



DECLARATION OF RESTRICTIVE COVENANTS

By Turtleback Development Corporation & Turtleback Mountain Partners

THIS DECLARATION is made this 22nd of January, 2007 by Turtleback Development Corporation, a Colorado corporation and assented to by Turtleback Mountain Partners, a New Mexico limited liability company.

WHEREAS, Turtleback Development Corporation and Turtleback Mountain Partners are the owners of certain real property in Sierra County, New Mexico, more particularly described below (the "Property"), and desire to impose the provisions of this Declaration on and subject all of the Property to the covenants, hereinafter stated, including easements, for the purpose of protecting the value and standards of said real property, the terms of which Declaration shall run with the land and be binding upon and inure to the benefit of all parties having any right, title or interest in or to the Property, or any part thereof, and their respective heirs, successors and assigns.

NOW, THEREFORE, Turtleback Development Corporation and Turtleback Mountain Partners hereby declare that the Property shall be subject to the following covenants, conditions and restrictions:

ARTICLE 1 – DEFINITIONS

1.1 **Defined Terms.** Wherever used herein, the following terms shall have the following meanings:

1.1.1 "Association" means the Turtleback Owners Association, a New Mexico nonprofit corporation, or any successor entity duly incorporated by the Owners to carry out the duties and purposes stated in this Declaration, or, during the Period of Declarant Control, the Declarant.

1.1.2 "Common Easements" means all real property designated as roadways, streets, pull outs, fire system cisterns, utility easements, decorative easements, arroyos, stormwater detention areas, trails and trail easements, common areas, open space, and any facilities or features thereon which are within the Property but are not Lots, and which are for use in accord with Article 4. Except that "Common Easements" expressly:

- (a) Do not include the Sierra del Rio Golf Course and support facilities,
- (b) Do not include any Structures, irrigation systems, ponds/lakes, pumphouses, wells or other Improvements for the Sierra del Rio Golf Course, and
- (c) Do not include any commercial or recreational Structures/Improvements built or to be built within the Property which are not expressly deeded to the Association.

1.1.3 "Common Expenses" shall mean all expenses incurred by the Association and Declarant with respect to the conduct of the operational and management duties and functions charged or delegated to it hereunder, including, but not limited to, all expenses of maintenance, operation, repair and replacement, to Peer Standards, of all Common Easements and any portion of the Property, including but not limited to all arroyo and stormwater detention structures, that shall be maintained by the Association, the rendering to Owners of any contracted services including but not limited to residential trash service; any budgeted expense for capital improvements; utility charges; expenses for road maintenance, including maintaining Turtleback Mountain Parkway to Peer Standards; expenses relating to providing and maintaining monumentation and landscaping on Turtleback Mountain Parkway to Peer Standards; taxes; insurance; expenses for management and employees; legal and accounting expenses; expenses incurred for common security and enforcement of these covenants; any expenses declared Common Expenses by the provisions of this Declaration or the Association's Bylaws; any other valid charge against the Common Easements; and any other cost incurred by the Declarant or the Association's Board of Directors for the general benefit and welfare of the Owners. Common Expenses also include such reasonable amounts as the Board of Directors considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements.

1.1.4 "Declarant" means the Turtleback Development Corporation, and its successors and assigns, if any such successor or assign agrees by instrument recorded in the records of Sierra County, New Mexico to act as and assume the duties of Declarant under this Declaration.

1.1.5 "House" means the Structure located on each Lot consisting of a single family dwelling intended for use as a principal residence, vacation home, or seasonal home.

1.1.6 "Improvement" shall include, without limitation, any wall, fence, gate, sign, driveway, road, parking area, antenna, satellite dish, utility or non-commercial communication installation (whether above or below ground), recreation facility, landscaping, grading, and any excavation or other site disturbance of any kind.

1.1.7 "Lot" means any platted parcel as shown on any recorded plat of land within the Property.

1.1.8 "Neighborhood" means the various designated planned residential development components of the Property. Each Neighborhood is expressly intended to maintain architectural and visual cohesion through the Design Guidelines, further described in Section 8.2, which is administered by an Architectural Review Committee, further described in Section 8.1.

1.1.9 "Owner" means any record owner or any purchaser under a recorded real estate contract as reflected by the public records of Sierra County, New Mexico, whether one or more persons or entities, of a fee simple title to any Lot, beginning on the day such document is recorded in the records of Sierra County, New Mexico. "Owner" expressly excludes those persons or entities having such interest merely as security for the performance of an obligation. Except for the requirements stated in Article 6 and as expressly stated in Sections 5.1, 7.2.4 and 7.4.3, "Owner" includes the Declarant.

1.1.10 "Peer Standards" mean in a manner that is comparable to peer resort communities such as Las Campanas, Sonoma Ranch, and Sandia Resort. Peer Standards are intended to ensure that Turtleback Mountain Resort remains the premier residential community in Sierra County, New Mexico. Requirements to maintain to "Peer Standards" may not be amended.

1.1.11 "Person" means a natural individual, trustee, corporation, partnership, limited liability company, combination, association or other legal entity.

1.1.12 "Property" means that real property in Sierra County, New Mexico, described on Exhibit A, and any future real property specifically included by Declarant, in its sole discretion, to this Declaration by filing in the records of Sierra County, New Mexico a written Amended Declaration during the Period of Declarant Control.

1.1.13 "PUD Document" means that certain zone document titled Turtleback Mountain Resort PUD Zone Document filed for record on 13th day of February 2006, with the County Clerk of Sierra County, New Mexico as Document No. 200600526 in Plat Book 1, Pages 4588-4601, as it may be amended from time to time, and any future real property specifically included by Declarant, in its sole discretion, to this Declaration by filing in the records of Sierra County, New Mexico a written Amended Declaration during the Period of Declarant Control.

1.1.14 "Rules" mean such rules and regulations regulating use of the Property, Neighborhoods and/or Lots as may be adopted by the Declarant during the Period of Declarant Control defined in Section 6.1 or thereafter by the Board pursuant to the Association's Bylaws.

1.1.15 "Structure" means any man-made construct having a floor and a roof.

ARTICLE 2 - STRUCTURES

2.1 Permitted Structures. The Neighborhoods shall be used solely for single family residential purposes. No Structure shall be erected, altered, placed or permitted to remain on any Lot subject to this Declaration other than one House, garage, shed, guest house or studio, all subject to the Design Guidelines and Review Committee approval. All Structures shall be architecturally aligned with, or similar in style to, the House.

2.2 Prohibited Structures. No modular homes, prefabricated structures, mobile homes or similar facilities or Structures shall be kept, placed, or maintained within the Neighborhoods at any time except as specifically authorized in the Design Guidelines. No temporary dwelling, garage, outbuilding, trailer or other similar Structure, temporary construction shelter or facility maintained during, and used exclusively in connection with, the construction of any work, improvement or (except as expressly reserved by Declarant in Section 6.8) temporary sales facility may be permitted in the Neighborhoods.

2.3 Structure Design. The design of each Structure shall meet the specifications of the Design Guidelines, including but not limited to Structure style, height, square footage, exterior color and surface materials.

ARTICLE 3 - COMMON SCHEME RESTRICTIONS AND REQUIREMENTS

3.1 Animals. Livestock is not permitted on any Lot. No animals may be kept or maintained on any Lot in any manner or number which is a nuisance or offensive to the neighboring lots, whether by reason of noise, habits, odors, or otherwise. All animals must be confined to the Lot. Enclosures for animals shall be constructed in accordance with the Design Guidelines. Small household pets which remain inside the residence on a Lot, such as caged birds, aquarium fish or guinea pigs, shall be allowed at the Lot Owner's discretion so long as the "nuisance" portions of this Section are not violated.

3.1.1 **Barking Dogs.** Barking dogs are a de facto "nuisance" under Section 3.1 of this Declaration. For the purpose of this Declaration, a "barking dog" shall mean a dog that barks, bays, cries, howls or makes any other noise continuously and/or incessantly for a period of ten minutes or barks intermittently for one-half hour or more to the disturbance of any person at any time of day or night; provided, however, that a dog shall not be deemed a "barking dog" for the purpose of this Section, if, at the time the dog is barking or making any other noise, a person is trespassing or threatening to trespass upon the Lot in or upon which the dog is situated or for any other legitimate cause which teased or provoked the dog. An Owner's failure to comply with this Section shall result in a fine in an amount to be determined by the Board.

3.2 **Antennas, Satellite Dishes, Towers, and Wind Generators.**

3.2.1 No exterior satellite dish or antenna of any sort, shall be installed or maintained on any Lot, except those devices which are enclosed within a building or Structure, or screened from view from other Lots and from any easements granted to or used by any person besides the Owner of the antenna or satellite dish. If an Owner desires to install such a device, the Owner shall obtain and install the smallest device available within the field of technology for such device, and in no case may a satellite dish be greater than 18" in diameter.

3.2.2 No radio or television transmission towers shall be erected, placed or permitted.

3.2.3 No wind-driven machinery shall be permitted within the Property.

3.3 **Awnings.** No fabric window awnings or exterior window shades of any kind are permitted on any Structure or on any Lot within a Neighborhood.

3.4 **Basketball Hoops.** Basketball hoops and nets are permitted pursuant to the Design Guidelines.

3.5 **Cooling Equipment.** No evaporative coolers are permitted within the Property. Any other type of air conditioner, heat pump, or similar unit must be properly integrated into the Structure, and/or adequately screened to limit its visibility from roadways and adjoining Lots.

3.6 **Driveways and Street Parking.**

3.6.1 All driveways shall be surfaced by each Owner, at each Owner's expense, with asphalt, brick, stone, or concrete, and maintained so as to reduce erosion and eliminate unsightly conditions. Driveways shall follow the natural contours of the land and shall be of sufficient size to accommodate all vehicles owned by an Owner.

3.6.2 All vehicles owned by an Owner shall be parked on his or her Lot in driveway areas, and shall not be parked on the street or street easement whether paved or unpaved, except when an Owner hosts a party or special function, but in no case longer than 24 hours.

3.7 **Garages and Parking of Vehicles.**

3.7.1 A garage of sufficient size to accommodate at least two automobiles shall be constructed with each House. Open carports are prohibited. A garage may be converted to any new use permitted herein provided that a replacement garage of sufficient size to

accommodate at least two automobiles is constructed within six months of the time that the prior garage ceased being used primarily as a garage.

3.7.2 The garage shall primarily be used for vehicles and not storage. Storage in garages cannot take precedence over the garage's primary function: to park automobiles or other vehicles.

3.7.3 Except as stated herein, no trucks or other commercial vehicles, motorcycles, ATVs, campers, recreational vehicles, boats, trailers, horse trailers or similar vehicles shall be kept or maintained on a Lot, except within garages. Temporary exceptions are authorized herein where customarily required for the limited purposes of building, repairing, refinishing, or maintaining the Lot or any Structure, or for the purpose of moving household goods or other necessary or customary furnishings, equipment or supplies in or out of the any Structure or the Lot. Non-temporary exceptions may be authorized by the Association on a case-by-case basis where sufficient screening through fences and vegetation, or both, has been installed to limit visibility from other Lots and from any easement granted to or used by any person besides the Owner of the vehicle(s). As used in this Section 3.7, "temporary" means a time period not to exceed 24 hours within any calendar month.

3.7.4 No vehicles, parts of vehicles of any type, or large unsightly equipment or machinery shall be parked permanently or for any non-temporary period on any portion of the Lots visible from other lots or from any easement granted to or used by any person besides the owner of the vehicle, equipment or machinery.

3.8 Exterior Lights.

3.8.1 Turtleback Mountain Resort is expressly intended to comply with the New Mexico Night Sky Protection Act, 74-12-1 N.M.S.A. 1978, et seq., as it may be amended from time to time, and any more restrictive federal or local law protecting against light pollution. In the event a conflict exists between the covenants and conditions of this Declaration and the provisions of any applicable law with respect to light pollution emanating from any Lot, the more restrictive of the conflicting provisions shall control. Notwithstanding the foregoing, in the event of amendment to any existing law or newly enacted law regarding light pollution, improvements existing within the Property prior to the date of the amendment or new law shall not be subject to modification under the same, unless expressly required by the amendment or the new law.

3.8.2 All exterior lights must be located so as not to be directed toward or radiate into surrounding Lots or Easements. Bright, glaring lights on rooftops, patio walls or elsewhere are prohibited. Exterior pole-mounted lights greater than three (3) feet in height are not permitted. All exterior wall-mounted and low pole-mounted lights shall have cut-off shields which prevent the spread of light in an upward direction to protect the "dark sky" quality of the area. Lights with motion detectors are encouraged. All lighting design must be in accord with the Design Guidelines.

3.9 **Flagpoles.** No permanent flagpoles, balloons, beacons or banners are permitted on any Lot in a Neighborhood; provided, however, such items are permitted to be attached to a House or Structure on a temporary, short-term basis during holidays or special functions. Notwithstanding the foregoing, permanent flagpoles are permitted in Common Easement areas.

3.10 **Fences and Walls.** All fences and walls are subject to the approval of the Review Committee, and must be installed and constructed in accordance with the Design Guidelines, including the set-back requirements.

3.11 Home Occupations. No business, manufacturing or commercial activity of any nature shall be conducted upon or from any Lot in a Neighborhood, except that "home occupations" shall be permitted if such activity does not disturb Owners of other Lots, does not increase traffic upon the Easements to undesirable levels as determined on a case by case basis by the Board, and is in compliance with all federal, state, and local laws.

3.12 Landscaping. All landscaping shall meet the specifications as defined by the Design Guidelines. Xeriscaping is encouraged.

3.13 Mining and Drilling. In no event shall a Lot, or any portion thereof, be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing, for commercial use, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

3.14 Nuisance. No Lot shall be used for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be visually offensive, obnoxious, toxic, dangerous, or unhealthy, and no substance, thing or article may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of any occupants or Owners of Lots within the Property or adjacent lands.

3.15 Reflective Materials. No reflective material shall be used where it would negatively affect any other House within the Property. If such reflection does occur, the reflective material shall be painted a subdued, neutral color to be approved by the Architectural Review Committee, or some other approved treatment shall be applied.

3.16 Rentals. No single-family dwelling, studio, guest house or outbuilding may be used as a boarding house for rental purposes. As used herein, "rental purposes" does not prohibit rental or lease of the whole single-family dwelling, studio, guest house or outbuilding by an Owner so long as (a) the lease term is not less than 90 days, (b) the lease is made by a written agreement (i) requiring the tenant to observe the provisions of this Declaration and (ii) making a breach of this Declaration a breach of such lease agreement, and (c) each Owner shall at all times remain fully responsible and liable for the payment of the assessments and for compliance with all other obligations under this Declaration.

3.17 Rooftop Equipment. Except as stated in Section 3.5 (Cooling Equipment) and Section 3.21 (Solar Devices), all rooftop equipment including, but not limited to, mechanical and plumbing flues must be properly integrated into the Structure in accordance with the Design Guidelines, and adequately screened from view from other Lots and from any easement granted to or used by any person besides the Owner.

3.18 Setback. The setbacks from property lines for all Structures and other vertical improvements shall be set forth in the Design Guidelines.

3.19 Sheds. No sheds shall be permitted without prior written approval of the Architectural Review Committee. Such approval shall only be granted if the design of the shed is architecturally aligned with the House and the shed meets the specifications of the Design Guidelines, including but not limited to Structure style, height, exterior color and surface materials.

3.20 Signs and Billboards. Except for signage allowed pursuant to the construction regulations within the Design Guidelines and political signage, no "for sale" signs, no advertising signs or billboards of any kind, including home office or business signage, will be permitted on any Lot in a Neighborhood except for a decorative name/address plate, and provided the name plate shall not exceed 200 square inches in size. Notwithstanding the

foregoing, during the construction of a House, after its completion, and pending the sale thereof, and during any subsequent resale of the House, (a) one "for sale" sign, designed and distributed by the Architectural Review Committee may be erected on a Lot and (b) temporary sales signs approved by the Architectural Review Committee, such as "open house" signs or directional arrows, may be erected on the Property and Lot. Political signage shall be limited to two signs per Lot not to exceed six (6) square feet of combined surface area and shall be free standing, not to exceed three (3) feet in height above natural grade. Political signage may be erected two (2) weeks prior to an election or event and must be removed within one (1) week after the event.

3.21 Solar Devices. Solar panels are permitted upon written approval of the Architectural Review Committee, provided they are properly integrated into the Structure in accordance with the Design Guidelines, and adequately screened from view from other Lots and from any easement granted to or used by any person besides the Owner of the solar device.

3.22 Storage Tanks. No tanks of any kind shall be erected, placed or permitted within a Lot, except as needed for the fire protection purposes or domestic water systems or cisterns; provided the system or cistern is adequately screened.

3.23 Subdivision. No Lot smaller than three acres may be subdivided. With approval of the Architectural Review Committee (and any governmental entity having jurisdiction, if required), adjoining Lot lines may be vacated to create a new consolidated Lot.

3.24 Swimming Pools. Swimming pools and covered hot tubs of a permanent nature, as well as temporary wading pools are permitted pursuant to the Design Guidelines.

3.25 Trash, Noise and Fire Pollution.

3.25.1 No Lot shall be used for the storage or dumping of rubbish or debris of any kind, or for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition, or that will be visually offensive or obnoxious, toxic, dangerous, or unhealthy, and no substance, thing or material may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of any occupants or Owners within the Property.

3.25.2 After construction, the storage of construction material, supplies and equipment on any Lot shall be prohibited unless placed out of view of other Owners.

3.25.3 No clothes lines shall be permitted on the Property.

3.25.4 No burning of any materials, including, but not limited to, leaves, landscaping debris or firewood, shall be permitted either indoors or outdoors. No wood-burning fireplaces, stoves or fire-pits shall be permitted.

3.25.5 No devices emitting undesirable noise levels shall be permitted on the property except during construction.

3.25.6 Mechanical and other equipment and storage piles are restricted to areas on the Lot where they can be screened from view from other Lots and from any easement granted to or used by any person besides the Owner of the same.

3.25.7 Any noise from home garden machinery shall be limited to the hours of 8:00 am until 6:00 pm.

3.25.8 The Association, on behalf of all Owners, shall contract with a private trash hauler to provide periodic solid waste pick up service to the Lots.

3.25.9 The discharge of firearms, explosives, or fireworks of any kind on the Property shall be strictly prohibited, except that the Association may use fireworks on the Property during special events or occasions.

3.26 **Utilities.** All extensions of utilities shall be underground to all Structures at all locations. No utility lines shall be maintained above ground except during construction. Any disturbance of natural ground cover and vegetation necessitated by the installation of utility service lines on a Lot where it does not coincide with the driveway shall be restored by the Owner of the Lot by replanting or other approved landscaping. All meter locations shall be subject to approval by the Architectural Review Committee.

3.27 **Waiver of Provisions.** The prohibitions or requirements stated in this Article 3 may be waived or varied pursuant to Paragraph 12 of the Design Review Process where the proposed waiver is not inconsistent with the purpose and intent of this Declaration.

ARTICLE 4 - EASEMENTS

4.1 **Common Easements.** All Common Easements shall be maintained to Peer Standards by the Association for the benefit of all Owners, the Declarant, the Sierra del Rio Golf Course, and the Limited Public (as defined in Section 4.1.2(i)) pursuant to this Declaration to enhance the value and desirability of the Property, subject, however, to the following limitations and restrictions:

4.1.1 Use of the Common Easements shall be subject to such Rules as may be adopted from time to time by the Declarant during the Period of Declarant Control or, thereafter, by the Board.

4.1.2 The Common Easements shall be subject to the following:

(a) Such rights and easements as may have been offered for dedication to public use;

(b) Such easements and rights as have been reserved by Declarant in Article 6;

(c) Such easements or other interests as may from time to time be taken under power of eminent domain;

(d) The right of the Association to suspend the right of an Owner (and his licensees, invitees and tenants) to use those Common Easements that are not required for access for any period during which any assessment levied by the Association against his Lot remains unpaid, or for a reasonable period for any infraction of the Association's Bylaws, Rules, or this Declaration, as amended from time to time;

(e) The right of the Association to limit or permit the use of Common Easements by non-members who are not among the Limited Public, as the Association deems appropriate, and the right of the Association to limit the number of guests of Owners using those Common Easements that are not required for access; and

(f) Such other easements as may from time to time be granted or conveyed by the Association pursuant to this Declaration

(g) Streets within the Property shall be owned by the Association and shall be maintained to Peer Standards by the Association. The Board may establish rules for travel on these streets. Travel via golf cart usage shall be encouraged in any such rules so long as any golf carts allowed on the streets have been approved by the Board, the driver holds a current, valid drivers license, and the driver acknowledges that personal golf carts shall not be used on the Sierra del Rio Golf Course. Golf cart travel on streets shall be limited to designated pathways, where provided. No golf cart travel is permitted along Turtleback Mountain Parkway.

(h) Turtleback Mountain Parkway and all entry monumentation shall be maintained by the Association to Peer Standards in a manner that is consistent in look and quality to the original construction. Such maintenance shall include, but is not limited to, appropriate landscaping, maintenance of features such as archways and signs, and prompt road repair. If Turtleback Mountain Parkway is not maintained to Peer Standards, Sierra del Rio Golf Course, its owners, employees, or agents may cause the needed maintenance or repair to be performed and bill the Association for all reasonable expenses incurred in performing the needed maintenance or repair. Any such bill shall be paid by the Association from Common Expenses within 30 days of the Association's receipt of the bill.

(i) Reasonable, short-term use for ingress and egress by the Limited Public while acting with legitimate purpose. As used in this Article 4, "Limited Public" means any licensee, invitee, or tenant of an Owner; any invitee, member, or patron of the Sierra del Rio Golf Course, any person providing requested service to an Owner, the Declarant, the Association, or the Sierra del Rio Golf Course; or any employee, agent, or supplier of the Declarant, the Association, or the Sierra del Rio Golf Course.

4.1.3 Except as allowed by the Board of Directors of the Association in writing, there shall be no improving, landscaping, decorating, or repairing of any Common Easement except by the Association in conjunction with its maintenance or landscaping of Common Easements.

4.1.4 The Association's duly authorized agents shall have the right of reasonable access over and across the Lots where necessary to perform the Association's maintenance responsibilities under this Declaration. The Association shall have the right to control access to the Common Easements; however, the Association shall not impair the Owners' right of access to their Lots nor access to the Sierra del Rio Golf Course by its owners, operators, and the Limited Public.

4.1.5 Each Owner shall be liable to the Association for all damage to the Common Easements or improvements or facilities situated thereon caused by such Owner, his invitees, licensees or tenants.

4.1.6 The ownership and access rights of the Association and the Owners to the Common Easements shall be subject to the following easement and encroachment rights:

(a) Each Owner of a Lot, served by utility connections, lines or facilities, including, but not limited to, those for water, gas, telephone, drainage, and cable television services, shall have the right and is hereby granted a non-exclusive easement, to the full extent necessary therefore, to enter upon the Common Easements and/or to have utility companies and/or County of Sierra personnel and/or City of Elephant Butte personnel enter upon the Common Easements where such connections, lines or facilities or any portion

thereof may lie, to repair, replace and generally maintain the same. Whenever utility connections, lines or facilities installed within the Property serve more than one Lot, the Owner of each Lot served hereby shall be entitled to the full use and enjoyment of the portions thereof which service his Lot. Declarant hereby reserves to itself easements over, under, through the Common Easements for installation of such utility connections, lines or facilities for the benefit of the Property or as may otherwise be needed for the development of the Property together with the right, as Declarant deems necessary or appropriate, to grant and transfer such easements to the Association, utility companies or governmental agencies, or authorities within whose jurisdiction the Property lies, and other appropriate entities and individuals.

(b) All easements of record.

4.2 Easement to Inspect. The Association's duly authorized agents are granted the right to enter Lots to ascertain the extent of compliance with this Declaration, including nuisances described herein, Design Guidelines, and any Rules as may be adopted, and to correct defaults if necessary. Prior notice of said inspection shall be given to the occupant, except in cases of emergency.

4.3 Easement for Governmental Personnel. There is hereby established a right of entry for public officials, police, fire, rescue, and other personnel to come upon the Property, including but not limited to all Common Easements, to carry out and enforce their official duties.

4.4 Easements Reserved to Declarant. There is hereby reserved to Declarant such easements as are stated in Section 6.2 below.

4.5 No Common Easement in Sierra del Rio Golf Course. The Sierra del Rio Golf Course and all related Structures and Improvements are not included within the Property governed by the Declaration. This Declaration expressly does not grant any easement in or to the Sierra del Rio Golf Course, nor to any of the property, assets, facilities, equipment, or structures supporting the Sierra del Rio Golf Course, including but not limited to the club house, parking areas, driving range, maintenance facilities, restrooms, irrigation system, ponds/lakes and pumphouses.

4.6 No Common Easement in Undeeded Commercial or Recreational Facilities. Commercial or recreational facilities, built now or in the future, which are not expressly deeded to the Association, are not included within the Property governed by the Declaration.

4.7 No View Easements. No easements are granted by this Declaration for views of natural or built features, including views of the Sierra del Rio Golf Course or support features.

4.8 Easement for Golf Course Use. There is hereby established a right of entry onto the Common Easements for reasonable, short-term use in connection with golf course activities including but not limited to golf ball flight and retrieval for the benefit of the **Sierra del Rio Golf Course**, its owners, operators, employees, agents, invitees, members, and patrons.

ARTICLE 5 - DUTIES AND RESPONSIBILITIES OF OWNERS

5.1 Owner's Responsibility to Build. Requirements stated in this Section 5.1 apply to all Owners except the Declarant. Each Owner of a Lot in a Neighborhood shall obtain a permit and begin construction of his or her House within the period established by the Design

Guidelines, which period shall vary, depending on the Neighborhood, between two (2) and five (5) years, and which period shall begin at the time any Owner acquired a recorded interest in a Lot from the Declarant ("Construction Period"). Each Owner shall substantially complete construction of his or her House within the period established by the Design Guidelines, which period shall vary, depending on the Neighborhood, between twelve (12) and eighteen (18) months of beginning construction ("Completion Period"). Subject to any variances or extensions granted, any such Owner's failure to begin construction within the Construction Period or to substantially complete construction within the Completion Period may result in a fine in an amount to be established by the Association's Board of Directors pursuant to the Association's Bylaws and these Declarations. As stated in Section 6.7 of this Declaration, Declarant reserves a right of first refusal on the sale or attempted sale of any Lot during the Construction Period where the House construction has not commenced.

5.2 Owner's Responsibility to Repair. The Owner shall be responsible for the maintenance and repair of all Structures and Improvements on the Lot, and on the Lot itself, including, without limitation:

5.2.1 Maintaining the exterior structure and surroundings of all Structures including glass doors, windows and screens, the interior, the plumbing, electrical, heating and air conditioning systems servicing the Structures, the parking areas, water laterals from the Structures to any stub-outs, the Structure's exterior surface and roof, including painting and surfacing, and for the prompt rebuilding of any Structures in the event of partial or complete destruction. All maintained areas shall be kept in clean and orderly condition.

5.2.2 Each Owner shall maintain the landscaping of the Lot in a neat and attractive manner. Each Owner shall be responsible for keeping the landscaping in a healthy condition. An Owner shall, at the Owner's sole expense, remove dead plant material within two (2) months after the growth has died.

5.2.3 Should the Association's Board of Directors determine that any Owner has neglected properly to perform the duties stated in this Section 5.2, the Board of Directors may assess a fine against the Owner or, in its sole discretion, may, upon 30 days written notice to the Owner or, in the event if an emergency, cause the needed maintenance or repair to be performed and levy a special assessment against the Owner and the Owner's Lot reimbursing the Association for all reasonable expenses incurred in performing the needed maintenance or repair.

5.3 Observance of Responsibilities. Each Owner shall comply with the provisions of this Declaration and shall cause and be responsible for the Owner's family, agents, guests, contractors, employees and any person renting or leasing any Structure on Owner's Lot doing likewise.

ARTICLE 6 - DECLARANT'S RESERVED RIGHTS

6.1 Period of Declarant Control. Declarant reserves the following rights during the time periods stated below ("Period of Declarant Control").

6.1.1 Declarant reserves the right to:

- (a) Establish and amend the Design Guidelines,
- (b) Act as the Architectural Review Committee or determine the membership of each Architectural Review Committee,

(c) Appoint the Officers and Directors of the Association's Board of Directors, and

(d) Change, amend, modify or revise any of the covenants and restrictions of this Declaration,

until the earlier of such time as (i) Declarant elects, in its sole discretion, after Declarant is no longer an Owner of 50% of the gross developable land within the Property or (ii) Declarant is no longer an Owner of 95% of the gross developable land within the Property. As used in this Article 6, "gross developable land" excludes Common Easements.

6.2 Declarant's Reservation of Easements.

6.2.1 There is hereby reserved to Declarant a non-exclusive easement and right-of-way in, through, over, under and across all portions of the Property for the purpose of completing its development and improvement work on the Property, and, towards this end, Declarant reserves the right to grant easements and rights-of-way in, through, under, over, on and across the Property, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, gas or other utilities and for any other materials or services necessary for the completion of said development and improvement work provided, however, that Declarant's exercise of this right shall not materially affect an Owner's proposed building site or use of his or her Lot. Declarant reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage lines which may from time to time be in or along the streets and roads. In addition, Declarant reserves the right to continue to use the Property and any sales offices, model homes, signs and parking spaces located on the Property in its effort to develop and market portions of the Property. Any of the easements and rights reserved by Declarant in this Section may be assigned by Declarant to individuals, builders or other businesses, and may be exercised by Declarant's agents, employees and representatives.

6.2.2 There is hereby reserved to Declarant, non-exclusive easements over the Common Easements and the facilities located thereon for all business, construction and sales activities relating to the development of the Property. It is anticipated that said construction and sales activities shall relate to individual projects developed from time to time on portions of the Property and to the promotion or enhancement of either all or a portion of the Property by Declarant. Declarant reserves the right to utilize space in the Common Easements which are not on a part of any Lot.

6.3 Declarant's Right to Dedicate. Nothing contained in this Declaration shall be deemed to restrict or otherwise impede Declarant, at any time and from time to time, from dedicating portions of the Property, including the Common Easements, to any public or private entities, agencies, authorities or utilities, prior to sale of such portion to an Owner.

6.4 Declarant's Right to Add Lots. Subject to approvals from the City of Elephant Butte, Declarant may, from time to time, and without necessity of any approvals by any Owner or the Association, alter the Common Easements by surveying out a portion thereof which is neither a part of any Lot nor used by any Owner (other than Declarant) for access. Declarant may offer such surveyed portion as a Lot (or Lots) for sale, provided that Declarant may not cumulatively reduce the total net square footage allocated to Common Easements more than 50% without written agreement of 65% of the Owners at the time of the proposed reduction.

6.5 Declarant's Right to Include. Declarant may, from time to time, and in its sole discretion, and without necessity of any approvals by any Owner, subject real property which is contiguous to the Property, to this Declaration whereby such property will have all of the rights and obligations of membership in the Association, including the right to use the Common Easements. The addition of any such property shall become effective when Declarant shall have recorded in the Office of County Clerk, Sierra County, New Mexico an amendment to this Declaration which: (a) includes a legal description of the real property to be included, (b) states the total acreage of the real property to be included, and (c), if known, states the total acreage of gross developable land within the real property to be included.

6.6 Declarant's Right to Amend. Declarant reserves the right to change the design and arrangement of all Lots so long as Declarant owns the Lots so changed. Declarant further reserves the right to alter the boundaries between Lots so long as Declarant owns the Lots so altered; to increase or decrease the number of Lots and to alter the boundaries of the Common Easements so long as Declarant owns the Lots abutting the Common Easements where the boundaries are being altered. Any plat, PUD, or other amendment required for such purpose need be signed and acknowledged only by the Declarant, and such amendment shall not require the approval of any Owners, contract purchasers of any unaffected Lots, or the Association. Declarant further reserves the right to remove from the Common Easements, and retain title to, such land as it may desire to utilize for any business purpose that, in its opinion, will be beneficial to the Declarant, Association or Property. Any such lands so removed by the Declarant shall not constitute a part of any Lot described and to be sold hereunder and the Declarant, or other owner of such lands, shall pay reasonable charges, if any, for the use of water, sewage disposal, electrical services and other facilities. Declarant, or any other Owner of such lands, shall have the right to use the remaining portions of the Common Easements for ingress and egress. Declarant, or any other owner of such lands, shall pay all taxes and insurance with respect to such lands.

6.7 Declarant's Right of First Refusal. No Owner shall sell or transfer its Lot to a person other than Declarant or Declarant's designee during the Construction Period unless (a) construction of the House on the Lot has commenced or (b) the Declarant has declined to repurchase the Lot at the sales price that said person has contracted to pay or (c) the sale is to a member of the Owner's immediate family or (d) the sale is made pursuant to court order.

6.8 Declarant's Right to Maintain Sales Offices and Signs. Declarant reserves the right to use any Structure owned by, or made available to, Declarant as a model, sales office and/or management office. Notwithstanding anything to the contrary contained in this Declaration, including Sections 2.2 and 3.20, Declarant further reserves the right to maintain on the Property and Lots such temporary sales structures, advertising and sales signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of Declarant

6.9 Declarant's Right to Assign. Any of the easements and rights reserved by Declarant in this Article 6 may be assigned if and only if Declarant's assignee agrees by instrument recorded in the records of Sierra County, New Mexico to act as and assume the duties of Declarant under this Declaration with regard to such easements or rights.

6.10 No Amendment. This Article may not be amended.

ARTICLE 7 - THE ASSOCIATION

7.1 Association Duties, Membership, Voting Rights.

7.1.1 The Association shall be the entity responsible for management, maintenance, operation, and control of the Common Easements within the Property. The Association shall be the primary entity responsible for administering and enforcing the standards, restrictions, and requirements set forth in this Declaration and such Rules as may be adopted. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in the Design Guidelines for each Neighborhood. The Association shall perform its functions in accordance with this Declaration, the Association's Bylaws, the Association's Articles of Incorporation, and New Mexico law, and it may perform any function through a management company or other delegee selected by the Association's Board of Directors.

7.1.2 Every Owner, including the Declarant, shall be a Member of the Association and shall be entitled to vote. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

7.1.3 The Association shall have one class of voting Membership. One vote is allocated to each Lot to be exercised by the person or persons who are the Lot's Owner. No vote is allocated for unplatted portions of the Property. Except during the Period of Declarant Control stated in Section 6.1, voting shall be the manner used to elect the Directors of the Association.

7.2 Creation of the Lien and Personal Obligation of Assessments.

7.2.1 The undersigned, for each Lot owned within the Property, hereby covenants, and each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments, as stated in Section 7.4.

(b) Special assessments, which shall include emergency and unanticipated costs that were not included in the Association's budget, as described in Section 7.4, but which should be borne equally by all Owners in the same manner as annual assessments. Special assessments also shall include fines imposed by the Association for violation of this Declaration, the Association's Bylaws, the Design Guidelines, or any Rules as may be adopted. Special assessments shall also include costs incurred by the Association under Article 5 of this Declaration, and any such special assessment shall be borne exclusively by the Owner or Owners incurring the same.

7.2.2 Unplatted portions of the Property shall not be subject to annual assessments, special assessments, nor included in the determination of pro rata share.

7.2.3 All annual and special assessments shall be established and collected as provided in these Declarations and the Association's Bylaws. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made or such fine imposed. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

7.2.4 For all Owners except the Declarant, the assessments provided for herein shall commence with respect to each Lot on the date when the Declarant conveys such Lot to the Owner.

7.3 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement and maintenance of the Common Easements and that portion of the Property to be maintained by the Association. No assessment shall include costs relating to operations or maintenance of: (a) the Sierra del Rio Golf Course, (b) support facilities for the Sierra del Rio Golf Course, and (c) commercial or recreational facilities built which are not expressly deeded to the Association.

7.4 Determination of Annual Assessments.

7.4.1 At least eighty (80) days before the beginning of each fiscal year, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the Common Expenses.

7.4.2 No later than sixty-five (65) days before the beginning of the fiscal year, the Board of Directors shall send to each Owner a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses, including reserves, and any additional assessments, payable by each Owner. Unless a majority of the Members present or voting by proxy at the annual meeting or at a special meeting called for the purpose of considering the budget reject the budget, the budget shall be deemed ratified, whether or not a quorum is present. The date for any special meeting would be set not less than fourteen (14) days or more than thirty (30) days after mailing to the owners the copy of the proposed budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Members shall continue until such time as the Members ratify a subsequent budget proposed by the Board of Directors.

7.4.3 Each Lot shall be allocated an equal share of the Common Expenses, regardless of the purchase price, size or location of the Lot. The initial assessment against each Lot shall be the sum of Seventy Five Dollars (\$75.00) per month. Upon completion of a House or other habitable Structure on a Lot, an additional assessment of Twenty Five Dollars (\$25.00) per month shall commence, for that Lot, for the provision of high speed internet service to that Lot. At the Lot Owner's discretion, the additional assessment amount can be applied towards any service then being provided to owners in Turtleback Mountain Resort by Orange Broadband or its successors. During the period of Declarant Control stated in Section 6.1, all Owners, except for the Declarant, shall pay assessments directly to the Declarant. The Declarant shall pay any deficit for Common Expenses during the Period of Declarant Control.

**ARTICLE 8 – NEIGHBORHOOD
ARCHITECTURAL DESIGN REGULATION**

8.1 Architectural Review Committee. The Declarant shall act as or shall establish the Architectural Review Committee. The Committee shall be responsible for the review and approval of the construction, renovation, alteration, modification, or addition to any Structure or Improvement on any Lot within a Neighborhood, as more specifically set forth in the Association's Bylaws and the Design Guidelines.

8.2 Design Guidelines. The Declarant shall establish Design Guidelines for each Neighborhood governing the construction, renovation, alteration, modification, or addition to any Structure or Improvement on any Lot within the Neighborhoods. The Design Guidelines may be amended from time to time either by:

(a) The Declarant, in its sole discretion during the Period of Declarant Control, or

(b) Following the Period of Declarant Control, by the Board, provided that any material changes at that point in time shall require both the recommendation of the Architectural Review Committee and the agreement of 65% of the Owners.

8.3 Approval. Any Owner seeking approval for the construction, renovation, alteration, modification, or addition to any Structure or Improvement on the Owner's Lot shall follow the procedure set forth in the Design Guidelines.

8.4 No Liability Arising from Approval Procedures. By the acquisition of title to any Lot in the Property, and in consideration thereof, each Owner thereby agrees to NOT FILE SUIT against the Declarant, the Association, nor any Architectural Review Committee, nor any individual member thereof, to recover damages in connection with the approval procedure set forth in the Design Guidelines. Anyone submitting plans to the Committee for approval or requesting a waiver or variance there from shall for himself, and his successors and assigns, by the submitting of the same, waive all claims for damages resulting from any related acts or omissions.

8.5 Enforcement. The Declarant, the Association and any Owner shall have the power to enforce the Design Guidelines.

ARTICLE 9 - WAIVER OF LIABILITY RELATING TO THE SIERRA DEL RIO GOLF COURSE

9.1 No Liability for Harm. Neither the Declarant, its agents, its employees, its assigns or its successors, nor the Association, nor Turtleback Mountain Partners, its owners or assigns, nor the Sierra del Rio Golf Course, its owners or operators shall be responsible for nor have any liability for accident, loss, damage, injury, or death ("Harm") to persons, pets, personal property, or real property located on the Property, where such Harm or alleged Harm arises from activities taking place on the Sierra del Rio Golf Course.

9.2 No Liability for Trespass or Nuisance. Neither the Declarant, its agents, its employees, its assigns or its successors, nor the Association, nor Turtleback Mountain Partners, its owners or assigns, nor the Sierra del Rio Golf Course, its owners or operators shall be responsible for trespass or nuisance caused by activities taking place on the Sierra del Rio Golf Course, including but not limited to golfers, golf carts and golf balls entering any Lot.

9.3 Covenants of Precaution, Waiver, and Indemnity. By the acquisition of title to any Lot in the Property, and in consideration thereof, such Lot being in proximity to the Sierra del Rio Golf Course, EACH OWNER ACKNOWLEDGES THE POTENTIAL FOR HARM ARISING FROM ACTIVITIES TAKING PLACE ON THE SIERRA DEL RIO GOLF COURSE AS A RESULT OF THE PROXIMITY TO THE SIERRA DEL RIO GOLF COURSE. The undersigned, for each Lot owned within the Property, hereby covenants, and each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, with regard to the potential for Harm, trespass and nuisance arising from activities taking place on the Sierra del Rio Golf Course:

9.3.1 To be SOLELY RESPONSIBLE for the Owner's personal safety, as well as the safety of the Owner's family, guests, invitees, tenants, pets, personal property, and real property, and to TAKE EVERY PRECAUTION to provide for such safety and well-being.

9.3.2 To RELEASE Declarant, its assigns or its successors, the Association, Turtleback Mountain Partners, its owners or assigns and the Sierra del Rio Golf Course, its owners or operators from any claim of Harm, trespass, or nuisance arising from activities taking place on the Sierra del Rio Golf Course. TO NOT SUE OR OTHERWISE MAKE ANY CLAIM against Declarant, its assigns or its successors, the Association, Turtleback Mountain Partners, its owners or assigns, or the Sierra del Rio Golf Course, its owners or operators for the same, and TO WAIVE all claims for damages resulting from any such actual or perceived Harm, trespass or nuisance.

9.3.3 To INDEMNIFY Declarant, its assigns or its successors, the Association, Turtleback Mountain Partners, its owners or assigns, and the Sierra del Rio Golf Course, its owners or operators from claims of Harm, trespass, or nuisance arising from activities taking place on the Sierra del Rio Golf Course where such claims are raised by the Owner's guests, invitees or tenants, PROVIDED that this indemnification shall be limited by the terms of §§ 56-7-1 and/or -2 N.M.S.A. 1978 should a court of competent jurisdiction determine that either or both statutory provisions apply.

9.4 **No Amendment.** This Article may not be amended.

ARTICLE 10 - GENERAL PROVISIONS

10.1 **Enforcement.** The Declarant, the Association, and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, and reservations now or hereafter imposed by the provisions of this Declaration. No covenant contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur.

10.2 **Notices.** Any notices required or permitted to be delivered hereunder shall be deemed to be delivered when personally delivered to the respective addressee or upon deposit of the same in the United States mail, postage prepaid, certified or registered mail, return receipt requested, to any Owner at the Owner's mailing address. Any Owner may change his address by giving notice thereof to Association (or the Declarant during the Period of Declarant Control) at the following address, or other address as specified by the Association:

Turtleback Owners Association
Post Office Box 990
Elephant Butte, NM 87935

10.3 **Invalidity.** Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

10.4 **Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each. The Declarant may change, amend, modify or revise any of the covenants and restrictions of this Declaration during the Period of Declarant Control and, upon so doing, shall provide written verification of the same to all Owners. Following the Period of Declarant

Control, Owners holding at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the Association may, by executing and acknowledging an appropriate instrument not more than one (1) year and not less than ninety (90) days prior to the expiration of said initial twenty (20) year period or prior to the expiration of any ten (10) year extension period thereafter, release the land subject hereto from all of the restrictive covenants contained in this Declaration, or may, at any time, change, amend, modify or revise any of said restrictive covenants, except that, notwithstanding anything to the contrary contained in this Declaration, the following may not be amended by the Owners:

Section 1.1.2(a), 1.1.2 (b), 1.1.2 (c),

Section 1.1.4,

Sections 4.1.2(i), 4.1.4, 4.5, 4.6, 4.7, 4.8,

Sections 5.1,

Article 6

Sections 7.1.2, 7.1.3, 7.2.1, 7.2.1(a), 7.2.1 (b), 7.2.2,

Section 8.4,

Article 9,

Section 10.4

Notwithstanding anything to the contrary contained in this Declaration, provisions relating to Peer Standards and maintenance responsibilities in the following Sections may be made restrictive, but may not be amended to result in any less restrictive effect:

Sections 1.1.3, 1.1.10,

Sections 4.1, 4.1.2(g), 4.1.2(h),

Sections 5.2, 5.2.1, 5.2.2, 5.2.3.

Every amendment must be recorded in the Office of County Clerk, Sierra County, New Mexico to be effective.

10.5 Disputes and Method for Resolution. Claims, disputes or other matters arising between or among the Declarant, the Association, the Board of Directors, the Architectural Review Committee, or any of the Owners within the Property, which arises out of or relates to this Declaration, shall be subject to and decided by arbitration in accordance with the Rules of the New Mexico Uniform Arbitration Act, N.M.S.A. 1978, Section 44-7-1 et. seq., unless the parties mutually agree otherwise. Notice for demand for arbitration should be filed in writing with the other party within a reasonable time after the claim, dispute or other matter in questions has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question, would be barred by the applicable statute of limitations. No arbitration arising out of or relating to the Declaration of Restrictive Covenants shall include by consolidation, joinder or in any other manner, any additional person or entity not having a legal or equitable interest in such Covenants, except by written consent signed by the parties

to the arbitration. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The parties to the arbitration shall attempt to agree upon a single arbitrator, but if they are unable to do so, then each party shall within ten (10) days after a demand for arbitration has been made, select an arbitrator of his choice. The two arbitrators so chosen shall within ten (10) days after selection appoint a third arbitrator and the three arbitrators so chosen shall hear and render a decision on the matter within thirty (30) days after final appointment

10.6 **Governing Law.** This Declaration and the rights of Declarant and the Association shall be governed by and construed in accordance with the laws of the State of New Mexico.

10.7 **Recitals and Exhibit.** The foregoing recitals are incorporated herein by reference.

10.8 **Captions.** The captions and section headings of this Declaration are not necessarily descriptive, or intended or represented to be descriptive, of all the provisions thereunder, and in no manner shall such captions and section headings be deemed or interpreted to limit the provisions of this Declaration.

10.9 **Numbers and Genders.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, the use of any gender shall include all genders, and the use of the words "include" and "including" shall be construed as if the phrases "without limitation" or "but not [be] limited to" were annexed thereafter.

10.10 **Binding Effect.** This Declaration shall run with the land and be binding upon and shall inure to the benefit of Declarant, the Owners, and their respective heirs, successors and assigns.

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Executed as of this 22nd day of January, 2007.

TURTLEBACK DEVELOPMENT CORPORATION,
a Colorado corporation,

By _____
Jack L. Whitt, Its Vice President

STATE OF NEW MEXICO

COUNTY OF SIERRA

This instrument was acknowledged before me this 22nd day of January, 2007 by Jack L. Whitt, Vice President of Turtleback Development Corporation, a Colorado corporation.

Notary Public: _____

My commission expires: _____

Executed as of this 22nd day of January, 2007.

TURTLEBACK MOUNTAIN PARTNERS,
a New Mexico limited liability company,

By _____
Jack L. Whitt, Its Manager / Member

STATE OF NEW MEXICO

COUNTY OF SIERRA

This instrument was acknowledged before me this 22nd day of January, 2007 by Jack L. Whitt, Manager/Member of Turtleback Mountain Partners, a New Mexico limited liability company.

Notary Public: _____

My commission expires: _____