

DECLARATION

FOR

THE WILLOWS AT TELLURIDE PHASE II CONDOMINIUMS

THIS DECLARATION is made on the date hereinafter set forth by Marsim Development Limited Liability Company, a Colorado limited liability company, with an address of P.O. Box 1421, Telluride, Colorado 81435 ("Declarant").

RECITALS:

Declarant is the owner of certain real estate in San Miguel County, State of Colorado, which is more particularly described as set forth in Exhibit A attached hereto and by reference made a part hereof.

Declarant desires to create a common interest community on the real estate described in Exhibit A, the name of which community is The Willows at Telluride Phase II Condominiums, in which portions of the real estate described in Exhibit A will be designated for separate ownership and uses of either a residential or commercial nature, and in which portions of the real estate described in Exhibit B will be owned in undivided percentage interests and will be made available for use by the owners of the separate ownership portions.

Declarant has caused The Willows at Telluride Phase II Condominium Association, Inc., a Colorado nonprofit corporation (the "Association"), to be incorporated under the laws of the State of Colorado, for the purpose of exercising the functions as herein set forth.

NOW THEREFORE, the undersigned Declarant does hereby publish and declare that all of the property described as The Willows at Telluride Phase II Condominiums, as more specifically described in Exhibit A attached hereto and incorporated herein by reference, are held and shall be held, conveyed, granted, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following terms, covenants, uses, conditions, definitions easements, limitations, liens, assessments, privileges, rights, powers of attorney, obligations, reservations and restrictions and shall be deemed to run with the land and shall be a burden and a benefit to owners, and all signatories hereto, their successors, grantees and assigns, and to any person acquiring any interest in the property and the improvements thereon, their grantees, successors, heirs, executors, administrators, devisees and assigns, all of which are hereby subjected to the Declaration.

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ARTICLE 1

SUBMISSION/DEFINED TERMS

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

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

(a) Commercial Unit means any one of the Units designated now or hereafter as Commercial on the Condominium Map, subject to Declarant's or the successor to the Declarant's right to redesignate the type of use allowed and subject to the restrictions on commercial uses contained herein.

(b) Common Elements means the real estate within this Common Interest Community owned by the Unit Owners through the Association in undivided percentage interests, other than a Unit, which real estate shall be designated on the Condominium Map as Common Elements, and as set forth in Exhibit B.

(c) Common Expense Assessments shall include, in supplementation to the definition of Common Expense Assessments included in the Act, late charges, attorneys' fees, fines and interest charged by the Association.

(d) Condominium Map means the condominium plat and map for The Willows at Telluride Phase II Condominiums recorded in the office of the Clerk and Recorder of San Miguel County, Colorado in Plat Book 1 at Page 3821 - 3826

(e) Design Review Committee means the three (3) to five (5) member committee created by the Declarant for the purpose of establishing architectural controls over the Common Interest Community to insure the proper use and appropriate development and improvement of the Common Interest Community so as to provide for harmonious development and improvement of the Common Interest Community. The Board of Directors of the Association may act as the Design Review Committee.

(f) General Development Plan means that document setting forth land uses and development standards for the Common Interest Community, if any, and providing regulations for uses permitted therein, as the same may be amended from time to time.

(g) Improvements means structures installed within or upon a Unit or the Common Elements.

(h) Limited Common Elements means those portions of the Common Elements as set forth on the Condominium Map, designated by Declarant for the exclusive use of one or more but fewer than all of the Units.

(i) Person With a Disability means and includes any person with a "handicap," as defined under the Federal Fair Housing Act and the Americans with Disabilities Act, and the regulations adopted by the federal

government in connection therewith, as such statute and regulations may be amended from time to time.

(j) Residential Units means any of the Units designated by Declarant as such on the Condominium Map, subject to Declarant's right to re-designate the type of use allowed.

(k) Unit means a physical portion of the Common Interest Community, designated for separate ownership, shown as a Unit on the recorded Condominium Map, and the boundaries of which are defined in Article 4 of this Declaration.

(l) Unit Owner means the Declarant or any other person who owns a Unit.

ARTICLE 2

NAMES/DESCRIPTION OF REAL ESTATE

Section 2.01 Name and Type. (a) Common Interest Community. The type of Common Interest Community is a planned community. The name of the Common Interest Community is "The Willows at Telluride Phase II Condominiums."

(b) Association. The name of the Association is "The Willows at Telluride Phase II Condominium Association, Inc."

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

Section 2.03 Recording Data. All easements and licenses to which the Common Interest Community is currently subject are recited herein or set forth on the recorded Condominium Map. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to this Declaration, or granted by authority reserved in any recorded document.

ARTICLE 3

THE ASSOCIATION

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

Section 3.02 Authority. The business affairs of the Common Interest Community shall be managed by the Association. The Association shall be governed by its Bylaws, as amended from time to time. The Board of Directors ("Board"), may, by written resolution delegate authority to a manager or managing agent for the Association, provided no such delegation shall not relieve the Board of final responsibility.

Section 3.03 Specific Powers.

(a) The Association shall have the powers, authority and duties as follows and as necessary and proper to manage the business and affairs of the Common Interest Community.

(b) The Association shall have all of the powers, authority and duties permitted or set forth in the Act.

(c) The Association shall be responsible for the maintenance, repair and improvements of the Common Elements of the entire Common Interest Community. The Association shall have an easement through, into, over, under and across any and all units to the extent necessary to fulfill its duties under this section.

(d) The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of the Unit Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated at a meeting called for that purpose.

Section 3.04 Membership. Every person who is a record Unit Owner of a fee interest in any Unit which is subject to this Declaration shall be a member of the Association, including contract sellers. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of such Unit shall be the sole qualification for such membership. Where more than one person holds an interest in any Unit, all such persons shall be members, provided, however, that only one person may exercise the voting rights of such Unit.

Section 3.05 Board of Directors. The affairs of the Common Interest Community and the Association shall be governed by a Board which, until the termination of the period of Declarant Control, shall consist of between three and five persons, the majority of whom, excepting the Members of the Board appointed by the Declarant, if any, shall be Unit Owners. There shall be one class of members of the Board ("Board Members"). The entire Association may act as the Board.

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

Section 3.07 Declarant Control.

(a) The Declarant shall have the reserved power, pursuant to the Act, to appoint and remove officers and Board Members. This power of Declarant (the period of Declarant Control) terminates no later than the earlier of: (i) ninety (90) days after conveyance of 75% of all Units in the ordinary course of business to Unit Owners other than the Declarant; (ii) five (5) years after the last conveyance of a Unit by the Declarant in the ordinary course of business to a Unit Owner other than Declarant; or (iii) three (3) years after the right to add new Units was last exercised ("Turnover Date").

(b) During the period of Declarant Control, the Declarant's Control shall be subject to the following limitations:

(i) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than a Declarant, not less than fifty percent (50%) of the Board Members must be elected by Unit Owners other than the Declarant.

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

Section 3.08 Indemnification. To the full extent permitted by law, each officer, director and Board Member

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

ARTICLE 4

UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 4.01 Number of Units.

(a) The current number of Units in the Common Interest Community is five, of which currently three are free-market Residential Units, one is a Deed-Restricted Residential Unit, and one is a free-market Commercial Unit. Declarant reserves the right, for itself and for its successors and assigns, as more fully set forth in Article 9 of this Declaration, and subject to the requirements of applicable zoning ordinances and regulations, to re-designate Units as residential or commercial or free-market or deed-restricted. Declarant also reserves the right to combine any Commercial Units owned by Declarant into one Unit made subject to a master lease and subleases. In the event Declarant or a successor to Declarant exercises this reserved right to re-designate a Unit, that party shall cause a supplement to this Declaration to be recorded reflecting such redesignation.

(b) The Declarant reserves the right to create and add up to the maximum number of Units allowed by any governmental entity having jurisdiction, pursuant to any development plan for the Property.

Section 4.02 Estates of a Unit Owner. Each Unit Owner shall own his Unit in fee simple absolute and appurtenant to each Unit shall be an undivided fractional fee simple interest in the Common Elements, as set forth on Exhibit C. The fractional interest in the Common Elements appurtenant to each Unit has been determined by the ratio the square footage of each Unit bears to the total amount of square footage of all the Units.

Section 4.03 Identification of Units/Unit Descriptions. The identification number of each Unit is shown on the Condominium Map and Exhibit C of this Declaration. Every contract for sale, deed, lease, Security Interest, will or other legal instrument shall legally describe a Unit by its identifying Unit number followed by the words:

"The Willows at Telluride Phase II Condominiums, in accordance with the recorded Declaration and Condominium Map, San Miguel County, Colorado."

Such description shall be construed to describe the Unit, together with the appurtenant limited common elements and the appurtenant undivided interest in the common elements, and to incorporate all the rights incident to ownership of a condominium unit and all the limitations on such ownership as described in the Declaration. The reference to the Declaration and Condominium Map in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration or Condominium Map, without specific references thereto.

Section 4.04 Unit Boundaries. Unit Owners are responsible for the maintenance, repair and replacement of the properties located within their Unit boundaries, except as provided in this Declaration. The following are designated as boundaries of each Unit, as defined below and as depicted on the Condominium Map:

(a) **Upper Boundaries.** The horizontal plane of the unfinished lower surface of the suspended ceilings, extended to an intersection with the vertical perimeter boundaries. Space above suspended ceilings, to which access

is needed for repair and maintenance of the Units and Common Elements above the Unit is a Limited Common Element to the Unit.

(b) Lower Boundaries. The horizontal plane of the undecorated or unfinished upper surfaces of the floors, extended to an intersection with the vertical perimeter boundaries.

(c) Vertical Perimeter Boundaries. The planes defined by the center plane between the surfaces of the studs and framing, or the surfaces of the walls, if not built with studs and framing, of all perimeter walls between adjoining Units, including perimeter walls of areas depicted on the Condominium Map as a deck or patio area of a Unit, the unfinished inner surfaces of poured concrete or other exterior walls, the outside unfinished surfaces of corridor walls, the exterior unfinished surface of corridor doors to Common Elements, the interior surface of closed exterior windows and doors and the vertical planes indicated by lines in common corridors as shown on the Condominium Map.

(d) Inclusions. Each Unit includes the spaces and improvements lying within the boundaries described above, including decks or patio areas as limited common elements to the respective Units, as depicted on the map. Each Unit also includes the spaces and improvements within the spaces containing water heating facilities, all electrical switches, wiring, pipes, ducts, conduits, smoke detector or security systems and communications, television, telephone and electrical receptacles and boxes serving that Unit exclusively, the surface of these items being the boundaries of that Unit, whether or not the spaces are contiguous.

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

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

Section 4.05 Common Elements and Limited Common Elements.

(a) The real estate described in Exhibit B are Common Elements. Portions of the Common Elements may be designated as Limited Common Elements, and portions of Units may become Common Elements or Limited Common Elements.

(b) The Declarant reserves, through ten (10) years after the recording of this Declaration or such maximum period of time allowed by law, but not to exceed twenty (20) years, whichever period of time is greater, the right to allocate areas as Common Elements and to allocate areas which constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the owners of Units to which those specified areas shall become appurtenant. The Declarant may allocate or assign Common Elements or Limited Common Element areas (i) by making such an allocation in a recorded instrument, or (ii) in the deed to the Unit to which such Limited Common Element shall be appurtenant, or (iii) by recording an appropriate amendment or supplement to this Declaration, (iv) by recording a supplement to the Condominium Map, or (v) by recording the allocation or assignment in the minutes or records of the Association. Such allocations by the Declarant may be made as a matter of reserved right by the Declarant and may be made to Units owned by the Declarant.

Section 4.06 Delegation of Use. Any Unit Owner may delegate its right of enjoyment to the Common

Elements and facilities to the members of its family, tenants, guests, or contract purchasers who reside at the Unit.

Section 4.07 Title to the Common Elements. Subject to the covenants, conditions, and restrictions contained in this Declaration, the Association shall have an undivided ownership in the Common Elements and the members of the Association shall have the nonexclusive right to use and enjoy the Common Elements. Title to the Common Elements to be conveyed is subject to the reserved Development Rights, Special Declarant Rights and other rights reserved to the Declarant, and/or its assigns in this Declaration.

ARTICLE 5

MAINTENANCE, REPAIR AND REPLACEMENT

Section 5.01 Common Elements. The Association shall be responsible for the maintenance, repair and replacement of any Common Elements. Such Common Elements shall be maintained in good order and condition consistent with the Town of Telluride's approval of the Project under the official Certificate(s) of Appropriateness as may be amended from time to time in accordance with the then in effect requirements of the Telluride Land Use Code.

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

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

ARTICLE 6

EASEMENTS AND RIGHTS OF USE

Section 6.01 Utility Easements. Easements for utilities over and across the Common Elements shall be those shown upon the recorded Condominium Map, and such other easements as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 6.02 Easements for the Board. Each Unit shall be subject to an easement in favor of the Board (including its agents, employees and contractors) to perform its obligations pursuant to this Declaration.

Section 6.03 Association's Right to Use Common Elements. The Association shall have a nonexclusive easement to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

Section 6.04 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Common Interest Community, to enter upon any part of the Common Interest Community in the performance of their duties.

Section 6.05 Easements for Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, a valid easement for the encroachment exists.

Section 6.06 Unit Owners' Easements of Enjoyment. Every Unit Owner shall have a right and easement

of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- (a) The right of the Association to promulgate and publish rules and regulations with which each Unit Owner and their guests shall strictly comply.
- (b) The right of the Association to suspend the voting rights and rights to use the Common Elements by a Unit Owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed sixty days for any infraction of its published rules and regulations.
- (c) The right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act, if the grant is approved by the affirmative vote of Unit Owners having sixty-seven percent (67%) of the votes appurtenant to all Units, provided, further, that if the grant affects any Limited Common Element, such grant shall also require the express written consent of all Unit Owners having the right to use such Limited Common Element, and provided further, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this clause. Any easement, right-of-way, license or similar interest granted by the Association pursuant to this Section shall state that the grant was approved (i) by Unit Owners having at least sixty-seven percent (67%) of the votes, (ii) if appropriate, by all Unit Owners having the right to use any Limited Common Element affected by the grant. Such grant procedure may be used for the purpose (among other things) of permitting reasonable modification of the Common Elements to be made by or at the request of, and at the expense of, a Unit Owner, if such modifications are necessary under the Federal Fair Housing Act (as heretofore and hereafter amended) or otherwise appropriate to afford to one or more Persons With a Disability, residing at or intending to reside at the Unit, the full enjoyment of such Unit, the Limited Common Elements appurtenant to such Unit and/or the Common Elements.
- (d) The right of the Association to close or limit the use of the Common Elements, Limited Common Elements while maintaining, repairing and making replacements in the Common Elements, Limited Common Elements and Units.
- (e) The Development and Special Declarant Rights of the Declarant reserved in this Declaration.

Section 6.07 Easement for Stairway; Easement Through Exterior Walls for Future Access. There is hereby established an easement for an exterior stairway as reflected on the Map. In addition, the Declarant reserves the right to create an easement through the interior and exterior east wall of Commercial Unit One common element for the purpose of possible access between the Project and one or more units in The Willows at Telluride (Phase One) Condominiums.

ARTICLE 7

ALLOCATED INTERESTS

Section 7.01 Allocated Interests. The percentage of ownership in the Common Elements attributable to each Unit and the corresponding the Common Expense liability and votes in the Association allocated to each Unit are set forth in Exhibit C.

Section 7.02 Determination of Allocated Interests. The interests allocated to each Unit have been calculated as follows:

- (a) The ownership of the Common Elements, the percentage of liability for Common Expenses and the number of votes in the Association are calculated on the basis of square footage of each Unit as a fraction or

percentage of the square footage of all Units in the Common Interest Community.

(b) Square footage calculations may vary from final square footage calculations reflected in the "as built" plans or actual physical measurements. These variations are due, among other things, to variations in measurement criteria among architects, surveyors and builders.

Section 7.03 Reallocation. If Units are added to or withdrawn from the Common Interest Community, or use rights are redesignated, or the size of a Unit is changed, pursuant to the provisions of this Declaration and the Act, the formula set forth above shall be used to reallocate the Allocated Interests.

ARTICLE 8

COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 8.01 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments.

Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance assessments, utility assessments (assessed in proportion to usage) and such other assessments as imposed by the Association. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association also shall be the personal obligation of the Unit Owner of such Unit at the time when the assessment or other charges became or fell due. The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against a Unit up to the time of the grant or conveyance, without prejudice to the grantor's right to recover from the grantor any amounts paid by the grantee therefor. No Unit Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under this Declaration.

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

Section 8.02 Apportionment of Common Expenses. Except as provided in this Declaration, all Common Expenses shall be assessed against all Units in accordance with the formula for liability for the Common Expenses as set forth in this Declaration and as initially shown on Exhibit C of this Declaration.

Section 8.03 Purpose of Assessments. The assessments levied by the Association through its Board shall be used for the purposes of promoting the health, safety, and welfare of the residents and guests of the Common Interest Community and the members of the Association. Such purposes shall include, but shall not be limited to the following: The improvement, maintenance, repair, upkeep and reconstruction of the Common Elements, and for the painting, landscape care and snow removal and any other maintenance obligations which may be deemed desirable for the common benefit of the Unit Owners or for the maintenance of property values, or for the payment of expenses which may be incurred by virtue of agreement with or requirement of The Town of Telluride, San Miguel County or other government authorities. The assessments may also be used to provide insurance of various types and in such amounts deemed appropriate by the Board. A portion of the assessments may be used to provide a reserve fund for the replacement, repair, and maintenance of Common Elements of the real estate which must be replaced on a periodic basis.

Section 8.04 Annual Assessment/Commencement of Common Expense Assessments. The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs. The omission or failure of the Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 8.05 Effect of Non-Payment of Assessments. Any assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 15 days after the due date thereof, as established by the Board, shall bear interest at the rate of twenty-one percent (21%) per annum from the due date, and the Association may assess a reasonable late charge thereon as determined by the Board. Failure to make payment within 60 days of the due date thereof shall cause the total amount of such Unit Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Association against a Unit Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefor. If such action at law or equity is commenced, or if the Association in any way consults with legal counsel concerning payment of assessment, charge or fee and a Unit Owner desires to pay the levied assessment, charge or fee, such Unit Owner will be required to pay all attorney fees incurred by Association in obtaining payment of levied assessment, charge or fee. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment Lien, and a Unit Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Unit Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 8.06 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien Security Interest on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under State or Federal law. Sale or transfer of any Unit shall not affect the lien for said assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by applicable State law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit Owner from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 8.07 Working Fund. The Association or Declarant may require the first Unit Owner of each Unit (other than Declarant) to make a non-refundable Payment to the Association in an amount equal to up to one-fourth (1/4) of the annual Common Expense Assessment against that Unit in effect at the closing thereof, which sum shall be held, without interest, by the Association as a working fund. Said working fund shall be collected and transferred to

the Association at the time of closing of the sale by Declarant of each Unit, as aforesaid, and shall be maintained for the use and benefit of the Association. Such payment shall not relieve a Unit Owner from making regular payments of assessments as the same become due. Upon the transfer of his Unit, a Unit Owner shall be entitled to a credit from his transferee for any unused portion of the aforesaid working fund. This account may be updated annually as of December 31, and notice shall be given to all Unit Owners whose individual account does not equal up to one fourth ($\frac{1}{4}$) of the current annual assessment. Payment of any shortage shall be due with the next regular assessment payment, following written notice.

Section 8.08 Common Expenses Attributable to Fewer than All Units.

(a) Any Common Expense associated with the maintenance, repair or replacement of components and elements attached to or a part of a Unit or Units or to a Unit or Units to which a Limited Common Element is assigned may be assessed against that or those Units. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element may be assessed equally among the Units to which it is assigned.

(b) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner may be assessed exclusively against that Unit.

(c) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

(d) An assessment to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense liabilities.

(e) If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit.

(g) Fees, charges, taxes, impositions, late charges, fines, attorney fees, collection costs and interest charged against a Unit Owner pursuant to this Section are enforceable as Common Expense assessments.

ARTICLE 9

RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Subject to the Special Declarant Rights reserved by the Declarant in the Units, the following use restrictions apply to all Units and to the Common Elements:

Section 9.01 Use/Occupancy. No Unit within the Common Interest Community shall be used for any purpose other than as allowed by the local zoning codes; provided, however, that uses described as "day care" or "child care" facilities (licensed or unlicensed) are expressly prohibited. In addition, only "low impact" commercial uses shall be allowed, and no bar or bar/restaurant, food preparation use, industrial use or other high impact use shall be allowed without the express written consent of the Declarant during the period of Declarant control or the Association thereafter. No Unit shall be occupied for business, living or sleeping purposes by more persons than the Unit was designed to safely accommodate. For purposes of the foregoing occupancy restriction, each Residential Unit is deemed to have been designed to safely accommodate two (2) persons per bedroom, and up to two (2) additional persons in the Unit. No Improvements located upon a Unit shall be occupied in any manner at any time prior to being fully completed in accordance with approved plans nor shall any Improvements when completed, be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions herein set forth. Residential Units shall not be used for any purpose other than a residential dwelling or a manager's unit, and commercial and business uses are strictly prohibited without the express written consent of the Board.

Section 9.02 Units to be Maintained. Each Unit at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Unit so that the same are visible from any neighboring Unit, or any street, except as necessary during a period of construction. Declarant, its agents and assigns and the Association, and its agents, shall have the authority to enter and clean Units which do not conform to the provisions of this Section, and to charge and collect from the Unit Owners thereof all reasonable costs related thereto.

Section 9.03 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant its employees and agents to perform such reasonable activities, and to maintain upon portions of the Common Interest Community such facilities as they deem reasonably necessary or incidental to the construction and sale of Units in the development of the Common Interest Community, specifically including, without limiting the generality of the foregoing, the maintenance of temporary business offices, storage areas, trash bins, construction yards and equipment, signs, model units, temporary sales offices and lighting facilities.

Section 9.04 Restrictions on Animals and Pets. No animals, livestock, poultry or insects, of any kind, shall be raised, bred, kept or boarded within a Unit; provided, however, that with the prior written approval of the Board, Unit Owners may keep a reasonable number of dogs, cats, fish or other domestic animals which are bona fide household pets, so long as such pets are not kept for breeding purposes and are not kept in such number or in such manner as to create a nuisance to any Unit Owner. The Board shall have, and is hereby given the exclusive right and authority to reasonably determine that dogs, cats, or other household pets are being kept for breeding purposes or are being kept in such a number or in such manner as to be unreasonable or to create a nuisance to any Unit Owner, or that a Unit Owner is otherwise in violation of the provisions of this Section, and to take such action or actions as it deems reasonably necessary to correct the same. A Unit Owner's right to keep household pets shall be coupled with the responsibility to pay for damage caused by such pets.

Section 9.05 Nuisances. No Nuisance shall be permitted within the Common Interest Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Unit Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Unit or Common Element, or any portion of the Common Interest Community by Unit Owners. Further, no immoral, improper, offensive or unlawful use shall be permitted within the Common Interest Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Common Interest Community or a portion thereof shall be observed. As used herein, the term nuisance shall not include any activities of Declarant which are reasonably necessary to the development and construction of Improvements within this Common Interest Community; provided, however, that such activities of the Declarant shall not unreasonably interfere with any Unit Owner's use and enjoyment of his Unit, or any Unit Owner's ingress and egress to or from its Unit and a public way.

Section 9.06 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Common Interest Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Common Interest Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Common Interest Community except with the prior written approval of the Design Review Committee or the Board.

Section 9.07 No Hazardous Activities. No activity shall be conducted on any portion of the Common Interest Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Common Interest Community and no open fires shall be lighted or permitted on any portion of the Common Interest Community except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace designed to prevent the dispersal of burning embers.

Section 9.08 Compliance with Insurance Requirements. Except as may be approved in writing by the Board, nothing shall be done or kept on the Common Interest Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 9.09 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within a Unit including all tractors, snow removal equipment and garden or maintenance equipment, except when actually in use. All service areas for hanging, drying or airing of clothing shall be kept within a Unit. No satellite dishes shall be placed outside a Unit without the written approval of the Declarant or the Board.

Section 9.10 Utilities. All electric, television, radio and telephone line installations and connections shall be placed inside a Unit. All types of refrigerating, cooling or heating apparatus must be concealed inside a Unit.

Section 9.11 Restriction on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Common Interest Community except such sign or signs as may be approved in writing by the Design Review Committee or the Board. One sign advertising a Unit for sale or for lease may be placed upon such Unit; provided, however, that standards relating to dimensions, color, style and location of such sign shall be determined from time to time by the Design Review Committee or the Board and shall comply with local sign codes and with all other applicable statutes, ordinances and regulations.

Section 9.12 Restrictions on Loads. No Unit Owner may place a load on any floor which exceeds the floor load for which the floor was designed to support. No Unit Owner shall install, operate or maintain any item of heavy equipment or other installation, except in a manner designed to achieve a proper distribution of weight.

Section 9.13 Lease of a Unit. Any Unit Owner shall have the right to lease its Unit upon such terms and conditions as the Unit Owner may deem advisable, subject to the following:

(a) Short term rentals (of less than three months) of Units to overnight and short term guests shall be subject to reasonable regulations of the Association.

(b) Any long term lease or rental agreement (of more than three months) shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association and the Articles of Incorporation and the rules and regulations of the Association.

(c) All short and long term leases and rental agreements of Residential Units shall state that the failure of the tenant or renter or guest to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the rules and regulations of the Association shall constitute a default of the lease or rental agreement and this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

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

Section 9.14 Sale of a Unit. The right of a Unit Owner to sell, transfer or otherwise convey such Unit shall not be subject to any Association right of first refusal or similar restriction and such Unit may be sold free of any such restrictions.

Section 9.15 No Restrictions on Mortgaging of a Unit. There are no restrictions on the right of the Unit Owners to mortgage or otherwise encumber their Units. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 9.16 No Time Shares. A Unit may not be conveyed pursuant to a timesharing arrangement

described in Sections 38-33-110 to 113, Colorado Revised Statutes, without the written consent of Declarant for ten years from the date of recording of this Declaration, and thereafter, without the consent of the Association.

Section 9.17 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, rules and regulations concerning and governing the Common Interest Community or any portion thereof may be adopted, amended, or repealed, from time to time, by the Board, or its successors and assigns. The Board may establish and enforce penalties for the infraction thereof.

Section 9.18 Special Rules for Affordable Housing Units. In accordance with the Telluride Land Use Code, the following provision is applicable to Residential Unit 5:

Residential Unit 5 is an affordable housing unit as required by the Telluride Land Use Code. Residential Unit 5 shall only be assessed monthly dues and other shared assessments based on whichever of the following two formulas results in the lower cost for the affordable housing unit: (a) The size of affordable housing unit in square feet as compared to the total size of the other units in the development; or (b) The size of the lot on which the affordable housing unit is located as compared to the total size of the other lots in the development.

Any Project general annual assessment, special assessment, or any other assessed charge for such affordable housing unit shall be subject to an initial assessment and/or annual assessment increase limitation equal to 3% of the prior year's general annual assessment for the affordable housing unit, or the increase applied to the entire homeowners association, whichever is less.

ARTICLE 10

DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 10.01 Development Rights and Special Declarant Rights. The Declarant reserves, through ten years after the recording of this Declaration, or such maximum period allowed by law, not to exceed 20 years, whichever is greater, the following Development Rights and Special Declarant Rights:

- (a) The right to relocate boundaries between adjoining Units, enlarge Units, enlarge the Common Elements, reduce or diminish the size of Units, reduce or diminish the size of areas of the Common Elements, subdivide Units or complete or make improvements indicated on plats or maps filed of record or filed with the Declaration;
- (b) The right to exercise any development rights reserved below or allowed in the Act including without limitation withdrawal of specified property;
- (c) The right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for construction and for the purpose of discharging the Declarant's obligations under this Declaration;
- (d) The right to make the Common Interest Community subject to an additional master association and master declaration;
- (e) The right to merge or consolidate the Common Interest Community with an another Common Interest Community;
- (f) The right to appoint or remove any officer of the Association or any Board Member during the Declarant Control period;

- (g) The right to amend the Declaration in connection with the exercise of any development right; and
- (h) The right to amend the Condominium Map in connection with the exercise of any development right.

Section 10.02 Additional Reserved Rights. In addition to the Special Declarant Rights set forth above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

(a) **Sales.** The right to maintain sales offices, management offices and models in Units or on the Common Elements.

(b) **Signs.** The right to maintain signs and advertising on the Common Interest Community to advertise the Common Interest Community.

(c) **Dedications.** The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, ski ways, 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 Unit Owners.

(d) **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 parking and/or storage or recreational facilities, which may or may not be a part of the Common Interest Community for the benefit of the Unit Owners and/or the Association.

(e) **Other Rights.** The right to exercise any Additional Reserved Right created by any other provision of this Declaration or the Act.

Section 10.03 Rights Transferable/Rights Transferred.

(a) Any Special Declarant Right, any of the Additional Reserved Rights, any expansion rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the real property records of San Miguel County. Such instrument shall be executed by the transferor Declarant and the transferee.

(b) Notwithstanding the foregoing, the Development Rights and Special Declarant Rights of Declarant to relocate the boundaries of Units, to create new Units or Common Elements, and/or to further subdivide Units and the right of the Declarant to designate the type of use allowed in Units, may be transferred and assigned by Declarant to the Unit Owners for the maximum period of time allowed by law, not to exceed twenty (20) years. The foregoing rights are subject to the following additional terms and conditions: (i) the Unit Owners of the Units affected must comply with the requirements of C.R.S. § 38-33.3-209(6) and C.R.S. § 38-33.3-210; (ii) the authority of the Owners of the specified Units to make these changes is not limited by or subject to the consent of the Association or any other person; and (iii) the express written consent shall be required of the Declarant, or, alternatively, the Declarant may veto and reject the proposed change, as it determines in its sole discretion, which powers of the Declarant to require approval by it or to veto the change shall exist as long as the above rights exist.

ARTICLE 11**ARCHITECTURAL APPROVAL/DESIGN REVIEW**

Section 11.01 Required Approvals and Design Criteria. No Improvement to the interior of a Unit or any structure or any attachment to the exterior of the building or to any existing structure, shall be constructed, erected, placed or installed within the Common Interest Community, including but not limited to a change in painting and/or staining of exterior siding, unless complete plans and specifications thereto (said plans and specifications to show exterior design, height, materials, color, location of the structure or addition to the structure, plotted horizontally and vertically, as well as such other materials and information as may be required by the committee) and shall have been first submitted to and approved in writing by the Design Review Committee. However, the Design Review Committee shall not refuse to permit a Unit Owner to make reasonable modifications to its Unit or to any Limited Common Element which the Unit Owner has the right to use, if such modifications are necessary under the Federal Fair Housing Act or the Americans with Disabilities Act (as heretofore and hereafter amended) to afford one or more Persons With a Disability residing at or intending to reside at such Unit the full enjoyment of such Unit and/or the Limited Common Elements appurtenant thereto. The Design Review Committee shall exercise its reasonable judgment to the end that all attachments, improvements, construction, and alterations to Units or Common Elements, and within this Common Interest Community shall comply with the requirements set forth herein, and in the General Development Plan. The approval or consent of the Design Review Committee on matters properly coming before it, and actions taken by it, shall not be arbitrary or capricious. Decisions shall be conclusive and binding on all interested parties. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, preservation of aesthetic beauty, and conformity with the plan specification and purposes generally set out in the General Development Plan or this Declaration.

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

Section 11.02 Establishment of the Design Review Committee. The Design Review Committee (the "Design Review Committee") shall consist of between three (3) and five (5) members. Declarant shall appoint all members and real estate owned by the Declarant (including both Units and Common Elements) shall be exempt from any control by the Committee. On the Turnover Date, the Design Review Committee may then be comprised completely of Unit Owners without regard to special qualifications and the members shall then be appointed by the Association. Until the Turnover Date, Declarant, in its sole discretion, may at any time grant the power of appointment of the members of the Design Review Committee, and the chairman thereof, to any entity succeeding to substantially all of the assets of Declarant, or to the Association. Notwithstanding the above, appointments may be for staggered terms of a years different in termination so as to provide reasonable continuity to the design review process. The Declarant may remove any appointee at any time upon written notice to such appointee. Such right is limited to the term of Declarant's control hereunder. At the discretion of the Board, the Board may act as the Design Review Committee.

Section 11.03 Reply and Communication. The Design Review Committee shall reply to all submittal of plans made in accordance herewith in writing within sixty (60) days after receipt. Where prior written consent of approval of the Design Review Committee is required under the Declaration with respect to the making of an Improvement, such Improvements shall be conclusively deemed to have been made in compliance with this Declaration unless a notice of intention to commence legal action challenging and objection thereto is issued by the Design Review Committee within a reasonable period of time after completion of such Improvement. All communications and submittals shall be addressed to the Design Review Committee at such address as the chairman of the Design Review Committee shall hereafter designate in writing addressed and mailed to the Unit Owners.

Section 11.04 Variations. The Design Review Committee may grant reasonable variations or adjustments from any conditions and restrictions imposed by this Article or by the General Development Plan in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in the development guide. Such variations or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Units or Common Elements nor deviate substantially from the general intent and purpose of these Covenants and of the General Development Plan.

Section 11.05 Waivers. The approval or consent of the Design Review Committee, or appointed representative thereof, to any application for design approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the committee as to any application or other matters subsequently or additionally submitted for approval or consent pursuant to these covenants or the General Development Plan.

Section 11.06 Liability. The Design Review Committee and the members thereof, as well as any representative of the committee designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants.

Section 11.07 Records. The Design Review Committee shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day.

Section 11.08 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Design Review Committee and any interested Unit owner shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this section, the Design Review Committee shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure of the Design Review Committee or of any Unit Owner to enforce any covenant or restriction herein contained, or any provision of the General Development Plan, shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.09 General Development Plan. The design criteria and control provisions of the General Development Plan, if any, are expressly incorporated herein by this reference.

ARTICLE 12

INSURANCE/CONDEMNATION

Section 12.01 Insurance Carried. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein and as set forth in the Act, which coverage shall be paid out of assessments levies as set forth herein, and which shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado and. Commencing not later than the time of the first conveyance by sale of a Unit to a person other than a Declarant, the Association shall maintain, to the extent reasonably available, policies with the following terms or provisions:

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

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

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

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements, in an amount, if any, specified by the common interest community instruments or otherwise deemed sufficient in the judgment of the board but not less than any amount specified in the Association documents, insuring the Board, the Association, the Managing Agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in the Declarant's capacity as a Unit Owner and Board member. The Unit Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) If the insurance described above is not reasonably available, or if any policy of such insurance is canceled 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 Unit Owners. The Association to carry may carry any other insurance it considers appropriate, including insurance on Units it is not obligated to insure, to protect the Association or the Unit Owners.

(d) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the association unless:

(I) The common interest community is terminated, in which case C.R.S. § 38-33.3-218 (Termination of common interest community) applies;

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

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

(iv) Prior to the conveyance of any Unit to a person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the common interest community rightfully demands all or a substantial part of the insurance proceeds.

(e) Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are common expenses.

(f) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions

hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Units and the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause for less than one hundred percent (100%) of the full insurable replacement cost.

Section 12.02 Policy Requirements. Insurance policies carried pursuant to this section must provide that:

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

(b) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least 20 days prior written notice to all of the Owners, holders of First Mortgages and the Association.

(c) No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Unit Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Unit Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Unit Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

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

(e) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of First Mortgages at least 10 days prior to expiration of the then current policies.

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

Section 12.03 Submittal of Claims. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Unit Owners causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. In the event that more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Unit Owner a *pro rata* share of any deductible paid by the Association.

Section 12.04 Use of Proceeds. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and, except to the extent that other persons will

be distributees, the insurance proceeds attributable to units and Limited Common Elements that are not rebuilt must be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Unit Owners or lienholders, as their interests may appear, as follows:

(a) In a condominium, in proportion to the Common Element interests of all the Units; and

(b) In a planned community, in proportion to the common expense liabilities of all the Units. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned under C.R.S. § 38-33.3-107, and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

Section 12.05 Fidelity Insurance. The Association may obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, Board members, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation.

Section 12.06 Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 12.07 Officers' and Directors' Personal Liability Insurance. The Association may obtain officers' and directors' personal liability insurance to protect the officers, directors and Board members from personal liability in relation to their duties and responsibilities in acting as officers, directors and Board members on behalf of the Association.

Section 12.08 Other Insurance. The Association may obtain insurance against such other risks, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 12.09 Insurance Premium. Except as assessed in proportion to risk, if permitted under the terms of this Declaration, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the Annual Assessments levied by the Association.

Section 12.10 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 12.11 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 12.12 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record, and pursuant to the Act.

Section 12.13 Owner's Obligation to Obtain Insurance on Units. An insurance policy issued to the Association does not obviate the need for Unit Owners to obtain insurance for their own benefit. Owners shall be required to obtain adequate casualty and liability insurance with respect to their respective Units. In connection therewith, the liability of the carrier issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by Unit Owners, and the policies of insurance carried by the Association shall be primary, even if a Unit Owner has other insurance that covers the same loss or losses as covered

by policies of the Association.

ARTICLE 13

SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS

Section 13.01 General Provisions. The provisions of this article are for the benefit of holders, insurers, or guarantors of holders of first lien Security Interests recorded within the Common Interest Community. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Association. A holder, insurer or guarantor of a first lien Security Interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a Security Interest, shall be considered an "Eligible Holder." Eligible insurers and guarantors of a first lien Security Interest shall have the same rights as Eligible Holder.

Section 13.02 Special Rights. Eligible Holders shall be entitled to: (a) Timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association, including any annual audited financial statement; (d) receive written notice of all meetings of the Board or members of the Association; (e) designate a representative to attend any such meetings; (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (g) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration; (h) thirty (30) days written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; (i) thirty (30) days written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Common Interest Community or by an Eligible Holder; and (j) immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or a Unit if the cost of reconstruction exceeds Thirty Thousand Dollars (\$30,000.00) and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Units.

Section 13.03 Special Approvals. After the period of Declarant control, unless at least two-thirds of the Eligible Holders of first lien Security Interests (based on one vote for each mortgage owned) of Units in the Association and requisite Unit Owners have given their written approval, neither the Association nor any Unit Owner shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Unit Owners (except that the granting of access easements, utility easements; drainage easements and water facilities easements or easements for other public proposes consistent with the intended use of such real estate by the Association shall not be deemed within the meaning of this provision); (b) change the method of determining the obligations, Assessments or other charges which may be levied against Unit Owners or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Units, including the architectural design of the exterior appearance of Units, or the upkeep of the Common Elements; (d) fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration; (e) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed; (f) take action to terminate the legal status of the Common Interest Community after substantial destruction or condemnation occurs; (g) amend any material provision of this Declaration; and (h) establish self-management by the Association when professional management has previously been required by the legal documents for the Common Interest Community or by an Eligible Holder. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Holder of a first lien Security Interest receives written request for

approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within 30 days, it shall be deemed to have approved such request.

Section 13.04 Right to Pay Taxes and Insurance Premiums. Any holder of a first lien Security Interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Units, and the holder of a first lien Security Interest making such payments shall be entitled to immediate reimbursement therefor from the Association.

ARTICLE 14

GENERAL PROVISIONS

Section 14.01 Enforcement. The Association or a Unit Owner may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for such violation, including reasonable attorney fees incurred in enforcing these covenants, or to restrain such violation or attempted violation. Failure of the Declarant, the Association or any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board may post on a bulletin board at a conspicuous place on the Common Area notices of any covenant violations by members and copies of any recorded statements. Failure to post shall not affect the validity of any lien or covenant violation.

Section 14.02 Compliance with Federal Fair Housing Act and Americans with Disabilities Act. In order to comply with the requirements of the Federal Fair Housing Act ("FFHA") and the Americans with Disabilities Act ("ADA"), as each are amended from time to time;

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

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

Section 14.03 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 14.04 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 14.05 Amendment of Declaration by Declarant. Until the first Residential Unit has been conveyed by Declarant by deed recorded in the office of the San Miguel County Clerk and Recorder, any of the provisions,

covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination. Thereafter if Declarant shall determine that any amendments to this Declaration shall be necessary in order to make non-material changes, such as the correction of a technical, clerical or typographical error or clarification of a statement, then, subject to the following sentence, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Unit Owner and holder of a Security Interest. Each deed, Security Interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 14.06 Amendment of Declaration by Unit Owners. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least sixty-seven percent (67%) of the votes in the Association and with the written consent of the Association. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of San Miguel County, State of Colorado, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association. For purposes of this Declaration, the Bylaws and the operation of the Association, a vote of two-thirds of the Association (66.66%) shall be deemed to be "rounded up" to sixty-seven percent (67%).

Section 14.07 Amendment Required by Government Mortgage Agencies. Any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of San Miguel County, State of Colorado, of a certificate, setting forth the amendment or repeal in full.

Section 14.08 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate on December 31, 2016, or upon conveyance of 100% of the Units to Unit Owners, whichever occurs first.

Section 14.09 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado. Venue shall be in San Miguel County District Court.

Section 14.10 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 14.11 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized

agent this 21 day of March, 2007.

DECLARANT:

MARSIM DEVELOPMENT LIMITED LIABILITY COMPANY,
a Colorado limited liability company.

By: Spencer Simmons, Manager

By: Michael J. Lynch, AIF
Michael J. Lynch, Attorney-in-Fact



STATE OF COLORADO }
COUNTY OF SAN MIGUEL } ss.

The foregoing Declaration was acknowledged before me by Michael J. Lynch, attorney-in-fact for Spencer Simmons, Manager of Marsim Development Limited Liability Company, on the 21 day of March, 2007.

Susan Heiskari
Notary Public

My commission expires: 8/8/2007

EXHIBIT A

DESCRIPTION OF REAL ESTATE

Lot 7A, Block 31, Town of Telluride, according to the plat recorded in the office of the San Miguel County Clerk and Recorder, County of San Miguel, State of Colorado.

EXHIBIT B

COMMON ELEMENTS

All areas designated as "Common Elements" or "General Common Elements" pursuant to the Condominium Map for The Willows at Telluride Phase II Condominiums, subject to the terms and conditions of this Declaration, County of San Miguel, Colorado.

EXHIBIT C**TABLE OF INTERESTS**

UNIT	SQUARE FOOTAGE*	PERCENT INTEREST	ASSOCIATION VOTES
Residential Unit 1	1410	19%	19
Residential Unit 2	1627	22%	22
Residential Unit 3	2914	40%	40
Commercial Unit 4	901	12%	12
Residential Unit 5 (Affordable Housing Unit)	482	7%	7
TOTALS	7334	100%	100

* Exclusive of limited common elements. Note: Square footage calculations reflected herein may vary from the final square footage calculations reflected in the "as built" plans or actual physical measurements. These variations are due, among other things, to variations in measurement criteria among architects, surveyors and builders.

+ Unit 5 square footage includes Mechanical Storage limited common element.

SAN JUAN SURVEYING
160 D Society Drive
P.O. Box 3730
Telluride, CO 81435
(970) 728-1128 ph (970) 728-9201 fax

CERTIFICATE OF SUBSTANTIAL COMPLETION OF STRUCTURAL COMPONENTS

The undersigned, as the land surveyor for the project depicted herein, does hereby certify that all structural components of the buildings and improvements containing or comprising the Units shown on this Map are substantially completed. I am a Colorado Licensed Land Surveyor.

By: *Christopher R. Kennedy*

Date: 03/21/2007

Printed Name: Christopher R. Kennedy

Company Name: San Juan Surveying

OWNERS CERTIFICATE

The undersigned hereby states and declares the following:

Marsim Development Limited Liability Company, a Colorado limited liability company ("Owner"), is the current fee simple owner of the following described real property ("Property"): Lot 7A, Block 31, Town of Telluride, according to the plat filed of record in the office of the Clerk and Recorder of San Miguel County, County of San Miguel, State of Colorado.