

**FIRST AMENDMENT TO DECLARATION OF COMMON INTEREST COMMUNITY  
(Ouray County)**

This First Amendment to Declaration of Common Interest Community ("**Amendment**"), dated and made effective as of July 10, 2015 ("**Effective Date**") is made by San Miguel Development Co. - VIII, LLC, a Colorado limited liability company ("**Declarant**").

**RECITALS**

A. Declarant established a certain common interest community under the name Dancing Bear Ranch ("**Community**"), consisting of certain real property located in Ouray County and Montrose County, Colorado.

B. The Community was formed pursuant to certain "**Governing Documents**", including the following:

(1) The Declaration of Common Interest Community for Dancing Bear Ranch recorded on December 30, 2005 in Reception No. 190189 (Ouray County) and recorded on July 7, 2015 in Reception No. 866672 (Montrose County) ("**Declaration**"). Certain Design Guidelines are appended to the Declaration; and

(2) Plat of the Community recorded on October 26, 2005 in Reception No. 189646 (Ouray County) ("**Plat**").

C. The Community consists of certain Lots and Common Elements as depicted on the Plat and otherwise described in the Declaration.

D. Declarant reserved certain Development Rights and Special Declarant Rights in the Declaration, in particular Article 9 thereof ("**Reserved Declarant Rights**"), which, among other things allow Declarant to create additional Lots in the Community.

E. Declarant has sold certain of the Lots to third parties, namely Lot 1, Lot 5 and Lot 7.

F. Declarant, with the consent of the Owners of Lot 1, Lot 5 and Lot 7 for those amendments not being pursued by Declarant pursuant to the Reserved Declarant Rights, which amendments were discussed and approved by the Owners at the duly noticed and held 2015 annual meeting of the Association, is amending the Declaration and the Plat for purposes stated herein and on those certain "**Companion Plat Amendments**."

G. A separate identical copy of this Amendment is intended to be recorded proximate in time with both the Clerk and Recorder for Ouray County, Colorado and with the Clerk and Recorder for Montrose County, Colorado.

H. This Amendment is intended to be recorded proximate in time with the Companion Plat Amendment with both the Clerk and Recorder for Ouray County, Colorado and with the Clerk and Recorder for Montrose County, Colorado.

**NOW, THEREFORE**, for and in consideration of the premises and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby amends the Declaration as follows:

1. **Creation of Additional Lots.** Declarant, through the exercise of the Reserved Declarant Rights, has elected to further subdivide Lots owned by Declarant into additional Lots, as depicted on the Companion Plat Amendments. Henceforth, the Community will contain a total of 23 Lots as the same are depicted on the Companion Plat Amendments. The Lots being formed by this Amendment and the Companion Plat Amendments consist of land already subjected to the Declaration and Plat and no new land is being annexed into the Community. All of the 23 Lots are deemed to be annexed into the Community and subjected to and burdened by the Governing Documents. In connection with the enlargement of the number of the Lots located within the Community, Declarant is amending Exhibit C/Table of Interests to modify the Allocated Interests assigned to each Lot.

2. **Change In Name of Community.** The name of the Community is changed from Dancing Bear Ranch to Spruce Mountain. Henceforth the name of the Common Interest Community or Community shall be known and referred to as Spruce Mountain. In each instance where the term Dancing Bear Ranch is referred to in any of the Governing Documents, it is hereby intended to be changed to Spruce Mountain.

3. **Change In Name of Association.** The name of the Association is changed to Spruce Mountain Owners Association, Inc., a Colorado nonprofit corporation. Henceforth the name of the Association shall be known and referred to as Spruce Mountain Owners Association, Inc.. In each instance where the term Dancing Bear Ranch Mountain Owners Association, Inc. is referred to in any of the Governing Documents, it is hereby intended to be changed to Spruce Mountain Owners Association, Inc.

4. **Imposition of Road Impact Fees.** The Declaration is amended to include a new Section 5.04, which provides as follows:

5.04. **Road Impact Fees.**

5.04.1. Prior to the commencement of construction of any improvements on any Lot, including, without limitation, any clearing/grading, site excavation or other similar work (collectively "**Proposed Construction**"), the owner of the Lot planning to undertake the Proposed Construction, in addition to any other requirements governing the review and approval of such Proposed Construction by the Association, shall be obligated to pay the Association an impact fee equal to \$5000 ("**Impact Fee**") to offset impacts to the Access Roads and other Association facilities. The owner of the Lot shall pay the Association the full amount of Impact Fee prior to commencing the Proposed Construction or otherwise using the Access Roads and Association facilities in any manner for the Proposed Construction. The Board of Directors shall review the amount of the Impact Fee annually and may adjust the amount in its discretion.

5.04.2. The Association shall maintain and is authorized to expend such funds from time to time in the discretion of the Board for purposes of undertaking improvements, repairs, maintenance and other alterations of the Access Roads.

5.04.3. The Impact Fee shall be due and payable as provided for above. If the full amount of the Impact Fee is not paid to the Association at the time provided for herein, the delinquent Impact Fee shall bear interest at the rate of eighteen percent (18%) per annum from the date due until paid in full, shall constitute the personal, joint and several obligation and liability of the Lot Owner, and the Association, in addition to other rights and remedies, shall have an Assessment Lien on the transferee's Lot for such delinquent amount (together with accrued interest, and costs and attorney's fees incurred in collecting the same by collection action, foreclosure, or otherwise) as provided in Article 4 of the Declaration.

5.04.4. An Owner shall be responsible for repairing any damage caused by the use of the Access Roads and Association facilities in connection with the Proposed Construction beyond normal wear and tear.

5. **Imposition of RETA.** The Declaration is amended to include a new Section 7.09, which provides as follows:

7.09. **Imposition of RETA.**

7.09.1. Upon each sale of an improved or unimproved Lot in the Community, or of an interest therein, to another Person or a transfer of 33% or more of the ownership interests in any entity that owns a Lot in the Community (a "**Transfer**"), excluding Transfers for which an exemption is provided below, the party acquiring the Lot or interest in the entity shall be obligated to pay to the Association a Real Estate Transfer Assessment ("**Transfer Assessment**") equal to 1.5% of the "**Consideration**" (as defined below) paid for the Lot or interest.

7.09.2. Upon receipt, the Association shall deposit such Transfer Assessments in a separate interest-bearing bank account under the name of the Spruce Mountain, and the monies therein shall be expended from time to time in the discretion of the Board for purposes of undertaking improvements to capital projects in the Community, including the roads and water system and any other projects deemed necessary and appropriate for the Community. RETA Funds may be used to construct new projects or to modify, expand, alter, improve, repair or replace existing improvements which benefit Lots in the Community.

7.09.3. The Transfer Assessment shall be due and payable by the purchaser to the Association on the same day as the Transfer giving rise to the Transfer Assessment. If the full amount of the Transfer Assessment is not paid to the Association at the time of transfer of the Lot as provided herein, the delinquent Transfer Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date of transfer until paid in full, shall constitute the personal, joint and several obligation and liability of the transferee Lot Owner, and the Association shall have an Assessment Lien on the transferee's Lot for such delinquent amount (together with accrued interest, and costs and attorney's fees incurred in collecting the same by collection action, foreclosure, or otherwise) as provided in Article 7 of the Declaration.

7.09.4. As used in this Section, the term "**Transfer**" shall mean, whether or not the same is in writing or is recorded, (a) any grant, assignment, transfer, exchange, conveyance or consummated sale of any ownership or title to real property located within the Community; (b) the leasing, letting, conveyance, assignment, transfer or consummated sale of a possessory interest in real property located within the Community; or (c) a sale, conveyance or transfer of a majority controlling economic or voting interest in a corporation, limited liability company, partnership (general or limited, and with or without limited liability), joint venture, trust, or other association or organization where such entity owns real property located within the Community.

7.09.5. As used in this Section, the term "**Consideration**" shall mean the gross consideration paid for the real property affected by a Transfer and shall include actual cash paid, the fair market value of real and personal property delivered or conveyed in exchange for the Transfer, or contracted to be so paid or delivered or conveyed, in return for the Transfer, and shall include the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of the Transfer. The term "**Consideration**" does not include as an addition to gross consideration the amount of any outstanding lien or encumbrance in favor of the United

States, the State of Colorado, or any municipal or quasi-municipal corporation or district for taxes, or special or local benefits or improvements.

7.09.6. The Association shall maintain and is authorized to expend such funds from time to time in the discretion of the Board for purposes of undertaking improvements, repairs, maintenance and other alterations of the Common Elements, including the Access Roads.

7.09.7. **Exemptions from the Payment of RETA.** The Real Estate Transfer Assessment imposed by this Section shall not apply to:

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

B. Any Transfer by gift of real property, where there is no Consideration other than love and affection or charitable donation.

C. Any Transfer to an organization which is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended, provided that the Association, in its sole and absolute discretion, specifically approves such exemption in each particular case.

D. Any Transfer by document, decree or agreement partitioning, terminating or evidencing termination, of a joint tenancy, tenancy in common or other co-ownership in real property; provided, however, if additional Consideration is paid in connection with such partition or termination, the Real Estate Transfer Assessment shall apply and be based upon such additional Consideration.

E. Any Transfer by reason of death, whether pursuant to a will, the law of descent and distribution or otherwise.

F. Any Transfer made (i) pursuant to a reorganization, merger or consolidation of corporations, limited liability companies or partnerships for no Consideration other than the issuance of securities or interests that give the Person the same relative interest in the real property it had prior to such Transfer, or (ii) by a subsidiary to a parent corporation for no Consideration other than cancellation or surrender of the subsidiary's stock, or (iii) to a corporation, limited liability company, partnership, business trust, trust, association or any other legal entity if that entity is owned by the Person by whom such Transfer was made and if such Person thereafter has the same relative interest in such entity as it had in the real property immediately prior to the Transfer and there is no Consideration other than its interest in such entity.

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

H. Any Transfer by decree or order of a court of competent jurisdiction quieting, determining or resting title except for a decree of foreclosure, including a final order awarding title pursuant to a condemnation proceeding.

I. Transfers to secure a bona fide debt or other obligation, or releases thereof, other than by foreclosure of real property that is security for a debt or other obligation.

J. An executory contract for the sale of real property of less than three (3) years duration, under which the vendee is entitled to or does take possession of such real property without acquiring title thereto, or any assignment or cancellation of any such contract.

K. Any Transfer to, between or amongst spouses, siblings, children (natural or adopted), grandchildren, or a trust solely for the benefit of an Owner and any such individuals or any combination thereof, including a transfer which is from an entity owned by a spouse, sibling, child (natural or adopted), or grandchild to an individual who is a spouse, sibling, child (natural or adopted), or grandchild of the person owning the entity.

L. Any of the following Transfers related to foreclosures of security interests:

(i) Transfers pursuant to purchase at a foreclosure sale, whereby the First Mortgagee (or a qualifying assignee of the First Mortgagee who acquires rights under such Mortgage in the ordinary course of business and prior to any default) takes title to the real property. Purchase at foreclosure sale by any Person or entity other than the First Mortgagee (or the qualifying assignee of the First Mortgagee) shall not be exempt from the Real Estate Transfer Assessment.

(ii) Transfers by qualifying voluntary conveyance in lieu of foreclosure, whereby the First Mortgagee (or the qualifying assignee of the First Mortgagee who acquires rights under such Mortgage in the ordinary course of the assignee's business) takes title to real property.

(iii) Redemption from foreclosure by the Owner of the real property. Redemption from foreclosure by any Person other than the Owner of the real property subject to foreclosure shall not be exempt from the Real Estate Transfer Assessment.

(iv) Transfers to or from nominees or other intermediaries for no Consideration other than any unpaid lien, mortgage, contract indebtedness or other encumbrance or debt not assumed by or the obligation of the nominee or intermediary, for a period not to exceed six (6) months, such as Transfers made to facilitators in connection with a tax-free exchange. The exemption in this section is not intended to extend to the exchange or other Transfer transaction as a whole, but only to the portion of such transaction involving conveyances to or from Persons holding legal title but not owning any of the beneficial interest in the real property.

M. Transfers pursuant to a decree of separation or divorce.

N. Transfers to a trust if the donor has the same relative interest in the trust as the donor had prior to the Transfer or if there is no Consideration other than love and affection or charitable donation, and Transfers from such a trust where there is no Consideration.

7.09.8. **Exemptions Not to Serve as Artifice.** Notwithstanding the exemption provisions set forth above, if an artifice or device is employed in connection with a Transfer, such Transfer shall nevertheless be subject to the Real Estate Transfer Assessment.

7.09.9. **Processing A Request for Exemptions from the Payment of RETA.** In the event of any Transfer claimed to be exempt from the Real Estate Transfer Assessment imposed by this Declaration, the transferor or transferee may deliver to the Association an Application for Exemption, together with such information as the applicant may deem appropriate to demonstrate that the Transfer is exempt, in order to apply for a Certificate of Exemption from the Association. Except as provided below, a Certificate of Exemption shall constitute *prima facie* evidence of the exemption of a Transfer from the Real Estate Transfer Assessment as set forth in this Declaration. The Association, through its Board, shall have fifteen (15) days within which to grant or deny a Certificate of Exemption, which, if granted, may be affixed to the deed or other instrument of Transfer and Recorded. If the Association does not grant a Certificate of Exemption with respect to such Transfer within such time, the application shall be deemed denied. The burden of proving any exemption shall in all cases be upon the Person claiming the exemption.

6. **Creation of Private Road Easement.** The Declaration is amended to include a new Section 2.08, which provides as follows

Section 2.08 **Easement for Private Road.** An easement is hereby declared, reserved and created over and across those portions of the Lot which are labelled as the 100' Private Road Easement on the Amended and Restated Plat, which shall burden the Lot upon which the 100' Private Road Easement is denoted and which shall benefit Declarant, the Association and each owner of a lot, including their respective guests, invitees, contractors, as well as their heirs, successors, transferees and assigns. The 100' Private Road Easement shall be used for installing, maintaining, repairing, operating, and otherwise making available for the use and benefit of all Owners of Lots in the Community facilities for the Access Roads and other roads and driveway facilities which may be used by such benefitted parties for vehicular, pedestrian, equestrian and other similar uses and purposes, subject to the right and ability of the Association to monitor usage and impose reasonable rules and regulations which will govern such usage of the Access Roads. Parking may not occur on the 100' Private Road Easement. Underground utilities may be installed within the 100' Private Road Easement.

7. **Creation of Shared Driveways Easements.** The Declaration is amended to include a new Section 2.09, which provides as follows

Section 2.09 **Easement for Shared Driveways.** An easement is hereby declared, reserved and created over and across those portions of the Lot which are labelled as the 100' Shared Driveway Easement on the Amended and Restated Plat, which shall burden the Lot upon which the 100' Shared Driveway Easement is denoted and which shall benefit Declarant, the Association and those lots which adjoin the Shared Driveway Easement, including their respective guests, invitees, contractors, as well as their heirs, successors, transferees and assigns. The 100' Shared Driveway Easement shall be used for installing, maintaining, repairing, operating, and using a shared driveway by the Owners of Lots benefitted by the easement, which shall be designed, installed, operated and maintained by the Owners of the Lots benefitted by and sharing the Shared Driveway. The costs shall be equitably allocated between the Owners of the Lots benefitted by and sharing the Shared Driveway and in the event of a dispute between the Owners concerning the allocation of such costs, the Association shall resolve such disagreements in a fair, commercially reasonable manner. The Shared Driveway may be used by such benefitted parties for vehicular, pedestrian,

equestrian and other similar uses and purposes, subject to the right and ability of the Association to monitor usage and impose reasonable rules and regulations which will govern such usage of the Access Roads. Parking may not occur on the Shared Driveway Easement. Underground utilities may be installed within the Shared Driveway Easement.

8. In instances where Declaration inadvertently includes references to the Clerk and Recorder for San Miguel County, the reference should be changed to the respective Clerk and Recorders for Ouray County and/or Montrose County, Colorado as the circumstances dictate.

9. The Companion Plat Amendments, among other things, are intended to amend, restate and replace the original Plat.

10. Section 8.05 is modified to provide as follows: No primary residential Dwelling shall be constructed on a lot, the habitable floor space of which, exclusive of basements, decks and porches, is less than 1500 square feet.

11. **Modifications to Design Guidelines.** The Design Guidelines are modified as follows:

a. No primary residential structure shall be constructed on a lot, the habitable floor space of which, exclusive of basements, decks and porches, is less than 1500 square feet.

12. In all other respects, the Declaration shall remain unmodified hereby and in full force and effect.

13. Declarant represents that it has secured the requisite consent and approval of the Owners of Lots in the Community approving this Declaration Amendment and authorizing its recordation.

14. Declarant represents that it has secured the requisite consent and approval of any lender required to consent to and approve this Declaration Amendment and authorizing its recordation. Any such lender consent will be recorded by separate document, referencing this Declaration Amendment Plat.

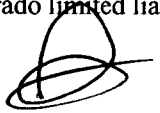
15. The Spruce Mountain Owners Association, Inc. has reviewed and does approve and consent to this Amendment as well as the Companion Plat Amendment.

16. San Miguel Development Co. – VIII, LLC, a Colorado limited liability company has also been known as and appeared of record as “San Miguel Development Company VIII, LLC, a Colorado limited liability company”, both entities are intended to be one in the same.

IN WITNESS WHEREOF, Declarant has executed this Amendment as of the Effective Date.

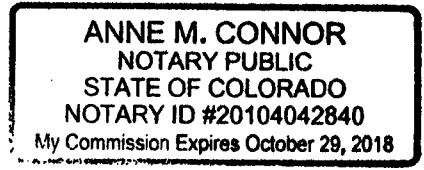
**DECLARANT:**

San Miguel Development Co. - VIII, LLC,  
a Colorado limited liability company

By:   
Thomas G. Kennedy, Authorized Agent

Date: July 10, 2015

STATE OF COLORADO)  
COUNTY OF SAN MIGUEL)



The foregoing First Amendment was acknowledged before me this 10<sup>th</sup> day of July, 2015, by Thomas G. Kennedy, as an Authorized Agent for San Miguel Development Co. - VIII, LLC, a Colorado limited liability company.

Witness my hand and official seal.

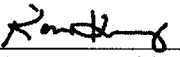
Anne M Connor  
Notary Public

My commission expires: 10/29/18

**ASSOCIATION CONSENT:**

**The Undersigned joins this First Amendment to acknowledge its consent and approval of this First Amendment and the Companion Map Amendment**

Spruce Mountain Owners Association, Inc.,  
A Colorado nonprofit corporation

By:   
Ron Kurucz, President



**REVISED EXHIBIT D**  
**(TABLE OF INTERESTS)**

<b>Lot</b>	<b>Allocated Interest</b>
1	1/23
2A	1/23
2B	1/23
3A	1/23
3B	1/23
3C	1/23
4A	1/23
4B	1/23
4C	1/23
5	1/23
6A	1/23
6B	1/23
7	1/23
8A	1/23
8B	1/23
9A	1/23
9B	1/23
10A	1/23
10B	1/23
10C	1/23
10D	1/23
10E	1/23
10F	1/23
<b>Total</b>	<b>23</b>