

NONPROFIT

FILED

ARTICLES OF INCORPORATION  
OF  
WESTERMERE CONDOMINIUM OWNERS ASSOCIATION, INC.

STATE OF COLORADO  
DEPARTMENT OF STATE  
(A NON-PROFIT CORPORATION)

I, the undersigned natural person over the age of eighteen years, acting as incorporator of a non-profit corporation to be organized under the "Colorado Non-Profit Corporation Act", Sections 7-20-101 et seq., adopt the following articles of incorporation.

09-04-91, 08:30 S.  
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ARTICLE I. NAME

The name of the non-profit corporation shall be the Westermere Condominium Owners Association, Inc. (hereinafter referred to as the "corporation").

ARTICLE II. DURATION

The duration of the Westermere Condominium Owners Association, Inc. shall be perpetual.

ARTICLE III. DEFINITIONS

The following underlined words shall have the meanings set forth herein:

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 this corporation.

3.3 Association. "Association" or "Corporation" means the Colorado nonprofit corporation, formed by declarant to govern the administration of 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

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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.

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.

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 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 the 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 foreclosure or by any conveyance in lieu of foreclosure.

3.17 Parking Space. "Parking space" means a portion of the property or additional 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.

#### ARTICLE IV. PURPOSES AND POWERS

4.1 Purposes. The corporation's purpose shall be to engage in the business of managing, operating and administering the Westermere Condominiums and to promote the health, safety and welfare of all members of the corporation, to establish, provide and maintain a desirable community and environment for all owners and guests and to protect and preserve the property, property values and property rights in the Westermere Condominium.

4.2 Powers. In furtherance of the foregoing purposes, but not otherwise, the corporation shall have and may exercise all of the following powers:

4.2.1 Real and Personal Property. To acquire, by gift, purchase, lease, trade or any other method, own, operate, build, manage, maintain, rent, sell, develop, encumber, and otherwise deal in and with real or personal property of every kind and character, tangible and intangible, wherever located, and interests of every sort therein.

4.2.2 Services. To (i) own, lease, acquire, build, improve, repair, operate, and maintain any of the common elements of the property, and any other property owned and maintained for the common benefit and enjoyment of owners and to employ other persons to do so; (ii) own, lease acquire, build, operate, manage and maintain any utility systems, including but not limited to

water, sanitary sewer, storm sewer, electrical, natural gas, telephone and communication systems; (iii) provide solid waste collection; (iv) maintain undeveloped lands; (v) provide a cable television system; (vi) provide parking; (vii) provide control over vehicular access to the Westermere Condominiums; (viii) provide animal control; (ix) provide property maintenance services for any unit or improvement thereon; (x) provide design review and inspection services; (xi) provide any service and perform all actions contemplated or permitted by the declaration; (xi) provide any service and perform all actions necessary to promote the general health, safety and welfare of persons within the Westermere Condominiums and to protect and preserve property, property values and property rights.

4.2.3 Taxes. To pay taxes, if required.

4.2.4 Covenant Enforcement. To enforce any and all covenants, restrictions, agreements, or rules and regulations applicable to Westermere Condominiums in any manner provided by the laws of Colorado, the declaration or these articles of incorporation or the bylaws as from time to time are in force and effect.

4.2.5 Borrowing. To borrow funds or raise moneys for any of the purposes of the corporation and from time to time to execute, accept, endorse and deliver as evidences of such borrowing, all kinds of instruments and securities, including, but without limiting the generality of the foregoing, promissory notes, drafts, bills of exchange, warrants, bonds, debentures, property certificates, trust certificates and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment and performance of such securities by mortgage on, or pledge, conveyance, deed or assignment in trust of, the whole or any part of the assets of the corporation, real, personal or mixed, including contract rights, whether at the time owned or hereafter acquired; provided that the power of the corporation to mortgage its properties may be limited as set forth in the declaration as form time to time are in force and effect. Without limiting the generality of the foregoing, the corporation may from time to time borrow funds from declarant or any affiliate thereof.

4.2.6 Contracts. To enter into, amend, perform and carry out, or cancel and rescind, contracts, leases, permits management agreements, and concession agreements for any lawful purposes pertaining to its business.

4.2.7 Guaranties. To make any guaranty respecting securities, indebtedness, notes, interest, contracts or other obligations created by any individual, partnership, corporation, corporation or other entity, and to secure such guaranties by encumbrance upon any and all assets of the corporation, to the extent that such guaranty is made in pursuance of the purposes

herein set forth.

4.2.8 Loans. To lend money for any of the purposes above set forth; to invest its funds from time to time and take and hold real and personal property as security for payment of funds so loaned or invested.

4.2.9 Assessments. To levy regular assessments and special assessments against the members of the corporation as specifically set forth in its bylaws and the declaration as from time to time are in force and effect; to charge interest on unpaid assessments; to collect charges, fees, fines, liquidated damages, penalties and interest in accordance with the declaration and the corporation's bylaws as from time to time are in force and effect; and to create and enforce liens as security for such assessments, charges, fees, fines, penalties and interest.

4.2.10 Dividends, Distributions, etc. The corporation shall not pay any dividends nor shall it have any power to do so. No distribution of the corporate assets to members (as such) shall be made. Upon dissolution of the corporation, the assets shall be distributed as provided in Article XII herein.

4.2.11 Rule Making. To make, enforce and amend reasonable rules and regulations applicable to Westermere Condominium for the health, safety and welfare of owners and the maintenance of the property and for the accomplishment of any of the purposes or to further any of the powers set forth above.

4.2.12 Fiscal Matters. To prepare and implement an annual budget for the corporation and to establish and maintain a reserve fund for repairs and maintenance of the common elements.

4.2.13 Powers Conferred by Law. The foregoing enumerations of specific powers shall not limit or restrict in any manner the general powers of the corporation and the enjoyment and exercise thereof as now or hereafter conferred by the laws of Colorado. The corporation shall have all general powers possessed by non-profit corporations organized under the laws of the State of Colorado, including all powers necessary or convenient to effect any and all corporate purposes including any lawful business purpose.

4.2.14 General Powers. To do everything necessary and proper for the accomplishment of any of the purposes of the attainment of any of the objectives, or the furtherance of any of the powers above set forth, either alone or in connection with other corporations, firms or individuals, and either as principal or agent, and to do every act or thing incidental or appurtenant to, or growing out of, or connection with any of the aforesaid objects, purposes or powers.

## ARTICLE V. REGISTERED AGENT AND REGISTERED OFFICE

The initial registered office of the corporation shall be: P.O.Box 11001, Telluride, Colorado, 81435, (street address: 646 Mountain Village Boulevard, Telluride, Colorado) and the registered agent thereat shall be Barry T. Tharp.

## ARTICLE VI. MEMBERSHIP AND VOTING

6.1 Membership. There shall be one regular membership in the corporation attributable to the fee simple title of each unit. Each such regular membership shall be appurtenant to the fee simple title to such unit. The owner of a unit shall automatically be the holder of the regular membership appurtenant to that unit and title to and ownership of the regular membership for the unit shall automatically pass with fee simple title to the unit. Each owner of a unit shall automatically be entitled to the benefits and subject to the burdens relating to the regular membership for its unit. If fee simple title to a unit is held by more than one person or entity, the regular membership appurtenant to that unit shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership as fee simple title to the unit is held.

6.2 Voting. Each member of the corporation shall be entitled to the number of votes assigned to the member's unit as set forth in Exhibit 1, attached hereto. Voting rights for each member shall be equal to the percentage ownership of the common elements assigned to the unit owned by such member.

## ARTICLE VII. DIRECTORS

7.1 Authority and Number of Directors. The control and management of the affairs of the corporation and the disposition of its funds and property shall be vested in a board of directors consisting of not less than 3 or more than 5 directors. The initial board of directors shall consist of 3 directors who shall hold office until the election or appointment of their successors at the first annual meeting. At such first annual meeting and all subsequent annual meetings, the members of the corporation shall elect the directors for a term of one year each.

7.2 Initial Directors. The names and addresses of those persons comprising the first board of directors to serve until their successors shall be duly elected are as follows:

NAME:  
Robert Mahoney

Barry T. Tharp

ADDRESS:  
16396 Timberlane  
New Buffalo, MI 49117

P.O. Box 11001  
Telluride, CO 81435

Robert Fleisher

155 Harbor Drive #4904  
Chicago, IL 60601

7.3 Election of Directors. The manner of selection or election of the board of directors at the annual meeting, other than those caused by removal, shall be determined according to the bylaws from time to time in force and effect. Cumulative voting shall not be allowed in the election of directors or for any other purpose.

7.4 Delegation of Authority. The board of directors may, by resolution approved by a majority of the entire board of directors, designate no less than two of their number to constitute an executive committee which shall have and exercise all of the power of the board of directors in the management of the business and affairs of the corporation or such lessor authority as may be set forth in such resolution. No such delegation of authority shall relieve the board of directors or any member of the board from any responsibility imposed by law.

#### ARTICLE VIII. INCORPORATOR

The name and address of the incorporator is:

Michael Obrand  
P.O. Box 2466  
Telluride, CO 81435

#### ARTICLE IX. OFFICERS

The corporation shall have a president, a secretary, a treasurer and such other officers as may from time to time be prescribed in the bylaws. The terms of office and the manner of appointment or election of the officers shall also be prescribed by the bylaws.

#### ARTICLE X. EXECUTION OF INSTRUMENTS

Authority to convey or encumber the property of the corporation and to execute any deed, contract or to her instrument on behalf of the corporation for itself or as attorney-in-fact for one or more of the members is vested in the president, except as limited in the declaration. All instruments conveying or encumbering such property (whether or not executed as such attorney-in-fact) shall be executed by the president and any other officer of the corporation.

#### ARTICLE XI. MANAGEMENT

The following provisions are inserted for the management of the business and for the conduct of the affairs of the corporation,



and are in furtherance of and not in limitation or exclusion of the powers granted by law:

11.1 Contracts with Directors, Officers or Members. No contract or other transaction of the corporation with any other person, firm or corporation shall be affected or invalidated by the fact that any director, officer or member, individually or jointly with others, may be a party to or may be interested in any such contract or transaction. Each person who may become a director, officer or member of the corporation is hereby relieved from any liability that might otherwise arise by reason of his contracting with the corporation for the benefit of himself or any firm or corporation in which he may be in anywise interested.

11.2 Board of Directors to Exercise General Power. All corporate powers except those which by law or by these articles expressly require the consent of the members shall be exercised by the board of directors or the executive committee or such officer or officers designated by the board of directors.

11.3 Compensation of Directors and Members. The board of directors is hereby authorized to make provision for "reasonable compensation" to its members and to members of the corporation for their services, and to reimburse such members for expenses incurred in connection with furthering the purposes of the corporation. The board of directors shall fix the basis and conditions upon which such compensation and reimbursement shall be paid. Any director of the corporation may also serve in any other capacity and receive compensation and reimbursement for such other work.

11.4 Limitation of Liability of Directors. No director of the corporation shall be liable to the corporation or its members for monetary damages for breach of fiduciary duty as a director. Notwithstanding the foregoing, a director shall be liable to the corporation or its members for monetary damages for

- (i) any breach of the director's duty of loyalty to the corporation or its members,
- (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law,
- (iii) loans made in violation of C.R.S. 7-24-111, or
- (iv) any transaction from which the director derived an improper personal benefit.

11.5 Indemnification of Directors and Officers. The corporation shall indemnify its directors and officers to the fullest extent permitted by the laws of the state of Colorado.

## ARTICLE XII. DISSOLUTION

The corporation may be dissolved only by the affirmative vote of the members representing two-thirds of the voting rights in the corporation. Written notice of a proposal to dissolve, setting for

the reasons therefor and the disposition to be made of the assets, as set forth below, shall be mailed to every member at least 90 days in advance of any action taken. Upon dissolution of the corporation, the assets, both real and personal of the corporation shall be dedicated to an appropriate public agency or agencies or utility or utilities to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. In the event such dedication is not accepted, such assets shall be granted, conveyed and assigned to any nonprofit organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the corporation. No such disposition of corporation properties shall be effective to divest or diminish any right or title of any member vested in him under the recorded covenants and deeds applicable to the subdivision unless made in accordance with the provisions of such covenants and deeds.

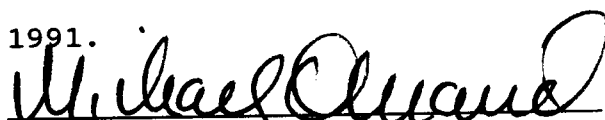
#### ARTICLE XIII. BYLAWS

The initial bylaws of the corporation shall be as adopted by the initial board of directors. The board shall have power to alter, amend or repeal the bylaws. The bylaws may contain any provisions for the regulation or management of the affairs of the corporation which are not inconsistent with the law, the declaration or these articles of incorporation, as the same may from time to time be in force and effect.

#### ARTICLE XIV. AMENDMENT

The corporation reserves the right to amend, alter, change or repeal any provision contained in these articles of incorporation with respect to any particular provisions by the affirmative vote of the members representing two-thirds of the voting rights present at any regular or special meeting called for the purpose unless a higher or different voting requirement is set forth herein; provided that any such amendment shall not be inconsistent with the declaration which from time to time is in force and effect.

Dated: August 28, 1991.

  
Michael Obrand,  
Incorporator

State of Colorado )  
County of San Miguel )

Subscribed and sworn to before me on Aug. 28, 1991.  
Witness my hand and official seal.

My commission expires: August 19, 1995.

Katharine M. Jewett  
Katharine M. Jewett,  
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	22.5
100	3.4
101	16.5
210	7.7
211	6.1
212	4.7
310	7.7
311	6.1
312	4.7
410	10.4
411	5.8
412	4.4
<u>Totals</u>	<u>100 %</u>

Exhibit 1