

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE OVERLOOK AT TELLURIDE SUBDIVISION/PUD**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE OVERLOOK AT TELLURIDE SUBDIVISION/PUD ("Declaration")**, made effective as of August 30, 2018 ("**Effective Date**"), is made and entered into by Windhorse Properties, LLC, a Colorado limited liability company ("**Declarant**").

**RECITALS**

1. Declarant is the owner of that certain real property situated in the Town of Telluride, San Miguel County, Colorado ("**Property**"), as more particularly described on attached **Exhibit "A"**. The Property includes any and all of the beneficial rights and interests arising in connection with the documents that make up the Town Development Approvals and Requirements (defined below), including, without limitation, the right to install the Community Access Road/Facilities (defined below) within certain portions of the Galena Avenue ROW right of way owned by the Town (defined below). The Property is subject to those covenants, easements and agreements currently of record and those which are to be recorded subsequent to the recordation of this Declaration pursuant to the rights of Declarant hereunder and/or those easements and agreements which are required or necessary and appropriate in furtherance of the Town Development Approvals and Requirement (defined below).

2. Declarant intends to develop the Property as a planned community entitled "The Overlook At Telluride" under the Act [defined below] ("**Community**" or "**Community**").

3. The Community has been approved for development pursuant to the Town Development Approvals and Requirements [defined below].

4. The Overlook At Telluride Homeowners Association, Inc., a Colorado non-profit corporation ("**Association**") has been formed as an association to exercise the functions set forth herein and to own, lease, hold, operate, care for and manage certain property for the common benefit of Owners and Occupants of Lots within, and of any other person acquiring an interest in, the Community.

5. Declarant desires to establish covenants, conditions and restrictions upon the Community and certain mutually beneficial restrictions and limitations with respect to the proper use, occupancy, improvement and enjoyment thereof, all for the purposes of enhancing and protecting the value, desirability and attractiveness of the Community and enhancing the quality of life within the Community.

6. Declarant desires and intends that the Owners, Mortgagees, Occupants and all other Persons hereafter acquiring any interest in the Community shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements contained in this Declaration, as it may be amended from time to time.

7. The Community will be developed in accordance with any and all site specific approvals granted to Declarant for the Property by the Town of Telluride ("**Town**") as well as the applicable and effective laws, regulations, charters and codes ("**Town Laws**") properly made applicable to the Property (collectively, the "**Town Development Approvals and Requirements**"). The Town Approvals include, without limitation, (1) a Preliminary and Final Large Scale Subdivision to create twenty lots in the Hillside Developing Two Zone District pursuant to LUC Section 6-402.A and Section 3-203; (2) a Conceptual, Preliminary and Final Large Scale Planned Lot Development pursuant to LUC Section 6-307; (3) Review of the Hillside Master Plan designation of certain sites' suitability for development pursuant to LUC Section 3- 203.E.7; (4) Right of Way Vacations; (5) Construction Impact Mitigation Plan pursuant to LUC Section 3-203.E.3. In the event of a conflict between the Governing Documents (defined below) and the Town Development Approvals and Requirements, the applicable Town Development Approvals and Requirements shall control. Initially, the agreements reflecting the Town

Development Approvals and Requirements include, but are not limited to, the following described documents:

- (a) The Replat entitled The Overlook At Telluride Subdivision/PUD recorded on August 30, 2018 in Reception No. 454591 ("Replat").
- (b) Planned Unit Development/Development Agreement recorded on August 30, 2018 in Reception No. 454592 ("Development Agreement").
- (c) Subdivision Improvement(s) Agreement recorded on August 30, 2018 in Reception No. 454593 ("SIA").
- (d) Road Use, Access and Maintenance Agreement recorded on August 30, 2018 in Reception No. 454594 ("Road Agreement").
- (e) The Permit reflecting the approval of a 1041 Review application for the Property, approved by the Telluride Town Engineer authorizing development within an area designed as a Geologic Hazard area ("Permit Authority Approval") recorded on August 30, 2018 in Reception No. 454595.
- (f) Workforce Housing Deed Restriction recorded on August 30, 2018 in Reception No. 454596 ("Workforce Housing Unit Deed Restriction"), which burden and effect only Lots 2, 17 and 18, but not any of the other Lots in the Community.
- (g) ROW Vacation Ordinance recorded on March 13, 2018 in Reception No. 452552.
- (h) Resolution (Open Space Dedication) recorded on March 13, 2018 in Reception No. 454590.

8. Under the Town Development Approvals and Requirements, twenty legally separate Lots are permitted to be created and developed on the Property. Additional non-developable parcels which are to be improved for Association common uses and activities and shall be owned by the Association as allowed pursuant to the Town Development Approvals and Requirements are also part of the Community.

9. Each Owner, by its acceptance of a deed or other conveyance vesting in the Owner an interest in a Lot in the Community, acknowledges that the Owner has carefully reviewed and understands the Town Development Approvals and Requirements (as it may be amended from time to time) and the Declarant's reserved rights as set forth in this Article or elsewhere in this Declaration, that the Owner accepts and approves such matters and appreciates any potential impacts that the implementation of the Town Development Approvals and Requirements and/or the exercise of such reserved rights may have on the Owner's Lot, and expressly waives any rights the Owner may have to object to or to interfere in any way with the implementation of such Town Development Approvals and Requirements or the exercise of any and all rights of the Declarant under the Declaration.

Tract OS-A, Tract OS-B, Tract OS-D, Tract OS-E and Outlot 1as shown on the Plat shall be conveyed to the Town of Telluride and will be conveyed free and clear of these Declarations, but subject to any terms, conditions, reservations, easements, covenants or other restrictions, if any, conveyed in the instrument conveying title.

## DECLARATION

**NOW, THEREFORE**, for the purposes set forth above and herein, Declarant for itself and its successors and assigns hereby declares that the Community and any other property, if any, which becomes subject to this Declaration in the manner hereinafter provided, and each part thereof, shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, maintained and enjoyed subject to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, exceptions, easements, privileges, rights and other provisions hereinafter set forth, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, use, occupancy and enjoyment of the Community, and all of which shall run with the land and be binding upon and inure to the benefit of (i) the Community and every part thereof, (ii) Declarant and its successors and assigns, (iii) the Association and its successors and assigns, (iv) every Member of the Association, and (v) all Owners, Occupants and other Persons having or acquiring any right, title or interest in or to the Community or any part thereof, or any Improvement(s) thereon, and their respective heirs, personal representatives, successors and assigns. Provided always, that to the extent this Declaration provides that Declarant shall not be bound by or is exempt from the application of certain covenants, conditions and restrictions contained herein, Declarant shall not be considered subject to such covenants, conditions or restrictions.

## **ARTICLE ONE DEFINITIONS**

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

1.1. **Act.** "Act" shall mean the Colorado Common Interest Ownership Act as set forth in C.R.S. 38-33.3-101, et seq., as the same may be amended from time to time.

1.2. **Allocated Interests.** "Allocated Interests" means the Common Expense liability and the votes in the Association allocated to each Lot, which interests are allocated as follows:

(a) The Common Expense liability for each Lot is calculated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Community. Such fraction is then multiplied by the Common Expense or the Assessment in question to determine that Lot's share thereof. The Common Expense liability of a Lot is determined without reference to the size, location, value or use of the Lot.

(b) One (1) vote in the Association is allocated to each Lot in the Community.

(c) The foregoing allocations may not discriminate in favor of Lots owned by Declarant or an affiliate of Declarant.

(d) If Lots are added to or withdrawn from the Community, (i) the Common Expense liability for each Lot shall be reallocated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Community following the addition or withdrawal of such Lots, and (ii) one (1) vote in the Association shall continue to be allocated to each Lot in the Community following the addition or withdrawal of such Lots.

The Allocated Interests for the Community are specifically set forth on **Exhibit "B"** attached hereto and made a part hereof by this reference, as said **Exhibit "B"** may be amended from time to time.

1.3. **Articles of Incorporation.** "Articles of Incorporation" or "Articles" means the Articles of Incorporation of The Overlook At Telluride Homeowners Association, Inc., 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.

1.4. **Assessment.** "Assessment" means a Regular Assessment, Special Assessment, or Reimbursement Assessment.

1.5. **Association.** "Association" means The Overlook At Telluride Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

1.6. **Association Property.** "Association Property" means, to the extent of the Association's interest therein: (a) all real and personal property, including Improvement(s), now or hereafter owned or leased by the Association, (b) all rights, duties and obligations allocated to the Community in accordance with the Town Development Approvals and Requirements, (c) all Common Areas now or hereafter owned, leased or maintained by the Association, together with the Improvement(s) thereon, including, without limitation, the Community Access Road/Facilities, the retaining walls and the drainage facilities; and (d) all beneficial rights and interests granted to or reserved for the Association created or reserved on any Plat, or any Supplemental Plat, or in this Declaration or in any separate agreement, for the use and benefit of the Association and/or the Owners. 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 Lots or the Improvement(s) constructed thereon. The ownership of the Association Property is subject to the Permitted Exceptions.

1.7. **Board.** "Board" means the Board of the Association.

1.8. **Budget.** "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 this Declaration.

1.9. **Bylaws.** "Bylaws" means the Bylaws of the Association which have been or will be adopted by the Board of the Association, as the same may be amended from time to time.

1.10. **Common Area.** "Common Area" means any portion of the Community designated in this Declaration or on a Plat or any Supplemental Plan as Common Area, General Common Area or Limited Common Area and which is owned or leased or maintained by the Association for the common use and enjoyment of the Owners and Occupants or some of them. Common Areas shall include any rights and interests assigned to the Community in accordance with the Town Development Approvals and Requirements, including, without limitation, the Community Access Road/Facilities.

1.11. **Common Expenses.** "Common Expenses" means any expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

1.12. **Community.** "Community" means The Overlook At Telluride and any additional real property which may from time to time be annexed into the Community and made subject to this Declaration by Supplemental Declaration and Supplemental Plat, including all Lots and Association Property, together with all Improvement(s) and other amenities now or hereafter located thereon, and together with all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto. If any property is subsequently withdrawn from the Community pursuant to the provisions of this Declaration, the term "Community" shall no longer apply to such withdrawn property. Tract OS-A, Tract OS-B, Tract OS-D, Tract OS-E and Outlot 1 are not a part of the Community, nor subject to the covenants, conditions and requirements of this Declaration.

1.13. **Community Access Road/Facilities.** "Community Access Road/Facilities" means that access road, along with its supporting retaining walls, landscaping and related irrigation facilities, and drainage facilities, approved by the Town and installed by Declarant to provide access to the Community. The Community Access Road/Facilities are located within the Galena Avenue ROW and are referred to as Primrose Lane. The Community Access Road/Facilities and Galena Avenue ROW are owned by the Town of Telluride, but shall be inspected, maintained and repaired by the Association as provided for herein and as contemplated by the Town Development Approvals and Requirements.

1.14. **Governing Documents.** "Governing Documents" means the basic documents creating and governing the Community, including, but not limited to, this Declaration, the Plat, the Articles of Incorporation and Bylaws of the Association, any Rules and Regulations and/or Policies promulgated by

the Association and any other documents, policies and procedures relating to the Community adopted by the Association or the Board pursuant to this Declaration or the Act, as the same may be supplemented or amended from time to time.

1.15. **Declarant.** “Declarant” means Windhorse Properties, LLC, a Colorado limited liability company, its successors, assigns, and affiliates. A Person shall be deemed to be a “successor and assign” of Declarant if specifically designated in a duly Recorded instrument as a successor or assign of Declarant under this Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in that written instrument. The term “affiliate of Declarant” shall have the meaning set forth in Section 38-33.3-103(1) of the Act.

1.16. **Declaration.** “Declaration” means this instrument and all Supplemental Declarations, as this instrument and such Supplemental Declarations may be amended from time to time.

1.17. **Deed of Trust.** “Deed of Trust” means a Mortgage.

1.18. **Improvement(s).** “Improvement(s)” means any improvement or improvements (whether singular or plural), 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 or a Supplemental Declaration for such property was first Recorded, including, but not limited to, dwelling units, buildings, outbuildings, additions, hot tubs, 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, pathways, ditches, fences, screening walls, retaining walls, rockfall mitigation walls and barriers, stairs, decks, flag poles, fixtures, landscaping (including the addition, alteration or removal of any tree, shrub or other vegetation and any berming and any noise attenuation walls or barriers), 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, irrigations lines and systems, antennae and satellite dishes or receivers. Once an Improvement(s) has been constructed or accomplished on a property within the Community, any subsequent alteration of or addition to or removal of that Improvement(s) shall also constitute “Improvement(s)” hereunder.

1.19. **Lease.** “Lease” means and refers to any agreement for the leasing, rental, use or occupancy of a residential dwelling located on a Lot within the Community. The required terms and procedures for Leases are more particularly set forth below.

1.20. **Restricted Area/No Build Zone.** “Restricted Area/No Build Zone” means that portion of the Community, including portions of a Lot, which is depicted and designated as the “Restricted Area/No Build Zone” on the Plat. As provided for in the Town Development Approvals and Requirements, no Improvement(s) shall be constructed beyond any Restricted Area/No Build Zone, except for the installation of Rockfall Mitigation Fencing and tree planting.

1.21. **Limited Common Area.** “Limited Common Area” means a Common Area, if any, that is designated by this Declaration, a Supplemental Declaration, a Plat or an amended or a Supplemental Plat, for the exclusive use of one or more Lots in the Community but fewer than all of the Lots.

1.22. **Lot.** “Lot” means any part of the Community which is designated as a Lot on a Plat or an amended or Supplemental Plat, together with all Improvement(s) thereon and appurtenances thereto.

1.23. **Rules and Regulations.** “Rules and Regulations” means rules and regulations adopted from time to time by the Board, as provided for in of this Declaration.

1.24. **Member.** “Member” means each Owner, including the Declarant. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

1.25. **Mortgage**. "Mortgage" means any mortgage, deed of trust or other security instrument, given voluntarily by the Owner of a Lot, creating a real property security interest in a Lot 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 Lot. 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."

1.26. **Mortgagee**. "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.

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

1.28. **Notice and Hearing**. "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.

1.29. **Occupant** means any Person who is a tenant in a residence on a Lot 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, the Declarant, or the Association.

1.30. **Official Records** "Official Records" shall mean the Office of the Clerk and Recorder for San Miguel County, Colorado.

1.31. **Owner**. "Owner" means the Person, including Declarant, or, if more than one, all Persons collectively, who hold fee simple title of record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder. The term "Owner" shall be analogous to the term "Owner", as that term is defined in the Act.

1.32. **Permitted Exceptions**. "Permitted Exceptions" means all liens, encumbrances, reservations, restrictions, conditions, easements and other matters of record which encumber the title to all or any part of the Community, as of the date this Declaration or a Supplemental Declaration is Recorded. This Declaration and shall be subject to such Permitted Exceptions.

1.33. **Person**. "Person" means a natural person, a corporation, a partnership, a limited liability company, a trust, or any other entity capable of holding title to real property pursuant to the laws of the State of Colorado.

1.34. **Plat**. "Plat" means the Final Record Plat for The Overlook At Telluride, Planned Community, recorded August 30, 2018 in the Official Records in Reception No. 454591, as said Plat may be amended from time to time. By this reference, said Plat is incorporated in this Declaration. The term "Plat" shall also mean and refer to each Supplemental Plat and/or amended Plat.

1.35. **Record or Recorded**. "Record" or "Recorded" means an instrument of record in, or the act of recording an instrument in the Official Records.

1.36. **Regular Assessment**. "Regular Assessment" means a charge against an Owner and the Owner's Lot 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 this Declaration and are allocated to the Lots in accordance with the Allocated Interests, except that Common Expenses that in the judgment of the Board benefit fewer than all of the Lots may be allocated exclusively to the Lots benefited.

1.37. **Reimbursement Assessment**. "Reimbursement Assessment" means a charge against a particular Owner and the Owner's Lot for the purpose of reimbursing the Association for costs and expenses incurred by the Association: (a) in connection with the undertaking of work and/or the provision of goods and services made on a Lot or an Improvement(s) on a Lot for the benefit of the

Owner of the Lot (b) in connection with any reviews conducted by the Association contemplated hereunder in which the Association is required to act upon a request by an Owner and in connection with its review of such request, the Association retained consulting companies (such as, but not limited to, architects, engineers, surveyors, attorney and others consultants) to provide or perform services in connection with such actions, (c) enforcement of any provision hereof or the remedying of any violation by the Owner or an Occupant or their agents, employees or contractors of this Declaration or any amendment hereto or the Articles, Bylaws, any Rules and Regulations or any approvals granted by the Association, following notice and hearing, (d) for other purposes provided for in this Declaration, (e) Common Expense caused by the actions, inactions or conduct of any Owner or of such Owner's Occupants, and (f) other expenses, fees, late charges and interest as provided for herein. Reimbursement Assessment shall include without limitation any Common Expense caused by the misconduct of any Owner or of such Owner's Occupants and any and all fees, costs and expenses, including attorney fees, incurred by the Association in enforcing compliance with the Community Documents.

1.38. **Special Assessment.** "Special Assessment" means a charge against an Owner and the Owner's Lot 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, 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 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 this Declaration.

1.39. **Supplemental Declaration.** "Supplemental Declaration" means an amendment to this Declaration which annexes real property to the Community and subjects such real property to this Declaration and sets forth such amendments to this Declaration and such additional covenants, conditions, uses and restrictions as may be applicable to the annexed property.

1.40. **Supplemental Plat.** "Supplemental Plat" means an amendment to Plat for the purposes of annexing real property described therein to the Community.

## ARTICLE TWO GENERAL RESTRICTIONS APPLICABLE TO THE COMMUNITY

It is the intention of Declarant to establish and impose a common and general plan for the improvement, development, use and occupancy of the Community, all in order to enhance the value, desirability, and attractiveness of the Community and to promote the marketing, development and enjoyment thereof. Accordingly, Declarant hereby declares that the entire Community, including but not limited to all Lots, 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, subject to such Declarant exemptions as may be set forth herein.

2.1. **Development Control.** All Improvement(s) shall be commenced, made, done, permitted, located, erected, improved, altered or removed within the Community in compliance with these Declarations and Town Development Approvals and Requirements, including all requirements for site specific design reviews and approvals by the appropriate Town board, commission or staff person. No Improvement(s) shall violate any established Restricted Area/No Build Zone. Construction of Improvement(s) on a Lot shall comply with the setbacks established on the Plat, as may be modified and reduced by the Town during a design review process (subject to approval by the Association), and only those Improvement(s) authorized under the Town Development Approvals and Requirements and the Community Documents shall be allowed to extend beyond the setback, but in no event beyond a Restricted Area/No Build Zone or the Lot boundary line, unless authorized by a specific grant of an easement, including, without limitation, an easement allowing construction shoring approved by the Town and the Association. Water features shall not be allowed within the Community.

2.2. **Violation of Law, Insurance, Etc.** No Owner or Occupant or Person shall do any act or cause or permit anything to be done or kept in or upon a Lot or a residence constructed thereon, or the Association Property, which would result in the increase of, or cancellation of, insurance maintained by the Association or would be in violation of any federal, state, San Miguel County, Town 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

2.3. **Residential Use and Occupancy of Lots and Tracts.**

(a) Each Lot may be improved, occupied and used only for private single-family residential purposes, consistent with these Declarations and the Town Development Approvals and Requirements and the Town Laws. Duplex, Triplex or other multifamily attached development is prohibited.

(b) The use of Lots 2, 17 and 18 are further restricted by the Workforce Housing Unit Deed Restriction.

(c) Development on Tract OS-C is restricted to active and passive open space uses, the installation of drainage facilities, the installation of landscaping, the installation of Rockfall Fencing, and such other uses and activities allowed by the Town Development Approvals and Requirements.

(d) No business, professional or other non-residential or commercial use shall be made of any Lots, or conducted in any residence constructed on a Lot, excepting in-home businesses or occupations which do not involve: (i) employees, (ii) the solicitation or invitation of the general public, or (iii) the servicing of customers, employees, contractors or subcontractors and which activities are conducted entirely within the residence and do not cause any additional traffic or parking within the Community or otherwise create a nuisance for neighboring Lots or the Community.

(e) Developer may use Lots for sales and marketing purposes and for construction staging.

2.4. **New Construction Required; No Temporary Buildings or Occupancy.** All Improvement(s) constructed within or placed upon the Community shall be new. No mobile homes (single or double wide), and no used or temporary house, structure, tent, teepee, or non-permanent out-building (specifically including without limitation mobile homes and trailers) shall ever be placed, erected or allowed to remain within the Community except temporary structures or construction trailers used for construction purposes during the construction of a residence, which temporary facilities shall be removed immediately following completion of construction and in any event no later than 18 months following commencement of construction or remodeling unless a written extension is granted by the Association. No trailer, mobile home, incomplete residence or other structure, other than a residence completed in accordance with approved plans, shall ever be used or occupied at any time for residential purposes, either temporarily or permanently. No completed residence on a Lot shall be occupied in any manner until all provisions of this Declaration have been complied with, and a Certificate of Occupancy has been issued by the Town. The work of constructing, altering or remodeling any residence on a Lot or any other Improvement(s) within the Community shall be diligently performed from the commencement thereof until the completion thereof. Staging for any construction may occur at locations approved by the Association and the Town. The Association may place limitations and restrictions on staging and parking of construction vehicles on the Community Access Road/Facilities to insure safe and efficient access by all other owners.

2.5. **Legal Description of a Lot.** Every instrument affecting the title to a Lot shall describe that Lot by its identifying Lot designation followed by the words "Lot \_\_\_\_\_, The Overlook At Telluride in accordance with the recorded Declaration and Plat, Town of Telluride, San Miguel County, Colorado." Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Lot, but also the General and Limited Common Areas appurtenant thereto, if any. Each such description shall be construed to include a nonexclusive easement for ingress



to and egress from the Lot, and use (consistent with the Plat and this Declaration) of the General and Limited Common Areas.

2.6. **Title to Lots.** The title to any Lot may be held and owned by one or more person, firm, corporation, partnership, association, trust or other legal entity including Declarant, or any number of combinations thereof. By acceptance by any grantee of his deed or other instrument of conveyance from the Declarant or any prior Owner, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the General Common Areas. Each Owner specifically agrees not to institute any action therefor. Furthermore, each Owner agrees that this Section may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the Association incurs in connection therewith.

2.7. **Right to Mortgage a Lot.** Each Owner shall have the right to mortgage or otherwise encumber his Lot without restriction. No Owner, however, shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof except the undivided interest therein appurtenant to his Lot. Any Mortgage or other encumbrance of any Lot within the Community shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through the foreclosure by private power of sale, judicial foreclosure, or otherwise.

2.8. **Restrictions on Equipment, Tanks, Antennae, Satellite Dishes, Etc.**

(a) Heating, air conditioning (including swamp coolers), air movement, wind collection, or refrigeration equipment must be screened from the view of neighboring properties. The use of solar energy systems (both passive and active) within the Community is encouraged, provided such systems comply with governmental guidelines for residential uses and are integrated within the design of the residence and as permanently attached to the residential Improvement(s) constructed on the Lot.

(b) No tanks of any kind, whether elevated or buried, shall be erected, placed or permitted to remain upon any Lot except in compliance with applicable federal and state regulations. Any approved tank must be located underground or adequately concealed from view by fencing or screening approved by the Association.

(c) An Owner may install an antenna to receive video programming, provided that the Owner shall comply with the following requirements: (a) the antenna installation and location shall comply with all fire, electrical and other applicable safety codes, (2) the antenna is affixed to the residential improvement constructed on the Lot, (c) the antenna shall be sited in a location that minimizes its visibility from neighboring Lots, (d) the antenna shall be painted in a manner that allows it blends into the background against which it is mounted, (e) Satellite dishes that exceed one meter in diameter, and MDS antennas that exceed one meter in diameter or diagonal measurement, shall not be allowed within the Community, and (f) mast antennas that extend higher than three feet above the roof line are not allowed.

2.9. **Annoying Light, Sound or Odor.** All exterior lighting installed or maintained on any Lot or on any Improvement(s) located on a Lot shall be placed so that the light source is screened or shielded from the residence on any other Lot and from the Association Property and all times, lights shall be installed and operated consistent with the Town Development Approvals and Requirements, which may include a requirement that the Owner of some of the Lots install low intensity lighting at the access to their driveway to provide lighting along the Community Access Road/Facilities. No sound shall be emitted from any part of the Community (including without limitation any Lot), which is unreasonably loud or annoying to others, and no odor shall be emitted from any part of the Community. An Owner is exempt from these requirements governing noise during such times as the Owner is undertaking construction, repair or maintenance of Improvement(s) on a Lot.

2.10. **Noxious or Offensive Activities; Nuisances; Construction Activities.** 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, Declarant or the Association, or which causes damage to neighboring property, or which interferes with the peaceful enjoyment or possession and proper use of the Community, or any part thereof, by Owners or Occupants. Any activity on a Lot, which interferes with satellite dish, television, cable or radio reception on another Lot shall be deemed a nuisance and shall be a prohibited activity. As used herein, the term "nuisance" shall not apply to any activities of Declarant which are reasonably necessary or appropriate to the development, improvement, maintenance, marketing and/or sale of the Community or any part thereof. Normal construction activities and parking, during daylight hours, in connection with the building of Improvement(s) on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration. Construction activities which generate noise or odor on Sundays and holidays are not permitted. Lot and Association Property 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 Association. In addition, construction equipment and building materials may only be stored or kept within the Community during and in connection with the construction of Improvement(s) thereon, and then may be kept only in areas approved by the Association, which also may require screening of the storage areas. All such equipment and materials shall be removed immediately following completion of construction.

2.11. **No Hazardous or Unsafe Activities.** No activity shall be conducted on, and no Improvement(s) 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, and except as allowed below, no explosives, gasoline, 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 Lot or elsewhere within the Community. Gasoline or fuel for an Owner's lawn mower, snowblower, or power generator and the like may be maintained on an incidental basis in an enclosed structure on a Lot in an amount not to exceed 10 gallons. The foregoing is not intended to allow the use and operation of power generators for extended periods of time, it being the intention that such generators may be used in connection with: (a) construction or renovation of Improvement(s) on the Lot, (b) normal and customary maintenance and repair of Improvement(s) and (c) during periods of power failure.

2.12. **No Outside Burning; Fire Hazards.** No exterior fires shall be lighted or permitted on any property within the Community except in a contained barbecue unit or while attended and in use for cooking purposes or for a gas fire pit. No Owner shall cause or permit any condition on his Lot which creates a fire hazard or is in violation of fire prevention regulations, or which would increase insurance rates for Association Property or for other Owners. Notwithstanding the foregoing, the Declarant shall have the right to perform burning activities in connection with the development, marketing and maintenance of the Community.

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

(a) All parking of an automobile belonging to an Owner or Occupant must occur on parking areas designated on the Lot as part of the design approvals for the residential improvements. All parking required for a Lot shall be located within the garage constructed as part of the Improvement(s) on the Lot or designated spots on the driveway on the Lot. No portion of a garage originally intended for the parking of an automobile shall be converted into living space or storage space. A garage shall be used by an Owner for parking so that an Owner will not be required to park on the Community Access Road/Facilities or elsewhere in the Community. All garage doors shall be kept closed when not in use. Notwithstanding the foregoing, an automobile may be temporarily parked on driveways on Lots: (i) during special occasions, but only for the duration thereof not to exceed 8 hours, (ii) for loading, delivery service or emergency purposes, but only for the time required to accomplish such purpose, and (iii) as necessary on a daily basis for the construction, maintenance or servicing of Improvements on the Lot. For purposes of these Declarations, an automobile does not constitute boats, trailers, buses, motor homes, mobile homes, campers (on or off supporting vehicles),

motorcycles, snowmobiles, recreational vehicles, all-terrain vehicles, trucks, industrial or commercial vehicles

(b) No parking or storage of an automobile by an Owner shall occur anywhere along the Community Access Road/Facilities at any time, except that certain designated "temporary parking areas" have been created within portions of the Community Access Road/Facilities, as indicated on the Plat. The temporary parking areas are available for temporary parking by guests of Owners visiting the Community and may not be used for longer term parking of vehicles (more than 72 hours).

(c) No boats, trailers, buses, motor homes, mobile homes, campers (on or off supporting vehicles), 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 upon any Lot in the Community except within enclosed structures approved by the Town.

(d) No motorized vehicle of any kind shall be maintained, repaired, repainted, serviced or rebuilt on the Community Access Road/Facilities or on any Lot except within a completely enclosed garage which fully screens the sight and sound of the activity from the streets and other Lots. This restriction shall not prevent the non-commercial washing and polishing of vehicles and boats, together with activities normally incident thereto.

(e) 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 on their Lot driveways while on vacation or during a period of illness), or which does not have an operable propulsion system within the vehicle.

(f) 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), and if the offending vehicle is not removed within seventy-two (72) hours thereafter, the Board shall have the right to remove and store 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 of the Lot on which the vehicle is located, and to enter upon an Owner's Lot for such purpose, all without liability on the part of the Board.

(g) Snowmobiles, motorcycles, trail bikes, minibikes, dirt bikes, all-terrain vehicles, and similar motorized vehicles shall not be used or operated (but may be transported on trailers) within the Community, except that motorcycles properly licensed for operation on public roads may be used on roadways within the Community. Notwithstanding the foregoing, Declarant and/or the Association may operate such vehicles or equipment within the Community solely for maintenance, construction, security or similar purposes or in emergency circumstances.

2.14. **Leases.** Any Owner shall have the right to Lease their residential dwelling on his/her Lot for long term or short term purposes, provided such usage complies with applicable Town Laws. The deed restrictions placed on Lots 2, 17 and 18 impose other restrictions on the leasing of Lots.

2.15. **Garbage; Trash; Compost; Containers.** No refuse, garbage, trash, grass, shrub, or tree clippings, plant waste, compost, metal, bulk materials, scrap, rubbish, or debris of any kind shall be kept, stored, maintained or allowed to accumulate or remain on any Lot or on Association Property, except that any approved container containing such materials may be placed next to the street not earlier than 6:00 a.m. on the designated morning of garbage collection and must be returned to its enclosed structure 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 not be visible from

another Lot or Association Property. All such refuse, garbage, trash, plant waste, compost, metal, scrap materials, rubbish and debris shall be promptly removed from the Community and shall not be burned thereon. Compost structures and containers may be placed on a Lot or on Association Property in locations and in containers approved by the Association, provided that no such structure or container shall be larger than fifty-five (55) gallons. Notwithstanding the foregoing, the Association shall have the right to require that every Owner purchase and use a designated garbage container intended to deter wildlife interaction. Garbage containers shall comply with all applicable Town requirements concerning type of containers, including bear proof containers.

2.16. **Excavations.** No excavation or other earth disturbance shall be performed or permitted within the Community except in connection with the construction of Improvement(s), and then only with the prior written approval of the Association. Upon completion of construction, openings in the ground shall be backfilled and compacted and all disturbed ground shall be graded and landscaped. All such work shall comply with the Town Development Approvals and Requirements, including the 1041 Geohazard Mitigation and Geotechnical reviews and requirements.

2.17. **No Interference with Waterways or Drainage or Irrigation Systems.** No Owner or Occupant shall construct, install, maintain or permit any Improvement(s) or obstruction or plant trees or take any other action which damages or interrupts or interferes in any way with (i) the normal flow of water through and along waterways and water features within the Community, (ii) any irrigation ditch, lateral, lake, pond or other water collection, storage or distribution system within or serving the Community, or (iii) normal drainage patterns within the Community, subject always to the rights of owners of ditches and other water rights and the requirements of the Association. The Association shall have the authority to take such action as may be necessary to abate or enjoin any such damage or interference, and shall have the right to enter upon a Lot for purposes of correcting or removing the same, and any costs incurred by the Association in connection with such abatement, injunctive or corrective activities shall be assessed to the subject Owner in the form of a Reimbursement Assessment.

2.18. **Fences and Walls; Rockfall Fences.** Except for any rockfall mitigation installed by Declarant, fencing is restricted throughout the Community to optimize the open space character of the project and to facilitate wildlife movement. Subject to approval by the Town and the Association, which approval will not be unreasonably withheld by the Association, fences and similar devices required by the Town for rock fall and/or avalanche mitigation, if any is required, may occur on Lots and/or the Parcels. The cost of designing, installing and maintaining any such improvement will be incurred by the Owner seeking to install the improvement.

2.19. **Use of Easement Areas; Utility Installation.** All easements shown on the Subdivision Plat, Plat or a Supplemental Plat covering any portion of the Community have been created or reserved for the purposes indicated on such Plat and/or in Article 7 below. No Owner or Occupant may erect any structure of any type whatsoever in such easement areas, nor may an Owner or Occupant use the surface of such easement areas for any private use, other than driveways or landscaping which will not interfere with the use of said easement by the Persons or entities for whose benefit it has been created or reserved and which receives the prior written approval of the Association. With respect to easements created for access and/or utility purposes either by the terms of this Declaration or any other Recorded agreement or on a Plat, any and all bona fide public and private utility service companies shall have the right of access, ingress, egress, and use of such easement areas for the installation, operation and maintenance of utility facilities serving the Community, subject to the following limitations. Except as to special street lighting or other aerial facilities which may be required by the Town, no aerial 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, whether upon Lots, Association Property, easements, streets, or rights-of-way of any type, either by a utility company, an Owner, the Association or any other person or entity (including but not limited to any person owning or acquiring any part of 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. Provided, that during the construction of a residence on a Lot a temporary overhead power line may be installed which shall be promptly removed upon completion of construction.

2.20. **Restoration of Improvement(s) in the Event of Damage or Destruction.** In the event of damage to or destruction of any Improvement(s) on any Lot, the Owner thereof shall cause the damaged or destroyed Improvement(s) to be promptly restored or replaced to its original condition or such other condition as may be approved in writing by the Association, or the Owner shall cause the damaged or destroyed Improvement(s) to be promptly demolished and the Lot to be suitably landscaped, subject to the approval of the Association, so as to present a pleasing and attractive appearance. Such Improvement(s) shall be repaired, restored or otherwise demolished and suitably landscaped within such reasonable time frame as may be established by the Association.

2.21. **Damage by Owners During Construction.** Each Owner is responsible for any damage caused to roads, streets, ditches, fences, trails, natural or constructed drainage courses, utilities, Association Property, Improvement(s) on Association Property or to other Lots or Improvement(s) thereon, during the construction or alteration of Improvement(s) upon the Owner's Lot, including without limitation damage caused by any construction vehicles using the roads or streets within the Community. Damage shall include any degradation in the appearance or condition of such roads, streets, Association Property, or other Lots or Improvement(s). The responsible Owner shall promptly repair and clean up any such damage, at its sole expense. Each Owner shall also be responsible for any damage caused by utility cuts in roads, and for washout and runoff damage, and to promptly repair any such damage. If the Owner fails to repair any such damage within 10 days following receipt of a written notice from the Board requesting the same, the Board shall have the right to perform such repairs on behalf of the Owner, and to levy a Reimbursement Assessment upon the Owner and its Lot to recover the costs thereof.

2.22. **Restrictions on Resubdivision, Property Restrictions, Rezoning, and Time Sharing.**

(a) No Lot shall ever be rezoned, or further subdivided or replatted by an Owner into smaller Lots.

(b) Declarant reserves the right to replat a Lot, or to combine two or more Lots owned by Declarant, or to adjust or remove boundary lines between Lots owned by Declarant, provided that any necessary Town Development Approvals and Requirements are obtained, all Declaration and Plat amendments required by the Act and/or local land use laws are prepared, executed and Recorded, provided further that the combined Lots will be required to continue paying two or more shares of Regular Assessments and Special Assessments (equivalent to the number of lots being combined), but the voting rights shall be combined and restricted to only one vote for the combined Lots. All costs relating to the foregoing activities shall be the sole responsibility and obligation of Declarant. Declarant's rights under this subsection (a) shall terminate upon the first to occur of (i) the date which is 30 years after the Recording of this Declaration, or (ii) Declarant's relinquishing of these rights by a Recorded instrument.

(c) The boundaries between adjoining Lots may also be adjusted or removed (*i.e.* the Lots combined) by the Owner(s) thereof other than Declarant, if (i) the written consent of the Board is first obtained, which may be granted or withheld in the sole discretion of the Board, (ii) all applicable regulations and codes are complied with and all necessary Town Development Approvals and Requirements are obtained, (iii) the proposed adjustment or removal does not violate the terms of any document evidencing a security interest in the subject Lots, (iv) all Declaration and Plat amendments required by the Act and/or local land use laws are prepared, executed and Recorded, and (v) the necessary reallocation of Allocated Interests of the Owners is accomplished pursuant to the guidelines set forth above or as otherwise required by the Board, provided that the combined Lots will be required to continue paying two or more shares of Regular Assessments and Special Assessments (equivalent to the number of lots being combined), but the voting rights shall be combined and restricted to only one vote for the combined Lots. All costs relating to such activity (including the attorneys' fees and costs incurred by the Board in reviewing and acting upon the matter) shall be the sole responsibility and obligation of the Owner(s) applying for the same.

(d) No Owner of a Lot shall grant or convey any easement rights affecting any portion of the Lot without the prior written consent of the Board.

(e) No further covenants, conditions, restrictions or easements shall be Recorded by any Owner (except Declarant in the exercise of its reserved rights) or other Person against any Lot without the provisions thereof having been first approved in writing by the Board for consistency with the Declaration and the general plan of development for the Community. Any covenants, conditions, restrictions or easements Recorded without such approvals being evidenced thereon shall be null and void. This provision does not apply to Mortgages.

(f) No application for any variance or special use permit for any Lot, shall be filed with any governmental authority by any Owner (except Declarant in the exercise of any reserved rights) unless the proposed use of the Lot has first been approved in writing by the Board and the proposed use otherwise complies with the Declaration.

(g) Unless approved by the Association, no form of time-share or interval ownership or use program shall ever be created or allowed in connection with any Lot in the Community, and any such attempted ownership or use program shall be null and void and unenforceable.

2.23. **Health, Safety and Welfare.** In the event any uses, activities, or 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 Rules and Regulations governing the same in order to appropriately restrict and regulate such uses, activities or facilities within the Community. Such rules shall be consistent with the purposes and provisions of this Declaration.

2.24. **Implementation and Variances.** The Board may implement the restrictions set forth in this Article, or otherwise restrict and regulate the use and occupancy of the Community and the Lots by reasonable Rules and Regulations of general application adopted by the Board from time to time. The Board may, in its sole discretion and in extenuating circumstances, grant variances from any of the restrictions set forth in this Article (excepting any such restrictions with respect to which the Association has the authority to grant variances under this Declaration), if the Board determines, in its sole 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 (including neighboring Lots) 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 at least ten (10) days advance written notice of the variance hearing, and of the nature of the variance requested, postage prepaid, by certified mail, return receipt requested, to all Owners of Lots within the Community, at the current addresses for such Owners reflected in the Association files. The applying Owner must provide the Committee with an accurate list of the Owners to be so notified. If the foregoing notice requirements are complied with, it is not necessary that the Owners actually receive the notice that is mailed to them, such notices being deemed received upon mailing. No variance shall conflict with the Town Development Approvals and Requirements or with ordinances or regulations of the Town. If a variance from the Town Development Approvals and Requirements or 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 variance before submitting a variance application to the Board.

2.25. **Declarant Activities.** The Declaration shall in no way restrict Declarant's right and ability to develop, improve, maintain, repair, regulate, operate, administer, manage, market, sell, lease, encumber or dispose of the Community, the Lots, the Association Property or any part thereof, including the right to construct Improvement(s), place construction and office trailers, and install signs thereon, all in the complete discretion of Declarant.

### ARTICLE 3 MAINTENANCE OF THE LOTS AND ASSOCIATION PROPERTY

3.1. **General Maintenance of Community.** All property within the Community, including without limitation all Lots (including unimproved Lots, and Lots on which Improvement(s) are under construction), Association Property, Improvement(s), and landscaping, shall be kept and maintained in a clean and attractive condition and in good order, condition and repair. The individual Owners and the Board shall each use a reasonable standard of care in providing for the repair, management and maintenance of the properties for which they are responsible so that the entire Community will reflect a pride of ownership.

3.2. **Owners Responsibilities.**

(a) Except as specifically set forth in this Section or in a Supplemental Declaration, maintenance, repair, and upkeep of each Lot and the Improvement(s) thereon (including, without limitation, any residence, structural/foundation systems, drainage/stormwater management, retaining walls, landscaping, as well as any additional geologic hazard mitigation facilities and other improvements required by a site specific development approval for the Lot) shall be the responsibility of the Owner of the Lot. Such maintenance and repair shall be performed by each Owner whenever necessary or appropriate and at regular intervals in order to keep the Lot and Improvement(s) in substantially the same condition and appearance as existed at the time of completion of construction, subject to normal wear and tear that cannot be avoided. Said Owner obligations shall include all maintenance, repair or replacement required as a consequence of any fire, rockfall damage, avalanche, wind, vandalism, theft or other casualty. With respect to a Lot, this maintenance obligation extends to all lands and landscaping within the Lot lines, excepting any areas or elements that are required to be maintained by the Association, and includes without limitation the landscaping maintenance and weed control obligations set forth below. Unsightly conditions on a Lot shall constitute a nuisance under this Declaration.

(b) The driveway and lateral utilities extending from the Community Access Road/Facilities constructed for a Lot will be constructed, maintained and repaired by the Owner of the Lot so being served.

(c) If an Owner fails to perform any of such obligations within ten (10) days following receipt of a written notice from the Board requesting the same, the Board shall have the right to enter upon the Lot of the Owner to cure the violation, to perform any needed repairs or maintenance, or to otherwise cause compliance with this Section, and to levy and collect a Reimbursement Assessment upon the Owner and its Lot for the costs and expenses incurred by the Association in connection therewith, including, without limitation, professional services (legal, accounting, architectural, engineer, construction contractor and the like). The Board shall have no right to enter into the interior of a residence without the consent of the Owner except in the case of a clear emergency.

(d) An Owner shall remove vegetation from their Lot only in accordance with the Town Development Approvals and Requirements.

(e) Each Owner shall undertake such other maintenance, repair and other actions on their Lot or a Parcel placed upon it by any other provisions of this Declaration and/or by the Town Development Approvals and Requirements, if any.

3.3. **Association Responsibilities.**

(a) The Community Access Road/Facilities, which is shown on the Plat as Primrose Lane, is owned by the Town of Telluride and shall continue to be deemed to be a "public" street and pedestrian walkway. The Association shall be responsible for inspecting, maintaining, repairing, and, as necessary, replacing components of the Community Access Road/Facilities from time to time, inclusive of all supporting facilities and features, such as lighting, landscaping and signage.

(b) Winter maintenance of the Community Access Road/Facilities, including the storage and/or removal of snow and ice.

(c) Maintenance, repair, and upkeep of primary Rockfall Fence installed by Declarant on Lots and Parcels shall be the responsibility of the Association.

(d) Maintenance, repair, and upkeep of drainage facilities shall be the responsibility of the Association.

(e) Maintenance, repair, and upkeep of any other Association Property, including any Improvement(s) thereon, shall be the responsibility of the Association.

(f) The Association shall undertake such other maintenance, repair and other actions placed upon it by any other provisions of this Declaration and/or by the Town Development Approvals and Requirements.

(g) The cost and expense of the foregoing, including insurance obtained for such Improvements, shall be a Common Expense allocated to all of the Owners of the Lots, provided, however, that if the Community Access Road/Facilities, Rockfall Fences, drainage facilities, landscaping or other improvements being maintained by the Association is damaged by an Owner or Occupant, the expense of repairing the damage may be charged to that Owner as a Reimbursement Assessment. The Association may enter into contracts to have some or all of its foregoing responsibilities performed by third parties.

#### **ARTICLE FOUR GEOHAZARD AND GEOTECHNICAL REVIEW AND MITIGATION**

4.1. **Geologic Hazard Mitigation and Review Criteria.** Each Owner shall be required to comply with any design and mitigation requirements as stated in the Town Development Approvals and Requirements relating to geohazard conditions that may affect the use and development on the Lot, including, without limitation, conditions relating to potential rockfall and unstable soils ("**Geologic Hazard Design Criteria**"). Additional Geologic Hazard Design Criteria may be established by the Town in the course of its review of a site specific development application proposing development on a Lot.

4.2. **Preparation of Geologic Hazard and Geotechnical Report.** A qualified registered engineer, retained by an Owner of a Lot, must design and engineer each home design requiring a Geologic Hazard mitigation plan and a Geotechnical (Soils) Report/Plan.

4.3. **Review and Approval by the Town.** An Owner shall submit the geohazard mitigation report and mitigation plan and/or a geotechnical (soils) report and engineering plan to the Town which shall be reviewed by the Town as part of its consideration of a site specific development application for each Lot and must be approved by the Town prior to issuance of a building permit for development of an Improvement(s) requiring mitigation and/or soils engineering on a Lot.

4.4. **Installation of Site Specific Geohazard Mitigation.** If required, an Owner shall install all elements of a site specific geohazard mitigation plan and/or geotechnical plan, without deviation or variation unless approved by the Town, except for the Rockfall Fence shown on the Replat which is being installed by the Developer. An Owner shall notify the Town when the elements of the approved geohazard mitigation plan are being installed to enable the Town to periodically monitor installation for compliance with the approved geohazard mitigation plan.

4.5. **Management and Maintenance of Site Specific Geohazard Mitigation.** Each Owner shall be obligated to inspect, maintain, repair and replace the elements of the approved geohazard mitigation plan on the Owner's Lot, except for the Rockfall Fence shown on the Replat, which will be maintained and repaired by the Association.

4.6. **Disclosure of Geologic Hazards.** Pursuant the Telluride Land Use Code, each Owner is hereby notified and informed of the geologic hazards as identified in Town Development Approvals and Requirements



**ARTICLE FIVE**  
**ASSOCIATION PROPERTY, UNITS AND TITLE**

5.1. **Use and Enjoyment of Association Property.** No Owner or Occupant shall place any structure or store or leave any materials or personal property upon Association Property.

5.2. **Association May Regulate Use of Association Property.** The Association, acting through the Board, shall have the right and authority to regulate the use of Association Property 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 Association Property and the enhancement of the use and enjoyment thereof by Owners and Occupants and other authorized users. The Association, acting through the Board, may for good cause suspend the right of any person to use and enjoy Association Property, including without limitation the right of a Member who or which is delinquent in the payment of any Assessments, and the right of any Member or other authorized user who is in violation of the terms and provisions of this Declaration or the Articles, Bylaws, any Rules and Regulations or the terms and provisions of any approvals granted by the Association.

5.3. **No Partition of Association Property.** No Owner or other Person shall have any right to partition or to seek the partition of Association Property or any part thereof.

5.4. **Owner Liability for Owner or Occupant Damage to Association Property.** Each Owner shall be liable to the Association for any damage to Association Property or for any expense, loss or liability suffered or incurred by the Association in connection with Association Property 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 the Rules and Regulations relating to Association Property. 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, damages, losses or liabilities incurred by the Association as a consequence of any such negligence, willful misconduct or violations.

5.5. **Damage or Destruction to Association Property.** In the event of damage to or destruction of Association Property, including Improvement(s) thereon, by fire, rockfall, other geohazard condition, or other casualty, the Association shall repair or replace the same in accordance with the provisions of this Declaration. Repair, reconstruction, or replacement of Association Property shall be accomplished under such contracting and bidding procedures as the Association shall determine are appropriate. 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 Association Property or for any other use deemed appropriate by the Board. The Association shall have the power to levy and collect a Reimbursement Assessment against an Owner to recover the costs, expenses, damages, losses or liabilities incurred by the Association as a consequence of any such negligence, willful misconduct or violations.

5.6. **Condemnation of Association Property.** If any Association Property or part thereof or interest therein is taken under exercise of the power of eminent domain or by purchase in lieu thereof, the portion of any award in condemnation or the price payable for the deed in lieu that is attributable to the Association Property taken or purchased shall be paid to the Association. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners and Occupants and other Persons therein. Any award or funds received by the Association shall be held by the Association for the purposes stated in Section 5.5 above or as a reserve for future maintenance, repair, reconstruction, or replacement of Association Property or may be used for Improvement(s) or additions to or operation of Association Property or for such other uses as may be deemed appropriate by the Board. Except as may otherwise be provided by the Act, no Owner or other

Person shall be entitled to participate as a party or otherwise in any condemnation proceedings nor to receive any proceeds therefrom.

5.7. **Title to Association Property Upon Dissolution of Association.** In the event of dissolution of the Association, the Association Property shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agency or organization or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Owners for the purposes for which the Association Property was held by the Association. If the foregoing is not possible, the Association Property shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners in proportion to each Owner's Allocated Interest in the Common Expenses of the Association.

5.8. **Mechanic's Liens on Association Property.** Declarant shall be responsible for the release of mechanics' liens filed with respect to Association Property, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of Declarant, its agents, contractors or subcontractors. Likewise, the Association shall be responsible for the release of mechanics' liens filed with respect to Association Property, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of the Association, its directors, officers, agents, contractors or subcontractors. No labor performed or materials furnished with respect to a Lot at the instance of the Owner shall be the basis for filing a lien against Association Property. No labor performed or materials furnished with respect to Association Property at the instance of the Board shall be the basis for filing a lien against any Lot.

5.9. **Amendment Deemed Included.** The reference to the Plat and the Declaration in any instrument shall be deemed to include any recorded supplements or amendments to the Plat or the Declaration, whether or not specific reference is made thereto.

5.10. **Transfer of General Common Areas.** All Owners and the Association, covenant that they shall neither by act nor omission, seek to abandon, subdivide, encumber, sell or transfer the Common Areas without the consent of: (i) the Owners, including Declarant if Declarant owns a Lot, representing an aggregate ownership interest of 66% or more of the Common Areas in the Association; (ii) the First Mortgagees representing an aggregate of 66% of the then-outstanding balances of such Mortgages covering or affecting any or all Lots; and (iii) during the Marketing Period, the consent of the Declarant. Any such action without the written consent of said Owners, First Mortgagees and, if applicable, the Declarant, shall be null and void. Notwithstanding the foregoing, nothing contained in this shall be construed to limit or prohibit a proportionate adjustment in the percentage ownership in the General Common Areas in connection with the combination, division, or partition of any Lot pursuant to the right of combination, division, or partition of a Lot by the Owner or between Owners thereof for the purpose of sale, use, or improvement of such Lot. Nothing to the foregoing withstanding, the Association shall not abandon, subdivide, encumber, sell or transfer a portion of the General Common Areas which has been properly designated as a Limited Common Element without the consent of the Owner(s) of the Lot(s) to which the Limited Common Element has been assigned.

## **ARTICLE SIX DECLARANT'S RESERVED RIGHTS**

Declarant hereby expressly reserves to itself and its successors and assigns the following described rights ("**Reserved Rights**"), which include development rights and special Declarant rights, any one or more of which rights may be exercised, in the sole and absolute discretion of Declarant, at any time and from time to time during the period commencing upon the Recording of this Declaration and ending on the date of termination of such rights established below. It is expressly understood that Declarant shall not be obligated to exercise any of these Reserved Rights, and that no consent shall be required from any Owner, Mortgagee, or the Association for the effective exercise of any of these Reserved Rights. Except as limited by this Article, such Reserved Rights may be exercised upon or in connection with all or any portion of the Community. Such Reserved Rights may be exercised with respect to different parcels of said real estate at different times, and in connection therewith Declarant hereby states that

(i) no assurances are made regarding the boundaries of said different parcels or with respect to the order in which such parcels may be subjected to the exercise of these Reserved Rights, even if a reference to a phase or phasing appears in a legal description, Plat, Town Development Approvals and Requirements or other agreement relating to the property, and (ii) if a particular Reserved Right is exercised in any portion of the real estate subject to that Reserved Right, that Reserved Right is not required to be exercised in all or any portion of the remainder of that real estate. The Reserved Rights hereinafter set forth shall be prior and superior to any other provisions of this Declaration and may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Lots and other portions of the Community hereafter made, whether by Declarant or otherwise, shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the rights reserved by and to Declarant in this Article and elsewhere in this Declaration or even though no specific reference to such rights appears in the conveyancing instruments. Nothing in this Article shall limit or impair any other rights granted or reserved to Declarant by other provisions of this Declaration. The following Reserved Rights are hereby reserved to Declarant and its successors and assigns:

6.1. **Construction of Improvement(s).** The right, but not the obligation, to construct the Community Access Road/Facilities, the Rockfall Fence and the other infrastructure improvements and other improvements required by the Town Development Approvals and Requirements as may be amended from time to time. Furthermore, the right to create, grant and/or use and enjoy additional non-exclusive easements, and to relocate existing platted or other easements, upon or across any portion of the Community, as may be reasonably required for the construction by Declarant of the above-described Improvement(s) or the effective exercise by Declarant of any of the other reserved rights described in this Article.

6.2. **Sales, Marketing and Management.** The right to construct, locate or operate, and to maintain upon, and to remove from, any part of the Community including Lots owned by Declarant and Association Property, in the discretion of Declarant, and in such number, size and location as may be reasonably required by Declarant in connection with the completion of Improvement(s), the management of the development, and/or the promotion, marketing, sale or rental of Lots, the following:

6.2.1. Sales offices, management offices, and/or construction offices, and structures containing or relating to the same. Such offices, to the extent they are not situated on a Lot, are hereby declared to be personal property of the Declarant and shall in any case be removable by Declarant or its successors or assigns promptly upon the Declarant or its successors or assigns ceasing to be an Owner;

6.2.2. Signs identifying and advertising the Community and the Lots therein, or relating to development or construction thereon;

6.2.3. Model residences constructed or to be constructed on Lots;

6.2.4. Parking areas and facilities, necessary or desirable in the marketing of the Community and the Lots;

6.2.5. Employees in offices; equipment; vehicles; and marketing and construction materials; and

6.2.6. The right to attract, invite or bring prospective purchasers of Lots into the Community at all times.

6.3. **Merger.** The right to merge or consolidate the Community with another Community of the same form of ownership.

6.4. **Declarant Control of Association.** The right to appoint or remove any Board member or officer of the Association, as more specifically set forth herein, but only for and during the "Period of Declarant Control of Association" as defined herein.

6.5. **Other Reserved Development Rights.** Subject to compliance with any applicable County requirements, the right with respect to all or any Declarant-owned portion of the Community (including the Lots) to (a) create Association Property (including Limited Common Areas); (b) combine Lots; (c) reconfigure Lots and/or Association Property, or otherwise modify or amend the recorded Plat; (d) amend the Town Development Approvals and Requirements; (e) convert Lots into Association Property; (f) modify locations of easements and Improvement(s) being constructed on Lots or Parcels, (g) create additional Lots, (k) annex additional property into the Community, and (l) create master associations and/or subordinate associations and to subject all or portions of the Real Estate to such master association or subordinate association. Additionally, in order to effectively exercise the rights reserved to Declarant under this Article, the right to amend this Declaration (without the consent of Owners, Mortgagees or the Association being required) for purposes of (i) complying with or qualifying for federal or state registration of the project (ii) satisfying title insurance requirements, or (iii) bringing any provision or provisions of the Declaration into compliance with the Act

6.6. **Other Rights.**

A. The right to grant or withhold its approval and/or consent to any matter or action requiring the approval and/or consent pursuant to the Declaration;

B. The right to exercise any and all other Reserved Rights stated, established or otherwise reserved herein or otherwise allowed in the Act;

C. The right to amend the Governing Documents in connection with the exercise of any Reserved Rights; and

D. The right to amend the Plat in connection with the exercise of any Reserved Rights.

E. 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, retaining walls, walkways, drainage, parking areas, utility conduits and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Community.

F. The right to enter into, establish, execute, amend, and otherwise deal with contracts, agreements and leases for the use, operation, lease, repair, maintenance or regulations of Common Areas, which may or may not be a part of the Community.

G. The right to grant and convey an easement over portions of the Common Areas to adjoining property owners to enable pedestrian and vehicular access and/or the extension of utilities to serve adjoining property, provided that the grant of such easement does not preclude uses and activities of the Common Areas contemplated by this Declaration.

H. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

6.7. **No Further Authorizations Needed.** The consent of Owners or holders of Security Interests shall not be required for the Declarant or its assignees to exercise any Reserved Rights, and Declarant 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 County. Reserved Rights of the Declarant or its assignees may be exercised with respect to different parcels of the Community at different times. Additionally, Declarant or its assignees may exercise any Reserved Rights on all or any portion of the Community in whatever order is determined. Declarant or its assignees shall not be obligated to exercise any Reserved Rights or to expand the Community beyond the number of Lots initially submitted.

6.8. **Interpretation.** Recording of amendments to the Declaration and the 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 Improvement(s), and the same shall be added to and become a part of the Community for all purposes. All conveyances of Lots after such amendment is recorded shall be effective to transfer rights in all Common Areas, whether or not reference is made to any Amendment of the Declaration or Map.

6.9. **Assignment of the Declarant Rights.** Declarant reserves the right to transfer and assign some or all of the Reserved Rights to any Person, which will be evidenced by a written assignment describing the right or rights transferred recorded in the Official Records, and upon such assignment, such assignee may elect to exercise any assigned Reserved Rights subject to these Declarations and the Act and upon such election, the assignee shall assume all of the duties and obligations of the Declarant with respect to the Reserved Rights being so assigned. Such instrument shall be executed by the transferor Declarant and the transferee. In the event that the Declarant assigns some or all of the Reserved Rights to the Association, the terms provided for in such assignment may extend the period of time within which the Association may exercise such Reserved Rights in perpetuity.

6.10. **Termination of Declarant's Reserved Rights.** With the exception of Declarant's right to appoint or remove Board members and officers of the Association, which is addressed in Section 8.5 below, the rights reserved to Declarant in this Article shall automatically terminate and expire upon the first to occur of (i) the date which is twenty (20) years after the Recording of this Declaration, or (ii) Declarant's relinquishment and surrender of such rights by Recorded instrument. Declarant may from time to time relinquish and surrender one or more but less than all of the reserved rights, in which event the unrelinquished reserved rights shall remain fully valid and effective for the remainder of the term thereof. The Association may extend the time period for exercise of a development right, or reinstate a lapsed development right, subject to whatever terms, conditions and limitations the Association may impose on the subsequent exercise of the development right. The extension or renewal of a development right and any terms, conditions and limitations shall be included in an amendment executed by Declarant or the owner of the real estate subject to the development right and the Association.

## **ARTICLE SEVEN EASEMENTS**

The following "Easements" are hereby established by Declarant for the purposes stated and for the parties indicated. Declarant reserves the right to modify the location and/or use of any of the Easements Easement identified in this Article Seven or anywhere else in this Declaration or on the Plat. Declarant also reserves the right to expand the Persons who may use the Easements. The rights reserved herein shall be exercised in the manner provided for in Article 6. Declarant's rights with respect to the modification of the Easements shall terminate thirty (30) years after the date of recording of this Declaration.

7.1. **Easements for Incidental Encroachments.** If any portion of an Improvement(s) approved by the Association encroaches in its approved location upon an Association Property, including any future encroachments arising or resulting from the repair or reconstruction of an Improvement(s) subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such incidental encroachment.

7.2. **Blanket Association Utility and Drainage Easement Over Association Property.** 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 all roads in the Community and all Association Property for the construction, installation, testing, operation, monitoring, management, administration, maintenance, repair, removal and replacement of utilities and utility lines, irrigation lines and systems, water features, drainage systems, pipes, wires, circuits, conduits, meters, facilities and systems for the benefit of the Community or any part thereof or neighboring lands, including but not

limited to drainage, domestic water, irrigation water, sewer, gas, telephone, electricity, 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 and drainage easement rights shall be obligated to restore, reseed, replant and/or re-landscape the surface of the disturbed area to as close to its original condition as possible, as promptly as possible following completion of any utility or drainage work.

7.3. **Association Administrative Easement Over Association Property.** 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 Community Access Road/Facilities and all Association Property (including without limitation all easements benefiting the Association) and a right to use the same for purposes of enabling the Association to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including without limitation the snowplowing and maintenance of private driveways and sidewalks.

7.4. **Declarant Easement Over Association Property.** There is hereby created, granted and reserved to Declarant and its successors and assigns a non-exclusive easement over, across, upon and under the Community Access Road/Facilities and all Association Property (including without limitation all easements benefiting the Association), including a right of access, ingress and egress thereto, and a right to use such roads and Association Property, and each and every part thereof, for all purposes reasonably related to (a) Declarant's development, improvement, maintenance, management, marketing and sale of the Community and all portions thereof and/or (b) Declarant's exercise and implementation of the rights reserved to Declarant under this Declaration, and/or (c) the discharge by Declarant of any of its obligations under this Declaration or under the SIA or any other Declarant obligations relating to the Community. Declarant's rights with respect to this easement shall terminate upon the first to occur of (i) the date which is thirty (30) years after the Recording of this Declaration, or (ii) Declarant's relinquishment of all or a portion of this easement right by Recorded instrument.

7.5. **Public Trail Easement.** As depicted and further described in the Replat, Declarant established, reserved, granted and conveyed a certain 6' wide trail easement between Lot 15 and Lot 16 as depicted on this Replat, which is deemed to be a non-exclusive, perpetual easement ("**Public Trail Easement**") to the Town of Telluride (including the general public by and through the rights granted to the Town of Telluride) granting public pedestrian access over the indicated easement area. The Public Trail Easement is strictly limited to pedestrian usage and shall not be used for bike, equestrian or any motorized uses, which uses are prohibited. No structures shall be placed in the easement. The Public Trail Easement also allows for the installation, repair, and maintenance of a trail. A person electing to use the trail and easement shall assume all risks associated with such usage and shall be deemed to release Declarant, the Association and the respective owners of Lot 15 and Lot 16 from any claims or liability arising from damage to person or property resulting from their usage. Portions of the Public Trail Easement overlap with the Lot 15 and Lot 16 Access and Utility Easement. The parties using the Public Trail Easement and the Lot 15 and Lot 16 Access and Utility Easement shall do so in a way that is complementary and shall not preclude or inhibit the respective usage rights of the other parties benefitted by easement rights in the area.

7.6. **Lot 15 and Lot 16 Access and Utility Easement.** As depicted and further described in the Replat, Declarant established, reserved, granted and conveyed a certain access and utility easement over and across portions of Lot 15 and Lot 16 as depicted on this Replat, for the mutual use and benefit of Lot 15 and Lot 16 ("**Lot 15 and Lot 16 Access and Utility Easement**"). The Lot 15 and Lot 16 Access and Utility Easement is deemed to be a non-exclusive, perpetual easement allowing for the installation and construction of certain access and utility improvements along with the right to use, repair, replace, upgrade and maintain the access and utility improvements. The costs and expense of such uses and activities, to the extent the driveway and/or utilities are serving both lots shall be equitably shared and allocated between Lot 15 and Lot 16.

7.7. **Rockfall Fence Easement.** As depicted and further described in the Replat, Declarant established, reserved, granted and conveyed a certain "Rockfall Fence Easement" over and across

portions of Lots 1 through and including 15 and Tract OS-C as depicted on this Replat. The Rockfall Fence Easement is deemed to be a non-exclusive, perpetual easement that is granted to the Association. The Rockfall Fence Easement allows for the installation and construction of a rockfall fence by the Association along with the right to use, repair, replacement, upgrade and maintain the rockfall fence, install and maintain landscaping. There is also established, reserved, granted and conveyed a blanket easement over any unimproved portion Lots 1 through and including 15 and Tract OS-C outside of Rockfall Fence Easement, which grant the Association and its designees a right to gain reasonable access as reasonably necessary to install, maintain, repair and replace the Rockfall Fence from time to time. The Association shall reasonably restore any portions of Lots 1 through and including 15 and Tract OS-C that were materially disturbed by the Association in exercising its rights under the Rockfall Fence Easement.

7.8. **Utility and Drainage Easements.** There are hereby created, granted and reserved for the use and benefit of the Declarant, the Association, and appropriate public utilities, perpetual, non-exclusive easements over, upon, across and under those portions of the Community that are designated "Utility Easement" or "Drainage Easement" on the Plat. Utility Easements may be used for the installation, operation, maintenance, repair, removal or replacement of underground utility lines, vaults and related surface facilities. Drainage Easements may be used for the installation, operation, maintenance, repair, removal or replacement of drainage systems and facilities. Except as may otherwise be provided in any Subdivision Improvement(s) Agreement between Declarant and the Town or in any other separate agreement between Declarant and a utility supplier, the party causing the disturbance shall be obligated to restore, repair, reseed and/or re-landscape any area disturbed by the exercise of these easement rights to as close to its original condition as possible, as promptly as possible following the completion of any work within a Utility or Drainage Easement.

7.9. **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 streets, roads, properties and areas within the Community, for use in the lawful performance of their duties.

7.10. **Easements Deemed Created.** All conveyances of Lots and Association Property hereafter made, whether by Declarant or otherwise, shall be deemed and construed to grant and reserve all of the easements referred to in this Article and elsewhere in this, even though no specific reference to such easements appears in the conveyancing instruments.

7.11. **Restrictions on Owners in Easement Areas.** Owners of Lots that are subject to any easements created by this Declaration or by the Plat shall acquire no right, title or interest in any cables, conduits, mains, lines, or other equipment or facilities or improvements that may be installed upon, over or under the easement area by a beneficiary of said easement rights. Moreover, Owners and Occupants of Lots that are subject to any such easements are hereby prohibited from (i) constructing any Improvement(s) upon the easement areas excepting driveways and any other Improvement(s) expressly approved in writing in advance by the Association, (ii) altering or obstructing the flow of any water or drainage thereon, or (iii) landscaping the same, in any manner that might interfere with the full and proper exercise of said easement rights by any beneficiary thereof. Finally, said Owners and Occupants are hereby prohibited from violating any of the restrictions relating to the use of the easement areas as may be set forth in this Declaration. Any Owner or Occupant violating any of these restrictions shall be obligated to remove the offending improvement or landscaping and to restore the surface of the area to its original condition at the Owner's cost and expense, or otherwise to remedy the violation, within 30 days following a written request therefore from any easement beneficiary. If said Owner or Occupant fails to comply with the request in a timely manner, the Association shall have the right to enter upon the Owner's Lot to perform the necessary work and may assess the costs thereof against the Owner and the Owner's Lot in the form of a Reimbursement Assessment.

7.12. **Recorded Easements and Licenses.** In addition to the easements described in this Article and elsewhere in this Declaration, the recorded easements and licenses appurtenant to or included in the Community are depicted on the Replat.

## ARTICLE EIGHT ASSOCIATION

8.1. **Association.** 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 Association Property, 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, Bylaws, and any Rules and Regulations. 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 on behalf of the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

8.2. **Association Board.** The affairs of the Association shall be managed by an Board. The number, term, and qualifications of the members of the Board shall be fixed in the Articles of Incorporation or the Bylaws. A quorum shall be deemed present throughout any meeting of the Board if persons entitled to cast at least fifty percent (50%) 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 Act, this Declaration, the Articles or Bylaws. Except as provided in the Act, this Declaration and 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. If appointed by Declarant, in the performance of their duties, the members of the Board and the officers of the Association are required to exercise the care required of fiduciaries of the Owners. If not appointed by Declarant, 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.

8.3. **Membership in Association.** There shall be one Membership in the Association for each Lot within the Community. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership appurtenant to that Lot, and shall collectively be the "Member" of the Association with respect to that Lot, and the Membership appurtenant to that Lot, automatically pass with fee simple title to the Lot. Declarant shall hold a Membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, and may not otherwise be separated from ownership of a Lot.

8.4. **Voting Rights of Members.** Each Lot in the Community shall be entitled to one (1) vote in the Association. Occupants of Lots shall not have voting rights. If title to a Lot is owned by more than one (1) Person, such persons shall collectively cast their allocated vote. If only one of the multiple owners of a Lot is present at an Association meeting, such owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple owners is present, the vote allocated to that Lot 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 vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the Lot. In the event of a protest being made by one or more multiple owners, and a majority of the multiple owners of the Lot cannot agree on how to cast their vote, any vote cast for that Lot shall be null and void with regard to the issue being voted upon. Such multiple owners and their Lot shall nevertheless be counted



in determining the presence of a quorum with respect to the issue being voted upon. In accordance with Section 38-33.3-309 of the Act, and except as may otherwise be provided in the Bylaws, a quorum is deemed present throughout any meeting of the Members of the Association if persons entitled to cast at least forty percent (40%) 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 entitled to vote 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 Act, this Declaration, the Articles, or the Bylaws. The vote allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. If a Lot is owned by more than one person, each owner of the Lot may vote or register protest to the casting of a vote by the other owners of the Lot 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. No vote allocated to a Lot owned by the Association may be cast. The Owners, by a vote of sixty-seven percent (67%) 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, other than a member appointed by Declarant.

8.5. **Period of Declarant Control of Association.** Notwithstanding any other provisions hereof, Declarant shall have and hereby reserves the power to appoint and remove, in its sole discretion, the members of the Board and the officers of the Association during the period commencing upon the Recording of this Declaration and terminating no later than the earlier of (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than Declarant; or (b) two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business. During said Period of Declarant Control of the Association: (a) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant; and (b) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board must be elected by Owners other than Declarant. At any time prior to the termination of the Period of Declarant Control of the Association, the Declarant may voluntarily surrender and relinquish the right to appoint and remove officers and members of the Board, but in such event Declarant may require, for the duration of the Period of Declarant Control of the Association, that specified actions of the Association or the Board, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective. As to such actions, Declarant may give its approval or disapproval in its sole discretion and option, and its disapproval shall invalidate any such action by the Board or the Association. Not later than the termination of the Period of Declarant Control of the Association, the Owners (including Declarant) shall elect an Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant, and the Board shall elect the officers, with such Board members and officers to take office upon election.

8.6. **Turnover.** Within sixty (60) days after Owners other than Declarant elect a majority of the members of the Board, Declarant shall turnover control of the Association in accordance with the provisions of Section 38-33.3-303(9) of the Act.

8.7. **Termination of Contracts and Leases of Declarant.** The following contracts and leases, if entered into before the Board elected by the Owners pursuant to Section 38-33.3-303(7) takes office, may be terminated without penalty by the Association at any time after the Board elected by the Owners pursuant to said Section 38-33.3-303(7) takes office, upon not less than ninety (90) days notice to the other party: (i) Any management contract, employment contract or lease of recreational or parking areas or facilities; (ii) Any other contract or lease between the Association and Declarant or an affiliate of Declarant; or (iii) Any contract or lease that is not bona fide or was unconscionable to the Owners at the time entered into under the circumstances then prevailing.

## ARTICLE NINE POWERS AND DUTIES OF ASSOCIATION

9.1. **General Powers and Duties of Association.** The Association shall have and may exercise all of the powers and rights 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 including those enumerated in Section 38-33.3-302 of the Act, as such laws may be amended from time to time, subject only to the limitations upon such powers as are contained in this Declaration. More specifically, and without limiting the generality of the foregoing, the Association shall have all of the powers and duties necessary (i) for the administration, management, governance and operation of the Community and the Association, (ii) to own, operate, improve, maintain, repair, manage, lease, encumber, and otherwise deal with Association Property, (iii) to improve, maintain and repair the Limited Common Areas, and (iv) to do any and all lawful things that may be authorized, required or permitted to be done by the Association under the Act and/or under the provisions of this Declaration.

9.2. **Power to Grant Easements.** The Association shall have the power to grant access, utility, drainage, irrigation, and such other easements upon, over, across or under Association Property as it deems necessary or desirable for the benefit of the Community or parts thereof, or for the benefit of all or less than all of the Owners, or for the benefit of lands situated outside the Community.

9.3. **Power to Convey or Encumber Association Property.** The Association shall have the power to convey, or subject to a security interest, portions of the Association Property if Owners entitled to cast at least sixty-seven percent (67%) of the allocated votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots not owned by Declarant, agree to that action, except that all Owner(s) of Lots to which any Limited Common Area is allocated must agree in order to convey that Limited Common Area or to subject it to a security interest. Proceeds of the sale are an asset of the Association. An agreement to convey, or subject to a security interest, Association Property must be evidenced by the execution of an agreement, in the same manner as a deed, by the Association. The agreement must specify a date after which the agreement will be void unless approved by the required percentage of allocated votes. Any grant, conveyance or deed executed by the Association must be recorded in the Official Records and is effective only upon Recordation. The Association, on behalf of the Owners, may contract to convey an interest in an Association Property, but the contract is not enforceable against the Association until approved, executed and ratified pursuant to this Section. Thereafter, the Association shall have all the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments. Unless in compliance with this Section any purported conveyance, encumbrance, judicial sale, or other transfer of Association Property is void. A conveyance or encumbrance of Association Property pursuant to this Section shall not deprive any Lot of its rights of (i) access, ingress and egress to the Lot, and (ii) support of the Lot. A conveyance or encumbrance of Association Property pursuant to this Section shall not affect the priority or validity of preexisting encumbrances.

9.4. **General Power to Provide Services and Facilities to Owners.** The Association shall have the power, but not the obligation, to acquire, construct, operate, manage, maintain, repair and administer services and facilities for the benefit of the Owners, or some of them, including, without limitation, security, animal control, rockfall mitigation, noise attenuation, vegetation control, insect and pest control, television service, parking facilities, transportation facilities, snow removal, signage, (including entry monuments), lighting, (including seasonal lighting), fencing, landscape walls, landscaping services and facilities, drainage facilities, including retention and detention ponds, irrigation facilities, water features, trash and solid waste disposal services, including recycling programs, utility services, recreational facilities and services, maintenance, and such other services, functions and facilities as are deemed appropriate by the Board. The foregoing list shall not be deemed to be a representation by Declarant of services or facilities that will in fact be available for use by the Owners. The Association may enter into such agreements and arrangements as it may deem appropriate with any provider of utilities or services to the Community or any portion thereof, and may form or join any districts created to provide such services.

9.5. **Power to Provide Special Services to Owners.** The Association shall have the power to provide services to an Owner or group of Owners. Any service or services to an Owner or group of Owners shall be provided pursuant to an agreement in writing which shall provide for payment to the Association by such Owner or group of Owners of the costs and expenses of the Association in providing such services, including a fair share of the overhead expenses of the Association, and shall contain reasonable provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Owner or group of Owners and that the payment for such services shall, in the discretion of the Board, be secured by a lien on the Lot(s) of the Owner or group of Owners.

9.6. **Power to Acquire Property and Construct Improvement(s).** The Association may acquire, hold, encumber and/or convey any right, title or interest in or to real or personal property, including Improvement(s). The Association may construct Improvement(s) on Association Property and may demolish existing Improvement(s) thereon.

9.7. **Power to Adopt Rules and Regulations.** The Association may adopt, amend, repeal, and enforce such Rules and Regulations as the Board may consider necessary, desirable or appropriate from time to time with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Property (including Limited Common Areas), and the use of any other property within the Community, including Lots. Any such Rules and Regulations shall be effective only upon adoption by resolution at an open meeting of the Board. 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 (and all other Persons who are authorized users of Association Property) 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. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall govern. Such Rules and Regulations may establish reasonable and uniformly applied 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.

9.8. **Power to Contract with Employees, Agents, Contractors, Districts, Consultants and Managers.** The Association shall have the power to contract with, and/or to employ and discharge employees, agents, independent contractors and consultants, including lawyers and accountants, and special districts, to perform any of the responsibilities of the Association under this Declaration, including without limitation maintenance responsibilities. The Association shall also have the power to retain and pay for the services of a manager or managers, which may be an affiliate of Declarant, to undertake any of the administrative or managerial responsibilities for which the Association may have responsibility under this Declaration, to the extent deemed advisable by the Association, and may delegate any of its duties, powers, or functions to any such manager. Notwithstanding any delegation to a manager of any duties, powers, or functions of the Association, the Association and its Board shall remain ultimately responsible for the performance and exercise of such duties, powers, and functions.

9.9. **Power to Assign Future Income.** The Association shall have the power to assign its right to future income, including the right to receive Regular Assessments, but only following the affirmative vote of at least fifty-one (51) percent of the total allocated votes in the Association, at a duly-called meeting of the Members of the Association.

9.10. **Duty to Accept Property and Facilities Transferred by Declarant.** The Association shall accept title to any real property, or interests in real property, including any Improvement(s) and personal property thereon, transferred to the Association by Declarant, or Declarant's successors or assigns. Property interests transferred to the Association by Declarant or its successors or assigns may include fee simple title, undivided interests, easements, leasehold interests and licenses to use. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association free and

clear of all monetary obligations, liens and encumbrances (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration and all easements, covenants, conditions, restrictions, and equitable servitudes or other encumbrances of record or otherwise in existence. Except as otherwise specifically approved by resolution of the Board, no property or interest in property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee. Any Improvement(s) or personal property transferred to the Association by Declarant shall be in good working order, ordinary wear and tear excepted, and at the time of transfer Declarant shall make any repairs reasonably required to bring the transferred property into good working order. Subject only to the foregoing, the Association shall accept all properties transferred to it by Declarant in their "Where Is, As Is" condition, without recourse of any kind, and Declarant disclaims and shall not be deemed to make or to have made any representations or warranties, express or implied, by fact or law, with respect to the transferred properties or any aspect or element thereof, including without limitation warranties of merchantability, habitability, fitness for a particular purpose, or workmanlike construction.

9.11. **Duty to Manage and Care for Association Property.** The Association shall manage, operate, care for, maintain, repair and replace all Association Property and keep the same in a functional, clean and attractive condition for the benefit and enjoyment of the Owners. Except as otherwise specifically provided in this Declaration the Association shall also manage, operate, care for, maintain and repair the Limited Common Areas.

9.12. **Duty to Pay Taxes.** The Association shall pay any taxes and assessments levied upon Association Property (excepting Limited Common Areas) and any other taxes and assessments payable by the Association before they become delinquent. The Association shall have the right to contest any such taxes or assessments by appropriate legal proceedings provided no sale or foreclosure of any lien for such tax or assessment occurs and provided further that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful.

9.13. **Duty to Keep Association Records.** The Association shall keep financial records in sufficient detail to enable the Association to carry out its responsibilities under this Declaration and to comply with the requirements of the Act, including, but not limited to, current records of paid and unpaid Assessments for each Lot. All financial and other records of the Association shall be made reasonably available for examination by the Owners and the authorized agents of the Owners.

9.14. **Duty to Support Association.** The Association shall take such actions, provide such funds, and do such other things as may be necessary or appropriate from time to time to support and assist the Association in the performance of its responsibilities under this Declaration, and shall cooperate with said Committee to the fullest extent possible in such matters.

9.15. **Insurance.** Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Association shall maintain and keep in 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:

(a) **Casualty Insurance.** To the extent reasonably available, property insurance on all Association Property, including but not limited to the Community Access Road/Facilities, the retaining walls and the drainage facilities and such other Improvement(s) and personalty, owned, leased or otherwise allocated to the Association for maintenance and repair by operation of the Town Development Approvals and Requirements or this Declaration, and on all property that must become Association Property. Such insurance shall be for broad form covered causes of loss, including casualty, fire, and extended coverage insurance including, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the 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.

(b) **Liability Insurance.** Comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of the Association Property (including the Limited Common Areas), and covering public liability or claims of liability for injury to persons and/or property, and death of any person or persons, and, if the Association owns or operates motor vehicles, public liability or claims of liability for bodily injury (including death) and property damage arising as a result of the ownership and operation of motor vehicles. Such liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable, (a) have limits of not less than \$2,000,000.00 per person and \$2,000,000.00 per occurrence; (b) insure the Board, the Association, the Association and its officers, the manager, if any, and their respective employees, agents and all Persons acting as agents; (c) include the Declarant as an additional insured as its interests may appear; (d) include the Owners as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of Association Property; (e) cover claims of one or more insured parties against other insured parties; (f) be written on an occurrence basis; and (g) shall name as additional insureds such other parties as may be required by specific agreements.

(c) **Contractual Liability Insurance.** To the extent reasonably available, contractual liability insurance covering such contractual obligations and liabilities, indemnifications, hold harmless agreements, and agreements to defend, as the Association may have or be a party to from time to time, with coverage of at least One Million Dollars (\$1,000,000.00) or such greater amount as the Board shall determine to be appropriate from time to time.

(d) **Fidelity Bonds.** To the extent reasonably available, fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association. If funds of the Association are handled by a management agent, then fidelity bond coverage may also be obtained for the officers, employees, or agents thereof handling or responsible for Association funds. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection in an amount no less than the lesser of (a) one-half times the Association's estimated annual operating expenses and reserves, (b) a sum equal to three (3) months aggregate Regular Assessments, plus reserves, as calculated from the current Budget of the Association; or (c) the estimated maximum amount of funds, including reserves, in the custody of the Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

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

(f) **Directors and Officers Liability Insurance.** Directors and officers liability insurance with coverage of at least One Million Dollars (\$1,000,000.00) or such greater amount as the Board shall approve for all Association, Board and Association directors, officers, members and managers, for any and all errors and/or omissions and other covered actions that occur during their tenure in office or employment. This insurance coverage shall be mandatory.

(g) **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.

(h) **Nonliability of Association or Board.** Notwithstanding the duty of the Association to obtain insurance coverage, as stated herein, neither the Association nor any Board member, nor the Declarant, 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.

(i) **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 (i) liability insurance on Limited Common Areas shall be separately bid and the cost thereof shall only be included in the Regular Assessments of the Lots entitled to use such Limited Common Areas, and (ii) the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or Association Property, by an Owner or Occupant, may at the Board's election, be assessed against that particular Owner and his Lot as a Reimbursement Assessment.

(j) **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.

(k) **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. The insurance policies shall also name the Town of Telluride as an additional insured party with respect to the Community Access Road/Facilities placed within Town owned public right of way.

(l) **Other Insurance to be Carried by Owners.** Insurance coverage on the furnishings and other items of personal property belonging to an Owner or Occupant, public liability insurance coverage upon each Lot, and casualty insurance coverage on the Improvement(s) constructed on Lots, shall be the responsibility of the Owner or Occupant of the Lot. No Owner or Occupant shall maintain any insurance, whether on its Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the Improvement(s) or fixtures on Association Property.

9.16. **Damage to Community.** Any portion of the Community for which insurance is required under Section 38-33.3-313 of the Act which 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) sixty-seven percent (67%) of the Owners vote not to rebuild the damaged Improvement(s). The cost of repair or replacement that is in excess of insurance proceeds and reserves is deemed to be a Common Expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable to the damaged Association Property must be used to restore the damaged area 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 Lots that are not rebuilt must be distributed to the Owners of those Lots, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all Owners or lienholders as their interests may appear in proportion to the Common Expense liabilities of all the Lots. In the event of damage to or destruction of all or a portion of the Association Property 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 Association Property 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 therefore, 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 sixty (60) days after written notice thereof. The Assessment provided for herein shall be a debt of each Owner assessed and a lien on his

Lot, and may be enforced and collected in the same manner as any Assessment Lien provided for in this Declaration. If the entire damaged Association Property is not repaired or replaced, the insurance proceeds attributable to the damaged Association Property must be used to restore the damaged area to a condition compatible with the remainder of the Community. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and first Mortgagees of their respective Lots, if any.

9.17. **Limited Liability.** Neither the Association nor its past, present or future officers or directors, nor any employee, agent or committee member of the Association or 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, the Board and the Association 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, the Board and the Association against claims, damages or other liabilities resulting from such good faith action or failure to act.

## **ARTICLE TEN ASSESSMENTS**

10.1. **Assessment Obligation and Lien.** Declarant, for each Lot, shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefore (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"). No Owner shall have any right to set-off against an Assessment any claims that the Owner may have or may claim to have against the Association. The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Lot against which each such Assessment is charged. The obligation for such payments by each 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 Owner is liable for Assessments made against such Owner's Lot during his period of ownership of the Lot. 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 Lot at the time when the Assessment became due. Upon the transfer of title to a Lot, 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.

10.2. **Statutory Lien.** The Association has a statutory lien pursuant to Section 38-33.3-316 of the Act on the Lot of an Owner for all Assessments levied against such Lot or fines imposed against such Lot'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.

10.3. **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.

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

- (a) Liens and encumbrances Recorded before the recordation of this Declaration;
- (b) A security interest on the Lot which has priority over all other security interests on the Lot 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 Section 11.7 below) which would have become due, in the absence of any acceleration, during the six (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 of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien;
- (c) Liens for real estate taxes and other governmental assessments or charges against the Lot; and
- (d) 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 does not prohibit an action or suit to recover sums for which this Article creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Lot shall not affect the lien for an Assessment.

10.5. **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 Lot as a Reimbursement Assessment.

10.6. **Regular Assessments.**

- (a) A Regular Assessment shall be made annually against each Lot, 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, (iii) the costs of services rendered or expenditures incurred by the Association to or for less than all Lots, (iv) the costs of improving or maintaining Limited Common Areas, and reasonable reserves for such costs, which costs shall be assessed only to the Lots designated for the use of said Limited Common Areas, (unless such costs are for the general benefit of the Community), and (v) such other matters as may be reasonably determined by the Board to be the subject of a Regular Assessment;
- (b) Regular Assessments shall be allocated in accordance with the Allocated Interests of each Lot in the Community. Any Common Expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefited. If Common Expense liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be reallocated in accordance with the reallocated Common Expense liabilities.
- (c) Regular Assessments shall be levied on a calendar year basis, except that the initial Regular Assessment period shall commence on the first day of the calendar month or quarter in which the first Lot is conveyed by Declarant to a Person other than Declarant. Regular Assessments shall be paid in installments on a monthly, quarterly or semi-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 period (e.g. January 1, July 1) as appropriate. Unless and until changed to a monthly or semi-annual system by the Board, Regular Assessments shall be due and payable on the first day of each calendar quarter. Any Owner acquiring a Lot between installment due dates shall pay a pro rata share of the immediately preceding installment.

(d) The Board shall fix the amount of the Regular Assessment, using the Budget procedure described below, at least thirty (30) days before the end of each calendar 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. If a duly adopted Budget is amended during the calendar year, the Board shall provide written notice to the Owners of any changes caused thereby in the remaining Regular Assessments due during that year.

(e) The Board shall also mail to each Owner at least ten (10) days prior to the due date thereof a written notice of the amount of the next quarterly (or monthly or semi 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 paragraph 11.6(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.

(f) In accordance with Section 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.

10.7. **Association Budget.** Commencing in 2018, and during the last three (3) months of each year thereafter, the Board shall prepare or cause to be prepared an operating budget (the "**Budget**") for the next calendar year. The Budget shall provide for the allocation of any surplus funds remaining from any previous Budget period. The annual Budget may provide for a Special Assessment in any calendar year, if considered necessary or appropriate by the Board. Alternatively, the Board may at any time adopt a Special Budget that provides for a Special Assessment. Within thirty (30) days after adoption of any proposed Budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen (14) nor more than sixty (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. Unless at that meeting sixty-seven percent (67%) of all allocated votes in the Association reject the Budget, the Budget shall be ratified, whether or not a quorum of Owners is present. In the event that the proposed Budget is rejected, the Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board. If the Board considers it necessary or appropriate, a duly adopted Budget may be amended during the calendar year by the Board, provided the same notice and ratification procedure is followed for the Amended Budget as is required for the annual Budget.

10.8. **Special Assessments.** In addition to the other Assessments authorized in this Article, 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 and including without limitation irrigation systems), to or upon or serving the Community, or for excess reconstruction costs or other extraordinary expenses, or to acquire Association Property, or for funding any operating deficit of the Association. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the Allocated Interests of each Lot in the Community, and 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 thirty (30) days after the giving of such notice. Any Special Assessment for an Improvement(s) or other expenditure which will benefit fewer than all of the Lots shall only be levied against the Lots benefited; provided, that expenditures in connection with Association Property (excepting Limited Common Areas) shall be

deemed for the general benefit of all Lots, wherever located. If fewer than all of the Lots will be subject to the Special Assessment, then such Special Assessment shall be allocated equally amongst those Lots.

10.9. **Reimbursement Assessments.** In addition to the other Assessments authorized in this Article, the Board may levy against any Owner or Owners, at any time and from time to time, a Reimbursement Assessment for purposes provided for herein. 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.

10.10. **Effect of Nonpayment of Assessments; Remedies of the Association.** 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 twelve percent (12%) nor more than twenty-one percent (21%) per year, and the Board may also assess a bad check charge in the amount of 10 percent (10%) 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 Board may also suspend the delinquent Owner's use of Association Property and Association services or benefits, as provided in Section 13.4. 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 Lot 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 Lot. 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 Lot 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 Lot 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 of the Association Property or by abandonment of the Lot against which the Assessments are made. 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 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.

10.11. **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 Lot, whether delinquent or not. The statement shall be furnished within fourteen (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 Lot for unpaid Assessments which were due as of the date of the request.

10.12. **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 ELEVEN EMINENT DOMAIN

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

11.2. **Representation in Condemnation Proceedings of Association Property.** In the event of a threatened taking of all or any portion of the Association Property, the Owners hereby appoint the Association through such persons as the Board may designate to represent the Association and all of the 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 Owners, and service of process on each individual Owner shall not be necessary.

11.3. **Award for Association Property.** Any awards received by the Association on account of the taking of Association Property 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 Owners as their interests may appear. The rights of an Owner and the Mortgagee of a Lot as to any such distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

11.4. **Taking of Lots.** If a Lot is acquired by eminent domain or part of a Lot 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 that Lot and its Allocated Interests whether or not any Association Property was acquired. Upon acquisition, unless the decree otherwise provides, that Lot's Allocated Interests are automatically reallocated to the remaining Lots (as appropriate) in proportion to the respective Allocated Interests of those Lots before the taking. Any remnant of a Lot remaining after part of a Lot is taken is thereafter Association Property. Otherwise, if part of a Lot is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Lot and its interest in the Association Property whether or not any Association Property was acquired. Upon acquisition, unless the decree otherwise provides:

(a) That Lot's Allocated Interests are reduced in proportion to the reduction in the size of the Lot; and

(b) The portion of Allocated Interests divested from the partially acquired Lot is automatically reallocated to that Lot and to the remaining Lots (as appropriate) in proportion to the respective interests of those Lots before the taking, with the partially acquired Lot participating in the reallocation on the basis of its reduced Allocated Interests.

11.5. **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 TWELVE GENERAL PROVISIONS

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

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

12.3 **Amendment of Declaration and Plat.**

12.3.1 This Declaration and the Plat may be amended pursuant to Section 38-33.3-217 of the Act. Under the Act, the Declaration may be amended by the Declarant in certain defined

circumstances, including without limitation: (a) when the Declarant 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 Declarant and/or the Association in certain defined circumstances.

12.3.2 In addition to the foregoing, this Declaration (including the Plat) may be amended only by the vote or agreement of Owners to which more than 51% of the votes in the Association are allocated.

12.3.3 In the event that written notice of an intent to amend this Declaration, the Plat or any of the Governing Documents requiring approval by the Owners, which notice complies with this Section 12.3.3 is sent to an Owner at the current address of the Owner on file with the Association 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 Lot as an affirmative vote. All ballots shall be returned to the President of the Association. The notice required by this Section shall include: (a) a copy of the proposed amendment, (b) a statement that the Owner has thirty days to vote to either approve or disapprove the proposed amendment in writing and that failure to vote will result in and be deemed to be a vote in favor of the proposed amendment, and (c) reasonably clear directions on the manner and method on which the Owner may vote on the proposed amendment and where to return the ballot. In the event that the Owner fails to respond by the expiration of the stated thirty day period, the Association shall count the non-responding Owner of the Lot as an affirmative vote. All ballots shall be returned to the President of the Association.

12.3.4 Pursuant to Section 38-33.3-217(4) of the Act, which provides that except to the extent expressly permitted or required by other provisions of the Act (e.g., permitted amendments), no amendment may: (i) create or increase special Declarant rights; or (ii) increase the number of Lots, in the absence of a vote or agreement of Owners to which at least 51% of the votes in the Association are allocated, including 51% of the votes allocated to Lots.

12.3.5 Pursuant to Section 38-33.3-217(4.5) of the Act which 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 Lot is restricted in the absence of a vote or agreement of Owners to which at least 51% of the votes in the Association for such Lots are allocated. This limitation does not apply in instances where the Declarant is amending the Declaration and/or the Governing Documents pursuant to its Reserved Rights, to the fullest extent allowed by the Act.

12.3.6 Under no circumstances shall any amendment to the Declaration, the Plat or any of the Governing Documents alter, limit, impair, reduce, eliminate, extinguish, terminate or otherwise affect the Reserved Rights of Declarant or any Lot owned by Declarant without the prior written consent and approval of Declarant, which Declarant may grant or withhold in Declarant's sole discretion.

12.3.7 No consent of any mortgage or trust deed holder shall be required to accomplish any amendment or supplement to this Declaration, the Plat or any of the Governing Documents.

12.3.8 An amendment to this Declaration shall be in the form of a "First (or Second, etc.) Amendment to Declaration and Plat." With the exception of Declarant amendments, amendments to this Declaration shall be duly executed by the President and Secretary of the Association and recorded in the Official Records.

#### 12.4 **Compliance; Enforcement.**

12.4.1 Every Owner and Occupant of a Lot 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 and the Governing Documents, 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 and/or any Governing Documents, 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 or any Governing Documents, and any approvals granted by the Board. 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. Each remedy provided under this Declaration is cumulative and not exclusive.

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

12.4.3 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 Lot. In the event that any Person, including an occupant, guest, or invitee of a Lot 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 Lot 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 Lot 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 Lot on which a violation exists.

12.4.4 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.

12.4.5 Failure by any party entitled to exercise 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.

12.4.6 No Owner shall have the right to bring any claim for damages or any enforcement action against another Owner, Occupant, the Association, Declarant or an Affiliate of

Declarant, until the aggrieved Owner has given the offending Owner, Occupant, the Association, Declarant or an Affiliate of Declarant written notice of the aggrieved Owner's complaint and the opportunity to resolve the problem as provided for in Section 12.5.

12.4.7 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 or the Governing Documents, 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.

12.4.8 The decision for the Association to pursue an 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;
- D. the Association is precluded from bringing an action because of applicable law, this Declaration or the Governing Documents;
- E. that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

12.4.9 A decision by the Association and its Board 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.

12.4.10 The provisions of this Section 12.4 may not be modified, amended or deleted without the prior written consent of Declarant, which may be granted or withheld in the discretion of Declarant.

## 12.5 Agreement to Encourage Alternative Dispute Resolution.

12.5.1 **Bound Parties.** The Declarant, each of the Affiliates of Declarant, the Association and its officers, directors, and committee members, each Owner and all other Persons subject to this Declaration, and any Person not otherwise subject to this Declaration or any Governing Documents 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 this Section 12.5 and has engaged in a good faith effort to resolve such Claim.

12.5.2 **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 Declaration and/or any Governing Documents;

(b) the rights, obligations, and duties of any Bound Party under the Declaration and/or any Governing Documents; or

(c) the design or construction of any Improvement(s) within the Community, other than matters of aesthetic judgment, which shall not be subject to review

12.5.3 **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 12.5:

(a) any suit by the Association to collect assessments or other amounts due from any Owner, including the filing of a Statement of Lien against any Owner and their Lot;

(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 and/or any Governing Documents;

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

(d) any dispute which affects the material rights or obligations of a party who is not bound by the terms of the Declaration and/or any 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 12.5.4, 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.

#### 12.5.4 **Dispute Resolution Procedures.**

(a) **Notice.** A Person bound by the Declaration and/or any 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:

(1) the nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;

(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, subject to the limitations contained in Section 12.6. 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.

**12.5.5 Declarant to Consent to Amendments.** The provisions of this Section 12.5 may not be modified, amended or deleted without the prior written consent of Declarant, which may be granted or withheld in the discretion of Declarant.

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

12.6.1 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;

12.6.2 Receive written notice from the Association that the Owner of the Lot is delinquent in the payment of Assessments thereon;

12.6.3 Upon written request, inspect the books and records of the Association during normal business hours;

12.6.4 Upon written request, receive copies of annual Association financial statements;

12.6.5 Upon written request, 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;

12.6.6 Upon written request, receive written notice of condemnation proceedings affecting any Common Areas;

12.6.7 Upon written request, receive written notice of the lapse of any insurance that the Association is required to maintain under this Declaration; and

12.6.8 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 Areas and may



pay any overdue premiums on hazard or general liability insurance policies covering the Common Areas, 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.

12.6.9 This Declaration and the other Governing Documents may be amended or supplemented without the requirement to obtain the consent of any First Mortgagee or any other holder of a Mortgage as provided for in Section 12.3.

12.7 **Notice.** Each Owner, and each First Mortgagee if it so elects (as provided for in Section 12.6), 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 Lot 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.

12.8 **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.

12.9 **Safety and Security.** Each Owner and occupant of a Lot, 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, the Declarant, the Affiliates of Declarant and the Managing Agent, 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 Occupants of such Owner's Lot that the Association, its Board and committees, the Declarant, the Affiliates of Declarant and the Managing Agent 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 Lots and Common Areas and the contents of Lots, resulting from acts of third parties.

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.

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

12.12 **Conflict With the Act.** In the event of any conflict or inconsistency between the provisions of the Governing Documents and the Act and/or the Colorado Revised Nonprofit Corporation Act, the respective provisions of the Act and/or the Colorado Revised Nonprofit Corporation Act shall govern and control and the Governing Documents shall automatically be amended, but only to the extent

necessary to conform the conflicting provisions hereof with the provisions of the Act and/or the Colorado Revised Nonprofit Corporation Act

12.13 **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 Lot each Owner voluntarily submits to the jurisdiction of such court.

12.14 **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.

12.15 **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.

12.16 **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.

12.17 **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.

12.18 **Disclaimer Regarding Safety.** Declarant and the association hereby disclaim any obligation regarding the security of any persons or property within the community. Any owner or occupant of property within the community acknowledges that Declarant and the association are only obligated to do those acts specifically enumerated herein, or in the articles of incorporation and bylaws, and are not obligated to do any other acts with respect to the safety or protection of persons or property within the community.

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

Windhorse Properties, LLC,  
a Colorado limited liability company

By: Jane L Hickcox

Date: 8/28/18

Printed Name: Jane L Hickcox

Title: Manager

STATE OF COLORADO )

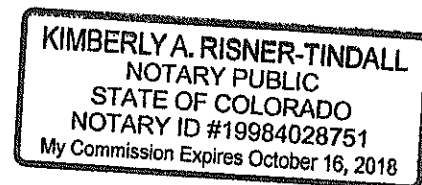
COUNTY OF Sau Miguel ) ss.

Acknowledged, subscribed and sworn to before me this 28<sup>th</sup> day of August, 2018 by Jane L Hickcox, as the Manager of Windhorse Properties, LLC, a Colorado limited liability company.

Witness my hand and official seal.

Kimberly A. Risner-Tindall  
Notary Public

My commission expires: 10/16/18



**EXHIBIT "A"**  
**(LEGAL DESCRIPTION)**

A parcel of land located within the East Telluride Addition to The Town of Telluride, according to the Plat recorded June 23, 1898 in Plat Book 28 at Page 13, County of San Miguel, State of Colorado, further described as follows:

Beginning at the Northeast corner of Block 6, within said East Telluride Addition, being the POINT OF BEGINNING;

Thence N 17°54'00" E a distance of 22.28 feet along the extension of the eastern boundary of said Block 6;

Thence N 71°34'27" W a distance of 875.04 feet to the intersection with the centerline of Hemlock Street;

Thence S 17°54'00" W a distance of 310.31 feet along the centerline of Hemlock Street to the intersection with the centerline of Galena Avenue;

Thence S 72°06'00" E a distance of 525.11 feet along the centerline of Galena Avenue;

Thence N 34°53'10" E a distance of 24.44 feet;

Thence N 54°00'47" W a distance of 21.35 feet to the northern boundary of said Galena Avenue Right of Way;

Thence S 72°06'00" E a distance of 80.53 feet along said northern boundary;

Thence S 54°00'47" E a distance of 17.24 feet;

Thence 68.09 feet along the arc of a tangential curve, concave to the north, having a central angle of 19°39'43", and a radius of 198.42 feet;

Thence S 73°40'30" E a distance of 127.98 feet;

Thence 56.70 feet along the arc of a tangential curve, concave to the south, having a central angle of 13°14'34", and a radius of 245.34 feet;

Thence S 60°25'56" E a distance of 15.10 feet;

Thence N 17°54'00" E a distance of 269.59 feet along the eastern boundary of said Block 6 to the POINT OF BEGINNING;

**TOGETHER WITH**

A Portion of the East Telluride Addition To The Town of Telluride, according to the Plat recorded June 23, 1898 in Plat Book 28 at Page 13, described as follows:

Beginning at the intersection of the easterly boundary of Alder Street with the northerly boundary of Dakota Avenue;

Thence North 17°54'00" East a distance of 11.17 Feet along the easterly boundary of Alder Street to the northerly boundary of the East Telluride Addition;

Thence South 71°02'53" East a distance of 250.04 Feet along the northerly boundary of said East Telluride Addition to the westerly boundary of Maple Street;

Thence South 17°54'00" West a distance of 6.58 Feet along the westerly boundary of Maple Street to the northerly boundary of Dakota Avenue;

Thence North 72°06'00" West a distance of 250.00 Feet along the northerly boundary of Dakota Avenue to the point of beginning,

as depicted on Plat Of Survey recorded March 11, 1991 in Surveyors Plat Book S1 at Page 56, County of San Miguel, State of Colorado.

**TOGETHER WITH**

A portion of the East Telluride Addition To The Town of Telluride, according to the plat recorded June 23, 1898 in Plat Book 28 at Page 13, described as follows:

Beginning at the intersection of the easterly boundary of Maple Street with the northerly boundary of Dakota Avenue;

Thence North 17°54'00" East a distance of 5.66 feet along the easterly boundary of Maple Street to the northerly boundary of the East Telluride Addition;

Thence South 71°02'53" East a distance of 250.04 feet along the northerly boundary of said East Telluride Addition to the westerly boundary of Hemlock Street;

Thence South 17°54'00" West a distance of 1.07 feet along the westerly boundary of Hemlock Street to the northerly boundary of Dakota Avenue;

Thence North 72°06'00" West a distance of 250.00 feet along the northerly boundary of Dakota Avenue to the point of beginning,  
as depicted on Plat Of Survey recorded March 11, 1991 in Surveyors Plat Book S1 at Page 56, County of San Miguel, State of Colorado.

TOGETHER WITH

Lots 1-8 (inclusive) of Block 2, East Telluride Addition to The Town of Telluride, according to the Plat recorded June 23, 1898 in Plat Book 28 at Page 13, County of San Miguel, State of Colorado

**EXHIBIT "B"**  
**(Allocated Interests)**

<b>Lot</b>	<b>Allocated Interest in the Community</b>	<b>Votes Allocated to the Lot in the Community</b>
1	1/20 <sup>th</sup>	One
2	1/20 <sup>th</sup>	One
3	1/20 <sup>th</sup>	One
4	1/20 <sup>th</sup>	One
5	1/20 <sup>th</sup>	One
6	1/20 <sup>th</sup>	One
7	1/20 <sup>th</sup>	One
8	1/20 <sup>th</sup>	One
9	1/20 <sup>th</sup>	One
10	1/20 <sup>th</sup>	One
11	1/20 <sup>th</sup>	One
12	1/20 <sup>th</sup>	One
13	1/20 <sup>th</sup>	One
14	1/20 <sup>th</sup>	One
15	1/20 <sup>th</sup>	One
16	1/20 <sup>th</sup>	One
17	1/20 <sup>th</sup>	One
18	1/20 <sup>th</sup>	One
19	1/20 <sup>th</sup>	One
20	1/20 <sup>th</sup>	One
<b>Total</b>	<b>20</b>	<b>20</b>

**EXHIBIT "C"**  
**(Recorded Easements and Licenses)**

Those easements and agreements currently of record and those which are to be recorded subsequent to the recordation of this Declaration pursuant to the rights of Declarant hereunder and/or those easements and agreements which are required or necessary and appropriate in furtherance of the Town Development Approvals and Requirements.