

**AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR
THE TELLURIDE LODGE, A CONDOMINIUM COMMUNITY**

THIS AMENDED AND RESTATED CONDOMINIUM DECLARATION (“Declaration”), is made effective as of February 15, 2007 (“Effective Date”) and is made, adopted and published by The Telluride Lodge Association, Inc., a Colorado nonprofit corporation (“Association”). The Association for itself and on behalf of its members, hereby amends, restates, terminates, supersedes and replaces in its entirety the Original Declaration (as defined below), including any and all other previous amendments thereto. Each amendment of the original Declaration that is first reflected in this Declaration shall be effective from and after the recording of this Declaration in the records of the Clerk and Recorder of San Miguel County, Colorado. Capitalized terms used in this Declaration and not defined elsewhere in this Declaration have the meanings given those terms in Article 2.

RECITALS

- A. The Telluride Company, as Declarant, was the original declarant (“Declarant”) for the condominium project known as “**The Telluride Lodge, a condominium community**” (“Community” or “**Telluride Lodge**”), consisting of certain residential condominium units and common elements. The Community was established on all of the real property (“Property”) described on the Original Map and the Map Amendments, including any and all beneficial rights to easements, agreements and other documents of record affecting the Property.
- B. The Association was duly formed by Declarant and exists in accordance with applicable Colorado law.
- C. The Community was created by the Declarant with the recordation in the official records of the office of the Clerk and Recorder of the County of San Miguel, State of Colorado (“Official Records”) of that certain Condominium Declaration for The Telluride Lodge, a recorded January 9, 1973 in Book 343 at page 658 (“Original Declaration”) and that certain Condominium Map for the Community recorded on January 9, 1973 in Map Book 1 at page 13 (“Original Map”).
- D. The Original Declaration has been modified and supplemented from time to time by the following instruments: (1) Deed recorded June 20, 1973 in Book 344 at page 984; (2) Resolution Changing Interest Rates recorded June 11, 1982 in Book 399 at page 495; (3) Resolution recorded September 12, 1983 in Book 406 at page 650; (4) Supplemental Declarations to the Condominium Declaration for Telluride Lodge Association recorded December 22, 1989 in Book 461 at page 9, September 3, 1992 in Book 497 at page 542, February 24, 1993 in Book 506 at page 322, June 7, 1993 in Book 512 at page 121, September 22, 1995 in Book 550 at page 963, November 19, 1996 in Book 571 at page 225, June 24, 1997 in Book 583 at page 50, April 17, 1998 at reception No. 318244, and July 6, 2001 at reception No. 342430; (5) Amendment to Amended Exhibit A recorded July 18, 1996 in Book 564 at page 942, (6) Guidelines recorded July 18, 1996 in Book 564 at page 945 and (7) Amendment to Declaration recorded in Reception No. 375249 and any other amendment or supplement to the Original Declaration (collectively, the “Original Declaration Amendments”). The term Declaration shall include the Original Declaration Amendments.
- E. The Original Map has been modified and supplemented from time to time by the following instruments (collectively “Map Amendments”): (1) the Subdivision Map of Condominium Unit F-f-537-538 recorded September 6, 1985 in Map Book 1 at page 587; (2) the Map of Unit B-e (314-315) recorded December 22, 1989 in Map Book 1 at page 971 (3) the Map of Unit D-f (416-417) recorded June 14, 1993 in Map Book 1 at page 1497; (4) the Map of Unit C-F(302-303) recorded December 8, 1993 in Map Book 1 at page 1598; (5) the Map of Unit E-f-(402-403) recorded May 8, 1995 in Map Book 1 at page 1841; (6) the Map of Unit H-f-(502-503) recorded November 19, 1996 in Map Book 1 at page 2158; (7) the Map of Unit G-f-(517-518) for The Telluride Lodge recorded June 24, 1997 in Map Book 1 at page 2256 (8) the Map of Unit E-e-(400-401) recorded April 17, 1998 in Map Book 1 at page 2358; (9) the Map of Unit C-e-(300-301) recorded July 16, 1998 in Map Book 1 at page 2402; (10) the Map of Units G-e-515 and G-e-516 recorded July 6, 2001 in Map Book 1 at page 2902; (11) the Map of Units A-e-329 and A-e-330 recorded March 21, 2002 in Map Book 1 at page 2994; (12) and according to the Condominium Declaration for The Telluride Lodge recorded January 9, 1973 in Book 343 at page 658 and Supplemental Declarations recorded December 22, 1989 in Book 461 at page 9, September 3, 1992 in Book 497 at

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page 542, February 24, 1993 in Book 506 at page 322, June 7, 1993 in Book 512 at page 121, September 22, 1995 in Book 550 at page 963, November 19, 1996 in Book 571 at page 225, June 24, 1997 in Book 583 at page 50, April 17, 1998 at reception No. 318244, and July 6, 2001 at reception No. 342430, and the Amendment to Amended Exhibit A recorded July 18, 1996 in Book 564 at page 942 and any other amendment or supplement to the Original Map. The Original Map and the Map Amendments are collectively referred to as the "Map".

F. Declarant has assigned all of its reserved declarant and development rights ("**Assigned Declarant Rights**"), as provided for in the Declarations, to the Association by Assignment of Rights recorded on January 21, 2003, at Reception No. 354510.

G. The Telluride Lodge currently consists of 112 Units ("**Units**"). The Units are identified and designated as such on Exhibit "A" to this Declaration and on the Map.

H. The requisite number of Owner of Units and the Association has determined that the Declaration and, as applicable, the Map should be amended and restated as provided for herein.

NOW THEREFORE, the Association does hereby modify, amend and publish this Declaration as follows:

ARTICLE ONE IMPOSITION OF COVENANTS

1.1. **Purpose.** The purpose of this Declaration is to form The Telluride Lodge, a condominium community by ratifying the Map, as previously amended, and further ratifying the submission of the Property to the condominium form of ownership and use pursuant to the Act (defined below) and setting forth a plan for the use and ownership of Units. This common interest community is a condominium as defined in the Act. As of the Effective Date, The Telluride Lodge consists of 112 Units ("**Units**"). The Units are identified and designated as such on Exhibit "A" to this Declaration.

1.2. **Intention of Declaration.** This Declaration is intended to protect the value and desirability of The Telluride Lodge, to further a plan for the improvement, sale, and condominium ownership of The Telluride Lodge, to create a harmonious and attractive development, and to promote and safeguard the health, comfort, safety, convenience, and welfare of the Owners of Units in The Telluride Lodge. The Association restates, reaffirms and further declares that the entire Community shall be owned, held, used occupied, improved, altered, maintained, conveyed, leased, encumbered and enjoyed subject to the following covenants, conditions, restrictions, reservations, easements, rights and other provisions.

1.3. **Condominium Declaration.** To accomplish the purposes and intentions recited above, the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, has been submitted to condominium ownership under the Act. All of the Property is subjected to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration, and all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved, subject to the provisions of this Declaration.

1.4. **Condominium Plat or Map.** The prior recorded Maps and Plats concerning the Property and The Telluride Lodge are hereby ratified and endorsed, except to the extent specifically modified by this Declaration. All terms, conditions, depictions, boundaries and dimensions of Units and Common Elements are hereby ratified and confirmed and shall continue with full force and effect. All references in this Declaration to Plat or Map shall be the Maps and Plats existing as of the Effective Date and such amendments and supplements as may be prepared in the future.

1.5. **Covenants Running With the Land.** All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of all Units Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

ARTICLE TWO DEFINITIONS

The following words, when used in this Declaration, shall have the meanings designated below unless the context expressly requires otherwise:

2.1. **“Act”** means the Colorado Common Interest Ownership Act, Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

2.2. **“Allocated Share of the Common Expenses”** means the share of Common Expenses allocated to each of the particular Units in The Telluride Lodge and indicated on **Exhibit “A”**. The Allocated Share of Common Expenses for a particular Unit shall be determined by creating a fraction, the numerator of which shall be the Unit Size of the Unit and the denominator of which is the total cumulative size of all of the Units *as then exist as of the time of the calculation* in the Community. The Allocated Share of Common Expenses assigned to a Unit shall change should the size of the Unit or any other Unit in The Telluride Lodge be expanded or reduced.

2.3. **“Allocated Share of the Common Elements”** means the share of Common Elements allocated to each of the particular Units in The Telluride Lodge and indicated on **Exhibit “A”**. The Allocated Share of Common Elements for a particular Unit have been established by creating a fraction, the numerator of which shall be the Unit Size of the Unit and the denominator of which is the total cumulative size of all of the Units as were originally included in the Community and as indicated on **Exhibit “A”** and denoted as Original/Initial Unit Square Footage. The Allocated Share of Common Elements assigned to a Unit shall NOT change should the size of the Unit or any other Unit in The Telluride Lodge be expanded or reduced.

2.4. **“Allocated Voting Rights”** means the share of Voting Rights allocated to each of the particular Units in The Telluride Lodge and indicated on **Exhibit “A”**. The Allocated Voting Rights shall be determined by creating a fraction, the numerator of which shall be one and the denominator of which is the total number of Units then in the Community. The Allocated Voting Rights assigned to a Unit shall not change should the size of a Unit in The Telluride Lodge be expanded or reduced. The Allocated Voting Rights assigned to a Unit shall only change in the event that the number of Units in The Telluride Lodge is increased or decreased.

2.5. **“Articles of Incorporation”** or **“Articles”** means the Articles of Incorporation of The Telluride Lodge Association, a Colorado nonprofit corporation, which have been filed with the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

2.6. **“Assessments”** means the annual, special and default Assessments or dues duly assessed pursuant to this Declaration.

2.7. **“Association”** means The Telluride Lodge Association, a Colorado nonprofit corporation.

2.8. **“Association Property”** means, to the extent of the Association’s interest therein: (a) all real and personal property, including Improvements, now or hereafter owned or leased by the Association, (b) all Common Elements and Limited Common Elements now or hereafter owned, leased or maintained by the Association, together with the Improvements thereon; (c) all easements, property rights or other interests created or reserved on the Maps or Declarations, or in any separate agreement, for the use and benefit of the Association and/or the Owners, and (d) any development plans, permits and approvals, water and sewer taps and the like (or interests therein) that may be owned, leased or maintained by the Association or which the Association is entitled to use. Association Property may be located within or outside the Community. With the exception of easements which are Association Property, Association Property does not include the Units or the Improvements constructed thereon.

2.9. **“Board”** means the governing body of the Association as provided in this Declaration and in the articles of incorporation and bylaws of the Association and in the Act.

2.10. **“Budget”** means a written itemized estimate of the Common Expenses to be incurred by the Association in performing its functions under this Declaration and adopted by the Board pursuant to the Declaration.

2.11. **"Building"** means a one of the buildings constructed or to be constructed on the Property pursuant to this Declaration.

2.12. **"Bylaws"** means any instruments, however denominated, which are adopted by the Association for the regulation and management of the internal affairs of that Association, including the amendments thereto.

2.13. **"Common Elements"** means all of the Community, other than the Units, designated as Common Elements and existing for the use of one or more of the Unit Owner. The Common Elements shall be owned by the Unit Owners of the separate Units, each Unit Owner of a Unit having an undivided interest in the Common Elements as allocated in **Exhibit "A"**.

2.14. **"Common Expenses Liability"** means the liability for General Common Expenses allocated to each Unit pursuant to this Declaration.

2.15. **"Common Expenses"** means expenditures made or liabilities incurred by or on behalf of an Association, together with any allocations to reserves, including all expenses incurred by the Association for any reason whatsoever in connection with Association Property, or the costs of any other item or service provided or performed by the Association pursuant to this Declaration, the Articles, Bylaws, Rules and Regulations, or Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association. In the event that any common services furnished to the Community are part of services that are provided to or benefit property in addition to the Community, Common Expenses shall only include the cost of such services reasonably allocated to the services provided to the Community

2.16. **"Condominium Documents"** means the basic documents creating and governing The Telluride Lodge, including, but not limited to, this Declaration, the articles of incorporation and Bylaws of The Telluride Lodge Association, the Map, and any procedures, Rules and Regulations, or policies relating to The Telluride Lodge adopted under such documents by The Telluride Lodge Association or the Board.

2.17. **"Condominium Map"** or **"Map"** means that part of this Declaration that depicts all or any portion of The Telluride Lodge in three dimensions and is recorded in the Records. By this reference, the Condominium Map is incorporated in this Declaration. In interpreting the Condominium Map, the existing physical boundaries of each Unit as constructed shall be conclusively presumed to be its boundaries.

2.18. **"Costs of Enforcement"** means all monetary fees, fines, late charges, interest, expenses, costs, including receiver's and appraiser's fees, and reasonable attorneys' fees and disbursements, including legal assistants' fees, incurred by the Association in connection with the collection of Assessments or in connection with the enforcement of the terms, conditions and obligations of the Condominium Documents.

2.19. **"Declaration"** means this Amended and Restated Condominium Declaration for The Telluride Lodge, a condominium community, together with any supplement or amendment to this Declaration and recorded in the Official Records. The term Declaration includes all Maps and Plats recorded with or prior to this Declaration and all amendments to this Declaration and supplements to the Maps and Plats without specific reference thereto.

2.20. **"Deed of Trust"** means a Mortgage.

2.21. **"Eligible First Mortgagee"** means a First Mortgagee which has notified the Association in writing of its name and address and status as a First Mortgagee and has requested that it receive notices provided for herein.

2.22. **"First Mortgagee"** means a holder of a Security Interest in a Unit which has priority over all other Security Interests in the Unit.

2.23. **"General Common Expenses"** means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, for the general benefit of all or substantially all of the Condominium Units.

2.24. **"Improvement(s)"** means any improvements, structural or otherwise, alterations, additions, repairs, excavation, grading, landscaping or other work which in any way alter any property within the Community, or the improvements located thereon, from its natural or improved state existing on the date this Declaration was first Recorded, including, but not limited to, dwelling units, buildings, outbuildings, additions, patio covers, awnings, the painting, staining or other change of any exterior surfaces of any visible structure, walkways, outdoor sculptures or artwork, sprinkler or irrigation systems, garages, carports, roads, driveways, parking areas, ponds, ditches, fences, screening walls, retaining walls, stairs, decks, flag poles, fixtures, landscaping (including the addition, alteration or removal of any tree, shrub or other vegetation), hedges, windbreaks, plantings, planted trees and shrubs, gardens, poles, signs, tanks, solar equipment, wind harnessing or other energy generating equipment, exterior air conditioning, water softener fixtures, utilities, antennae and satellite dishes or receivers. Once an Improvement has been constructed or accomplished on a property within the Community, any subsequent alteration of or addition to or removal of that Improvement shall also constitute an "Improvement" hereunder.

2.25. **"Lease"** means and refers to any agreement for the leasing, rental, use or occupancy of a residential dwelling located on a Unit within the Community.

2.26. **"Limited Common Elements"** means those parts of the Common Elements which are limited to and reserved for the use in connection with one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include any balcony, deck, patio, courtyard or porch appurtenant to and accessible only from a Unit, any shutters, awnings, window boxes, doorsteps, stoops, porch, balcony or patio designated or designed to serve a single Unit, but located outside the Unit's boundaries or outside Units designated as Limited Common Elements in this Declaration or on the Map, if any. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Limited Common Elements also include any portion of the Common Elements allocated by this Declaration or on the Map as Limited Common Elements. All Limited Common Elements shall be used in connection with the appurtenant Unit(s) to the exclusion of the use thereof by the other Unit Owners, except by invitation. Subject to the Association's overall responsibility for maintenance of the Limited Common Elements, each Unit Owner shall be responsible for routine maintenance and care of the walls, ceilings and floors of any balcony or deck or of any other Limited Common Elements appurtenant to and accessible only from the Unit Owner's Unit, and for keeping the same in a good, clean, sanitary, and attractive condition. No reference to Limited Common Elements need be made in any instrument of conveyance or encumbrance in order to convey or encumber the Limited Common Elements appurtenant to a Unit.

2.27. **"Majority of Owners"** means a majority (or any greater percentage that may be specifically required for a particular action or authorization by the terms of this Declaration) of the total voting power of the members of the Association.

2.28. **"Management Agreement"** means any contract or arrangement entered into for purposes of administering the performance of the responsibilities of a Board relative to the operation, maintenance, and management of The Telluride Lodge or particular portions or aspects thereof.

2.29. **"Managing Agent"** means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Association.

2.30. **"Member"** means each Unit Owner. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit.

2.31. **"Mortgage"** means any mortgage, deed of trust or other security instrument, given voluntarily by the Owner of a Unit, creating a real property security interest in a Unit and Recorded in the records of the Clerk and Recorder of San Miguel County. **"First Mortgage"** means a mortgage which is the first and most senior of the Mortgages on the same Unit. The term **"Mortgage"** does not mean a statutory, tax or judicial lien. The term **"Deed of Trust"** when used herein shall be synonymous with the term **"Mortgage."**

2.32. **"Mortgagee"** means a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee.

2.33. **"Mortgagor"** means the maker, obligor or grantor of a Mortgage. The term **"Mortgagor"** includes a trustor or grantor under a Deed of Trust.

2.34. **"Notice and Hearing"** means a written notice and public hearing before the Board, or a panel appointed by the Board, as set forth in the Bylaws.

2.35. **"Occupant"** means any Person who is a tenant in a residence on a Unit pursuant to a Lease with the Owner thereof. **"Occupant"** also means any Person who is present within the Community as a family member, guest or invitee of an Owner, an Occupant or the Association. **"Occupant"** also means a Unit Owner's guests, invitees, servants, tenants, employees, or licensees who occupy a Unit or are on the Common Elements for any period of time.

2.36. **"Person"** means an individual, association, partnership, limited liability company, corporation, trust, governmental agency, political subdivision, or any combination thereof.

2.37. **"Plat"** means that part of the Original Declaration that is a land survey plat as set forth in Section 38-51-102, Colorado Revised Statutes, as amended, depicts all or any portion of The Telluride Lodge in two dimensions, was executed by the Declarant and was recorded in the Records.

2.38. **"Property"** means the real property described in the Maps.

2.39. **"Real Estate"** means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage, or law, pass with the conveyance of land though not described in the contract of sale or instrument of conveyance. Real Estate includes parcels with or without Horizontal Boundaries and spaces that may be filled with air or water.

2.40. **"Records"** means the Office of the Clerk and Recorder in every county in which any portion of The Telluride Lodge is located.

2.41. **"Regular Assessment"** means a charge against an Owner and the Owner's Unit for purposes of covering the annual costs of operating and administering the Association and all other Common Expenses. Regular Assessments are based on a Budget adopted by the Board in accordance with the Declarations and are allocated to the Units in accordance with the Allocated Interests, except that Common Expenses that in the judgment of the Board benefit fewer than all of the Units may be allocated exclusively to the Units benefited.

2.42. **"Reimbursement Assessment"** means a charge against a particular Owner and the Owner's Unit for the purpose of reimbursing the Association for costs and expenses incurred by the Association in connection with the enforcement of any provision hereof or the remedying of any violation by the Owner or an Occupant of this Declaration or any amendment hereto, the Articles, Bylaws, Rules and Regulations or any approvals granted by any committee, or for other purposes set forth in the Declaration, pursuant to the Declarations, together with late charges and interest as provided for herein. Reimbursement Assessment shall include without limitation any Common Expense caused by the misconduct of any Unit Owner or of such Owner's Occupants.

2.43. **"Rules and Regulations"** means the rules and regulations and policy statements or manuals promulgated by the Board for the management, preservation, safety, control, and orderly operation of The Telluride Lodge in order to effectuate the policies, intent and to enforce the obligations set forth in the Condominium Documents, as amended and supplemented from time to time. The Rules and Regulations include the Renovation Guidelines and such other guidelines and/or policy documents promulgated by the Board consistent with the Condominium Documents.

2.44. **"Security Interest"** means an interest in Real Estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The terms includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security,

assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of a Security Interest. Any such holder of a Security Interest on the Property which has priority over all other Security Interests on the Property shall become a First Mortgagee on such Units.

2.45. **"Short-Term Rental"** means the leasing or rental of a Unit for a period of less than thirty (30) consecutive days, except to a relative of the Owner.

2.46. **"Special Assessment"** means a charge against an Owner and the Owner's Unit for purposes of reimbursing the Association for costs and expenses incurred or to be incurred by the Association for the purpose of paying for the construction, reconstruction, repair, maintenance or replacement of capital improvements to or upon or serving the Community or any part thereof, the costs of which were not included in a Regular Assessment, or for excess reconstruction costs or other extraordinary expenses, or to acquire Association Property, or for funding any operating or reserve deficit of the Association, as authorized by the Board from time to time as provided herein. Special Assessments shall be based on a Budget adopted by the Board in accordance with the Declaration.

2.47. **"Town"** means the Town of Telluride, Colorado.

2.48. **"Unit"** means a physical portion of The Telluride Lodge which is designated for separate ownership or occupancy and the boundaries of which are described in or determined by this Declaration. Each Unit shall be designated by a separate number, letter, address or other symbol or combination thereof that identifies only one Unit in The Telluride Lodge as more specifically set forth on **Exhibit "A"**. If walls, floors, or ceilings are designated as boundaries of a Unit in this Declaration, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring, in-floor heating and any other materials constituting any part of the finished surfaces thereof are a part of the Unit and all other portions of the walls, floors or ceilings are a part of the Common Elements. Unless otherwise provided, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. The boundaries of a Unit as depicted and/or otherwise described on any Map as of the Effective Date shall be conclusively be deemed to be the actual boundaries of the Unit. Changes to any Unit boundaries, if any, shall be described on any amendment or supplement to a Map as provided for herein.

2.49. **"Unit Owner"** or **"Owner"** means any person who owns record title to a Unit or an undivided interest therein. The term includes a contract seller but excludes a contract purchaser, and excludes any Person having a Security Interest in a Unit or an undivided interest therein, unless such Person has acquired record title to such Unit or undivided interest pursuant to a foreclosure or any proceedings in lieu of foreclosure. The term **"Owner"** shall be analogous to the term **"Unit Owner"**, as that term is defined in the Act.

ARTICLE THREE GENERAL PROVISIONS AND RESTRICTIONS

3.1. **Division into Units.** The Property and Community is divided into ____ Buildings containing the Units, each of which Units consist of a separate fee simple estate in a Unit and an appurtenant undivided fee simple interest in the Common Elements. The identification number of each Unit is shown on the Condominium Map. Each Owner shall own his or her appurtenant undivided interest in the Common Elements as a tenant-in-common with the other Owners, and shall have the non-exclusive right to use and enjoy the General Common Elements. With respect to Limited Common Elements, each Owner of a Unit designated by this Declaration or the Condominium Map for the use of such Limited Common Element shall have the non-exclusive right to use and enjoy the same in common with all other Owners of Units so designated, for all purposes for which the Limited Common Element was created, subject to any Rules and Regulations relating thereto.

3.2. **Inseparability of a Unit.** Each Unit and its appurtenant undivided interest in the Common Elements shall be inseparable and may be conveyed, leased, encumbered, devised or inherited only as a Unit.

3.3. **Description of Units.** Every contract for sale, deed, lease, security interest and every other legal document or instrument shall legally describe a Unit as follows:

Unit _____, The Telluride Lodge, a Condominium Community, according to the Condominium Map and the Declaration for Community recorded in the Office of the Clerk and Recorder of San Miguel County, Colorado [with the recording information for the Map and Declaration and each amendment or supplement then of record inserted].

Such description shall be legally sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Unit and its appurtenant undivided interest in the Common Elements, and to incorporate all of the rights, interests, obligations, restrictions and burdens appurtenant or incident to ownership of a Unit as set forth in this Declaration and on the Condominium Map. Each such description shall be construed to include a non-exclusive easement over the Common Elements for appropriate ingress and egress to and from each Unit, and a non-exclusive right to use and enjoy the Limited Common Elements, and an exclusive or non-exclusive right to use and enjoy any Limited Common Elements designated for the use of that Unit, subject to all applicable provisions of this Declaration.

3.4. **Unit Boundaries.** The Unit boundaries shall be as the same are depicted and/or described on the Map and shall be the conclusive description of each particular Unit. In the event of any conflict between any provisions of this Declaration and depictions contained on the Map, with respect to any Unit boundary, the depictions on the Map shall control. All spaces, interior partitions, and other fixtures and Improvements within the boundaries of a Unit are a part of the Unit.

3.5. **Separate Assessments and Taxation - Notice to Assessor.** The Association, to the extent necessary, shall give written notice to the Assessor of San Miguel County, Colorado, of the creation of condominium ownership of this Community, as provided by the Act, so that each Unit, together with its undivided interest in the General Common Elements and its interest in the Limited Common Elements appurtenant thereto, shall be deemed a separate parcel and subject to separate assessment and taxation.

3.6. **Subdivision or Assemblage of Units and Common Elements.** An Owner and the Association may subdivide or otherwise divide, assemble and otherwise modify the boundaries of Units and/or Common Elements only in strict accordance with the provisions contained in this Section. In addition, any relocation of boundaries shall be done in accordance with the procedures set forth in the Act, in particular Sections 212 and 213.

3.6.1. **Subdivision of a Unit into Multiple Units.** For purposes of this Section, the term "Subdividable Units" shall mean only the following described Units: Units 316-317, 318-319, 320-321, 339-340, 341-342, 414-415, 418-419, 500-501, 519-520, 529-530, 539-540 and 541-542.

3.6.1.1. An Owner of a Subdividable Unit shall have the right, upon obtaining written, prior permission of the Association, to subdivide Owner's Subdividable Unit into two Units, meaning an Owner may divide the mapped boundaries of his/her Subdividable Unit into more than one Unit, utilizing the same external boundaries of the mapped Subdividable Unit.

3.6.1.2. An Owner seeking to divide a Subdividable Unit shall prepare and present the Board with plans and specifications demonstrating that the proposed division will not affect the structural integrity of the Building or affect ingress or egress to any other Unit.

3.6.1.3. An Owner seeking to divide a Subdividable Unit shall obtain any and all required approvals from the Town of Telluride, including any condominium subdivision approvals, building permits and the like ("Town Approvals"). In addition, an Owner seeking to divide a Subdividable Unit shall pay any additional tap fees to the Town of Telluride resulting from such division.

3.6.1.4. Upon completion of any construction and the obtaining of all required Town Approvals, an Owner seeking to divide a Subdividable Unit shall prepare an amendment to the Declaration and the Map, demonstrating the resulting Units and complying with this Section 3.6.1. The Declaration Amendment and Map Amendment shall be signed by the Owner and the Association and shall be recorded in the office of the Clerk and Recorder of San Miguel County, Colorado. Any such condominium subdivision shall not be effective for any purpose until a Declaration Amendment and Map Amendment (including modifications to **Exhibit "A"** of this Declaration for the purpose of modifying the Allocated Share of the Common Expenses and Allocated Share of the Common Elements for each of the Units in The Telluride Lodge as indicated on **Exhibit "A"** resulting from the

creation of the Subdividable Unit) has been duly signed by the Association and Owner and thereafter recorded in the office of the Clerk and Recorder of San Miguel County, Colorado by the Owner. All costs of preparation and filing of Declaration Amendment and Map Amendment shall be paid by the Owner or Owners so subdividing Units. The filing of a Declaration Amendment and Map Amendment shall not alter the Allocated Voting Rights assigned to the Unit. No increase in other Unit Owner's Allocated Interests shall occur without their written approval.

3.6.1.5. Upon the completion of the subdivision of a Subdividable Unit, the Allocated Share of the Common Expenses shall be increased as provided for in Section 2.2, while the Allocated Share of Common Elements and the Allocated Voting Rights will stay the same and not be modified, enlarged or decreased.

3.6.1.6. No other Unit, other than a Subdividable Unit may be subdivided.

3.6.1.7. The division and use of a Subdividable Unit shall further comply with the Rules and Regulations.

3.6.2. **Assemblage of Common Elements into a Unit.** An Owner ("Proposing Owner") that wants to propose adding adjacent Common Elements ("Expansion Space") to his/her Unit, shall comply with the following procedures:

3.6.2.1. The Proposing Owner shall submit a complete application to the Association that will be reviewed and acted upon by the Board, in its sole discretion.

3.6.2.2. An application shall contain the following information if deemed necessary by the Board:

(a) An accurate survey, prepared and stamped/certified by a licensed surveyor, showing the existing dimensions of the Unit and Common Elements that are the subject of the application and the resulting dimensions that would result if the application is approved.

(b) Copies of plans, specifications and drawings showing any and all construction activities that is proposed and would be implemented if the application were approved.

(c) A signed statement by a Colorado licensed engineer or architect, addressed to the Association, stating that the proposed construction will not affect any of the following: (1) the structural integrity of any buildings, structures, Units or Common Elements in the Community, (2) utilities serving any Units or Common Elements in the Community, and (3) ingress and egress to any other Units or Common Elements in the Community. The signed statement shall also state that the proposed renovations do comply with all design requirements contained in The Telluride Lodge governing documents and shall comply with all applicable requirements contained in the Town of Telluride Design Guidelines, Land Use Code, Building Code and Municipal Code. The Proposing Owner is responsible for obtaining all required Town plan and permit approvals for the renovation ("**Town Approvals**").

(d) Such other or additional information or documents required to be submitted to the Association pursuant to The Telluride Lodge Homeowners Association Guidelines.

3.6.2.3. The Board, in its sole discretion, based upon the unique facts of a particular application, may require that Proposing Owner to obtain signed consents for the proposed application from the Owners of each Unit that adjoins the Unit being proposed for renovation and/or 51% of the Owners of Units within the Building(s) containing the Unit and Common Elements proposed for renovation. Any consent shall provide that the Owner has reviewed and consents to the proposed plans and specifications and the conversion of Common Elements into the Proposing Owner's Unit.

3.6.2.4. The Board shall review a complete application at its next available regularly scheduled meeting where sufficient time is available or at a special meeting called to review the application. The Board shall include the review of the application on its regularly published agenda. The application will be available for review by Owners in the Associations' business office during normal business hours.

3.6.2.5. After considering the application at a duly held meeting and allowing for comment by the Proposing Owner and any other interested Owners, the Board shall approve or deny, the application. The Board shall approve the application only if it determines that the application meets the following requirements, as determined solely by the Board, in the sole judgment of the Board:

(a) The proposed renovations will not interfere with other Owner's reasonable use and enjoyment of their Units, in terms impacts to another Units structural integrity, utility services, ingress and egress, views, ability to use or access open space/recreation areas.

(b) The Owner has demonstrated the ability to comply with all obligations and requirements contained in the Declarations.

(c) The Owner has agreed to post a bond in an amount reasonably determined by the Board to insure the prompt and timely initiation and completion of all work proposed in the application.

3.6.2.6. Should the Board vote to approve the application, the Board shall require the Proposing Owner to comply with the following conditions and requirements:

(a) Prior to commencing work, the Proposing Owner shall post cash, a bond or other security acceptable to the Board to secure the Proposing Owner's performance under the approval. The amount, term and other elements relating to the security shall be determined by the Board and shall be as provided for in The Telluride Lodge Homeowners Association Guidelines.

(b) Prior to commencing work, the Proposing Owner shall provide the Association with a copy of signed and issued plans and permits from the Town of Telluride authorizing all of the work proposed by the Proposing Owner. Proposing Owner is responsible for all fees, taxes, costs and expenses relating to the Town Approvals, including any tap fees.

(c) Proposing Owner shall be responsible for obtaining any consent which its lender, if any, may require prior to the commencement of the work.

(d) Construction, operation, repair and maintenance of the improvements shall be undertaken in a manner that reasonably minimizes disturbance to the natural condition of the surface area of the Community and shall not cause any disturbance to the natural condition of the surface area of the Community to be re-sodded and/or re-contoured as may be necessary to return such area as nearly as practicable to its condition prior to the construction of the Easement Area.

(e) Appropriate safety measures and devices, including signage, shall be installed at appropriate locations.

(f) All work will be done expeditiously, with as minimal impact as possible to other Unit Owners in a professional workmanlike manner. Work shall proceed as provided for in The Telluride Lodge Homeowners Association Guidelines.

(g) Proposing Owner shall comply with all applicable federal, state and local laws, rules, regulations and safety standards in connection with Proposing Owner's activities hereunder, including, without limitation, the construction, use, operation, maintenance, repair, replacement and service of Proposing Owner's equipment and appurtenances hereunder.

(h) Proposing Owner hereby, jointly and severally, agree to indemnify, defend and save harmless the Association and its directors, officers, employees, successors and assigns and each Owner in the Community and their successors and assigns from any mechanics' liens, expense, cost, claim, action, liability, loss, damage or suit whatsoever (including attorney's fees and costs) (collectively, the Claims and individually, a "Claim") arising out of, or in any way connected with, the construction, installation, maintenance, repair, replacement, use or existence of the improvements.

(i) During the term of the construction of the improvements, the Proposing Owner shall keep and maintain, at their sole cost and expense, a commercial general liability insurance coverage for the Association containing minimum limits per occurrence as reasonably determined by the Board.

3.6.2.7. Within thirty days of the completion of the improvements to the Expansion Space, Proposing Owner, at its cost and expense, shall cause to be prepared:

(a) A Map Amendment showing the new boundaries of the Unit and affected Common Elements in form acceptable to the Association. The Map Amendment must match the approved plans and drawings submitted to the Association. The Map Amendment must include a signature block for the Association and the Town of Telluride, in addition to other signatures required by applicable law.

(b) A Declaration Amendment reallocating the Allocated Interests to reflect the modifications to the boundaries of the Proposing Owners Unit. The Declaration Amendment and Map Amendment shall be signed by the Owner and the Association and shall be recorded in the office of the Clerk and Recorder of San Miguel County, Colorado. Any such modification shall not be effective for any purpose until a Declaration Amendment and Map Amendment (including modifications to Exhibit "A" of this Declaration for the purpose of modifying the Allocated Share of the Common Expenses for each of the Units in The Telluride Lodge as provided for in Section 2.2 resulting from the creation of the Subdividable Unit, except that the Allocated Share of Common Elements and the Allocated Voting Rights will stay the same and not be modified, enlarged or decreased.) has been duly signed by the Association and Owner and thereafter recorded in the office of the Clerk and Recorder of San Miguel County, Colorado by the Owner. All costs of preparation and filing of Declaration Amendment and Map Amendment shall be paid by the Owner or Owners so subdividing Units. The filing of a Declaration Amendment and Map Amendment shall not alter the Allocated Voting Rights assigned to the Unit. No increase in other Unit Owner's Allocated Interests shall occur without their written approval.

(c) When the Map Amendment and Declaration Amendment have been prepared, fully executed and are ready for recordation, the Association will execute and deliver to the Proposing Owner, its quitclaim deed for the portion of the Common Elements which was approved for inclusion within the Unit of the Proposing Owner. Proposing Owner shall cause the Map Amendment, Declaration Amendment and quitclaim deed to be recorded at Proposing Owners cost and expense.

3.6.2.8. The Association and the Proposing Owner shall obtain and maintain insurance on the reconfigured Unit, including the portion of the Common Elements included within the Unit, as provided for in this Declaration.

3.6.2.9. A Proposing Owner may elect to submit a draft application to the Board for the proposed assemblage to get a prior determination by the Board as to whether the application has merit or may confront problems leading to a denial.

3.6.2.10. All costs incurred in connection with any such subdivision or assemblage of Units and Common Elements allowed herein shall be borne by the Owner or Owners of the affected Units, including all costs incurred by the Association in connection therewith.

3.6.2.11. In connection with any such relocation of boundaries, the Owners of the affected Units shall have the right, with the prior written approval of the Board of the Association, to re-designate, as part of a Unit or as a Limited Common Element, any portion of the Common Elements or any walls, floors or other separations between the affected Units, which may be necessary or appropriate to accomplish such combination or division; provided, however, that the exercise of the rights granted herein shall be subject to the prior written consent of any first Mortgagee having an interest in any such affected Units.

3.6.2.12. The Expansion Space shall be subject to the restrictions contained in the Rules and Regulations, including, without limitation, the following:

- separate Unit.
- A. The Expansion Space shall not be further subdivided and/or sold as a separate Unit.
- B. The owner will not seek to obtain a unique address.
- C. The owner will not separate utilities for the expanded space from the existing unit.
- D. The owner will not separate the unit and reside in one portion while renting the other as a separate unit.
- E. The owner will not construct a second kitchen in the Expansion Space.

3.7. **No Partition of Title to Units or Common Elements.** No Owner may assert any right or bring any action for partition or subdivision with respect to such Owner's Unit or the Common Elements. By becoming an Owner, each Owner waives any and all rights of subdivision or partition that such Owner may have with respect to such Owner's Unit and/or the Common Elements. This Section shall not, however, limit or restrict the right of the Owners of a Unit to bring a partition action pursuant to Section 38-28-101, et seq., of the Colorado Revised Statutes requesting the sale of the Unit and the division of the proceeds among such Owners; provided that no physical division of the Unit or of the Common Elements shall be permitted as a part of such action and no such action shall affect any other Unit. Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is appurtenant is void.

3.8. **Encumbrances.**

3.8.1. Any Owner shall have the right from time-to-time to Mortgage or encumber his interest in a Unit by a Mortgage or deed of trust. A first Mortgage shall be one which has first and paramount priority under applicable law and with respect to certain portions of the obligations, liens for Common Expenses or Limited Common Expenses and other obligations created by this Declaration, the Articles of Incorporation and Bylaws. The first Mortgage shall be subordinate to all other terms and conditions of the Declaration other than as expressly provided for in this Section 3.8.1.

3.8.2. The Owner of a condominium may create junior Mortgages on the following conditions. That any such junior Mortgage shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, liens for Common Expenses or Limited Common Expenses and other obligations created by this Declaration, the Articles of Incorporation and Bylaws. That the holder of any junior Mortgage shall release, for the purpose of restoration of any Improvements upon the Community, all of this right, title and interest in and to the proceeds under insurance policies upon said Community wherein the Association is named insured. Such release shall be furnished upon written request by the Association.

3.9. **Separate Assessment.** Each Unit shall be separately assessed for all taxes and assessments of the State of Colorado, San Miguel County or any other political subdivision or district having authority to tax. If and as necessary, Association shall give written notice to the Assessor of San Miguel County, Colorado requesting that the Units be separately assessed and taxed and that the total value of the Common Elements be assessed and taxed proportionately in accordance with the Allocated Interests of such Units in the Common Elements. After this Declaration has been recorded in the real estate records of San Miguel County, Colorado, Association shall deliver a copy of this Declaration as recorded to the Assessor of San Miguel County, Colorado.

3.10. **Mechanic's Liens.** If any Owner shall cause or permit any material to be furnished to such Owner's Unit or any labor or services to be performed therein, neither the Association nor the Owner of any other Unit shall be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done and such Owner shall be solely responsible to contractors, laborers, materialmen and other Persons furnishing labor, services or materials to such Owner's Unit. Nothing herein contained shall authorize any Owner or any Person dealing through, with or under any Owner to charge the Common Elements or any Unit other than that of such Owner with any mechanic's or materialmen's lien

or other lien or encumbrance whatsoever. Notice is hereby given that the right and power to charge any lien or encumbrance of any kind against the Common Elements or against any Owner or any Owner's Unit for work done or materials furnished to any other Owner's Unit is expressly denied. If, because of any act or omission of any Owner, any mechanic's or materialmen's lien or other lien or order for the payment of money shall be filed against any of the Common Elements or against any other Owner's Unit or against any other Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose or which act or omission forms the basis for such lien or order shall, at such Owner's own cost and expense, cause such lien or order to be canceled or bonded over in an amount and by a surety company reasonably acceptable to the party or parties affected by such lien or order within twenty (20) days after the filing thereof, and further such Owner shall indemnify and save harmless all such parties affected from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees resulting therefrom.

3.11. **Additions, Alterations or Improvements by Owners.** No additions, alterations, changes or improvements shall be constructed, made, done or permitted to any Unit by any Owner, Occupant, or employee or agent thereof, without the prior written approval of the Board in accordance with the Declaration and the Rules and Regulations.

3.12. **Maintenance of the Community.** All property within the Community, including, without limitation, all Units, General Common Elements and Limited Common Elements shall be kept and maintained in a safe, clean and attractive condition and in good order, condition and repair as provided for in Section 3.12 and 3.13.

3.13. **Association Maintenance Responsibilities.**

3.13.1. The Association shall be responsible for maintaining, repairing, improving, restoring and replacing the Common Elements, except for those obligations and responsibilities imposed upon the Owner of a Unit for maintaining, repairing, improving, restoring and replacing a Limited Common Element associated with the Unit.

3.13.2. The obligations of the Association shall include, without limitation, the painting, staining or other resurfacing of the exterior surfaces of all walls, exterior doors, windows, decks and balconies, the maintenance, repair, improvement, restoration or replacement of all structural elements and roofs, common lighting and utilities, water features, snowplowing, and landscaping, irrigation and general upkeep of all yard areas.

3.13.3. The Association, through its Board, shall have the exclusive right and authority to make any changes, alterations, improvements or additions to the Common Elements, including the Limited Common Elements, and no individual Owner shall have any right to do any of such things without the express prior written consent of the Board.

3.13.4. If the need for such maintenance or repair results from the willful or negligent act of or from damage or destruction caused by an Owner or Occupant, the Board shall have the right to perform such maintenance or repair and to levy and collect a Reimbursement Assessment upon the Owner and the Owner's Unit for the costs and expenses incurred by the Association in connection therewith.

3.14. **Owner Maintenance Responsibilities With Respect to Owner's Unit and Limited Common Elements.**

3.14.1. Each Owner shall be responsible for maintaining, repairing and improving as necessary all interior elements and features of the Owner's Unit including interior non-supporting walls, improvements, windows, fixtures, equipment, appliances and appurtenances and any decks or balconies associated with the Unit. Each Owner shall have the exclusive right and obligation to paint, repaint, tile, carpet, install drapes, wax, paper or otherwise finish or refinish and decorate the interior surfaces of the walls, ceiling, floors and doors forming the boundaries of his Unit. Nothing herein shall authorize an Owner to undertake any changes or modifications to their Unit or any Common Elements which otherwise require Board approval, in the absence of Board approval.

3.14.2. Each Owner shall be responsible for the day-to-day cleaning and upkeep of the Limited Common Elements reserved for the use of such Owner and any other Owners, including the decks. Any and all cost

associated with maintenance, repair, replacement and day-to-day care, cleaning and upkeep of said Limited Common Elements shall be paid and discharged by the Owner or Owners entitled to the exclusive use of said Limited Common Elements. The expense of maintaining, repairing, replacing or reconstructing a Limited Common Element shall be undertaken by the Owner of the Unit or Units to which such Limited Common Element is assigned.

3.14.3. In addition, each Owner shall be responsible for any damage to other Units or Common Elements resulting from the Owner's failure to perform or negligent performance of the Owner's maintenance and repair responsibilities as set forth herein.

3.14.4. Each Owner shall perform the Owner's maintenance and repair responsibilities in such manner as shall not unreasonably disturb or interfere with other Owners or Occupants.

3.14.5. If an Owner fails to perform any such maintenance or repair obligations within ten days following receipt of a written notice from the Board requesting the same, the Board shall have the right to enter upon the Unit of the Owner to perform such obligations on the Owner's behalf and to levy and collect a Reimbursement Assessment upon the Owner and the Owner's Unit for the costs and expenses incurred by the Association in connection therewith.

3.14.6. Each Unit is subject to an easement for the benefit of the Association and its Board, agents, employees and contractors, for purposes of accomplishing the maintenance and repair rights described herein.

3.15. **Standard of Care.** The Association and the individual Owners shall each use a reasonable standard of care in performing their respective maintenance, repair and upkeep responsibilities so that the entire Community will reflect a pride of ownership. All repairs and replacements within the Community shall be substantially similar to the existing construction and craftsmanship and shall be of first-class quality.

3.16. **Emergency Maintenance and Repair.** Notwithstanding any other provisions of this Section 3.9, in the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of Persons or property within the Community, the Board and its designated agent, shall have the authority (without any notice being required) to take whatever remedial action and to undertake such maintenance, repairs and improvements as may be necessary anywhere in the Community to protect persons and property.

3.17. **Compliance with Laws.** No Owner or Occupant shall do any act or cause or permit anything to be done or kept in or upon its Unit, or any Common Elements, which would be in violation of any federal, state, city or other law, ordinance, regulation or code of any governmental body having jurisdiction, or of any rule or regulation promulgated by the Association, or of any provision of this Declaration, or which would result in the increase of, or cancellation of, insurance maintained by the Association.

3.18. **Use and Occupancy.**

3.18.1. No Unit shall be used other than for a lawful use and in full compliance with all building, zoning and other laws and regulations of the applicable governmental authorities having jurisdiction over the Community.

3.18.2. Each Unit shall be occupied and used only for single-family residential purposes. No business, professional or other non-residential or commercial use shall be made of any Residential Unit, or conducted in any Residential Unit, excepting in-home businesses or occupations which do not involve employees other than Owners, the solicitation or invitation of the general public, or the servicing of customers, and which activities are conducted entirely within the Unit and do not cause any additional traffic or parking within the Community or otherwise create a nuisance for neighboring Units or the Community.

3.18.3. No Owner or Occupant or Person shall do any act or cause or permit anything to be done or kept in or upon a Unit which would result in the increase of, or cancellation of, insurance maintained by the

Association or would be in violation of any federal, state, County or other law, ordinance, regulation or code of any governmental body having jurisdiction, or of any Rule or Regulation promulgated by the Association.

3.18.4. Commencing as of the Effective Date, no Unit Owner shall use, repair, maintain, restrict, encumber, covenant or otherwise own a Unit in such a manner so as to cause its value and/or the value of other Units or Common Elements in the Community to diminish or not reasonably appreciate in value, by any action or inaction of such Unit Owner, including, by way of example and not limitation, placing an enforceable covenant or deed restriction on a Unit or Common Elements which is intended to control the price for which the Unit can be sold, resold or rented to any person or entity, including any governmental entity.

3.18.5. Neither the General Common Elements nor any part or appurtenance of or to any Unit which is visible outside the Unit (e.g., doors) shall be altered in appearance or modified without the prior written consent of the Board.

3.18.6. All unsightly structures, facilities, equipment, objects, and conditions, all sporting equipment (e.g., skis, snowboards, bikes, mountain bikes, kayaks, etc.), and all snow removal, garden or maintenance equipment except when in actual use, shall be kept in an enclosed structure or in a screened area approved in writing by the Board. Tasteful patio furniture and firewood, may be kept on a deck, but shall be kept in an attractive and good condition. No laundry or wash shall be dried or hung outside on any Unit. No barbecue grilles may be used or stored on a deck.

3.18.7. No noxious or offensive activity shall occur or be allowed at any time on any property within the Community, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to Owners, Occupants, or the Association, or which causes damage to other Units or Common Elements, or which interferes with the peaceful enjoyment or possession and proper use of the Community, or any part thereof, by Owners or Occupants. The Board, in its sole discretion, shall have the right and authority to determine the existence of any nuisance or unreasonable embarrassment, disturbance or annoyance under this Section.

3.18.8. Each Owner shall comply with the Rules and Regulations and the requirements of all health authorities and other governmental authorities having jurisdiction over the Community. Normal construction activities and parking, during daylight hours, in connection with the building of authorized Improvements on a Unit shall not be considered a nuisance or otherwise prohibited by this Declaration unless they are in violation of the requirements of the Board, but Units shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Board. In addition, construction equipment and building materials may only be stored or kept within the Community during and in connection with the construction of Improvements thereon, and then may be kept only in areas approved by the Board, which also may require screening of the storage areas. All such equipment and materials shall be removed immediately following completion of construction.

3.18.9. No activity shall be conducted on, and no Improvement shall be constructed on, any property within the Community that is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, and except as allowed below, no explosives, gasoline, fireworks, or other volatile and/or incendiary materials or devices or any materials deemed hazardous or toxic substances under applicable environmental laws, rules, or regulations shall ever be used, kept, stored, permitted to remain or be released or disposed of on any Unit or elsewhere within the Community.

3.19. **Vehicle Parking, Storage, Operation and Repair.**

3.19.1. Each Unit is granted the right to park one motorized vehicle in the Community as provided for in the Rules and Regulations.

3.19.2. Motorized vehicles of any kind shall only be parked or stored in designated parking areas.

3.19.3. No boats, trailers, buses, motor homes, mobile homes, campers, off-road-motorcycles, snowmobiles, recreational vehicles, all terrain vehicles, trucks, industrial or commercial vehicles (both cabs or trailers), abandoned or inoperable vehicles (as defined below), or any other similar vehicles (excepting passenger automobiles and one ton or smaller pick-up trucks) shall be parked or stored in the Community except as approved in advance by the Board.

3.19.4. No motorized vehicle of any kind shall be maintained, repaired, repainted, serviced or rebuilt in the Community. This restriction shall not prevent the non-commercial washing and polishing of vehicles and boats, together with activities normally incident thereto.

3.19.5. An "abandoned or inoperable vehicle" shall mean any motorized vehicle which does not display a current motor vehicle license or which has not been driven under its own propulsion for a period of one (1) week or longer (excepting otherwise permitted vehicles parked by Owners or Occupants while on vacation or during a period of illness), or which does not have an operable propulsion system within the vehicle.

3.19.6. In the event that the Board shall determine that a vehicle is abandoned or inoperable, or is otherwise in violation of the provisions of this section, a written notice of violation describing said vehicle shall be personally delivered to the vehicle owner (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner cannot be reasonably ascertained), thereafter, the Board (as the case may be) shall have the right to remove the offending vehicle, or cause the vehicle to be removed and stored, at the sole expense of the owner of the vehicle if the vehicle is located on a roadway, or at the sole expense of the Owner on which the vehicle is located, all without liability on the part of the Board.

3.19.7. The Board may cause any unauthorized vehicle parked in the Community to be immediately towed at the cost and expense of the owner of the unauthorized vehicle.

3.20. **Pets.** Pets may be owned and kept in the Community only in accordance with those Rules and Regulations or other policies adopted by the Association which govern Pets in the Community.

3.21. **Leases.** Any Owner shall have the right to Lease his Unit under the following conditions:

3.21.1. All Leases shall be in writing, and must cover the entire residence, i.e., no Leases of bedrooms alone or otherwise covering less than all of the residence shall be permitted.

3.21.2. All Leases shall provide (i) that the terms of the Lease and the tenant's (Occupant's) use of the residence shall be subject in all respects to the provisions of this Declaration and the Articles, the Bylaws, the Rules and Regulations (ii) that the Occupant has received and reviewed copies of said documents, and (iii) that any failure by the Occupant to comply with any of the aforesaid documents, in any respect, shall be a default by Occupant under the Lease and a default by Occupant and Owner under said documents which may be enforced against Occupant and/or Owner by the Board.

3.21.3. Each Owner who leases a residence shall be responsible for assuring compliance by the Occupant with all of the provisions of this Declaration, the Articles, the Bylaws, the Rules and Regulations, and the Design Guidelines, and shall be jointly and severally responsible with the Occupant for any violations thereof by the Occupant.

3.21.4. The Owner shall provide the Association with contact information concerning any long-term tenant (more than one month in duration).

3.21.5. Each Lease shall expressly provide that the Association (via the Board) shall have the right to give the Occupant written notice that the Occupant is in violation of one or more of the documents listed in subsection (c) above, which notice shall specify a period of time in which the Occupant may cure the violation. If the violation continues uncured, or if it is repeated within the 3-month period following the date of the first notice, the Lease shall provide that the Owner gives to the Association an irrevocable power of attorney to act on the Owner's behalf to give such statutory notices to the Occupant and to take such other actions as may be necessary or appropriate to terminate the Lease and to evict the Occupant from the Premises. If a Lease does not contain such

provisions, the Owner hereby irrevocably appoints the Association as its attorney-in-fact to act on its behalf as set forth herein, which power shall be deemed coupled with an interest.

3.22. **Annoying Light, Sound or Odor.** All exterior lighting installed or maintained on any Unit shall be placed so that the light source is screened or shielded from any other Residential Unit, and shall require the prior written approval of the Board in each instance. No light shall be emitted from any part of the Community (including any Unit) which is unreasonably bright or causes unreasonable glare. Without limiting the generality of the foregoing, no spotlights, floodlights or other high-intensity lights shall be permitted within the Community without the prior written approval of the Board. No sound shall be emitted from any part of the Community (including any Unit) which is loud or annoying, and no odor shall be emitted from any part of the Community (including any Unit) which is noxious or unreasonably offensive. Again without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used within the Community except with the prior written approval of the Board. The Board, in its sole discretion, shall have the right and authority to determine the existence of any violation of this Section including the reasonableness of any light, sound or odor.

3.23. **Noxious or Offensive Activities; Nuisances.** No noxious or offensive activity shall occur or be allowed at any time within the Community, nor shall anything be done or placed therein which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to Owners, Occupants, or the Association, or which interferes with the peaceful enjoyment or possession and proper use of the Community, or any part thereof, by Owners or Occupants. The Board, in its sole discretion, shall have the right and authority to determine the existence of any nuisance or unreasonable embarrassment, disturbance or annoyance under this Section. Each Owner and Occupant shall comply with any rules and regulations and the requirements of all health authorities and other governmental authorities having jurisdiction over the Community.

3.24. **No Hazardous or Unsafe Activities.** No activity shall be conducted on, and no improvement shall be constructed on, any property within the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no explosives, gasoline, fireworks, or other volatile and/or incendiary materials or devices or any materials deemed hazardous or toxic substances under applicable environmental laws, rules, or regulations shall ever be used, kept, stored, permitted to remain or be released or disposed of in any Unit or elsewhere within the Community.

3.25. **Outside Burning; Fire Hazards.** No exterior fires shall be lighted or permitted within the Community except in a contained gas barbecue unit while attended and in use for cooking purposes. No Owner or Occupant shall cause or permit any condition upon or within his Unit which creates a fire hazard or is in violation of fire prevention regulations, or which would increase insurance rates for other Owners.

3.26. **No Firearms.** The discharge of firearms, including but not limited to BB guns and pellet guns, upon or within any part of the Community (including the Units) is expressly prohibited.

3.27. **Garbage and Trash.** With the exception of dumpsters or other trash receptacles provided by the Association on Common Elements, no refuse, garbage, trash, grass, shrub, or tree clippings, plant waste, scrap, rubbish, or debris of any kind shall be kept, stored, maintained or allowed to accumulate or remain anywhere within the Community, except that containers of such materials may be placed next to the street on the designated morning of garbage collection and must be returned to a Unit that same day. No garbage containers, trash cans or receptacles shall be maintained in an unsanitary or unsightly condition, and except when placed for pickup they shall be kept completely within a Unit.

3.28. **Right of Entry.** During reasonable hours and upon reasonable notice to the Owner or Occupant of a Unit, any member of the Board, and any authorized representative of the Board shall have the right to inspect any exterior portion of a Unit and, with the permission of the Owner or Occupant, the interior portion of the Unit. In the case of emergency, no notice or permission shall be required to inspect the interior of a Unit. The purpose of any such inspection shall be to ascertain whether or not the provisions of this Declaration have been or are being complied with, or for the purpose of exercising any rights or performing any responsibilities (maintenance, repair, etc.) established by this Declaration, and such individuals shall not be deemed guilty of trespass by reason of such

entry. For purposes of this section, "emergency" shall mean circumstances posing an imminent threat of injury or damage to persons or property.

3.29. **Antennae, Satellite Dishes, Etc.** No radio, television or other antennae of any kind or nature, and no device for the transmission or reception of audio, video, microwave or other signals, including without limitation satellite dishes or receivers, shall be erected, attached, placed or permitted to remain on any Common Elements within the Community except with the prior written approval of the Board as to design and location, and then must be adequately fenced or screened in a manner approved by the Board.

3.30. **No Mining or Drilling.** No property within the Community shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, geothermal resources, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth. Nothing contained herein shall be construed to limit the rights of owners of mineral interests reserved or severed from the surface of any portion of the Real Estate prior to the recording of this Declaration.

3.31. **Underground Utility Lines.** Except as to special street lighting or other above-ground facilities which may be expressly required by the Town and/or exist as of the Effective Date, no above-ground utility lines or facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed within the Community, and all utility lines and facilities (including but not limited to water, sewer, gas, electricity, telephone, and cable TV) shall be buried underground.

3.32. **Association Landscaping.** All landscaping on Association Property shall be the responsibility of the Association, and no Owner or Occupant shall perform any landscaping activities within the Community (including without limitation the planting, grooming or removal of grass, trees, bushes or other vegetation, or the planting or tending of gardens) without the express prior written approval of the Board.

3.33. **Signs and Advertising.** No sign, poster, billboard or advertising device of any kind shall be allowed or displayed anywhere within the Community without the prior written approval of the Board and subject to any required Town of Telluride approvals.

3.34. **Health, Safety and Welfare, Rules and Regulations.** In the event any uses, occupancies, activities, and facilities within the Community are deemed by the Board to be an unreasonable annoyance or nuisance, or to adversely affect the health, safety or welfare of Owners or Occupants, the Board may adopt reasonable Rules and Regulations of general application in order to appropriately restrict and regulate such uses, occupancies, activities or facilities within the Community. Such Rules and Regulations shall be consistent with the purposes and provisions of this Declaration.

3.35. **Variances.** The Board may, in its sole discretion and in extenuating circumstances, grant variances from any of the restrictions set forth in this Article 3, if the Board determines, in its discretion, (a) either (i) that a particular restriction creates a substantial hardship or burden on an Owner or Occupant, which hardship or burden was not caused by said Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete, and (b) that the activity permitted under the variance, in the judgment of the Board, will not have any material adverse effect on the Owners and Occupants of the Community, and is consistent with the high quality of living intended to be promoted hereby throughout the Community. When an Owner applies for a variance, the Board must give reasonable notice of the variance hearing to all Owners of Units in the Community. No variance shall conflict with ordinances or regulations of the Town of Telluride. If a variance from Town laws or regulations is also required in connection with a matter for which a variance is desired hereunder, it shall be the Owner's responsibility to obtain such Town variance before submitting a variance application to the Board.

ARTICLE FOUR EASEMENTS

4.1. **Blanket Association Utility Easement Over Common Elements.** There is hereby created, granted and reserved to the Association, its agents, employees and assigns a perpetual, non-exclusive

blanket easement over, across, upon and under the Common Elements for construction, installation, operation, maintenance, repair, removal and replacement of utilities and utility lines, pipes, wires, circuits, conduits, meters, facilities and systems for the benefit of the Community or any part thereof, including but not limited to water, sewer, gas, telephone, electricity, internet, cable TV, and other master TV and communication systems, if any, together with an easement for access, ingress and egress to accomplish such purposes, and together with the right to grant any such easement rights to utility companies. The Association or other person or entity exercising such utility easement rights shall be obligated to restore, reseed, replant and/or relandscape the surface of any disturbed area to as close to its original condition as possible, as promptly as possible following completion of any utility work, and shall be further obligated to exercise such easement rights at such times and in such manner as to interfere as little as reasonably possible with the occupancy, use and enjoyment of the Units by the Owners and Occupants thereof.

4.2. **Association Administrative Easement Over Common Elements.** There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement over, across, upon and under the Common Elements and a right to use the Common Elements for purposes of enabling the Association to perform its various responsibilities and to exercise its various rights under this Declaration.

4.3. **Association Easement in Units for Maintenance, Repair and Emergencies.** There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement and right to enter upon all Units as necessary for the performance of the Association's rights and responsibilities under this Declaration and for the making of emergency repairs or reconstruction to the Buildings, the Units, and/or the Common Elements. For routine maintenance and non-emergency repairs, entry to a Unit shall be made after giving at least one day's notice in writing to the Owner. In case of emergency, where there is an imminent threat of damage or injury to person or property, entry shall be made at any time without notice or permission. The Board is hereby granted the authority to use such reasonable force as may be necessary under the circumstances to gain entry into a Unit in case of an emergency, if no other reasonable means of entry is available. The Association shall be responsible for the cost and expense of repairing all damages to property occurring as a result of such forcible entry, which costs shall be considered Common Expenses, unless the emergency and/or damage results from the willful act or negligence of an Owner or Occupant, in which event such Owner shall be solely responsible for the costs of repairing/restoring such damage. These costs can be levied, assessed and collected by the Board as a Reimbursement Assessment pursuant to the provisions of this Declaration.

4.4. **Encroachment Easements.** Each Owner has an easement upon an adjoining Unit or Common Element for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, settlement or shifting or movement of the Building, or any other similar cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachments occur due to the willful misconduct of an Owner. In the event a structure is partially or totally destroyed, and then repaired or rebuilt in substantially the same manner as originally constructed, the Owners agree that minor encroachments upon an abutting Unit or Common Element shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration or of deeds, mortgages, deeds of trust or other security instruments relating to Units, the actual location of a Unit shall be conclusively deemed to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Unit as indicated on the Condominium Map.

4.5. **Blanket Emergency Services Easement.** There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons now or hereafter serving the Community and its Owners and Occupants, a perpetual, non-exclusive blanket Emergency Services Easement over, upon, along and across all properties and areas within the Community, for use in the lawful performance of their duties.

4.6. **Recorded Easements and Licenses.** In addition to the easements described in this Article 4 and elsewhere in this Declaration, the recorded easements and licenses appurtenant to or included in the Community are noted and further incorporated into the Community.

ARTICLE FIVE COMMON ELEMENTS

5.1. **Use and Enjoyment of Common Elements.** Except as otherwise provided in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Elements in common with all other Owners (a) for all purposes for which such Common Elements were established, and (b) as required for purposes of access and ingress to and egress from (and use, occupancy and enjoyment of) any Unit owned by the Owner or Common Elements available for the Owner's use. This right to use and enjoy the Common Elements shall extend to each Owner, Occupant, and the family members, guests and invitees of each Owner, and shall be appurtenant to each Unit, subject at all times to the provisions of this Declaration, the Articles and Bylaws, and any Rules and Regulations adopted by the Board from time to time. No Owner or Occupant shall place any structure or improvement whatsoever upon the Common Elements, nor shall any Owner or Occupant engage in any activity which will temporarily or permanently impair free and unobstructed access to or use of all parts of the Common Elements (excepting Limited Common Elements) by all Owners and by the Association.

5.2. **Association May Regulate Use of Common Elements.** The Association, acting through the Board, shall have the right and authority to regulate the use of the Common Elements (including the Limited Common Elements) by the promulgation, enforcement and interpretation from time to time of such Rules and Regulations relating thereto as the Association considers necessary or appropriate for the protection and preservation of the Common Elements and the enhancement of the use and enjoyment thereof by the Owners and Occupants.

5.3. **Owner Liability for Owner or Occupant Damage to Common Elements.** Each Owner shall be liable to the Association for any damage to Common Elements or for any expense, loss or liability suffered or incurred by the Association in connection with the Common Elements arising from (a) the negligence or willful misconduct of such Owner or of any Occupant, agent, employee, family member, guest or invitee of such Owner, or (b) any violation by such Owner or any Occupant, agent, employee, family member, guest or invitee of such Owner of any law, regulation, or code, including without limitation any environmental law, or of any provisions of this Declaration, or any Rules and Regulations relating to the Common Elements. Each Owner shall indemnify, defend and hold the Association harmless from any loss, damage, expense or liability arising from the circumstances described in subsections (a) or (b) immediately above. The Association shall have the power to levy and collect a Reimbursement Assessment against an Owner to recover the costs, expenses, damage, losses or liabilities incurred by the Association as a consequence of any such negligence, willful misconduct or violations by the Owner or the Owner's Occupant.

5.4. **Damage or Destruction to Common Elements.** In the event of damage to or destruction of the Common Elements, including improvements thereon, by fire or other casualty, the Association shall repair or replace the same in accordance with the provisions of Article 7 below. Repair, reconstruction, or replacement of Common Elements shall be accomplished under such contracting and bidding procedures as the Association shall determine to be appropriate, and shall be performed at such times and in such manner as to interfere as little as reasonably possible with the occupancy, use and enjoyment of undamaged Units by the Owners and Occupants thereof. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the same for future maintenance, repair, improvement, and operation of Common Elements or for any other use deemed appropriate by the Board.

ARTICLE SIX ASSOCIATION

6.1. **Association; General Powers.** The Association has been formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act to manage the affairs of the Community. The Association shall serve as the governing body for all of the Owners and Occupants for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Elements, the levying and collection of Assessments for Common Expenses and other expenses of the Association, and such other matters as

may be provided in this Declaration, the Articles and the Bylaws. The Association shall have all of the powers, authority and duties as may be necessary or appropriate for the management of the business and affairs of the Community, including without limitation all of the powers, authority and duties of a Colorado corporation formed under the Colorado Revised Nonprofit Corporation Act, and all of the powers and duties provided for in the Act. The Association shall have the power to assign its right to future income, including the right to receive Common Expense assessments, but only upon the affirmative vote of the Owners of Units to which at least 51 percent of the votes in the Association are allocated. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

6.2. **Association Board.** The affairs of the Association shall be managed by the Board. The number, term, and qualifications of the members of the Board shall be fixed in the Articles of Incorporation or the Bylaws, except that there shall never be less than three members. A quorum shall be deemed present throughout any meeting of the Board if persons entitled to cast at least 50 percent of the votes on the Board are present at the beginning of the meeting or grant their proxy as provided in C.R.S. Section 7-128-205(4). With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3-7) of the Act, all regular and special meetings of the Board or any committee thereof shall be open to attendance by all Members of the Association or their representatives. Without limiting the generality of the foregoing, no rule or regulation may be validly adopted during an executive session. Agendas for meetings of the Board shall be made reasonably available for examination by all Members of the Association or their representatives. The Board shall have all of the powers, authority and duties granted or delegated to it by the Colorado Revised Nonprofit Corporation Act, this Declaration, the Articles or Bylaws. Except as provided in the Colorado Revised Nonprofit Corporation Act, this Declaration, the Articles or Bylaws, the Board may act in all instances on behalf of the Association. The Board may not, however, act on behalf of the Association to amend this Declaration, to terminate the Community, or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term. The Board may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for management of the affairs of the Association. No member of the Board and no officer shall be liable for actions taken or omissions made in the performance of such member's or officer's duties except for wanton and willful acts or omissions.

6.3. **Membership in Association.** There shall be one Membership in the Association for each Unit within the Community. The person or persons who constitute the Owner of a Unit shall automatically be the holder of the Membership appurtenant to that Unit, and shall collectively be the "Member" of the Association with respect to that Unit, and the Membership appurtenant to that Unit shall automatically pass with fee simple title to the Unit. Membership in the Association shall not be assignable separate and apart from fee simple title to a Unit, and may not otherwise be separated from ownership of a Unit.

6.4. **Voting Rights of Members.** Each Unit in the Community shall have one vote in the Association which shall be determined and weighted by creating a fraction, the numerator of which shall be 1 and the denominator of which is the total number of Units then in the Community is set forth on attached Exhibit "A". Occupants of Units shall not have voting rights. If title to a Unit is owned by more than one (1) person, such persons shall collectively cast their allocated votes. If only one of the multiple owners of a Unit is present at the Association meeting, such owner is entitled to cast the votes allocated to that Unit. If more than one of the multiple owners is present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any of the multiple owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit. In the event of a protest being made by one or more multiple owners, and a majority of the multiple owners of the Unit cannot agree on how to cast their votes, any votes cast for that Unit shall be null and void with regard to the issue being voted upon. Such multiple owners and their Unit shall nevertheless be counted in determining the presence of a quorum with respect to the issue being voted upon. A quorum is deemed present throughout any meeting of the Members of the Association if persons entitled to cast at least 30 percent of the total allocated votes in the Association are present, in person or by proxy, at the beginning of the meeting. Provided a quorum of allocated votes is present in person or by proxy, the affirmative vote of a majority of the total allocated votes so present shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the Colorado Revised Nonprofit Corporation Act, this Declaration, the Articles, or the Bylaws. The votes

allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of a vote by the other owners of the Unit through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after its date, unless a different termination date is otherwise set forth on its face. The Owners, by a vote of 67 percent of all allocated votes present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause.

6.5. **Rules and Regulations.** The Governing Documents establish a framework of covenants and conditions that govern the Community. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Association's membership are authorized to change the Rules and Regulations in accordance with the following procedures, subject to the limitations set forth in Section 6.5. Generally, Rules and Regulations are intended to enable the interpretation and implementation of this Declaration, the operation of the Association, and the use and enjoyment of the Common Elements (including Limited Common Elements).

6.5.1. **Board Authority.** Subject to the notice requirements and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its Members, the Board, at an open meeting of the Board, may, by Resolution, adopt new Rules and Regulations and modify, amend, supplement or rescind existing Rules and Regulations by majority vote of the directors at any Board meeting.

6.5.2. **Membership Authority.** Subject to the notice requirements in subsection (c), Owners entitled to cast more than 50% of the votes in the Association may also adopt new Rules and Regulations and modify or rescind existing Rules and Regulations at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted.

6.5.3. **Notice.** The Board shall send notice to all Owners concerning any proposed Rule change at least five business days prior to the meeting of the Board or the membership at which such action is to be considered. At any such meeting, Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote. This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Elements, such as hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules and Regulations.

6.5.4. **Effective Date.** A Rules and Regulations change adopted under this Section 6.3 shall take effect 30 days after the date on which written notice of the Rules and Regulations change is given to the Owners. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Owner, and copies of the currently effective Rules and Regulations shall be made available to each Owner and Occupant upon request and payment of the reasonable expense of copying the same. Each Owner and Occupant shall comply with such Rules and Regulations, and each Owner shall see that Occupants claiming through such Owner comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. Such Rules and Regulations may establish penalties (including the levying and collection of fines) for the violation of such Rules and Regulations or of any provision of this Declaration, the Articles, or the Bylaws.

6.5.5. **Conflicts.** In the event of a conflict between the Rules and Regulations and any provision of this Declaration, the Declaration shall control.

6.5.6. **Owners' Acknowledgment and Notice to Purchasers.** By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules and Regulations, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and Regulations and that such change may not be set forth in a recorded document. A copy of the current Rules and Regulations and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

6.6. **Protection of Owners and Others.** Except as may be set forth in this Declaration (either initially or by amendment) all Rules and Regulations that may be adopted by the Board shall comply with the following provisions:

6.6.1. **Similar Treatment.** Similarly situated Units shall be treated similarly.

6.6.2. **Holiday, Religious and other Displays.** No Rule and Regulation shall abridge an Owner's right to display religious or holiday symbols and decorations on his or her Unit of the kinds normally displayed in single-family residential neighborhoods. The Board may regulate or prohibit signs or displays, the content or graphics of which the Board deems to be obscene, vulgar, or similarly disturbing to the average person.

6.6.3. **Displays of American Flags.** No Rule and Regulation shall abridge an Owner's right display of the American flag in that Owner's Unit, in a window of the Owner's Unit, or on a balcony adjoining the owner's Unit if the American flag is displayed in a manner consistent with the federal flag code, P.L. 94-344; 90 Stat. 810; 4 U.S.C. 4 to 10. The Association may adopt reasonable rules regarding the placement and manner of display of the American flag. The Association rules may regulate the location and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole.

6.6.4. **Displays of Service Flags.** No Rule and Regulation shall abridge an Owner's right display a service flag bearing a star denoting the service of the Owner or a member of the Owner's immediate family in the active or reserve military service of the United States during a time of war or armed conflict, on the inside of a window or door of the Owner's Unit. The Association may adopt reasonable rules regarding the size and manner of display of service flags; except that the maximum dimensions allowed shall be not less than nine inches by sixteen inches.

6.6.5. **Displays of Political Signs.** No Rule and Regulation shall abridge an Owner's right display of a political sign by an Owner in that Owner's Unit, in a window of the Owner's Unit; except that an Association may prohibit the display of political signs earlier than forty-five days before the day of an election and later than seven days after an election day. An Association may regulate the size and number of political signs that may be placed on a unit owner's property if the Association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the city, town, or county in which the Unit is located does not regulate the size and number of political signs on residential property, the Association shall permit at least one political sign per political office or ballot issue that is contested in a pending election, with the maximum dimensions of thirty-six inches by forty-eight inches, on a unit owner's property. As used in this Section, "political sign" means a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate, the recall of a public official, or the passage of a ballot issue.

6.6.6. **Household Composition.** No Rule and Regulation shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Elements.

6.6.7. **Activities Within Dwellings.** No Rule and Regulation shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

6.6.8. **Allocation of Burdens and Benefits.** No Rule and Regulation shall alter the allocation of financial burdens among the various Units or rights to use the Common Element to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Elements availability, from adopting generally applicable Rules and Regulations for use of Common Element, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Element, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided for herein.

6.6.9. **Leasing and Transfer of Units.** No Rule and Regulation shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit; however, the Rules and Regulations may require a minimum lease term and other requirements and limitations. The Rules and Regulations may also require that Owners use Board-approved lease forms (or include specific lease terms), and may impose a reasonable review or administrative fee in connection with the Board's review of a lease.

6.6.10. **Abridging Existing Rights.** No Rule and Regulation shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.

6.6.11. **Interference with Easements.** No Rule and Regulation may unreasonably interfere with the exercise of any easement.

6.6.12. **Parking of Certain Vehicles.** No Rule and Regulation may unreasonably interfere with the ability of an Owner to park a motor vehicle on a street, driveway, or guest parking area in the Community if the vehicle is required to be available at designated periods at the Owner's residence as a condition of the Owner's employment and all of the following criteria are met:

- A. The vehicle has a gross vehicle weight rating of ten thousand pounds or less;
- B. The Owner is a bona fide member of a volunteer fire department or is employed by an emergency service provider, as defined in section 29-11-101(1.6), C.R.S.;
- C. The vehicle bears an official emblem or other visible designation of the emergency service provider; and
- D. Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other unit owners to use streets and driveways within the common interest community.

6.7. **Community Technology.**

6.7.1. **Community Systems.** The Association may provide, or may enter into and assign to the Association or cause the Association to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance and upgrades or modifications to the Community Systems as the Association determines appropriate. The Association may provide for access to any such Community System for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a Service Area Assessment or Specific Assessment and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

6.7.2. **Opportunities for Community Interaction.** The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and occupants to interact and participate in Association-sponsored activities. To the extent permitted by the Act, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

6.8. **Required Disclosures.**

6.8.1. To the extent required by the Act, the Association shall provide to all Owners, at least once per year, a written notice stating the name of the Association; the name of the Association's designated agent or management company, if any; and a valid physical address and telephone number for both the Association and the designated agent or management company, if any. The notice shall also include the name of the Community, the initial date of recording of the Declaration, and the reception number or book and page for the main document that constitutes the Declaration. If the Association's address, designated agent, or management company changes, the Association shall provide all unit owners with an amended notice within ninety days after the change. The notice required by this Section may be accomplished by mail, email or by posting the information on a website maintained by the Association and readily accessible to all Owners. An Owner who does not have access to the internet shall provide written notice to the Association requesting that the notice contemplated by this Section be sent to that Owner by mail.

6.9. **Good Governance Policies.**

6.9.1. The Association shall adopt responsible governing policies, including, but not limited to, policies as to the handling of conflicts of interest and investment of reserve funds. To the extent that other governance policies and practices are not otherwise formally adopted, the Association shall adhere to the requirements of the Colorado Revised Nonprofit Corporation Act as it relates to the governance of the Association. No policy of the Association shall be adopted that is inconsistent with the provisions of the Colorado Revised Nonprofit Corporation Act.

6.9.2. In addition to the foregoing and to the extent not otherwise provided for in this Declaration or Articles of Incorporation and the Bylaws for the Association, to promote responsible governance, the Association shall:

- A. Maintain accounting records using generally accepted accounting principles; and
- B. Adopt policies, procedures, and rules and regulations concerning:
 - (I) Collection of unpaid assessments;
 - (II) Handling of conflicts of interest involving board members;
 - (III) Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;
 - (IV) Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines;
 - (V) Inspection and copying of Association records by Owners;
 - (VI) Investment of reserve funds; and
 - (VII) Procedures for the adoption and amendment of policies, procedures, and rules, which are generally stated in Section 6.3 and Section 6.4 of this Declaration.

6.10. **Education.**

6.10.1. The Board may authorize, and account for as a common expense, reimbursement of Board members for their actual and necessary expenses incurred in attending educational meetings and seminars on responsible governance of the Associations. The course content of such educational meetings and seminars shall be specific to Colorado, and shall make reference to applicable sections of this Act.

6.10.2. The Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and the Board under Colorado law.

ARTICLE SEVEN
INSURANCE

7.1. **Insurance Requirements.** The Association shall obtain, maintain and keep in full force and effect at all times the following types of insurance, and the cost of said coverage shall be paid by the Association as a Common Expense:

7.1.1. **Casualty Insurance.** Property insurance on the Common Elements and on any property owned by the Association. The insurance must include the Units but not the finished interior surfaces of the walls, floors and ceilings of the Units, which finished interior surfaces of the walls, floors and ceilings of the Units and all other improvements and furnishings and personal property in the Unit, the Owner of the Unit is required to obtain. Such insurance shall be for broad form covered causes of loss, including casualty, fire, and extended coverage insurance including, if available at a reasonable cost, coverage for vandalism and malicious mischief. Such insurance shall be for the full insurable replacement cost of the Units and other insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies.

7.1.2. **Liability Insurance.** Comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements and covering public liability or claims of liability for injury to persons and/or property, and death of any person or persons. Such liability insurance shall, to the extent reasonably obtainable, (a) have limits of not less than Two Million Dollars (\$2,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence; (b) insure the Board, the Association and its officers, and their respective employees, agents and all persons acting as agents; (c) include the Owners as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements; (d) cover claims of one or more insured parties against other insured parties; and (e) be written on an occurrence basis.

7.1.3. **Worker's Compensation.** A Worker's Compensation policy, if necessary, to meet the requirements of law.

7.1.4. **Directors and Officers Liability Insurance.** The Association may, in its discretion, carry directors and officers liability insurance in such amount as the Board may deem appropriate.

7.1.5. **Other Insurance.** Such other insurance in such amounts as the Board shall determine, from time to time, to be appropriate to protect the Association or the Owners, or as may be required by the Act.

7.2. **General Provisions Respecting Insurance.**

7.2.1. Insurance policies carried pursuant to Sections 7.1.1 and 7.1.2 above shall provide that (i) each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association; (ii) the insurer waives its rights of subrogation under the policy against the Association, each Owner, and any person claiming by, through, or under such Owner or any other director, agent or employee of the foregoing; (c) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (d) if at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy shall be the primary insurance. An insurer that has issued an insurance policy for the insurance described in Sections 7.1.1 and 7.1.2 above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

7.2.2. Any loss covered by the property insurance policy described in Sections 7.1.1 above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, the Owners, and lienholders as their interests may appear. Subject to the provisions of Section 38.33.3-313(9) of the Act, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, the Owners, and lienholders are not entitled to receive payments of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely restored or the Community is terminated. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims,

responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. In the event more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro rata share of any deductible paid by the Association.

7.2.3. Insurance policies and insurance coverage shall be reviewed at least annually by the Board to ascertain whether coverage under the policies is sufficient in light of the current values of Common Elements and in light of the possible or potential liabilities of the Association and other insured parties. In no event shall insurance coverage obtained or maintained by the Association obviate the need for Owners and Occupants to obtain insurance for their own benefit.

7.3. **Non-liability of Association or Board.** Notwithstanding the duty of the Association to obtain insurance coverage, as stated herein, neither the Association nor any Board member, shall be liable to any Owner, Occupant, mortgagee or other person, if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner and Occupant to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner or Occupant may desire.

7.4. **Premiums.** Premiums for insurance policies purchased by the Association and other expenses connected with acquiring such insurance shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Unit or its appurtenances, or Common Elements, by an Owner or Occupant, may at the Board's election, be assessed against that particular Owner and his Unit as a Reimbursement Assessment.

7.5. **Insurance Claims.** The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard, and may, in its discretion, appoint an authorized representative, or enter into an insurance trust agreement, wherein the trustee shall have the authority to negotiate losses under any policy purchased by the Association.

7.6. **Benefit.** Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for the Association, the Owners, or the Occupants, as their interests may appear.

7.7. **Other Insurance to be Carried by Owners.** Insurance coverage on the improvements, furnishings and other items of personal property belonging to an Owner or Occupant, and public liability insurance coverage within and upon each Unit and any Limited Common Elements designated for that Unit shall be the responsibility of the Owner or Occupant of the Unit.

7.8. **Damage to Community.** Any portion of the Community for which insurance is required under Section 38-33.3-313 of the Act that is damaged or destroyed must be repaired or replaced promptly by the Association unless: (i) the Community is terminated; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) 67 percent of the Unit Owners, including owners of every Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged property to a condition compatible with the remainder of the Community, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt must be distributed to the Owners of those properties, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all Unit Owners or lienholders as their interests may appear in proportion to the Common Elements interests of the Units. In the event of damage to or destruction of all or a portion of the Common Elements due to fire or other adversity or disaster, the insurance proceeds, if sufficient to

reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Association may levy a Special Assessment in the aggregate amount of such deficiency, or if any Owner or group of Owners is liable for such damage, may levy a Reimbursement Assessment against the Owner or group of Owners responsible therefor, and shall proceed to make such repairs or reconstruction. Such Assessment shall be due and payable as provided by resolution of the Board, but not sooner than 60 days after written notice thereof. The Assessment provided for herein shall be a debt of each Unit Owner assessed and a lien on his Unit, and may be enforced and collected in the same manner as any Assessment Lien provided for in this Declaration. If the entire damaged property is not repaired or replaced, the insurance proceeds attributable to the damaged property must be used to restore the damaged property to a condition compatible with the remainder of the Community. No distributions of insurance proceeds shall be made unless made jointly payable to the Unit Owners and first mortgagees of their respective Units, if any.

ARTICLE EIGHT LIMITED LIABILITY

Neither the Association nor its past, present or future officers or directors, nor any other employee, agent or committee member of the Association shall be liable to any Owner or Occupant or to any other person for actions taken or omissions made except for wanton and willful acts or omissions. Without limiting the generality of the foregoing, the Association and the Board shall not be liable to any Owner or Occupant or other person for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice. To the extent insurance carried by the Association for such purposes shall not be adequate, the Owners severally agree to indemnify and to defend the Association and the Board against claims, damages or other liabilities resulting from such good faith action or failure to act.

ARTICLE NINE ASSESSMENTS

9.1. **Assessment Obligation.** Each Unit Owner, by acceptance of a deed therefor (including a public trustee's or sheriff's deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) Regular Assessments or charges, (2) Special Assessments, and (3) Reimbursement Assessments, such assessments to be established and collected as hereinafter provided (collectively the "Assessments"). The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Unit against which each such Assessment is charged. The obligation for such payments by each Unit Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without set-off or deduction of any kind or nature. Each Unit Owner is liable for Assessments made against such Owner's Unit during his period of ownership of the Unit. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the joint, several and personal obligation of each person who was an Owner of such Unit at the time when the Assessment became due. Upon the transfer of title to a Unit, the transferor and the transferee shall be jointly, severally and personally liable for all unpaid Assessments and other charges due to the Association prior to the date of transfer, and the transferee shall be personally liable for all such Assessments and charges becoming due thereafter.

9.2. **Statutory Lien.** The Association has a statutory lien pursuant to §38-33.3-316 of the Act on the Unit of an Owner for all Assessments levied against such Unit or fines imposed against such Unit's Owner from the time the Assessment or fine becomes due (the "Assessment Lien"). Fees, charges, late charges, attorneys' fees, fines and interest charged by the Association pursuant to the Act or this Declaration are enforceable as Assessments. The amount of the lien shall include all such items from the time such items become due. If an Assessment is payable in installments, the Association has an Assessment Lien for each installment from the time it becomes due, including the due date set by the Board's acceleration of installment obligations. An Assessment Lien is extinguished unless proceedings to enforce the lien are instituted within 6 years after the full amount of Assessments becomes due.

9.3. **Lien Superior to Homestead and Other Exemptions.** An Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

9.4. **Priority of Lien.** An Assessment Lien is prior to all other liens and encumbrances on a Unit except as follows:

9.4.1. Liens and encumbrances recorded before the recordation of this Declaration;

9.4.2. A security interest on the Unit which has priority over all other security interests on the Unit and which was recorded before the date on which the Assessment sought to be enforced became delinquent. An Assessment Lien is prior to the security interest described in the preceding sentence to the extent of an amount equal to the Regular Assessments (based on a Budget adopted by the Association pursuant to the Declaration) which would have become due, in the absence of any acceleration, during the 6 months immediately preceding institution by the Association or any party holding a lien senior to any part of the Association lien created under this Article 9 of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien;

9.4.3. Liens for real estate taxes and other governmental assessments or charges against the Unit; and

9.4.4. As may otherwise be set forth in the Act. The priority of mechanics and materialmen's liens is not affected by the Act.

This Article 9 does not prohibit an action or suit to recover sums for which this Article 9 creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Unit shall not affect the lien for an Assessment.

9.5. **Perfection of Lien.** The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien for Assessments is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Unit as a Reimbursement Assessment.

9.6. **Regular Assessments.**

9.6.1. A Regular Assessment shall be made annually against each Unit, based upon an annual Budget prepared by the Board, for purposes of paying (i) the annual costs of operating and administering the Association and all other Common Expenses, (ii) reasonable reserves for contingencies, replacements, and other proper purposes, and (iii) such other matters as may be reasonably determined by the Board to be the subject of a Regular Assessment;

9.6.2. Regular Assessments shall be allocated in accordance with the Allocated Interests of each Unit in the Community, except that Unit Common Expenses shall be assessed exclusively against the Units, provided that any Common Expense or portion thereof benefiting fewer than all of the Units may be assessed exclusively against the Units benefited; and (v) any Common Expense associated with the maintenance, repair, improvement or replacement of a Limited Common Element shall be assessed only against the Unit(s) for which the Limited Common Element is designated. Regular Assessments shall be levied on a calendar year basis. Regular Assessments shall be paid in installments on a monthly, quarterly, semi-annual or annual basis, as the Board may determine from time to time, and shall be due either on the first day of each calendar month or on the first day of each calendar year quarter (January 1, April 1, July 1 and October 1), or on the first day of a semi-annual or annual period (e.g. January 1, July 1) as appropriate. Unless and until changed to a monthly or semi-annual or annual system by the Board, Regular Assessments shall be due and payable on the first day of each calendar quarter. Any Owner acquiring a Unit between installment due dates shall pay a pro rata share of the immediately preceding installment.

9.6.3. The Board shall fix the amount of the Regular Assessment (or dues), using the Budget procedure described below, at least 30 days before the end of each fiscal year. Written notice of the Regular Assessment shall be sent to each Owner. Failure of the Board timely to fix and levy the Regular Assessments for any year or to send a notice thereof to any Owner shall not relieve or release any Owner from liability for payment of Regular Assessments or any installments thereof for that or subsequent years as soon as the Board levies the Regular Assessment and provides notice thereof.

9.6.4. The Board may, but is not obligated, mail to each Owner at least 10 days prior to the due date thereof a written notice of the amount of the next quarterly (or monthly or semi annual or annual, as the case may be) installment of Regular Assessment that is due from such Owner, and the date on which such installment is due pursuant to subparagraph (d) above. Failure of the Board to send timely notice to any Owner of an installment of Regular Assessment due shall not relieve or release any Owner from liability for payment of that installment as soon as the Board in fact provides such notice.

9.6.5. In accordance with §38-33.3-314 of the Act, any surplus funds remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves shall be carried forward as a credit against the next year's budget.

9.7. **Association Budget.** During the last three (3) months of each fiscal year thereafter, the Board shall prepare or cause to be prepared an operating budget ("Budget") for the next fiscal year. The Budget shall provide the allocation of any surplus funds remaining from any previous Budget period. Within thirty (30) days after adoption of any proposed Budget for the Association, the Board shall mail, by ordinary first-class mail, email or otherwise deliver, a summary of the Budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the Budget not less than 14 nor more than 60 days after the mailing or other delivery of the summary. Such meeting may, but need not be, concurrent with the annual meeting of the Members as provided in the Bylaws. The Budget shall be considered by the Owners at that meeting whether or not a quorum of Owners is present and must be approved by 51% of Unit Owner at that meeting. In the event that the proposed Budget is rejected, the Budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent Budget proposed by the Board.

9.8. **Special Assessments.**

9.8.1. In addition to the Regular Assessments and Reimbursement Assessments authorized in this Article 9, the Board may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, maintenance, or replacement of capital improvements (including related fixtures and personal property) to or upon or serving the Community, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association. Except in the event of an emergency, where no membership vote shall be required, the Board shall not levy a Special Assessment without the approval of the Unit Owners in the Community as provided below.

9.8.2. Written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Owners no less than 30 or more than 50 days before the meeting. At the meeting, the presence of Owners in person or by proxy that are entitled to cast 50 percent of the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called pursuant to the same notice requirements, and the required quorum at this second meeting shall be only 30 percent of the votes in the Association. No such second meeting shall be held more than 60 days following the date of the first meeting.

9.8.3. Provided a quorum of Owners entitled to vote is present in person or by proxy in accordance with the quorum requirements set forth in the preceding paragraph, then the affirmative vote of Owners holding a majority of the allocated votes so present shall constitute approval of the proposed Special Assessment.

9.8.4. For purposes of this Section 9.8, the term "emergency" shall mean any circumstances or set of circumstances which pose an imminent threat of loss, damage or injury, actual or threatened, to persons or property. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the Allocated Interests of each Unit in the Community, provided that Special Assessments that benefit fewer than all of the Units shall be allocated exclusively to the Units benefited. Special Assessments shall be due and

payable to the Association on the due date fixed by the Board in the notice given to the Owners of such Special Assessment, which due date shall be no earlier than 30 days after the giving of such notice.

9.9. **Reimbursement Assessments.** In addition to the Regular and Special Assessments authorized hereunder, the Board may levy against any Owner or Owners, at any time and from time to time, a Reimbursement Assessment for purposes of reimbursing the Association for all costs and expenses incurred by it in enforcing any provision of or in remedying any violation of this Declaration, the Articles and Bylaws, or any Rules and Regulations, by such Owner or Owners, their Occupant(s), or their agents, employees or contractors. Reimbursement Assessments may also be made by the Board for any other purposes for which this Declaration provides for the levying of a Reimbursement Assessment. Finally, and in addition to the foregoing, a Reimbursement Assessment may also be levied in the form of a reasonable fine against an Owner for a violation of this Declaration, the Articles, Bylaws, or the Rules and Regulations, but only after the Owner(s) to be so fined have been provided with Notice and Hearing. Reimbursement Assessments shall be due and payable to the Association on the due date fixed by the Board in the notice given to the Owner(s) of such Reimbursement Assessment, which date shall be no earlier than 30 days after the giving of such notice.

9.10. **Benefit of Class of Owners.** The costs of any Common Expenses to the Community, not determined to be a Limited Common Expense pursuant to this Article, (including, without limitation, gas, electric, trash, water and sewer and other utility expenses), unless and to the extent that these are separately metered or provided, shall be apportioned to all Units, in accordance with the Units' percentage ownership interests in and to the General Common Elements, as set forth on **Exhibit "A"**. The foregoing notwithstanding, the costs of any Common Expenses, or portions thereof, which the Board reasonably determines to benefit only one or more Units, shall be borne by the Unit or Units involved, in accordance with the allocations determined by the Board, in its sole discretion.

9.11. **Misconduct.** If any Common Expenses or Limited Common Expenses are caused by the misconduct of any Owner, the Board may assess that expense exclusively against such Owner's Unit.

9.12. **Special Allocation of Expenses of Repair and Maintenance.** The Association shall have the right to allocate a disproportionate share of the expenses of repair and maintenance of the Common Elements to any Unit or to a particular Building, which has been occupied or used (including uses of a Unit on a rental basis for the majority of the dates in any Assessment period) to the extent that the Board reasonably determines that such occupancy and/or usage has resulted in excessive wear and tear.

9.13. **Effect of Nonpayment of Assessments; Remedies of the Association.**

9.13.1. Any Assessment or portion or installment thereof which is not paid when due (or for which a bad check is issued) shall be deemed delinquent and shall bear interest from and after the due date at the rate of interest set by the Board from time to time, which shall not be less than 12 percent nor more than 21 percent per year, and the Board may also assess a late charge thereon and/or may assess a bad check charge in the amount of 10 percent of the bad check or \$50.00, whichever is greater. The Board may also elect to accelerate the installment obligations of any Regular Assessment for which an installment is delinquent. The delinquent Owner shall also be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting a delinquent Assessment, which collection costs shall be added to the delinquent Assessment. The Board may but shall not be required to record a Notice of Delinquent Assessment or charge against any Unit as to which an Assessment or charge is delinquent. The Notice shall be executed by an officer of the Board, and shall set forth the amount of the unpaid Assessment or charge, the name of the delinquent Owner and a description of the Unit.

9.13.2. The Assessment Lien may be foreclosed by the Association in the same manner as a mortgage on real property. The Association shall be entitled to purchase the Unit at foreclosure. The Association may also bring an action at law against the Owner personally obligated to pay the delinquent Assessment and/or foreclose the lien against said Owner's Unit in the discretion of the Association. No Owner may exempt himself or otherwise avoid liability for the Assessments provided for herein by waiver of the use or enjoyment of any Common Elements or by abandonment of the Unit against which the Assessments are made.

9.13.3. In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver to collect all sums alleged to be due from the Unit Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Regular Assessments.

9.14. **Statement of Unpaid Assessments.** The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by facsimile transmittal or by certified mail, first class postage prepaid, return receipt requested, to the Association, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit, whether delinquent or not. The statement shall be furnished within 14 days after receipt of the request and is binding on the Association, the Board, and every Owner. If no statement is furnished either delivered personally or by facsimile transmission or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for unpaid Assessments which were due as of the date of the request.

9.15. **Assessments for Tort Liability.** In the event of any tort liability against the Association which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a Special Assessment. The Association may, however, require a larger contribution from fewer than all Owners under any legal or equitable principles regarding liability for negligent or willful acts or omissions.

ARTICLE TEN EMINENT DOMAIN

10.1. **Definition of Taking** The term "taking", as used in this Article 10, shall mean condemnation by eminent domain or sale under threat of condemnation.

10.2. **Representation in Condemnation Proceedings of Common Elements** In the event of a threatened taking of all or any portion of the Common Elements, the Unit Owners hereby appoint the Association through such persons as the Board may designate to represent the Association and all of the Unit Owners in connection therewith. The Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Service of process on the Association shall constitute sufficient notice to all Unit Owners, and service of process on each individual Unit Owner shall not be necessary.

10.3. **Award for Common Elements** Any awards received by the Association on account of the taking of Common Elements shall be paid to the Association. The Association may, in its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Unit Owners as their interests may appear. The rights of a Unit Owner and the mortgagee of a Unit as to any such distribution shall be governed by the provisions of the mortgage encumbering the Unit.

10.4. **Taking of Units.** If a Unit is acquired by eminent domain or part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Owner for the acquired Unit and its Allocated Interests whether or not any Common Elements were acquired. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests are automatically reallocated to the remaining Units (as appropriate) in proportion to the respective Allocated Interests of those Units before the taking. Any remnant of a Unit remaining after part of a Unit is taken is thereafter a Common Element. Otherwise, if part of a Unit is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Unit and its interest in the Common Elements whether or not any Common Elements were acquired. Upon acquisition, unless the decree otherwise provides:

10.4.1. That Unit's Allocated Interests are reduced in proportion to the reduction in the number of Units in the Community; and

10.4.2. The portion of Allocated Interests divested from the partially acquired Unit is automatically reallocated to that Unit and to the remaining Units (as appropriate) in proportion to the respective

interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

10.5. **Miscellaneous.** The court decree shall be recorded in San Miguel County. The reallocations of Allocated Interests pursuant to this Article shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

**ARTICLE ELEVEN
SPECIAL DECLARANT RIGHTS, DEVELOPMENT RIGHTS
AND ADDITIONAL RESERVED RIGHTS**

The Association hereby reserves for itself and its successors, assigns and designees, the following "Special Declarant Rights," "Development Rights" and "Additional Reserved Rights" for up to thirty years following the recordation of this Declaration (collectively the "Reserved Declarant Rights"). The exercise of the Reserved Declarant Rights is subject to the Town Laws, including any and all required reviews and approvals by the Town.

11.1. **SPECIAL DECLARANT RIGHTS.**

11.1.1. **Completion of Improvements.** The right to complete Improvements indicated on plats and maps filed with the Declaration.

11.1.2. **Exercise of Reserved Rights.** The right to exercise (i) any Special Declarant Rights, Additional Reserved Rights or Development Rights reserved in this Article or (ii) any other rights reserved or existing under the provisions of this Declaration or the Act.

11.1.3. **Consolidation on Merger.** The right to merge or consolidate the Community with a similar common interest community.

11.1.4. **Amendment of Declaration.** The right to amend the Declaration in connection with the exercise of any Development Rights, Special Declarant Rights or Additional Reserved Rights.

11.1.5. **Amendment of Community Map.** The right to amend the Condominium Map in connection with the exercise of any Development Rights, Special Declarant Rights or Additional Reserved Rights.

11.2. **DEVELOPMENT RIGHTS.**

11.2.1. **Relocate Boundaries.** The right to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements or otherwise reduce or diminish the size of Units (reduce or diminish the size of areas of the Common Elements), subdivide Units with the consent of the owner of the affected Unit(s), provided that, the Association shall not reduce or diminish the size of a portion of the General Common Elements which has been properly designated as a Limited Common Element without the consent of the Owner(s) of the Unit(s) to which the Limited Common Element has been assigned.

11.2.2. **Create Additional Units.** The right to create or construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements or to convert Common Elements into Units.

11.2.3. **Annex Additional Real Property or Units.** The right to add Units and to subject additional Property located in the Town of Telluride to the provisions of this Declaration upon the substantial completion of improvements thereon.

11.2.4. **Withdraw Real Property.** The right to withdraw any Property from the provisions of this Declaration.

11.2.5. **Master Associations and Subordinate Association.** The right to create master associations and/or subordinate associations (for an individual Building) and to subject all or portions of the Property to such master association or subordinate association;

11.2.6. **Other Rights.**

11.2.6.1. The right to exercise any and all Development Rights reserved herein or otherwise allowed in the Act;

11.2.6.2. The right to amend the Declaration in connection with the exercise of any Development Rights; and

11.2.6.3. The right to amend the Condominium Map in connection with the exercise of any Development Rights.

11.3. **ADDITIONAL RESERVED RIGHTS.**

11.3.1. **Dedications.** The right to establish or obtain, from time to time, by dedication, grant or otherwise, utility and other easements or encroachment permits for purposes including but not limited to streets, paths, walkways, skyways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Community.

11.3.2. **Use Agreements.** The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of recreational facilities and/or Common Elements, which may or may not be a part of the Community.

11.3.3. **Other Rights.** The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

11.4. **No Further Authorizations Needed.** The consent of Owners or holders of Security Interests shall not be required for the Association or its assignees to exercise any reserved rights, and Association or its assignees may proceed without limitation at their option, subject to existing Property use, zoning laws and any planned unit development requirements of the Town of Telluride. Reserved rights of the Association or its assignees may be exercised with respect to different parcels of the Community at different times. Additionally, Association or its assignees may exercise any reserved rights on all or any portion of the Community in whatever order is determined. Association or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted.

11.5. **Amendment of the Declaration or Community Map.** If Association or its assignees elect to exercise any reserved rights, that party shall comply with the Act.

11.6. **Interpretation.** Recording of amendments to the Declaration and the Condominium Map or plat pursuant to reserved rights in the Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically vest in each existing Owner the reallocated Allocated Interests appurtenant to his Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any Additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration or Community Map.

**ARTICLE TWELVE
GENERAL PROVISIONS**

12.1 **Duration of Declaration.** The term of this Declaration shall be perpetual.

12.2 **Application of CIOA.** The Association and the owners of the Units elect treatment for the Community pursuant CRS, Section 38-33.3-101 et. seq. "The Colorado Common Interest Ownership Act" ("CIOA" or "Act").

12.3 **Termination of Community.** The Community may be terminated only by the agreement of (i) Owners holding at least 80 percent of the total allocated votes in the Association, and (ii) the holders of all first mortgages on Units. In the event of such termination, the provisions of Section 38-33.3-218 of the Act shall apply.

12.4 **Amendment of Declaration and Map.**

12.4.1 This Declaration and the Map may be amended pursuant to Section 38-33.3-217 of the Act. Under the Act, the Declaration may be amended by the Association in certain defined circumstances, including without limitation (a) when the Association is exercising reserved rights hereunder, or (b) for purposes of correcting clerical, typographical, or technical errors. The Act also provides that the Declaration may be amended by the Association in certain defined circumstances. Otherwise, this Declaration (including the Condominium Map) may be amended only by the vote or agreement of Owners to which more than 50 percent of the votes in the Association are allocated. Furthermore, Section 38-33.3-217(4) of the Act provides that except to the extent expressly permitted or required by other provisions of the Act (e.g., permitted Association amendments), no amendment may (i) create or increase Special Declarant Rights or (ii) increase the number of Units, in the absence of a vote or agreement of Unit Owners to which at least fifty percent (50%) of the votes in the Association are allocated, including fifty percent (50%) of the votes allocated to Units.

12.4.2 Modifications to the boundaries of Units and common elements shall occur as provided for in Section 3.

12.4.3 In the event that written notice is sent to an Owner at the current address of the Owner on file with the Association and the notice includes a copy of the proposed amendment, a statement that the Owner has thirty days to approve or disapprove the proposed amendment in writing, with reasonable and clear directions on the manner and method on which to vote and where to return the ballot and the Owner fails to respond by the expiration of the stated thirty day period, the Association shall count the non-responding Owner of the Unit as an affirmative vote. All ballots shall be returned to the President of the Association.

12.4.4 Further, Section 38-33.3-217(4.5) of the Act provides that except to the extent expressly permitted or required by other provisions of the Act, no amendment may change the uses to which any Unit is restricted in the absence of a vote or agreement of Unit Owners to which at least fifty percent (50%) of the votes in the Association are allocated.

12.4.5 No consent of any mortgage or trust deed holder shall be required to accomplish any such amendments.

12.4.6 An amendment to this Declaration shall be in the form of a "First (or Second, etc.) Amendment to Declaration and Map." With the exception of Association amendments, amendments to this Declaration shall be duly executed by the President and Secretary of the Association and recorded in the Office of the Clerk and Recorder of San Miguel County.

12.5 **Compliance; Enforcement.**

12.5.1 Every Owner and Occupant of a Unit in the Community shall fully and faithfully observe, abide by, comply with and perform all of the covenants, conditions and restrictions set forth in this Declaration, the Articles, Bylaws and Rules and Regulations, and all approvals granted by the Board, as the same or any of them may be amended from time to time. In addition to any other rights or remedies that may be provided to any Person under the terms and provisions of this Declaration, the Association through its Board, and every Owner (except an Owner that is delinquent in the payment of Assessments hereunder), shall have the right, acting alone or together with others having such right, to enforce, by any proceeding at law or in equity, any or all of the covenants, conditions, restrictions, assessments, charges, liens, servitudes, easements and other provisions now or hereafter imposed by this Declaration, the Articles, Bylaws, Rules and Regulations, and approvals granted by the Board. A

Person seeking to enforce the Governing Documents shall first comply with any requirements for Alternative Dispute Resolution concerning the Claim as provided for in Section 12.5.

12.5.2 Such enforcement rights shall include without limitation the right to bring an injunctive action for any form of injunctive relief available under Colorado law (including specific performance), or an action for damages, or both. Injunctive relief may include, without limitation, orders to stop work, orders to remove improvements constructed in violation hereof, orders to compel performance, and any other orders appropriate under the circumstances.

12.5.3 The Board shall have the following further rights and remedies:

(a) The right to levy and collect, after Notice and Hearing, reasonable fines for the violation of any of the foregoing matters which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.

(b) The right to levy and collect a Reimbursement Assessment against any Owner.

(c) The right to enter upon any Unit within the Community, after giving the Owner or Occupant at least 5 days written notice of the nature of the violation (unless an emergency exists, in which case without notice), without liability to the Owner or Occupant thereof, to enforce or cause compliance with such matters, at the cost and expense of the Owner or Occupant in violation.

(d) The right to cut off or suspend any or all Association services or benefits to the subject Owner or Occupant and his Unit until the violation is cured.

(e) The right to suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 90 days delinquent in paying any Assessment).

(f) The right to exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents).

(g) The right to record a notice of violation with respect to any Unit on which a violation exists.

12.5.4 The Board shall have the following further rights and remedies:

12.5.5 In any action brought under this Section 12.4, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection therewith. Failure by any party entitled to do so to exercise in a particular instance any of the rights available to it under this Section 12.4 shall in no event be deemed a waiver of the right to do so in any other instance.

12.5.6 Provided always, that no Owner shall have the right to bring an enforcement action against another Owner or Occupant for a breach by that Owner or Occupant of any of such matters, or against the Association for a breach by the Association of any of such matters or for a failure by the Association to enforce compliance with such matters by others, until the aggrieved Owner has given the offending Owner or Occupant and the Association at least 30 days prior written notice of the aggrieved Owner's complaint and the opportunity to resolve the problem during that 30 day period.

12.5.7 And further provided, that notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of this Declaration, the Bylaws, the Articles of Incorporation, or the Rules and Regulations, or to compel the removal of any building or improvement because of the violation of the terms of any such building restriction, unless the action is commenced within one year from the date from which the person commencing the action knew or in the exercise

of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

12.5.8 The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

- (a) the Association's position is not strong enough to justify taking any or further action;
- (b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

12.5.9 A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

12.5.10 The Association, by contract or other agreement, may enforce applicable Town and county ordinances. In addition, the Town may enforce their ordinances within the Community.

12.6 Agreement to Encourage Alternative Dispute Resolution.

12.6.1 **Bound Parties.** The Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Chapter (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 12.6 in a good faith effort to resolve such Claim.

12.6.2 **Claims.** As used in this Chapter, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (a) the interpretation, application, or enforcement of the Governing Documents; or
- (b) the rights, obligations, and duties of any Bound Party under the Governing Documents.

12.6.3 **Limitations on Claims.** Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 12.6:

- (a) any suit by the Association to collect assessments or other amounts due from any Owner;
- (b) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the covenants and restrictions of this Declaration or the Rules and Regulation;

(c) any suit that does not include the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(d) any dispute which affects the material rights or obligations of a party who is not bound by the terms of the Governing Documents; and

(e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 12.6, unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Section.

12.6.4 Dispute Resolution Procedures.

(a) **Notice.** A Person bound by the Governing Documents ("**Bound Party**") asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

- Respondent's role in the Claim;
- (1) the nature of the Claim, including the Persons involved and the
 - (2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
 - (3) the Claimant's proposed resolution or remedy; and
 - (4) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the San Miguel County, Colorado area. Each Bound Party shall present the mediator with a written summary of the Claim. If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

12.6.5 **Limitation of Damages.** All Bound Parties agree that, in any lawsuit arising out of a Claim subject to the procedures set forth in Section 12.5 or Section 12.6, any damage award shall be limited to the amount of any actual economic loss suffered by the prevailing party and shall not include punitive damages or damages for pain and suffering, except that punitive damages shall be permitted in the case of a lawsuit arising out of a violation of the Governing Documents.

12.7 **Rights of First Mortgagees.** Upon the filing of a written request thereof with the Association, the holder of a first Mortgage on any Unit in the Common Interest Community shall be entitled to:

12.7.1 Written notice from the Association that the Owner of the subject Unit is delinquent in the payment of Assessments thereon.

12.7.2 Inspect the books and records of the Association during normal business hours.

12.7.3 Receive copies of annual Association financial statements.

12.7.4 Receive written notice of meetings of the Association where matters will be considered that, if approved, will require the consent of first Mortgagees or some of them.

12.7.5 Receive written notice of condemnation proceedings affecting any Common Elements.

12.7.6 Receive written notice of the lapse of any insurance that the Association is required to maintain under this Declaration.

12.7.7 In addition, any first Mortgagee shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against the Common Elements and may pay any overdue premiums on hazard or general liability insurance policies covering the Common Elements, and shall be entitled to immediate reimbursement therefor from the Association, unless the Association is contesting any unpaid taxes or other charges and has set aside sufficient funds to pay the contested amounts if necessary.

12.7.8 The consent or approval of any Mortgagee is expressly not required to amend the Map or Declaration.

12.8 **Notice.** Each Owner, and each first Mortgagee if it so elects, shall register its mailing address from time to time with the Association. Except as otherwise specifically provided in this Declaration, any notice permitted or required to be given hereunder shall be in writing and may be delivered either personally, or by facsimile transmission, or by mail. Notices delivered personally or sent by facsimile transmission shall be deemed given on the date so delivered or sent. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been posted in the first-class U.S. Mail, certified and return receipt requested, with adequate postage affixed, addressed to the receiving party at the address last registered by such party with the Association, or in the case of an Owner that has not provided such an address, to the Unit of that Owner. Notices to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

12.9 **No Dedication to Public Use.** Nothing contained in this Declaration shall be deemed to be or to constitute a dedication of all or any part of the Community to the public or to any public use.

12.10 **Interpretation of Declaration.** The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a common and general plan for the development, improvement, enhancement, protection and enjoyment of the Community, and to the extent possible, shall be construed so as to be consistent with the Act. In the event that any of the terms and conditions of this Declaration is determined to be inconsistent with the Act, the Act shall control.

12.11 **Conflict With Condominium Map.** In the event of any conflict or inconsistency between the provisions of this Declaration and the Condominium Map, the provisions of said Condominium Map shall govern

and control and this Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of said Condominium Map.

12.12 **Violations Constitute a Nuisance.** Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration. This provision does not limit the remedies that may be available under this Declaration or at law or in equity. Failure of the Association or of any other Person to bring enforcement action to correct any violation of this Declaration shall not constitute a waiver of or estop the Association or other Person from bringing a future or subsequent enforcement action to correct such violation or any other similar violation.

12.13 **Captions.** Captions given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof and shall not be considered in interpreting any of the provisions hereof.

12.14 **Singular Includes Plural.** Unless the context requires a contrary construction, as employed in this Declaration the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

12.15 **Remedies Cumulative.** Each remedy provided under this Declaration is cumulative and not exclusive.

12.16 **Costs and Attorneys' Fees.** In any action or proceeding involving the interpretation or enforcement of any provision of this Declaration, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith.

12.17 **Governing Law; Jurisdiction.** The laws of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Declaration. Any legal action brought in connection with this Declaration shall be commenced in the District Court for San Miguel County, Colorado, and by acceptance of a deed to a Unit each Unit Owner voluntarily submits to the jurisdiction of such court.

12.18 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof. Where any provision of this Declaration is alleged to be or declared by a court of competent jurisdiction to be unconscionable, Association shall have the right by amendment to this Declaration to replace such provision with a new provision, as similar thereto as practicable but which in Association's reasonable opinion would be considered not to be unconscionable.

12.19 **Safety and Security.** Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, the Association shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Unit that the Association, its Board and committees are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and Common Elements and the contents of Units, resulting from acts of third parties.

IN WITNESS WHEREOF, the Association, having obtained the requisite number of votes, has approved and consented to and does hereby duly adopt, execute and deliverer this Declaration, intending it to become effective as of the Effective Date.

Telluride Lodge Association, Inc.,
a Colorado nonprofit corporation

By: Ken Hodges

Date: 2-15-07

Name: KEN HODGES

Title: Telluride Lodge HOA President



MY COMMISSION EXPIRES 4/5/2008

State of Colorado
County of San Miguel

Subscribed to and acknowledged before me this 15th day of February, 2006, by Ken Hodges as the President of Telluride Lodge Association, a Colorado nonprofit corporation.

Witness my hand and official seal.

J. Dolan
Notary Public

My commission expires: 4/5/08

EXHIBIT "A"
Condominium Declaration
(ALLOCATED INTERESTS)

Condominium Unit	Building	Original/Initial Unit Square Footage	Unit Square Footage (As of Effective Date)	Original Allocated Share of the Common Elements	Allocated Share of the Common Expenses	Allocated Voting Rights
Unit 300	300	597	786.00	0.7541	0.7463	1
Unit 301	300	577	759.99	0.7290	0.7216	1
Unit 302	300	764	921.30	0.9646	0.8748	1
Unit 303	300	728	1434.00	0.9191	1.3616	1
Unit 304	300	711	763.92	0.8982	0.7254	1
Unit 305	300	751	781.21	0.9487	0.7418	1
Unit 306	300	711	739.41	0.8982	0.7021	1
Unit 307	300	751	772.97	0.9487	0.7340	1
Unit 308	300	955	987.22	1.2065	0.9374	1
Unit 309	300	939	1061.40	1.1863	1.0078	1
Unit 310	300	547	563.31	0.6910	0.5349	1
Unit 311	300	779	1064.82	0.9841	1.0111	1
Unit 312	300	711	748.80	0.8982	0.7110	1
Unit 313	300	751	1091.25	0.9487	1.0362	1
Unit 314	300	605	801.43	0.7637	0.7610	1
Unit 315	300	569	1109.00	0.7194	1.0530	1

Condominium Unit	Building	Original/Initial Unit Square Footage	Unit Square Footage (As of Effective Date)	Original Allocated Share of the Common Elements	Allocated Share of the Common Expenses	Allocated Voting Rights
Unit 316	300	893	976.32	1.1278	0.9270	1
Unit 317	300	598	654.34	0.7559	0.6213	1
Unit 318	300	643	763.65	0.8126	0.7251	1
Unit 319	300	531	630.08	0.6705	0.5983	1
Unit 320	300	620	787.86	0.7831	0.7481	1
Unit 321	300	554	704.24	0.7000	0.6687	1
Unit 322	300	955	987.87	1.2065	0.9380	1
Unit 323	300	939	1034.40	1.1863	0.9822	1
Unit 324	300	533	657.40	0.6734	0.6242	1
Unit 325	300	516	509.68	0.6519	0.4840	1
Unit 326	300	778	1107.03	0.9828	1.0512	1
Unit 327	300	711	786.40	0.8982	0.7467	1
Unit 328	300	751	1049.44	0.9487	0.9965	1
Unit 329	300	587	1136.10	0.7410	1.0788	1
Unit 330	300	587	1203.80	0.7421	1.1430	1
Unit 331	300	955	979.24	1.2065	0.9298	1
Unit 332	300	939	1030.98	1.1863	0.9789	1
Unit 333	300	711	1325.00	0.8982	1.2581	1

Condominium Unit	Building	Original/Initial Unit Square Footage	Unit Square Footage (As of Effective Date)	Original Allocated Share of the Common Elements	Allocated Share of the Common Expenses	Allocated Voting Rights
Unit 334	300	751	781.49	0.9487	0.7420	1
Unit 335	300	711	711.75	0.8982	0.6758	1
Unit 336	300	751	757.42	0.9487	0.7192	1
Unit 337	300	785	1359.90	0.9923	1.2913	1
Unit 338	300	706	1183.93	0.8914	1.1242	1
Unit 339	300	643	768.16	0.8121	0.7294	1
Unit 340	300	531	634.52	0.671	0.6025	1
Unit 341	300	608	793.06	0.7677	0.7530	1
Unit 342	300	566	739.24	0.7154	0.7019	1
Unit 400	400	600	790.00	0.7579	0.7501	1
Unit 401	400	574	756.00	0.7252	0.7178	1
Unit 402	400	765	945.50	0.9667	0.8859	1
Unit 403	400	726	1368.40	0.9170	1.2993	1
Unit 404	400	711	709.51	0.8982	0.6737	1
Unit 405	400	751	1103.67	0.9487	1.0480	1
Unit 406	400	711	766.24	0.8982	0.7276	1
Unit 407	400	751	1309.00	0.9487	1.2429	1
Unit 408	400	955	986.99	1.2065	0.9372	1

Condominium Unit	Building	Original/Initial Unit Square Footage	Unit Square Footage (As of Effective Date)	Original Allocated Share of the Common Elements	Allocated Share of the Common Expenses	Allocated Voting Rights
Unit 409	400	939	1386.78	1.1863	1.3168	1
Unit 410	400	547	1040.00	0.6910	0.9875	1
Unit 411	400	779	1235.00	0.9841	1.1727	1
Unit 412	400	711	1183.57	0.8982	1.1238	1
Unit 413	400	751	1109.37	0.9487	1.0534	1
Unit 414	400	608	791.73	0.7681	0.7518	1
Unit 415	400	566	736.92	0.7150	0.6997	1
Unit 416	400	743	930.63	0.9390	0.8837	1
Unit 417	400	748	1374.77	0.9447	1.3054	1
Unit 418	400	752	790.96	0.9502	0.7510	1
Unit 419	400	422	443.58	0.5329	0.4212	1
Unit 420	400	605	1372.40	0.7646	1.3031	1
Unit 421	400	569	1255.40	0.7185	1.1920	1
Unit 422	400	955	990.08	1.2065	0.9401	1
Unit 423	400	939	1050.75	1.1863	0.9977	1
Unit 424	400	547	853.50	0.6910	0.8104	1
Unit 425	400	779	782.29	0.9841	0.7428	1
Unit 500	500	598	737.82	0.7552	0.7006	1

Condominium Unit	Building	Original/Initial Unit Square Footage	Unit Square Footage (As of Effective Date)	Original Allocated Share of the Common Elements	Allocated Share of the Common Expenses	Allocated Voting Rights
Unit 501	500	576	711.11	0.7279	0.6752	1
Unit 502	500	708	934.29	0.8938	0.8871	1
Unit 503	500	784	1750.00	0.9899	1.6397	1
Unit 504	500	711	1115.34	0.8982	1.0590	1
Unit 505	500	751	778.12	0.9487	0.7291	1
Unit 506	500	711	1480.50	0.8982	1.4058	1
Unit 507	500	751	1350.00	0.9487	1.2819	1
Unit 508	500	955	1591.24	1.2065	1.5109	1
Unit 509	500	939	1344.44	1.1863	1.2766	1
Unit 510	500	533	1028.00	0.6734	0.9761	1
Unit 511	500	516	510.51	0.6519	0.4847	1
Unit 512	500	835	971.90	1.0549	0.9228	1
Unit 513	500	711	762.34	0.8982	0.7239	1
Unit 514	500	751	953.85	0.9487	0.9057	1
Unit 515	500	475	806.00	0.6007	0.7653	1
Unit 516	500	698	1184.00	0.8824	1.1242	1
Unit 517	500	639	1354.07	0.8075	1.2857	1
Unit 518	500	852	1244.93	1.0762	1.1821	1

Condominium Unit	Building	Original/Initial Unit Square Footage	Unit Square Footage (As of Effective Date)	Original Allocated Share of the Common Elements	Allocated Share of the Common Expenses	Allocated Voting Rights
Unit 519	500	597	805.00	0.7545	0.7644	1
Unit 520	500	577	771.00	0.7286	0.7321	1
Unit 521	500	598	1336.00	0.7558	1.2686	1
Unit 522	500	576	1267.00	0.7273	1.2031	1
Unit 523	500	955	989.86	1.2065	0.9399	1
Unit 524	500	939	1060.13	1.1863	1.0066	1
Unit 525	500	547	563.31	0.6910	0.5349	1
Unit 526	500	779	1265.00	0.9841	1.2012	1
Unit 527	500	711	708.78	0.8982	0.6730	1
Unit 528	500	751	754.47	0.9487	0.7164	1
Unit 529	500	667	809.41	0.8421	0.7686	1
Unit 530	500	507	616.21	0.6410	0.5851	1
Unit 531	500	955	987.00	1.2065	0.9372	1
Unit 532	500	939	1033.36	1.1863	0.9812	1
Unit 533	500	711	854.30	0.8982	0.8112	1
Unit 534	500	751	781.32	0.9487	0.7419	1
Unit 535	500	711	1430.00	0.8982	1.3399	1
Unit 536	500	751	883.97	0.9487	0.8394	1

Condominium Unit	Building	Original/Initial Unit Square Footage	Unit Square Footage (As of Effective Date)	Original Allocated Share of the Common Elements	Allocated Share of the Common Expenses (As of Effective Date)	Allocated Voting Rights
Unit 537	500	746	954.99	0.9418	0.9068	1
Unit 538	500	746	1008.30	0.9419	0.9574	1
Unit 539	500	673	737.82	0.8503	0.7006	1
Unit 540	500	501	549.15	0.6328	0.5214	1
Unit 541	500	597	737.82	0.7546	0.7006	1
Unit 542	500	577	712.27	0.7285	0.6763	1
Total		79,157	106,727.30	100%	100%	112