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**AMENDED AND RESTATED
CONDOMINIUM DECLARATION
OF
OWL MEADOWS AT TELLURIDE**

Name of Common Interest Community:

Type of Common Interest Community:

Name of the Association:

Person Executing the Declaration:

Owl Meadows at Telluride

Condominium

Owl Meadows Homeowners Association, Inc.

Owl Meadows, LLC



**Security
Title**

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AMENDED AND RESTATED CONDOMINIUM DECLARATION OF OWL MEADOWS AT TELLURIDE

This AMENDED AND RESTATED CONDOMINIUM DECLARATION OF OWL MEADOWS AT TELLURIDE (the Declaration) is made as of Jan. 27th, 2006, by Owl Meadows, LLC, a Colorado limited liability company (the "Declarant").

RECITALS

A. Declarant is owner of Lot 42, Backman Village Subdivision, located in Telluride, San Miguel County, Colorado (the "Property").

B. Declarant has the option to purchase Lot 41, Backman Village Subdivision, located in Telluride, San Miguel County, Colorado and any and all plans and permits related to the development of Lot 41, Backman Village Subdivision.

C. Declarant desires to create a condominium common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statute §38-33.3-101 *et. seq.* (the "Act") on the Property, the name of which is Owl Meadows at Telluride.

ARTICLE 1 DECLARATION AND SUBMISSION

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act.

ARTICLE 2 DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration shall have the following meanings:

Section 2.1 "Agency" means any agency or corporation such as Housing and Urban Development, Veteran's Administration ("VA"), Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC") that purchases or insures residential mortgages.

Section 2.2 "Allocated Interests" means the undivided interest in the Common Elements and Assessments and votes in the Association allocated to each Unit. The formulas for the Allocated Interests are as follows:

2.2.1 Percentage Share of Common Expenses and Percentage Share of Ownership of Common Elements. The figure is determined by the percentage equivalent to a fraction, the numerator of which shall be the square footage of each individual Unit and the denominator of which

shall be the total square footage of all Units in the Project; subject to the limitation set forth in Section 10.4., herein below.

2.2.2 Voting. One vote per Unit.

Section 2.3 "Articles" mean the Articles of Incorporation for Owl Meadows Homeowners Association, Inc., a Colorado non-profit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

Section 2.4 "Annual Assessment" means the Assessment levied pursuant to an annual budget.

Section 2.5 "Assessments" means the Annual, Special and Default Assessments levied pursuant to Article 10 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

Section 2.6 "Association" means Owl Meadows Homeowners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 2.7 "Association Documents" means this Declaration, the Articles of Incorporation, the Bylaws, the Map, and any procedures, rules, regulations or policies adopted under such documents by the Association.

Section 2.8 "Bylaws" means the Bylaws adopted by the Association, as amended from time to time.

Section 2.9 "Clerk and Recorder" means the office of the Clerk and Recorder in the County of San Miguel, Colorado.

Section 2.10 "Common Element" means all portions of the Project except the Units. The Common Elements are owned by the Owners in undivided interests according to the Allocated Interest set forth in Section 2.2.1 above and consist of General Common Elements and Limited Common Elements.

2.10.1 "General Common Elements" means all tangible physical properties of this Project except Limited Common Elements and the Units.

2.10.2 "Limited Common Elements" means those parts of the Common Elements which are either limited to or reserved in this Declaration, on a Map, in a recorded certificate executed by Declarant pursuant to Article 14, or by action of the Association, for the exclusive use of an Owner of a Unit or are limited to and reserved for the common use of more than one but fewer than all Owners.

Section 2.11 "Common Expenses" means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) insurance premiums for the insurance carried under Article 9; and (iv) all expenses lawfully determined to be common expenses by the Executive Board.

Section 2.12 "County" means the County of San Miguel, Colorado.

Section 2.13 "Declaration" means this Declaration and the Map, and amendments and supplements to the foregoing.

Section 2.14 "Executive Board" means the governing body of the Association.

Section 2.15 "Expansion Property" means the real property described as Lot 41, Backman Village Subdivision, San Miguel County, Colorado, and any other real property located in the Town of Telluride, which Declarant may submit to the terms of this Declaration by one or more Supplemental Declarations.

Section 2.16 "First Mortgage" means any Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 2.17 "First Mortgagee" means any person named as a Mortgagee in any First Mortgage.

Section 2.18 "Manager" means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

Section 2.19 "Map" means the Condominium Map of the Project recorded with the Clerk and Recorder of the County, depicting a plan and elevation schedule of all or a part of the Property subject to this Declaration and any supplements and amendments thereto.

Section 2.20 "Member" means every person or entity that holds membership in the Association.

Section 2.21 "Mortgage" means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

Section 2.22 "Mortgagee" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.23 "Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Unit, and "Owner" also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit.

Section 2.24 "Owner's Agent" for purposes of owner liability means members of the Unit Owner's family, or the Unit Owner's agent, employee, invitee, licensee or tenant.

Section 2.25 "Project" means the common interest community created by this Declaration and as shown on the Map consisting of the Property, the Units and the Common Elements.

Section 2.26 "Unit" means, the enclosed units intended for dwelling, and including any attached and appurtenant garage, one individual airspace which is contained within the perimeter windows, doors and unfinished surfaces of perimeter walls, floors and ceilings as shown on the Map, together with the appurtenant interest in the Common Elements. Unless the context implies a distinction between a dwelling unit and the garage appurtenant to that dwelling unit, the term "Unit" shall mean both the dwelling unit and the garage appurtenant to that dwelling unit.

Section 2.27 "Successor Declarant" means any person or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder of the County.

Section 2.28 "Supplemental Declaration" means an instrument which amends this Declaration.

Section 2.29 "Supplemental Map" means a supplemental Map of the Project which depicts any change in the Project through a Supplemental Declaration.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meanings specified or used in the Act.

ARTICLE 3 NAME, DIVISION INTO UNITS

Section 3.1 Name. The name of the Project is Owl Meadows at Telluride. The Project is a Condominium pursuant to the Act.

Section 3.2 Association. The name of the Association is Owl Meadows Homeowners Association, Inc. Declarant has caused the Association to be incorporated as a non-profit corporation under the laws of the State of Colorado.

Section 3.3 Number of Units. The initial number of Units in the Project is 8. Declarant reserves the right to expand the Project to a maximum number of 30 Units.

Section 3.4 Identification of Units. The identification number of each Unit is shown on the Map. The street address is 240 South Mahoney Drive, Telluride, CO.

Section 3.5 Description of Units; Use.

3.5.1 Each Unit, the appurtenant interest in the Common Elements and the appurtenant use of Limited Common Elements, shall be inseparable and may be transferred, leased, devised or encumbered only as one Unit. Any attempted transfer of a garage separate from a Unit or any attempted transfer of the appurtenant interest in the Common Elements or Limited Common Elements shall be void unless the entire Unit to which that interest is allocated is also transferred.

3.5.2 Any contract of sale, deed, lease, Mortgage, Deed of Trust, will or other instrument affecting a Unit may describe it by its Unit number, Owl Meadows of Telluride, County of San Miguel, State of Colorado, according to the Condominium Map thereof recorded on

Jan. 27, 2006, at Reception No. 381087, and the Declaration recorded on Jan. 27, 2006, at Reception No. 381088, in the records of the Clerk and Recorder of the County of San Miguel, Colorado, as amended from time to time. As an example, Unit No. 1 may be described as Unit 1, Owl Meadows at Telluride, County of San Miguel, State of Colorado, according to the Map thereof recorded on Jan. 27, 2006, at Reception No. 381087, and the Declaration recorded on Jan. 27, 2006, at Reception No. 381088, in the records of the Clerk and Recorder of the County of San Miguel, Colorado, as amended from time to time.

3.5.3 Each Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit shall be used and occupied only as a residence, except that Units 1-7 and 25-30 may also be utilized as a professional home office subject to compliance with applicable governmental regulations, zoning laws and Association rules and regulations, and each garage shall be used and occupied only for storage of personal property and parking of vehicles, boats and trailers. No vehicle may be parked on or within the Project at any time unless it is within a garage, except that the owners of Units 17, 22 and 30 may park a non-commercial passenger vehicle in front of their units so long as doing so does not block access to any other Unit's entrances or garages.

3.5.4 Subject to the provisions of Section 4.10, an Owner shall have the right to lease his Unit in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however, that (i) all leases/rental agreements shall be in writing and shall provide that the lease is subject to the terms of this Declaration, the Bylaws and governmental regulations, (ii) a Unit may be leased only for the uses provided hereinabove, and (iii) any failure of a lessee to comply with the terms of this Declaration or any other Association Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not the lease contains such a provision.

3.5.5 No household pet or animal shall be allowed in or about the Project, including Common Elements, at any time without adequate supervision by a Unit Owner. Owners will be held responsible for any litter, waste, mess or damage created by their pets in the General Common Elements or Limited Common Elements and for any offensive or prolonged noises created by their pets.

ARTICLE 4

MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 4.1 The Association. The Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit.

Section 4.2 Transfer of Membership. An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit. The Association shall not create a right of first refusal on any Unit and Unit Owners may transfer ownership of their Units free from any such right.

Section 4.3 Membership. The Association shall have one (1) class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters as set forth in Section 2.2.2 above. Each Owner, including Declarant while

Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents.

Section 4.4 Declarant Control. Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association during the term of Declarant Control. 'Declarant Control begins with the appointment of the initial Executive Board and continues until the earlier of (a) five (5) years from the date of recording the Declaration, (b) sixty (60) days after Declarant conveys seventy-five percent (75%) of the Units that may be created to Owners other than Declarant, (c) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business, or (d) two (2) years after the right to add new Units was last exercised. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded with the Clerk and Recorder of the County but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective. Under the Act, Declarant Control is further extinguished, to the extent stated, sixty (60) days after the following events: (a) Declarant conveys twenty-five percent (25%) of the Units that may be created to Owners other than Declarant, to the extent of twenty-five percent (25%) of the members of the Executive Board (minimum of one), and (b) Declarant conveys fifty percent (50%) of the Units that may be created to Owners other than Declarant, to the extent of thirty-three and one-third percent (33-1/3%) of the members of the Executive Board.

Section 4.5 Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required under the Act.

Section 4.6 Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except as directed by the Executive Board.

Section 4.7 Rights of Action. The Association on behalf of itself and any aggrieved Unit Owner shall be granted a right of action against any and all Unit Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. The Unit Owners shall have a right of action against the Association for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Unit Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorneys' fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

Section 4.8 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act and by the Colorado Nonprofit Corporation Act.

Section 4.9 Notice. Any notice to an Owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, or the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Unit.

Section 4.10 Owner Use and Occupancy Regulation. The Association shall have and may exercise the right to control Owner's use and occupancy of their respective units in order to assure Unit Owners of eligibility of the Project for any Agency. Any Owner wishing to lease a Unit shall lease the entire Unit. The Association shall have the authority to permit or deny the use or leasing of any Unit within the Project, subject to then-current federal mortgage eligibility requirements.

ARTICLE 5 POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION

Except as provided in the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association, to:

- 5.1.1 Adopt and amend bylaws and rules and regulations;
- 5.1.2 Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;
- 5.1.3 Hire and terminate managing agents and other employees, agents and independent contractors;
- 5.1.4 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Project;
- 5.1.5 Make contracts and incur liabilities, except that any contract providing for the services of Declarant may not exceed three (3) years and must provide for termination by either party without cause and without payment of a termination fee on ninety days or less written notice;
- 5.1.6 Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- 5.1.7 Cause additional improvements to be made as a part of the Common Elements;
- 5.1.8 Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if (a) Members entitled to cast at least eighty percent (80%) of the votes agree to that action, (b) the provisions of Article 17 are followed with respect to approval of First

Mortgagees, and (c) if all Owners of Units to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest;

5.1.9 Grant easements, leases, licenses and concessions through or over the Common Elements;

5.1.10 Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements;

5.1.11 Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents;

5.1.12 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

5.1.13 Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;

5.1.14 Assign its right to future income, including the right to receive Assessments;

5.1.15 Exercise any other powers conferred by the Declaration or Association Bylaws;

5.1.16 Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and

5.1.17 Exercise any other powers necessary and proper for the governance and operation of the Association.

ARTICLE 6 MECHANIC'S LIENS

Section 6.1 No Liability. If any Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no Owner of any other Unit, nor the Association, shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Unit.

Section 6.2 Indemnification. If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs,

expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

Section 6.3 Association Action. Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien may be effected against an individual Unit or Units.

ARTICLE 7 EASEMENTS

Section 7.1 Recorded Easements. The Property shall be subject to all easements as shown on any Map or plat, those of record, those provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article.

Section 7.2 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, the Association and/or for Owners in all future phases of Owl Meadows at Telluride, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of the Units, or improvements on the Property or Expansion Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property or Expansion Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Project by the Owners.

Section 7.3 Utility Easements. There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Units and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable t.v. and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to locations, and subject to such utilities being underground or adjacent to the Unit.

Section 7.4 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Elements for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the General Common Elements and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit,

and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association, such as for closure for repairs and maintenance.

Section 7.5 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Common Elements in the proper performance of their duties.

Section 7.6 Support Easement. Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of structures or improvements presently situated or to be built in the future on the Property or any Expansion Property.

ARTICLE 8 MAINTENANCE

Section 8.1 Maintenance by Owners. Each Owner shall maintain and keep in repair the interior of his Unit, including the fixtures thereof to the extent current repair shall be necessary in order to avoid damaging other Unit Owners, and the surfaces (excluding the roofing elements) of Limited Common Elements allocated to the Unit. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner of such Unit. An Owner shall do no act or any work that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall be responsible for the maintenance of the interior non-supporting walls of his Unit, and the surface materials such as plaster, drywall, paneling, wallpaper, paint, tile and carpeting of the perimeter walls, ceilings and floors within the Unit, including Unit doors, windows, screens, appliances, cabinets and fixtures. The Association reserves the right to grant the maintenance responsibility to the Unit Owner of certain areas on each Unit and of other Limited Common Elements, and the Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner.

Section 8.2 Owner's Failure to Maintain or Repair. In the event that a Unit (including the allocated Limited Common Elements) is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board (after a determination by the Executive Board that the condition of such Unit negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

Section 8.3 Maintenance by Association. The Association shall be responsible for the maintenance and repair of the Common Elements, whether located inside or outside of Units, in good order and condition consistent with the Town of Telluride's approval of a Project under Certificate of

Appropriateness ("CA") CA # _____ and CA # _____, as amended under CA # _____, as may be amended from time-to-time in accordance with the then in effect requirements of the Telluride Land Use Code. The maintenance and repair of the Common Elements shall be the Common Expense of all Owners. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping and walls which Owner is not required to maintain as set forth in Section 8.1, signage, irrigation systems, snow melt systems, sidewalks, driveways and improvements, if any (which shall include without limitation snow removal services unless performed by another private or public organization formed for such purposes), located in the Common Elements. In the event the Association does not maintain or repair the Common Elements, Declarant shall have the right, but not the obligation, to do so at the expense of the Association.

Section 8.4 Association Maintenance as Common Expense. The cost of maintenance and repair by the Association shall be a Common Expense of all of the Owners, to be shared by each Unit Owner according to the Allocated Interests therefore. Damage to the interior or any part of a 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 also be Common Expense of all of the Owners. However, if such damage is caused by negligent or tortious acts of a Unit Owner or Owner's Agent, then such Unit Owner shall be responsible and liable for all of such damage and the cost thereof, to the extent that Owner or Owner's Agent's negligence caused such damage, which must be timely paid.

Section 8.5 Easement for Maintenance. Each Owner and the Association shall have the irrevocable right, to be exercised by the Manager, the Executive Board or officers or employees of the Association, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or another Unit. In the event insurance proceeds under Article 9 are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

Section 8.6 Limited Common Element Damage. In the event of damage or destruction of a Limited Common Element from any cause other than the negligence or tortious acts of an Owner or Owner's Agent, the then Owners of the Units to which the Limited Common Element is attributable shall bear equally the expense to repair or rebuild the Limited Common Element to its previous condition. The Owner shall bear the cost of such damage to the extent of such Owner's or Owner's Agent's negligence.

Section 8.7 Association Power. The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Elements. No Owner shall make any addition or other alteration to any portion of the Common Elements, no matter how minor, without the express written consent of the Executive Board.

ARTICLE 9 INSURANCE

Section 9.1 General Insurance Provisions. The Association shall acquire and pay for, out of the assessments levied under Article 10 below, the following insurance policies carried with reputable insurance companies authorized to do business in Colorado:

9.1.1 Hazard Insurance Coverage. Insurance for fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes co-insurance), special condominium, building ordinance and inflation guard endorsements attached, in amounts determined by the Executive Board to represent not less than the full then current insurable replacement cost of the buildings located on the Property including all of the Units and Common Elements, including all fixtures, interior and perimeter walls and floors, partitions, decorated and finished surfaces of interior and perimeter walls, floors, and ceilings, doors, windows and other elements or materials comprising a part of the Units and including any fixtures, equipment or other property within the Units which are to be financed by a Mortgage to be purchased by an Agency including ENMA and FHLMC, and excluding any betterments and improvements made by Unit Owners or purchased as builder options and building excavations and foundations. Maximum deductible amounts for such policy shall be determined by the Executive Board, provided, however, that if an Agency requires specific deductibles, the Executive Board shall follow such Agency's requirements. The Association shall obtain insurance covering the standard specifications of each Unit. **Each Unit Owner shall be responsible for obtaining insurance for the contents and personal property of Owner and additional or supplemental insurance covering any options, upgrades, additions, alterations or improvements to his Unit which increase the replacement value of his Unit.** In the event that satisfactory arrangement is not made for additional insurance by the Unit Owner, the Unit Owner shall be responsible for any deficiency in any resulting insurance loss recovery and the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. Any additional premiums attributable to the original specifications of a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Section 10.7 hereof in the event the Association pays such premium for a Unit Owner.

Such hazard insurance policy must be written by an insurance carrier that has (a) a "B" or better general policyholder's rating or a "6" or better Financial performance index rating in Best's Insurance Reports, or (b) an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports International Edition.

9.1.2 Comprehensive Liability. Comprehensive general public liability and property damage insurance for the Project in such amounts as the Executive Board deems desirable, provided that such coverage shall be for at least \$1,000,000 for bodily injury, including deaths and property damage arising out of a single occurrence insuring the Association, the Executive Board, the Manager or managing agent, or both, if any, and their respective agents and employees, and the Unit Owners from liability in connection with the operation, maintenance and use of Common Elements and must include a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to condominiums similar to the Project in the Telluride area

including automobile liability insurance if appropriate. The Executive Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Executive Board that such party has current and satisfactory insurance, including workers compensation insurance, commercial general liability insurance and automobile insurance on all of which the Association is named as an additional insured.

The insurance policies may be carried in blanket policy form naming the Association as the insured, for the use and benefit of and as attorney-in-fact for the Unit Owners. Each Unit Owner shall be 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. Each Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Common Expenses for the Unit which the Mortgage encumbers. The insurance company shall waive its rights of subrogation under the insurance policy against any Unit Owner or member of the Unit Owner's household. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss under an insurance policy described above there is other insurance in the name of the Unit Owner covering the same risk covered by the policy, the Association's policy shall provide primary Insurance.

Insurance coverage on the furnishings and other items of personal property belonging to an Owner and any options, additions and alterations to a Unit which increase the Unit's replacement value above that of the original standard specifications for the Unit (unless financed by a Mortgage to be purchased by FNMA or FHLMC), casualty and public liability insurance coverage for each Unit and the Limited Common Elements associated therewith and workman's compensation insurance covering work within each Unit or on the Limited Common Elements associated therewith shall be the responsibility of the Owner of the Unit.

Section 9.2 Certificates of Insurance; Cancellation. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. All policies required to be carried under this Article 9 shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be cancelled by the insurance company without at least thirty (30) days prior written notice to each Owner and each First Mortgagee whose address is shown in the records maintained pursuant to the Association's documents. If the insurance described in this Article is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and to all First Mortgagees.

Section 9.3 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 9.1 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 Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 9.5 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after

the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 9.4 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Section 9.1 and 9.7 or its agent shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses, and to any servicer of a Mortgage for Federal National Mortgage Association.

Section 9.5 Repair and Replacement. Any portion of the Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

9.5.1 The common interest community created by this Declaration is terminated in which case the approval must first be obtained of sixty-seven percent (67%) of all Unit Owners;

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

9.5.3 There is a vote not to rebuild by (a) eighty percent (80%) of the Owners entitled to vote and (b) every Owner of a Unit or assigned Limited Common Element that will not be rebuilt; or

9.5.4 Prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a Common Expense. If all the Common Elements are 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 Project, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to each Unit's Common Expenses Allocated Interests.

Section 9.6 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses, provided, however, that if the Association's fire and extended coverage insurance covers fixtures, equipment or other property within some but not all of the Units (as required by any Agency including ENMA or FHLMC), or other insurance attributable to some but not all of the Units (such as boiler insurance), the Association reserves the right to charge the Owners of such Units for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage.

Section 9.7 Fidelity Insurance. Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others, including any manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than the greater of (a) twenty-five thousand dollars (\$25,000) or (b) the estimated maximum of funds, including reserve funds, in the custody of the Association or management agent as the case may be, at any given time during the term of each policy as calculated from the current budget of the Association but in no event less than a sum equal to three (3) months' aggregate assessments plus reserve funds. In addition, if responsibility for handling funds is delegated to a Manager, such insurance or bonds must be obtained by or for the Manager and its officers, employees and agents, as applicable. Such fidelity insurance or bonds shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 9.8 Workers' Compensation Insurance. The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 9.9 Other Insurance. The Association shall maintain flood insurance if any part of the Project is located within a Special Flood Hazard Area on a Flood Insurance Rate Map, equal to the lesser of 100% of the insurable value of the Project or the maximum coverage available under the appropriate National Flood Insurance Program. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of the Executive Board against any liability asserted against a Member of the Executive Board or incurred by him in his capacity of or arising out of his status as a Member of the Executive Board. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties or as requested by any Agency.

ARTICLE 10 ASSESSMENTS

Section 10.1 Obligation. Each Owner, including Declarant while an Owner of any Unit upon which a Certificate of Occupancy has been issued, is obligated to pay to the Association (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments.

Section 10.2 Budget. Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget for the Project and shall submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 10.3 Annual Assessments. Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to Section 10.2 above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping of the General Common Elements, care of grounds within the General Common Elements, routine repairs and renovations within the Common Elements, wages, common water and utility charges for the Common Elements, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of improvements within the Common Elements on a periodic basis, as needed.

Annual Assessments shall be payable in monthly installments on a prorated basis in advance and shall be due on the first day of each month. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

Section 10.4 Apportionment of Annual Assessments. The Common Expenses shall be allocated among the Units on the basis of the Allocated Interests for Common Expenses in effect on the date of assessment, provided, however, that the Association reserves the right to allocate all expenses relating to fewer than all of the Units (such as those expenses attributable to Limited Common Elements and insurance premiums described in Section 9.6) to the Owners of those affected Units only.

The Deed Restricted Unit is subject to the Town of Telluride Affordable Housing Deed Restriction and Covenants and means a physical portion of the Condominium Project which is designated for separate ownership and the boundaries of which are described in or determined by this Declaration and labeled as a Deed Restricted Unit. Each such unit shall be designated by a separate number, letter, address or other symbol or combination thereof that identifies the Unit as a deed restricted unit in the Condominium Project. The use and occupancy of such unit is subject to the laws and regulations of the Town of Telluride with respect to its affordable housing regulations. Under the Town's regulations, the assessments which may be assessed to and collected from the Owner of the deed restricted unit may be subject to a cap, eliminated, reduced or otherwise restricted and in all instances, the provisions of these Declarations shall conform to such Town "affordable housing regulations" and the Town of Telluride Affordable Housing Deed Restriction and Covenants. In the event that the Common Expenses that would otherwise be assigned to such deed restricted unit are reduced or eliminated, the share of the Common Expenses shall be allocated to all other Units in accordance with their Allocated Interests. The voting rights and ownership interests in the Common Elements that are allocated to the Affordable Housing Unit shall be adjusted or eliminated to coincide with any limitations placed on the payment of Common Expenses by the Town. The Board, on behalf of the Association, shall cause an amendment to this Declaration be made to reflect any modifications to the Allocated Interests consistent with the provisions stated in this section, which shall adjust or eliminate the square footage of the Deed Restricted Unit from the formula for calculating the Allocated Interests.

Section 10.5 Special Assessments. In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, 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 improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section 10.5 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner or Owner's Agents shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than ten (10) days after such notice shall have been given.

Section 10.6 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 10.7 Effect of Nonpayment: Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid on or before five (5) days after its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (i) Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- (ii) Assess interest from the due date at the yearly rate of eighteen percent (18%) or such other lawful rate as the Executive Board may establish, not exceeding twenty-one percent (21%) per year;
- (iii) Suspend the voting rights of the Owner during any period of delinquency;
- (iv) Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- (v) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- (vi) Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Unit shall constitute a lien on such Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Section 10.8 Personal Obligation. Each Assessment against a Unit is the personal obligation of the person who owned the Unit at the time the Assessment became due and shall not pass to successors in title unless they agree to assume the obligation. No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 10.9 Payment by Mortgagee. Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

Section 10.10 Statement of Status of Assessment Payment. Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Agency, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

Section 10.11 Working Capital Fund. The Association shall establish a working capital fund equal to two-twelfths (2/12) of the estimated Annual Assessments for Common Expenses for each Unit subject to the terms of this Declaration, which amount shall be paid to the Association upon the transfer of title to a Unit. The working capital fund may be used by the Association for emergencies, insurance deductibles in the event of casualty or other loss, capital expenditures for repair or replacement of Common Elements, and such other expenses which do not occur on a regular and ongoing basis, as may be determined by a majority of the Executive Board. The working capital fund shall be established upon the conveyance of the first Unit in the first phase of the Project by Declarant to a third-party purchaser. Upon acquisition of record title to a Unit from Declarant or any seller after Declarant, each Owner shall contribute to the working capital fund of the Association an amount equal to two-twelfths (2/12) of the Annual Assessment determined by the Executive Board for that Unit for the year in which the Owner acquired title. Such payments shall not be considered

advance payments of Annual Assessments. The working capital fund must be maintained by the Association in a segregated account, and may not be used by the Declarant to defray any of its expenses, reserve contributions, or construction costs, nor to make up any budget deficits during the period of Declarant control.

Section 10.12 Maintenance Accounts: Accounting. If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a manager, then such other persons or manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or manager, (b) maintain all reserve and working capital accounts of the Association separate from the operational accounts of the Association, (c) provide to the Association no less than once per quarter an accounting for the previous quarter, and (d) provide to the Association an annual accounting and financial statement of Association funds prepared by the manager, a public accountant or a certified public accountant.

ARTICLE 11 DAMAGE OR DESTRUCTION

Section 11.1 The Role of the Executive Board. Except as provided in Section 9.5, in the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the name of the Association under Article 9, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 9 is sometimes referred to as the "Association-Insured Property").

Section 11.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction unless the approval is obtained of fifty-one percent (51%) of First Mortgagees of Units subject to First Mortgages (which percentage is measured by votes allocated to such Units). Such costs may also include professional fees and premiums for such bonds as the Executive Board or the insurance trustee, if any, determines to be necessary.

Section 11.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association's Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 11.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 11.6, if permitted under the Act, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

Section 11.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in proportion to the relative value of each Unit which shall be based on the square footage of the Unit and in accordance with the Units' Percentage Share of Common Expenses, first to the Mortgagees and then to the Owners, as their interests appear.

ARTICLE 12 CONDEMNATION

Section 12.1 Rights of Owners. Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 12.2 Partial Condemnation: Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least sixty-seven percent (67%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in Article 11 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed among the Units according to the relative value of each Unit which shall be based on the square footage of the Unit and in accordance with each Unit's Allocated

Interests of Percentage Share of Common Elements, first to the Mortgagees and then to the Owners, as their interests appear.

Section 12.3 Complete Condemnation. If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that approval must first be obtained of fifty-one percent (51%) of First Mortgagees of Units subject to First Mortgages (which percentage is measured by votes allocated to such Units), and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Section 11.5 above.

ARTICLE 13 ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of (a) granting easements pursuant to Article 7, (b) purchasing and maintaining insurance pursuant to Article 9, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9 upon their damage or destruction as provided in Article 11, or (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article 12, above. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE 14 RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Section 14.1 Reserved Development Rights of Expansion. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject additional phases of the Expansion Property to the provisions of this Declaration to include up to 22 additional Units and to expand the Common Elements.

14.1.1 Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder of the County one or more Supplemental Declarations and Supplemental Plats setting forth the Units and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion, which shall contain no more than 22 additional Units, may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant in its sole discretion, determines. All improvements to be constructed on the Expansion Property shall be substantially completed prior to the recording of the Supplemental Declaration and Map adding additional Units and the improvements shall be consistent with the Units hereby submitted to the Declaration in

structure type and quality of construction. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration.

14.1.2 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" shall mean the Units as shown on the Map plus any additional Units added by any Supplemental Declarations and Supplemental Maps, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Units shall be effective to transfer rights in the Property as expanded.

14.1.3 Declaration Operative on Expansion Property. Units added by Supplemental Declarations and Maps shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declarations, upon recording the Supplemental Map(s) depicting the Expansion Property and Supplemental Declaration(s) with the Clerk and Recorder of the County. In the event that a portion of the Expansion Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit any additional portion of the Expansion Property to the provisions of this Declaration. The rights of Declarant and any Successor Declarant, as described herein, shall apply to all Units which are added to this Declaration in accordance with these provisions relating to enlargement thereof.

No rights or obligations of any character of any owner in Units in the Expansion Property shall attach until a Supplemental Declaration and Supplemental Map are filed with the Clerk and Recorder of the County annexing the Units constructed in such area to Owl Meadows at Telluride.

14.1.4 Effect of Expansion. Upon the construction of additional Units and their inclusion under this Declaration and the filing of the Supplemental Declaration(s) and Supplemental Map(s) thereof, the Allocated Interests applicable to a Unit shall be as set forth in Section 2.2 above.

Notwithstanding any inclusion of additional Units under this Declaration, each Owner (regardless of whether such Owner is the owner of a Unit shown on the original Map or is the owner of a Unit constructed in the Expansion Property and included by a Supplemental Declaration and Map) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Association, including the expenses for such new Common Area, costs and fees, if any. The recording of a Supplemental Declaration or Supplemental Plat shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.

Section 14.2 Development and Special Declarant Rights. The Declarant hereby reserves for itself and its successors, assigns and designees, the following "Special Declarant Rights," "Development Rights" and "Additional Reserved Rights" for up to 10 years following the recordation of this Declaration (collectively the "Reserved Declarant Rights"). The exercise of the Reserved Declarant Rights is subject to the Town Laws, including any and all required reviews and approvals by the Town.

14.2.1 Completion of Improvements. The right to complete Improvements indicated on Maps and maps filed with the Declaration.

14.2.2 Exercise of Reserved Rights. The right to exercise (i) any Special Declarant Rights, Additional Reserved Rights or Development Rights reserved in this Article or (ii) any other rights reserved or existing under the provisions of this Declaration or the Act.

14.2.3 Consolidation on Merger. The right to merge or consolidate the Community with a similar common interest community.

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

14.2.5 Amendment of Community Map. The right to amend the Condominium Map in connection with the exercise of any Development Rights, Special Declarant Rights or Additional Reserved Rights.

14.2.6 Relocate Boundaries. The right to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements or otherwise reduce or diminish the size of Units (reduce or diminish the size of areas of the Common Elements), subdivide Units with the consent of the owner of the affected Unit(s), provided that, the Association shall not reduce or diminish the size of a portion of the General Common Elements which has been properly designated as a Limited Common Element without the consent of the Owner(s) of the Unit(s) to which the Limited Common Element has been assigned.

14.2.7 Create Additional Units. The right to create or construct additional Units, Common Elements and Limited Common Elements, to subdivide Units and to convert Units into Common Elements or to convert Common Elements into Units.

14.2.8 Annex Additional Real Property or Units. The right to add Units and to subject additional Property located in the Town of Telluride to the provisions of this Declaration upon the substantial completion of improvements thereon.

14.2.9 Withdraw Real Property. The right to withdraw any portion of the Real Estate from the provisions of this Declaration.

14.2.10 Master Associations and Subordinate Association. The right to create master associations and/or subordinate associations (for an individual Building) and to subject all or portions of the Property to such master association or subordinate association:

(i) The right to exercise any and all Development Rights reserved herein or otherwise allowed in the Act;

(ii) The right to amend the Declaration in connection with the exercise of any Development Rights; and

(iii) The right to amend the Condominium Map in connection with the exercise of any Development Rights.

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

14.2.12 Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulations of recreational facilities and/or Common Elements, which may or may not be a part of the Community.

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

Section 14.3 No Further Authorizations Needed. The consent of Owners or holders of Security Interests shall not be required for the Association or its assignees to exercise any reserved rights, and Association or its assignees may proceed without limitation at their option, subject to existing Property use, zoning laws and any planned unit development requirements of the Town of Telluride. Reserved rights of the Association or its assignees may be exercised with respect to different parcels of the Community at different times. Additionally, Association or its assignees may exercise any reserved rights on all or any portion of the Community in whatever order is determined. Association or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Units initially submitted.

Section 14.4 Amendment of the Declaration or Community Map. If Association or its assignees elect to exercise any reserved rights, that party shall comply with the Act.

Section 14.5 Assignment of the Declarant Rights. Declarant reserves the right to transfer and assign some or all of the Declarant Rights to any Person, which will be evidenced by a written assignment recorded in the Official Records, and upon such assignment, such assignee may elect to exercise any assigned reserved rights subject to these Declarations and the Act.

Section 14.6 Interpretation. Recording of amendments to the Declaration and the Condominium Map or Map pursuant to reserved rights in the Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically vest in each existing Owner the reallocated Allocated Interests appurtenant to his Unit. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any Additional Improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Units after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any Amendment of the Declaration or Community Map.

Section 14.7 Reservation of Withdrawal Rights. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from the provisions of this Declaration individual Units and/or Common Elements, provided however that none of the real estate or any portion of the Project may be withdrawn after any Unit has been conveyed by Declarant to a purchaser.

Section 14.8 Other Reserved Rights. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to: (a) complete improvements indicated on the plats and Maps, (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size, within one or more Units and within the General Common Elements so long as Declarant or Successor Declarant continues to be an Owner of a Unit or, if earlier, five (5) years from the recording of this Declaration with the Clerk and Recorder of the County, (c) to subject the Project to a master association, (d) to make merge or consolidate the Project with a common interest community of the same form of ownership, and (e) to appoint or remove any officer of the association or any Executive Board member during the period of Declarant control as set forth in Section 4.4 above.

Section 14.9 Change in Allocated Interests. In the event Declarant or Successor Declarant exercises the right to add or withdraw Units as set forth above or to add Expansion Property, the Allocated Interests of the resulting Units after such expansion or withdrawal shall be according to the formula set forth in Section 2.2 above.

Section 14.10 Termination of Rights. The rights reserved to the Declarant for itself, its successors and assigns in this Article shall expire, unless sooner terminated as required by the Act, five (5) years from the date of recording this Declaration, unless such rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Executive Board may impose on the subsequent exercise of the rights by Declarant.

ARTICLE 15 ARCHITECTURAL CONTROL AND DESIGN REVIEW

Section 15.1 Common Elements. No alteration or additions to the Common Elements of any kind (including, without limitation, change in color, texture, street number signage, doors or windows) shall be made unless first approved in writing by the Executive Board. The Executive Board shall exercise reasonable judgment to the end that all modifications to the Common Elements conform to and harmonize with existing surroundings and structures. The Executive Board has the absolute right to deny any requested changes which the Executive Board reasonably determines do not conform to and harmonize with existing surroundings and structures. All construction activities shall be planned and carried out with a minimum of disruption, unsightliness and noise.

Section 15.2 Requirement for Approval. No improvements shall be constructed, erected, placed, altered, maintained or permitted on any part of the Project, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any part of the Project until plans and specifications with respect thereto satisfactory to the Executive Board showing the proposed improvements, site location of such improvements, complete building plans and material specifications, and all exterior elevations, materials and colors, landscaping, grading, drainage, erosion control, easements and utilities, and such other information as may be requested by local government or Executive Board have been submitted to and approved in writing by the Executive Board and local government governing bodies. All improvements shall be constructed only in accordance with approved plans. If the Executive Board has not responded to an Owner's request for approval within ninety (90) days of the submission by Owner of all information requested by the Executive Board, then such Owner's request shall be deemed approved by the Executive Board. Non-structured Improvements and alterations which are completely within an

existing Unit on a Lot may be undertaken without approval by the Executive Board. The Declarant shall be exempt from the provisions of this Section 15.2.

The Association, upon the unanimous approval by the Executive Board and after reasonable notice to the offender and to the Owner, may remove any improvements constructed, reconstructed, refinished, altered, or maintained in violation of these Covenants, and the Owner of the improvements shall immediately reimburse the Association for all expenses incurred in connection with such removal.

Section 15.3 Criteria for Approval. The Executive Board shall approve any proposed improvement only if it deems in its reasonable discretion that the improvements in the location indicated will not be detrimental to the appearance of the surrounding areas of the Project as a whole; that the appearance of the proposed improvement will be in harmony with the surrounding areas of the Project; and that the upkeep and maintenance of the proposed improvement will not become a burden on the Association. Specific factors considered in approving plans include, among other things, conformity and harmony of exterior design, colors and materials with neighboring structures, relation of the proposed improvements to the natural topography, adequacy of drainage, erosion control, grade and finished ground elevation of the structure to that of neighboring structures and natural features of the property, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Executive Board may condition its approval of any proposed improvement upon the making of such reasonable changes therein as the Executive Board may deem appropriate.

15.4 Exterior Lighting. All exterior fixtures shall be full cut off fixtures only, 40 watt maximum or equal, per GS #19 and GS #20 as provided for in the *Design Guidelines for Building in Telluride* (the "Design Guidelines"). When feasible, timers and motion sensors shall be integrated into the site lighting per GS #19b.4 and GS 19B.1 of the *Design Guidelines*. For development on Lot 41, Backman Village Subdivision, second and third floor decks and balconies shall only have step lights and no exterior lighting on the façade of the building.

ARTICLE 16 MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Units. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws and Rules and Regulations of the Association.

Section 16.1 Title Taken by Mortgagee. Any Mortgagee holding a First Mortgage of record against a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit (i) is acquired or (ii) could have been acquired under the statutes of Colorado governing foreclosures, whichever is earlier, provided, however, that the lien of the Association for unpaid assessments shall not have priority over a First Mortgage in the amount of more than six (6) months of regular common expense assessments, and provided, further, that a First Mortgagee or Agency that acquires title to a Unit through foreclosure of a First Mortgage will not be liable for any fees or charges related to the collection of the six (6)

months of unpaid dues or charges that accrued before the First Mortgagee or Agency acquired title to the Unit.

Section 16.2 Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Unit.

Section 16.3 Right to Pay Taxes and Charges. Mortgagees who hold First Mortgages against Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 16.4 Audited Financial Statement. Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety days an audited financial statement of the Association for the immediately preceding fiscal year at the expense of such Mortgagee.

Section 16.5 Notice of Action. Any First Mortgagee and any Agency which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Unit number), will be entitled to timely written notice of:

16.5.1 Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (b) the interest in the Common Elements appurtenant to the Unit (excluding changes resulting from the submission of Expansion Property to the Declaration) or the liability of Assessments relating thereto, (c) the number of votes in the Association relating to any Unit, or (d) the purposes to which any Unit or the Common Elements are restricted or any amendment set forth in Section 17.2 below;

16.5.2 Any proposed termination of the common interest community;

16.5.3 Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured or guaranteed by such Agency;

16.5.4 Any delinquency in the payment of Assessments owed by a Unit Owner subject to the Mortgage where such delinquency has continued for a period of sixty days;

16.5.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article 9.

Section 16.6 Action by Mortgagee. If this Declaration or any Association Documents require the approval of any Agency or Mortgagees then, if any Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to

have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE 17 DURATION OF COVENANTS AND AMENDMENT

Section 17.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 17.2 Amendment. This Declaration, or any provision of it, may be amended at any time by Owners holding not less than (a) sixty-seven percent (67%) of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose, and (b) provided the First Mortgagee has requested notice in accordance with Section 16.5 above, the approval shall first be obtained of fifty-one percent (51%) of First Mortgagees of Units subject to a First Mortgage (which percentage is measured by votes allocated to such Units) if the amendment to the Association Documents add or delete any material provisions which establish, provide for, govern or regulate any of the following:

- 17.2.1 Voting.
- 17.2.2 Assessments, Assessment liens or subordination of such liens;
- 17.2.3 Reserves for maintenance or repair and replacement of the Common Elements;
- 17.2.4 Insurance or fidelity bonds;
- 17.2.5 Reallocation of interests in the Common Elements, or rights to use of the Common Elements other than as set forth in Article 14;
- 17.2.6 Responsibility for maintenance and repair of the Project;
- 17.2.7 Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community;
- 17.2.8 Boundaries of any Unit;
- 17.2.9 The interests in the Common Elements;
- 17.2.10 Convertibility of Units into Common Elements or of Common Elements into Units;
- 17.2.11 Imposition of any restrictions on the leasing of Units;
- 17.2.12 Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his Unit;

17.2.13 Establishment of self-management by the Association where professional management has been required by any Agency;

17.2.14 Any provision which is for the express benefit of an Agency or First Mortgagees, regardless of whether the amendment is material;

17.2.15 Hazard or fidelity insurance requirements; and

17.2.16 Restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein.

Section 17.3 Amendment for Certain Actions. Notwithstanding anything else contained in this Declaration, except as provided by the Act, and except in case of condemnation or substantial loss to the Units and/or Common Elements, unless at least three-fourths (3/4ths) of First Mortgagees (which percentage is measured by votes allocated to such Units) and three-fourths (3/4ths) of Owners of Units (other than Declarant), the Association may not:

17.3.1 By act or omission seek to abandon or terminate the condominium regime created hereby;

17.3.2 Reallocate the Allocated Interest or obligation of any Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the Percentage Share of Ownership of Common Elements other than as set forth in Article 14;

17.3.3 Partition or subdivide any Unit;

17.3.4 Seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements by act or omission other than the grant of easements for public utilities or other public purposes consistent with the intended use of the Common Elements and other than as set forth in Article 14;

17.3.5 Use hazard insurance proceeds for losses to any part of the Property (whether Units or Common Elements) for other than the repair, replacement or reconstruction of the Project.

Section 17.4 Certification of Amendment. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted under the Act.

Section 17.5 Amendment of Declaration and Map.

17.5.1 This Declaration and the Map may be amended pursuant to Section 38-33.3-217 of the Act. Under the Act, the Declaration may be amended by the Declarant in certain defined circumstances, including without limitation (a) when the Declarant is exercising reserved rights hereunder, or (b) for purposes of correcting clerical, typographical, or technical errors. The Act also provides that the Declaration may be amended by the Declarant and/or the Association in certain defined circumstances. Otherwise, this Declaration (including the Condominium Map) may be amended only by the vote or agreement of Owners to which more than 50% percent of the votes in the Association are allocated.

17.5.2 Furthermore, Section 38-33.3-217(4) of the Act provides that except to the extent expressly permitted or required by other provisions of the Act (e.g., permitted Association amendments), no amendment may (i) create or increase special Declarant rights or (ii) increase the number of Units, in the absence of a vote or agreement of Unit Owners to which at least fifty percent (50%) of the votes in the Association are allocated, including fifty percent (50%) of the votes allocated to Units.

17.5.3 In the event that written notice is sent to an Owner at the current address of the Owner on file with the Association and the notice includes a copy of the proposed amendment, a statement that the Owner has thirty days to approve or disapprove the proposed amendment in writing, with reasonable and clear directions on the manner and method on which to vote and where to return the ballot and the Owner fails to respond by the expiration of the stated thirty day period, the Association shall count the non-responding Owner of the Unit as an affirmative vote. All ballots shall be returned to the President of the Association.

17.5.4 Further, Section 38-33.3-217(4.5) of the Act provides that except to the extent expressly permitted or required by other provisions of the Act, no amendment may change the uses to which any Unit is restricted in the absence of a vote or agreement of Unit Owners to which at least fifty percent (50%) of the votes in the Association are allocated.

17.5.5 No consent of any mortgage or trust deed holder shall be required to accomplish any such amendments.

17.5.6 An amendment to this Declaration shall be in the form of a "First (or Second, etc.) Amendment to Declaration and Map." With the exception of Association amendments, amendments to this Declaration shall be duly executed by the President and Secretary of the Association and recorded in the Office of the Clerk and Recorder of San Miguel County. All amendments to this Declaration shall be indexed in the Grantee's index in the names of the Community and the Association, and in the Grantor's index in the name of each person executing the amendment.

**ARTICLE 18
LIMIT ON TIMESHARING**

No Owner of any Unit shall offer or sell any interest in such Unit under a "timesharing" or "interval ownership" plan, or any similar plan.

**ARTICLE 19
GENERAL PROVISIONS**

Section 19.1 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 19.2 Laws, Ordinances and Regulations.

19.2.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Executive Board with respect to certain actions are independent of the obligations of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

19.2.2 Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of the property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 19.3 Enforcement. Except as otherwise provided in this Declaration, the Executive Board, Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Executive Board of the Association, Declarant or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 19.4 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 19.5 Conflicts Between Documents. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 19.6 Construction Defect Dispute Notification and Resolution Procedure. All actions, or claims (i) by the Association against any one or more of Declarant, its builders, general contractors or brokers, or their agents or employees (individually, a "Declarant Party" and

collectively, "Declarant Parties"), (ii) by any Owner(s) against any one or more of the Declarant Parties, or (iii) by both the Association and any Owner(s) against any one or more of the Declarant Parties, relating to or arising out of the Project, including, but not limited to, the Declaration, or any other Project documentation, the use or condition of the Project or the design or construction of or any condition on or affecting the Project, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements (including, but not limited to, Common Elements) or disputes which allege negligence or other tortious conduct, breach of contract, or breach of implied or express warranties as to the condition of the Project or any Improvements (collectively, "Dispute(s)") shall be subject to the provisions of this Section 19.6. Declarant and each Owner acknowledge that the provisions set forth in this Section 19.6 shall be binding upon current and future Owners of the Project and upon the Association, whether acting for itself or on behalf of any Owner(s).

19.6.1 Notice. Any Person (including the Association) with a Dispute claim shall notify the Declarant in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

19.6.2 Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually acceptable place within the Project to discuss the claim. At such meeting or at such other mutually agreeable time, the Declarant and the Declarant's representatives shall have full access to the property that is the subject of the claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing in a manner deemed appropriate by Declarant, which rights shall continue until such time as the Dispute is resolved as provided in this Subsection. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Project and the property which is the subject of the claim to take and complete corrective action.

19.6.3 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in subsection 19.6.2 shall be construed to impose any obligation on Declarant to inspect, test, repair or replace any item of the Project for which Declarant is not otherwise obligated under applicable law or any limited warranty provided by Declarant in connection with the sale of the Project and/or the Project and/or the Improvements constructed thereon. The right of Declarant to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form executed and recorded by Declarant in the Official Records of San Miguel County, Colorado.

19.6.4 Mediation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in subsection 19.6.2 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this subsection 19.6.4) or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. No litigation or other action shall be

commenced against the Declarant without complying with the procedures described in this subsection 19.6.4.

(i) Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (150) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project is located or such other place as is mutually acceptable by the parties.

(ii) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Exclusion Agreement. Any admissions, offers of compromise or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

(iv) Parties Permitted at Sessions. Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of both parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(v) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each party to the mediation shall bear its own attorneys fees and costs in connection with such mediation.

19.6.5 Arbitration. Should mediation pursuant to Subsection 19.6.3 above not be successful in resolving any Dispute, such claim or dispute shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association as modified or as otherwise provided in this Subsection 19.6.5. The parties shall cooperate in good faith to attempt to cause all necessary and appropriate parties to be included in the arbitration proceeding. Subject to the limitations imposed in this Subsection 19.6.5 the arbitrator shall have the authority to try all issues, whether of fact or law.

(i) Place. The proceedings shall be heard in the county in which the Project is located.

(ii) Arbitration. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association with experience in relevant real estate matters or construction. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein.

(iii) Commencement and Timing of Proceeding. The arbitrator shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(iv) Pre-hearing Conferences. The arbitrator may require one or more pre-hearing conferences.

(v) Discovery. The parties shall be entitled only to limited discovery, consisting of the exchange between the parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The parties shall also be entitled to conduct further tests and inspections as provided in Subsection 19.6.2 above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(vi) Limitation on Remedies/Prohibition on the Award of Punitive Damages. The arbitrator shall not have the power to award punitive or consequential damages. As further provided below, the right to punitive and consequential damages is waived by the parties. The arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages in the proceeding.

(vii) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(viii) Arbitration Award. The arbitrator's award may be enforced as provided for in the Colorado Arbitration Act, or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

19.6.6 Waivers.

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 19.6 AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 19.6. THE ASSOCIATION, EACH OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 19.6. THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH OWNER ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO SUCH REMEDIES, AND THAT SUCH AGREEMENT TO THE PROVISIONS OF THIS SECTION 19.6 IS VOLUNTARY.

19.6.7 Statutes of Limitation. Nothing in this Section 19.6 shall be considered to toll, stay, reduce or extend any applicable statute of limitations.

19.7 Required Consent to Modify. Notwithstanding anything to the contrary contained in this Declaration, any action or claim instituted by the Association against any one or more of the Declarant Parties, relating to or arising out of the Project, the Declaration or any other Project documentation, the use condition of the Project or the design or construction of or any condition on or affecting the Project, including, but not limited to, construction defects, surveys, soils conditions, grading, specifications, installation of Improvements or disputes which allege negligence or other tortious conduct, breach of contract or breach of implied or express warranties as to the condition of the Project or any Improvements, shall have first been approved by Owners representing sixty-seven percent (67%) of the votes in the Association who are voting in person or by proxy at a meeting duly called for such purpose.

19.7.1 Notice to Owners.

(i) Prior to obtaining the consent of the Owners in accordance with Section 19.7, the Association must provide written notice to all Owners which notice shall (at a minimum include (1) a description of the nature of any action or claim (the "Claim"), (2) a description of the attempts of Declarant to correct such Claim and the opportunities provided to Declarant to correct such Claim, (3) a certification from an engineer licensed in the State of Colorado that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, (4) the estimated cost to repair such Claim, (5) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against Declarant and a description of the relationship between such attorney and member(s) of the Board (if any), (6) a description of the fee arrangement between such attorney and the Association, (7) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (8) the estimated time necessary to conclude the action against Declarant, and (9) an affirmative statement from the Board that the action is in the best interest of the Association and its Members.

(ii) In the event the Association recovers any funds from Declarant (or any other person or entity) to repair a Claim, any excess funds remaining after repair of such Claim shall be paid into the Association's reserve fund.

19.7.2 Notification of Prospective Purchasers. In the event that the Association commences any action or claim, all Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Subsection 19.7.1.

"DECLARANT"

OWL MEADOWS, LLC, a Colorado limited liability company

By: *[Signature]*
Member/Manager

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

The foregoing instrument was acknowledged before me this 27th day of January, 2006, by Owl Meadows, LLC, a Colorado limited liability company, by Cris Flora, its Member/Manager.

WITNESS my hand and official seal.

My commission expires: 10/16/2006*[Signature]*
Notary Public