

**FIRST AMENDED AND RESTATED CONDOMINIUM DECLARATION
for
WESTERMERE CONDOMINIUM**

ARTICLE I. INTRODUCTION

1.1 Declarant and Original Declaration. Westermere Development Partners Limited Partnership, an Illinois limited partnership, hereinafter referred to as the “**Declarant**,” was the owner of certain real property located in San Miguel County, Colorado, legally described in paragraph 1.2 herein and made subject to the original Condominium Declaration for Westermere Condominiums recorded September 19, 1991 in Book 482 at pages 598-634, Reception No. 272822 (the “**Original Declaration**”) in the real property records of the Office of the Clerk and Recorder of San Miguel County, Colorado (the “**Official Records**”). The Original Declaration has been supplemented as amended by a First Supplement recorded September 2, 1992 at Reception No. 279202 in the Official Records, a Supplement recorded May 21, 1993 at Reception No. 284854, a Second Supplement recorded July 23, 1993 at Reception No. 286090, a First Amendment recorded April 20, 2007 at Reception No. 392132, a Second Amendment recorded March 24, 2010 at Reception No. 411716, and a Third Amendment recorded December 26, 2012 at Reception No. 426192. **This First Amended and Restated Condominium Declaration (this “Declaration”) supersedes and replaces the Original Declaration, as supplemented as amended.**

1.2 The Real Property. The real property owned by the Declarant which was made subject to the Original Declaration was 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 Creation of Condominium. Declarant subdivided the Property into condominiums and created a “**Condominium**” pursuant to the Condominium Ownership Act of the State of Colorado (C.R.S sections 38-33-101 et seq.). Declarant executed the Original Declaration for Westermere Condominium to define the rights, powers, duties, conditions and limitations of Condominium ownership in the Westermere Condominium. The Association and the Owners hereby agree to subject the Condominium to the Colorado Condominium Ownership Act (“**CCIOA**”), C.R.S sections 38-33.1-101 et seq.

1.4 Compliance with Applicable Laws. Declarant created the Condominium in full Compliance with applicable local, state and federal zoning and other laws and regulations.

1.5 Name of Condominium. The name of the Condominium is the Westermere Condominium.

1.6 Maximum Number of Units. The maximum number of Condominium Units shall be twenty-five (25).

ARTICLE II. DECLARATION

The entire Property and every part thereof is and shall be owned, held, conveyed, transferred, encumbered, used, leased, occupied, constructed and modified 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 as an equitable servitude and shall constitute a benefit and burden to the Owners and their 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 fifty percent (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., a Colorado nonprofit corporation, filed on September 4, 1991 with the Colorado Secretary of State.

3.3 Association. “**Association**” or “**Corporation**” means the Colorado nonprofit corporation formed to administer this Condominium Property, the Members of which shall be all of the Owners of Condominium Units, Parking Units and Storage 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, the Articles of Incorporation and Bylaws 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 Bylaws. “**Bylaws**” means the duly adopted bylaws of the Association.

3.7 Commercial Unit. “**Commercial Unit**” shall mean a Condominium Unit that may be used for commercial purposes in accordance with the General Declaration for the Telluride Mountain Village, as amended, restated and supplemented, and the Town of Mountain Village Land Use Ordinance. The Units which may be for commercial purposes are Units 100, 101A and 102. The boundaries of these Units are shown on the Condominium Map.

3.8 Common Elements. “**Common Elements**” or “**General Common Elements**” means all the Property except the Condominium Units, Parking Units and Storage 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, and including the exterior windows and doors of each Unit (but excluding the interior trim and surface finishes of such windows and doors); (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 subfloor 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, lights, 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 the administration, management, common utility service, maintenance, repair replacement of the Common Element located within or on the Property; (iii) expenses declared Common Expenses by provisions of this Declaration, the Bylaws or pursuant thereto; (iv) expense of snow removal and maintenance of the 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 filed and recorded September 19, 1991 in Plat Book 1 at page 1168, Reception No. 272823 in the Official Records, including any supplements or amendments thereto, of the Property, 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 and the Common Elements.

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, interior trim and surface finishes of exterior windows and exterior 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, installation or improvements which are part of or serve more than one Unit and, in general, all improvements installed for common use in the Building. “**Condominium Unit**” or “**Unit**” also includes Parking Units and Storage Units as defined below. “**Condominium Unit**” or “**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 First Amended and Restated 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 Member. “**Member**” shall have the same meaning as Owner.

3.15 Membership. “**Membership**” shall mean each Member’s status as a Member of the Association.

3.16 Mortgage. “**Mortgage**” means any mortgage, deed of trust, or any other security instrument which encumbers a Condominium Unit or any part thereof.

3.17 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.

3.18 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.

3.19 Parking Unit. “**Parking Unit**” means a portion of the Property designated on the Condominium Map as such and to be used for the Parking of motor vehicles.

3.20 Parking Unit Owner. “**Parking Unit Owner**” shall mean the person who owns a Parking Unit.

3.21 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.

3.22 Property. “**Property**” shall mean the real property described in section 1.2 of the Declaration.

3.23 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, restated and supplemented, and the Town of Mountain Village Land Use Ordinance. The Units

that may be used for residential purposes are: 210, 211, 212, 310, 311, 312, 410, 411 and 412. The boundaries of these Units are shown on the Condominium Map.

3.24 Storage Unit. “**Storage Unit**” means a portion of the Property designated on the Condominium Map as such and to be used for Storage of nonhazardous items.

3.25 Storage Unit Owner. “**Storage Unit Owner**” shall mean the person who owns a Storage Unit.

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

4.1 Division of Property into Condominium Units. Pursuant to the Original Declaration, as amended and supplemented, the Property was divided into Condominium Units, Parking Units and Storage 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 have been and 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 the Members, the fractional interest in Common Elements appurtenant to which is at least fifty-one percent (51%), the Condominium Map may be amended so as to conform the Map to the actual location of any of the constructed improvements; and to establish, vacate or relocate outside the Building, utility easements or access easements.

4.3 Conveyance and Description of Condominium Unit. Every contract for the purchase and sale of a Condominium Unit 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 Common Elements shall be designated on the Condominium Map, and such description shall be conclusively presumed to relate to the corresponding Unit reflected thereon.

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 designation and number shown on the Condominium Map and this Declaration, as each shall appear on the records of the County Clerk and Recorder of San Miguel County, Colorado as follows:

[Residential, Commercial, Parking or Storage, as applicable] Unit No. ____, as shown on the Condominium Map for the Westermere Condominium recorded September 19, 1991 in Plat Book 1 at page 1168, Reception No. 272823 in the records of the Clerk and Recorder of San Miguel County, Colorado, including any supplements or amendments thereto, and as defined and as described in the First Amended and Restated Condominium Declaration for Westermere Condominium

recorded _____ at Book _____, pages _____ - _____, Reception No. _____ in the records of the Clerk and Recorder of San Miguel County, Colorado.

Such description shall be construed to describe the Unit, together with the appurtenant undivided common 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 such Owner's own 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 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 future. Any walls or any other structural separation shall not alter the bearing capabilities of such structures and shall not adversely affect the 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 any 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.

5.6 Partition not Permitted. The Common Elements shall be owned in common by all Owners of Condominium Units, and no 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 such Owner's Unit so long as the structural integrity of the Common Elements not affected.

5.9 Easement 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 the 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 on 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, encroachment 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 Easement of Access of 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 Owners' 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 such Owner's Unit and shall have the right to the horizontal and lateral support of such Owner's Unit, and such rights shall be appurtenant to and pass with title to each Condominium Unit.

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 made and hereafter made 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. The Assessor of San Miguel County, Colorado has been provided with descriptions of the Condominium Units so that each Unit shall be assessed separately thereafter for all taxes, assessments and other charges of the Colorado or of any political subdivision or of any 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 such Owner's Unit and the Limited Common Elements appurtenant to such Unit, including without limitation, interior walls, interior trim and surface finishes of exterior windows and exterior doors, interior 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 and the Town of Mountain Village Land Use Code, 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 shall be reasonable for all damage caused by such Owner's animal(s) or the animals of any Owner's tenants, agents, guests or invitees. 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 other materials left by such Owner's animal or the animal of any Owner's tenants, agents, guests or invitees.

5.19 Structural Alteration. 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, Condition and Restrictions of this Declaration and Articles of Incorporation and Bylaws of the Association. Each Owner, such Owner's agents, tenants and invites 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 such Owner's 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 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 request of any Owner, the Association shall enforce such indemnity by collection from the Owner of every 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 interest 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 this Declaration. In the alternative, any Owner may enforce this paragraph 5.21 against any other Owner.

5.22 Violation of Law. Owners, their agents, tenants and guests shall take to 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, guest or invitee of any Owner shall do anything or cause anything to be kept in or about any Unit or any part to 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 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 or no improvement shall be made or constructed within any Unit or 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 in or on 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. 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 any of the Common Elements without 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.

5.27 Parking and Storage. Parking and Storage have been made available on the Property pursuant to the established Parking Units and Storage Units. No other part of the Property, unless specifically designated by the Association thereof, shall be used as Parking or Storage. No part of the Property shall be used as a 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 construction or maintenance of the Property).

5.28 Limitation 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 Nonprofit Corporation. As set forth above, a nonprofit corporation has been organized to act as the owner's association and has created Bylaws for the governance of this Corporation. The name of this Corporation is Westermere Condominium Owners Association, Inc.

6.2 Membership. Every Owner shall be Member of the Association. There shall only be one (1) Membership for each Unit. If title to a Condominium Unit is held by more than one (1) person, the Membership related to that until 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 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 (1) class of voting Membership. Only one (1) 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 joint Owner of any Unit. Each Unit shall have the number of votes set forth on **Exhibit 1**, attached hereto.

6.4 Membership's 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 has adopted Bylaws to govern the Association. The Bylaws provide for the election and removal of Directors and Officers, meetings of Members and such other matters as are appropriately included in the Bylaws.

6.6 Board of Directors. The Association shall be managed by a Board of Directors. The Association shall be managed by a Board of Directors. The number, tenure and qualifications of the Directors shall be determined in accordance with the Articles and Bylaws of the Association.

6.6.1 Management of the Association. Subject to the provisions of this Declaration, the Articles of Incorporation and 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 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 a person who is or was a Director of the Corporation. “**Director**” includes, unless the context otherwise 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 such person is or was a manager if:

(I) Such person conducted himself in good faith;

(II) Such person reasonably believed:

(A) In the case of conduct in such person’s official capacity with the Corporation, that such person’s conduct was in the Corporation’s best interest; or

(B) In all other cases, that such person’s conduct was at least not opposed to the Corporation’s best interest; and

(III) In the cases of any criminal proceeding, such person had no reasonable cause to believe such person’s conduct was unlawful.

(b) The termination of any proceeding by judgment, order, settlement, or conviction, or upon 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 such person’s official capacity, in which such person was adjudged liable on the basis that personal benefit was improperly received by such person.

(d) Indemnification permitted under this subsection (2) in connection with a proceeding by or in the right of the 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 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 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 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 section (6) shall be an unlimited general obligation of the Director or Officer but need to 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 proceeding at a time when he has not been made a named defendant or respondent in the proceeding.

(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 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 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 power to indemnify him against such liability under the provision 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 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 Assessment. 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 court of competent jurisdiction to enforce any provision of this Declaration, to enjoin any violation of its terms and to defend 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.

7.6 Acquisition of Personal Property for Common Use. The Association may acquire and hold, for the use and benefit of the 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 accordance with the interest set forth on **Exhibit 1**. Such interest shall not be transferrable except with the transfer of Condominium Unit. A transfer of a Condominium Unit shall transfer the ownership of the transferor's beneficial interest in such property without reference thereto. Each Owner of a Unit and such Owner's 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 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 regulation 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 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 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 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 wall shall be changed, commenced, placed, erected or maintained until the plans and specifications showing the nature, kind, shape, height, materials and locations 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 (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 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.

Notwithstanding anything to the contrary, if a Unit Owner chooses to replace an exterior window or exterior door prior to the time the Association is planning to replace an exterior window or exterior door, then that Owner may do so at that Owner's expense so long as that Owner obtains prior written Board approval. The Board may deny approval if the proposed new exterior window or exterior door does not match the old exterior window or exterior door in terms of design and specifications, or is not in harmony with the design of the other exterior windows and exterior doors of the building.

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 delegation shall not revoke or change any of the rights or obligations of any Owners as set forth herein. Such delegation 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 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 from the provisions of this Declaration, or given or implied by law or which may be necessary and proper to fulfill its duties, obligation, rights or privileges.

ARTICLE XIII. 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 sections shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance 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 in the exercise of prudent business judgment, obtain such insurance. Such insurance shall include fire and extended coverage, flood (but only if the Property is located in a flood plain area), vandalism and malicious mischief, and such other risk 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 a 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. The insurance shall cover claims of one or more insured parties against other insured parties. 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 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, such Owner’s tenants or invitees, third party liability as respects the act 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 or policies also shall provide that it or they cannot be canceled by either the insured or the insurance company until after thirty (30) days prior written notice is first given to each Owner. 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 of the interest of any particular Owner guilty or 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 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. 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 the policies obtained by it and maintained by it pursuant of this section. The Association shall use the insurance proceeds to repair, restore or reconstruct those portions of the Property and its Common Elements which may have been damaged and may contract for such purposes. To the extent that reconstruction is not required herein and there is a determination by at least sixty-seven percent (67%) of the Owners 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 interest therein, with joint payments being made to the Owner and the mortgagees where the Association has written notice of the existence of a mortgage.

8.4 Insurance policies carried pursuant to this section must provide that:

(a) Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association;

(b) The insurer waives its rights to subrogation under the policy against any Unit Owner or member of such Unit Owner's household;

(c) No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

8.5 Any loss covered by the property insurance policy described in this section must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association Unit Owners and lienholders as their interests may appear. Subject to the provisions of this Article, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the common interest community is terminated.

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

8.7 An insurance policy issued to the Association does not obviate the need for Unit Owners to obtain insurance for their own benefit. All Unit Owners shall maintain the following insurance:

(a) Property insurance on the Unit for broad form covered causes of loss and hazards; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Unit, in an amount not less than \$500,000.00, Board, insuring the Unit Owner and naming as additional insureds the Association, Executive Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) The hazard insurance maintained under 8.7(a) shall include the Unit and the finished interior surfaces of the walls, floors, and ceilings of the Unit, as well as improvements and betterments installed by Unit Owners.

(d) Each Unit Owner shall cause its insurer that has issued an insurance policy for the insurance described in this section to issue certificates or memoranda of insurance to the Association, naming the Association as a certificate holder on the property policy and an additional insured on the liability policy. The insurer issuing the policies may not cancel or refuse to renew them until thirty (30) calendar days after notice of the proposed cancellation or nonrenewal has been mailed to the Association.

8.8 An insurer that has issued an insurance policy for the Association insurance described in this Article shall issue certificates or memoranda of insurance to the Association and, upon request, to any Unit Owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) calendar days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and each Unit Owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

8.9 Repair and Replacement.

(a) Any portion of the Community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(I) The Community is terminated, in which case CRS section 38-33.3-218 applies;

(II) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

(III) Sixty-seven percent (67%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild; or

(IV) Prior to the conveyance of any Unit, the holder of a deed of trust or mortgage on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

(b) The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt must be distributed to the owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the Common Element interests of all the Units.

8.10 The Association may carry fidelity insurance and may require any independent contractor employed for the purposes of managing the Community to carry fidelity insurance.

8.11 Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

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 maintain, repair or improve the Common Elements, to establish a reserve fund for repair or replacement of the Common Elements and to finance those operation of the Association as set forth in its annual budgets.

9.2 Agreement to Pay Assessment. Each Owner of any Unit, by acceptance of any deed or other instrument creating such Owner's interest in the Unit, whether it be so in 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 purpose provided in this Declaration, and special assessment for capital improvement and other matters as provided in this Declaration. Such

assessment shall be fixed, established and collected from time to time in the manner provided in this Article.

9.3 Regular Assessments.

9.3.1 Amount of Regular Assessment. The regular assessment against all Units shall be based upon advanced 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 or 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 any previous period; the creation of reasonable contingency reserve, surplus, and/or sinking fund, common utilities; and any other expenses or 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. 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.

9.3.2 List of Services Paid for Out of Regular Assessments. Funds generated by regular assessments of Units shall be used by the Association to pay for the following services:

- (1) provision of insurance 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.

9.4 Reserve Fund. The Association shall locate 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 of elements of at least \$25,000, though this amount may be increased by the board.

9.5 Apportionment of Expenses. Any expense 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 any of 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. Assessment for expenses relating to Limited Common Elements shall be allocated to the Units to which such Limited Common Elements are appurtenant.

Notwithstanding anything to the contrary, expenses to repair damage to a Common Element, including exterior windows and exterior doors, may be charged to a Unit Owner to the extent that the Unit Owner caused the damage.

9.6 Notice of Regular Assessment 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 amount of any assessment. Such assessment shall be due and payable on or before (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 case shall be ten (10) days after such notice shall have been given.

9.7 Special Assessment. In addition to the regular assessment authorized by this Article, the Association may levy a special assessment payable over such a period as the Association may determine, for the purpose 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 for assessing the expenses authorized by other sections hereof which shall make specific reference to this Article. Any amount assessed pursuant hereto against all Units and Owners shall be assessed against all Units of a prorate basis according to the percentage interest in the Common Elements as set forth in **Exhibit 1** attached hereto. Any amounts assessed hereto less than all the Units and Owners shall be assessed to and paid in fully but such Units and Owners pro rata in accordance with the relative percentage interest 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 the Board, which special assessment shall be implemented unless at least fifty-one percent (51%) of the Membership votes, represented in person or in proxy at a meeting of the Association called for the purpose of ratifying the special assessment, reject such assessment.

9.8 Lien for Assessments. All unpaid Common Expense Assessments shall constitute a statutory lien on such Unit as set forth in C.R.S. 38-33.3-316, and the Association shall have all

statutory lien rights therein set forth. Collection of unpaid assessments shall be subject to interest, late fees, collection charges, and other collection policies as established in a written collection policy adopted by the Board of Directors. The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments and other charges against the Unit due prior to the date of the grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. The foregoing joint and several liability specifically includes grantors and grantees where the grantee becomes an Owner of a Unit as a result of foreclosure, or a deed-in-lieu of foreclosure.

9.9 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 judgement 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 such Owner's Unit. Except for such assessment, no Owner shall be liable for the debts or other obligations of the Association.

9.10 Statement of Account. Upon written request of any Owner or any mortgagee, the Association will provide within five (5) business days a statement of account, and may charge such Owner or mortgagee the Association's cost to provide such statement.

9.11 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 be made for such facilities.

ARTICLE X. DAMAGE OR DESTRUCTION

10.1 Association as Attorney-in-Fact. 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 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 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 sixty-seven percent (67%) of the voting rights of the Association represented in person or by proxy at a meeting of the Association called for purpose of considering this issue 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 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 this Declaration, 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 assessment provided for herein 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 payments for costs of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contribution each Owner made, or would have made had there been an assessment(s), pursuant to section 10.5 of this Declaration.

ARTICLE XI. OBSOLESCE, 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. Adoption such plan must have approval of at least sixty-seven percent (67%) of the Membership votes represented in person or by proxy at a meeting of the Association called for the purpose of considering this issue.

11.2 Payment for Renewal and Reconstruction. The expense of renewal or reconstruction shall be assessed against all Owners as special assessment against their respective Condominium Units. These special assessments shall be levied in advance pursuant to this Declaration 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 may agree as provided herein 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, the 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 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, damage, or other proceeds therefrom the sum of which is hereafter 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 interest 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 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 located among the Owners according to their

ownership interest in the Common Elements, (b) the total amount allocated to the severance damages shall be apportioned those Condominium Units which are not taken or condemned, (c) the respective amounts allocated to the taking or the injury to a particular Unit and /or improvements an Owner has made within such Owner's own Unit shall be apportioned to the particular Unit involved, and (d) the amount located to consequential damages and any other takings or injuries shall be apportioned as the Association 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 the Unit, the Association shall reallocate the ownership interest in the Common Elements and the vote determined in accordance with 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 this Declaration.

12.6 Reconstruction and Repair. Any reconstruction and repair necessitated by the condemnation shall be governed by the procedure specified in this Declaration.

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 number of all mortgagees of Units for whom such Owners have provided such written notice.

Notwithstanding anything to the contrary herein, 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 sixty-seven percent (67%) or more of the voting rights in the Association, excluding Units owned by the Association, the aggregate fractional interest in Common Elements appurtenant to which is at least sixty-seven percent (67%). 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.

13.3 Approval of Other Decision Affecting the Property. Notwithstanding anything to the contrary contained herein, the approval of Owners representing sixty-seven percent (67%) or

more of the voting rights in the Association, excluding Units owned by the Association, 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; or
- (9) material change of insurance coverage for the property.

ARTICLE XIV. THE BELL TOWER

The bell in the Bell tower is owned by the Telluride Mountain Village Owners Association, a Colorado nonprofit corporation (“**TMVOA**”) not 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 **TMVOA**, its successors and assigns, for maintenance and repair of the bell and its components.

ARTICLE XV. REVOCATION OR AMENDMENT TO DECLARATION

This Declaration shall not be revoked nor shall any of the provisions herein be amended unless the Owners representing sixty-seven percent (67%) or more of the voting rights of the Association, the aggregate fractional interest in Common Elements appurtenant to which is at least sixty-seven percent (67%) consent and agree to such revocation or amendment by instrument duly recorded.

ARTICLE XVI. PERIOD OF CONDOMINIUM OWNERSHIP

The Westermere Condominium 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 herein.

ARTICLE XVII. DURATION OF DECLARATION

Each provision contained in this Declaration for the Westermere Condominium shall continue and remain in full force and effect until this Declaration is terminated as herein provided.

ARTICLE XVIII. GENERAL PROVISIONS

19.1 Registration of Mailing Address. Each Owner shall notify the Association of such Owner's 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 such Owner may have conveyed said interest as provided herein, but the Owner of a Condominium Unit shall have no obligation for expenses or other obligation accruing after such Owner conveys such Condominium Unit.

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

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

19.5 Rights of Tenants and Other Occupants. The rights to 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 Bylaws of the Association and the rules and regulations duly promulgated by the Association.

19.6 Notice. All notices or demands which may be required to be given pursuant to this agreement must be in writing and shall be deemed to have been given when deposited in U.S. mail certified, return receipt requested, postage prepaid, to the addresses given to the Association by the Unit Owners as provided herein.

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.

19.7 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.

19.8 Governing Law. This agreement shall be construed in accordance with the law of the state of Colorado.

19.9 Venue for All Actions. The exclusive venue for any action or proceeding which arises out of or relates to this agreement shall in the Courts of San Miguel County, Colorado.

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

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

ARTICLE XIX. NO FIRST MORTGAGEE CONSENT REQUIRED

19.1 Notwithstanding any provisions in this Declaration, as same may be amended or supplemented, to the contrary, no action or decision by the Association, its Board of Directors, or the Owners shall require the consent of any holder of a first mortgage.

ARTICLE XX. LIABILITY FOR OBLIGATIONS

20.1 Liability for Obligations. Notwithstanding anything herein to the contrary, every Unit Owner, by acceptance of a deed or instrument of conveyance of an ownership interest in a Unit, whether or not expressed in any deed or instrument of conveyance, shall be deemed to covenant and agree for such Owner, and such Owner's heirs, personal representatives, successors and assigns, that:

20.1.1 All Owners shall have personal liability to the Association for the obligations created by this Declaration, including monetary obligations, that arise out of their ownership of a Unit.

20.1.2 All obligations created by this Declaration, including monetary obligations, with respect to a particular Unit, run with the land and burden that particular Unit, and shall continue to burden that particular Unit notwithstanding a change in Unit ownership. Such obligations shall not be affected or extinguished by a change in Owners.

20.1.3 Every current Owner of a particular Unit shall have joint and several liability with the former Owner of the Unit for all amounts owed to the Association of every kind and nature (including but not limited to regular assessments, special assessments, water and sewer charges, interest, fines, costs of collection, transfer fees and attorneys fees) that are unpaid as of the date of the grant or conveyance from the former Unit Owner to the current Unit Owner. This provision applies regardless of the type of conveyance and includes, but is not limited to, a purchase and sale, a deed-in-lieu of foreclosure, or the sale or redemption of the Unit in a foreclosure by the San Miguel County Trustee or Sheriff. These provisions are intended to be without prejudice to a Unit Owner's right to recover any such amounts from the former Owner.

20.2 Transfer Fee. Notwithstanding anything herein to the contrary, there is hereby imposed on all Transfers of Units (as defined below), a transfer fee of five percent (5%) of the Consideration (as defined below), unless the Transfer is subject to on Exemption as set forth

below. Such transfer fee, is due and payable to the association on the date of the Transfer. Unpaid transfer fees for a particular Unit are a personal obligation of that Unit's Owner and are an Association lien on that Unit.

20.2.1 A "**Transfer**" is defined as any transfer of an ownership interest in a Unit, whether by deed or any other writing or instrument, and includes:

20.2.1.1 A public trustee confirmation deed, sheriff's deed or deed-in-lieu of foreclosure.

20.2.1.2 The conveyance of fifty percent (50%) or more in a corporation, limited liability company, partnership, limited partnership, joint venture, trust or any other association or entity that owns a Unit.

20.2.1.3 "Consideration" is defined as the actual amount paid in consideration of the Transfer, and includes the bid of a foreclosing lender and the loan amount in a deed-in-lieu of foreclosure transaction.

20.2.1.4 The transfer fee shall not apply to a Transfer to any of the following "Exemptions, so long as a written exemption request is submitted to the Board prior to the date of Transfer and the Board certifies in writing its approval of the exemption:

20.2.1.4.1 On the date of Transfer, all amounts owed to the association of every kind and nature (including but not limited regular assessments, special assessments, water/sewer charges, interest, fines, costs of collection, and attorneys fees) are paid in full; or

20.2.1.4.2 The Consideration is zero (excluding foreclosures and deeds in lieu of foreclosures); or

20.2.1.4.3 The Transfer is to a spouse, or to natural or adopted children; or

20.2.1.4.4 The Transfer is pursuant to a deed of separation or divorce.

20.3 Collection of Rents; Receivership. If any Unit is past due ninety (90) days or more in an amount equal to either a) two quarters or more of regular operating and reserve assessments, or b) a special assessment of \$4,000 or more, then the Association has the following rights and remedies, all of which are elective at the Association's sole and exclusive option, and cumulative.

20.3.1 The Association may take possession of and manage the Unit, including the collection of rent and past due rent, and apply the net proceeds over and above the Association's costs, against amounts owed by the Unit to the Association. If rents are collected by the Association, then the Unit Owner irrevocably designates the Association as its attorney-in-fact to notify the payor of rents to make rent payments directly to the Association, to endorse instruments received in payment thereof in the name of the Unit Owner, and to negotiate same, and collect the proceeds. Payments to the Association hereunder, whether or not there are proper

grounds therefore, shall be applied to satisfy the obligations to the Association by the Unit Owner as set forth herein. The Association may exercise its rights hereunder directly, by agent, its manager, or through a receiver.

20.3.2 The Association may apply to a court of competent jurisdiction to appoint a receiver for the Unit. Such receiver shall have the authority and power (including preceding a foreclosure sale) to take possession of the Unit, to protect and preserve the Unit, to operate and manage the Unit, including preceding a foreclosure sale, to collect rents from the Unit and apply the proceeds, over and above the costs of receivership, to amounts due by the Unit to the Association. The receiver shall serve without bond if permitted by law. The Association's right to a receiver shall exist whether or no the apparent or actual value of the Unit exceeds the indebtedness of the Unit to the Association. An existing employment or contractual relationship between the Association and the receiver shall not be reason to disqualify or otherwise prevent a receiver from serving. The receiver may be appointed by a court of competent jurisdiction, ex parte and without notice to the Unit Owner, such notice to the Unit Owner being expressly waived.

20.3.3 The Unit Owner has an affirmative obligation to provide the Association and/or receiver with all written leases, oral leases and any other occupancy arrangements with third-parties for the Unit within five (5) business days of written request.

20.4 Homestead Waiver. Every Unit Owner, by acceptance of a deed or instrument of conveyance of an ownership interest in a Unit, whether or not expressed in any deed or instrument of conveyance, shall be deemed to covenant and agree that such Unit Owner waives the homestead exemption set forth in C.R.S. § 38-41-201, as same may be amended or supplemented, as to all liens of the Association against such Unit, and all such liens of the Association against such Unit shall be superior Owner's claim to a homestead exemption.

ARTICLE XXI. CONDOMINIUM PARKING AND STORAGE UNITS

21.1 Condominium Parking and Storage Units. The Owners do hereby publish and declare that all of the property described as Westermere Condominium Unit 010 and the individual Condominium Parking Units and Storage Units contained therein, are held, conveyed, granted, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following terms, covenants, uses, conditions, definitions easements limitations, liens, assessments privileges, rights, powers or attorney obligation, reservations and restrictions and shall be deemed to run with the land and shall be burden and a benefit to Owners, and all signatories hereto, their successors, grantees and assigns, at to any person acquiring any interest in the property and the improvements thereon, their grantees, successors, heirs, executors, administrators, devisees and assigns, all of which are hereby subjected to this Condominium Declaration supplement. Each Condominium Parking Unit or Storage Unit Owner in Westermere Condominium Unit 010, commonly referred to as the Parking Garage, is allocated the portion or percentage of votes in the Westermere Homeowners association as set forth in **Exhibit 1**, which is attached hereto and incorporated by reference. Said allocation shall also represent each Owner's percentage of common expenses of the Westermere Homeowners Association and each Owner's percentage of undivided interest in the Common Elements.

21.2 Additional Definitions – Parking.

21.2.1 Parking Structure. Means that portion of the Westermere building and improvements that make up the subsurface Parking garage, its access, improvement and appurtenances.

21.2.2 Parking Unit. Means a portion of Westermere Condominium Unit 010 for permitted vehicle Parking use as more particularly described in this Condominium Declaration supplement, designed and intended for individual ownership and consisting of any one of those portions of the Condominium for permitted vehicle Parking use which is separately identified by an identifying number and separately shown on the Condominium Map. All the Units of the Condominium located within Condominium Unit 010 are Parking Units, except for those designated as Storage Units.

21.2.3 Condominium Parking Unit. Means all of that one individual airspace which is contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, or other boundary of the particular Unit as depicted and identified on the Westermere Parking Condominium Map or Condominium Maps together with all fixtures and improvements therein contained but not including any of the structural components of the Parking structure (as such terms are hereinafter defined), if any, located within such Unit including but not limited to: bearing walls, floors, halls corridors, stairs, stairways, fire escapes, entrances, exits, roofs (except for the interior surfaces thereof, of perimeter wall, floor or ceiling), shafts, installation of central services such as drainage, refrigeration, central air conditioning, elevators, stairways, escalators, tanks, pumps, motors, fans, compressors, ducts and utilized for or serve more than one Condominium Unit, and in general all apparatus and installation existing for common use, wherever located, and all doors.

21.3 Supplemental Map Filed for Record. There has been filed for record in the Office of the Clerk and Recorder, San Miguel County, Colorado a Condominium Map depicting:

21.3.1 The legal description of Westermere Condominium Unit 010 and the Condominium Parking Units and Storage Units contained therein and survey thereof;

21.3.2 The linear measurements and location, with references to the exterior boundaries of said property, of the building and all improvements built within below or upon said land depicted;

21.3.3 Perimeter floor plans and elevation plans of building improvements on said land, showing the horizontal and vertical locations, the number designation and the linear dimensions of each Condominium Parking Unit and Storage Unit. Those utility lines or fixtures which are located within walls, attics, attached to the ceiling, below the floor are general Common Elements;

21.3.4 The elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plane and the linear measurements showing the thickness of the perimeter walls, if, any; and

21.3.5 The designation of each Unit as a Condominium Parking Unit or Storage Unit.

21.4 Statement of purpose, division into Condominium Parking Units and Storage Units. Westermere Condominium Unit 010 was divided in ownership into eleven (11) Condominium Parking Units and eight (8) Condominium Storage 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 General Common Elements which is set forth opposite the designating Unit symbol on **Exhibit 1**, attached to and by this reference made part of this Condominium Declaration.

21.5. Condominium Parking and Storage Units. The description and location of the Condominium Parking Units and Storage Units set forth on the Condominium Map are hereby incorporated into this Condominium Declaration.

21.6 Alterations Within and Between Condominium Parking Units and/ or Storage Units. A Condominium Parking Unit or Storage Unit Owner may not make improvements or alterations to such Owner's Unit whether or not of a structural nature without the express written consent of the Board of Directors.

21.7 Inseparability of Condominium Parking Unit Storage Unit Elements. A Condominium Parking Unit and Storage Unit Owner's undivided interest in and to the General Common Elements, and/or other rights, which are hereby made appurtenant to or part of a Condominium Parking Unit or a Storage Unit, shall not be separated from the Condominium Parking Unit or Storage Unit of which it and/or they are part of or appurtenant to, by deed, lease, encumbrance or otherwise and shall be deemed to be conveyed or encumbered with the Condominium Parking Unit or Storage Unit described in a deed or other instruments.

21.8 Description of the Condominium Parking Unit or Storage Unit.

21.8.1 Description of Condominium Parking Unit Storage Unit. A contract written pursuant to the Map and Condominium Declaration may legally described a Condominium Parking Unit or Storage Unit by its identifying Unit symbol and the name of this Condominium with further reference to San Miguel County, Colorado, the County in which this common interest community is located.

21.8.2 Description Format. Every contract, deed, lease mortgage, will or any other instrument may describe a Condominium Parking Unit or Condominium Storage Unit in this property according to the following description format:

“Condominium Parking Unit _____,” Westermere Condominium, according to the supplemental Condominium Map therefore filed for record, and according and subject

to the Condominium Declaration record in book____, at page ____ in the records of the San Miguel County Clerk and Recorder, San Miguel County, Colorado.

“Condominium Storage Unit _____,” Westermere Condominium, according to supplemental Condominium Map therefore filed for record, and according and subject to the Condominium Declaration recorded in Book _____, at page ____ in records of the San Miguel County Clerk and Recorder, San Miguel County, Colorado.

21.8.3 Property Rights Included in such Description. Every such description includes and described the entire Condominium Parking Unit or Storage Unit, including its appurtenant fractional, undivided interest in and in to the General Common Elements, a non-exclusive easement for ingress and egress between the Unit and the public way, exclusive or semi-exclusive use of any and all of its Common Elements, and all of the other rights, easements, obligations, limitations, covenants and restrictions included in the definition of such Condominium Parking Unit or Storage Unit as provided in this Condominium Declaration.

21.8.4 Items Excluded from Units. A Unit shall be deemed not to include: any pipes, wires, conduits and other public utility lines, chutes, flues, ducts, hoses, drainage, joists, ventilation or other ducts, bearing walls and structural portions of the building running through a Unit which are utilized for or serve more than one Unit. If any pipes, wires, conduits, chutes, flues, hoses, drainage, apparatus, or any other apparatus lie partly within the partly outside the boundaries of any Unit, then such portion therefore which serve only that Unit shall be considered a part of that Unit and such portion therefore which serve more than one Unit shall be considered a part of the Common Elements.

21.8.5 Boundaries. Each underground Condominium Parking Unit or Storage Unit shall consist the volumes or cubicles of space which are enclosed by the lower, upper and lateral or parametrical boundaries described as follows:

21.8.5.1 Underground upper and lower boundaries. The lower boundaries of the underground Condominium Parking and Storage Units are horizontal planes, the elevation of which coincides with the elevation of the paved, concrete floor the building, extended to intersect the lateral or perimetrical boundaries thereof. The upper boundaries of the underground Units are horizontal planes, the elevation of which coincides with the lower surface of the exposed ceiling separating the Building garage from the Building, extended to intersect the lateral or perimetrical boundaries thereof.

21.8.5.2 Lateral or Perimetrical Boundaries. The lateral or perimetrical boundaries of the underground Condominium Units are (i) imaginary vertical planes of the Centre lines of the painted lines the denoting and separating the underground Condominium Units, (ii) imaginary vertical planes intersecting the two imaginary vertical planes noted in (i) above and denoting the entrance to, and the width of, each underground Condominium Unit, (iii) the vertical planes which coincide with the unfinished inside surfaces of the perimeter walls of the Building garage for those underground Condominium Units which front against the inside surface of said perimeter walls of the vertical plains which coincide with any railing or concrete step or center line of the painted line for those underground Condominium Units which front against such

items, said vertical planes extended to intersect the upper and the lower boundaries of the underground Condominium Units and to intersect the other lateral or perimetrical boundaries thereof. The same lateral and perimetrical boundaries shall be used to describe the Condominium Storage Units.

21.9 Separate Taxation of Condominium Parking Units and Storage Units. Written notice of the submission of this property to Condominium ownership shall be given as provided by law to the San Miguel County Assessor. Thenceforth all taxes, assessments and other governmental impositions of the State of Colorado or of any political subdivision, special district or of any other taxing or assessing authority shall be assessed and collected against each Condominium Parking Unit separately and not against a Building or the Complex as a whole. Each separate Condominium Parking Unit or Storage Unit shall be designed on tax records as a separate and distinct parcel. For the purpose of valuation for assessment, the valuation of the General Common Elements shall be apportioned among the several Condominium Units in proportion to their fractional or percentage undivided interest in the General Common Elements. The lien for taxes assessed against any Condominium Unit shall be confined to that Condominium Unit. No forfeiture or sale of any Condominium for delinquent taxes, assessments or other governmental imposition shall divest or in any way affect the title to any other Condominium Unit.

21.10 Title. A Condominium Parking Unit or Storage Unit may be held and owned by more than one person as joint tenants, as tenants in common, or in any form of real property co-ownership recognized under the laws of the State of Colorado.

21.11 Certain Work Prohibited. No Condominium Parking Unit or Storage Unit Owner shall undertake any work in such Owner's or her Unit or elsewhere in the Property which would jeopardize the soundness or safety of a Unit or Building, reduce the value thereof or impair an easement or hereditament thereon or thereto without the approval of the Board of Directors having been obtained prior to commencement of such work. Structural alterations shall not be made by an Owner to the Parking Structure, to roof trusses or other supporting members, common water, gas, drainage or steam pipes, electric or other utility conduits, plumbing or other fixtures connected therewith, nor shall an Owner remove any improvements or fixtures from the Property, Parking Structure or any part thereof without prior written consent of the Board of Directors first having been obtained.

21.12 Use and Occupancy of Condominium Parking Units and Storage Units. Each Owner shall be entitled to the exclusive ownership and possession of such Owner's Condominium Parking Unit and Storage Unit. Each Unit shall be used for Parking purposes as permitted by the zoning ordinance of San Miguel County, Colorado, or the applicable ordinance then in effect, and as specified on the supplemental Condominium Map. No use of any nature shall unreasonably interfere with the quiet use and enjoyment of any other Condominium Parking Unit or Storage Unit. A Storage locker approved by the Board of Directors may be maintained within a Parking Unit.

21.13. Various Rights and Easements.

21.13.1 Association Rights. The Association and Managing Agent shall have a perpetual, non-exclusive right and easement to make such use of, and to enter into or upon any of the Property, the General Common Elements, and the Condominium Parking and Storage Units under the Association's jurisdiction as may be necessary or appropriate for the performance of the duties and functions which they are obligated or permitted to perform under this Condominium Declaration. Said right of access shall include the right to install walls, utilities, lighting and performance of repairs.

21.13.2 Owner's Easement for Access, Support and Utilities. Each Condominium Parking Unit and Storage Unit shall include a perpetual, non-exclusive easement appurtenant to any part of such Condominium ownership interest for access between the Unit in question and the public way adjacent to the Parking Structure, and over and across the lawns, walks, driveways and all other General Common Elements of the Parking Structure, an easement for horizontal and lateral support of such Owner's Unit and for utility services serving such Unit.

21.13.3 Easements for Encroachments. If any part of the General Common Elements encroaches or shall hereafter encroach upon a Condominium Parking Unit or Storage Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Unit, the Owner of the encroaching Unit shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments shall not be considered to be encumbrances either against the title to the Common Elements or any Condominium Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of a Building, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of any Building within the Parking structure, or any improvement within the Parking structure or any part thereof.

21.13.4 Easements within the Units for Repair, Maintenance and Emergencies. Some of the General Common Elements are or may be located within a Unit or may be conveniently accessible only through, over, or under a particular Condominium Parking Unit or Storage Unit. The Association, Managing Agent and each Owner shall have a perpetual easement, which may be exercised on behalf of any Owner by and through the Association or the Managing Agent, as agent for such Owner, for access through any Unit and all Common Elements, from time to time, during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit. Damage to any Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, or as a result of emergency repairs within another Unit, at the instance of the Association, shall be a Common Expense of all the Owners of the Property or the Unit Owners within a particular building, as determined by the Board, whose decision shall be binding upon the Owners. If such damage resulted from the acts or omissions of an Owner, the cost of the repair shall be a debt of said Owner. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with law, ordinance or

lawful order of any governmental authority. Restoration of the damaged improvements shall be substantially the same condition as existed prior to the damage.

21.13.5 Easements Deemed Appurtenant. The easements, servitudes, uses and rights herein created shall be appurtenant to, inseparable from and part of each of the Condominium Parking Units and Storage Units. All conveyances of, and other instruments affecting title to a Condominium Parking Unit or Storage Unit shall be deemed to grant and reserve the easements, servitudes, uses and rights as are herein provided, even though no specific reference to such easements, servitudes uses and rights need appear in any such conveyance.

21.14 Owner's Maintenance Responsibility. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own the materials but not surfaces of the perimeter walls, ceilings and floors within the Condominium Parking Unit or Storage Unit. An Owner shall not be deemed to own lines, pipes, wires, conduits, drainage ways, structural supports or systems (for brevity, hereafter called “**Utilities**”) running through such Owner’s Unit which serve one or more other Units, except as co-tenant with the other Owners. An Owner's right to maintain, repair, alter and remodel a Unit carries with it the obligation to replace at such Owner’s sole cost and expense, any finishing or other materials removed with similar or other types or kinds of materials of at least equal quality. An Owner shall maintain and keep in good repair and in a clean, safe, attractive and sightly condition, at such Owner’s sole cost and expense, the interior of her or such Owner’s own Unit, including the fixtures thereof, and the improvements affixed thereto, and such other items and areas as may be required by the Bylaws or by rules and/or regulations promulgated pursuant to this Declaration or the Bylaws. An Owner shall maintain and keep in a neat and clean condition, any area adjoining and/or leading to such Owner's Unit or appurtenant to such Owner's Condominium Unit. All fixtures and equipment installed within a Unit, commencing at the point where the Utilities enter the Unit and any fixtures, Storage facility, equipment and utility facilities serving only that one Unit shall be maintained and kept in repair by and at the expense of the Owner thereof. If any Owner fails to carry out or neglects the responsibilities set forth in this paragraph, the Association may fulfill the same and charge such Owner therefor, with lien rights vesting in the Association in the event of nonpayment by the Owner, including payment by that Owner of costs and reasonable attorney's fees, if any. Any expense incurred by an Owner under this paragraph shall be the sole expense of said Owner.

21.15 Compliance with Provisions of this Declaration, Articles of Incorporation, Bylaws of the Association. Each Condominium Parking Unit and Storage Unit Owner shall comply strictly with and shall cause of such Owner’s guests, agents and tenants to comply strictly with all of the provisions of this Declaration, the Articles of Incorporation, Bylaws of the Association, and the decisions, rules, regulations and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. The Association's Board may from time to time, adopt, modify and enforce rules and regulations, penalties, fines and/or sanctions to compel compliance with said Articles, Bylaws, Rules, Regulations and the Declaration or to prevent or abate nuisances, disorderly or unsafe conduct in or about the Parking Structure. Owners may be held responsible and may be fined or otherwise sanctioned for the misconduct of their families, guests, agents or tenants. Failure to comply with any of such shall be grounds for legal action to recover fines, penalties and/or other sums due and for damages or injunctive relief of both, along

with costs of suit and reasonable attorneys' fees, maintainable by the Managing Agent or Board of Directors in the name of the Association for itself and/or on behalf of one or more of the owners, or, in a proper case, by an aggrieved Owner.

21.16 The Association. The Condominium Parking Units and Storage Units and all improvements thereon shall be governed and administered by the Association. The Association shall be responsible for payment of Common Expenses, and shall be responsible for maintenance and upkeep of the Common Elements.

21.16.1 General Purposes and Powers. The Association through its Board and/or a Managing Agent shall perform functions and hold and manage property so as to further the interests of the Condominium Parking Unit and Storage Unit Owners and shall have all powers necessary or desirable to effectuate such purposes.

21.16.2 Membership. The fee simple Owner of a Condominium Parking Unit or Storage Unit within the Property shall automatically become a Member of the Association, said Membership being appurtenant to title to a Condominium Parking Unit or Storage Unit. The Membership appurtenant to a Condominium Unit shall automatically pass with title to the Unit with each Owner automatically being entitled to the benefits and subject to the duties and responsibilities relating to the regular Membership for such Owner's Unit. If title to a Unit is held by more than one Person, each co-owner of a fee interest in a Condominium Parking Unit shall be a Member of the Association.

21.16.3 Voting of Owners. Each Condominium Parking Unit and Condominium Storage Unit shall have the number of votes set forth on Exhibit 1. Only one natural person shall exercise the voting rights of any one Condominium Parking Unit or Storage Unit at any meeting or, under other circumstances, act as spokesperson for all Owners of a given Condominium Unit.

21.17 Restrictive Covenants and Obligations.

21.17.1 No Imperiling of Insurance. No Unit Owner and no Owner's tenants or guests shall do anything or cause anything to be kept in or on the Building which might reasonably result in an increase in the premiums for insurance or which might reasonably cause cancellation of such insurance, without the prior written consent of the Association first having been obtained.

21.17.2 No Violation of Law. No Unit Owner and no Owner's guest shall do anything or keep anything in or on or about the Property which would be immoral, improper, offensive or in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body or authority having jurisdiction over the Condominium.

21.17.3 No Noxious, Offensive, Hazardous or Annoying Activities. No noxious or offensive activity shall be carried on upon any part of the Condominium Parking Unit or Storage Unit nor shall anything be done or placed on or in any part of the Unit which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be

conducted on any part of the Unit and no improvement shall be made or constructed on any part of the Condominium which would or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Unit which is unreasonably loud or annoying. No odor shall be emitted on any part of the Condominium which is noxious or offensive to others.

21.17.4 No Unsightliness. No unsightliness shall be permitted on or in any part of the Unit. Without limiting the generality of the foregoing, nothing shall be hung or placed upon any of the General Common Elements, which would or might be unsightly. The judgment of the Board shall be final in determining what is or is not unsightly within the Building subject to its jurisdiction. Objects once determined to be or not to be unsightly may later be reconsidered by the Board provided that at least a year has passed since the Board's previous consideration of the same matter.

21.17.5 No Violation of Rules. No Unit Owner and no Owner's guests, family, tenants or agents shall violate the rules and regulations adopted from time to time by either Association within its jurisdiction, whether relating to the use of Units, the use of General Common Elements, or otherwise.

21.17.6 Parking of Vehicles. Parking of any and all vehicles within the Unit shall be subject to the rules and regulations of the Association, which shall not defeat the rights of the Owners of Parking spaces designated as their Condominium Parking Units.

21.17.7 Restriction on Parking and Storage. No part of the Condominium Parking Unit, unless specifically designated by the Association, 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, large truck 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 within the Condominium which are necessary for construction or maintenance), unless otherwise specifically authorized by the Association, in writing.

21.17.8 Restrictions on Signs. No signs or advertising of any nature shall be erected or maintained within the Parking Structure, including any Unit, without the prior written consent of the Board of Directors of the Association.

Determination of whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 21.17 shall be made by the Board having jurisdiction and shall be final.

ARTICLE XXII. RIGHT OF FIRST REFUSAL / CONDOMINIUM PARKING UNITS AND STORAGE UNITS

22.1 The Association has limited Parking Spaces (aka “**Parking Units**”) and “**Storage Units**” available for use of Association Owners (Members). The Association has a “**Right of First Refusal**” for the Association to purchase Association Parking Units and Storage Units.

22.2 The Association has a Right of First Refusal (aka a “**ROFR**”) to purchase all Westermere Parking Units and/or Storage Units that an Owner seeks to sell separate from the Condominium Unit to which they are appurtenant. The Association Right of First Refusal shall operate as follows:

22.2.1 If the Owner of a Parking Unit or an Owner of a Storage Unit receives a bona fide offer to purchase such Unit which such Owner intends to accept, before entering into a binding, unconditional contract for the sale (except the foregoing shall not prevent the Owner from first executing a contract for sale provided the contract is conditional upon the ROFR), the Owner (the “**Selling Owner**”) shall deliver to the Association written notice (hereafter the “**Sale Notice**”) of such Selling Owner’s intent to sell. The Sale Notice shall constitute an offer by such Selling Owner to sell the Parking Unit (or Storage Unit, as the case may be) to the Association and shall contain a copy of the offer or contract made or received or a summary of the terms of the offer which such Owner is prepared to accept or has accepted subject to the ROFR.

22.2.2 The Association shall have ten (10) business days from the date of the Sale Notice to notify the Selling Owner that the Association intends to purchase the Parking Unit (or Storage Unit, as the case may be) (the “**Commitment Notice**”). The Association shall purchase such Unit from the Selling Owner on the same terms and conditions as the third party offer/contract. If the Association does not issue a Commitment Notice, the Selling Owner may sell such Unit to the third party. If and when the third party seeks to sell the Unit, the Association shall have the same ROFR to purchase such Unit.

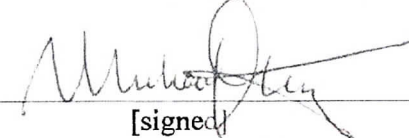
22.3 Lottery. If the Association purchases a Parking Unit (or Storage Unit, the Association may utilize such Unit as an Association Common Element. The Association may also sell the Unit to an Association Owner in need of parking or storage. In the event the Association elects to sell the Unit to an Association Owner in need of parking or storage, the Association shall utilize a fair and impartial lottery system to select such Association Owner. The Association Owners in need shall have comparable needs (i.e., shall constitute Owners who do not already own a Parking Unit or Storage Unit).

Certification


The Association certifies that this First Amended and Restated Condominium Declaration was approved by the Association Board, by a vote of at least sixty-seven percent (67%) of the Owners and by the first Mortgagees.

State of New York)
County of Nassau) ss.

Westermere Condominium Owners Association, Inc., a Colorado nonprofit corporation

By: 
[signed]
MICHAEL GREY, President


Attest:


[signed]
Sherri K Reeder, Secretary

The foregoing was acknowledged before me on January 17, 2022 [date] by MICHAEL GREY, President, Westermere Condominium Owners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 3/29/25


Notary Public

CHRISTINE GRAMAROSSO
Notary Public - State of New York
No. 01GR6415922
Qualified in Queens County
My Comm. Expires Mar. 29, 2025

**WESTERMERE CONDOMINIUM
PERCENTAGE INTEREST IN COMMON ELEMENTS
AND VOTING RIGHTS**

Unit Number	Percentage Interest in Common Elements, Number of Votes
100	3.121%
101A	9.651%
102	5.521%
210	10.381%
211	7.811%
212	6.001%
310	9.281%
311	7.571%
312	5.751%
410	10.790%
411	7.191%
412	5.381%
P1	0.897%
P2	0.897%
P3	0.897%
P4	0.897%
P5	0.897%
P6	0.897%
P7	0.897%
P8	0.897%
P9	0.897%
P10	0.897%
P11	0.897%
S1	0.229%
S2	0.229%
S3	0.229%
S4	0.179%
S5	0.179%
S6	0.229%
S7	0.229%
S8	0.179%
Total	100.000%

Exhibit 1