

PRE-ANNEXATION AGREEMENT

This Pre-Annexation 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**"). This Pre-Annexation Agreement shall be effective (the "Effective Date") upon the Effective Date of the Settlement Agreement which is delivered to **OWNERS** concurrently with this Pre-Annexation Agreement.

I. RECITALS

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 at the **Development**, 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 **Development** 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 **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 memorandum **OWNERS** allege was intended to constitute constructive notice of the 1974 Contract to all persons; and

WHEREAS, **OWNERS** allege that **TOWN** failed to record the 1974 Contract, or any memorandum thereof, prior to 1991 and **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 Development; and

WHEREAS, **OWNERS** allege that the 1974 Contract is void as to **OWNERS** and **OWNERS'** interests in the Development are free and clear of any claims asserted by **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** and **ASSOCIATION** allege is an invalid instrument, the recording of which by **TOWN** 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, which deliveries **OWNERS** allege were undertaken without their knowledge or consent; and

WHEREAS, **TOWN** has made demand on **OWNERS** for payment of water service fees and tap fees pertaining to the delivery of treated water to the Development; and

WHEREAS, **OWNERS** have refused and continue to refuse to pay tap fees or water service fees, alleging, inter alia, that **OWNERS** are entitled to delivery of treated water free of charge in perpetuity pursuant to an agreement dated July 20, 1900, between **TOWN** and F.P. Brown; 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 in Book 481, pages 956-976, in the records of the San Miguel County Clerk and Recorder (hereafter, "Liens"); and

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

WHEREAS, **TOWN** has demanded that **OWNERS**, whom **TOWN** alleges are 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, alleging that **TOWN** failed to record a memorandum of the 1974 Contract as required by its terms, which **OWNERS** allege prevented them from having notice of the Contract

prior to 1991, and have refused to apply for and consent to annexation; 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; 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, including but not limited to the issues of annexation of the Development and delivery of treated water to the Development; and

WHEREAS, the parties to this Agreement are empowered to enter into a pre-annexation agreement for the provision and continued provision of water and sanitary sewer services pursuant to C.R.S. section 31-12-121, and the parties agree that a pre-annexation agreement pursuant to said section provides the most expeditious and cost-effective manner in which to resolve the disputes between the parties in the above referenced litigation;

NOW THEREFORE, in consideration of the following mutual promises, covenants, terms and conditions as set forth below, as well as set forth in the Release and Settlement Agreement which accompany this Pre-Annexation Agreement, the parties hereto, on behalf of themselves and their successors, agents, employees, assigns and officials hereby agree as follows:

II. AGREEMENT

A. The recitals set forth above, as well as the provisions and recitals of the Settlement Agreement and Release are incorporated as essential terms of this Pre-Annexation Agreement.

B. The parties to this Pre-Annexation Agreement mutually agree and acknowledge that this Pre-Annexation Agreement, as well as the Settlement Agreement and Release, shall supersede the 1974 Contract in its entirety, and that this Pre-Annexation Agreement is entered into for the purpose of **OWNERS** obtaining municipal water and sewer services for the Development. Upon the Effective Date of The Settlement Agreement, the Memorandum of Agreement recorded in the office of the San Miguel County Clerk and Recorder on August 30, 1991, shall be null and void. **TOWN** shall record in the Office of the San Miguel County Clerk and Recorder a Memorandum of this Pre-Annexation Agreement, which shall provide constructive notice of the terms of this Agreement to all successors in interest and other persons and entities.

C. **OWNERS** expressly agree and covenant that the provisions of this Pre-Annexation Agreement, as well as the Settlement Agreement and Release, shall be a burden upon each **OWNER'S** respective interest in the Development, and shall run with the land with respect to each such interest.

D. **OWNERS**, on behalf of themselves and their agents, employees, assigns, and successors in interest hereby consent to annexation of the Development at such future date as the Development or any portion thereof becomes eligible for annexation under state law, but in no event shall such annexation occur prior to January 31, 1995. The terms of this Pre-Annexation Agreement in no way require **TOWN** to annex the Development.

E. **OWNERS** agree to sign this Pre-Annexation Agreement, and to sign a limited irrevocable power of attorney (hereafter, "Power(s) of Attorney"), in the representative form attached hereto as Exhibit "1", appointing the Telluride Town Clerk as attorney-in-fact to consent to annexation of such Development to the **TOWN** when eligible for annexation. **TOWN** shall provide each **OWNER** with an individual Power of Attorney for signature, as well as original signature pages to this Agreement to be signed in counterpart. All Powers of Attorney shall be signed by **OWNERS** and returned to their counsel of record. Counsel for **OWNERS** shall return the signed Powers of Attorney to counsel for **TOWN** no later than January 23, 1995. It is understood and agreed that the Power of Attorney forms have been 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.

F. Upon return of the signed Powers of Attorney to counsel for **TOWN**, **TOWN** agrees to provide perpetual potable water and sanitary sewage collection and treatment services for the Development by connection with the **TOWN'S** water and sewer systems, in accordance with all applicable provisions of the Telluride Municipal Code, as may be amended from time to time, except as specifically set forth herein in this Pre-Annexation Agreement or the Settlement Agreement. **OWNERS** shall pay for such services as set forth by applicable provisions of the Telluride Municipal Code, as may be amended from time to time, expressly subject to the terms of paragraph II (A) (2) (a-b) of the Settlement Agreement. **TOWN** shall be the exclusive provider of services to the Development.

G. Within ninety (90) days after the completion of annexation of the Development, **TOWN** shall apply zoning to the Development in accordance with the **TOWN'S** then existing Land Use Code, as may be amended from time to time. Provision shall be made by **TOWN** in such zoning for grandfathering or continuation of any pre-existing uses or structures which may become non-conforming as a result of such zoning.

H. As partial consideration for **TOWN'S** promise and agreement to provide perpetual potable water and sanitary sewage collection and treatment services, **OWNERS** agree to transfer and convey ownership to **TOWN** of all water service main lines which may be located on or under the physical boundaries of the Development. Such transfer of ownership shall be deemed completed upon the

Effective Date of this Agreement. **TOWN** accepts transfer of such mains in "as is" condition and **OWNERS** make no representation or warranty as to the condition or state of repair of such mains. **OWNERS** shall retain ownership of all other water conveyance equipment and appurtenances located on or under the physical boundaries of the Development, including but not limited to laterals, service lines, valves, taps, vaults and pressure regulators, and shall be solely responsible for maintenance, repair, replacement, and all other costs associated with such equipment and appurtenances.

I. **OWNERS** hereby convey to the **TOWN** a non-revocable general license to temporarily enter and occupy the Development and store materials and equipment on any roads, rights of way and vacant general common areas within the Development as **TOWN** requires for the purpose of repairing, maintaining, restoring, servicing or replacing any and all water service main lines located on, under or adjacent to the physical boundaries of the Development. **TOWN** shall be responsible for restoring any surface disturbance and repair any damage caused by such work. Said license shall be effective on the effective date of this Agreement. Within ninety (90) days after annexation of the Development has been completed, **OWNERS** shall quit-claim to the **TOWN** a non-exclusive surface and subsurface waterline easement ten (10) feet in width from either side of the centerline of the then existing water main extending from the Highway 145 right of way to and five (5) feet past the then existing water service valve(s). **TOWN** shall provide **ASSOCIATION** with a survey of such lines at least thirty (30) days prior to such conveyance.

J. In the event that a temporary shut-off of the **TOWN'S** water or sewer system, either partly or in whole, is required or deemed by the **TOWN** to be necessary or beneficial due to any cause, including but not limited to bursting, breakage, leakage, damage or accident to any water or sewer mains, pipes or other equipment of **TOWN'S** water and sewer system, **TOWN** is expressly authorized to take any action necessary for the repair, replacement, maintenance or protection of the systems, or to meet the exigencies of the situation. Such action expressly includes but is not limited to closing any valve or valves in any of the water or sewer mains within or serving the **TOWN** or the Development. **TOWN** agrees to use due diligence in repairing, replacing or maintaining said system. **OWNERS** agree that **TOWN** shall not be liable to **OWNERS** for damages on account of any bursting, breakage, leakage, or accident within the **TOWN'S** water or sewer systems, or on account of any interruption in service resulting from shut-off of said systems.

K. **OWNERS** agree that upon the Effective Date of the Settlement Agreement and Pre-Annexation Agreement, all provisions of Telluride Municipal Code Title 13, "Waters and Sewers", as it presently exists or may hereafter be amended, shall apply to **OWNERS**; and **TOWN** reserves the right to amend, modify, increase, or adopt new service charges, rates, tap fees, other charges, or to otherwise amend any provision of Title 13 or other applicable provisions of the Telluride Municipal Code. The provisions of this paragraph are expressly and specifically subject to the provisions of paragraph II (A)(2)(a)-(b) of the Settlement Agreement, and notwithstanding any provision to the contrary in the Telluride

Municipal Code, **OWNERS** are entitled to free water delivery service as set forth in paragraph II (A)(2)(a)-(b) of the Settlement Agreement.

L. As of the effective date of this Agreement, **TOWN** agrees that any shuttle bus services provided by the **TOWN** to a service area which includes the Development shall be made available to the Development on the same terms and conditions as all other similarly situated persons or entities in said service area.

M. **OWNERS** agree that no later than April 15, 1995, each wood-burning stove, fireplace or other solid fuel burning device located in each unit, if any, shall either be brought into compliance with the standards set forth in § 8.12.020 of the Telluride Municipal Code, as may be amended from time to time, or shall be converted to natural gas. Should an **OWNER(S)** elect to convert his/her/its/their wood-burning stove, fireplace or other solid fuel burning device to natural gas by this date, then the **TOWN** shall rebate to said **OWNER(S)** the sum of \$750.00. Each **OWNER(S)** is limited to a rebate of \$750.00 total, regardless of the number of fireplaces, wood-burning stoves or other solid fuel burning devices which the **OWNER(S)** converts to natural gas. Each **OWNER(S)** is limited to one (1) solid fuel burning device per unit, which device shall be brought into compliance with § 8.12.020 as set forth above. **TOWN** shall have the right and the obligation to inspect wood-burning stoves at the Development after April 15, 1995, upon providing at least twenty-four (24) hours notice of inspection to any one **OWNER** of each unit, or the authorized agent or representative of said **OWNER**. **TOWN** shall issue permits for all conforming stoves within thirty (30) days of the date of completion of annexation. The failure to either conform each **OWNER'S** wood-burning stove to applicable provisions of the Telluride Municipal Code, or to convert said stove to natural gas, by April 15, 1995, shall subject each non-complying **OWNER** to a fine in the amount of \$50.00 per day for each day after April 15, 1995. that said **OWNER** fails to comply with the provisions of this paragraph. **TOWN** may take all actions at law or at equity to collect all fines incurred under this paragraph M.

N. Prior to the effective date of the annexation ordinance which annexes the Development to **TOWN**, the rates for sewer service at the Development shall be 125% of the rates charged to **TOWN** residents, in conformance with the Telluride Municipal Code. The 80% surcharge on sewer service presently charged by **TOWN** to **OWNERS** shall cease upon the Effective Date of this Pre-Annexation Agreement and the Settlement Agreement. There shall be no refund of such surcharge previously charged to or paid by **OWNERS**. Upon the effective date of the annexation ordinance which annexes the Development to **TOWN**, **OWNERS** shall be charged the same rate for sewer service as all other similarly situated **TOWN** residents.

O. By entering into this Pre-Annexation Agreement, the **TOWN** does not assume any debt or obligation, financial or otherwise, of the **OWNERS**, including without limitation any liens, charges, taxes or agreements for repayment of loans. The parties agree that the **TOWN** shall not be deemed a successor or assignee of any of the **OWNERS** to any debt or obligation, and the **OWNERS** shall

forever hold the **TOWN** harmless from, and defend the **TOWN** against, any claim, demand, liability or judgment which imposes or would impose any such obligation, lien, or debt on the **TOWN** by virtue of this Pre-Annexation Agreement or any conveyance provided for herein.

P. **OWNERS** agree to indemnify, defend and hold harmless the **TOWN**, its officers, agents and employees, from and against all liability, claims and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the design, location, construction, maintenance, repair or condition of the water and sewer systems at the Development as of the time of completion of annexation of the Development to the **TOWN**, including injury, loss, or damages caused or claimed to be caused in whole or in part by the act, omission, error, professional error, mistake, negligence, or other fault of the **OWNERS** or any **OWNER'S** predecessors or successors in interest, or for any employee, agent, representative or contractor of any **OWNER**, but except to the extent such loss, damage, or injury is directly caused and attributable to the negligent acts or omissions by the **TOWN** or its agents, officers and employees. **TOWN** does not by this paragraph, or any other provision of this Pre-Annexation Agreement or Settlement Agreement, waive or intend to waive any provisions of the Colorado Governmental Immunities Act, C.R.S. § 24-10-101 et.seq., as from time to time may be amended.

Q. Should any provision of this Pre-Annexation Agreement be declared invalid, null, void, voidable or illegal by a Court of competent jurisdiction, then all surviving provisions shall remain in full force in effect and binding upon the parties and their agents, assigns, employees, officers and successors in interest. Should the Powers of Attorney be deemed invalid, null, void, voidable, illegal, or otherwise ineffective to effect annexation of the Development in compliance with the terms of this Pre-Annexation Agreement, then **OWNERS** agree that upon request from **TOWN** at any time subsequent to January 31, 1995, **OWNERS**, and each of them, shall sign a petition requesting annexation of the Development to **TOWN** in accordance with C.R.S. § 31-12-101 et.seq. **OWNERS** agree that in such event no **OWNER** shall request an annexation election or otherwise take, cooperate or participate in any action to hinder, slow or prevent annexation of the Development to **TOWN**. **OWNERS** agree that any **OWNERS** in violation of this provision shall be liable to **TOWN** in money damages for the amount expended or incurred by **TOWN**, including but not limited to reasonable attorney's fees, in conducting an annexation election or otherwise effecting annexation of the Development. Should **OWNERS** be required to submit an annexation petition due to any provision of this Agreement or the Powers of Attorney being declared invalid, null, void, voidable, illegal or otherwise ineffective to effect annexation of the Development, then **TOWN** agrees to reimburse **OWNERS** for reasonable attorney's fees expended for the purpose of reviewing the annexation petition.

SIGNATURE PAGE: PRE-ANNEXATION AGREEMENT

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

BROWN HOMESTEAD CONDOMINIUMS
HOMEOWNERS ASSOCIATION, INC.

By: *Tom G. Kesling*
President, Board of Directors

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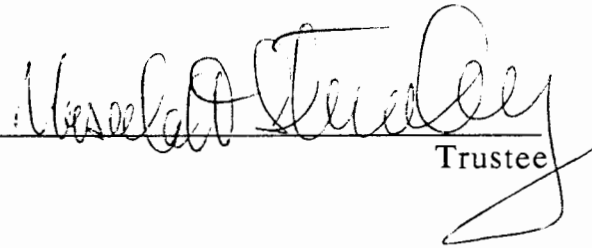
KWW DEVELOPMENTS, a partnership

By: *Tom Y. Kissling*
Its *General Partner*

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URSULA W. STEINBERG 1991
REVOCABLE MANAGEMENT TRUST

By: 
Trustee

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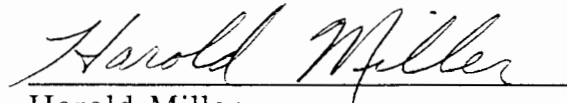
between the TOWN OF TELLURIDE, a home rule municipality and political subdivision of the State of Colorado, and BROWN HOMESTEAD CONDOMINIUMS HOMEOWNERS ASSOCIATION, INC., a Colorado corporation

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

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

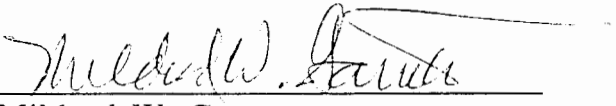
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Harold Miller

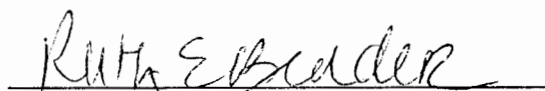
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Mildred W. Garrett

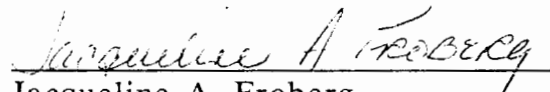
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Ruth Bender

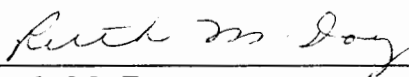
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Jacqueline A. Froberg

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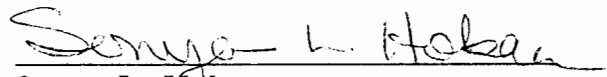
Ruth M. Day

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Frederick K. Soyka



Sonya L. Hoban

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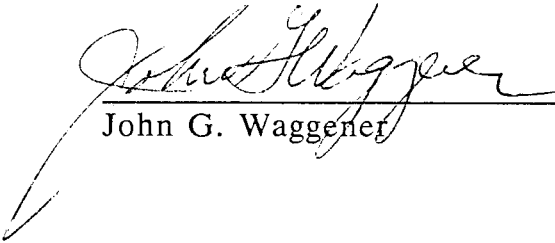
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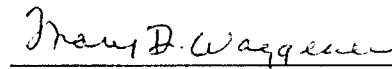
Christine Merritt

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John G. Waggener



Mary D. Waggener

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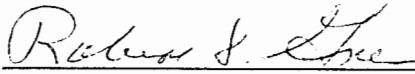
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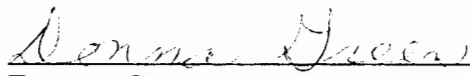
Barry Cook

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Robert Green



Donna Green

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THE GREEN REVOCABLE TRUST

Rec'd by: _____
By: Donna Green

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Bruce Hochman

see attached letter dated 11/17/94

Bruce Neal Hochman, M.D.
2054 Sheridan Rd.
Leucadia, California 92024
619-436-9528

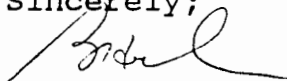
J. McClow
232 W. Tomichi Ave.
Suite 202
Gunnison, Co. 81230

November 17, 1994

Dear Mr. McClow:

You are hereby authorized to release the enclosed settlement documents to the City of Telluride under the express understanding and warranty that welding closed my fireplace flue, thereby making the fireplace unusable, will satisfy the provisions of paragraph II.M. of the "Pre-annexation Agreement."

Sincerely;

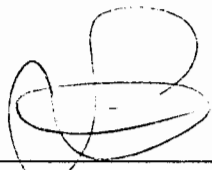

Bruce Hochman, M.D.

copy: Lou Kissling
Jed Caswell

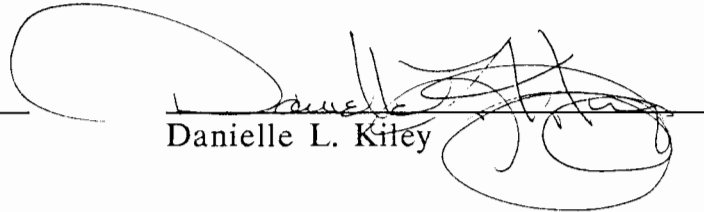
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Michael M. Kiley



Danielle L. Kiley

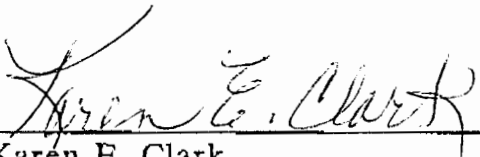
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between the TOWN OF TELLURIDE, a home rule municipality and political subdivision of the State of Colorado, and BROWN HOMESTEAD CONDOMINIUMS HOMEOWNERS ASSOCIATION, INC., a Colorado corporation


Norma Cappello

SIGNATURE PAGE: PRE-ANNEXATION AGREEMENT

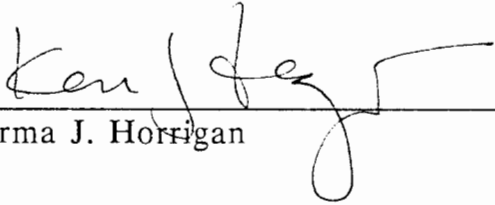
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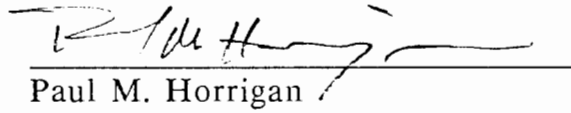
Karen E. Clark
Karen E. Clark

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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

A handwritten signature in cursive script, appearing to read "Karma J. Horrigan", written over a horizontal line.

Karma J. Horrigan

A handwritten signature in cursive script, appearing to read "Paul M. Horrigan", written over a horizontal line.

Paul M. Horrigan

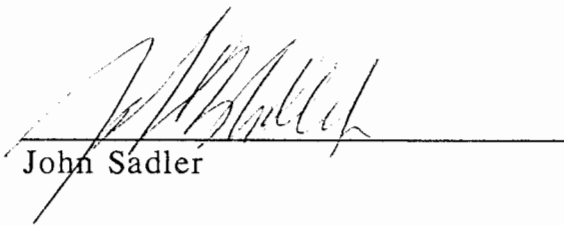
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Richard T. Schroeder

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John Sadler



Wendy Sadler