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By *Gay Cappis*
Gay Cappis-Recorder

**CONDOMINIUM DECLARATION
for
WESTERMERE CONDOMINIUM**

ARTICLE I. INTRODUCTION

1.1 Declarant. Westermere Development Partners Limited Partnership, an Illinois limited partnership, hereinafter referred to as "declarant", is the owner of certain real property located in San Miguel County, Colorado, legally described in paragraph 1.2 herein.

1.2 The Real Property. The real property owned by the declarant which is subject to this declaration is legally described as follows:

Lot 69R-1, according to the Replat of Lot 69R-1 and Lot 69R-2, Telluride Mountain Village, Filing 1, recorded September 5, 1991, in Plat Book 1, at page 1164, San Miguel County, Colorado

hereinafter referred to as the "property".

1.3 Intention of Declarant. Declarant intends to subdivide the property into condominiums and to create a condominium pursuant to the Condominium Ownership Act of the State of Colorado (C.R.S. sections 38-33-101 et seq.). To define the rights, powers, duties, conditions and limitations of condominium ownership in the Westermere Condominium, declarant hereby executes this Condominium Declaration for Westermere Condominium.

1.4 Compliance with Applicable Laws. Declarant has created this condominium in full compliance with applicable local, state and federal zoning and other laws and regulations.

1.5 Name of Condominium. The name of this condominium shall be the Westermere Condominium.

1.6 Maximum Number of Units. The maximum number of condominium units shall be twenty-five (25), achieved only by further subdividing existing residential unit 010 and commercial units 100 and 101.

ARTICLE II. DECLARATION

Declarant hereby declares that the entire property and every part thereof is and shall be owned, held, conveyed, transferred, encumbered, used, leased, occupied, constructed and modified

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subject to the covenants, conditions and restrictions of this declaration, which are hereby declared to be in furtherance of a general plan of condominium ownership. Each and every provision of this declaration shall: (1) be deemed incorporated in every deed, lease or other instrument by which any right, title or interest in the property or any portion thereof is transferred, whether voluntarily or by operation of law; (2) be a personal covenant and obligation of every owner, lessee or any other person or entity owning or acquiring any right, title or interest in the property or any portion thereof; (3) be deemed to run with the land as a covenant running with the land and as an equitable servitude and shall constitute a benefit and burden to declarant, its successors and assigns and to all persons hereafter acquiring or owning any interest in the property or any portion thereof, however such interest may be acquired.

ARTICLE III. DEFINITIONS.

3.1 Affirmative Vote of a Majority of the Members. The affirmative vote of a majority of the members shall be achieved on any particular matter if, and only if, members representing in excess of 50% of the voting rights represented at the meeting or otherwise voting on the matter, vote in favor of the matter. Unless otherwise specified herein, an affirmative vote of a majority of the members shall be sufficient to decide any matter.

3.2 Articles of Incorporation. "Articles of incorporation" shall mean the articles of incorporation of Westermere Condominium Owners Association, Inc.

3.3 Association. "Association" or "corporation" means the Colorado nonprofit corporation formed by declarant to administer this condominium property, the members of which shall be all of the owners of condominium units. The official name of the association shall be: Westermere Condominium Owners Association, Inc. The board of directors of the association shall be elected by the members and shall manage the affairs of the association.

3.4 Board of Directors. "Board of directors" or "board" shall mean the governing board of the association elected pursuant to the applicable provisions of the declaration, articles of incorporation and by-laws and subject to the laws of the state of Colorado.

3.5 Building. "Building" means any building containing units as shown on the condominium map.

3.6 By-Laws. "By-laws" means the duly adopted by-laws of the association.

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3.7 Commercial Unit. "Commercial unit" shall mean a condominium unit which may be used for commercial purposes in accordance with the general declaration for the Telluride Mountain Village, as amended and supplemented, and the San Miguel County Land Use Code. The units which may be used for commercial purposes are Units 100 and 101. The boundaries of these units is shown on the condominium map.

3.8 Common Elements. "Common elements" or "general common elements" means all the property except the condominium units. The common elements include the improvements which are, or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair, or safety of the building and the units therein including but not limited to the following: (i) all the property which is not located within a unit as shown on the condominium map including specifically the air space above and below the units and the land on which the building is located; (ii) all foundations, columns, girders, beams and supports of the building; (iii) the exterior walls, to the undecorated and/or unfinished interior surfaces, thereof, the main or bearing walls of the building, the main or bearing subflooring and the roof of the building; (iv) any and all utility, service and maintenance rooms, space, fixtures, apparatus, conduits, wires, installations and central facilities or improvements for power, light, gas, telephone, television, hot and cold water, heating, refrigeration, air conditioning, chutes, ducts, flues, incineration or similar utilities which are provided for the service, safety, or maintenance of the units.

3.9 Common Expenses. "Common expenses" shall mean and include each of the following: (i) all sums lawfully assessed against the owners and their units by the association; (ii) expenses of administration, management, common utility service, maintenance, repair replacement of the common elements located within or on the property; (iii) expenses declared common expenses by provisions of this declaration, the by-laws or pursuant thereto; (iv) expense of snow removal and maintenance of public or private roadways, walkways or other areas within and/or adjacent to the property and necessary and/or convenient to the property or parts thereof; (v) expenses agreed upon as common expenses by a vote of the owners as provided herein. "Common expenses" does not include expenses arising out of the use, maintenance, repair or improvement of limited common elements.

3.10 Condominium Map. "Condominium map" means the condominium map or plat, including any supplements or amendments thereto, of the property, filed or to be filed in the official records of the

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County of San Miguel, State of Colorado, showing the location of the building(s) with respect to the boundaries of the property, the boundaries of each unit, together with unit numbers identifying the units, including horizontal and vertical locations and dimensions of the building, the units, the common elements, limited common elements and such other information as may be included thereon in the discretion of the declarant pursuant to the terms of the Colorado Condominium Ownership Act.

3.11 Condominium Unit or Unit. "Condominium Unit" or "Unit" means the individual air space within the interior unfinished surfaces of the perimeter walls, floors, ceilings, closed windows and doors as shown on the condominium map to be recorded, together with all the fixtures and improvements contained therein but not including any of the structural components of the building, if any, located within such units, such as bearing walls, floors, halls, corridors, lobbies, stairways, stairs, fire escapes, entrances, exits, roofs (except for the interior surface thereof, if a perimeter wall, floor or ceiling), foundations, columns, girders, beams, supports, shafts, installations or improvements for central utilities services such as power, light, gas and heating, elevators and other fixtures or improvements which are part of or serve more than one unit and, in general, all improvements installed for common use in the building. "Unit" also includes the undivided interest in and to the general common elements appurtenant to each unit and the right to use of limited common elements appurtenant to such unit.

3.12 Declaration. "Declaration" shall mean this condominium declaration for Westermere Condominium.

3.13 Limited Common Elements. "Limited common elements" means those common elements designated as such on the condominium map or in the declaration which are reserved for use by fewer than all the owners of condominium units.

3.14 Mortgage. "Mortgage" means any mortgage, deed of trust, or any other security instrument which encumbers a condominium unit or any part thereof.

3.15 Mortgagee. "Mortgagee" means any person named as the mortgagee or beneficiary under any mortgage or deed of trust which encumbers a condominium unit or any part thereof.

3.16 Owner. "Owner" means any person owning a condominium unit; the term "owner" shall not refer to any mortgagee, as herein defined, unless such mortgagee has acquired title pursuant to

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foreclosure or by any conveyance in lieu of foreclosure.

3.17 Parking Space. "Parking Space" means a portion of the property designated on the condominium map as such and to be used for the parking of motor vehicles.

3.18 Parking Space Owner. "Parking space owner" shall mean the person who owns or has the right, by lease agreement with the owner, to use a parking space, including the declarant, unit owners, third parties or the association.

3.19 Person. "Person" shall mean any individual or any legal entity, including but not limited to a corporation, trust, partnership, limited liability company, which may hold title to real property in the State of Colorado.

3.20 Property. "Property" shall mean the real property described in section 1.2 of the declaration.

3.21 Residential Unit. "Residential unit" means a unit to be used as a residence in accordance with the general declaration for the Telluride Mountain Village, as amended and supplemented, and the San Miguel County Land Use Code. The units which may used for residential purposes are: 010, 210, 211, 212, 310, 311, 312, 410, 411 and 412. The boundaries of these units is shown on the condominium map.

ARTICLE IV. CREATION OF CONDOMINIUM, CONVEYANCE AND DESCRIPTION OF UNITS

4.1 Division of Property into Condominium Units. The property is hereby divided into condominium units, each consisting of a separate, fee simple absolute estate in a designated unit, together with the appurtenant, fractional or percentage, undivided fee simple interest in and to the common elements which is shown on Exhibit 1 and together with the right to use, to the exclusion of others, any limited common elements designated herein and/or on the map as appurtenant to the unit in question.

4.2 Recording of Condominium Map. The condominium map and all supplements and amendments thereto shall be filed for record in the official records of the County Clerk and Recorder of San Miguel County, Colorado. Upon the affirmative vote of majority of members and holders of first mortgages encumbering units, the fractional interest in common elements appurtenant to which is at least 51%, the condominium map may be amended so as to conform the map to the actual location of any of the constructed improvements;

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and to establish, vacate or relocate outside the building, utility easements, access easements or parking spaces, although parking spaces shall not be moved without the consent of the owner thereof and the mortgagee, if any, of such space.

4.3 Conveyance and Description of Condominium Unit. Every contract for the purchase and sale of a condominium unit written prior to the filing for record of the condominium map shall be effective and binding on the parties thereto if it describes a condominium unit by its identifying unit number, and states that such condominium unit will have an undivided interest in the common elements appurtenant thereto, as such condominium unit and appurtenant common elements shall be designated on the condominium map to be filed for record in San Miguel County, Colorado, and such description shall conclusively be presumed to relate to the corresponding unit reflected thereon.

After the condominium map shall have been filed for record in San Miguel County, Colorado, every contract for the purchase and sale of a condominium unit and every other instrument affecting title to a condominium unit may describe that condominium unit by the number shown on the condominium map with the appropriate reference to the condominium map and to this declaration, as each shall appear on the records of the County Clerk and Recorder of San Miguel County, Colorado as follows:

Condominium Unit No. ____, as shown on the Condominium Map for the Westermere Condominium recorded _____, 1991 in the records of the County Clerk and Recorder of San Miguel County, Colorado, at Plat Book _____, Page _____, and as defined and as described in that Condominium Declaration for Westermere Condominium recorded _____, 1991 at Book ____ and Pages ____ in the records of the County Clerk and Recorder of San Miguel County, Colorado.

Such description shall be construed to describe the unit, together with the appurtenant undivided interest in the common elements, and to incorporate all the rights incident to ownership of a condominium unit and all the limitation on such ownership as described in this declaration.

ARTICLE V. PROPERTY RIGHTS AND RESTRICTIVE COVENANTS.

5.1 Estates of an Owner. Each owner shall own his unit in fee simple absolute and appurtenant to each unit shall be an undivided fractional fee simple interest in the common elements, as set forth on Exhibit 1 attached hereto.

5.2 Right to Combine Condominium Units. Unit owners shall

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have the right to combine adjacent units provided, however, that condominium units shall not be physically combined without first obtaining written permission of the association, hereafter defined, which permission shall not be unreasonably withheld or delayed. Unit owners may provide for physical access between units only with prior written permission of the association, which shall not be unreasonably withheld or delayed. Such combination or physical access shall not affect the designation nor prevent separate ownership of such units in the future. Any walls or other structural separation between combined units, or any space which would be occupied by such structural separations shall not alter the bearing capabilities of such structures and shall not adversely affect other owners. The combination of units shall not be effective for any purpose until a supplemental condominium map shall be filed and recorded respectively in the Office of the Clerk and Recorder of San Miguel County, Colorado. All costs of the preparation and filing of supplemental condominium maps shall be paid by the owner combining the units.

5.3 Limited Common Elements. A portion of the common elements, including but not limited to, balconies, decks and such other areas as are designated as limited common elements on the condominium map, is set aside and reserved for the exclusive use, management, control and operation of and by the individual owners of the units to which the limited common elements are appurtenant as shown on the condominium map. Owners of units which are not appurtenant to such common elements shall have no right to use or possess such limited common elements.

5.4 Title to Units. Title to a condominium unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Colorado.

5.5 Inseparability of Units and Appurtenant Elements. No part of a unit or any interest therein may be separated or transferred separately from the undivided interest in the general and limited common elements appurtenant to such unit during the period of condominium ownership described herein, so that each unit shall be conveyed, devised, encumbered, hypothecated, transferred, whether voluntarily or by operation of law, only as a complete condominium unit. Every transfer, encumbrance, conveyance, hypothecation or other disposition of a condominium unit shall include all appurtenant rights created by law or by this declaration.

Notwithstanding anything to the contrary herein, owners of parking spaces may lease or sell those spaces separately from the condominium unit to which they may be appurtenant.

5.6 Partition not Permitted. The common elements shall be owned in common by all the owners of condominium units, and no

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owner may bring or maintain any action for partition thereof. No unit may be partitioned from the general or limited common elements to which it is appurtenant.

5.7 Ownership of Common Elements. Subject to the covenants, conditions and restrictions contained in this declaration, each owner shall have an undivided percentage ownership interest in the common elements as shown on Exhibit 1, attached hereto, and shall have the nonexclusive right to use and enjoy the common elements.

5.8 Owners' Rights with Respect to Interiors of Units. Each owner shall have the exclusive right to paint, repaint, tile, carpet, drape, wax, paper or otherwise finish or refinish and decorate the interior surface of the walls, ceilings, floors, and doors forming the boundaries of his unit so long as the structural integrity of the common elements not affected.

5.9 Easements for Encroachments. If any part of the common elements encroaches or shall hereafter encroach upon a unit or units, an easement for such encroachment and for the maintenance of the same shall be deemed granted by this declaration. If any part of a unit encroaches or shall hereafter encroach upon the common elements, or upon an adjoining unit or units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the common elements or the units. If any part of the utilities such as gas or electric metering devices shall encroach upon the limited common elements or units, an easement for such encroachment and for the maintenance of the same shall be deemed granted by this declaration. Encroachments referred to herein include, but are not limited to, encroachments caused by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the property or any part thereof.

5.10 Easements of Access for Repair, Maintenance and Emergencies. The association shall have an easement to, into, through, over, under and above each unit and the common elements as necessary to make repairs or improvements to the common elements and to address emergency situations. Absent an emergency, such easement may only be exercised after reasonable notice to the owner or occupant of the unit affected and during normal business hours.

5.11 Owner's Right to Ingress and Egress and Support. Each owner shall have the right to ingress and egress over, upon and across the common elements necessary for normal access to his unit and shall have the right to the horizontal and lateral support of his unit, and such rights shall be appurtenant to and pass with title to each condominium unit.

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5.12 Association's Right to Use of Common Elements. The association shall have a nonexclusive easement to make such use of the common elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this declaration.

5.13 Easements Deemed Granted. All conveyances of condominium units hereafter made, whether by the declarant, or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to section 5.9 through 5.12, inclusive, above, even though no specific reference to such easements or to those sections appear in any such conveyance.

5.14 Separate Taxation of Units. As soon as possible after the condominium map shall have been filed for record in San Miguel County, Colorado, declarant shall deliver a written notice to the Assessor of San Miguel County, Colorado, as provided by law, setting forth the descriptions of the condominium units so that each unit shall be assessed separately thereafter for all taxes, assessments and other charges of the State of Colorado or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. No forfeiture or sale of any condominium unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other condominium unit.

5.15 Maintenance of Units and Limited Common Elements. Each owner shall keep the interior of his unit and the limited common elements appurtenant to such unit, including without limitation, interior walls, windows, glass, ceilings, floors and permanent fixtures, in a clean, sanitary and attractive condition, and in a good state of repair free from the accumulation of trash or debris and deterioration.

5.16 Use of Units Governed by General Declaration for Telluride Mountain Village. Use of all units shall be restricted as provided in the General Declaration for the Telluride Mountain Village, San Miguel County, Colorado, as amended and supplemented.

5.17 Prohibition of Damage and Certain Activities. No owner shall undertake any work of improvement, structural repair or alteration which would jeopardize the soundness or safety of the building or any unit thereof or which would reduce the value thereof or impair an easement thereon.

5.18 Restrictions on Animals. Animals may be kept in any unit if such keeping is in compliance with all applicable state and local animal control laws, the general declaration for Telluride Mountain Village, as amended and supplemented, and such reasonable rules and regulations promulgated by the association. All owners

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shall be responsible for all damage caused by his animal(s). No animal shall be allowed to remain tied or chained to any part of the common elements and all owners shall be responsible for the immediate cleaning of any waste or other materials left by his animal.

5.19 Structural Alterations. No structural alterations to any unit shall be made, and no plumbing, electrical or similar work within the common elements shall be done by any owner without the prior written consent of the association.

5.20 Compliance with Covenants, Conditions and Restrictions of this Declaration and Articles of Incorporation and Bylaws of the Association. Each owner, his agents, tenants and invitees shall comply with the provisions of this declaration, the articles of incorporation and bylaws of the association, and the rules and regulations of the association adopted pursuant thereto as the same may be lawfully amended from time to time. The association or any owner of any unit may bring an action to enforce the provisions hereof or to enjoin any violation hereof and the prevailing party in such action shall be entitled to recover reasonable attorney's fees, including fees and costs attributable to associates, paralegals, and clerical staff.

5.21 Mechanic's Liens. No labor performed or materials furnished for use in connection with any unit with the consent or at the request of any owner or his agent shall create any rights to file a statement of mechanic's lien against the unit of any other owner not expressly consenting to or requesting the same or against any interest in the common elements except as to the undivided interest therein appurtenant to the unit of the owner for whom such labor shall have been performed and such materials shall have been furnished. Each owner shall defend, indemnify and hold harmless all other owners and mortgagees from and against liability, expenses, including reasonable attorney's fees, and loss arising from the claim of any lien against a condominium unit, or any part thereof, of any other owner for labor performed on, or for materials furnished to, the first owner's unit and contracted for by, through or under such owner. At the written request of any owner, the association shall enforce such indemnity by collection from the owner of the unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, and obtaining discharge of the lien or by other appropriate means adequate to protect the interests of other unit owners who have not requested or consented to any labor or materials furnished to their units. Such collection shall be made by a special assessment pursuant to Article VII of this declaration. In the alternative, any owner may enforce this paragraph 5.21 against any other owner.

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5.22 Violations of Law. Owners, their agents, tenants and guests shall take no action with respect to any of the property or any portion thereof, including their units and limited common elements of such units, which constitutes a violation of any law nor shall owners, their agents, tenants and guests use, occupy, or modify the property or any portion thereof, including their units and limited common elements of such units, in a manner which is in violation of any law.

5.23 Prohibition of Activities Resulting in Cancellation of Insurance. No owner, tenant, agent, or guest of any owner shall do anything or cause anything to be kept in or about any unit or any part of the property which might reasonably result in an increase in the premiums for insurance on the property or which might reasonably cause cancellation of such insurance without the prior written consent of the association.

5.24 Prohibition of Offensive or Hazardous Activities. No noxious or offensive activities shall be carried on in any unit or on any part of the property nor shall anything be done or placed on or in any part of the property which is or may become a nuisance or cause unreasonable embarrassment, disturbance or annoyance to occupants of the property. No activity shall be conducted on any part of the property or within any unit and no improvement shall be made or constructed within any unit or on any part of the property which would or might be unsafe or hazardous to any person or property. No sound shall be emitted from any unit which is unreasonably loud or annoying. No odor shall be emitted which is noxious or offensive to others.

5.25 No Unsightliness. No unsightliness shall be permitted on or in any part of the property. Without limiting the generality of the foregoing, nothing shall be hung or placed in or upon any of the general common elements, and nothing shall be placed on or in windows or doors of units which are unsightly. The board of directors of the association shall have final authority in determining what is unsightly.

5.26 Restriction on Signs. During the construction and sale phases of development of the property, declarant may erect and maintain such signage on the building and in the common elements as they may deem appropriate and reasonable. Thereafter, no signs or advertising device of any nature shall be erected or maintained on any part of the building or in any of the common elements or within any unit if it can be seen from the common elements without the prior written consent of the association. The association may maintain at least one or more signs of reasonable size, location and form to identify the building. All signs shall be kept in good repair. No sign shall be erected or maintained in violation of zoning or other applicable laws.

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5.27 Parking. No parking has been made available on the property for any units or their owners, their tenants, invitees. Declarant shall be entitled to dedicate parking spaces for use by the general public. If declarant dedicates parking spaces for use by the general public, such parking may be utilized by the general public during reasonable commercial hours.

No part of the property, unless specifically designated by the association therefor, shall be used as a parking, storage, display or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, truck (except light trucks) or recreational vehicle, except as a temporary expedient for loading, delivery or emergency (provided, however, that this restriction shall not restrict trucks or other commercial vehicles from the property which are necessary for the construction or maintenance of the property).

5.28 Declarant's Right to Subdivide Units 100 and 101. Subject to density limitations and the approval of the holder of the first mortgage of such units, declarant, its successors and assigns shall have the right to subdivide Units 100 and 101 into twelve (12) separate units without the prior approval of the association. Unit 100 may be subdivided into a maximum of 3 units and unit 101 may be subdivided into a maximum of 9 units. To accomplish such subdivision, declarant, its successors or assigns shall file an amendment to this declaration designating the units thereby created, their square footage, percentage ownership interest in the common elements and voting rights in the association. In no event, shall such subdivision of Units 100 and 101 increase the total percentage ownership interest of Units 100 and 101 in the common elements or their voting rights in the association. In addition to filing such an amendment to this declaration, declarant, its successors or assigns shall also record a supplement to the condominium map showing such subdivision and designating such additional units, including: (i) the general common elements and limited common elements appurtenant to such units; (ii) the floor plans and linear dimensions of the interior of each unit; (iii) the elevation of the unfinished interior surfaces of the floors and ceilings of the units as established from a datum plane and the distances between floors and ceilings; and (iv) the designation or number of each unit. Each additional unit created hereunder shall be subject to the same use restrictions as the unit from which they were created. Each unit created as result of subdivision shall be assigned the number of the original unit followed by a letter of the alphabet beginning with the letter "A."

5.29 Declarant's Right to Sell or Lease Parking Spaces. Declarant, its successors and assigns shall have the right to sell

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or lease individual parking spaces to unit owners or any other person.

5.30 Right to Create Fractional Ownership Interests. Declarant, its successors or assigns shall the right to create fractional ownership interests in fee simple in any units owned by declarant, its successors or assigns, subject to the approval of lender which has provided construction financing to declarant, provided, however, no such approval need be obtained after any construction loans have been paid in full.

5.31 Unit Owners to Maintain Liability Insurance. Each unit owner shall secure and maintain liability coverage of at least \$100,000.00 naming the association as an additional insured under the policy. Proof of such insurance shall be provided to the association.

5.32 Limitations on Additional Liens. Except for mechanic's, assessment or tax liens, no additional liens may be obtained against the general or limited common elements in which unit owners have a percentage ownership.

ARTICLE VI. THE OWNERS ASSOCIATION.

6.1 Creation of Non-Profit Corporation. Declarant shall organize a non-profit corporation to act as the owner's association and create bylaws for the governance of this corporation. The name of this corporation shall be Westermere Condominiums Owners Association, Inc.

6.2 Membership. Every owner shall be a member of the association. There shall only be one membership for each unit. If title to a condominium unit is held by more than one person, the membership related to that unit shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which the title to the condominium unit is held. No person or entity other than an owner may be a member of the association and membership in the association may not be transferred separately from the unit itself, provided, however, that the rights of membership may be assigned to a mortgagee as further security for a loan secured by a lien on a unit.

6.3 Voting Rights. The association shall have one class of voting membership. Only one natural person shall exercise the voting rights for any one condominium unit at any meeting of the members. If more than one person owns the unit, the co-owners shall delegate in writing to one person the right to vote for such owners and the owners shall notify the association of such delegation. In the absence of such delegation and notice to the association, the association shall not be obligated to recognize the vote of any

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joint owner of any unit. Each unit shall have the number of votes set forth on Exhibit 1, attached hereto.

6.4 Members' Right to Inspect Books and Records. Members of the association shall have the right to inspect the books and records of the association on reasonable notice during normal business hours.

6.5 Bylaws to Govern Association. The board of directors is directed to adopt bylaws to govern the association. The bylaws shall provide for the election and removal of directors and officers, meeting of members and such other matters as are appropriately included in the bylaws of a non-profit corporation.

6.6 Board of Directors. The association shall be managed by a board of directors. The board of directors shall consist of at least three and no more than five directors elected by the members of the association.

6.6.1 Management of the Association. Subject to the provisions of this declaration, the articles of incorporation and the bylaws, the board of directors shall manage the association and its affairs.

6.6.2 Indemnification of Directors, Officers, Employees, or Agents. (1) as used in this section:

(a) "Expenses" includes attorney fees.

(b) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expense incurred with respect to a proceeding.

(c) "Official capacity", when used with respect to a director or officer means the office of director or officer of the owners' association and, when used with respect to a person other than an officer or director, means the employment or agency relationship undertaken by the employee or agent on behalf of the association.

(d) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(e) "Proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

(f) "Director" means an person who is or was a director of the corporation. "Director" includes, unless the context otherwise

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requires, the estate or personal representative of a director. "Officer" means a person who is or was an officer of the corporation. "Officer" includes, unless the context otherwise requires, the estate or personal representative of an officer.

(2) (a) Except as provided in paragraph (d) of this subsection (2), the corporation shall indemnify against liability incurred in any proceeding an individual made a party to the proceeding because he is or was a manager if:

(I) He conducted himself in good faith;

(II) He reasonably believed:

(A) In the case of conduct in his official capacity with the corporation, that his conduct was in the corporation's best interests; or

(B) In all other cases, that his conduct was at least not opposed to the corporation's best interests; and

(III) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) The termination of any proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, is not of itself determinative that the individual did not meet the standard of conduct set forth in paragraph (a) of this subsection (2).

(c) The corporation shall not indemnify a director or officer under this subsection (2) either:

(I) In connection with a proceeding by or in the right of the corporation in which the director or officer was adjudged liable to the corporation; or

(II) In connection with any proceeding charging improper personal benefit to the director or officer, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(d) Indemnification permitted under this subsection (2) in connection with a proceeding by or in the right of a corporation is limited to reasonable expenses incurred in connection with the proceeding.

(3) The corporation shall indemnify a director or officer of the corporation who was wholly successful, on the merits or

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otherwise, in defense of any proceeding to which he was a party, against reasonable expenses incurred by him in connection with the proceeding.

(4) A director or officer who is or was a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the following manner:

(a) If it determines the director or officer is entitled to mandatory indemnification under subsection (3) of this section, the court shall order indemnification, in which case the court shall also order the corporation to pay the director or officer's reasonable expenses incurred to obtain court-ordered indemnification.

(b) If it determines that the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in paragraph (a) of subsection (2) of this section, the court may order such indemnification as the court deems proper; except that the indemnification with respect to any proceeding in which liability shall have been adjudged in the circumstances described in paragraph (c) of subsection (2) of this section is limited to reasonable expenses incurred.

(5)(a) The corporation shall not indemnify a director or officer under subsection (2) of this section unless authorized in the specific case after a determination has been made that indemnification of the director or officer is permissible in the circumstances because he has met the standard of conduct set forth in paragraph (a) of said subsection (2).

(b) The determination required to be made by paragraph (a) of this subsection (5) shall be made by a majority of votes cast by members of the corporation; except that such vote shall not include members who are parties to the proceedings.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible.

(6)(a) The corporation shall pay for or reimburse the reasonable expenses incurred by a director or officer who is a party to a proceeding in advance of the final disposition of the proceeding if:

(I) The director or officer furnishes the corporation a

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written affirmation of his good-faith belief that he has met the standard of conduct described in subparagraph (I) of paragraph (a) of subsection (2) of this section;

(II) The director or officer furnishes the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is determined that he did not meet such standard of conduct; and

(III) A determination is made that the facts then known to those making the determination would not preclude indemnification under this subsection (6).

(b) The undertaking required by subparagraph (II) of paragraph (a) of this subsection (6) shall be an unlimited general obligation of the director or officer but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this subsection (6) shall be made in the manner specified in subsection (5) of this section.

(7)(a) The provisions concerning the corporation's indemnification of or advance for expenses to directors or officers contained in this operating agreement, shall be valid only if and to the extent these provisions are consistent with C.R.S. section 7-3-101.5.

(b) The corporation shall pay or reimburse expenses incurred by a director or officer in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent in the proceeding.

(8)(a) The corporation shall indemnify and advance expenses pursuant to subsection (6) of this section to an employee or agent of the corporation who is not a director or officer to the same extent as a director or officer; and

(b) The corporation may indemnify and advance expenses to an employee or agent of the corporation who is not a director or officer to a greater extent if consistent with law.

(9) The corporation may purchase and maintain insurance on behalf of a person who is or was a director or officer, employee, fiduciary, or agent of the corporation or who, while a director or officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as director or officer, officer, partner, trustee, employee, fiduciary, or agent of any other foreign or domestic corporation or any corporation, partnership, joint venture, trust, other enterprise, or employee

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benefit plan against any liability asserted against or incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section. Any such insurance may be procured from any insurance company designated by the members of the corporation, whether such insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere.

(10) Any indemnification of or advance of expenses to a director or officer in accordance with this section, if arising out of a proceeding by or on behalf of the corporation, shall be reported in writing to the members with or before the notice of the next members meeting.

ARTICLE VII. POWERS AND DUTIES OF THE ASSOCIATION

7.1 Maintenance and Repair of the Common Elements. The association shall be responsible for the maintenance, repair and improvements of the common elements of the entire property. The association shall have an easement through, into, over, under and across any and all units to the extent necessary to fulfill its duty under this section 7.1.

7.2 Financial Matters. The association shall establish and maintain sound financial policies and procedures and comply with all applicable tax laws.

7.3 Budget, Reserve Fund and Assessments. The association shall prepare annual budgets for the commercial and residential units, establish a reserve fund for maintenance, repairs and emergencies and establish and levy assessments against each unit to pay for usual and customary expenses of the association, to pay for professional services and for repairs, maintenance and improvements of the common elements.

7.4 Legal Actions. The association may bring any action in a court of competent jurisdiction to enforce any provision of this declaration, to enjoin any violation of its terms and to defend actions brought against the association. The prevailing party in any such action brought to enforce the provisions of this declaration or to enjoin a violation hereof shall be entitled to reasonable attorney's fees and actual litigation costs incurred.

7.5 Professional Services. The association may retain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, and may retain and pay for such other professional services as the association shall determine to be necessary or desirable for the proper operation of the property.

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7.6 Acquisition of Personal Property for Common Use. The association may acquire and hold for the use and benefit of owners tangible and intangible personal property and may dispose of such property by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the owners in accordance with the interests set forth on Exhibit 1. Such interests shall not be transferable except with the transfer of a condominium unit. A transfer of a condominium unit shall transfer the ownership of the transferor's beneficial interest in such property without any reference thereto. Each owner of a unit and his invitees may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other owners of units. The transfer of title to a condominium unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed condominium unit.

7.7 Rules and Regulations. The association may make and owners, their agents, employees, and invitees shall comply with reasonable rules and regulations governing the use of the units, common elements and personal property for common use, which rules and regulations shall be consistent with the rights and duties established in this declaration.

7.8 Suspension of Voting Rights. The association may suspend any owner's voting rights in the association during any period or periods during which such owner fails to comply with any obligation of such owner under this declaration. The association may also take judicial action against any owner to enforce compliance with such obligations or to obtain damages for noncompliance, all to the extent permitted by law. The association may exercise any right or privilege given to it expressly by this declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

7.9 Architectural Control. No building, fence, wall, sign, unit or other structure shall be changed, commenced, placed, erected or maintained until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the board of directors of the association, or by an architectural committee composed of three (3) or more representatives appointed by the board. In the event the board, or its designated committee, fails to approve or disapprove such design and location with thirty (30) days after the plans and specifications have been submitted to it, approval will not be required and this section will be deemed to have been fully

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complied with. In addition, owners and their units are subject to design review as provided in the General Declaration for the Telluride Mountain Village, as amended and supplemented.

7.10 Delegation by Association. Except as otherwise expressly stated herein, any of the rights, interest, duties, functions and obligations of the association set forth herein or reserved herein may be transferred, assigned, or delegated to any other person or entity; provided, however, that no such transfer, assignment or delegation shall relieve the association of any of the obligations set forth herein. Any such transfer, assignment or delegation shall not revoke or change any of the rights or obligations of any owners as set forth herein. Such delegations may be to a director or officer of the corporation, or to any owner, or management company, provided that any such delegation to a director or officer of the corporation or owner shall be revocable by the association.

7.11 Right to Grant Utility Easements through Common Elements. The association shall have the right to grant easements for utilities serving the property and the building over, upon, under or through any portion of the common elements, and is hereby irrevocably appointed as attorney-in-fact for each owner for such purpose.

7.12 Landscaping. Any landscaping of the common elements shall be maintained by the association. Landscaping shall be a type complementary to the character of the condominium units.

7.13 Implied Rights. The association shall have and may exercise any right or privilege given to it expressly by this declaration, or reasonably to be implied from the provisions of this declaration, or given or implied by law or which may be necessary and proper to fulfill its duties, obligations, rights or privileges.

7.14 Limits on Authority of Association. The association shall have no authority to authorize any single expenditure exceeding \$2,000, or aggregate expenditures which total in excess of \$5,000 in any one calendar year without prior approval of an affirmative vote of the majority of members of the association.

ARTICLE VIII. INSURANCE

8.1 Types of Insurance. The association shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Colorado and which have a Best quality rating of "A" and a size rating of not less than XIV. The provisions of this section shall not be construed to limit the power or authority of the association to obtain and maintain insurance coverage, in addition to any

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insurance coverage required hereunder, in such amounts and in such forms as the association may deem appropriate from time to time.

8.1.1 Property Insurance. The association shall obtain insurance on the common elements in such amounts as shall provide for full replacement thereof in the event of damage or destruction resulting from the perils against which such insurance is obtained, all in the manner in which a corporation owning a similar commercial building in the vicinity of the property would in the exercise of prudent business judgment, obtain such insurance. Such insurance shall include fire and extended coverage, flood (but if the property is located in a flood plain area), vandalism and malicious mischief, and such other risks and hazards against which the association shall deem it appropriate to provide insurance protection. The association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the association's opinion are consistent with good business practice.

8.1.2 Liability Insurance. The association shall purchase broad form comprehensive general liability coverage of at least \$1,000,000 and in such forms as it deems advisable. Coverage shall be written on an occurrence basis to the extent such coverage is reasonably available and may include, without limitation, liability for personal injury, water damage, contractual obligations, and activities in connection with the ownership, operation, maintenance and other use of the property and its common elements. If automobiles are operated on behalf of the association, separate automobile liability insurance with coverage of at least \$1,000,000 shall be purchased and maintained by the association.

8.1.3 Worker's Compensation and Employer's Liability Insurance. The association may purchase worker's compensation and employer's liability insurance and all other similar insurance in respect of employees of the association in the amounts and in the forms now or hereafter required by law as it deems necessary.

8.1.4 Other Insurance. The association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the property and its common elements including any personal property of the association located thereon. The association shall be under no obligation, however, to purchase or maintain insurance covering personal property of any unit owner, his tenants or invitees, third party liability as respects the acts of a unit owner, or for loss of income of any unit owner or its tenants.

8.2 Form of Policy. The property insurance obtained by the association shall be carried in a form or forms naming the association as the insured, as trustee for the owners. Such policy

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or policies also shall provide that it or they cannot be canceled by either the insured or the insurance company until after ten (10) days prior written notice is first given to each owner, and to each mortgagee. On request, the association shall furnish each owner a true copy of such policy or certificate identifying the interest of the owner. All policies of insurance shall be invalidated or suspended only in respect to the interest of any particular owner guilty of breach of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that owner's interest, or who permits or fails to prevent the happening of an event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall provide further that the insurance under any such policy as to the interest of all other insured owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Liability insurance shall name the association the insured, as trustee for the owners and for declarant, whether or not it is an owner, and shall protect each owner and declarant against liability for acts of the association in connection with the ownership, operation, maintenance or other use of the property or its common elements.

8.3 Insurance Proceeds. Subject to the prior approval of owners representing 75% or more of the voting rights of the association, including units owned by the association, and the holders of first mortgages encumbering units, the fractional interest in common elements appurtenant to which is at least 75%, the association shall have the power to negotiate, compromise and settle insurance claims and to receive the proceeds of any property insurance payments received under policies obtained by it and maintained by it pursuant to this section. The association shall use the insurance proceeds to repair, restore or reconstruct those portions of the property and its common elements which have been damaged and may contract for such purposes. To the extent that reconstruction is not required herein and there is a determination that the property and its common elements shall not be rebuilt, the proceeds shall be distributed to each of the owners thereof in accordance with their respective interests therein, with joint payments being made to the owner and the mortgagees where the association has written notice of the existence of a mortgage.

ARTICLE IX. ASSESSMENTS.

9.1 Right of Association to Assess Condominium Owners. The association shall have the right to assess condominium owners to promote the health, safety and welfare of the project and to

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maintain, repair or improve the common elements, to establish a reserve fund for the repair or replacement of the common elements and to finance those operations of the association as set forth in its annual budgets.

9.2 Separate Assessment of Residential and Commercial Units. The association shall prepare budgets for both the residential and commercial units and shall collectively assess such units separately based upon the costs and expenses reasonably allocable to such units.

9.3 Agreement to Pay Assessment. Declarant, for each unit owned by it within the property, and as the owner of the property and every part thereof, hereby covenants, and each owner and mortgagee of any unit, by acceptance of a deed or other instrument creating his interest in the unit, whether it be so expressed in the instrument, shall be deemed to covenant and agree to pay to the association monthly and other assessments made by the association for the purposes provided in this declaration, and special assessments for capital improvements and other matters as provided in this declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided in this article.

9.4 Regular Assessments.

9.4.1 Amount of Regular Assessments. The regular assessments against all units shall be based upon advance estimates by the association to provide for the payment of all estimated expenses arising out of or connected with the performance of the association's duties. The estimated expenses may include but are not limited to management fees and expenses; insurance premiums; maintenance, improvement and repair of common elements; snow removal; payment for services rendered to the association; water and sewer service and trash removal; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; common utilities; and any other expenses and liabilities which may be incurred by the association for the benefit of the owners under or by reason of this declaration. For its first year of operation, the association shall estimate its annual expenses based on the experience of other mixed use condominiums of similar size, location and features. Thereafter, the association shall estimate its annual expenses based on its actual expenses. The association shall approve annually the estimated expenses and regular assessments by an affirmative vote of a majority of the members votes cast at the annual meeting in person or by proxy.

9.4.2 List of Services Paid for out of Regular Assessments. Funds generated by regular assessments of units shall

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be used by the association to pay for the following services:

- (1) provision of insurance policies as provided herein;
- (2) lighting of the common elements;
- (3) heating of the common elements;
- (4) snow removal from and landscaping of the common elements;
- (5) accounting and other professional service fees incurred by the association;
- (6) maintenance and repair of the common elements;
- (7) provision of hot water to the residential units.

9.5 Reserve Fund. The association shall allocate a certain portion of the regular assessment, to be determined by the board, to establish a reserve fund for the repair, construction, replacement and improvement of common elements of at least \$25,000, though this amount may be increased by the board.

9.6 Apportionment of Expenses. Any expenses assessed pursuant hereto against any owner shall be assessed to all owners on a pro rata basis according to their percentage interest in the common elements as set forth on Exhibit 1 hereto. Notwithstanding anything to the contrary herein, the association shall have the right to prorate expenses related to the common elements based upon actual use and consumption by individual owner(s) if assessment based on Exhibit 1 is unfair. Assessments for expenses relating to limited common elements shall be allocated to the units to which such limited common elements are appurtenant.

9.7 Notice of Regular Assessments and Time for Payment. Assessments may be made on a calendar month, quarter or year basis as the association may select. The association shall give written notice to each owner as to the amount of the assessment with respect to his condominium unit within thirty (30) days of the determination and levy of such assessment. Such assessment shall be due and payable on or before ten (10) days following receipt of the notice of assessment or, in the event the assessment shall be paid monthly, on or before the 10th day of each month. Each assessment shall bear interest at the lower of the highest rate permissible under Colorado law or eighteen percent (18%) per annum from the date it becomes due and payable if not paid within ten (10) days after such date. Failure of the association to give timely notice of any assessment as provided herein shall not affect the liability of the owner of any condominium unit for such assessment, but the date when payment shall become due in such a

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case shall be ten (10) days after such notice shall have been given.

9.8 Special Assessments. In addition to the regular assessments authorized by this article, the association may levy a special assessment, payable over such a period as the association may determine, for the purposes of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the property, the common elements or any part thereof, or for any other expense incurred or to be incurred as provided in this declaration. This section shall not be construed as an independent source of authority for the association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other sections hereof which shall make specific reference to this article. Any amounts assessed pursuant hereto against all units and owners shall be assessed against all units on a prorata basis according to the percentage interests in the common elements as set forth in Exhibit 1 attached hereto. Any amounts assessed pursuant hereto against less than all the units and owners shall be assessed to and paid in full by such units and owners pro rata in accordance with the relative percentage interests of such owners and units in the common elements as set forth in Exhibit 1 attached hereto. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the owners, and no payment shall be due less than thirty days after such notice shall have been given. A special assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. The association shall approve any special assessment by vote of at least seventy-five per cent (75%) of the membership votes represented in person or by proxy at a meeting of the association called for the purpose of approving a special assessment. In addition, any such special assessments shall be subject to the prior approval of the holders of first mortgages encumbering units, the fractional interest in common elements appurtenant to which is at least 75%.

9.9 Lien for Assessments. All sums assessed to any condominium unit pursuant to this article, together with interest thereon as provided herein, shall be secured by a lien on such condominium unit in favor of the association. Such lien shall be superior to all other liens and encumbrances on such condominium unit, except only for valid tax and special assessment liens on the condominium unit in favor of any governmental taxing authority and the lien of a first mortgage. All other persons acquiring liens on any condominium unit after this declaration shall have been recorded in the official records of the County of San Miguel, State of Colorado shall be deemed to consent that such lien shall be inferior to existing and all future liens for assessments, as

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provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed pursuant to this article, the association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the owner of the condominium unit and the legal description of the condominium unit. Such a notice shall be signed by the association and may be recorded in the office of the County Clerk and Recorder of San Miguel County, Colorado. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the association in the same manner in which mortgages on real property may be foreclosed in Colorado. In any such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses of filing the notice of lien and all reasonable attorney's fees, including fees and costs attributable to associates, paralegals and clerical staff. All such costs and expenses shall be secured by the lien being foreclosed. The owner shall also be required to pay to the association any assessments against the condominium unit which become due during the period of foreclosure. The association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, encumber and otherwise deal with the unit as the owner thereof.

A release of notice of lien shall be executed by the association and recorded in the official records of the County of San Miguel County, Colorado, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien including accrued interest, costs and attorney's fees.

Any mortgagee holding a lien on a condominium unit may pay, but shall not be required to pay, any amounts secured by the lien created by this section, and upon such payment such mortgagee shall be subrogated to all rights of the association with respect to such lien, including priority.

Notwithstanding anything to the contrary herein, any mortgagee who acquires title to a condominium unit through foreclosure or a deed in lieu of foreclosure shall not be liable for assessments which became due and payable prior to the earlier of the date the mortgagee acquired title to or took possession of the condominium unit.

The association may report to any mortgagee of a condominium unit any unpaid assessments remaining unpaid for longer than ninety (90) days after the same shall have become due; provided, however, that such mortgagee first shall have furnished to the association written notice of such mortgage.

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9.10 Personal Obligation of Owner. The amount of any regular or special assessment against any unit shall be the personal obligation of the owner of the unit at the time of the assessment and the personal obligation of any future owner of the unit to the association. The association may bring an action in San Miguel County, Colorado, recover a money judgment for such personal obligation without foreclosing or waiving the lien securing the same. No owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of any of the common elements or by abandonment of his unit. Except for such assessments, no owner shall be liable for the debts or other obligations of the association.

9.11 Statement of Account. Upon written request of any owner or any mortgagee, and payment of a fee not to exceed \$25, prospective mortgagee or prospective purchaser of a condominium unit, the association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such condominium unit, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments of prepaid items, including, but not limited to, an owner's share of prepaid insurance premiums. Unless such request for a statement of account shall be complied with within thirty (30) days, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a mortgagee which acquired its interest subsequent to requesting such statement.

9.12 Statement Regarding Recreational Facilities and Assessments Relating Thereto. There are no major recreational facilities available for use by members of the association, and therefore, no charges or assessments will made for such facilities.

ARTICLE X. DAMAGE OR DESTRUCTION.

10.1 Association as Attorney-in-Fact. Declarant and all owners irrevocably constitute and appoint the association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the property and its common elements upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from declarant or any owner shall constitute appointment of the attorney in fact herein provided.

10.2 General Authority of Association. As attorney, in fact, the association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of a unit owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the

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succeeding subparagraphs means restoring the property to substantially the same condition in which it existed prior to the damage or destruction, with each unit and the common elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance of the association collected shall be available to the association for the purpose of repair or reconstruction unless owners representing at least seventy-five percent (75%) of the votes rights of the association represented in person or by proxy at a meeting of the association called for the purpose of considering this issue and the holders of first mortgages encumbering units, the fractional interest in common elements appurtenant to which is at least 75% agree not to rebuild, in which event the condominium shall be terminated.

10.3 Estimate of Costs. As soon as practicable after an event causing damage to, or destruction of, any part of the property, the association shall obtain reliable and complete estimates of the costs of repair or reconstruction of that part of the property damaged or destroyed.

10.4 Repair or Reconstruction. As soon as practicable after receiving these estimates, the association shall diligently pursue to completion the repair or reconstruction of that part of the property damaged or destroyed. The association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the owners, and no consent or other action by any owner shall be necessary in connection therewith. Such repair or reconstruction shall be substantially in accordance with the original plans or may be in accordance with any other plans and specifications the association may approve. The location of the building and all unit shall be substantially the same as prior to the damage or destruction.

10.5 Funds for Reconstruction. If the proceeds of any insurance collected are insufficient to pay the estimated or actual cost of such repair or reconstruction, the association, pursuant to Article IX hereof, may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such special assessment shall be allocated and collected as provided in that article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

10.6 Distribution of Funds for Repair or Reconstruction. The insurance proceeds held by the association and the amounts received from the assessments provided for in section 10.5 constitute a fund for the payment of costs of repair and reconstruction after damage or destruction. It shall be deemed that the first money distributed in payment for costs of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all

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costs of such repair or reconstruction, such balance shall be distributed to the owners in proportion to the contributions each owner made, or would have made had there been an assessment(s), pursuant to section 10.5 of this declaration.

ARTICLE XI. OBSOLESCENCE, ABANDONMENT AND TERMINATION.

11.1 Adoption of a Plan. Upon obsolescence, the owners may adopt a written plan for the renewal and reconstruction of the property, which plan shall have the approval of first mortgagees of record at the time of the adoption of such plan. Adoption of such plan must have approval of at least seventy-five per cent (75%) of the membership votes represented in person or by proxy at a meeting of the association called for the purpose of considering this issue and shall be subject to the prior approval of the holders of first mortgages encumbering units, the fractional interest in common elements appurtenant to which is at least 75%.

11.2 Payment for Renewal and Reconstruction. The expense of renewal or reconstruction shall be assessed against all owners as special assessments against their respective condominium units. These special assessments shall be levied in advance pursuant to article IX hereof and shall be allocated and collected as provided in that article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction, the excess shall be returned to the owners by a distribution to each owner in an amount proportionate to the respective amount collected from each such owner.

11.3 Sale of Property upon Obsolescence. If the property becomes obsolete, the owners and mortgagees may agree as provided in article XIII that the condominium units are obsolete and that the property should be sold. In such instance the association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the association, the property shall be sold by the association as attorney in fact for all of the owners free and clear of the conditions contained in this declaration, the condominium map and the articles of incorporation and bylaws of the association, or any amendments or supplements thereto except as provided herein. The sale proceeds shall be apportioned among the owners in accordance with percentage interests as provided in Exhibit 1, attached hereto and incorporated herein, and such proceeds shall be paid into separate accounts, each such account representing one condominium unit. Each such account shall remain in the name of the association, and shall be further identified by the condominium unit designation and the name of the owner. From each separate account, the association, as attorney in fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to mortgagees in the order of the priority of their liens and

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the balance remaining to each respective owner.

ARTICLE XII. CONDEMNATION.

12.1 Consequences of Condemnation. If at any time or times during the continuance of the condominium ownership pursuant to this declaration, all or any part of the property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

12.2 Proceeds. All compensation, damages, or other proceeds therefrom the sum of which is hereinafter called the "Condemnation Award", shall be payable to the association.

12.3 Complete Taking. In the event the entire property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The condemnation award shall be apportioned among the owners in accordance with their percentage interests in the common elements as provided in Exhibit 1, attached hereto, provided that if a standard different from the value of the property as a whole is employed to measure the condemnation award in the negotiation, judicial decree, or otherwise, then, in determining such shares, the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the last preceding paragraph, the association shall as soon as practicable thereafter distribute to the parties in the shares so determined, such distribution to be made by checks payable jointly to the respective owners and their respective mortgagees.

12.4 Partial Taking. In the event that less than the entire property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each owner shall be entitled to a share of the condemnation award to be determined in the following manner: (a) as soon as practicable, the association shall, reasonably and in good faith, allocate the condemnation award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the owners according to their ownership interest in the common elements, (b) the total amount allocated to severance damages shall be apportioned those condominium units which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular unit and/or improvements an owner has made within his own unit shall be apportioned to the particular unit involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the association

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determines to be equitable in the circumstances. If an allocation of the condemnation award is already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award, the association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective owners and their respective mortgagees.

12.5 Reorganization. In the event a partial taking results in the taking of a complete unit, the owner thereof automatically shall cease to be a member of the association with respect to that unit. In the event of a taking of one or more complete units or the taking of a portion of a unit, the association shall reallocate the ownership interest in the common elements and the vote determined in accordance with this declaration according to the same principles employed in this declaration at its inception and shall submit such reallocation to the owners of remaining units for amendment of this declaration as provided in article XVI hereof.

12.6 Reconstruction and Repair. Any reconstruction and repair necessitated by the condemnation shall be governed by the procedures specified in article X hereof.

ARTICLE XIII. PROTECTION OF LENDERS.

13.1 Notice of Mortgage. Each owner shall and each mortgagee may provide written notice to the association of the creation of a mortgage on any unit and the release thereof. The notice of the creation of mortgage shall include the name, address and telephone number of the mortgagee. The association shall maintain, at its principal office, a register of the names, addresses and telephone numbers of all mortgagees of units.

Notwithstanding anything to the contrary herein or in any mortgage or deed of trust recorded against any unit after the recordation of this declaration, the association shall have no liability to any mortgagee for failure of the association to notify the mortgagee of any act or failure to act by the association.

13.2 Approval of Decision Not to Rebuild. A decision not to rebuild after damage or destruction of the building shall require the approval of owners representing seventy-five percent (75%) or more of the voting rights in the association, excluding units owned by the association, and the holders of first mortgages encumbering units, the aggregate fractional interest in common elements appurtenant to which is at least 75%. If such a decision is made, the property shall be sold and the proceeds distributed in the same manner herein provided in the event of sale of obsolete units, as set forth in Article XI.

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13.3 Approval of Other Decisions Affecting the Property. Notwithstanding anything to the contrary contained herein, the approval of owners representing seventy-five percent (75%) or more of the voting rights in the association, excluding units owned by the association, and the holders of first mortgages encumbering units, the aggregate fractional interest in common elements appurtenant to which is at least 75% shall be required before any of the following decisions may be made:

- (1) abandonment of the property or termination of this declaration;
- (2) changing the pro rata interest of any unit owner in the general common elements;
- (3) partition or subdivision of any unit;
- (4) the sale or encumbrance or other transfer or division of the common elements.
- (5) adoption of plan for renewal or reconstruction of the property upon damage, destruction or obsolescence.
- (6) sale of the property upon obsolescence.
- (7) use of insurance proceeds from damage or destruction for a purpose other than repair, restoration or reconstruction of the property;
- (8) material amendment of this declaration;
- (9) material change of insurance coverage for the property.

If any first mortgagee should not agree with a decision made in accordance with this section, the association shall have the right, but not the obligation, to purchase the mortgage of such mortgagee by payment in full of the amount secured thereby. The association shall obtain funds for such purpose by special assessments under article IX of this declaration.

ARTICLE XIV. GENERAL RESERVATIONS AND RIGHTS OF DECLARANT

14.1 Easement Over Common Elements for Construction Purposes. Declarant reserves for a period of seven (7) years from the date this declaration is recorded in the official records of the County of San Miguel, State of Colorado, a non-exclusive easement over unimproved portions of the common elements, and over all roads and parking areas of the common elements, if any, to the extent necessary or convenient for the construction of any additional improvements or buildings to become a part of the property.

14.2 Board of Directors. Notwithstanding any provisions expressly or impliedly to the contrary contained in this declaration, the articles of incorporation or bylaws of the association, declarant reserves the right to elect, select and replace the board of directors of the association until all of the condominium units in the property have been conveyed by declarant or December 31, 1994, whichever occurs first.

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14.3 Managing Agent. Notwithstanding any other provisions expressly or impliedly to the contrary contained in this declaration, declarant reserves the exclusive right to act as or appoint and discharge, from time to time, the managing agent of the association until all of the condominium units in the property have been conveyed by declarant or December 31, 1994, whichever occurs first.

ARTICLE XV. THE BELL TOWER

The bell in the Bell Tower is owned by the Telluride Mountain Village Resort Company, not declarant or the association, which has the right to operate the bell from time to time at its discretion.

There is hereby granted an easement, during normal business hours and upon reasonable notice, through Unit 410 for access to the bell in favor of the Telluride Mountain Village Resort Company, its successors and assigns, for maintenance and repair of the bell and its components.

ARTICLE XVI. REVOCATION OR AMENDMENT TO DECLARATION.

This declaration shall not be revoked nor shall any of the provisions herein be amended unless the owners representing seventy-five percent (75%) or more of the voting rights of the association and the holders of first mortgages encumbering units, the aggregate fractional interest in common elements appurtenant to which is at least 75% consent and agree to such revocation or amendment by instruments duly recorded.

ARTICLE XVII. PERIOD OF CONDOMINIUM OWNERSHIP.

The Westermere Condominiums and the condominium ownership created by this declaration shall continue until this declaration is terminated. This declaration shall be terminated if the property is sold following damage, destruction, obsolescence or condemnation in the manner provided in Articles X, XI, XII and XIII.

ARTICLE XVIII. DURATION OF DECLARATION

Each provision contained in this declaration for the Westermere Condominiums which is subject to the laws or rules sometimes referred to as rule against perpetuities or the rule prohibiting unreasonable restraints on alienation shall continue and remain in full force and effect for the period of 21 years following the death of the survivor of Michael Obrand or Barry T. Tharp, of Telluride, Colorado, and the now living children of these persons, or until this declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained

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in the declaration shall continue and remain in full force and effect in perpetuity, unless terminated or amended as provided herein.

ARTICLE XIX. GENERAL PROVISIONS.

19.1 Registration of Mailing Address. Each owner shall notify the association of his mailing address and telephone number with the association and shall promptly notify the association of changes.

19.2 Owner's Obligations Continue. All obligations of the owner under and by virtue of the provisions contained in this declaration shall continue, notwithstanding that he may have conveyed said interest as provided herein, but the owner of a condominium unit shall have no obligation for expenses or other obligations accruing after he conveys such condominium unit.

19.3 Transfer of Declarant's Rights. Any rights or interests reserved hereby to the declarant may be transferred or assigned by the declarant.

19.4 Sale and Retention of Units by Declarant. Declarant reserves the right to retain unsold units and sell, lease or rent them without the approval of the association.

19.5 Severability. If any of the provisions of this declaration or any paragraph, sentence, clause, phrase or work or the application thereof in any circumstance be invalidated, such invalidity shall not effect the validity of the remainder of the declaration, and the application of any such provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

19.6 Effect of Statute. The provisions of this declaration shall be in addition and supplemental to the Condominium Ownership Act of the State of Colorado and to all other provisions of law, including the Telluride Municipal Code, pertaining to condominium subdivision.

19.7 Rights of Tenants and Other Occupants. The rights of any lessee or occupant of any unit or part of any unit shall be subject to, and each such lessee and occupant shall be bound by all of the covenants, conditions and restrictions set forth in this declaration, the articles of incorporation of the association, the by-laws of the association and the rules and regulations duly promulgated by the association.

19.8 Notice. All notices or demands which may or are required to be given pursuant to this agreement must be in writing and shall

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be deemed to have been given when deposited in the U.S. mail certified, return receipt requested, postage pre-paid, to the addresses given to association as provided in sections 13.1 and 19.1.

Notice shall also be deemed to have been fully given or made or sent when made in writing and hand delivered to any party. The address to which any notice, demand, or writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

19.9 Attorney's Fees. If any action or proceeding is brought which arises out of this declaration, or the breach of any of its provisions, the prevailing party shall be entitled to costs and expenses incurred and reasonable attorney's fees.

19.10 Governing Law. This agreement shall be construed in accordance with the laws of the state of Colorado.

19.11 Venue for Legal Actions. Any action or proceeding which arises out of this agreement shall be brought in San Miguel County, Colorado.

19.12 Time. Time is of the essence of this agreement. If any payment is not made on the date due or if any obligation hereunder is not performed as herein provided, the party failing to timely perform or pay shall be deemed in default hereunder.

19.13 Successors in Interest. This agreement shall bind and inure to the benefit of the heirs, personal representatives, successors in interest and assigns of the parties hereto.

THIS DECLARATION is executed on September 18, 1991.

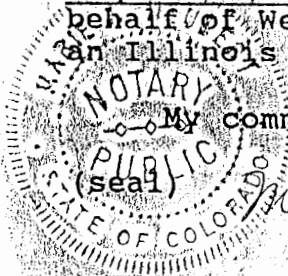
Westermere Development Partners Limited Partnership,
an Illinois limited partnership

By: Barry T. Tharp
Barry T. Tharp, General Partner

State of Colorado) ss.
County of San Miguel)

The foregoing instrument was acknowledged before me on September 18, 1991, by Barry T. Tharp, general partner, on behalf of Westermere Development Partners Limited Partnership, an Illinois limited partnership.

My commission expires 8/24/93.



Marie A. Neubert, Notary Public

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CONSENT OF HOLDER OF TRUST DEED TO DECLARATION

The undersigned holders of a deed of trust upon the property subject to this declaration hereby consents to and subordinates its interest in such property to the provisions of this declaration.

UNITED BANK OF MONTROSE NATIONAL ASSOCIATION, a national banking association

By: Dennis Devor

Title: Senior Vice President

State of Colorado)
County of Montrose)

The foregoing instrument was acknowledged before me on September 18, 1991, by Dennis Devor, as Senior Vice President of United Bank of Montrose National Association, a national banking association, on behalf of the association.

My commission expires 8/24/93.



Marie A. Neubert
Notary Public

UNITED BANK OF GRAND JUNCTION-DOWNTOWN NATIONAL ASSOCIATION, a national banking association

By: Ronald Rozga

Title: Vice President

State of Colorado)
County of Montrose)

The foregoing instrument was acknowledged before me on September 18, 1991, by Ronald Rozga, as Vice President of United Bank of Grand Junction-Downtown National Association, a national banking association, on behalf of the association.

My commission expires 8/24/93.



Marie A. Neubert
Notary Public

WESTERMERE CONDOMINIUM
PERCENTAGE INTEREST IN COMMON ELEMENTS
VOTING RIGHTS

<u>Unit number</u>	<u>Percentage interest in common elements, Number of votes</u>
010	11.25
100	14.76
101	3.04
210	10.10
211	7.60
212	5.83
310	9.03
311	7.37
312	5.59
410	13.20
411	7.00
412	5.23
<hr/> Totals	100 %

PAID: \$10.00
279202

279202 09/02/1992 01:37P B: 497 P: 474
Gay Cappis, County Clerk, San Miguel County, CO

EXHIBIT 1

First Supplement to the Declarations of Covenants, Conditions and Restrictions for Westermere Condominiums, Recomputation of Interest in Common Elements and Voting Rights.

<u>Unit Number</u>	<u>Percentage Interest in Common Elements, Number of Votes</u>
010	11.56
100	3.12
101	15.17
210	10.38
211	7.81
212	6.00
310	9.28
311	7.57
312	5.75
410	10.79
411	7.19
412	5.38
<hr/> Totals	<hr/> 100.00

Dated the year and day first above written.

Westermere Condominium
Owners Assn,
a Colorado Corporation

By *Richard Brickell*
Richard Brickell, Vice President

STATE OF COLORADO)
)
COUNTY OF SAN MIGUEL)

The foregoing instrument was acknowledged before me this 2nd
day of September, 1992, by Richard Brickell, as Vice President
of Westermere Condominium Owners Association.
Witness my hand and official seal.
My Commission Expires: 12-01-92.

Rose M. Farrell
Notary Public

