

## SETTLEMENT AGREEMENT

This Settlement Agreement, consisting of this Agreement and the Exhibit attached hereto is entered into between the **TOWN OF TELLURIDE**, a home rule municipality and political subdivision of the State of Colorado (hereafter "**TOWN**"), and **BROWN HOMESTEAD CONDOMINIUMS HOMEOWNERS ASSOCIATION, INC.**, a Colorado corporation (hereafter, "**ASSOCIATION**"); **KWW DEVELOPMENTS**, a partnership; **URSULA W. STEINBERG 1991 REVOCABLE MANAGEMENT TRUST**; **PATRICK O'CONNER**; **ANN M. O'CONNER**; **HAROLD MILLER**; **MILDRED W. GARRETT**; **RUTH BENDER**; **JACQUELINE A. FROBERG**; **RUTH M. DAY**; **FREDERICK K. SOYKA**; **SOYNA L. HOBAN**; **CHRISTINE MERRITT**; **JOHN G. WAGGENER**; **MARY D. WAGGENER**; **BARRY COOK**; **ROBERT GREEN**; **DONNA GREEN**; **THE GREEN REVOCABLE TRUST**; **BRUCE HOCHMAN**; **MICHAEL M. KILEY**; **DANIELLE L. KILEY**; **NORMA CAPPELLO**; **KAREN E. CLARK**; **KARMA J. HORRIGAN**; **PAUL M. HORRIGAN**; **RICHARD T. SCHROEDER**; **JOHN SADLER** and **WENDY SADLER** (hereafter collectively "**OWNERS**"; each individual person or entity named above shall be referred to as "**OWNER**"). The Effective Date of this Settlement Agreement shall be date on which counsel for **OWNERS** delivers to counsel for **TOWN** all properly executed signature pages to this Settlement Agreement, all properly executed signature pages to the Release and Pre-Annexation Agreement, all properly executed Powers of Attorney and Quit-Claim Deeds, and a properly executed Stipulation for Dismissal With Prejudice, as referred to herein; and

WHEREAS, the **TOWN** and F.P. Brown entered into a contract for the sale of water rights dated July 20, 1900, in which contract F.P. Brown perpetually reserved the right to delivery of that amount of water necessary for his domestic needs (hereafter, the "1900 Contract"); and

WHEREAS, the 1900 Contract further provided that in the event the Town later constructed "a new or different system of pipes, reservoirs or other appliances for the handling of the waters hereby conveyed" F.P. Brown would received delivery of his domestic water supply from the pipes of the Town and discontinue the use of the "House Ditch"; and

WHEREAS, the **OWNERS** assert that they are successors in interest to F.P. Brown's rights under the 1900 Contract; and

WHEREAS, the **TOWN** entered into an agreement in or about April, 1974 (hereafter, the "1974 Contract") with BR Telluride Properties, a Partnership, Burt M. Richmond and Dorothea D. Richmond (hereafter, "Developers") concerning the development of that real property described in the 1974 Contract; and

WHEREAS, in April, 1976 the property described in the 1974 Contract was zoned as the Brown Homestead P.U.D., and the Brown Homestead Condominium development was thereafter constructed, which development consists of twenty (20) condominium units and common area as more specifically described in the Declaration of

Covenants, Conditions and Restrictions and First Amendment thereto, recorded in Book 363, pages 277 et.seq. and Book 383, pages 800-808, respectively, in the records of the San Miguel County Clerk and Recorder (hereafter, the "Development"); and

WHEREAS, by the terms of the 1974 Contract the **TOWN** agreed to provide certain services to the Development, including but not limited to delivery of domestic water through an existing two inch tap located on the property, which water was to be treated at a water treatment facility to be constructed at the Development; and

WHEREAS, by the terms of the 1974 Contract the Developers were to apply for and consent to annexation of the property by the **TOWN** on the earliest date on which the Development was eligible for annexation; and

WHEREAS, by the terms of the 1974 Contract **OWNERS** allege that the Town was obligated to record a memorandum of the contract setting forth the names of the owners of the real property and legal description of property described in the contract in the office of the County Clerk and Recorder of San Miguel County, which **OWNERS** allege was intended to constitute constructive notice of the 1974 Contract to all persons; and

WHEREAS, **OWNERS** allege that the Town failed to record the 1974 Contract, or any memorandum thereof, prior to 1991 and the Owners **OWNERS** allege they received no notice of the 1974 Contract prior to the date upon which the Owners obtained title to their interests in the Brown Homestead Condominium; and

WHEREAS, the Owners and the Association allege that, not being recorded prior to 1991, the 1974 Contract is without validity as to the Owners and the Association and that the Owners' titles are free and clear of any claims asserted by the Town under the 1974 Contract; and

WHEREAS, on August 30, 1991, **TOWN** caused to be filed in the office of the San Miguel County Recorder a portion of the 1974 Contract, which **OWNERS** allege is an invalid instrument, the recording of which **OWNERS** allege violates the provisions of § 38-35-109(3), C.R.S. 1973 (1982 Repl. Vol. 16A); and

WHEREAS, the **TOWN** delivered untreated water to the Development through the Mill Creek Raw Water Transmission Line until completion of the Mill Creek Water Plant in 1987, and thereafter commenced delivery of treated water to the Development through the Mill Creek Treated Water Transmission Line; and

WHEREAS, on November 25, 1987, the **TOWN** sent notice to the **ASSOCIATION** that tap fees and service fees were required for delivery of treated water to the Development; and

WHEREAS, **OWNERS** refused to pay tap fees or service fees, alleging, inter alia, that **OWNERS** were entitled to delivery of treated water free of charge in perpetuity, as successors in interest to F.P. Brown under the terms of the 1900 Contract and that even under the 1974 Contract, no tap fees or water service

fees were to be paid by the Owners to the Town until the Development was annexed to the Town; and

WHEREAS, TOWN caused to be filed in the office of the San Miguel County Recorder liens against the property of OWNERS on August 30, 1991, for non-payment of tap fees and water service fees, which liens are recorded at Book 481, Pages 956-976, in the records of the San Miguel County Clerk and Recorder (hereafter, "Liens"); and

WHEREAS, OWNERS allege that the Liens recorded by TOWN are invalid and violate the provisions of § 38-35-109(3), C.R.S. 1973 (1982 Repl. Vol. 16A); and

WHEREAS, TOWN demanded in 1990 that OWNERS, as successors in interest to the 1974 Contract, apply for and consent to annexation of the Brown Homestead Condominium development; and

WHEREAS, OWNERS deny any obligations under the terms of the 1974 Contract; and

WHEREAS, the parties are now engaged in litigation in the San Miguel County District Court, Civil Action No. 92 CV 54 revolving around certain rights, interests and duties of OWNERS and TOWN as set forth more fully in the Complaint filed by OWNERS (hereafter, "Complaint") and Counterclaim filed by TOWN (hereafter, "Counterclaim") in Civil Action No. 92 CV 54, including but not limited to the rights of OWNERS to free water, the rights of OWNERS to free water treatment, the validity of the 1974 Contract and its application to OWNERS, the rights of the parties under the 1900 contract, the validity of Liens, the validity of TOWN ordinances, the obligation of OWNERS to apply for and consent to annexation, and OWNERS right to damages for filing of the Liens; and

WHEREAS TOWN and OWNERS desire to fully and finally settle all issues, complaints and disputes arising from, connected with or otherwise related to all facts and issues as raised, stated, alleged or otherwise pled in the Complaint and Counterclaim;

NOW THEREFORE, the TOWN and OWNERS agree to a full, final and complete settlement of Civil Action No. 92 CV 54 on the following terms and conditions:

#### AGREEMENT

##### I. OWNERS' OBLIGATIONS

A. Each OWNER recognizes and acknowledges that transfer of water rights as described below at Paragraph I(A)(5) and annexation of the Development to TOWN are essential terms to this Settlement Agreement. Each OWNER further recognizes and acknowledges that the TOWN desires a complete, full and final release to this action as described above. To facilitate this settlement, Each OWNER therefore agrees to do as follows:

1. Each OWNER shall individually execute in the form required this Settlement Agreement. Where the OWNER is other than an individual(s), then this Settlement Agreement shall be executed

by a duly authorized representative or agent of the entity holding title to **OWNER'S** property at the Development. Duplicate original signature pages to the Settlement Agreement will be provided to each **OWNER** to be executed in counterpart and returned to counsel for **OWNERS**.

2. Each **OWNER** shall individually execute in the form required the Release which is being provided to **OWNERS** concurrently with this Settlement Agreement. Where the **OWNER** is other than an individual(s), then the Release shall be executed by a duly authorized representative or agent of the entity holding title to **OWNER'S** property at the Development. Duplicate original signature pages to the Release will be provided to each **OWNER** to be executed in counterpart and returned to counsel for **OWNERS**.

3. Each **OWNER** shall individually execute in the form required the Pre-Annexation Agreement which is being provided to **OWNERS** concurrently with this Settlement Agreement. Where the **OWNER** is other than an individual(s), then the Pre-Annexation Agreement shall be executed by a duly authorized representative or agent of the entity holding title to **OWNER'S** property at the Development. Duplicate original signature pages to the Pre-Annexation Agreement will be provided to each **OWNER** to be executed in counterpart and returned to counsel for **OWNERS**.

4. Each **OWNER** shall individually execute in the form prepared by **TOWN** an Irrevocable Limited Power of Attorney for Annexation (hereafter, "Power of Attorney"), a representative form of which is attached to the Pre-Annexation Agreement as Exhibit "1". Where the **OWNER** is other than an individual(s), then the Power of Attorney shall be executed by a duly authorized representative or agent of the entity holding title to property at the Development. Each **OWNER** shall be provided with an individual Power of Attorney to be signed by said **OWNER** and returned to counsel for **OWNERS**.

5. Each **OWNER** shall execute a quit-claim deed, a representative form of which is attached hereto as Exhibit "A", transferring to **TOWN** all right, title and interest to any and all water rights owned or claimed by **OWNERS** pursuant to the 1900 Contract (hereafter, "Deed"). **TOWN** shall provide each **OWNER** with an original Deed which corresponds with said **OWNER'S** ownership interest in the common elements of the Development, and each **OWNER** shall sign said Deed in the form required and return said Deed to counsel for **OWNERS**. **TOWN** shall record said Deeds in the office of the San Miguel County Clerk and Recorder. The cost of such recording shall be borne by **TOWN**.

6. Properly executed signature pages to this Settlement Agreement, the Pre-Annexation Agreement and the Release, as well as properly executed Power of Attorney forms and Deeds shall be delivered by counsel for **OWNERS** to counsel for **TOWN** no later than January 23, 1995.

7. It is understood and agreed that the Power of Attorney forms and Deeds shall be prepared by **TOWN**, and that **OWNERS** shall have the opportunity to review said documents with counsel of their choice and request such changes as **OWNERS** and their counsel

deem necessary. By signing said documents OWNERS make no representation or warranty as to the validity or effectiveness of such instruments, but OWNERS agree and warrant that no OWNER will personally challenge or question the validity or effectiveness of such instruments in any manner or at any time, or assist in challenging the validity or effectiveness of such instruments in any manner or at any time.

B. No later than January 23, 1995, counsel for OWNERS shall deliver to TOWN a Stipulation For Dismissal With Prejudice in a form approved by counsel for the TOWN (hereafter, "Stipulation") of Civil Action No. 92 CV 54, which Stipulation shall be signed by counsel for OWNERS. TOWN shall not file the Stipulation with the Court until such time that TOWN completes the obligations as set forth below in paragraph II (A)(3) to this Agreement. Should TOWN fail to fulfill said obligations, then TOWN agrees that the Stipulation shall be null and void, and shall not file said Stipulation with the Court absent consent of OWNERS' counsel of record.

C. No later than April 15, 1995, OWNERS shall install, at OWNERS expense, twenty-one (21) water meters for the purpose of separately metering each of the twenty (20) units at the Development, as well as the common area at the Development. Billing for each water using unit and the common area shall be in accordance with Telluride Municipal Code, as may be amended from time to time, and the provisions of this Agreement. TOWN will send individual bills only to those persons not entitled to free water service, as set forth in paragraph II A (2)(a)-(b) of this Agreement, and payment shall be made in accordance with all then-existing laws, ordinances, rules and regulations. In order to facilitate accurate billing for water service, OWNERS agree that within twenty (20) days of receipt of request from TOWN, OWNERS or their authorized property manager or agent will provide TOWN with information regarding any transfer of full or partial title of any property at the Development, including the names of the persons involved with said transfer, the units involved, and the date of transfer.

## II. TOWN'S OBLIGATIONS

A. TOWN recognizes and acknowledges that release of all liens and encumbrances placed upon the Development and the waiver by TOWN of water service fees and tap fees as provided herein are essential terms of this Settlement Agreement. TOWN further acknowledges that the OWNERS and ASSOCIATION desire a complete, full and final release from all claims asserted in this action as described above. To facilitate this settlement, upon timely receipt of properly executed counterpart signature pages to the Release, Settlement Agreement, and Pre-Annexation Agreement, bearing the original signatures of all OWNERS (hereafter, "Signature Pages"), together with properly executed Deeds and a Power of Attorney from each OWNER and a properly executed original Stipulation, TOWN agrees to do as follows:

1. TOWN will release all Liens and encumbrances recorded by TOWN against OWNERS arising from failure to pay tap and water service fees, and will provide to counsel for OWNERS proof of

release of said Liens within ten (10) days of receipt of the documents referred to in paragraph II (A) of this Settlement Agreement.

2. **TOWN** agrees to waive all water service fees and tap fees pertaining to delivery of treated or untreated water to the Development incurred up to the Effective Date of this Agreement. **TOWN** expressly agrees that it will never bill, charge, or in any manner attempt to collect retroactively from **OWNERS** or their successors in interest any water service or tap fees incurred prior to the Effective Date of this Agreement. **TOWN** further agrees that, conditioned upon receipt of the properly executed documents referred to in paragraph II(A) of this Settlement Agreement, that **TOWN** will provide each **OWNER** treated water free of charge for so long as the **OWNER(S)** holds sole legal title to his/her/its/their condominium unit(s). Specifically excepted from this agreement to waive tap fees and water service fees are the following:

a. No successor in interest to legal title of the **OWNER'S** unit, or any other person or entity taking partial legal title to a unit with an **OWNER**, either as a joint tenant, tenant in common, or otherwise, shall be entitled to free water or a waiver of service or tap fees. Any successor in interest to full legal title of a unit or any person or entity taking partial legal title to a unit with an **OWNER** shall pay water service fees for the entire unit as set forth in paragraph I (C) of this Agreement, for so long as such successors in interest or other person(s) or entity(s) retain legal title to the unit(s). The intent of this subparagraph is to ensure that all persons and entities not a party to this Agreement as an **OWNER** shall pay water service fees in accordance with the Telluride Municipal Code. Failure by said person(s) or entity(s) to pay water service fees as required by the Telluride Municipal Code shall entitle the **TOWN** to take all actions at law and at equity available to it to collect said fees from said person(s) or entity(s), including but not limited to recording liens in the office of the San Miguel County Clerk and Recorder encumbering the entire condominium unit for failure to pay such fees.

b. Upon **OWNER'S** full divestment of legal title and interest to the interest held in the Development by **OWNER** as of the effective date of this Settlement Agreement, whether by sale, gift, grant or other conveyance to any person or entity not an **OWNER**, **OWNER'S** right to free water service by **TOWN** as outlined above is automatically, irrevocably and forever extinguished, and should said **OWNER** thereafter again take title to the same unit, or to any other condominium unit at the Development, said **OWNER** shall pay water service fees at the rates established pursuant to then existing Telluride Municipal Code, as may be amended from time to time.

c. This Settlement Agreement entitles **OWNERS** only to a waiver of past, present and future water service fees, subject to the terms of this Agreement, and any and all tap fees incurred up to the Effective Date of this Agreement. **TOWN** expressly agrees that it will never bill, charge, or in any manner attempt to collect from **OWNERS** or their successors in interest any water service or tap fees incurred prior to the Effective Date of

this Agreement. This Settlement Agreement does not entitle **OWNERS** to payment by **TOWN** of other future and related expenses, such as repair fees to water transmission equipment on the premises of the Development, meter installation fees for meters installed at the Development, or replacement of the existing tap or installation of a new tap at the Development. Repair charges, installation of new or additional meters and new taps or additional fixture units to the existing tap and other such future and related expenses shall be governed by the Telluride Municipal Code as may be amended from time to time.

3. Within twenty (20) days of receipt of all documents referred to in paragraph II (A) of this Settlement Agreement, **TOWN** will pay to **OWNERS** up to the sum of \$21,750.00 (Twenty One Thousand Seven Hundred Fifty Dollars) as payment for attorney's fees incurred in this action, provided that prior to this time **OWNERS** provide **TOWN** with proof that reasonable and necessary attorney's fees totalling at least \$21,750.00 (Twenty One Thousand Seven Hundred Fifty Dollars) were incurred by **OWNERS** in this action. If **OWNERS** incurred less than the sum of \$21,750.00 (Twenty One Thousand Seven Hundred Fifty Dollars) in reasonable and necessary attorney's fees in this action, then **TOWN** shall only be responsible for payment of the amount of attorney's fees actually incurred. Proof of such fees may include but is not limited to copies of bills received by **OWNERS** from **OWNERS'** attorneys which itemize and describe the work performed, and provide the amount charged for each task.

### 3. MISCELLANEOUS PROVISIONS

A. This Settlement Agreement shall be governed by the laws of the State of Colorado.

B. Each party to the Settlement Agreement, Release and Pre-Annexation Agreement represents and warrants that said party has read and understood all terms of said Agreements, and has had the opportunity to consult with counsel regarding the terms of said Agreements prior to signing same. Each party agrees that the Settlement Agreement, Release and Pre-Annexation Agreement contain the entire agreement between the parties, and that the terms of said Agreements are contractual and binding in nature, and not merely a recital.

C. The parties to the Settlement Agreement, Release and Pre-Annexation Agreement shall have all rights available at law or in equity to enforce the terms of said Agreements, including but not limited to the right of specific performance. In the event that any action is filed by any party to enforce the terms of said Agreements, or any action is otherwise filed arising out of the terms of said Agreements, the prevailing party shall be entitled to reasonable attorney's fees and costs incurred.

D. The provisions of this Settlement Agreement, as well as the Release and Pre-Annexation Agreement are severable in nature, and to the extent that any provision of said Agreements is found to be void, voidable, illegal or unenforceable by a Court of competent jurisdiction, the remaining provisions shall remain in



full force and effect and binding on the parties to said Agreements.

E. The terms of this Settlement Agreement, as well as the Release and Pre-Annexation Agreement may be amended only upon written agreement of counsel for the parties to said Agreements.

F. The parties to this Settlement Agreement, as well as the Release and Pre-Annexation Agreement agree that time is of the essence in performing the terms of these Agreements. The time limits set forth in said Agreements may be altered, changed or amended only upon written agreement of counsel.

G. The terms of this Settlement Agreement, as well as the Release and Pre-Annexation Agreement, and the rights, duties and obligations imposed therein are binding on the parties to said Agreements, as well as on said parties' heirs, executors, administrators, successors, employees, purchasers, servants, agents, assigns, officers, and elected and/or appointed officials.

H. The Recitals to this Settlement Agreement, as well as the terms, conditions, provisions and recitals of the Pre-Annexation Agreement and Release are hereby incorporated as essential terms of this Settlement Agreement.

I. The parties hereby agree that the **TOWN**, in signing the Settlement Agreement, Release and Pre-Annexation Agreement does not waive or intend to waive the monetary limitations or any other rights, defenses, immunities or protections of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et.seq., as from time to time may be amended. Should legal action ensue to enforce the terms of these Agreements, or otherwise arise from these Agreement, **OWNERS** hereby acknowledge and agree that **TOWN** has not waived and shall be entitled to the rights, defenses, immunities and protections as set forth in the Act.

J. **OWNERS** agree and acknowledge that each **OWNER** has read and understood all provisions of this Settlement Agreement, as well as all provisions of the Release and Pre-Annexation Agreement, and has had the opportunity to discuss said documents with his attorney of choice. No promise, inducement or agreement of any sort has been made to **OWNERS** other than as contained within the terms of this Settlement Agreement, the Release and Pre-Annexation Agreement. Said Agreements constitute the entire agreement between the parties, and no other prior, current or future representation, oral or written, shall be effective and binding upon the parties, other than an amendment to said Agreements performed in compliance with paragraph 3 (E) of this Settlement Agreement.

K. The signatories to this Settlement Agreement, Release, Pre-Annexation Agreement, Deeds and Power of Attorney forms affirm and warrant that they are fully authorized to enter into and execute said documents, and that all necessary actions, notices, consents, or releases required pursuant to any Law, Charter, Declaration, Articles or Bylaws required to authorize their execution of said documents have been made or obtained.





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INC., a Colorado corporation, et al. v. TOWN OF TELLURIDE

Case No. 92 CV 54 San Miguel County District Court

BROWN HOMESTEAD CONDOMINIUMS  
HOMEOWNERS ASSOCIATION, INC., a  
Colorado corporation

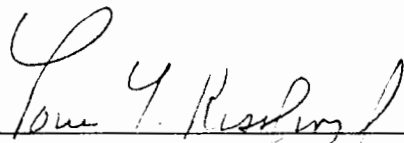
By: *Tom Y. Reschman*  
Its *President*

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KWW DEVELOPMENTS, a partnership


By:   
Its General Partner

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URSULA W. STEINBERG 1991  
REVOCABLE MANAGEMENT TRUST

By:   
Trustee

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Patrick O'Conner 3-29-94  
Patrick O'Conner

Ann M. O'Conner 3-29-94  
Ann M. O'Conner

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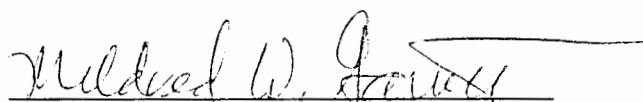
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Harold Miller

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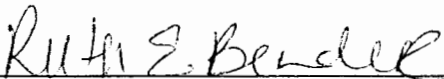
Mildred W. Garrett



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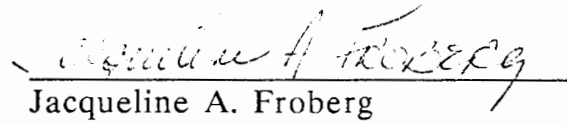
Case No. 92 CV 54      San Miguel County District Court

  
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Ruth Bender

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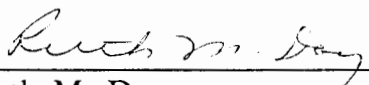
Case No. 92 CV 54 San Miguel County District Court

  
Jacqueline A. Froberg

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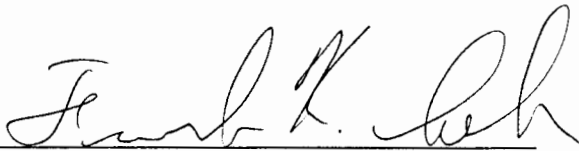
  
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Ruth M. Day

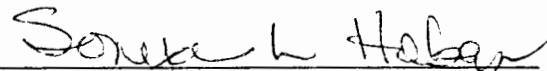
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Frederick K. Soyka



Sonya L. Hoban

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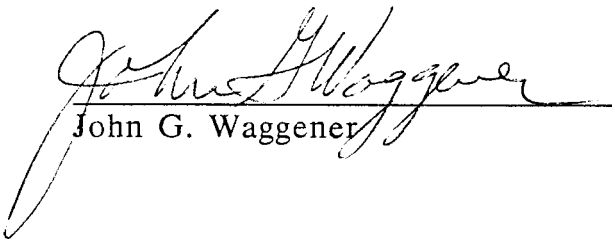
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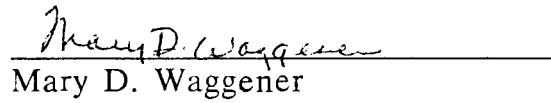
  
Christine Merritt  
Christine Merritt

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John G. Waggener

  
Mary D. Waggener

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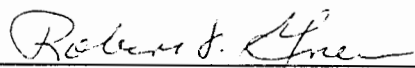
Barry Cook



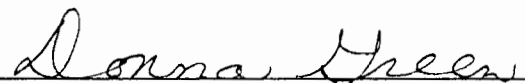
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Robert Green



Donna Green

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between the TOWN OF TELLURIDE, a home rule municipality and political subdivision of the State of Colorado, and BROWN HOMESTEAD CONDOMINIUMS HOMEOWNERS ASSOCIATION, INC., a Colorado corporation

THE GREEN REVOCABLE TRUST

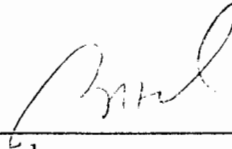
*Robert Green*

By: *Donna Green*

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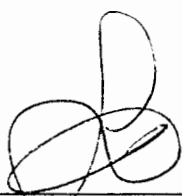
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Bruce Hochman

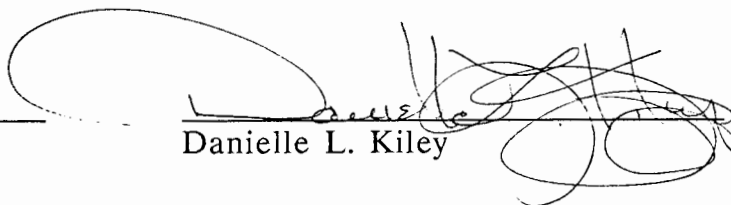
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INC., a Colorado corporation, et al. v. TOWN OF TELLURIDE

Case No. 92 CV 54 San Miguel County District Court



Michael M. Kiley

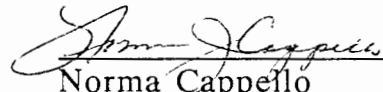


Danielle L. Kiley

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Norma Cappello

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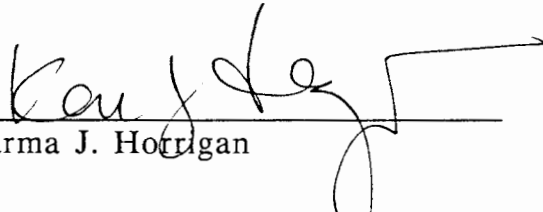
Case No. 92 CV 54 San Miguel County District Court

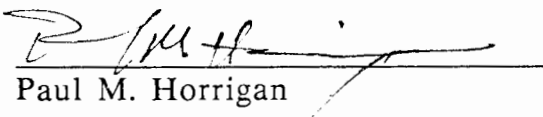
  
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Karen E. Clark

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Karma J. Horrigan

  
Paul M. Horrigan



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A handwritten signature in cursive script, appearing to read "Richard T. Schroeder", written in black ink on a white background.

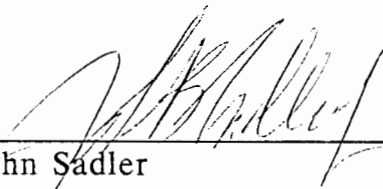
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Richard T. Schroeder

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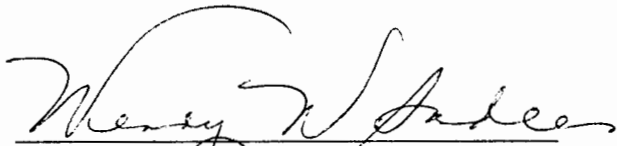
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John Sadler



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Wendy Sadler