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**BALLARD HOUSE SOUTH
CONDOMINIUM DECLARATION**

TOWN OF TELLURIDE
SAN MIGUEL COUNTY, COLORADO

CONDOMINIUM DECLARATION

THIS CONDOMINIUM DECLARATION (the "Declaration") made on the date hereinafter set forth below by the Declarant, the Telluride Income/Growth Limited Partnership, an Arizona limited partnership, with an address of P.O. Box _____, Telluride, Colorado 81435 (the "Declarant").

NOW, THEREFORE, the Declarant states as follows:

ARTICLE 1

SUBMISSION/DEFINED TERMS

Section 1.01 **Submission of Real Estate.** The Declarant hereby submits the real estate described in Exhibit A, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the "Real Estate") pursuant to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §§38-33.3-101 *et seq*, as it may be amended from time to time (the "Act") and the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Further, Declarant hereby declares that all of the Real Estate described in Exhibit A shall be held or sold, and conveyed subject to this Declaration, the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the Real Estate and be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner of an interest in a Unit (as defined below).

Section 1.02 **Defined Terms.** Each capitalized term in this Declaration or in the Map (as defined below) shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration.

- a) **Allocated Interest** means the percentage of the liability for Common Expense Assessments (as defined below) and voting percentage in the Association, as calculated in accordance with Section 6.02 herein, and as set forth on Exhibit C and the Map.
- b) **Articles** means the Articles of Incorporation of the Association as the same may be amended from time to time.
- c) **Assessments** means all General Assessments and Special Assessments.
- d) **Association** means and shall refer to the Ballard House South Homeowners' Association, Inc., a Colorado non-profit corporation, its successors and assigns. All Owners of Units shall be Members (as these terms are defined below). The Association shall be charged with the management and maintenance of the Community.
- e) **Board or Board of Directors** means the Association Board of Directors, designated as the body governing the affairs of the Association and elected by the Members, all pursuant to the Act, the Colorado Corporation Act, this Declaration and the Association Articles of Incorporation and Bylaws.

- f) **Building** means the building located on the Real Estate which building shall contain the Units as shown on the Map. The Building consists of a single building containing, on the date of execution hereof, a total of fifteen (15) Residential Units.
- g) **Bylaws** means the Bylaws of the Association as the same may be amended from time to time.
- h) **Common Elements** means the Real Estate within this Common Interest Community owned, leased, or benefitting the Association, other than a Unit, and shall include beneficial rights under easements, covenants and agreements of record, which Real Estate shall be designated on the Map and set forth in Exhibit B.
- i) **Common Expense Assessments** shall include, in addition to the definition of Common Expense Assessments included in the Act, the following:
- (i) Expenses declared common expenses by provisions of the Declaration;
 - (ii) Expenses of administration, operation and management, maintenance, repair or replacement of Common Elements, including, but not limited to, insurance, security and utilities attributable to the operation of the Common Elements;
 - (iii) All sums lawfully assessed against the Units by the Association for use in connection with the Common Elements, including but not limited to late fees, attorney fees, costs of collection, fines and interest charged by the Association pursuant to the Act and Declaration; and
 - (iv) Other expenses agreed upon as Common Expenses by the Board, consistent with the intent of the Act and Declaration.
- j) **Declarant** means the Telluride Income/Growth Limited Partnership, an Arizona limited partnership, and such successor or successors as may be designated by the Declarant.
- k) **Common Interest Community or Community** means the condominium community submitted to common interest ownership by this Declaration, pursuant to the Act and as herein provided.
- l) **Community Documents** means this Declaration, the Articles of Incorporation and Bylaws of the Association, the Rules and Regulations (as defined below).
- m) **Condominium Unit(s) or Unit(s)** means (a) the Residential Units and (b) Parking Units, each separately owned in fee simple. Each Unit shall consist of an individual air space, contained within the unfinished interior surfaces of the perimeter wall, floors (or the lowermost floor, if it is in an air space containing more than one level), windows and doors of each Condominium Unit as designated and described on the Map, together with all fixtures and Improvements therein contained or subsequently installed following recordation of the Map, the interior non-supporting portion of perimeter door jams and window wells, and the interior non-supporting and nonbearing walls, lofts and stairways within the air space, but not including (i) any of the structural components of the Improvements or other General Common Elements, if any, located within the air space Unit, or (ii) the perimeter wall, floors, ceilings, windows, or doors enclosing an air space Unit. The unfinished interior surfaces of perimeter wall, floors and ceilings, as used herein, shall not include any drywall

or other wall board treatment, paint, carpeting, wall paper, paneling or other decorator treatment. The interior surfaces of a window or door means the points at which such surfaces are located when such windows or doors are closed.

n) **Declarant Control** means the power of the Declarant to appoint and remove officers and members of the Board of Directors.

o) **Declarant Control Period** means the duration of Declarant Control as set forth in Paragraph 3.07 herein.

p) **Eligible Holder** means the holder of any recorded Mortgage under which the interest of any Owner is encumbered and which Mortgage is the first and paramount security interest priority, who has met the notification requirements under Article 12.

q) **General Assessments** means all assessments levied upon all of the Units, including: annual Common Expense assessments, insurance assessments, utility assessments, and such other assessments as shall be imposed by the Association, in accordance with the Act, the Declaration and/or any other applicable Community Document.

r) **General Common Elements** mean all of the Common Interest Community except (a) portions of the Common Interest Community contained entirely within a Unit and/or (b) portions of the Common Interest Community which are designated as Limited Common Elements.

s) **General Common Elements** means and includes all of the Community, except (a) portions of the Community contained entirely within a Unit, and (b) portions of the Community which are designated as Limited Common Elements.

t) **Improvements** means all structures and improvements located above, on or below the surface of the Real Estate, including the Building and all sidewalks and utility installations constructed pursuant to the Declaration and Map.

u) **Limited Common Elements** means those portions of the Common Elements, designated by Declarant for the exclusive use of one or more, but fewer than all, of the Units.

v) **Map** means the Map for the Community recorded simultaneously herewith.

w) **Member** means any person who owns one (1) or more Units and automatically therefore is a member of the Association.

x) **Mortgage** means any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered.

y) **Mortgagee** means any person named as the mortgagee or beneficiary under any Mortgage or any successor to the interest of such person under such Mortgage.

z) **Owner** means the person or persons owning a Unit in fee simple, including the Declarant. The term Owner shall not refer to any Mortgagee as herein defined unless such Mortgagee has acquired

title pursuant to foreclosure or any proceeding in lieu of foreclosure.

AA) **Parking Unit** means any of the Units designated as a Parking Unit on Exhibit C and the Map.

bb) **Person With a Disability** means and includes any person with a "handicap," as defined under the Federal Fair Housing Act and the regulations adopted by the federal government in connection therewith, as such statute and regulations may be amended from time to time.

cc) **Residential Unit** means any duly created Unit designated as Residential Units in Exhibit C and the Map, the use of which is limited to residential purposes.

dd) **Rules and Regulations** means those certain rules, regulations, policies and guidelines established by the Association and governing the use of the Community.

ee) **Special Assessments** means all Assessments levied upon all of the Units for special purposes such as capital improvements, reserve funding, amenities, specified Common Expenses, and such other assessments for special purposes as shall be imposed by the Association, in accordance with the Act, the Declaration and/or any other Community Document.

ff) **Turnover Date** means the date, as more particularly described in Paragraph 3.07 herein, upon which the Declarant relinquishes the power to appoint and remove officers and members of the Board of Directors.

ARTICLE 2

NAMES/DESCRIPTION OF REAL ESTATE

Section 2.01 Name and Type.

(a) **Common Interest Community.** The name of the Common Interest Community is "The Ballard House South, a condominium common interest community".

(b) **Association.** The name of the Association is "Ballard House South Homeowners' Association, Inc."

Section 2.02 **Real Estate.** The Common Interest Community is located in the Town of Telluride, San Miguel County, State of Colorado. The initial Real Estate is described in Exhibit A.

Section 2.03 **Recording Data.** All easements and licenses to which the Common Interest Community is presently subject and/or entitled are recited in Exhibit A. In addition, the Common Interest Community may be subject to and/or benefitted by other easements or licenses granted by the Declarant and recorded pursuant to this Declaration, or granted by authority reserved in any recorded document.

Section 2.04 **Utility Easements.** Easements for utilities over and across the Common Elements shall

be those shown upon the recorded Map, and such other easements as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document, the rights under which are hereby intended to be conveyed to the Association.

Section 2.05 Easements for the Association. Each Unit shall be subject to an easement in favor of the Association (including its agents, employees and contractors) to perform its obligations pursuant to this Declaration.

Section 2.06 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Common Interest Community, to enter upon any part of the Common Interest Community in the performance of their duties.

ARTICLE 3

THE ASSOCIATION

Section 3.01 General Purposes and Powers. The Association, through its Board of Directors, shall perform functions and manage the Common Interest Community as provided for in this Declaration and the Act so as to further the interests of the Members, residents, occupants, tenants and guests of the Common Interest Community and Unit Owners as Members of the Association. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.02 Authority. The business affairs of the Common Interest Community shall be managed by the Association through the Board of Directors. The Association and the Board of Directors shall be governed by its Articles and Bylaws, as amended from time to time. The Board of Directors may, by written resolution delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of Directors of final responsibility.

Section 3.03 Specific Powers.

- (a) The Association through the Board of Directors shall have the powers, authority and duties as are reasonable, necessary and proper to manage the business and affairs of the Common Interest Community.
- (b) The Association through the Board of Directors shall have all of the powers, authority and duties permitted or set forth in Section 38-33.3-302 of the Act.
- (c) The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of the Unit Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated at a meeting duly noticed and specifically called for that purpose.

Section 3.04 Membership. Every person who is the owner of record of a fee interest in any Unit

shall be a Member of the Association and shall be allocated those voting membership interests and expense allocations as are established on Exhibit C and the Map. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of such Unit shall be the sole qualification for such membership. Where more than one (1) person holds an interest in any Unit, all such persons shall be members. If a Unit has multiple owners, the owners of said Unit must designate in writing the name of the individual who shall be authorized to vote the percentage membership interest set forth on Exhibit C.

Section 3.05 Directors. The affairs of the Common Interest Community and the Association shall be governed by a Board of Directors which, until the termination of the period of Declarant Control, shall consist of three persons, and following such date shall consist of three persons, all of which, excepting the Directors appointed by the Declarant, shall be Unit Owners.

Section 3.06 Association Agreements. Any agreement for professional management of the Common Interest Community or any contract providing for services of the Declarant, may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty days' written notice; provided, however, the Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Declarant Control Period (as defined below) unless the Association is provided with a right of termination of any such contract or lease without cause; which is exercisable without penalty at any time after the Turnover Date (as defined below) upon not more than thirty days' notice to the other party thereto. The Association shall require the bonding of any professional management if the management will handle and account for Association funds.

Section 3.07 Declarant Control.

(a) The Declarant shall have the power to appoint and remove officers and members of the Board of Directors. The power of Declarant to appoint and remove officers and members of the Board of Directors (the "Declarant Control Period") automatically terminates, without further action, no later than the earlier of:

(i) sixty (60) days after conveyance of seventy-five percent (75%) of all Units in the ordinary course of business to Unit Owners other than the Declarant;

(ii) two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business to a Unit Owner other than Declarant;

(iii) two (2) years after the right to add new Units was last exercised; or

(iv) five (5) years after the first Unit is conveyed to a Unit Owner other than the Declarant (the "Turnover Date").

(b) During the Declarant Control Period, the Declarant's Control shall be subject to the following limitations: Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units, other than Parking Units, that may be created to Unit Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board of Directors must be elected by Unit Owners other than the Declarant.

(c) The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Declarant Control Period, but, in that event, the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant and approved by 75% of the Unit Owners, be approved by the Declarant before they become effective.

Section 3.08 **Indemnification.** To the full extent permitted by law, each officer and director of the Association shall be and are hereby indemnified by the Association against all expenses and liabilities including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not they are an officer or director of the Association at the time such expenses are incurred; except in such cases wherein such officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association.

ARTICLE 4

UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 4.01 **Number of Units.** The number of Units in the Community is thirty (30) of which fifteen (15) are Residential Units and fifteen (15) are non-voting Parking Units. The maximum number of Residential Units shall be twenty five (25). The maximum number of Parking Units is twenty five (25).

Section 4.02 **Identification of Units/Unit Descriptions.** The identification number of each Unit is shown on the Map and Exhibit C of this Declaration. Every contract for sale, deed, lease, security interest, will or other legal instrument shall legally describe a Unit by its identifying Unit number followed by the words:

"Condominium Unit ____, Ballard House South, a Condominium Common Interest Community, in accordance with the recorded Declaration and Map, San Miguel County, Colorado."

The reference to the Declaration and Map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration or Map, without specific references thereto.

Section 4.03 **Unit Boundaries.** Unit Owners are responsible for the maintenance, repair and replacement of the improvements and personal property located within their Unit boundaries, except as provided in this Declaration. The following are designated as boundaries of each Unit, as defined below and as depicted on the Map:

(a) **Residential Units:**

(i) **Upper Boundaries.** The horizontal plane of the unfinished surface of the lower of (i) the unfinished joists, or (ii) any common building mechanical, plumbing, fire safety and

/or electrical improvements, extended to an intersection with the vertical perimeter boundaries.

(ii) **Lower Boundaries.** The horizontal plane of the undecorated or unfinished upper surfaces of the concrete, gypcrete or plywood subflooring, extended to an intersection with the vertical perimeter boundaries.

(iii) **Vertical Perimeter Boundaries.** The planes defined by the unfinished interior surface of studs and framing on all demising and exterior walls, extended to an intersection with horizontal perimeter boundaries.

(b) **Parking Unit Boundaries.** Each Parking Unit shall consist of the cubicles of space which are enclosed by the lower, upper and lateral or perimetrical boundaries described as follows:

(i) **Underground Upper and Lower Boundaries.** The lower boundaries of the underground Parking Units are horizontal planes, the elevation of which coincides with the elevation of the upper surface of the underground concrete floor of the Building extended to intersect the lateral or perimetrical boundaries thereof. The upper boundaries of the underground Parking Units are horizontal planes, the elevation of which coincides with the lower surface of the exposed ceiling separating the building garage from the building, extended to intersect the lateral or perimetrical boundaries thereof. All pipes, air conditioning, ventilators, ducts and cables located above the surface of the exposed garage ceiling shall at all times remain General Common Elements.

(ii) **Lateral or Perimetrical Boundaries.** The lateral or perimetrical boundaries of the underground Parking Units are (a) imaginary vertical planes of the center lines of the painted lines denoting and separating the underground Parking Units, and (b) imaginary vertical planes intersecting the two imaginary vertical planes noted in Paragraph (i), above, and denoting the entrance to and the width of, each underground Parking Unit, and (c) the vertical planes which coincide with the unfinished inside surfaces of the perimeter walls of the Building garage for those underground Parking Units which front against the inside surface of said perimeter walls or the vertical planes which coincide with any railing or concrete step or centerline of a painted line for those underground Parking Units which front against any such items, said vertical planes extended to intersect the upper and lower boundaries of the underground Parking Unit and to intersect the other lateral or perimetrical boundaries thereof.

(iii) **Property Rights Included in Such Boundaries.** Every such description includes and describes the entire Parking Unit, including its appurtenant fractional, undivided interest in and to the General Common Elements, a perpetual easement for ingress and egress between the Parking Unit and the public way, perpetual use of any and all of its Common Elements, and all the other rights, easements, obligations, limitations, covenants and restrictions included in the definition of such Parking Unit as provided in this Declaration.

(c) **Inclusions in All Units.** Each Unit includes the spaces and improvements lying within the boundaries described above and as depicted on the Map. Each Unit also includes the spaces and improvements within the spaces containing water heating facilities, all electrical switches, wiring,

pipes, ducts, conduits, smoke detector or security systems and communications, television, telephone and electrical receptacles and boxes serving that Unit exclusively, the surface of these items being the boundaries of that Unit, whether or not the spaces are contiguous.

(d) **Exclusions.** Except when specifically included by other portions or this Declaration or by the Map, the following are excluded from each Unit; the spaces and improvements lying outside the boundaries described above, air conditioners and heating systems, thresholds, exterior lighting and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and other service to other Units and the Common Elements.

(e) **Noncontiguous Portions.** Certain Units may include special portions or pieces of equipment, such as air conditioning compressors, meter boxes, utility connection structures, air or gas pump and storage facilities and storage portions, which are situated in buildings or structures that are detached from the Unit. Such special equipment or storage portions are a part of the Unit, notwithstanding their non-contiguity with the principal portions.

Section 4.04 Common Elements and Limited Common Elements.

(a) The Common Elements shall consist of the Real Estate designated as Common Elements herein, on the Map and on Exhibit B. Portions of the Common Elements may be designated as General Common Elements or Limited Common Elements, and portions of Units may become General Common Elements or Limited Common Elements. General Common Elements shall include, but not be limited to, the following:

(i) All of the Common Interest Community, except (a) portions of the Common Interest Community contained entirely within a Unit, and/or (b) portions of the Common Interest Community which are designated as Limited Common Elements. This includes, without limitation, the following: the real estate; the structural components, the main or bearing walls and the main or bearing sub-flooring and roofs, including, but not limited to: the foundations, columns, girders, beams, supports, exterior walls, fire walls, perimeter walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits, delivery docks, partition walls, non-perimeter floors, non-perimeter division walls, crawl space, heat ducts, and (except as otherwise indicated) basements, attic spaces, and storage spaces; the exterior walls, the main or bearing walls including such bearing walls as are located within a Unit, and the main load bearing sub-flooring and roofs, windows and exterior doors of an individual air space Unit;

(ii) All sidewalks, roads, driveways, yards, gardens, planters, and decks/patios designated as General Common Elements on the Map;

(iii) Any installations consisting of equipment and materials making up any central utility and communication services (including all pipes, ducts, flues, wires, cable and conduit used in connection with such items, whether located in common areas or within Units), including such services as power, light, gas, hot and cold water, heating, refrigeration, central air conditioning, incinerating, and such central service support structures as are located within or without a Unit or Parking Unit; the elevators, tanks,

pumps, motors, fans, compressors and ducts;

(iv) In general, all apparatus and installations existing or provided for common use; and

(v) All other parts of the Common Interest Community necessary or convenient to the existence, maintenance and safety of the Common Interest Community, or normally in common use.

(b) Limited Common Elements shall include those portions of the Common Elements as are designated and reserved for the exclusive use by the Owner of a particular Unit or Units, but less than all of the Units, which Limited Common Elements are deemed to be inseparable appurtenances to such Unit or Units, which by way of illustration, but not limitation, includes any platform, balcony, deck, terrace, porch, patio, stairs, hallway, parking and/or storage area which is identified on the Map by legend, symbol or word as a Limited Common Element of a specified Unit or Units to which they are appurtenant, shall, without further reference thereto, be used in connection with such Unit or Units to the exclusion of other Unit Owners.

(c) The Declarant reserves, through twenty (20) years after the recording of this Declaration, the right to allocate areas as Common Elements, and further, to allocate areas which constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the owners of Units to which those specified areas shall become appurtenant. The Declarant may allocate or assign Common Elements or Limited Common Element areas (i) by making such an allocation in a recorded instrument, or (ii) in the deed to the Unit to which such Limited Common Element shall be appurtenant and (iii) by recording an appropriate amendment or supplement to this Declaration and (iv) by recording a supplement to the Map. Such allocations by the Declarant may be made as a matter of reserved right by the Declarant and may be made to Units owned by the Declarant.

Section 4.05 Unit Owners' Easements of Enjoyment. Every Unit Owner shall have a right and easement of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

a) The right of the Association to promulgate and publish rules and regulations which each Unit Owner and their guests shall strictly comply with.

b) The right of the Association to suspend the voting rights and rights to use the Common Element by an Unit Owner for any period during which any assessment against his Unit remains overdue; and for a period not to exceed sixty days for any infraction of its published rules and regulations.

c) The right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act, if the grant is approved by the affirmative vote of Unit Owners having sixty-seven percent (67%) of the votes appurtenant to all Units, and consented to, in writing, by the Eligible Holder's in the Units whose Unit Owners vote affirmatively; provided, further, that if the grant affects any Limited Common Element, such grant shall also require the express written consent of all Unit Owners having the right to use such Limited

Common Element and each of the Eligible Holder's of the Units to which such Limited Common Element is appurtenant; provided, further that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this clause. Any easement, right-of-way, license or similar interest granted by the Association pursuant to this Section shall state that the grant was approved (a) by Unit Owners having at least sixty-seven percent (67%) of the votes, and by the corresponding Eligible Holder's, (b) if appropriate, by all Unit Owners having the right to use any Limited Common Element affected by the grant, and by the corresponding Eligible Holder's. Such grant procedure may be used for the purpose (among other things) of permitting reasonable modification of the Common Elements to be made by or at the request of, and at the expense of, a Unit Owner, if such modifications are necessary under the Federal Fair Housing Act (as heretofore and hereafter amended) or otherwise appropriate to afford to one or more Persons With A Disability, residing at or intending to reside at the Unit, the full enjoyment of such Unit, the Limited Common Elements appurtenant to such Unit and/or the Common Elements.

d) The right of the Association to reasonably close or limit the use of the Common Elements, Limited Common Elements while maintaining, repairing and making replacements in the Common Elements, Limited Common Elements and Units.

Section 4.06 **Delegation of Use.** Any Unit Owner may delegate his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, guests, or contract purchasers who reside at his or her Unit.

Section 4.07 **Title to the Common Elements.** Each Unit Owner shall own an undivided percentage interest in the Common Elements, including the beneficial rights to those easements and agreements depicted on Exhibit B, which rights and interests are being held by all of the Unit Owners as tenants-in-common according to the percentage interest assigned to each Unit on Exhibit C and the Map.

ARTICLE 5

MAINTENANCE, REPAIR AND REPLACEMENT

Section 5.01 **General Common Elements.** The Association shall be responsible for the maintenance, repair and replacement of any General Common Elements.

Section 5.02 **Limited Common Elements.** In the event a Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, those Common Expenses may be assessed equally against the Units to which the Limited Common Element is assigned.

Section 5.03 **Units.** Unit Owners shall be responsible for the maintenance, repair and replacement of their Unit and the personal property located within the boundaries of their Unit. For purposes of performing exterior maintenance and other duties of the Association, the Association, through its duly authorized agents or employees, shall have the right, upon reasonable notice to the Unit Owner thereof, to enter upon any Unit at reasonable hours.

ARTICLE 6

ALLOCATED INTERESTS

Section 6.01 **Allocated Interests.** The Common Expense liability and votes in the Association allocated to each Unit are set forth in Exhibit C and the Map.

Section 6.02 **Determination of Allocated Interests.** The percentage interests allocated to each Unit, as shown on Exhibit C and the Map, have been calculated as follows:

(a) Percentage of Liability for Common Expenses:

(i) On the basis of square footage of each Residential Unit as a fraction or percentage of the square footage of all Units, including Parking Units, in the Common Interest Community; and

(ii) On the basis of square footage of each Parking Unit as a fraction or percentage of the square footage of all Units in the Common Interest Community.

(b) Number of votes in the Association:

(i) On the basis of square footage of each Residential Unit as a fraction or percentage of the square footage of all Residential Units in the Common Interest Community.

(iv) Owners of Parking Units have no votes.

Section 6.03 **Reallocation.** When Units are added to or withdrawn from the Common Interest Community, or use rights are redesignated, or the size of a Unit is changed, pursuant to the provisions of this Declaration and the Act, the formulas set forth above shall be used to reallocate the Allocated Interests, amend Exhibit C, and supplement the Map.

ARTICLE 7

COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 7.01 **Creation of Association Lien and Personal Obligation to pay Common Expense Assessments.** Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance assessments (assessed in proportion to risk), utility assessments (assessed in proportion to usage) and such other assessments as imposed by the Association. Such assessments, including fees, charges late charges attorney fees, fines and interest charged by the Association shall also be the personal obligation of the Unit Owner of such Unit at the time when the assessment or other charges became or fell due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Unit Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are

made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

The Association annual Common Expense Assessments, insurance assessments (assessed in proportion to risk), utility assessments (assessed in proportion to usage) and such other assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such assessment or charge is made. If a Common Expense Assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

Section 7.02 Apportionment of Common Expenses. Except as otherwise provided herein, all Common Expenses shall be assessed against all Units in accordance with the formula for liability for the Common Expenses as set forth in Exhibit C of this Declaration and on the Map.

Section 7.03 Purpose of Assessments. The assessments levied by the Association through its Board of Directors shall be used exclusively for the purposes of promoting the health, safety, and welfare of the residents and guests of the Common Interest Community and the members of the Association. Such purposes shall include, but shall not be limited to the following: the improvement, maintenance, repair, upkeep and reconstruction of the Common Elements, and for the painting, landscape care and snow removal and any other maintenance obligations which may be deemed desirable for the common benefit of the Unit Owners or for the maintenance of property values, or for the payment of expenses which may be incurred by virtue of agreement with or requirement of the Town of Telluride or other governmental or quasi-governmental authorities or by agreement with other lot owners for purposes deemed necessary or desirable. The assessments may also be used to provide insurance of various types and in such amounts deemed appropriate by the Board of Directors. Also, a portion of the assessments may be used to provide a reserve fund for the replacement, repair, and maintenance of Common Elements of the real estate which must be replaced on a periodic basis.

Section 7.04 Annual Assessment/Commencement of Common Expense Assessments. The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 7.05 Effect of Non-Payment of Assessments. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate of eighteen percent (18%) per annum from the due date, and the Association may assess a reasonable late charge thereon as determined by the Board of Directors. Failure to make payment within sixty days of the due date thereof shall cause the total amount of such Unit Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board of

Directors. Further, the Association may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Association against a Unit Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. If such action at law or equity is commenced, or if the Association in any way consults with legal counsel concerning payment of assessment, charge or fee and Unit Owner desires to pay the levied assessment, charge or fee, such Unit Owner will be required to pay all attorney's fees incurred by Association in obtaining payment of levied assessment, charge or fee. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment Lien, and a Unit Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Unit Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), except with respect to limited lien priorities to the extent permitted under the Act.

Section 7.06 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien Security Interest on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under State or Federal law. Sale or transfer of any Unit shall not affect the lien for said assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by applicable State law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 7.07 Common Expenses Attributable to Fewer than all Units.

- (a) Any Common Expense associated with the maintenance, repair or replacement of components and elements attached to or a part of a Unit or Units or to a Unit or Units to which a Limited Common Element is assigned may be assessed against that or those Units. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element may be assessed equally among the Units to which it is assigned.
- (b) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner may be assessed exclusively against that Unit.

Section 8.01 **Use/Occupancy.** No Unit within the Common Interest Community shall be used for any purpose other than as allowed by the local zoning codes and the rules, regulations, covenants, restrictions and conditions applicable to the Town of Telluride, County of San Miguel, State of Colorado. No Unit shall be occupied for business, living or sleeping purposes by more persons than the Unit was designed to safely accommodate.

Section 8.02 **Units to be Maintained.** Each Unit at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Unit so that the same are visible from any neighboring Unit, or any street, except as necessary during a period of construction. Declarant, its agents and assigns and the Association, and its agents, shall have the authority to enter and clean up Units which do not conform to the provisions of this Section, and to charge and collect from the Unit Owners thereof all reasonable costs related thereto.

Section 8.03 **Declarant's Use.** Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its employees and agents, to perform such reasonable activities, and to maintain upon portions of the Common Interest Community such facilities as they deem reasonably necessary or incidental to the construction and sale of Units in the development of the Common Interest Community, specifically including, without limiting the generality of the foregoing the maintenance of temporary business offices; storage areas, trash bins; construction yards and equipment; signs, model units, temporary sales offices and lighting facilities.

Section 8.04 **Restrictions on Animals and Pets.** Unit Owners may keep a reasonable number of dogs, cats, fish or other domestic animals which are bona fide household pets, so long as such pets are not kept for breeding purposes and are not kept in such number or in such manner as to create a nuisance to any Unit Owner. The Board of Directors shall have, and is hereby given the exclusive right and authority to reasonably determine that household pets are being kept for breeding purposes or are being kept in such a number or in such manner as to be unreasonable or to create a nuisance to any Unit Owner, or that a Unit Owner is otherwise in violation of the provisions of this Section, and to take such action or actions as it deems reasonably necessary to correct the same. A Unit Owner's right to keep household pets shall be coupled with the responsibility to pay for all damage caused by such pets.

Section 8.05 **Nuisances.** No nuisance shall be permitted within the Common Interest Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Unit Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Unit or Common Element, or any portion of the Common Interest Community by Unit Owners. Further, no immoral, improper, offensive or unlawful use shall be permitted within the Common Interest Community or any portion thereof. All valid laws, ordinances and regulations of all governmental and quasi-governmental bodies having jurisdiction over the Common Interest Community or a portion thereof shall be observed. As used herein, the term nuisance shall not include any activities of Declarant which are reasonably necessary to the development and construction of improvements within this Common Interest Community; provided, however, that such activities of the Declarant shall not unreasonably interfere with any Unit Owner's use and enjoyment of his Unit, or any Unit Owner's ingress and egress to or from their Unit and a public way.

Section 8.06 **No Hazardous Activities.** No activity shall be conducted on any portion of the Common Interest Community which is or might be unsafe or hazardous to any person or property. Without

- (c) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.
- (d) An assessment to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense liabilities.
- (e) If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit.
- (f) Fees, charges, taxes, impositions, late charges, fines, attorney's fees, collection costs and interest charged against a Unit Owner pursuant to this Section are enforceable as Common Expense assessments.

Section 7.08 Apportionment of Certain Expenses

(a) **Limited Common Elements.** Each Owner or Owners shall be jointly responsible for the day-to-day cleaning and upkeep of the Limited Common Elements reserved for the use of such Owner and any other Owners. Any and all cost associated with said day-to-day care, cleaning and upkeep of said Limited Common Elements shall be paid and discharged by the Owner or jointly by Owners entitled to the exclusive use of said Limited Common Elements. The expense of maintaining, repairing, replacing or reconstructing a Limited Common Element shall be assessed equally against the Unit or Units to which such Limited Common Element is assigned.

(b) **Benefit of Owners.** The costs of any Common Expenses (including, without limitation, gas, electric, trash, water and sewer and other utility expenses), unless and to the extent that these are separately metered or provided, shall be apportioned to all Units, in accordance with the Units' percentage ownership interests in and to the General Common Elements, as set forth on Exhibit C. The foregoing notwithstanding, the costs of any Common Expenses, or portions thereof, which the Board of Directors reasonably determines to benefit only one or more Units, shall be borne by the Unit or Units involved, in accordance with the allocations determined by the Board, in its sole discretion.

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

(d) **Special Allocation of Expenses of Repair and Maintenance.** The Association shall have the right to allocate a disproportionate share of the expenses of repair and maintenance of the Common Elements to any Unit, to the extent that the Board reasonably determines that such occupancy and/or usage has resulted in excessive wear and tear.

ARTICLE 8

RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

The following use restrictions apply to all Units and to the Common Elements:

limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Common Interest Community and no open fires shall be lighted or permitted on any portion of the Common Interest Community except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace designed to prevent the dispersal of burning embers.

Section 8.07 Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept within the Common Interest Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 8.08 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure, including all tractors, snow removal equipment and garden or maintenance equipment, except when actually in use. Also all service areas for hanging, drying or airing of clothing shall be kept within approved structures.

Section 8.09 Utilities. All electric, television, radio and telephone line installations and connections shall be concealed. All types of refrigerating, cooling or heating apparatus must be concealed.

Section 8.10 Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Common Interest Community except such sign or signs as may be approved in writing by the Board of Directors. One sign advertising a Unit for sale or for lease may be placed upon such Unit; provided, however, that standards relating to dimensions, color, style and location of such sign shall be determined from time to time by the Board of Directors and shall comply with local sign codes and with all other applicable statutes, ordinances and regulations.

Section 8.11 Restrictions on Loads. No Owner of a Unit may place a load on any floor which exceeds the floor load for which the floor was designed to support. No Owners of a Unit shall install, operate or maintain any item of heavy equipment or other installation, except in a manner designed to achieve a proper distribution of weight.

Section 8.12 Lease of a Unit. Any Unit Owner shall have the right to lease their Unit upon such terms and conditions as the Unit Owner may deem advisable, subject to the following:

- (a) Short term rentals (of less than three months) of Residential Units to overnight and short term guests shall be subject to reasonable regulations and restrictions of the Association, except that such restrictions can not require exclusive use of a designated management company.
- (b) Any long term lease or rental agreement (of over 3 months) shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association and the Articles of Incorporation and the rules and regulations of the Association.
- (c) All short and long term leases and rental agreements of Residential Units shall state that the failure of the tenant or renter or guest to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the rules and regulations of the Association shall constitute a default of the lease or rental agreement and this Declaration and such default shall be

enforceable by either the Association or the landlord, or by both of them.

(d) All occupancies of guests of Residential Units shall be subject to the right of the Association to evict the guest for failure to comply with the terms of the Declaration or Bylaws of the Association, the Articles of Incorporation or the rules and regulations of the Association.

Section 8.13 **Sale of a Unit.** The right of a Unit Owner to sell, transfer or otherwise convey their Unit shall not be subject to any right of first refusal or similar restriction and such Unit may be sold free of any such restrictions.

Section 8.14 **No Restrictions on Mortgaging of a Unit.** There are no restrictions on the right of the Unit Owners to mortgage or otherwise encumber their Unit. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 8.15 **Rules and Regulations.** In furtherance of the provisions of this Declaration, and the general plan, rules and regulations concerning and governing the Common Interest Community or any portion thereof may be adopted, amended, or repealed, from time to time, by the Board of Directors, or its successors and assigns. The Board of Directors may establish and enforce penalties for the infraction thereof.

ARTICLE 9

DEVELOPMENT RIGHTS, SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 9.01 **Special Declarant Rights.** Notwithstanding any other provisions as to voting or approval rights contained in the Declaration to the contrary, Declarant hereby reserves the following special declarant rights (the "Special Declarant Rights"), Additional Reserved Rights (as defined below) and Development Rights for the maximum time limit allowed by law, not to exceed twenty (20) years from the date of recordation of this Declaration:

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

(b) **Exercise of Reserved Rights.** The right to exercise (i) any Special Declarant Rights reserved in this Section, (ii) any Additional Reserved Rights pursuant to Section 9.02, (iii) any Development Rights reserved in Section 9.03, or (iv) any other rights reserved or existing under the provisions of the Declaration or the Community Laws.

(c) **Sales Management and Marketing.** The right to maintain on-site sales offices, construction offices, management offices and models in Units and the right to maintain signs advertising the Community. The sales offices, construction offices, management offices and models shall be considered Units and may be sold by the Declarant.

(d) **Construction Facilities.** The right of the Declarant and its employees, representatives, agents, and contractors to maintain on the Community temporary construction facilities and construction materials, staging yards, and other facilities reasonably required during the construction and sales

period for the Units, and during the period for construction and sale of additional Units.

(e) **Construction Easements.** The right to use easements through the Common Elements for the purpose of making Improvements within the community or within real estate which may be added to the Community, and the right to used, and to permit others to use easements through the common Elements as may be reasonable necessary for the purpose of discharging the Declarant's obligations under the Act, the Declaration, Plat and Map.

(f) **Control of Association and Board.** The right to appoint and remove any officer of the Association or any Board member during the Period of Declarant Control.

(g) **Master Association and Declaration.** The Declarant shall have the right to make the Community subject to an additional master association and master declaration.

(h) **Consolidation or Merger of Associations.** The Declarant shall have the right to merge or consolidate the Community with another common interest community.

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

(j) **Amendment of Map.** The right to amend the Map in connection with the exercise of any Development Rights, Special Declarant Rights or Additional Reserved Rights.

Section 9.02 Additional Reserved Rights. In additions to the Special Declarant Rights set forth in Section 9.01 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

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

(b) **Expansion Rights.** Declarant shall have the right to subject all or any portion of the real property described in Exhibit D, which is attached hereto and incorporated herein by reference (the "Development Property") to the provisions of this Declaration, together with any amendments thereto, upon the substantial completion of the improvements on the Development Property. The consent of the Unit Owners or holders of security interests in the Units shall not be required for the expansion of the Community, and the Declarant may proceed with such expansion without limitation at its sole option. If Declarant elects to submit the Development Property, or any part thereof, to this Declaration, Declarant shall record an amendment to the Declaration reallocating the Allocated Interests so that the Allocated Interests appurtenant to each Unit will be apportioned according to the formula set forth in the Declaration. The amendment to the Declaration shall contain at a minimum the legal description of the Development Property being submitted to this Declaration and a schedule Units and Allocated Interests appurtenant to the Units.

(c) **Submission of Residential Units as Eligible for Co-Ownership.** For the period that Declarant owns one or more Residential Units, the Declarant shall have the right to identify, designate and submit one or more such Residential Units as Eligible for Co-Ownership (as defined below). The Declarant, without requiring the consent of the Board, Owners of other Units or Mortgagees, may submit a Residential Unit to Co-Ownership. Any and all of the Residential Units designated by the Declarant as Eligible for Co-Ownership may be subjected to Co-Ownership by amendment of the Declaration designating the Residential Unit as Units Eligible for Co-Ownership. In designating Residential Units as Eligible for Co-Ownership, the following terms and conditions shall be applicable:

(i) **Definitions.** The following definitions shall apply to the Declaration, Community Documents and the Additional Reserved Rights set forth herein:

(A) **Committed to Co-Ownership** means those Residential Units to which one or more Co-Ownership Interests may be conveyed by the Declarant to a third party and which shall become a part of the Co-Ownership regime which may be created by the Declarant pursuant to the Additional Reserved Rights set forth in Section 9.02(b) above.

(B) **Co-Owner** means any person who owns one (1) or more Co-Ownership Interests. The term Co-Owner shall not refer to any holder of a Mortgage, unless such Mortgagee has acquired title pursuant to foreclosure or proceeding in lieu of foreclosure.

(C) **Co-Ownership** means the ownership regime whereby Co-Ownership Interests in Residential Units are conveyed and the use and occupancy rights of the resultant Co-Ownership Residences (as defined below) are subject to Co-Ownership Reservation Policies.

(D) **Co-Ownership Interest** means an undivided tenant-in-common fee title fractional ownership interest in a Designated Co-Ownership Residence, together with the undivided ownership interest in the Common Elements of the Community appurtenant to the Designated Co-Ownership Residence. Each Co-Ownership Interest shall include the right to short term, periodic use of the Ownership Residence, pursuant to the terms and conditions set forth in this Declaration and any amendment thereto, and the Co-Ownership Reservation Policies (as defined below).

(E) **Co-Ownership Reservation Policies** means those certain rules, regulations, policies and procedures adopted by the Association, as set forth in the document designated and entitled "Co-Ownership Reservation Policies at Ballard House South, a condominium common interest community" and recorded in the real property records of San Miguel County, Colorado, as may be periodically amended by the Association by subsequent recordation of the amended Co-Ownership Reservation Policies.

(F) **Co-Ownership Residential Unit** means a Residential Unit in which one or more Co-Ownership Interests have been conveyed.

(G) **Designated Co-Ownership Residential Unit** means the Residential Unit to which the purchaser of the Co-Ownership Interest receives fee title for conveyance purposes. The Co-Owner waives his right to use and occupy his Designated Co-Ownership Residential

Unit and instead is subject to the terms of the Co-Ownership Reservation Policies.

(H) **Eligible for Co-Ownership** means those Residential Units which Declarant has identified and designated as being eligible for conveyances of Co-Ownership Interests therein, as set forth in the Declaration as amended from time to time.

(ii) **Designation of Residential Units as Eligible for Co-Ownership.** Declarant shall have the right to designate and submit one or more Residential Units as being Eligible for Co-Ownership, with the right to convey Co-Ownership Interests in such fractional interest as determined by the Declarant and, therewith, to convert such Residential Units to Residential Units Committed to Co-Ownership. Declarant shall exercise this right by recording an amended Declaration and Map, together with such other and additional documents as may be required by law. Upon the exercise of this Additional Reserved Right by the Declarant and upon the Declarant's conveyance of such a Co-Ownership Interest, the Co-Owner shall have the right to use and occupy Co-Ownership Residential Units pursuant to the terms of the Declaration, as amended, and the Co-Ownership Reservation Policies to be established by the Association. Until such time as the Declarant exercises this Additional Reserved Right and a Residential Unit is Committed to Co-Ownership by the Declarant, Declarant reserves the right to sell, rent or lease any or all of the Residential Units owned by Declarant. Each Co-Ownership Interest conveyed by the Declarant pursuant to these Additional Reserved Rights shall be an undivided interest in real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied and otherwise affected in accordance with the provisions of this Declaration as amended from time to time and pursuant to Co-Ownership Reservation Policies adopted by the Association or the Declarant pursuant to Section 9.02(b)(1)(v) herein.

(iii) **Withdrawal of Residential Unit Eligible for Co-Ownership.** For any period that the Declarant owns one or more Residential Units Eligible for Co-Ownership, the Declarant shall have the right to withdraw one or more of such Residential Unit or Units from the Residential Units Eligible for Co-Ownership by recording an amendment to the Declaration and Map.

(iv) **Withdrawal of Units from Co-Ownership Regime.** For any period that the Declarant owns one hundred percent (100%) of the Co-Ownership Interests in one or more Designated Co-Ownership Residential Units, the Declarant shall have the right to withdraw one or more of such Residential Unit or Units from the Co-Ownership regime by recording an amendment to the Declaration and Map.

(v) **Conveyance of Fractional Interests of Differing Time Span and Use Rights.** For the period that Declarant owns one or more Residential Units not Committed to Co-Ownership (whether or not Eligible for Co-Ownership), the Declarant shall have the right to convey fractional ownership interests of any time span in any and all of such Residential Units and to establish the use and rights thereof separate and apart from those set forth in any Co-Ownership Reservation Policies which may be established by the Association.

(vi) **Rental of Residential Units in Conjunction with Hotel.** For any period that Declarant owns one or more Residential Units not Committed to Co-Ownership, the Declarant shall have the right to rent any and all of those Residential Units, including those Eligible for Co-Ownership, as part of Declarant's or Declarant's agent, successor or assign operation of a hotel. In addition, for any

period that Declarant owns any Co-Ownership Interests, the Declarant or Declarant's agent, successor or assign shall have the right to rent any and all of the occupancy periods appurtenant thereto as part of Declarant's or Declarant's agent, successor or assign's operation of a hotel.

(vii) **Parking Units - Declarant Reserved Rights.** For the period that Declarant owns any Parking Units, Declarant shall have the right to sell, lease and/or grant rights of usage in and to any and all such Parking Units to third parties, including non-Owners.

(viii) **Other Rights.** Declarant shall have the right to exercise any Additional Reserved Rights created by any other provision of the Declaration.

Section 9.03 Development Rights. For so long as Declarant retains an ownership interest in the Community, Declarant reserves the following Development Rights:

(a) **Boundary Adjustments.** The Declarant shall have the right to relocate boundaries between adjoining Units, create new Units or Common Elements, enlarge Units, enlarge the Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements, subdivide Units or complete or make improvements indicated on the Map filed of record or filed with the Declaration.

(b) **Exercise Development Rights.** Declarant shall have the right to exercise any Development Rights reserved herein.

(c) **Use of Common Elements.** The Declarant shall have the right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for construction and for the purpose of discharging the Declarant's obligations under this Declaration and exercising any Development Rights, Special Declarant Rights, and Additional Reserved Rights.

(d) **Declarant Control.** The Declarant shall have the right to appoint or remove any officer of the Association or any Board member during the Declarant Control Period.

(e) **Amendment of Declaration and Map.** The Declarant shall have the right to amend the Declaration and any Map in connection with the exercise of any Development Rights, Special Declarant Rights, and Additional Reserved Rights.

Section 9.04 No Further Authorizations Required. The consent of the Owners or holders of security interests shall not be required for the Declarant or its assignees to exercise any reserved rights, including the Development Rights, Special Declarant Rights, and Additional Reserved Rights, and Declarant or its assignees may proceed without limitation at their option, subject to existing land use, zoning laws and any planned unit development requirements of the Town of Telluride. Reserved rights of the Declarant or its assignees may be exercised with respect to different parcels or Units 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 expand the Community beyond the number of Units initially submitted.

Section 9.05 Rights Transferable/Rights Transferred. Any Special Declarant Right, Additional

Reserved Rights or Development Rights for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the real property records of San Miguel County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

Section 9.06 Interpretation. Recording of amendments to the Declaration and the Map in the office of the Clerk and Recorder of San Miguel County shall automatically: (i) Vest in each existing Unit Owner the reallocated Allocated Interests appurtenant to their Unit, and (ii) Vest in each existing Security Interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered 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 additional improvements, and shall be added to and become a part of the Real Estate for all purposes. All conveyances of Units after such expansion shall be effective to transfer rights in all Common Elements as expanded, whether or not reference is made to any amendment to the Declaration or Map. Reference to the Declaration and Map in any instrument shall be deemed to include all amendments to the Declaration, and the Map without specific reference thereto, including this Declaration.

Section 9.07 Construction. The improvements to be placed on the Real Estate or any part thereof shall be of a quality equal to or better than the improvements previously constructed on the Real Estate, but need not be of the same size, style or configuration.

Section 9.08 Submission to Co-Ownership by Others. The right to submit one or more Residential Units as Eligible for Co-Ownership may be exercised by non-declarant Unit Owners, provided, said right is exercised only in conjunction with the exercise of said right by the Declarant. Non-declarant Unit Owners may not submit a Residential Unit as Eligible for Co-Ownership without the prior written approval and participation of the Declarant. The Declarant and participating Unit Owners shall share pro rata in the cost of submitting Residential Units to Co-Ownership, which cost shall include attorney fees.

Section 9.09 Consent. By taking subject to this Declaration, each Unit Owner understands, acknowledges and agrees that the Declarant shall not need any further consent from the Unit Owners to exercise any Development Right, Special Declarant Right, and Additional Reserved Right herein.

Section 9.10 Other Rights and Reservations. THE OMISSION OF ANY RIGHT OR RESERVATION IN THIS ARTICLE SHALL NOT LIMIT ANY OTHER RIGHT OR RESERVATION BY DECLARANT WHICH IS EXPRESSLY STATED OR IMPLIED FROM ANY OTHER PROVISION IN THIS DECLARATION. ANY RESERVATION OR RIGHT OF THE DECLARANT WHICH IS STATED IN OR IMPLIED FROM THIS DECLARATION SHALL NOT GIVE RISE TO ANY AFFIRMATIVE OBLIGATION OR DUTY ON THE PART OF THE DECLARANT UNLESS EXPRESSLY STATED IN THIS DECLARATION.

ARTICLE 10

DESIGN REVIEW AND APPROVAL

Section 10.01 Required Approvals and Design Criteria. No improvement to the interior of a Unit or any attachment to the exterior of the Building, shall be constructed, erected, placed or installed within the Community, unless complete plans and specifications thereto shall have been first submitted to and

approved in writing by the Board of Directors. However, the Board of Directors shall not refuse to permit a Unit Owner to make reasonable modifications to their Unit or to any Limited Common Element which the Unit Owner has the right to use, if such modifications are necessary under the Federal Fair Housing Act (as heretofore and hereafter amended) to afford one or more Persons With a Disability residing at or intending to reside at such Unit the full enjoyment of such Unit and/or the Limited Common Elements appurtenant thereto. The Board of Directors shall exercise its reasonable judgment to the end that all improvements, construction and alterations to Units or Common Elements shall comply with the requirements set forth herein and as established by the Association. The approval or consent of the Board of Directors on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious; decisions shall be conclusive and binding on all interested parties.

(a) **Expense of Review.** Upon its review of such plans, specifications and submittal, the Board of Directors may require that the applicant(s) reimburse the Association for actual expense incurred by it in its review and approval process.

Section 10.02 Reply and Communication. The Board of Directors shall reply to all submittal of plans made in accordance herewith in writing within sixty (60) days after receipt. Where prior written consent or approval of the Board of Directors is required under the Declaration with respect to the making of an improvement; such improvements shall be conclusively deemed to have been made in compliance with this Declaration unless a notice of intention to commence legal action challenging and objection thereto is issued by the Board of Directors within a reasonable period of time after completion of such improvement. All communications and submittals shall be addressed to the Board of Directors at such address as the Board of Directors shall hereafter designate in writing addressed and mailed to the Unit Owners.

Section 10.03 Variances. The Board of Directors may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in the development guide. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Units or Common Elements nor deviate substantially from the general intent and purpose of these Covenants.

Section 10.04 Waivers. The approval or consent of the Board of Directors, or appointed representative thereof, to any application for design approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the committee as to any application or other matters subsequently or additionally submitted for approval or consent pursuant to these covenants.

Section 10.05 Liability. The Board of Directors and the members thereof, as well as any representative of the committee designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants.

Section 10.06 Records. The Board of Directors shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day.

Section 10.07 **Enforcement.** Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Board of Directors and any interested Unit Owner shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this section, the Board of Directors shall be entitled to recover its costs and reasonable attorneys fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure of the Board of Directors or of any Unit Owner to enforce any covenant or restriction herein contained, shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE 11

INSURANCE/CONDEMNATION

Section 11.01 **Insurance Carried.** The Association shall obtain and maintain in full force and effect at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Association shall maintain, to the extent reasonably available, policies with the following terms or provisions:

- (a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Unit Owner and shall provide that such policies may not be canceled or modified without at least twenty (20) days prior written notice to all of the Unit Owners, holders of first lien Security Interests and the Association.
- (b) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien Security Interests at least ten (10) days prior to expiration of the then current policies.
- (c) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, the officers of the Association, the Declarant, holders of first lien Security Interests, their successors and assigns and Unit Owners as insureds.
- (d) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Units and the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full insurable replacement cost.
- (e) Unit Owners may carry other insurance for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by Unit Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if a Unit

Owner has other insurance that covers the same loss or losses as covered by policies of the Association. In this regard, Declarant discloses that the Association's insurance coverage, as specified hereunder and under the Act, does not obviate the need for Unit Owners to obtain insurance for their own benefit.

(f) All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Unit Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Unit Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Unit Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 11.02 Hazard Insurance on the Units and Common Elements. The Association shall obtain adequate hazard insurance covering loss, building replacement, damage or destruction by fire or other casualty to the Units, to the Common Elements and the other property of the Association. The insurance obtained on the Units is not required to include improvements and betterments installed by Unit Owners. If coverage purchased by the Association includes improvements and betterments installed by Unit Owners, the cost thereof shall be assessed to each Unit in proportion to risk. All policies shall contain a standard non-contributory mortgage clause in favor of each holder of first lien Security Interests, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such holders of first lien Security Interests, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of the County of San Miguel, Colorado. If obtainable, the Association shall also obtain the following and any additional endorsements deemed advisable by the Board of Directors: (a) an Inflation guard endorsement, (b) a Construction Code endorsement, (c) a demolition cost endorsement, (d) a contingent liability from operation of building laws endorsement, (e) an increased cost of construction endorsement, and/or (f) any special PUD/Condominium endorsements.

Section 11.03 Liability Insurance. The Association shall obtain adequate comprehensive policy of public liability and property damage liability insurance covering all of the Units and the Common Elements, including structural coverage of the Units, in such limits as the Board may from time to time determine, but not in any amount less than One Million Dollars (\$1,000,000.00) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Common Interest Community. All liability insurance shall name the Association as the insured. If there are steam boilers in operation on the Common Interest Community, or if the Community has central heating or cooling, there must be in force boiler explosion and machinery coverage insurance providing for not less than Two Million Dollars (\$2,000,000.00) per accident, per location.

Section 11.04 Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustees and employees" shall not include any officer, director, agent or employee of Declarant or any officer,

director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 11.05 **Worker's Compensation and Employer's Liability Insurance.** The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 11.06 **Officers' and Directors' Personal Liability Insurance.** The Association may obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association. Neither the term "officers" nor the term "directors" shall include any officer, director, agent or employee of Declarant nor any officer, director, employee or agent of any professional manager or managing agent heretofore or hereafter employed by the Association.

Section 11.07 **Other Insurance.** The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 11.08 **Insurance Premium.** Except as assessed in proportion to risk, if permitted under the terms of this Declaration, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual assessments levied by the Association.

Section 11.09 **Managing Agent Insurance.** The manager or managing agent, if any, shall be insured to the same extent as the Association, as herein provided, and as provided in the Act, for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association.

Section 11.10 **Waiver of Claims Against Association.** As to all policies of insurance maintained by or for the benefit of the Association and Unit Owners, the Association and the Unit Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 11.11 **Annual Insurance Review.** The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 11.12 **Adjustments by the Association.** Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any holder of a first lien Security Interest. The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and holders of first lien Security Interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Unit Owners and holders of first lien Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 11.13 **Duty to Repair.** Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

Section 11.14 **Condemnation and Hazard Insurance Allocations and Distributions.** In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Unit Owners, distribution shall be in accordance with the percentage interests allocated in Exhibit C and on the Map, and pursuant to the Act.

ARTICLE 12

SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS

Section 12.01 **General Provisions.** The provisions of this Article are for the benefit of holders, insurers, or guarantors of holders of first lien mortgages or deeds of trust recorded within the Common Interest Community. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Association. A holder, insurer or guarantor of a first lien mortgage or deed of trust who has delivered a written request to the Association requesting treatment as an "Eligible Holder" and containing its name, address, the legal description and the address of the Unit upon which it holds a mortgage or deed of trust, shall be considered an "Eligible Holder." Insurers and guarantors of a first lien mortgage or deed of trust shall have the same rights as Eligible Holder.

Section 12.02 **Special Rights.** Eligible Holders shall be entitled to: (a) timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association, including any annual audited financial statement; (d) receive written notice of all meetings of the Board of Directors or Members of the Association; (e) designate a representative to attend any such meetings; (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (g) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration; (h) thirty (30) days written notice prior to the effective date of any proposed, material amendment to the Map, this Declaration, the Articles of Incorporation, or the Bylaws; (i) thirty (30) days written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Common Interest Community or by an Eligible Holder; and (j) immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or a Unit if the cost of reconstruction exceeds Twenty Thousand Dollars (\$20,000) and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Units.

Section 12.03 **Special Approvals.** Unless at least sixty-seven percent (67%) of the Eligible Holders of first lien Security Interests (based on one vote for each mortgage owned) on Units in the Association and requisite Unit Owners have given their written approval, neither the Association nor any Member shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements

or any improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such real estate by the Association shall not be deemed within the meaning of this provision); (b) change the method of determining the obligations, Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Units, including the architectural design of the exterior appearance of Units, or the upkeep of the Common Elements; (d) fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration; (e) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed; (f) take action to terminate the legal status of the Common Interest Community after substantial destruction or condemnation occurs; (g) amend any material provision of this Declaration or Map; and (h) establish self-management by the Association when professional management has previously been required by the legal documents for the Common Interest Community or by an Eligible Holder. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Holder of a first lien Security Interest receives written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within 30 days, it shall be deemed to have approved such request.

Section 12.04 **Right to Pay Taxes and Insurance Premiums.** Any Eligible Holder of a first lien Security Interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Units, and the holder of a first lien Security Interest making such payments shall be entitled to immediate reimbursement therefor from the Association.

ARTICLE 13

GENERAL PROVISIONS

Section 13.01 **Enforcement.** The Association or a Unit Owner or Unit Owners of any of the Units may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for such violation, including reasonable attorneys fees incurred in enforcing these covenants, or to restrain such violation or attempted violation. Failure of the Association or of any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board of Directors may post on a bulletin board at a conspicuous place on the Common Area notices of any covenant violations by members and copies of any recorded statements. Failure to post shall not affect the validity of any lien or covenant violation.

Section 13.02 **Compliance with Federal Fair Housing Act.** In order to comply with the requirements of the Federal Fair Housing Act (as heretofore and hereafter amended);

- (a) The Board of Directors may, to the extent permitted by law, make reasonable accommodations in the rules and regulations to the extent such accommodations are necessary

under the aforesaid Federal Fair Housing Act or otherwise appropriate to afford a Person With A Disability equal opportunity to use and enjoy a Unit, the Limited Common Elements appurtenant thereto, and/or the Common Elements, which accommodations may include waivers and modifications (of such rules and regulations) that are applicable only to a particular Person With a Disability or to a particular category of Persons With A Disability. Unless required by law, (i) the Board of Directors need not follow procedural requirements in making such waivers and modifications, and (ii) such waivers and modifications need not be approved by, or be subjected to disapproval by, the members of the Association.

(b) No rule or regulation of the Common Interest Community shall be interpreted or enforced in such a way as to make unavailable or deny a Unit to any person, or to discriminate against any person in the providing of services or facilities in connection with the sale or rental of a Unit to such person, because of the familial status of such person, as the term "familial status" is defined under the aforesaid Federal Fair Housing Act.

Section 13.03 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 13.04 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 13.05 Amendment of Declaration by Declarant. Until the first Unit has been conveyed by Declarant by deed recorded in the office of the County Clerk and Recorder of the County of San Miguel, Colorado, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination. Thereafter, if Declarant shall determine that any amendments to this Declaration shall be necessary in order to make corrections of a technical, clerical or typographical error or clarification of a statement, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to December 31, 1999. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Unit Owner and holder of a Security Interest. Each deed, Security Interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section. Notwithstanding the foregoing provisions, any withdrawal of Units from the Common Interest Community or change in the size of a Unit which results in an increase in the obligations of the non-declarant Unit Owners, must be approved by an affirmative vote of seventy-five percent (75%) of the non-declarant Unit Owners.

Section 13.06 Amendment of Declaration by Unit Owners. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration and Map may be amended or repealed at any time and from time to time upon approval of at least 67% of the votes in the Association and with the written consent of 67% of the Eligible Holders.

The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of San Miguel County, State of Colorado, of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 13.07 Amendment Required by Government Mortgage Agencies. Prior to December 31, 1998, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of San Miguel County, State of Colorado, of a certificate, setting forth the amendment or repeal in full.

Section 13.08 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate on December 31, 2002, or upon conveyance of 100% of the Units, other than Parking Units, to third party Unit Owners, whichever occurs first.

Section 13.09 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

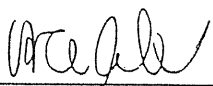
Section 13.10 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 13.11 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 13.12 Notices. Notices of matters affecting Ballard House South may be given to Unit Owners by the Association or other Unit Owners by first class, regular mail, postage prepaid. Notice shall be deemed given three (3) days following mailing.

IN WITNESS WHEREOF, the undersigned Declarant has caused this Declaration to be executed by its duly authorized agents effective as of this 13th day of January, 1999.

DECLARANT: TELLURIDE INCOME/GROWTH LIMITED PARTNERSHIP
BY: PEAK RETURNS, LLC, ITS GENERAL PARTNER,

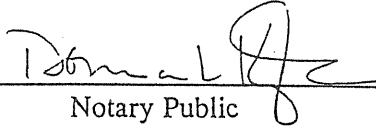
By: 

Hamish Cruden, Manager

STATE OF COLORADO }
 } ss.
COUNTY OF SAN MIGUEL }

The foregoing Declaration was acknowledged before me by Hamish Cruden, Manager of Peak Returns, LLC, as the general partner of Telluride Income/Growth Limited Partnership, Declarant, on the 13 day of January, 1999.

Witness my hand and seal.
My commission expires: Sept 6, 2000.



Notary Public



EXHIBIT A
BALLARD HOUSE SOUTH
DESCRIPTION OF REAL ESTATE

LOT 18B, REPLAT OF LOT B, BLOCK 26, & LOTS 16 & 18, BLOCK 27, AND A VACATED PORTION OF SAN JUAN AVENUE, TOWN OF TELLURIDE, ACCORDING TO THE PLAT RECORDED JANUARY 8, 1998 IN PLAT BOOK 1 AT PAGE 2320;

TOGETHER WITH:

THE INTEREST CONVEYED IN GRANT OF EASEMENT FOR SUBSURFACE STRUCTURE AND UTILITIES RECORDED JANUARY 8, 1998 AT RECEPTION NO. 316454;

EASEMENT DECLARATION FOR SUBSURFACE PARKING STRUCTURE RECORDED JANUARY 14, AT RECEPTION NO. 323678 ;

EASEMENT DECLARATION FOR UTILITIES AND RELATED FACILITIES RECORDED JANUARY 14, AT RECEPTION NO. 323677 ; AND

SUBJECT TO:

EASEMENT DECLARATION FOR ACCESS RECORDED JANUARY 14, 1999, AT RECEPTION NO. 323679 ;

COUNTY OF SAN MIGUEL,
STATE OF COLORADO.

EXHIBIT B
BALLARD HOUSE SOUTH
COMMON ELEMENTS

The General Common Elements and Limited Common Elements shall be shown, depicted and located on the Map. General Common Elements shall be identified as "C.E." or "G.C.E." and Limited Common Elements shall be identified as "L.C.E." The General Common Elements shall include all easements described in this Declaration, all easements set forth on the Map and each of the following easements which have been recorded of record in the real property records of San Miguel County, Colorado:

The Interest Conveyed in Grant of Easement for Subsurface Structure and Utilities Recorded January 8, 1998 at Reception No. 316454;

Easement Declaration for Subsurface Parking Structure Recorded January 14, 1999, at Reception No. 323678;

Easement Declaration for Utilities and Related Facilities Recorded January 14, 1999, at Reception No. 323677; and

Easement Declaration for Access Recorded January 14, 1999, at Reception No. 323679;

County of San Miguel,
State of Colorado.

EXHIBIT D
BALLARD HOUSE SOUTH
DESCRIPTION OF DEVELOPMENT PROPERTY

LOT 18A, REPLAT OF LOT B; BLOCK 26, & LOTS 16 & 18, BLOCK 27, AND A VACATED PORTION OF SAN JUAN AVENUE, TOWN OF TELLURIDE, ACCORDING TO THE PLAT RECORDED JANUARY 8, 1998 IN PLAT BOOK 1 AT PAGE 2320;

SUBJECT TO:

THE INTEREST CONVEYED IN GRANT OF EASEMENT FOR SUBSURFACE STRUCTURE AND UTILITIES RECORDED JANUARY 8, 1998 AT RECEPTION NO. 316454;

EASEMENT DECLARATION FOR SUBSURFACE PARKING STRUCTURE RECORDED JANUARY 14, AT RECEPTION NO. 323678;

EASEMENT DECLARATION FOR UTILITIES AND RELATED FACILITIES RECORDED JANUARY 14, AT RECEPTION NO. 323677; AND

TOGETHER WITH:

EASEMENT DECLARATION FOR ACCESS RECORDED JANUARY 14, 1999, AT RECEPTION NO. 323679;

COUNTY OF SAN MIGUEL,
STATE OF COLORADO.

EXHIBIT C
 BALLARD HOUSE SOUTH
 TABLE OF INTERESTS

<u>UNIT NUMBER</u>	<u>DESIGNATED USE</u>	<u>ALLOCATED SQUARE FOOTAGE*</u>	<u>UNIT SQUARE FOOTAGE</u>	<u>OWNERSHIP PERCENTAGE INTEREST</u>	<u>ALLOCATED VOTING PERCENTAGE</u>
101S	Residential	815.3	660	4.86	5.83
102S	Residential	867.1	700	5.15	6.19
103S	Residential	1132.2	945	6.96	8.35
104S	Residential	605.4	469	3.45	4.14
105S	Residential	658.0	519	3.82	4.59
201S	Residential	1126.0	904	6.66	7.99
202S	Residential	904.0	740	5.45	6.54
202SL	Residential	709.3	547	4.03	4.83
203S	Residential	841.3	687	5.06	6.07
205S	Residential	1345.7	1131	8.33	9.99
207S	Residential	1323.5	1035	7.62	9.15
301S	Residential	873.2	644	4.74	5.69
302S	Residential	1188.3	918	6.76	8.11
303S	Residential	976.4	746	5.49	6.59
305S	Residential	904.9	672	4.95	5.94
P-1	Parking	n/a	180	1.33	n/a
P-2	Parking	n/a	148	1.09	n/a
P-3	Parking	n/a	148	1.09	n/a
P-4	Parking	n/a	151	1.11	n/a
P-5	Parking	n/a	151	1.11	n/a
P-6	Parking	n/a	148	1.09	n/a
P-7	Parking	n/a	148	1.09	n/a
P-8	Parking	n/a	148	1.09	n/a
P-9	Parking	n/a	148	1.09	n/a
P-10	Parking	n/a	151	1.11	n/a
P-11	Parking	n/a	151	1.11	n/a
P-12	Parking	n/a	148	1.09	n/a
P-13	Parking	n/a	148	1.09	n/a
P-14	Parking	n/a	148	1.09	n/a
P-15	Parking	n/a	148	1.09	n/a

* Allocated Square Footage - defined as Unit Area, plus a proportionate share of Common Areas allocated per floor, not including elevator shafts and vertical areas of stairwell.

BYLAWS
OF
BALLARD HOUSE SOUTH HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I - OBJECT

1.01 **Association.** **BALLARD HOUSE SOUTH HOMEOWNERS' ASSOCIATION, INC.**, the ("Association") is a nonprofit corporation organized under the Colorado Nonprofit Corporation Act, as amended.

1.02 **Purpose.** The purpose for which this Association is formed is to manage The **BALLARD HOUSE SOUTH**, a Condominium, as provided by Declaration and to further the interests of the residents, occupants, tenants and guests of The **BALLARD HOUSE SOUTH** and members of the Association.

1.03 **Unit Owners Subject to Bylaws.** All present or future Unit Owners, tenants, or other persons who might, in any manner, have an interest in The **BALLARD HOUSE SOUTH** are subject to the covenants or regulations set forth in and provided for by these Bylaws. The acquisition and ownership of a Unit in The **BALLARD HOUSE SOUTH**, as defined in the Declaration for The **BALLARD HOUSE SOUTH**, a Condominium, shall signify that these By-laws are accepted, ratified and will be complied with by the Owner.

ARTICLE II - MEMBERSHIP, VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES

2.01 **Membership.** Ownership of a Unit in The **BALLARD HOUSE SOUTH** is required for membership in this Association. Any person or entity, upon becoming an owner of such Unit, also becomes a member of the Association, subject to these Bylaws. Such membership terminates without any formal Association action upon such person or entity ceasing to own a Unit, but such termination shall not relieve or release any such former Owner from any liability or obligation to the Association, nor shall it impair any rights or remedies which the Association may have against such former Owner, arising out of or in any way connected with ownership of a Unit and membership in the Association. No certificates of stock shall be issued by the Association, but the Board of Directors may, if it so elects, issue membership identification cards to the Owners of each Unit. Such membership card shall be surrendered to the Secretary whenever ownership in the Unit designated thereon shall terminate.

2.02 **Voting.** Members of the Association shall be entitled to vote on all matters. There shall be one vote for each Unit depicted on the **BALLARD HOUSE SOUTH** Condominium Plat Map, as recorded in the office of the Clerk and Recorder of San Miguel County, Colorado. The voting percentages in the **BALLARD HOUSE SOUTH** Homeowners' Association to be allocated to each Unit shall be as set forth in the Declaration for The **BALLARD HOUSE SOUTH**, A Condominium. If title to any Unit is held by two or more co-owners, one of the co-owners shall be designated by all co-owners of such Unit, to exercise the voting rights for such Unit on behalf of all Owners. Cumulative voting shall not be permitted.

2.03 **Quorum.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of the Owners of a majority of the Units shall constitute a quorum and an affirmative vote of those representing a majority of the Units represented at such a meeting, either in person or by proxy, shall be necessary to transact business and to adopt decisions binding on all Owners.

2.04 **Proxies.** Votes may be cast in person or by proxy. Proxies must be filed with the Secretary at or

before the commencement of each meeting. All proxies must be in writing signed by the Owner(s) granting the proxy and may be either general or for a particular meeting. A proxy-holder need not be an Owner.

ARTICLE III - MEETINGS OF MEMBERS

3.01 **Place of Meeting.** Meetings of the Association shall be held at such place within the Town of Mountain Village, Telluride, Colorado area, as the Board of Directors may from time to time determine.

3.02 **Annual Meetings.** The meetings of the Association shall be held at least once a year. The annual meeting of the BALLARD HOUSE SOUTH Homeowners' Association shall be held each year on such date as shall be selected by the Board of Directors, provided that such meeting shall occur in each year no later than three months after the end of the Association's fiscal year. The first annual meeting shall be called by the Initial Board of Directors of the Association. At such annual meetings, the Owners shall elect Directors to succeed those Directors whose terms are to expire prior to the next succeeding regular annual meeting of the Association and may transact such business of the Association as may properly come before the meeting.

3.03 **Special Meetings.** It shall be the duty of the President to call such special meeting of the Association as may be needed to transact business and/or to adopt decisions binding on all Owners. Such meetings may be called by the President, by resolution of the Board of Directors or by petition of the owners of at least two (2) of the Units in the BALLARD HOUSE SOUTH Homeowners' Association. The Notice of any such special meeting shall state the time and place of such meeting and the specific purpose thereof. Telephone meetings shall be valid. No business shall be transacted at a special meeting except as may be stated in the notice. Any such meeting shall be held within thirty (30) days after receipt by the President of such resolution or petition.

3.04 **Notice of Meetings.** It shall be the duty of the Secretary to hand deliver or to mail, postage prepaid, by regular United States mail, a notice of each annual or special meeting, stating the purpose thereof (including the general nature of any proposed amendment to the Declaration or the Bylaws, any budget changes, and any proposal to remove an officer or director), as well as the time and place where it is to be held, to each Unit Owner of record. A waiver of notice, signed by all Members of the Association before, at or within a reasonable time after any meeting shall be valid substitute for notice. The certificate of the Secretary that notice was properly given as provided in these Bylaws shall be prima facie evidence thereof. Such Notice of Members' meetings must be given at least 10, but not more than 20, days prior to the date of such meeting. Notice shall be deemed delivered when hand delivered, or deposited in the United States mail addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

3.05 **Adjourned Meetings.** If any meeting of the Association cannot be convened because a quorum of Units are not in attendance or the business of the meeting cannot be concluded, the Owners who are present, either in person or by proxy, may adjourn the meeting one or more times for periods of no longer than two weeks from time to time, until a quorum is obtained or until a conclusion can be reached.

3.06 **Quorum.** A quorum is deemed present throughout any meeting of the Association members if Owners of 50% of the Units are present, in person or by proxy, at the beginning of the meeting.

3.07 **Order of Business.** The order of business at all meetings of the Association shall be as follows:

- (a) Roll call
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading of minutes of the last meeting
- (d) Reports of officers
- (e) Reports of committees

- (f) Election of Directors (annual meetings only)
- (g) Unfinished business
- (h) New business

ARTICLE IV - BOARD OF DIRECTORS

4.01 **Association Responsibilities.** The Owners of the Units in The BALLARD HOUSE SOUTH, a Condominium, constitute the membership of the Association, and have the responsibility of administering The BALLARD HOUSE SOUTH through the Association's Board of Directors. The Association has the powers as set forth in the Declaration, including, without limitation, the power to amend the Declaration and to determine the powers and duties of the Board of Directors.

4.02 **Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors (the "Board") composed of three natural persons. The number of directors may be increased or decreased by amendment of these Bylaws, provided, however, that the number of Directors shall not be reduced to less than three nor increased to more than six. Until the first meeting of the Association, the Initial Board of Directors shall consist of the three individuals designated in the Articles of Incorporation of the Association, which individuals need not be Unit Owners. There shall be three classes of Directors, one class for each of the three types of uses and Units (Commercial, Retail and Residential). The members owning Commercial Units shall elect one-third of the Directors, the members owning Retail Units shall elect one-third of the Directors and the members owning Residential Units shall elect one-third of the Directors.

4.03 **Powers and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association. The Board of Directors may do all such acts and things as are not by law, the Articles of Incorporation of the Association, these Bylaws, or the Declaration either prohibited or directed to be exercised and done by the Owners.

4.04 **Other Powers and Duties.** The Board of Directors shall be empowered and shall have powers and duties as follows:

- (a) **Enforce Declaration Provisions.** To administer, implement and enforce the Declaration for The BALLARD HOUSE SOUTH, a Condominium, and the easements, uses, limitations, obligations and all other provisions set forth in the Declaration.
- (b) **Rules and Regulations.** To establish, make and enforce compliance with such reasonable rules and regulations as may be necessary for the operation and use of The BALLARD HOUSE SOUTH with the right to amend its rules from time to time. A copy of such rules and regulations shall be delivered to or mailed to each Unit Owner promptly upon the adoption thereof.
- (c) **Maintenance of Common Elements.** To keep in good order, condition and repair the entryways, conveyances and common elements, facilities and utilities owned by the Association.
- (d) **Insurance.** To obtain and maintain, all policies of insurance required by the Declaration, and deemed advisable by the Board of Directors.
- (e) **Assessments.** To periodically, and in no event less frequently than annually, fix, determine, levy and collect the assessments to be paid by the Owners of each Unit toward the gross expenses of the Association and to establish a reasonable reserve for major expenditures. To adjust, decrease or increase the amount of such assessments, and, if approved, to credit any excess of assessments over expenses and cash reserves to the Owners against the next succeeding assessment period. To levy and collect special assessments and

regular annual assessments whenever in the opinion of the Board it is necessary to do so in order to meet increased operating or maintenance expenses or costs, or additional capital assessments, which shall be in statement form and shall set forth in reasonable detail the various expenses, for which assessments are being made.

In setting the amount of the annual assessment, the Board shall use its best judgment in estimating the following items of income and expense over the period for which the budget is being prepared:

- (1) income from Unit Owners;
- (2) income from other sources;
- (3) cost of maintenance;
- (4) foreseeable repairs and improvements;
- (5) reserves for unforeseeable repairs and maintenance;
- (6) insurance premiums;
- (7) taxes, if any;
- (8) accounting and legal fees;
- (9) office expense;
- (10) fidelity bond and director's liability insurance;
- (11) common utility expenses; and
- (12) other foreseeable items.

(g) **Penalize Delinquencies.** To impose penalties and collect delinquent assessments, by lien enforcement, suit or otherwise, and to enjoin or seek damages from Unit Owners as provided in the Declaration, in these Bylaws, and Colorado statute, as such may be from time to time amended or supplemented.

(h) **Defend.** To protect and defend the Association from loss and damage by suit or otherwise.

(i) **Borrow.** To borrow funds and to give security therefor in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the Declaration or these Bylaws, and to execute all such instruments evidencing such indebtedness as the Board of Directors may deem necessary or desirable.

(j) **Contract.** To enter into contracts within the scope of their duties and powers; to make guarantees and incur liabilities.

(k) **Bank Accounts.** To establish bank accounts which are interest bearing or non-interest bearing, as may be deemed advisable by the Board of Directors.

(l) **Maintain Records.** To keep and maintain detailed, full and accurate books and records showing in

chronological order all of the receipts, expenses or disbursements with appropriate specificity and itemization and to permit inspection of such books and records during convenient weekday business hours by any of the Owners and, upon affirmative vote of at least a majority of the Members, to cause a complete audit to be made of the books and accounts by a competent accountant. Such books and records shall include itemization, billing and payment of assessments.

(m) **Annual Statements.** To prepare and deliver to each Unit Owner annually or if the Board shall so decide, more frequently, a statement showing all receipts, assessments, expenses or disbursements since the last such statement.

(n) **Personnel.** To designate, hire and remove the personnel necessary for the operation, maintenance, and repair of utilities, access road system and related facilities.

(o) **Suspend Voting Rights.** To suspend the voting rights of the Owners of any Unit for failure to comply with these Bylaws, the rules and regulations of the Association or with other obligations of the Owners of the Units, financial or otherwise, imposed by the Declaration.

(p) **Govern and Administer The BALLARD HOUSE SOUTH.** In general, to supervise and oversee the Association's officers, to carry on the administration of the Association and to do all of those things necessary and/or desirable to govern and operate The BALLARD HOUSE SOUTH.

(q) **Sanctions.** In the event that the Board of Directors itself, or through delegation of its powers to an Officer or Managing Agent, shall decide to invoke a sanction, penalty, fine or suspension of voting rights against a Unit Owner, a written notice of such sanction shall promptly be delivered or mailed to the Owners of the Unit in question notifying such party that the sanction will be stayed for a period of ten days during which time period the party in question may request a meeting with the Board of Directors to present his facts and/or opinions with respect to the matter. The Board shall, upon request for such a meeting, endeavor to hold such within the ten-day period during which the sanction is stayed. Such meeting may be held telephonically.

(r) **Annual Budget.** The Board of Directors shall adopt a budget for the BALLARD HOUSE SOUTH Homeowners' Association, annually. Within thirty (30) days after adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first class mail, or otherwise deliver a summary of budget to all Unit Owners, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the budget summary. Unless at that meeting a majority rejects the budget, the budget shall be ratified, whether or not a quorum is present. However, in the event that the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors.

4.05 **Managing Agent.** The Board of Directors may employ for the Association a Managing Agent (at a compensation established by the Board of Directors), to perform such duties and services as it shall authorize. The Board of Directors may delegate to such Managing Agent any of the Board's powers and duties but, notwithstanding such delegation, the Board shall not be relieved of its responsibility under the Declaration. Any contract of employment entered into with a Managing Agent must, however, be limited to a term not exceeding three years and must provide that it is cancelable by the Association without cause, upon thirty days written notice, and with cause at any time.

4.06 **Election and Term of Office.** Except as otherwise provided in the Declaration, members of the Board of Directors shall be elected by a majority or (if more than two candidates stand for election) a plurality, as appropriate, of the Owners or representatives of Units voting at the annual meeting of the Association. The term of

each Director's service shall extend until the next annual meeting of the Association and so long thereafter as may be necessary for a successor to be duly elected and qualified; or until the Director may resign or is removed in the manner herein provided.

4.07 Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by the remaining Directors, even though they may constitute less than a quorum. A Director so selected shall serve until a successor is elected at the next annual meeting of the Association.

4.08 Removal of Directors. At any annual or special meeting of the Association, duly called, any one or more of the Directors may be removed with or without cause by a majority of the Members and a successor may then and there be elected by the Owners of Units to fill the vacancy thus created. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting prior to a vote being taken on the matter.

4.09 Organizational Meeting. The first meeting of a newly elected Board of Directors shall be held within thirty days after such election at such place as shall have been fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to convene such meeting, provided that a majority of the new Board shall be present at such election meeting.

4.10 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and at such place in Town of Telluride, Colorado as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings of the Board of Directors shall be given by the Secretary to each Director, personally or by mail, telephone or telegraph, at least three days prior to the day named for such meeting.

4.11 Special Meetings. Special meetings of the Board of Directors may be called by the President, on his own initiative, on three (3) days notice to each Director, given personally, or by mail, telephone, fax or telegraph, which notice shall set forth the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on receipt of a written request to call such a special meeting from at least two Directors. Such meetings may be held telephonically.

4.12 Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

4.13 Board of Directors' Quorum. At all meetings of the Board of Directors, a majority (at least 50% of the votes entitled to be cast) of the Directors at the beginning of the meeting shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called, may be transacted without further notice.

4.14 Compensation; Fidelity Bonds. The Members of the Board of Directors shall serve without salary or compensation. The Board of Directors may require that all Officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association. All actions of members of the Board in good faith and using reasonable care shall be without recourse by the Association or any Owner.

ARTICLE V - OFFICERS

5.01 **Designation.** The Officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors.

5.02 **Election of Officers.** The Officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board. One person may hold concurrently the office of Vice President and Secretary or Vice President and Treasurer or Secretary and Treasurer, but the President shall serve only in the office of President.

5.03 **Removal of Officers.** Upon an affirmative vote of a majority of the Members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.

5.04 **President.** The President shall be elected from and by the Board of Directors and shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association. The President shall have all of the general powers and duties which are usually vested in the office of the President of a nonprofit corporation, including but not limited to, the power to appoint committees from among the Members from time to time as may be deemed appropriate, and to assist in the conduct of the affairs of the Association or as may be established by the Board or by the Members of the Association at any regular or special meeting. The President shall be the officer responsible for the preparation, execution, certification and recordation of amendments to the Declaration on behalf of the Association.

5.05 **Vice President.** The Vice President shall be a Member and shall have all the powers and authority and shall perform all of the functions and duties of the President, in the absence of the President or in the absence of the President's ability for any reason to exercise such powers and functions or perform such duties.

5.06 **Secretary.** The Secretary shall be a Member and shall keep the minutes of all meetings of the Association; the Secretary shall have charge of such books and papers as the Board of Directors may direct; and shall, in general, perform all of the duties incident to the office of Secretary. The Secretary shall compile and keep up to date at the principal office of the Association a complete list of Owners and their last-known addresses as shown on the records of the Association. Such list shall also show opposite each Owner's name the appropriate designation of the Unit owned by such Member. Such list shall be open to inspection by Owners and other persons lawfully entitled to inspect the same at reasonable times during regular business hours.

5.07 **Treasurer.** The Treasurer shall have responsibility for Association funds, shall keep the financial records and books of account of the Association and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE VI - INDEMNIFICATION OF DIRECTORS AND OFFICERS

6.01 **Indemnification.** The Association shall indemnify its Directors and Officers, and his or her heirs, executors and administrators against loss, costs and expense, including counsel fees, reasonably incurred in connection with any action, suit or proceeding to which such person may be made a party by reason of being or having been a Director or Officer of the Association, except as to matters to which such person shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as such Director or Officer in relation to the matter involved. The

foregoing rights shall not be exclusive of other rights to which such Director or Officer may be entitled. All liability, loss, damage, costs, and expense incurred or suffered by the Association by reason of, or arising out of, or in connection with the foregoing indemnification shall be considered a legitimate association expense.

Nothing contained in this Section shall, however, be deemed to obligate the Association to indemnify any Member who is or has been a Director or Officer of the Association with respect to any duties or obligations assumed or liabilities incurred simply as a Member or Owner of a Unit under or by virtue of the Declaration and not as an Officer or Director.

Anything to the contrary notwithstanding, this provision shall not eliminate or lessen the liability of a director to the Association, or its members, for monetary damages for: (1) any breach of the director's duty of loyalty to the Association or its members; (2) acts or omissions not in good faith or which include intentional misconduct or a knowing violation of law; (3) acts specified in C.R.S. 7-24-111; or (4) any transaction from which the director derived an improper personal benefit.

ARTICLE VII - AMENDMENTS

7.01 **Bylaws.** These Bylaws may be amended only by affirmative act of the Board of Directors of the Association at a meeting duly called for that purpose. Any notice of any meeting for said purpose shall specify the nature and text of any proposed amendment or amendments, provided that these Bylaws shall at all times comply with the Declaration.

7.02 **Declaration.** The Declaration may be amended only as set forth in the Declaration.

ARTICLE VIII - MISCELLANEOUS

8.01 **Proof of Ownership.** Every person or entity becoming an Owner of a Unit shall immediately furnish to the Board of Directors a photocopy or a certified copy of the recorded instrument vesting in that person such ownership, which copy (fax permitted) shall remain in the files of the Association. A Member shall neither be deemed in good standing nor shall be entitled to vote at any annual or special meeting of Members unless this requirement is first met.

8.02 **Compliance.** These By-Laws are intended to comply with the requirements of the Colorado Law and the Declaration. If the Bylaws are found to be not in compliance, then they shall not terminate, but instead shall be amended to conform to the applicable law.

8.03 **Character of Association.** This Association is organized as a nonprofit corporation. No Member, Director, Officer or other person may receive any property or funds, or shall receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the Association be paid as salary or compensation to, be distributed to, or inure to the benefit of any of the Board of Directors, Officers or Members, except upon a dissolution of the Association, provided however, always: (1) that reasonable compensation may be paid to any Member, Manager, Director or Officer while acting as an agent or employee of the Association for services rendered in effecting one or more of the purposes of the Association, and (2) that any Member, Manager, Director, or Officer may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the Association.

8.04 **Conveyances and Encumbrances.** Corporate property may be purchased, conveyed or encumbered for security of monies borrowed by authority of the Association and/or the Board of Directors. Conveyances or encumbrances shall be by instrument executed by the President or Vice President and by the Secretary or the Treasurer or an Assistant Secretary or an Assistant Treasurer, or executed by such other person or persons to whom

CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned does hereby certify that the above and foregoing Bylaws were duly adopted by the Directors of said Association as the Bylaws of said Association on the ____ of October, 1997, and that they do now constitute the Bylaws of said Association.

Hamish Cruden

B.J. "Chip" Lenihan

Ramon M. Escure

ARTICLES OF INCORPORATION

BALLARD HOUSE SOUTH HOMEOWNERS' ASSOCIATION, INC.

For the purpose of forming a nonprofit corporation pursuant to the provisions of the Colorado Nonprofit Corporation Act, as may be amended, the undersigned incorporator has signed and acknowledged the following Articles of Incorporation:

ARTICLE I - NAME

The name of this nonprofit corporation shall be: BALLARD HOUSE SOUTH HOMEOWNERS' ASSOCIATION, INC., (hereinafter the nonprofit corporation shall be referred to as the "Association").

ARTICLE II - DURATION

The period of duration of the Association shall be perpetual.

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ARTICLE III - PURPOSES

The objectives and purposes for which this Association is formed, are as follows:

1. To promote the health, safety, and welfare of all members of the Association; To establish, provide and maintain a desirable environment for all members and their guests and to protect and preserve the property, property values and property rights in the Ballard House South, a Condominium Common Interest Community ("Ballard House South") in Telluride, Colorado.
2. To enforce any and all covenants, restrictions, agreements, or rules and regulations contained within the Declaration for the Ballard House South ("Declaration") and applicable to Ballard House South in any manner allowed by the laws of Colorado, the Declaration or these Articles of Incorporation or the Bylaws of the Association as from time to time are in force and effect.
3. To provide any service and perform all actions contemplated by the Declaration or permitted by law.

ARTICLE IV - POWERS

In furtherance of its purposes, but not otherwise, the Association shall have the following powers:

1. All Common Law and Statutory Powers. The Association shall have all of the powers conferred upon nonprofit corporations by common law and statutes of the state of Colorado, in effect now and from

time to time, and those powers inherent to the Colorado Nonprofit Corporation Act, C.R.S. § 7-20-101 et seq. and those powers inherent to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et seq.

2. Powers needed to Effectuate the Declaration, Articles, By-laws, Easements, Agreements and any other Statutory Requirements. The Association shall have all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers of the Association under the Declaration, Articles and By-laws of the Association, together with any related and/or appurtenant easement, agreement or statutory requirement, including, without limitation, the following powers:

(a) Assessments. The Association shall have the power to levy and collect assessments and special assessments against the members for the purpose of defraying the costs, expenses and any losses of the Association or of exercising its powers or of performing its functions; to charge interest on unpaid assessments; and to create, enforce, and foreclose liens given as security for such assessment, charges, attorney fees, fines, penalties, damages and interest.

(b) Operation and Maintenance. To manage, control, operate, maintain, repair, replace and improve all common elements and utility systems serving Ballard House South.

(c) Advance Members' Interests. To engage in activities which will actively foster, promote and advance the common interests of the Association, and its individual members.

(d) Buy, Sell, Lease, or Encumber. To buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal with and in, real, personal and mixed property of all kinds, and any right or interest therein, for any purpose of this Association.

(e) Borrow. To borrow money and secure the repayment of monies borrowed for any purpose of this Association, limited in amount or in other respects as may be provided in the Declaration or Bylaws of this Association.

(f) Contract. To enter into, make, perform or enforce contracts of every kind and description, including, without limitation, contracts for management services, and to do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association with or in association with any person, firm, association, corporation or other entity or agency, public or private.

(g) Bylaws. To adopt, alter, amend or repeal such Bylaws as may be necessary or desirable for the proper management of the affairs of the Association, provided, however, that such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration or these Articles of Incorporation.

(h) Rule Making. To make and enforce rules and regulations applicable to Ballard House South for the accomplishment of any of the purposes or to further any of the powers set forth above, and to amend such rules and regulations.

(i) Powers Not Limited or Restricted. The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article IV are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article IV.

3. **Limitation on Powers.** Without the unanimous consent of the membership in the Association, the Association shall have no power or authority to take any action which would cause it to be classified other than as a nonprofit corporation by either the Internal Revenue Service or the state of Colorado.

4. **Prohibition on Dividends.** The Association shall not pay any dividends. No distribution of the corporate assets to members shall be made. Upon dissolution of the Association, the assets shall be distributed as provided in Article XII herein.

ARTICLE V - MEMBERSHIP

1. **One Class.** This Association shall be a membership corporation without certificates or shares of stock. There shall be one class of membership and membership in the Association shall be attributable to an interest in a condominium unit within Ballard House South.

2. **Voting.** All members shall be entitled to vote their percentage membership interest in Ballard House South. The voting rights of any members who are in default of any obligations to the Association may be suspended until such default is cured. The percentage vote appurtenant to an interest in a unit shall be made by one person, who shall represent all individuals or entities holding such interest in the condominium unit. The percentage of voting interest in the Association allocated to each member shall be determined in accordance with the provisions of the Declaration.

3. **Membership Appurtenant to Unit Ownership.** Each membership shall be appurtenant to title to an interest in a condominium unit. The owner of an interest in a condominium unit shall automatically be the holder of the membership appurtenant to that interest. Membership in the Association shall not be assigned, encumbered or transferred in any manner except as an appurtenance to transfer of title to interest in the condominium unit to which the membership appertains. Membership in the Association is mandatory.

4. **Transfer.** A transfer of membership shall occur automatically upon the transfer of an interest in the condominium unit to which the membership appertains, provided, however, that the Bylaws of the Association may contain reasonable provisions and requirements with respect to recording such transfers on the books and records of the Association.

5. **Suspensions of Voting Rights.** The Association may suspend the voting rights of the members for failure to comply with rules, regulations or Bylaws of the Association or for failure to comply with any other obligations under the Declaration and rules or agreements created pursuant thereto. The Association may also impose fines, as permitted by law, and take all other actions permitted by law, for failure of a member to comply with the rules, regulations and bylaws of the Association.

6. **Bylaws Applicable to Members' Rights.** The Bylaws may contain provisions, not inconsistent with the foregoing, setting forth the rights, privileges, duties and responsibilities of the Members.

ARTICLE VI - BOARD OF DIRECTORS

The business and affairs of this Association shall be conducted, managed and controlled by its Board of Directors as follows:

1. **Number/Terms.** The Board of Directors (hereinafter sometimes called "Board") shall consist of not less than three members, the specified number to be set forth from time to time in the Declaration and the Bylaws of the Association. In the absence of any provision to the contrary in the Declaration or Bylaws

of the Association, the Board shall consist of three Members. The terms of Directors shall expire annually.

2. **Elected Directors.** Members of the Board of Directors shall be elected in the manner determined by the Bylaws. Until such time as seventy-five percent (75%) of the interests in the condominium units in Ballard House South have been sold, the members of the Board of Directors shall be appointed by the Declarant, Telluride Income/Growth Limited Partnership. The persons comprising the Board shall be natural persons. A person does not have to be an owner of an interest in a condominium unit to serve on the Board. The initial Directors shall be those individuals specified in the Articles of Incorporation. After seventy-five percent (75%) of the interests in the condominium units have been sold, all members of the Board shall be elected by the membership.

3. **Vacancies.** Directors may be removed and vacancies on the Board shall be filled in the manner provided in the Bylaws. Any vacancies on the Board occurring before the first election of Directors by Members shall be filled by vote of the remaining Directors.

4. **Director Liability.** The Corporation hereby elects to enact all of those projections provided by Colorado law which would limit or eliminate the personal liability of Directors to the Association or its members in any and all cases with the exception of those statutory exceptions which do not eliminate or limit a Director's liability.

5. **Initial Board.** The names and addresses of the three natural persons over the age of twenty-one years who shall comprise the initial Board and who shall serve until the first election of Directors by the Members and until their successors are duly elected and qualified are as follows:

Name	Address
Hamish Cruden	Cruman Investments 5B On Hing Building 1 On Hing Terrace Central Hong Kong
B.J. "Chip" Lenihan	119 West Colorado Avenue P.O. Box 200 Telluride, Colorado 81435
Ed Tompkins	1343 East Sequoia Drive Phoenix, Arizona 85024

ARTICLE VII - OFFICERS

The Board shall, at each Annual Meeting of the Directors, elect a President of the Association, one or more Vice Presidents, a Secretary/Treasurer and such other officers as the Board, in accordance with the provisions of the Bylaws, believe will be in the best interests of the Association. The position of Treasurer may be combined with and held by the same person as the position of Secretary. The Officers shall have such duties as may be prescribed in the Bylaws of the Association and shall serve one year terms from the Annual Meeting of Directors at which they are appointed until a successor is named at the following Annual Meeting of Directors, at the pleasure of the Board.

ARTICLE VIII - CONVEYANCES AND ENCUMBRANCES

Association property may be conveyed or encumbered by authority of the Association and its Board of Directors. Conveyances or encumbrances shall be by instrument executed by the President or Vice President and by the Secretary Treasurer or an Assistant Secretary or Assistant Treasurer or executed by such other person or persons to whom such authority may be specifically delegated by the Board.

ARTICLE IX - EXECUTION OF INSTRUMENTS

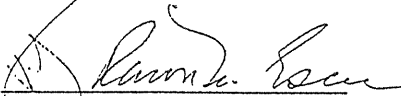
Authority to convey or encumber the property of the Association, and to execute any deed, contract or other instrument on behalf of the Association for itself or as attorney-in-fact for one or more of the members is vested in the president or any vice president. All instruments conveying or encumbering such property shall be executed by the president or vice president or any other officer of the Association.

ARTICLE X - PRINCIPAL OFFICE AND ADDRESS

The principal office and address of the Corporation shall be 119 West Colorado Avenue, Telluride, Colorado 81435.

ARTICLE XI- INITIAL REGISTERED OFFICE AND AGENT

The initial registered office of the corporation shall be at 226-228 West Colorado, Second Floor, P.O. Box 2542, Telluride, Colorado 81435. The initial registered agent at such office shall be Ramon M. Escure, Esq. The undersigned individual hereby consents to serve as the initial registered agent of the corporation.


Ramon M. Escure, Esq.

ARTICLE XII - INCORPORATOR

The following is the name and address of a natural person over the age of twenty-one years and of full, unimpaired legal capacity who is the incorporator of this corporation.

Name	Address
Ramon M. Escure, Esq.	P.O. Box 2542 Telluride, CO 81435

ARTICLE XIII - DISSOLUTION

The Association may be dissolved only by the affirmative vote of a majority of the members. Written notice of a proposal to dissolve, setting forth the reasons thereof and the disposition to be made of the assets, as set forth below, shall be mailed to every member at least 90 days in advance of any action taken. Upon dissolution of the Association, the assets, both real and personal, of the corporation, shall be dedicated to an appropriate public agency, utility or organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event that such dedication is not accepted, such assets shall be granted, conveyed

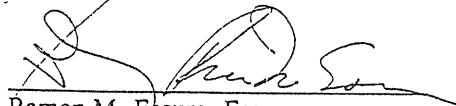
and assigned to any nonprofit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of the Association properties shall be effective to divest or diminish any right or title of any member vested in him under the recorded covenants and deeds applicable to BALLARD HOUSE SOUTH unless made in accordance with the provisions of such covenants and deeds.

ARTICLE XIV - AMENDMENTS

Amendments to these Articles of Incorporation shall be adopted, if at all, in the manner as set forth in the Colorado Nonprofit Corporation Act, as from time to time amended, provided however, that no article or amendment to these Articles of Incorporation shall be contrary to or inconsistent with any provisions of the Declaration.

Executed this 13th day of ~~December, 1998.~~ ^{January 1999}

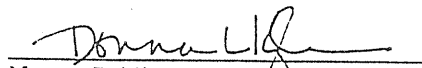
Incorporator:


Ramon M. Escure, Esq.
226-228 West Colorado, Second Floor
P. O. Box 2542
Telluride, CO 81435
(303) 728-6116

STATE OF COLORADO)
) ss
COUNTY OF SAN MIGUEL)

Subscribed and sworn to before me this 13th day of ~~December, 1998,~~ ^{January 1999} by Ramon M. Escure, Esq.
My commission expires:

September 6, 2000.


Notary Public

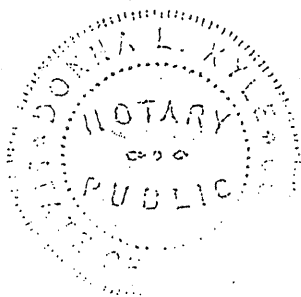


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Exhibit A - Description of Real Estate Attached

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