regulations shall also describe the procedures to be followed and material which must be provided by any Unit Owner or his authorized agents in order to obtain review of proposed construction by the Design Review Board. The Association shall be obligated for the preparation of such publications and the Design Review Board shall make such publications available to members of the Association for a reasonable fee. The Design Regulations shall apply to all Units and other property located within the Telecam/Ilium Park.

Section 9.04 - Reply and Communication. The Design Review Committee shall reply to all submittal of plans made in accordance herewith in writing within sixty (60) days after receipt. Where prior written consent of approval of the Design Review Committee is required under the Declaration with respect to the making of an Improvement, such Improvements shall be conclusively deemed to have been made in compliance with this Declaration unless a notice of intention to commence legal action challenging and objection thereto is issued by the Design Review Committee within one hundred and twenty (120) days after completion of such Improvement. All

communications and submittals shall be addressed to the Design Review Committee at such address as the chairman of the Design Review Committee shall hereafter designate in writing addressed and mailed to the Unit Owners.

Section 9.05 - Variances. The Design Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Units or Common Elements nor deviate substantially from the general intent and purpose of this Declaration. In the event that the request for a variance is disapproved by the Design Review Committee, the applicant shall have the right of appeal to the Executive Board of the Association.

Section 9.06 - Lapse of Approval. Approval of the design of a project shall lapse and become void one year following the date the applicant receives final plan approval for the project, unless prior to the expiration of one year, a building permit is issued and construction is substantially commenced and diligently pursued toward completion.

Section 9.07 - Waivers. The approval or consent of the Design Review Committee, or appointed representative thereof, to any application for design approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 9.08 - Liability. The Design Review Committee and the members thereof, as well as any representative of the committee designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants.

Section 9.09 - Records. The Design Review Committee shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day.

Section 9.10 - Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, and the Restrictions set forth at Article Eight herein, shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Design Review Committee and any interested Unit Owner shall have the right but not the obligation to institute, maintain and prosecute any

such proceedings. In any action instituted or maintained under this section, the Design Review Committee shall be entitled to recover its costs and reasonable attorneys fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure of the Design Review Committee or of any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE 10 - INSURANCE/CONDEMNATION

Section 10.01 - Duty to Insure Units and Improvements on Units. Each Owner shall obtain and maintain in full force and effect, at all times, all necessary and appropriate insurance coverage for their Unit and the Improvements on their Unit. Unit Owners are advised to carry casualty and liability insurance for their benefit and at their expense.

Section 10.02 - Insurance Carried. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Association shall maintain, to the extent reasonably available, policies with the following terms or provisions:

- a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Unit Owner and shall provide that such policies may not be canceled or modified without at least twenty (20) days prior written notice to all of the Unit Owners and the Association.
- b) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, the officers of the Association, the Declarant, its successors and assigns and Unit Owners as insureds.
- c) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less

than one hundred percent (100%) of the full insurable replacement cost.

Section 10.03 - Hazard Insurance on the Common Elements. The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the Common Elements and the other property of the Association. If obtainable, the Association shall also obtain the following and any additional endorsements deemed advisable by the Executive Board: (a) an Inflation guard endorsement, and/or (b) any special PUD endorsements.

Section 10.04 - Liability Insurance. The Association shall obtain adequate comprehensive policy of public liability and property damage liability insurance covering all of the Common Elements, in such limits as the Board may from time to time determine, but not in any amount less than Two Million Dollars (\$2,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Common Interest Community. All liability insurance shall name the Association as the insured.

Section 10.05 - Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 10.06 - Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 10.07 - Officers' and Directors' Personal Liability Insurance. The Association may obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 10.08 - Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar

nature, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 10.09 - Insurance Premium. Except as assessed in proportion to risk, if permitted under the terms of this Declaration, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual assessments levied by the Association.

Section 10.10 - Managing Agent Insurance. The manager or managing agent, if any, shall be insured to the same extent as the Association, as herein provided, for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association.

Section 10.11 - Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Unit Owners, the Association and the Unit Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 10.12 - Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association. The Association shall hold any insurance proceeds in trust for the Association and Unit Owners.

Section 10.13 - Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Unit Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record, and pursuant to the Act.

## ARTICLE 11 - GENERAL PROVISIONS

Section 11.01 - Enforcement. The Association or a Unit Owner or Unit Owners of any of the Units may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for such violation, including reasonable attorneys fees incurred in enforcing these covenants, or to restrain such violation or attempted violation. Failure of the Association or of any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Executive Board may post on a bulletin board at a conspicuous place on the Common Area notices of any covenant violations by members and copies of any recorded statements. Failure to post shall not affect the validity of any lien or covenant violation.

Section 11.02 - Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 11.03 - Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 11.04 - Amendment of Declaration, Map or Plat by Declarant. Until the first Unit has been conveyed by Declarant by deed recorded in the office of the County Clerk and Recorder of the County, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration or Exhibits of this Declaration, the Map or the Plat may be amended by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment. Thereafter if Declarant shall determine that any amendments shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of twenty (20) years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Unit Owner and holder of a Security Interest. Each deed, Security Interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 11.05 - Amendment of Declaration by Unit Owners. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least 67% of the votes in the Association and with the written consent of the Association. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the County, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 11.06 - Amendment Required by Mortgage Agencies.

Prior to ten (10) years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which a holder of a first lien Security Interest, or FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the County, State of Colorado, of a certificate, setting forth the amendment or repeal in full.

Section 11.07 - Required Consent of Declarant to Amendment.

Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving development rights or for the benefit of the Declarant, or its successors or assignees, shall not be effective unless Declarant, and its successors and assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its successors or assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate ten (10) years after the recording of this Declaration, or upon conveyance of 100% of the Units to Unit Owners, whichever occurs first.

Section 11.08 - Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 11.09 - Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 11.10 - Captions. All captions and titles used in this Declaration are intended solely for convenience of reference

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and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized agents this 18 day of June, 1996.

**Declarant:**

Telecam Partnership II, Limited, a  
Colorado limited partnership

By [Signature]

*Vice* President of Macelet, Inc., general  
partner of Telecam Partnership I  
Limited, a Colorado limited  
partnership, general partner

STATE OF COLORADO

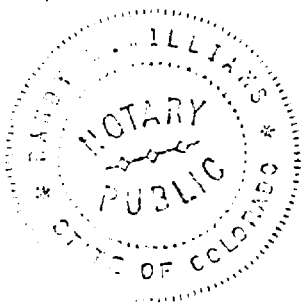
COUNTY OF SAN MIGUEL

} SS

The foregoing instrument was acknowledged before me on June 18, 1996, by DAVID E. HOFFMAN, Vice President of Macelet, Inc., general partner of Telecam Partnership I, Limited, a Colorado limited partnership, general partner of Telecam Partnership II, Limited, a Colorado limited partnership.

Witness my hand and seal.

My commission expires: 11/14/96



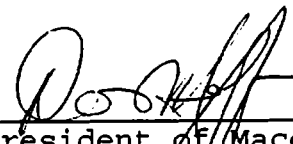
[Signature]  
Notary Public

## CONSENT

The undersigned, the owner of Lots 400, Q, Q1 and 503, Lawson Hill Planned Unit Development, Filing 9, San Miguel County, Colorado ("IV's Property"), consents to the provisions of the above and foregoing Declaration, hereby submits IV's Property to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101 et seq., (the "Act"), as the Act may be amended from time to time, and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. The undersigned hereby declares that all of IV's Property shall be held or sold, and conveyed subject to the foregoing easements, restrictions, covenants, and conditions. From this day forward, IV's Property shall be held, sold and conveyed subject to the terms and conditions of foregoing Declaration. The undersigned further declares that the foregoing Declaration is made for the purpose of protecting the value and desirability of IV's Property, that the foregoing Declaration shall run with the land and shall be binding on all parties having any right, title or interest in IV's Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Unit Owner thereof.

Dated: June 18, 1996

Telecam IV, LLC, a Colorado limited liability company

By   
Vice President of Macelet, Inc.,  
general partner of Telecam  
Partnership I Limited, a  
Colorado limited partnership,  
general partner of Telecam  
Partnership II Limited, Manager

STATE OF COLORADO

COUNTY OF SAN MIGUEL

SS

The foregoing instrument was acknowledged before me on June 18, 1996, by David I. Hoffmann, Vice President of Macelet, Inc., general partner of Telecam Partnership I, Limited, a Colorado limited partnership, general partner of Telecam Partnership II, Limited, a Colorado limited partnership, Manager of Telecam IV, LLC, a Colorado limited liability company.

Witness my hand and seal.

My commission expires: 11/14/96

[Signature]  
Notary Public

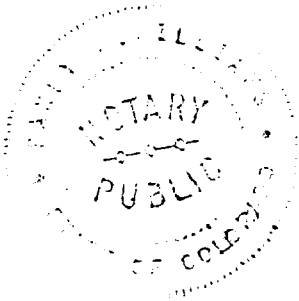


EXHIBIT A

DESCRIPTION OF THE REAL ESTATE

Lawson Hill PUD, Phase 9, according to the Plat recorded in the Office of the Clerk and Recorder of San Miguel County on July 14, 1995, in Plat Book 1 at pages 1891 et seq; and

Lot 425, Lawson Hill PUD, Phase 9, according to the Replat of said Phase 9 recorded in the Office of the Clerk and Recorder of San Miguel County on February 8, 1996, in Plat Book 1 at pages 1995 et seq; and

Lots 425A and 425-1, Lawson Hill PUD, Phase 9, according to the Replat of Lot 425, Lawson Hill PUD, Phase 9, recorded in the Office of the Clerk and Recorder of San Miguel County on April 25, 1996, in Plat Book 1 at pages 2037 et seq; and

Lawson Hill PUD, Phase 10, according to the Plat recorded in the Office of the Clerk and Recorder of San Miguel County on December 19, 1995, in Plat Book 1 at pages 1960 et seq;

all in San Miguel County, Colorado.

**EXHIBIT B****COMMON ELEMENTS**

All areas of the Real Estate that are not designated as a "Unit" or as "Units", all of which properties are subject to the terms and conditions of this Declaration.

EXHIBIT C

PROPERTIES WHICH MAY  
BE ADDED TO THE DECLARATION

All or any part of a Unit or parcel of real estate in San Miguel County, Colorado, adjacent to the Real Estate or any other real estate hereafter made subject hereto; provided the owners thereof consent.

AMENDMENT  
TO THE DECLARATION  
OF  
TELECAM/IILIUM PARK  
SAN MIGUEL COUNTY, COLORADO

Upon application of Telecam Partnership II, Ltd., a Colorado limited partnership ("Telecam"), the Declarant, and pursuant to Section 11.05 of the Declaration of Telecam/Ilium Park, San Miguel County, Colorado, recorded on June 19, 1996, in the Clerk and Recorder for San Miguel County, Colorado, in Book 563 Pages 382-435, Telecam herewith amends said Declaration effective January 1, 1997, so that the following sections are deleted and replaced in their entirety as follows:

Section 4.05 - Domestic Water Treatment and Waste Water Treatment Facility.

Declarant has caused to be constructed within the Telecam/Ilium Park Common Interest Community a water treatment and distribution facility of sufficient capacity to provide potable water to the Common Interest Community ("Water Facility"). Declarant has also caused to be constructed within the Telecam/Ilium Park Common Interest Community a waste water treatment and collection facility of sufficient capacity to provide waste water treatment to the Common Interest Community ("Waste Treatment Facility"). The cost to construct both of the Water Facility and Waste Treatment Facility was \$1,374,967.00. Declarant may convey the Water Facility and Waste Treatment Facility to the Association in consideration of the Association's promise to pay to Declarant \$1,374,967.00, representing the cost of construction.

The Association may pay Declarant said sum from any and all "Tap Fees" imposed and collected by it for connection to the Water Facility of a Unit or lot, or of any other property even if such property is not governed by the Association.

The Declarant will set the Tap Fees based on its good faith judgment of what sums need to be collected for the Association to pay the \$1,374,961.00 according to terms reached by the Association with the Declarant. The Association may also pay Declarant the cost of construction from Real Estate Transfer Assessments and Retail Sales Assessments to the extent such funds exceed a reasonable reserve for the cost of operation, repair and maintenance of the Water Facility and Waste Treatment Facility. The Association may execute such documents, including but not limited to promissory notes, deeds of trust, bills of sale, and security agreements, as may be necessary to effectuate the foregoing.

The Association may in its discretion impose use fees or other charges on individual Units, Common Elements and Limited Common Elements for potable water used or consumed on its premises from the Water Facility. The Association may in its discretion impose use fees or other charges on property not subject to the Declaration for potable water used or consumed on that property from the Water Facility. The Association will regulate, set and collect charges and control the delivery and usage of any and all water that is the product of the Water Facility.

Amendment to Declaration of Telecom/Ilium Park  
Page Two

Section 4.06

Deleted.

IN WITNESS WHEREOF, the Declarant, Telecom Partnership II, Ltd., a Colorado limited partnership, has caused this Amendment to the Declaration to be executed this 15th day of April, 1999.

Declarant, Telecom Partnership II, Ltd.,

By: William Cantlin  
William Cantlin, Vice President of Macelet, Inc.,  
a General Partner of Telecom Partnership I, Ltd.,  
General Partner

Consent is hereby given to the above Amendment to Declaration by the following, representing 67% of the votes of the Association,

Telecom Partnership II, Ltd.,

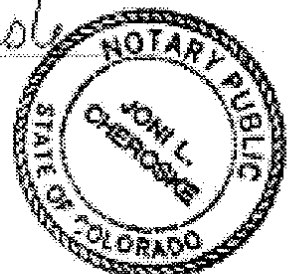
By: William Cantlin  
William Cantlin, Vice President of Macelet Construction, Inc.,  
a General Partner of Telecom Partnership I, Ltd., General Partner

STATE OF COLORADO )  
 ) ss.  
COUNTY OF SAN MIGUEL )

The foregoing instrument was acknowledged before me this 15th day of April, 1999, by William Cantlin.

My commission expires: may 1, 2000  
Witness my hand and seal

John L. Chesebrough  
Notary Public





**SECOND AMENDMENT TO THE DECLARATION OF TELECAM/ILIUM PARK**

This Second Amendment to the Declaration of Telecam/Ilium Park is made this \_\_\_\_ day of December, 2006, by Telecam Partnership II Limited, a Colorado limited liability company ("Telecam").

**RECITALS**

- A. Telecam is the Declarant under the Declaration of Telecam/Ilium Park (the "Declaration") and pursuant to Section 8.01(d) of the Declaration, the Declarant has the right to amend the Declaration to add units to and subject all or any part of property described on Exhibit C of the Declaration and additional unspecified property to the provisions of the Declaration.
- B. Telecam is the owner of Lots 440, 441, 442, 443, 444 and Tract 516, Lawson Hill Planned Unit Development, San Miguel County, Colorado (the "440 Property")
- C. Telecam desires to subject the 440 Property to the Declaration, the provisions of the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101 et seq., (the "Act"), as the Act may be amended from time to time, and to the terms and conditions the Declaration.

**NOW THEREFORE**, Telecam does hereby amend the Declaration as follows:

- 1. The following Exhibit D shall be added to the Declaration:

**EXHIBIT D**

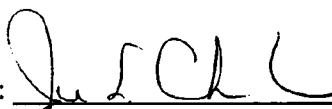
The following real property is hereby included in and subject to the Declaration of Telecam/Ilium Park, the Colorado Common Interest Ownership Act and the Telecam Ilium Park Home Owners Association:

Lots 440, 441, 442, 443, 444 and Tract 516, Lawson Hill Planned Unit Development, San Miguel County, Colorado

Dated: December 6, 2006

Telecam Partnership II Limited, a Colorado limited  
Liability company

By: \_\_\_\_\_

  
Joni L. Cheroske, Project Manager

### Third Amendment to the Declaration of Ilium Park

This Third Amendment (the "Third Amendment") to the Declaration of Ilium Park, a Planned Community (formerly known as Telecam/Ilium Park) is made effective August 1, 2013, by the owners of Ilium Park Owners Association, a Colorado nonprofit corporation (the "Association").

#### Recitals

A. Ilium Park is a planned community type of common interest community known as Ilium Park, formerly known as Telecam/Ilium Park, as established by the Declaration recorded on June 19, 1996 at Reception No. 305843 in the Clerk and Recorder's Office for San Miguel County, Colorado, as amended (the "Declaration"), and by the Plat recorded June 19, 1996 in Plat Book 1 at page 2058, at Reception No. 305844, as amended.

B. On March 13, 2012, the Association filed Articles of Amendment with the Colorado Secretary of State, changing the name of the Association from "Telecam/Ilium Park Home Owners Association" to "Ilium Park Owners Association. On May 15, 2012, the Association adopted the Second Amendment to the Bylaws, also confirming the Association name had been so changed.

C. This Third Amendment amends the Declaration, including sections 1.01(b) and (c) and 5.02, to confirm the change of the name of the Planned Community and the Association. This Third Amendment also deletes and replaces Declaration section 4.05, concerning the Domestic Water Treatment and Waste Water Treatment Facility.

#### Amendment

1. The Name of the Planned Community and the Association: The Declaration is hereby amended to confirm the name of the Planned Community is "Ilium Park," and the name of the Association is "Ilium Park Owners Association." In addition, the following specific amendments to the Declaration are made:

- a. Declaration section 1.01(b) is amended to state and confirm that name of the Planned Community is Ilium Park.
- b. Declaration section 1.01(c) is amended to state and confirm that the name of the Association is "Ilium Park Owners Association."
- c. Declaration section 5.02 is amended to state that an illustrative description of Units within the Planned Community is as follows:

Unit \_\_\_\_\_. Ilium Park, Lawson Hill P.U.D., a Planned Community, in accordance with the recorded Plat and Declaration, County of San Miguel, Colorado.

2. Domestic Water Treatment and Waste Water Treatment Facility: Declaration section 4.05 is deleted and replaced with the following:

Section 4.05 – Domestic Water Treatment and Waste Water Treatment Facility

- a. Declarant has caused to be constructed within the Ilium Park Common Interest Community a water treatment and distribution facility of sufficient capacity to provide potable water to the Common Interest Community ("Water Facility"). Declarant has also caused to be constructed within the Ilium Park Common Interest Community a waste water treatment and collection facility of sufficient capacity to provide waste water treatment to the Common Interest Community ("Waste Treatment Facility"). By Bill of Sale recorded April 16, 1999 at Reception No. 325686, Declarant conveyed the Water Facility and Waste Treatment Facility to the Association in consideration of the Association's promise to pay to Declarant Telecom Partnership II, Ltd. ("Telecam") the sum of \$1,374,967.00, representing the cost of construction. Such promise to pay was memorialized in a Promissory Note (the "Note") dated effective January 1, 1997, with the Association, as Borrower, and Telecam, as Lender in the principal amount of \$1,374,967.00, together with interest at the rate of four percent (4%) per annum. The Note was secured by a Deed of Trust (the "Original Deed of Trust") dated effective January 1, 1997 and recorded April 16, 1999 at Reception No. 325687.
- b. As part of a Settlement Agreement dated July 23, 2013, adopted and made effective by the Association on August 1, 2013, the validity, payment and interest related to the Note, among other issues, was resolved between the Association and Telecam. The Association and Telecam agreed to amend the Note with a new principal amount of \$500,000.00 (the "Note Balance"), comprised of the following two components: \$238,141.76, due and payable on the prior Note as of December 31, 2011, and the new additional balance for consideration of transfer of Water Rights in the amount of \$261,858.24, and that such amount shall only be paid as follows: All Tap Fees, as set forth in the schedule attached to the Settlement Agreement, shall be paid over to Telecam until this Note Balance is paid in full. Tap Fees shall not be increased or decreased for ten (10) years. Thereafter, any change to Tap Fees shall be approved by the Association Board and Telecam jointly. In addition, the Association shall pay Telecam half of the net Real Estate Transfer Assessment received until the Note Balance is repaid. The Note Balance shall not accrue interest. The Association and Telecam have executed an amendment to the Note, effective August 1, 2013 and entitled First Amendment to Promissory Note. The Association and Telecam have executed an amendment to the Original Deed of Trust, effective August 1, 2013 and entitled Extension and Modification of Deed of Trust, which document has been recorded. No assessments, regular or otherwise, may be levied against Telecam or any property owners in Ilium Park for purpose of retiring the Note.
- c. The Association may in its discretion impose use fees or other charges on individual Units, Common Elements and Limited Common Elements for potable water used or consumed on its premises from the Water Facility. The Association may in its discretion impose use fees or other charges on property not subject to the Declaration for potable water used or consumed on that property from the Water Facility. The Association will

regulate, set and collect charges and control the delivery and usage of any and all water that is the product of the Water Facility.

Certification

Certified to be the Third Amendment to the Declaration of Ilium Park, a Planned Community, adopted and approved by the Association Board of Directors and by the affirmative vote of at least sixty-seven percent (67%) of the Owners in Ilium Park Owners Association.

Ilium Park Owners Association

By: David Ramirez  
David Ramirez, President

Attest:

By: David Ballode  
David Ballode, Vice President

STATE OF COLORADO                    )  
  )ss.  
COUNTY OF SAN MIGUEL            )

The foregoing instrument was acknowledged before me on the 9<sup>th</sup> day of OCTOBER, 2013, by David Ramirez, as President of the Ilium Park Owners Association, and by David Ballode, as Vice President of the Ilium Park Owners Association.

WITNESS my hand and official seal.

My commission expires: 1/11/17  
\_\_\_\_\_  
Notary Public

JOSEPH A. SOLOMON  
Notary Public  
State of Colorado