

553963

REGISTRAR'S OFFICE
SAUK COUNTY WI
RECEIVED FOR RECORD

AT 10²⁵ O'CLOCK A M

ON Aug 26 1991
Loretta D. Williams
REGISTRAR

Grant Title 66.00
Ch.

POA DECLARATION
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CHRISTMAS MOUNTAIN VILLAGE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONSFORCHRISTMAS MOUNTAIN VILLAGE

<u>TABLE OF CONTENTS</u>	<u>PAGE NUMBER</u>
Recitals.....	1
1. Definitions.....	1
2. Scope of Declaration.....	5
2.1 Property Subject to Declaration.....	5
2.1.1 Existing Property.....	5
2.1.2 Additional Property.....	5
2.2 Supplemental Declarations.....	6
2.2.1 Effect of Supplemental Declaration..	6
2.3 Additional Declarations.....	6
2.4 Conveyances Subject to Declaration.....	7
3. Easements.....	7
4. Resort Recreational Facilities.....	8
4.1 Designation of Resort Recreational Facilities.....	8
4.2 Operation and Management.....	8
4.3 Commercial Use.....	9
4.4 Protection of Declarant.....	9
5. Christmas Mountain Village Property Owners' Association, Inc.	9
5.1 Property Owners' Association.....	9
5.2 Association Superior to Existing Associations.....	9
5.3 Membership in Association.....	10
5.4 Transfer of Membership.....	10
5.5 Delegates.....	10
5.6 Voting Rights.....	10
5.7 Powers of the Association.....	10
5.8 Control by Declarant.....	11
5.9 Advisory Board.....	12
6. Assessments and Fees.....	12
6.1 Purpose of Assessments.....	12
6.2 Annual Assessment.....	12
6.3 Resort Recreational Facilities Assessment..	12
6.4 Common Expenses.....	13
6.5 Special Assessments.....	13
6.6 Liability for Assessments.....	14
6.7 Surplus Funds.....	14
6.8 Creation of Personal Liability and Priority of Lien.....	14
6.9 Subrogation.....	14
6.10 Effect of Transfer of Interest.....	15
6.11 Mortgage Protection.....	15
6.12 Non-Payment of Assessments.....	15
6.12.1 Interest and Late Charge.....	15
6.12.2 Additional Remedies.....	15
6.12.3 Collection.....	16
7. Rules and Regulations.....	16
7.1 Promulgation.....	16
8. Insurance.....	16

<u>TABLE OF CONTENTS</u>	<u>PAGE NUMBER</u>
9. Maintenance, Repair and Reconstruction.....	17
9.1 Administration of the Resort Recreational Facilities.....	17
9.2 Liability of the Association.....	17
9.3 Owners' Responsibility for Damage.....	17
9.4 Condemnation or Eminent Domain.....	17
10. Remedies.....	18
10.1 Enforcement Association Instruments.....	18
10.2 Remedies are Cumulative.....	18
10.3 Preservation of Remedies.....	18
11. Arbitration.....	18
12. Third Party Liens.....	19
13. Termination.....	19
14. Term and Amendment.....	19
14.1 Term.....	19
14.2 Amendment by Owners.....	20
14.3 Amendment by Declarant.....	20
15. Miscellaneous.....	20
15.1 Captions.....	20
15.2 Plural, Gender.....	20
15.3 Successors and Assigns.....	21
15.4 Interpretation.....	21
15.5 Severability.....	21
15.6 Waiver.....	21
15.7 Binding Effect.....	21
15.8 Notices.....	21
15.9 Choice of Law.....	21
16. Joinder by Existing Association.....	21
16.1 Christmas Mountain Condominium Association.....	21
16.2 The Villas at Christmas Mountain Association.....	21
16.3 Christmas Mountain Campground Association..	21
16.4 Christmas Mountain Residential Owners' Association.....	21
17. Grantee's Acceptance.....	22
Exhibit A.....	25
Exhibit B.....	26

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONSFORCHRISTMAS MOUNTAIN VILLAGE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as the "Declaration") is made this 30th day of July, 1991, by DELLONA ENTERPRISES, INC., a Wisconsin corporation, (hereinafter referred to as "Declarant").

RECITALS

WHEREAS, Declarant is the owner in fee simple and developer of certain real property located at Wisconsin Dells, Sauk County, Wisconsin, which real property is more particularly described in Exhibit A attached hereto and made a part hereof (said real property, together with riparian and littoral rights as may be applicable and appurtenant thereto and together with all improvements now or hereafter located thereon, including the recreational facilities and amenities, and all appurtenances thereunto belonging, hereinafter referred to as the "Development"); and

WHEREAS, the Development is a part of the resort development known as Christmas Mountain Village (herein after referred to as the "Resort"); and

WHEREAS, the Resort includes or will include certain recreational facilities and amenities as more particularly described in Exhibit B attached hereto and made a part hereof (the "Resort Recreational Facilities") which Declarant desires to make available for use to all owners of interests in real property within the Development ("Interests"); and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the Development, Declarant desires to impose upon the Development mutual and beneficial restrictions, covenants, equitable servitudes and charges under a general plan of improvement to apply uniformly to the transfer and encumbrance of the real property within the Development for the mutual benefit of the Development and all owners and future owners of an Interest therein; and to provide for creation of an owners' association to which shall be delegated and assigned the powers of enforcing the covenants and restrictions of this Declaration and of collecting and disbursing the assessments and charges levied by the association.

NOW, THEREFORE, Declarant declares that all of the property in the Development is held and shall be held, sold, conveyed, mortgaged, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for the Development, sale or lease of said Development and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon each Interest in the Development in favor of each and all other such Interests; to create reciprocal rights between the respective owners of such Interests; to create a privity of contract and estate between the grantees thereof, their heirs, successors and assigns; and shall, as to any owner of an Interest, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other such owners of such Interests, present and future.

1. DEFINITIONS.

The following terms as used in this Declaration, unless the context otherwise expressly provides or requires, are defined as follows:

1.1 "Advisory Board" means an Advisory Board composed of one executive officer of each of the Existing Associations. The Advisory Board shall be formed to meet from time to time to resolve issues arising between the Declarant or any committee formed by the Declarant and any Existing Association and/or any member or members thereof.

1.2 "Articles of Incorporation" means the Articles of Incorporation of the Christmas Mountain Village Property Owners' Association, Inc., as they may lawfully be amended from time to time.

1.3 "Assessment" means any amount which, from time to time, is levied by the Declarant or the Board of Directors upon any Existing Association or any Owner including but not limited to:

(a) "Annual Assessment" means the amount levied upon each Existing Association or its members, and upon Owners who do not pay such Annual Assessment through an Existing Association, which entitles Owners to the right to use and enjoy the Resort Recreational Facilities made available from time to time by the Declarant. The Annual Assessment includes, but is not limited to a Resort Recreational Facilities Assessment and an assessment to pay the Common Expenses of the Association.

The Annual Assessment is and shall be separate and apart from any individual recreational facility use fee or charge which may be payable by individual Owners or any other Resort user upon their personal use of any specific facility, or consumption or rental of any equipment used therewith.

(b) "Special Assessment" means an Assessment levied by the Board upon each Existing Association, and upon any Owner who is not a member of an Existing Association, in the event that the total of all Annual Assessments is inadequate to meet the Common Expenses of the Association.

1.4 "Association" or "Property Owners' Association" or "POA" means the Christmas Mountain Village Property Owners' Association, Inc., which is or will be a Wisconsin nonprofit corporation, its successors and assigns, which will be charged with enforcing this Declaration and collecting and disbursing the assessments and charges of the Association.

1.5 "Association Instruments" means this Declaration, the Articles of Incorporation and By-Laws of the Association and any rules and regulations adopted by the Association, as each may be amended from time to time.

1.6 "Board" or "Board of Directors" means the duly elected or appointed Board of Directors of the Association.

1.7 "By-Laws" means the By-Laws of the Christmas Mountain Village Property Owners' Association, Inc., as they may lawfully be amended from time to time.

1.8 "Campground" means any such land and improvements which has been platted as a campground on a recorded Plat and intended for camping use as described in a declaration of covenants, and restrictions for such campground recorded in the Register's Office, Sauk County, Wisconsin.

1.9 "Campsite" means an area designated and marked for identification on the general plan of a Campground, which is intended for occupancy and use for camping purposes in accordance with the recorded covenants and restrictions for the Campground.

1.10 "Common Expenses" means and includes all expenses incurred by the Association or its duly authorized agent for the operation and administration of the Association.

1.11 "Common Surplus" means the excess of all amounts received by the Association, including but not limited to Assessments and rents, profits, and revenues, if any, over the Common Expenses.

1.12 "Declarant" means Dellona Enterprises, Inc., a Wisconsin corporation, or any assigns of Declarant or successor in title, who comes to stand in the same relation to the Development as Declarant, including, without limitation, any party that acquires ownership of all Declarant's then remaining Interests in the Development.

1.13 "Declaration" means this Declaration of Covenants, Conditions and Restriction for Christmas Mountain Village, as it may be amended from time to time.

1.14 "Delegate" means an executive officer of an Existing Association who, prior to the Turnover Date, shall be a member of the Advisory Board and after the Turnover Date, shall be entitled to vote at meetings of the members of the Master Association on behalf of the members of such Existing Association, as more fully provided in Section 5.5.

1.15 "Development" means all that real property situated in Sauk County, Wisconsin, described in Exhibit A hereto, and all other real property which may be annexed thereto, as provided herein including the property specified on such Exhibit A which, prior to the recordation of this Declaration, may have been conveyed to Owners and/or Existing Associations, which property is being made subject to this Declaration by the joinder in execution by all such Owners or Existing Associations, on their own behalf and/or in behalf of their members.

1.16 "Exchange User" means any person who occupies a Residential Dwelling Unit committed to timesharing or a Campsite pursuant to a reciprocal exchange program approved by the Board of Directors of the relevant Existing Association.

1.17 "Existing Associations" means the Christmas Mountain Condominium Association, the Christmas Mountain Residential Owners' Association, the Christmas Mountain Campground Association, and the Villas at Christmas Mountain Association, all of which are or will be duly formed under the laws of the State of Wisconsin, and including any other association which may be formed from time to time for purposes of administering any condominium, campground, subdivision or planned development described upon the Master Plan or upon recorded Plats in the Register's Office, Sauk County, Wisconsin, as being a part of the Development, whose members shall be Owners of Interests in the Development.

1.18 "Improvements" means all buildings, outbuildings, streets, roads, driveways, parking areas, fences, retaining and other walls, docks, piers, hedges, poles, antennas and any other structures of any type or kind located on real property within the Development.

1.19 "Interest" means any ownership interest in the real property of the Development as described in Exhibit A hereto, and all other real property which may be annexed thereto, which has been recorded in the Register's Office, Sauk County, Wisconsin.

1.20 "Management Agreement" means the then-effective agreement between the owner of a Resort Recreational Facility and a Manager which provides for the management of a Resort Recreational Facility.

1.21 "Manager" means the person or entity, its successors and assigns, engaged by the owner of a Resort Recreational Facility to undertake the duties, responsibilities, and obligations of managing a Resort Recreational Facility, pursuant to the then effective Management Agreement.

1.22 "Master Plan" means an unrecorded map of the Development designating the location of the condominiums, campgrounds, subdivisions, planned development, common areas and facilities within the Development.

1.23 "Mortgagee of Record" means any person or entity which has a mortgage or an Interest in the Development, including but not limited to the holder of a deed of trust or a purchase money mortgage and its successors and assigns, provided that such mortgage is evidenced by a written instrument which has been recorded in the Register's Office, Sauk County, Wisconsin.

1.24 "Owner" means any person or legal entity, including Declarant, who holds fee simple title to an Interest in the Development. Owner shall not mean or refer to a mortgagee, its successors or assigns, unless or until such mortgagee has acquired title pursuant to foreclosure proceedings or by deed in lieu of foreclosure. Declarant shall be deemed to be the Owner of any portion of the Development in which title has not been transferred to another party. All benefits, obligations, restrictions, or requirements imposed hereby upon an Owner shall also be imposed upon any person using the Development or occupying any Residential Dwelling Unit or Campsite in the Development pursuant to a contract, lease, or agreement of any form or other arrangement with any Owner, including Exchange Users and the guests, agents, licensees, or invitees of any person owning, using, or occupying any portion of the Development.

1.25 "Plat" means a final condominium, campground, subdivision or planned development map with respect to the Development, duly recorded in the Register's Office, Sauk County, Wisconsin, including any and all lawful additions or revisions to said Plat.

1.26 "Property Owners' Association" or "POA" means the Christmas Mountain Village Property Owners' Association, Inc., which is or will be a Wisconsin nonprofit corporation, its successors and assigns, which will be charged with enforcing this Declaration and collecting and disbursing the Assessments and charges of the Association.

1.27 "Public or Commercial Unit" means any improved parcel of land owned by Declarant or an Owner located within the Development which is designated by Declarant as a Public or Commercial Unit in the Master Plan and is designed to accommodate public, commercial, or business enterprises to serve the Development including but not limited to: business and professional offices; facilities for the retail sale of goods and services; social clubs; restaurants; theaters; lounges; and recreational facilities; provided, however, that Public or Commercial Units shall not include any of the areas within the legally described boundaries of a condominium, campground, subdivision or planned development within the Development. A parcel shall not be deemed to be improved as a Public or Commercial Unit until such time as the Improvements being constructed on said parcel are sufficiently completed in accordance with plans and specifications.

1.28 "Residential Dwelling Unit" means any Improvement intended for use as a single family or multi-family residential dwelling, including without limitation, any single family detached dwelling, garden home, patio dwelling, condominium unit or townhouse unit, which Improvement constructed thereon is sufficiently completed in accordance with the plans and specifications therefore.

1.29 "Residential Lot" means any unimproved parcel of land located within the Development which has been platted into lots intended for use as sites for single family detached dwellings, condominium units, townhouse units, garden home or patio dwelling as described on a recorded Plat. A parcel of land meeting the above criteria shall be deemed to be unimproved as a Residential Lot until the Improvements being constructed thereon are sufficiently completed for occupancy so as to be defined as a Residential Dwelling Unit.

1.30 "Resort Recreational Facilities" means those recreational facilities which are identified and designated as such by the Declarant, who may add to or subtract from such recreational facilities at any time without the consent of the Association. All Resort Recreational Facilities shall be available to Owners, their families, guests, invitees and licensees, subject to payment of the Assessments described herein, any individual use or user fees and rules and regulations affecting each Resort Recreational Facility which may be established or promulgated from time to time by the owner of a Resort Recreational Facility and any further restrictions or limitations contained therein or herein.

1.31 "Rules and Regulations" means written conditions established by the owner of a Resort Recreational Facility governing use of the Resort Recreational Facilities, as may be amended from time to time, which shall be binding on all Owners.

1.32 "Turnover Date" means the date on which the rights of the Declarant to designate the members of the Master Association Board are terminated under Section 5.8.

1.33 "Unimproved Land" means unimproved and developable land owned by Declarant located within the Development which has not been subdivided or platted of record as a Residential Lot, Public or Commercial Lot or Campground or which has not been improved as a Public or Commercial Unit, Residential Dwelling Unit or Campground and which is designated by Developer for residential, commercial or camping development. Property shall be deemed Unimproved Land until such time as such property is platted of record so as to constitute Residential Lots or a Campground or until such time as Public or Commercial Units, Residential Dwelling Units and Campgrounds are sufficiently completed for occupancy and use so as to be defined as a Public or Commercial Unit, Residential Dwelling Unit or Campground.

1.34 "Warranty Deed" means that certain instrument by which Declarant conveys one (1) or more Interests in the Development together with any subsequent assignments thereof.

2. SCOPE OF DECLARATION.

2.1 Property Subject to Declaration.

2.1.1 Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration consists of that land situated in Wisconsin Dells, Sauk County, Wisconsin as more particularly described in Exhibit A attached hereto, sometimes referred to herein as the "Existing Property." The Declarant intends to develop the Existing Property substantially in accordance with its current Master Plan and reserves the right to review and modify the Master Plan at its sole discretion at any time based upon its continuing development plan.

2.1.2 Additional Property. The Declarant shall have the right, within its sole discretion, to annex to the Existing Property and to submit to this Declaration as "Added Property" additional properties, including (i) properties now or hereafter acquired by it, which property is included within its current Master Plan and, (ii) property of others which is either abutting the

Existing Property (including additions thereto) or which is so situated that its addition will be reasonably consistent with the uniform scheme for development set forth in this Declaration and in the Master Plan. In addition to the Added Property described above, and upon recordation of this Declaration, Declarant shall have the right, at any time to submit to this Declaration the property, or any portion of the property, subject to the jurisdiction of the Existing Associations without the consent or joinder of any party, except to the extent such Existing Associations which are, already formed prior to the date this Declaration is recorded in the Register's Office, Sauk County, Wisconsin have joined in the execution of this Declaration and, by such joinder, will have agreed on behalf of itself and its members to be bound by the provisions hereof.

In the event that any Added Property is annexed to the Existing Property pursuant to the provisions of this Section 2.1.2, then such Added Property shall be considered within the definition of the Development for all purposes of this Declaration.

2.2 Supplemental Declarations. Any such addition as authorized in Section 2.1.2 above may be made by the filing of record of one or more Supplemental Declarations with respect to the Added Property. A Supplemental Declaration shall contain a statement that the real property which is the subject of the Supplemental Declaration constitutes Added Property which is to become a part of the Development subject to this Declaration. In addition, a Supplemental Declaration may contain such additions to or modifications of the provisions hereof applicable to any Added Property as may be necessary to reflect the different character, if any, of the Added Property that is the subject of the Supplemental Declaration, including modifications in the basis of assessments or amounts thereof. Such Supplemental Declaration shall become effective upon being recorded in the Register's Office, Sauk County, Wisconsin; provided that, in the event of any conflict between such additional provisions and the provisions in the Declaration, the provisions of this Declaration shall control.

2.2.1 Effect of Supplemental Declaration. Upon the recording of a Supplemental Declaration by Declarant which annexes and subjects Added Property to this Declaration, as provided in this Section, then:

(a) The easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added Property and inure to the benefit of and be binding on any Owner having any Interest in the Added Property in the same manner, to the same extent and with the same force and effect that this Declaration applies to the Existing Owners having an Interest in the Property subjected to this Declaration prior to the date of the recording of the Supplemental Declaration.

(b) In all other respects, all of the provisions of this Declaration shall include and apply to the Added Property made subject to this Declaration by any such Supplemental Declaration and the Owners, Mortgagees of Record, and lessees thereof, with equal meaning and of like force and effect and the same as if such Added Property were subjected to this Declaration at the time of the recording hereof.

(c) With respect to the Added Property, the Declarant shall have and enjoy all rights, powers and easements reserved by the Declarant in this Declaration, plus any additional rights, powers and easements set forth in the Supplemental Declaration.

2.3 Additional Declarations. Declarant intends, as the Development is developed and offered for sale, to subject portions thereof to specific covenants and restrictions which apply only

to each portion as defined and described in each such set of covenants and restrictions. Such additional covenants and restrictions shall be subject to the provisions hereof so that the Development remains an integrated development.

2.4 Conveyances Subject to Declaration. All covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant to and running with the land and shall at all times inure to the benefit of and be binding on any Owner of any Interest in the Development. Reference in any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document.

3. EASEMENTS.

(a) Each Owner, his family, guests, invitees, and licensees shall have the non-exclusive right and easement to use and enjoy the Resort Recreational Facilities. Such right and easement shall run with the land, be appurtenant to and pass with title to every Interest, subject to and governed by the provisions of this Declaration, the By-Laws, and the Rules and Regulations from time to time established by the Declarant or the owner of a Resort Recreational Facility. Non-Owners may use and enjoy the Resort Recreational Facilities only to the extent permitted under Rules and Regulations established by the Declarant or the owner of a Resort Recreational Facility and such Rules and Regulations may require that any such individual be a guest of an Owner who has the right to use such areas and/or pay a use fee set by the Association.

(b) Each Owner, his family, guests, invitees and licensees of an Interest in the Development shall have a non-exclusive perpetual easement for ingress to and egress from the Resort Recreational Facilities over and across all walkways, private roads and driveways located on the Resort Recreational Facilities, which easement shall run with the land, be appurtenant to and pass with the title to every such Interest. The owners of the Resort Recreational Facilities, their employees, agents and contractors, shall have the right of ingress to, egress from the Resort Recreational Facilities, including but not limited to parking and security patrolling and the right to store equipment in the Resort Recreational Facilities for the purposes of furnishing any maintenance, repairs or replacements of the Resort Recreational Facilities, as required or permitted hereunder.

In the event that said easements for ingress and egress shall be encumbered by any mortgage, leasehold or other lien, other than those on the Resort Recreational Facilities or any portion thereof which have been recorded in the Register's Office, Sauk County, Wisconsin prior to the date of recordation of this Declaration, such mortgages, leaseholds or other liens shall hereby be subordinate to the use rights of any Owner or Owners whose ownership interest is not also encumbered by said mortgage, leasehold or other lien.

(c) The owner of each Resort Recreational Facility shall be entitled to such construction easements over such Resort Recreational Facility in order to conduct and complete the construction and improvements as may be reasonably required, convenient or incidental to the completion, renovation, improvement or development of the Resort Recreational Facility.

(d) Declarant shall have and hereby retains for itself, an easement to maintain business and sales offices in the Resort Recreational Facilities, which easement shall include, but not be limited to, the right to erect and maintain signs, a sales office, a business office and promotional facilities within the Resort Recreational Facilities.

(e) The owner of each Resort Recreational Facility shall have the right, at its expense and for the benefit of the Development to utilize and to grant easements over, across, and under such Resort Recreational Facility for utilities, sanitary and storm sewers, security or other types of monitors, walkways, roadways, and rights-of-way, and to relocate or to realign any existing easements or rights-of-way over, across, and under such Resort Recreational Facility including without limitation, any existing utilities, sanitary lines, or sewer lines. In addition, the owner of each Resort Recreational Facility is authorized to give, convey, transfer, cancel, relocate, and otherwise deal with any and all utility and other easements now or hereafter located on or affecting such Resort Recreational Facility.

(f) The owner of a Resort Recreational Facility shall have the right to establish such easements, reservations, exceptions and exclusions consistent with the ownership of a Resort Recreational Facility, and not materially affecting the financial expense imposed upon the Owners and the Existing Associations, and which serve the best interests of the Development.

4. RESORT RECREATIONAL FACILITIES.

4.1 Designation of Resort Recreational Facilities. Declarant intends to construct, operate and maintain certain recreational facilities within the Development from time to time (the "Resort Recreational Facilities"). The Resort Recreational Facilities shall be identified and designated by Declarant, who may add to or subtract from the Resort Recreational Facilities at any time without the consent of the Association. Declarant may sell, convey, mortgage, hypothecate or encumber, lease, rent, use, occupy and improve the Resort Recreational Facilities in its sole discretion. The Resort Recreational Facilities shall be available to Owners, their families, guests, invitees and licensees, subject to payment of the Assessments described herein, individual use or user fees and Rules and Regulations affecting each Resort Recreational Facility and any further restrictions or limitations contained therein or herein.

4.2 Operation and Management. The owner of a Resort Recreational Facility shall operate and maintain the Resort Recreational Facility for the use and enjoyment of Owners, their families, guests, invitees and licensees and any guests, invitees or licensees of such owner, subject to payment of the Assessments described herein, individual use or user fees and Rules and Regulations affecting each Resort Recreational Facility and any further restrictions or limitations contained therein or herein and may promulgate Rules and Regulations for such Resort Recreational Facility which shall regulate the use of such facility and, if applicable, establish a use or user fee schedule for each such facility. Nothing contained herein shall be deemed to preclude an owner of a Resort Recreational Facility from allowing members of the general public to use the Resort Recreational Facilities to the extent Declarant determines, in its sole discretion, to allow for such use, and to charge such members of the general public such use fees or rental fees it may establish from time to time.

The owner of each Resort Recreational Facility shall have the sole and exclusive right and duty to manage and operate such Resort Recreational Facility including without limiting the generality of the foregoing, the right:

(a) to maintain, repair, replace or restore all of the improvements and landscaping within the Resort Recreational Facility;

(b) to promulgate, amend and rescind from time to time general policies and guidelines governing the use of the Resort Recreational Facility;

(c) to receive all notices, claims and demands relating to taxes and Assessments affecting the Resort Recreational Facility; and

(d) to contract with others for the management, maintenance, operation, construction or restoration of the Resort Recreational Facility or any portion thereof.

4.3 Commercial Use. The Declarant or his assigns shall retain the right to operate or enter into agreements with third parties which permit such parties to operate commercial ventures, including, but not limited to, food concessions within the Resort Recreational Facility.

4.4 Protection of Declarant. Notwithstanding any provision of the Association Instruments to the contrary, for so long as Declarant continues to hold title to one (1) or more Interest, none of the following actions may be taken by the Board, the Association, or any Owner other than Declarant, without the prior written approval of Declarant:

(a) levying any Assessment against Declarant for any capital improvements to the Development; and

(b) taking any action which would be detrimental to the sale by Declarant of Interests; provided, however, that an increase in the Annual Assessments without discriminating against Declarant shall not be deemed to be detrimental to the sale of Interests.

5. CHRISTMAS MOUNTAIN VILLAGE PROPERTY OWNERS' ASSOCIATION, INC.

5.1 Property Owners' Association. The Development is the subject of a multi-tiered association format, of which the Association is a part. All Owners in the Development must become members of two (2) associations, being (i) the Christmas Village Property Owners' Association, Inc., which is or will be a Wisconsin nonprofit corporation empowered with the rights, powers and duties set forth herein and in its Articles of Incorporation and its By-Laws, as the same may be amended from time to time, which Association is responsible for enforcing this Declaration and collecting and disbursing the Assessments and charges of the Association and (ii) the Existing Association which is responsible for the operation and maintenance of the condominium, campground, subdivision or planned development in which the Owner has an Interest. By taking title to an Interest, each purchaser of an Interest becomes a member of two (2) associations. On the primary level, the Association has the power to levy Assessments on each Existing Association or its members and upon Owners who do not pay an Assessment through an Existing Association, in accordance with the Association Documents. On the second and subordinate level, the Existing Associations are responsible for administering those affairs related to the individual condominiums, campgrounds, subdivisions or planned developments and may levy assessments against their individual members in accordance with the provisions of their respective covenants and restrictions.

5.2 Association Superior to Existing Associations. The Association is the organization with the sole responsibility to make and collect Assessments from the Existing Associations in accordance with the provisions of the Association Documents, which Assessments will be used for the purposes as more particu-

larly set forth in the Association Documents. The Assessments levied by the Association will be paid by each Existing Association on behalf of its members. By acceptance of conveyance or other transfer of title to an Interest, each Owner expressly assumes the personal obligation to make payment of all Assessments and other charges allocable to his Interest for which title is so conveyed or otherwise transferred as may be, or become, due and payable to the Association. This obligation to pay is secured by a lien or lien right in favor of the Association as to each and every Interest which relates back to the date of the initial recordation of this Declaration in the Register's Office, Sauk County, Wisconsin, with said lien or lien right being superior in all respects to all rights of homestead which may arise in favor of any Owner. Any Owner's failure to timely make these payments may result in foreclosure of the lien or lien right against the Owner's Interest.

The Existing Associations shall be subordinate in all respects to the Association, but shall retain all the rights and privileges as more particularly described in their respective covenants and restrictions including, without limitation, the right to levy assessments.

5.3 Membership in Association. By recording a Warranty Deed to an Interest in the name of the Owner, each Owner of an Interest, including the Declarant, so long as the Declarant owns any Interest in the Development, becomes a member of the Association until he ceases to be an Owner. If any person or entity other than the Declarant owns more than one Interest, such person or entity shall have one membership in the Association for each Interest owned.

5.4 Transfer of Membership. The membership of each Owner in the Association is appurtenant to and inseparable from his ownership of his Interest and shall automatically be transferred upon any valid transfer or conveyance of his Interest to any transferee or grantee. Membership in the Association is transferable only in connection with the conveyance of the Interest giving rise to such membership, and any other transfer or assignment of membership shall be null and void.

The transfer of any Interest shall operate to transfer to the new Owner the interest of the prior Owner, if any, in all funds held by the Association, even though not expressly mentioned or described in the instrument of transfer and without further instrument of transfer.

5.5 Delegates. Subject to rights retained by the Declarant herein, voting rights of the members of the Association shall be vested exclusively in delegates ("Delegates"). Each Existing Association shall have one (1) Delegate who shall be an executive officer of such Existing Association, appointed by the Board of Directors for each Existing Association.

5.6 Voting Rights. Prior to the Turnover Date, all of the voting rights at each meeting of the Association shall be vested exclusively in the Declarant and the Owners shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Master Association shall be vested in the Delegates and each Delegate shall have one vote.

5.7 Powers of the Association. Without limiting the generality of the foregoing, the Association shall have the right:

- (a) to levy and collect fees, duties and Assessments from its members as contemplated by Section 6 of this Declaration;
- (b) to establish and maintain one (1) or more reserve funds to provide monies to the Association to pay any expenses

incurred by the Association in the exercise of its powers or the performance of its duties;

(c) to pay taxes and Assessments, if any, levied by any governmental authority on any real or personal property owned by the Association, or on any transactions entered into by the Association which are subject to tax in the normal course of business including the right to reimburse the Declarant for any taxes, or portions thereof, paid by Declarant on behalf of the Association or any member thereof;

(d) to enforce the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, any general policies and guidelines from time to time promulgated by the Association, and any other decisions of the Association, and to pay all expenses incidental to such enforcement, including reasonable attorneys' fees, including, without limiting the foregoing, the right to reimburse Declarant for all costs and expenses incurred or paid by it in connection with the enforcement of any of the conditions, covenants, restrictions, charges or Assessments or terms contained herein;

(e) to obtain and maintain in force all policies of insurance required to be maintained by the Association by Section 8 of this Declaration;

(f) to expend monies collected by the Association from Assessments or charges and other sums received by the Association for the payment of all proper costs, expenses and obligations incurred by the Association in carrying out any or all of the purposes for which the Association is formed;

(g) after the Turnover Date and upon the affirmative vote of a majority of the Board, to borrow money and to mortgage, pledge, convey by deed to secure debt or deed of trust, to hypothecate any or all of its property as security for money borrowed or debts incurred; provided, however, that during such time as Declarant owns one (1) or more Interest in the Development, any such decision to borrow money or to mortgage, pledge, convey by deed to secure debt or deed of trust, or hypothecate any or all of the Association's property as security for money borrowed or debts incurred shall require a majority vote of the Board and the affirmative vote of the Declarant;

(h) to acquire by gift, purchase or otherwise and to hold, enjoy and operate real or personal property in connection with the business of the Association; provided, however, that after the Turnover Date the Association shall not acquire real property by purchase, lease, or otherwise unless such acquisition is approved by a majority vote of the Board and the affirmative vote of the Declarant;

(i) to do and perform any and all other acts which may be either necessary for, or proper or incidental to, the exercise of any of the foregoing powers.

5.8 Control by Declarant. Notwithstanding any provisions to the contrary contained in this Declaration, the Articles of Incorporation or the By-Laws of the Association, Declarant shall have the right to appoint or remove any director or directors of the Association or any officer or officers of the Association until the first of the following occurs:

(a) the date as of which ninety percent (90%) of the Interests in the Development have been conveyed to Owners other than the Declarant; or

(b) the surrender by Declarant of the authority to appoint and remove directors of the Association and officers of the Association by notice in writing by Declarant to the Board of Directors to this effect.

The date on which the Declarant's rights under this Section shall terminate shall be referred to as the "Turnover Date." From and after the Turnover Date, the Board shall be constituted and elected as provided in the By-Laws. Prior to the Turnover Date all of the voting rights at any meeting of the Association shall be vested exclusively in the Declarant and neither the Owners nor the Delegates shall have any voting rights.

5.9 Advisory Board. Prior to the Turnover Date, an Advisory Board composed of the Delegates shall be formed to meet from time to time to resolve issues arising between the Declarant and any Existing Association and/or any member or members thereof.

6. ASSESSMENTS AND FEES.

6.1 Purpose of Assessments. The Annual Assessment and any other applicable assessments or charges shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners, for the reimbursement of expenses incurred by the Association or its assigns, and for other expenses incurred in the performance of the duties of the Association or its assigns as set forth in this Declaration.

6.2 Annual Assessment. Each Owner (except the Declarant who agrees to pay the Association the amount of any monetary deficiencies between the Annual Assessments collected from the Owners and the expenses of the Association until the Turnover Date) shall be required to pay an Annual Assessment for each Interest owned. The amount of each Owner's Annual Assessment shall be determined as follows:

(a) **Resort Recreational Facilities Assessment:** The Association shall levy a fee upon each Existing Association and/or its members, or upon Owners who do not pay an Annual Assessment through an Existing Association, to fund the operation and maintenance of the Resort Recreational Facilities. Said fee which shall be referred to as the "Resort Recreational Facilities Assessment," shall be established by the Association pursuant to Section 6.3 herein and shall entitle Owners within the Development to the right to use and enjoy the Resort Recreational Facilities.

(b) **Common Expense Assessment:** The Association shall levy a fee upon each Existing Association and/or its members, or upon Owners who do not pay an Annual Assessment through an Existing Association, to fund the Common Expenses of the Association. Said fee shall be referred to as the "Common Expense Assessment."

The Association shall provide each Existing Association or Owner that may not pay the Annual Assessment through an Existing Association with an annual operating budget for the Association.

Notwithstanding any provision of this Section 6 to the contrary, after the Turnover Date, or earlier at Declarant's sole discretion, the Declarant shall pay the same Annual Assessment for each Interest owned as any other Owner in the Development.

6.3 Resort Recreational Facilities Assessment. The Resort Recreational Facilities Assessment shall be based on a usage fee for each Resort Recreational Facility established by the owner of each such facility. This usage fee shall be determined by one of the methods described below or by a combination of two or more of the methods.

(a) The usage fee may be based upon reasonable cost allocations for the Resort Recreational Facility to be allocated and assessed against the Existing Associations, and/or its members, or upon Owners not a member of an Existing Association, as determined

by generally accepted accounting principles, based upon industry standards for such facilities as applied against the cost associated with such facilities, including the general and administrative expenses incurred by the owner of the Resort Recreational Facility based upon the preceding twelve month period, and a reasonable profit to the owner of the Resort Recreational Facility for the operation of such Resort Recreational Facility.

(b) The usage fee may be determined by establishing a formula based upon the recreational facilities available to the Development, and the total number of Owners, occupants, or any other lawful users of the facilities, as applied to the costs of operations of such facilities, including general and administrative expenses incurred by the owner of the Resort Recreational Facility for the operation and maintenance of the facility based on the preceding twelve-month period, including a reasonable profit to the owner of the Resort Recreational Facility.

(c) The usage fee may be determined based upon the intensity of use per Public or Commercial Unit, Residential Dwelling Unit, Residential Lot or Campsite, such as the total number of Owners and occupants permitted upon each Public or Commercial Unit, Residential Dwelling Unit, Residential Lot or Campsite, plus the average number of days per year each unit, lot or Campsite is occupied. For example, Residential Dwelling Units committed to timeshared ownership may be construed to have a higher intensity of use than a Residential Dwelling Unit which is limited year round to single family use.

(d) Notwithstanding anything to the contrary herein, in the event the Resort Recreational Facilities Assessment or usage fee in any fiscal or calendar year exceeds **one hundred fifteen percent (115%)** of such assessments or fee for the preceding year, upon written application of ten percent (10%) of the Owners, a special meeting of the Owners shall be held upon no less than ten (10) days written notice to each Owner, but within thirty (30) days of the delivery of such application to the Board of Directors or any member thereof, at which special meeting Owners may submit the issue to arbitration as provided in Section 11 hereof.

6.4 Common Expenses. The Common Expenses which shall be payable by the Association from Annual Assessments collected shall consist of, but not be limited to, costs of the following items:

(a) Personal property taxes, real estate taxes, and any other fees or Assessments levied by a governmental authority against any property owned by the Association and not billed directly to the Owners;

(b) Insurance coverage purchased for the benefit of all Owners and the Association as permitted by this Declaration;

(c) Administrative costs;

(d) Such other expenses as may be determined from time to time by the Board of Directors to be Common Expenses; and

(e) The establishment and maintenance of a reasonable reserve fund or funds to cover operating contingencies or deficiencies arising from unpaid Assessments or liens, emergency expenditures and other matters as may be authorized from time to time by the Board of Directors.

6.5 Special Assessments. If the Annual Assessments collected from the Owners are at any time inadequate to meet the costs and expenses incurred by or imposed upon the Association for any reason, including, but not limited to, the non-payment by