

32



21002385 4/9/2010 11:16 AM  
1 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS OF  
WHISPERING PINES TOWNHOMES II, PHASE TEN

This Declaration of Covenants, Conditions, Restrictions and Easements of the Whispering Pines Townhomes II, Phase Ten (The Declaration) is made as of the 1st day of February, 2010, by the Whispering Pines Townhomes Association II, Inc., Homeowners Association, a Non-Profit Corporation registered under the laws of the State of Colorado.

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. The following words, when used in this Declaration or in any Amended or Supplemental Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

- A. "Articles" means the Articles of Incorporation for the Whispering Pines Townhomes II, Phase Ten Homeowners Association, Inc., as filed with the Colorado Secretary of State on 11/04/2004, and any amendments, which may be made to those Articles from time to time.
- B. "Annual Assessment" means the Assessment levied annually, and paid on a pro-rated basis each quarter, or monthly, as determined by the Association's Board of Directors.
- C. "Assessments" means the Annual, Special and Default Assessments levied pursuant to Article XI below. Assessments are also referred to as a Common Expense Liability as defined under the Act.
- D. "Association" means the Whispering Pines Townhomes II, Phase Ten Homeowners Association, Inc., a Colorado Non-Profit Corporation, and its successors and assigns.
- E. "Association Documents" means this Declaration, the Articles of Incorporation, and the Bylaws of the Association, and any procedures, rules, regulations or policies adopted under such documents by the Association.
- F. "Association-Owned Property" means the Common Area as shown on the Plat and all improvements and fixtures of any kind whatsoever located thereon and all other real property and improvements, if any, in which the Association owns an interest for the common use and enjoyment of all of the Owners on a non-exclusive basis. Such interest may include, without limitation, estates in fee, for terms of years, or easements.
- G. "Board of Directors" means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance and management of the Property and all improvements on the Property.

- H. "Bylaws" means the Bylaws as adopted by the Association, as amended from time to time.
- I. "Common Expenses" means (i) all expenses expressly declared to be Common Expenses by this Declaration, any Supplemental Declaration, or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Association-Owned Property, Party Walls and Exterior Maintenance Area; (iii) insurance premiums for the insurance carried under Article IX; and (iv) all expenses lawfully determined to be Common Expenses by the Board of Directors of the Association.
- J. "Common Area" means the area shown on the Plat as the "Common Area" and which is Association-Owned Property.
- K. "Declarant" means Whispering Pines Development Company, LLC, a Colorado Limited Liability Corporation, and its successors and assigns.
- L. "Declaration" means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements of Whispering Pines Townhomes II, Phase Ten Homeowners Association, Inc.
- M. "Default Assessment" means the Assessments levied by the Association pursuant to Article XI, Section 11.7 below.
- N. "Eligible First Mortgagee" means any First Mortgagee who submits a written request for notification to the Association, in care of the Association's registered agent, that identifies the First Mortgagee's name, address, and the Townhome Unit that serves as security for the Mortgagee's Mortgage.
- O. "Exterior Maintenance Area" means the exterior of any Townhome (excluding windowpanes), and the property within the perimeter of the Lot on which the Townhome is located.
- P. "First Mortgage" means any Mortgage, which is not subject to any lien or encumbrance except liens for taxes or other liens, which are given priority by statute.
- Q. "First Mortgagee" means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.
- R. "Lot" means a plot, including the improvements thereon, of land subject to this Declaration and designated as a "Lot" on any subdivision plat of the Property recorded by the Declarant in the office of the Clerk and Recorder of Archuleta County, Colorado.
- S. "Manager" means a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Board of Directors may authorize from time to time.
- T. "Member" means every person or entity who holds Membership in the Association.
- U. "Mortgage" means any mortgage, deed of trust or other document pledging any Townhome Unit or interest therein as security for payment of a debt or obligation.



21002385 4/9/2010 11:16 AM  
3 of 32 DCC RS161.00 D\$0.00

June Madrid  
Archuleta County

- V. "Mortgagee" means any person or entity named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person or entity under such Mortgage.
- W. "Owner" means the owner of record, whether one (1) or more persons or entities, of fee simple title to any Townhome Unit, and "Owner" also includes the purchaser under a contract for deed covering a Townhome Unit, but excludes those having such interest in a Townhome Unit merely as security for the performance of an obligation, including a Mortgagee, unless and until such person has acquired fee simple title to the Townhome Unit pursuant to foreclosure or other proceedings.
- X. "Party Wall" means a common wall, if any, adjoining two (2) Townhomes and shall be deemed to include the footings underlying, the portion of the roof over, and the utility lines within a common wall.
- Y. "Plat" means the subdivision plat depicting the Property subject to this Declaration and recorded in the real property records of Archuleta County, Colorado, on May 5, 2005, at Reception No. 20504276 at the office of the Clerk and Recorder of Archuleta County, Colorado contemporaneously herewith.
- Z. "Property" means and refers to that certain real property described on the Exhibit A attached to this Declaration.
- AA. "Special Assessment" means an Assessment levied pursuant to Article XI, Section 11.6 below on an irregular basis.
- BB. "Successor Declarant" means any party or entity to whom Declarant assigns any or all of its rights, obligations or interests as Declarant, as evidenced by an assignment or deed of record in the office of the Clerk and Recorder of Archuleta County, Colorado designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.
- CC. "Whispering Pines Community" means the planned community created by this Declaration, consisting of the Property, the Townhomes, and any other improvements constructed on the Property.
- DD. "Townhome" means the Townhouse residence constructed on any Lot.
- EE. "Townhome Unit" means a Lot, as defined in Section 1.1 (Q) above, and all improvements thereon, including a Townhome, and all easements and rights-of-way appurtenant thereto.

Each capitalized term not otherwise defined in this Declaration shall have the same meaning(s) specified or used in the Act.

## ARTICLE II

### DIVISION OF REAL PROPERTY



21002385 4/9/2010 11:16 AM  
4 of 32 DCC RS161.00 DS0.00

June Madrid  
Archuleta County

Section 2.1 Division of Real Property into Twenty-six (26) Lots. The Property is hereby divided into twenty-six (26) Lots designated Townhome Units #1001 through #1026, inclusive, and the Common Area, as shown on the Plat. The Declarant reserves no rights to create additional Lots.

Section 2.2 Planned Community. The Property is a "Planned Community" as defined under Colorado Revised Statute Subsection §38-33.3-103(22).

Section 2.3 Ownership of Lots. Title to a Townhome Unit may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Townhome Unit in which he owns an interest. For all purposes herein there shall be deemed to be only twenty-six (26) Owners, the Owners of Townhome Units #1001 through #1026. The parties, if more than one, having the ownership of a Townhome Unit shall agree among themselves how to share the right and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Townhome Unit in which they own an interest.

Section 2.4 Legal Description. Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Townhome Unit may describe it by its Townhome Unit number, Whispering Pines Townhomes Association II, Inc., and by any reference to the Plat and this Declaration and the recording information thereof in the real property records of Archuleta County, Colorado.

Section 2.5 Separate Assessment. Each Townhome Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed. The Common Area shall not be assessed separately but shall be assessed with the Townhome Units as provided pursuant to Colorado Revised Statute Subsections §39-1-103(10) and §38-33.3-105(2).

Section 2.6 No Partition. No Owner of a Townhome Unit shall bring any action for partition or division of the Association-Owned Property.

Section 2.7 Residential Use. Each Townhome Unit shall be used and occupied, solely for dwelling or lodging purposes. All of the above stated uses and occupancies shall be only as permitted by and subject to the appropriate and applicable governmental zoning and use ordinances, rules and regulations from time to time in effect.

Section 2.8 Lease of Unit. An Owner shall have the right to lease his Townhome Unit upon such terms and conditions as the Owner may deem advisable; provided, however, that (i) any such lease shall be in writing, and shall provide that the lease is subject to the terms of this



21002385 4/9/2010 11:16 AM  
5 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

Declaration (ii) a Townhome Unit may be leased only for the uses provided hereinabove, and (iii) any failure of a lessee to comply with the terms of this Declaration, Articles of Incorporation, Bylaws or rules of the Association shall be a default under the lease, enforceable by the Association. The Owner is responsible for the actions of his tenants and any violations of the Association's Declaration, Bylaws or Rules by a tenant may be enforced by the Owner.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 3.1 The Association. Every Owner of a Townhome Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Townhome Unit.

Section 3.2 Transfer of Membership. An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Townhome Unit and then only to the purchaser or Mortgagee of his Townhome Unit.

Section 3.3 Membership. The Association shall have one (1) class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Townhome Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one (1) vote for each Townhome Unit owned. The vote for such Townhome Unit may be appointed by proxy in accordance with the Bylaws. When more than one person holds an interest in any Townhome Unit, all such persons shall be Members, however, in no event shall more than one (1) vote be cast with respect to any one (1) Townhome Unit. No Owner shall be entitled to vote who is not in good standing (up to date on the payment of Assessments) with the Association.

Section 3.4 Declarant Representation. All Declarant rights have terminated. The Association shall be managed by a Board of Directors, elected by the Members, as set forth in the Bylaws.

Section 3.5 Compliance with Association Documents. Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Townhome Unit for the benefit of all other Townhome Units and for the benefit of Declarant's adjacent properties.

Section 3.6 Books and Records. The Association shall make available for inspection upon request, during normal business hours or under other reasonable circumstances, to Owners

and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 3.7 Manager. The Association may employ or contract for the services of a Manager to whom the Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by a Manager of any duty, power or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.8 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

#### ARTICLE IV

##### POWERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Section 4.1 Board of Directors Power. The Board of Directors shall have power to take the following actions:

- A. Adopt and publish rules and regulations governing the use of the Association-Owned Property, Common Areas, and Townhome Units.
- B. Determine Common Expenses and adopt and amend budgets for revenues, expenditures, and reserves and collect Assessments.
- C. Hire and terminate managing agents and other employees, agents, and independent contractors.
- D. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the community.
- E. Enter into contracts, leases, agreements, and licenses and incur liabilities.
- F. Regulate the use, maintenance, repair and modification of Common Areas.
- G. Grant easements, leases, licenses and concessions through, under, or over the Common Areas.
- H. Acquire, hold, encumber and convey in the name of the Association any right, title or interest in real or personal property, except that Common Areas may be conveyed or



21002385 4/9/2010 11:16 AM  
7 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

subjected to a security interest only if Members entitled to cast as least sixty-seven percent (67%) of the votes agree to that action.

- I. Impose and receive any payments, fees or charges for the use, rental or operation of the Common Areas.
- J. Enforce the provisions of this Declaration and the Bylaws and Rules of the Association.
- K. Impose charges (including, without limitation, late charges and default interest at the rate specified herein) for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of provisions of the Association Documents or otherwise suspend other Membership privileges (except that notice and opportunity to be heard shall not be required before suspension of Membership privileges for failure to pay Assessments within thirty (30) days after they become due).
- L. Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance.
- M. Assign its right to future income, including the right to receive Assessments.
- N. Exercise any other powers conferred by the Declaration or Association Bylaws.
- O. Exercise any other powers necessary and proper for the governance and operation of the Association.

## ARTICLE V

### ASSOCIATION-OWNED PROPERTY

The Association shall maintain and keep the Association-Owned Property in good repair, and the cost of such maintenance shall be funded as provided in Article XI. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, walls, gates, signage, irrigation systems, sidewalks, driveways and improvements located in the Association-Owned Property.

## ARTICLE VI

### MECHANIC'S LIENS



21002385 4/9/2010 11:16 AM  
8 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

Section 6.1 No Liability. If any Owner shall cause any material to be furnished to his Lot or unit thereon, or any labor to be performed therein or thereon, no Owner of any Townhome Unit shall, under any circumstances, be held liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, material-men and other persons furnishing labor or materials to his Lot, unit thereon or any improvements thereon or therein. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Association-Owned Property or any Lot or unit thereon other than of such Owner with any mechanic's lien or other lien or encumbrance whatsoever. On the contrary (and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against the Association-Owned Property or against any Owner or any Owner's Lot or unit thereon for work done or materials furnished to any other Owner's Lot or unit thereon is hereby expressly denied.

Section 6.2 Indemnification. If, because of any act or omission, any Owner, any mechanic's or other lien, or order for the payment of money, shall be filed against the Association-Owned Property or against any other Owner (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record, or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other unit Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

Section 6.3 Association Action. Labor performed or materials furnished for the Association-Owned Property, if duly authorized by the Association, in accordance with this Declaration or its Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law of equal amount against each of the Townhome Units. In the event of a lien is effected against two (2) or more Townhome Units, the Owners of the separate Townhome Units may remove their Townhome Units from the lien by payment of the fractional or proportional amount attributable to each of the Townhome Units affected. Subsequent to payment, discharge or other satisfaction, the Townhome Unit shall be released from the lien paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any Townhome Unit not so released or discharged.

## ARTICLE VII

### PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY DECLARANT



**Section 7.1 Owners' Easements.** Every Owner has a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Townhome Unit subject to the provisions contained herein. Certain third persons will also have access to the Common Area as set forth in the rules and regulations of the Association. Every Owner shall have a right of access to and from his Townhome Unit over and across those portions of the Common Area on which driveways are located. No Owner shall hinder nor permit his guest to hinder reasonable access by any other Owner and his guest to the Townhome Units and parking areas.

**Section 7.2 Recorded Easements.** The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements of record or of use as of the date of recordation of this Declaration. In addition, the Property is subject to those easements granted by the Declarant in this Declaration.

**Section 7.3 Other Easements.**

- A. Each Lot shall be subject to an easement for encroachments created by construction, settling and overhang, previously existing or as designed and constructed by Declarant or as a result of any addition or improvement pursuant to this Declaration. A valid easement for such encroachments and for the maintenance of same, so long as they exist, shall and does exist. In the event any improvement is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Townhome Unit due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the improvements shall stand.
- B. Each Townhome Unit is subject to a blanket easement for support and a blanket easement for the maintenance of the structures or improvements presently situated, or to be built in the future, on the Lots.
- C. There is hereby created an easement upon, across, over, in and under those portions of such Lots that contain mechanical equipment and utilities servicing all Townhome Units, and there is also hereby created a blanket easement upon, across, over, in and under the Property, each for the benefit of the Townhome Units and the structures and improvements situated thereon, including the Party Walls, if any, for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone cable TV and electricity. Said easements include future utility services not presently available to Townhome Units, which may reasonably be required in the future. By virtue of the above described blanket easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Townhome Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and



21002385 4/9/2010 11:16 AM  
10 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property. Notwithstanding the foregoing, all such utility equipment, wires, circuits and conduits will be placed on the Lot benefited thereby to the extent practicable, and if placed on any other Lot, will be placed underground if possible, and to the extent practicable will be placed as close to the Lot line as practicable. Any Owner shall have the right to relocate within his Lot any utility at his sole cost and expense.

- D. The Townhome Units shall have the benefit and use of two (2) common entrance driveways as provided on the Plat. There is granted hereby a non-exclusive easement to each Townhome Unit, for ingress and egress purposes over and across those portions of such Association-Owned Property and Lots, if any, which are used as a driveway serving the Townhome Units. No Owner shall hinder nor permit his guest to hinder reasonable access by any other Owner and his guest to the Townhome Units and parking areas.

Section 7.4 Reservation of Easements, Exceptions and Exclusions. Declarant has granted to the Association the right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Association-Owned Property, for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the best interest of all the Owners and the Association, in order to serve all the Owners.

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

Section 7.6 General Maintenance Easement. An easement is hereby reserved to Declarant, and granted to the Association, and any Member of the Board of Directors or the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs, to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, or to exercise its rights under Article VIII below, including the right to enter upon any Townhome Unit for the purpose of performing maintenance to the exterior of any Residence, as set forth in Article VIII below.

Section 7.7 Association as Attorney-in-Fact. Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Townhome Unit, does irrevocably constitute and appoint the Association with full power of substitution as the Owner's name, place and stead to deal with Owner's interest in order to effectuate the rights reserved by the Association, with full power, right and authorization to execute and deliver any instrument affecting the interest of

the Owner and to take any other action which the Association may consider necessary or advisable to give effect to the provisions of this Section and this Declaration generally. If requested to do so by the Association, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment.

Section 7.8 Delegation of Use. Any Owner may delegate his right of enjoyment to the Association-Owned Property to the Members of his family, his tenants, guests, licenses and invitees, but only in accordance with and subject to the limitations of the Association Documents.

## ARTICLE VIII

### PARTY WALLS EXTERIOR MAINTENANCE AREA AND SPECIAL EASEMENT

#### Section 8.1 Party Walls.

- A. The cost of reasonable repair and maintenance of any Party Wall shall be a Common Expense of the Association. The Association shall have sole discretion to determine the time and manner in which such maintenance shall be performed. The Association shall have a perpetual easement in and to that part of the Property on which a Party Wall is located, for Party Wall purposes, including maintenance, repair and inspection. No Owner shall alter or change a Party Wall in any manner, interior decoration excepted, and a Party Wall shall always remain in the same location as when erected.
- B. In the event of damage or destruction of a Party Wall from any cause, other than the negligence or willful misconduct of an Owner, the Association shall, as a Common Expense, repair or rebuild said wall to its previous condition, which specifically includes the previous sound transmission coefficient, and appropriate Owners, their successors and assigns, shall have the right to the full use of said wall so repaired and rebuilt. If an Owner's negligence or willful misconduct shall cause damage to or destruction of said wall, such negligent party shall bear the entire cost of repair and reconstruction.
- C. The Association shall have the right to break through a Party Wall for the purpose of repairing or restoring sewage, water, utilities, etc., subject to the obligation to restore said wall to its previous structural condition, which specifically includes the previous sound transmission coefficient, at the Common Expense of the Association, and the payment to the adjoining Owners of any damage caused thereby. Adjoining Owners shall have the right to make use of a Party Wall provided such use shall not impair the structural support or the sound transmission coefficient of the Party Wall.
- D. Declarant hereby grants to the Association and the Executive Board and their respective representatives a nonexclusive easement to enter upon and use the Property on which a

Party Wall is located as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform under this Declaration.

Section 8.2 Exterior Maintenance Area. In order to maintain a uniform appearance and a high standard of maintenance within Whispering Pines Townhomes II Phase Ten, the Association shall maintain the Exterior Maintenance Area, as more fully set forth below.

- A. Townhome Exteriors. The Association shall maintain the exterior of all Townhomes including, but not limited to, painting of the exterior porches and roof repair. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used to maintain the Townhomes. The Owner shall be responsible for repair or replacement of broken windowpanes.
- B. Landscaping, Sidewalks and Driveways. The Association shall maintain landscaping of the Lots surrounding the perimeter of the Townhomes and the Association-Owned Property, including, but not limited to, lawns, trees, shrubs and property signage, and the Association shall also maintain all sidewalks and driveways (and the maintenance provided under this Section shall include snowplow services and shoveling up to the front door. Rear patios are not included). Snow will be removed from roof areas that are subject to ice dams only. The Association is not responsible for any damage to roofs or heat tapes. These repairs are covered by the contractors insurance. The maintenance provided under this section shall be performed at such time and in such a manner as the Association shall determine.
- C. Association's Right to Grant Owner's Maintenance Area. The Association reserves the right to grant the maintenance responsibility of certain areas on each Townhome Unit to the Townhome Unit Owner, and the Townhome Unit Owner is obligated to accept said maintenance responsibility; provided said assignment is done in a uniform and nondiscriminatory manner. Furthermore, the Association shall have the right to promulgate reasonable rules and regulations regarding the maintenance by the Owner. Owners are responsible for maintenance of heat tapes or the addition of any heat tapes. Permits must be obtained for the installation of additional heat tapes. Existing heat tapes will require inspection by a certified electrician. If not installed per manufacturer's specifications, corrections will be at the Owner's expense.

Section 8.3 Special Easement. Declarant hereby reserves for itself and grants to the Association, the Board of Directors, and their respective representatives, a nonexclusive easement to enter upon and use the Exterior Maintenance Area and the Property on which a Party Wall is located as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article VIII.



21002385 4/9/2010 11:16 AM  
13 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

Section 8.4 Maintenance Contract. The Association or Board of Directors may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions or duties of the Association to maintain the Association-Owned Property, Party Walls and Exterior Maintenance Area. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Board. The Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power or function so delegated by written instrument executed by or on behalf of the Board.

Section 8.5 Owner's Responsibility. The Owner shall be responsible for maintaining all portions of the Owner's Townhome Unit except as defined by Sections 8.2 and 8.3. The Association shall have the right and power to prohibit storage or other activities deemed unsightly by the Board of Directors on any patio which is visible from another Townhome Unit patio. No Owner shall make any addition or other alteration to the Party Walls or any portion of the Exterior Maintenance Area without the express consent of the Association. The Association shall be entitled to reimbursement for cost of repair from any Owner, who causes, or whose tenant, employee or guest causes, damage to the Party Walls, the Exterior Maintenance Area or the Association-Owned Property by an act of negligence or willful misconduct.

Section 8.6 Owner's Failure to Maintain or Repair. In the event that a Townhome Unit and the improvements thereupon are not properly maintained and repaired, and the maintenance responsibility for the unmaintained portion of the Townhome Unit lies with the Owner of the Townhome Unit, or in the event that the improvements on the Townhome Unit are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Board of Directors, shall have the right to enter upon the Townhome Unit to perform such work as is reasonably required to restore the Townhome Unit and the building and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Townhome Unit, upon demand. All unreimbursed costs shall be a lien upon the Townhome Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article XI of this Declaration.

## ARTICLE IX

### INSURANCE



21002385 4/9/2010 11:16 AM  
14 of 32 DCC RS161.00 D\$0.00

June Madrid  
Archuleta County

Section 9.1 General Insurance Provisions. The Association shall maintain, to the extent reasonably available:

- A. Property insurance on the Common Area (including any improvements that may be contained within the Common Area and owned by the Association) for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping and other items normally excluded from property policies; and
- B. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area and the Association, in an amount deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Association, the Manager and their respective employees, agents, and all persons acting as agents. The 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 Area. The insurance shall cover claims of one or more insured parties against other insured parties.
- C. The Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Townhome Units that the Association is not obligated to insure to protect the Association or the Owners.

Section 9.2 Cancellation. If the insurance described in Section 10.1 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

Section 9.3 Policy Provisions. Insurance policies carried pursuant to Section 10.1 must provide that:

- A. Each Owner is an insured person under the policy with respect to liability arising out of such Owner's Membership in the Association;
- B. The insurer waives its rights to subrogation under the policy against any Owner or member of his household;
- C. No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- D. If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

**Section 9.4 Insurance Proceeds.** Any loss covered by the property insurance policy described in this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 9.7 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

**Section 9.5 Association Policies.** 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 Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

**Section 9.6 Insurer Obligation.** An insurer that has issued an insurance policy for the insurance described in this Article shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

**Section 9.7 Repair and Replacement.**

- A. Any portion of the Association-Owned Property for which insurance is required under this article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:
- (i) The regime created by this Declaration is terminated;
  - (ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
  - (iii) Eighty percent (80%) of the Owners vote not to rebuild; or
  - (iv) Prior to the conveyance of any Townhome Unit to a person other than Declarant, the Mortgagee holding a deed of trust or Mortgage on the damaged portion of the Association-Owned Property rightfully demands all or a substantial part of the insurance proceeds.



- B. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Association-Owned Property is not repaired or replaced, the insurance proceeds attributable to the damaged Association-Owned Property must be used to restore the damaged area to a condition compatible with the remainder of Whispering Pines Townhomes II Phase Ten, and except to the extent that other persons will be distributes, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to the Common Expense liabilities of all the Townhome Units.

Section 9.8 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 9.9 Fidelity Insurance. To the extent reasonably available, fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than two months current Assessments plus reserves as calculated from the current budget of the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bond may be obtained for the Manager and its officers, employees, and agents, as applicable. Any such fidelity coverage shall name the Association as an oblige and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 9.10 Workmen's Compensation Insurance. The Board of Directors shall obtain workmen's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 9.11 Other Insurance. The Board of Directors may purchase and maintain in force as a Common Expense, debris removal insurance, fidelity bonds, directors and officers liability insurance and other insurance or bonds that it deems necessary. The Board of Directors shall purchase and maintain Workmen's Compensation Insurance to the extent that the same shall be required by law.

Section 9.12 Insurance Obtained by Owners. In the event the Association does not maintain physical damage and liability insurance for all improvements, including the individual Townhome Units, within the Project, each Owner shall then obtain and at all times maintain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering the full replacement value of the Owner's Townhome Unit and personal property and personal liability insurance in a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) in respect to bodily injury or death to any number of persons arising out of one





21002385 4/9/2010 11:16 AM  
17 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

accident or disaster, or for damage to property, and if higher limits shall at any time be customary to protect against tort liability, such higher limits shall be carried. In addition, an Owner may obtain such other and additional insurance coverage on the Townhome Unit as such Owner in the Owner's sole discretion shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Executive Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Townhome Unit. No Owner shall obtain separate insurance policies on the Common Area.

All Owners are responsible for, and required to maintain on file copies of all such current policies to evidence compliance with the Association to evidence their obligations hereunder and to facilitate recovery of all appropriate awards or proceeds by the Association. File copies can be faxed by your insurance carrier upon renewal each year.

#### ARTICLE X

##### INCIDENTS OF OWNERSHIP IN WHISPERING PINES TOWNHOMES II PHASE TEN

Section 10.1 Inseparability. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Townhome Unit shall be presumed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively of the entire Townhome Unit, including each easement, license and all other appurtenant rights created by law, or by this Declaration.

Section 10.2 Residential Use. A Townhome may be used for permanent or short-term occupancy by its Owner, it's family, servants, agents, guests, invitees and tenants, and such Owner shall be allowed to rent or arrange for rental of its Townhome for any length of time, except that such Townhome may not be used as an office or for any other commercial purpose.

##### Section 10.3 Unit Maintenance and Restrictions.

- A. All Units shall be kept and maintained in a clean, safe, attractive condition compliance with the rules and design guidelines of the Association.
- B. No Townhome Unit may be used for immoral, offensive, or unlawful purposes.
- C. No noxious, unsafe or dangerous activity may be carried out or engaged in within the Whispering Pines Community or any Townhome Unit.
- D. Nuisances, including noise and lights are prohibited.



21002385 4/9/2010 11:16 AM  
18 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

- E. Only household pets are allowed, with a limit of two animals total, in any combination. No wild or exotic animals are allowed. Owners are responsible for the picking up animal droppings in all Common Areas. Owners who fail to pick up animal droppings may be fined at the discretion of the Board of Directors.
- F. No vehicles of any type may be parked on any Common Areas, including Main Driveways and lawns. Unit Driveway parking for trucks, trailers, commercial vehicles, boats, campers or any other large vehicles is allowed for up to 48 hours with the written approval of the Board of Directors. Violations of this rule will empower the Board of Directors to have the vehicles towed at the owner's expense after notice. Unnecessary movement of vehicle traffic is also prohibited.
- G. No abandoned, inoperable, or unregistered vehicles may be left anywhere within our community, or adjacent areas. They will be towed after notice, at the owner's expense.
- H. No maintenance or repairs of any vehicle may be performed outside of the garage. This does not include washing or polishing of vehicles.
- I. For Sale/Rent, or political signs shall be limited to thirty-six inches (36") by forty-eight inches (48") and posted in the window of the Owner's Unit. If the Unit does not have street-facing windows, the sign may be placed on the exterior of the Unit. One sign will be permitted for each contested election in the election cycle and may be posted, as described herein, for a maximum of forty five (45) days prior to the election and seven (7) days after the election.

## ARTICLE XI

### ASSESSMENTS

Section 11.1 Obligation. Each Owner, by accepting a deed for a Townhome Unit, is deemed to covenant to pay to the Association (i) the Annual Assessments imposed by the Board of Directors as necessary to meet the Common Expenses of maintenance, operation, and management of the Association Owned Property, Party Walls, and Exterior Maintenance Area and to perform the functions of the Association; (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (iii) Default Assessments which may be assessed against a Townhome Unit for the Owner's failure to perform and obligation of the Owner under the Association Documents.

Section 11.2 Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of Whispering Pines Townhomes II Phase Ten, for maintenance of the Party Walls, if any, and Exterior Maintenance Areas, and for the improvement and maintenance of the Association-Owned Property, as more fully set forth in this Article below.



21002385 4/9/2010 11:16 AM  
19 of 32 DCC RS161.00 DS0.00

June Madrid  
Archuleta County

Section 11.3 Budget. Within thirty (30) days after the adoption of proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than ten (10) nor more than fifty (50) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors. The Board of Directors shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Board of Directors shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Board of Directors shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 11.4 Annual Assessments. Annual Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Board of Directors shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Association-Owned Property, Party Walls and Exterior Maintenance Area; expenses of management; taxes and special governmental assessments pertaining to the Association-Owned Property, Party Walls and Exterior Maintenance Area and insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, common lighting within the Association-Owned Property and Exterior Maintenance Area; routine repairs and renovations relating to Association-Owned Property, Party Walls and Exterior Maintenance Area; wages; common water and utility charges for the Association-Owned Property and Exterior Maintenance Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining by the Association under or by reason of this Declaration; payment of any default remaining from a previous Assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs and replacement of improvements relating to the Association-Owned Property, Party Walls and Exterior Maintenance Area on a periodic basis, as needed.

Monthly Assessments shall be payable on the 1<sup>st</sup> day of each month. The omission or failure of the Association to fix the Annual Assessments for any Assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

**Section 11.5 Apportionment of Annual Assessments.** Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided equally among the Townhome Units.

**Section 11.6 Special Assessments.** In addition to the Annual Assessments authorized by this Article, the Association, if permitted under the Act, may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Association-Owned Property, Party Walls or Exterior Maintenance Area, or for any other expense incurred or to be incurred as provided in this Declaration. This Section 11.6 shall not be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owner's in the same proportion as provided for Annual Assessments in Article XI, Section 11.5, subject, however, to the requirements that any extraordinary maintenance, repair or restoration work to wall or the Exterior Maintenance Area on fewer than all of the Townhome Units shall be borne by the Owners (or his agents, servants, guests, tenants or invitees) shall be borne by that Owner. Notice in writing in the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. Special Assessments are currently restricted under the Act.

**Section 11.7 Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner, or which is incurred by the Association on behalf of the Owner, pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Townhome Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

**Section 11.8 Effect of Nonpayment: Assessment Lien.** Any Assessment installment, whether pertaining to any Monthly, Special, or Default Assessment, which is not paid within thirty (30) days after its due date, shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- A. Assess a late charge for each delinquency in such amount as the Association deems reasonable and appropriate;
- B. Assess an interest charge from the date of delinquency at the yearly rate of eighteen percent (18%), or such other rate as the Board of Directors may establish or as may be required by law;

- C. Suspend the voting right of the Owner during any period of delinquency;
- D. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- E. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments;
- F. The Association or any agent of the Association may prepare, record, and file in Archuleta County a statement of lien with respect to the Townhome Unit and proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Townhome Unit shall constitute a lien on such Townhome Unit, including the Townhome and any other improvements on the Townhome Unit. To evidence the lien created under this Article XI, Section 11.8, the Association may, but shall not be required to, prepare a written notice setting forth (i) the address of the Association, (ii) the amount of such unpaid indebtedness, (iii) the amount of accrued penalty on the indebtedness, (iv) the name of the Owner of the Townhome Unit, and (v) a description of the Townhome Unit. The notice shall be signed and acknowledged by the President, Vice-President, Manager or other agent of the Association, and the Association shall serve the notice upon the Owner by First Class Mail to the address of the Townhome Unit or to such other address as the Association may have in its files for such Owner. After the Association mails the Owner such a notice, the Association may record the same in the office of the Clerk and Recorder of Archuleta County, Colorado. Such lien for Assessments shall attach from the due date of the Assessment. Following the date the Association mails the notice, the Association may institute foreclosure proceedings against the defaulting Owner's Townhome Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Townhome Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

**Section 11.9 Personal Obligation.** The amount of any Assessment chargeable against any Townhome Unit shall be a personal and individual debt of the Owner of same. No Owner may exempt himself from liability for the Assessment by abandonment of his Townhome Unit or by waiver of the use or enjoyment of all or any part of the Association-Owned Property. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment, lien provided in this Declaration.



21002385 4/9/2010 11:16 AM  
22 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

Section 11.10 Successor's Liability for Assessments; Subordination of Lien. The provisions of the Act shall govern and control (a) the obligations of successors to the fee simple title of a Townhome Unit on which Assessments are delinquent and (b) the subordination by the lien of the Assessments provided for in this Declaration.

Section 11.11 Subordination of Lien. The lien of the Assessments provided for in this Declaration shall be subordinate to (a) the lien of real estate taxes and special governmental assessments, (b) liens and encumbrances recorded before the recordation of the Declaration, and (c) liens for all sums unpaid for a First Mortgage of record, recorded before the date on which the Assessment sought to be enforced became delinquent, subject to Section §38-33.3-316 of the Colorado Revised Statutes. Seller transfer of any Unit shall not affect the Association's lien except that sale or transfer of any Unit, pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, or cancellation or forfeiture shall only extinguish the Association's liens as provided in Section §38-33.3-316 of the Colorado Revised Statutes. The amount of extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board. No sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of any Assessments made after the sale or transfer.

Section 11.12 Notice to Mortgagee. The Association shall report to any Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same shall have become due, if such Mortgagee first shall have furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Townhome Unit may pay any unpaid Assessment payable with respect to such Townhome Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Townhome Unit for the amounts paid with the same priority as the lien of the Mortgage.

Section 11.13 Statement of Status of Assessment Payment. Upon payment of reasonable fee set from time to time by the Executive Board and upon fourteen (14) days' written request to the Manager or the Association's registered agent, any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Townhome Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Townhome Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days, the Association shall have no right to assert a lien upon the Townhome Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.



21002385 4/9/2010 11:16 AM  
23 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

Section 11.14 Capitalization of the Association. Upon acquisition of record title to a Townhome Unit from Declarant or any seller after Declarant, each Owner shall contribute to the working capital and reserves of the Association an amount equal to twenty-five percent (25%) of the Annual Assessment determined by the Board of Directors for that Townhome Unit for the year in which the Owner acquired title. Such payments shall not be considered advance payments of Annual Assessments. The unused portion of the working capital deposit shall be returned to each Owner upon the sale of his Townhome Unit, provided that the new purchaser of the Townhome Unit has deposited the required working capital deposit with the Association.

## ARTICLE XII

### ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article IX upon their damage or destruction as provided in Article XIII, or a complete or partial taking as provided in Article XIV below. Acceptance by a grantee of a deed or other instrument of conveyance from Declarant or any other Owner conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as Attorney-in-fact. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.

## ARTICLE XIII

### DAMAGE OR DESTRUCTION

Section 13.1 The Role of the Board of Directors. Except as provided in Section 13.6., in the event of damage to or destruction of all or part of any Association-Owned Property, or other property covered by insurance written in the name of the Association under Article IX, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article IX is sometimes referred to as the "Association-Insured Property").

Section 13.2 Estimate of Damages or Destruction. As soon as practicable after any event causing damage to or destruction of any part of the Association-Insured Property, the Board of Directors shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in Article XIII shall mean restoring the damaged or destroyed



21002385 4/9/2010 11:16 AM  
24 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

Section 13.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to complete the repair and reconstruction of the damaged or destroyed. Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 13.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction for the Association-Insured Property. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Article XI, Section 11.6., if permitted under the Act, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

Section 13.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs or repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Townhome Unit, first to the Mortgagees, if any, and then to the Owners, as their interests appear.

Section 13.6 Decision Not to Rebuild Common Area. If Owners representing at least sixty seven percent (67%) of the total allocated votes in the Association (other than Declarant) and sixty seven percent (67%) of the Mortgagees holding First Mortgages (based on 1.0 vote for each Mortgage which encumbers a Townhome Unit) and all directly adversely affected Owners agree in writing not to repair and reconstruct improvements within the Common Area and if no alternative improvements are authorized, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by





21002385 4/9/2010 11:16 AM  
25 of 32 DCC RS\$161.00 DS\$0.00

June Madrid  
Archuleta County

the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with the Act.

Section 13.7 Destruction of Townhome Unit. In the event of damage to or destruction of all or part of any Townhome Unit, improvement or other property owned by an individual Owner, such Owner shall arrange for and supervise the prompt repair and restoration of the damaged property, and shall be obligated to complete such repair and restoration in a timely fashion.

#### ARTICLE XIV

#### CONDEMNATION

Section 14.1 Rights of Owners. Whenever all or any part of the Association-Owned Property shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Association Owned Property is conveyed in lieu of a taking under threat of condemnation by the Board of Directors acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 14.2 Partial Condemnation Distribution of Award Reconstruction. The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Association-Owned Property was conveyed, and the award shall be disbursed as follows:

If the taking involves a portion of the Association-Owned Property on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least sixty seven percent (67%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Association-Owned Property to the extent lands are available for such restoration or replacement in accordance with plans approve by the Board of Directors. If such improvements are to be repaired or restored, the provisions in Article XIII above regarding the disbursement of funds in respect to casualty damage or destruction, which is to be repaired, shall apply. If the taking does not involve any improvements on the Association-Owned Property, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equitable shares per Townhome Unit among the Owners in accordance with the provisions in Article XIII, Section 13.6 above.

Section 14.3 Complete Condemnation. If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Association-Owned Property shall be distributed as provided in Article XIII above.

## ARTICLE XV

### ARCHITECTURAL CONTROL

No exterior addition to or change or alteration to the Townhomes or patios shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association or by an architectural committee composed of three (3) or more representatives appointed by the Board of Directors of the Association.

## ARTICLE XVI

### MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors for First Mortgages on Lots. To the extent applicable, necessary or proper, the provisions of this Article XVI apply to this Declaration and also the Articles and Bylaws of the Association.

Section 16.1 Approval Requirements. Unless at least sixty seven percent (67%) of the Eligible First Mortgagees, and at least sixty seven percent (67%) of the Owner (other than Declarant) have given their prior written approval, the Association shall not be entitled to:

- A. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or part of the Association-Owned Property (provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Association-Owned Property shall not be deemed a transfer within the meaning of this clause);
- B. Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;
- C. By act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design, appearance or maintenance of the Association-Owned-Property or the Exterior Maintenance Area; or
- D. Use hazard insurance proceeds for losses to improvements in the Association-Owned Property for other than the repair, replacement or reconstruction of such Property.



21002385 4/9/2010 11:16 AM  
27 of 32 DCC RS161.00 DS0.00

June Madrid  
Archuleta County

Section 16.2 Title Taken by Mortgagee. A Mortgagee holding a First Mortgage of record against a Townhome Unit who obtains title to the Townhome Unit and any improvements on the Townhome Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Townhome Unit (i) is acquired or (ii) could have been acquired under the statutes of Colorado governing foreclosures, whichever is earlier. Such Mortgagee will not be liable for any unpaid dues or charges attributable to the Townhome Unit, which accrue prior to the date the Mortgagee acquired title or could have acquired title under the Colorado foreclosure statutes, whichever is earlier, except for Assessments and charges permitted under Section §38-33.3-316 of the Colorado Revised Statutes. Sale or transfer of any Townhome Unit pursuant to a deed in lieu of foreclosure for the purpose of enforcing a First Mortgage shall extinguish the lien of such Assessments as to installments under Section §38-33.3-316 of the Colorado Revised Statutes. The amount of any extinguished lien may be reallocated and assessed to all Townhome Units as a Common Expense at the direction of the Board of Directors.

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

Section 16.4 Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Townhome Units for losses to, or taking of, all or part of Association-Owned Property, any Owner who has encumbered his Townhome Unit with a First Mortgage shall not take priority in receiving the distribution over the right of any such First Mortgagee.

## ARTICLE XVII

### DURATION OF COVENANTS AND AMENDMENT

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

Section 17.2 This Declaration, or any provision of it, maybe amended, in whole or in part, by amending existing provisions, adding new provisions or revoking existing or added provisions at any time by Owners holding not less than (a) sixty-seven percent (67%) of the votes possible to be cast under this Declaration, except as limited by Article XVII, and (b) provided that the Association has received approval from Eligible First Mortgagees as required



21002385 4/9/2010 11:16 AM  
28 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

by Article XVI. When Eligible First Mortgagee approval is required, approval is deemed given if an Eligible First Mortgagee fails to approve or deny an amendment within thirty (30) days of the date the Association mailed notice of the amendment to the Eligible First Mortgagee. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment

Section 17.3 Revocation. This Declaration shall not be revoked, except as provided in Article XIV regarding total condemnation, without the consent of all of the Owners evidenced by a written instrument duly recorded.

#### ARTICLE XVIII

##### LIMIT ON TIMESHARING

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

#### ARTICLE XIX

##### GENERAL PROVISIONS

Section 19.1 Enforcement. Except as otherwise provided in this Declaration, the Board of Directors, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter impose by the provisions of this Declaration. Failure by the Board of Directors of the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Additional possible actions by the Association:

- A. Impose reasonable monetary fines, after notice and an opportunity to be heard.
- B. Suspend a Member's voting rights or other Membership privileges
- C. Exercise self-help in cases of an emergency.
- D. Bring a lawsuit to enjoin any violation or threatened violation or to recover money Damages.

Section 19.2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 19.3 Conflicts Between Documents. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 19.4 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no right or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 19.5 Interpretation of the Covenants. Except for judicial construction, the Association, through its Board, will have the exclusive right to construe and interpret the provisions of the Association Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions will be final, conclusive, and binding as to all persons and property benefited or bound by the Association Documents.

Sections 19.6 Rule Against Perpetuities. If any of the provisions, interest, privileges, covenants, or rights created by this Declaration are determined by a court of competent jurisdiction to be unlawful, void, or voidable for violation of the rule against perpetuities or any related rule, the provisions etc. will be construed to continue until 21 years after the death of the survivor of the now descendants of the President of the United States on the date this Declaration is recorded.

Section 19.7 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances will operate to extinguish, terminate, or modify any of the provisions of this Declaration.

Section 19.8 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender will include the feminine and neuter genders; words used in the neuter gender will include the masculine and feminine genders. Words in the singular will include the plural; words in the plural will include the singular.

Section 19.9 Captions. All captions, titles, or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify, or otherwise affect any of the provisions and are not to be used in determining the intent or context.

Section 19.10 Survival of Liability. The termination of Membership in the Association will not: (i) relieve or release any former Member from any liability or obligation incurred under or arising out of the Association Documents during the period of Membership; or (ii) impair any



21002385 4/9/2010 11:16 AM June Madrid  
30 of 32 DCC R\$161.00 D\$0.00 Archuleta County

rights or remedies which the Association or Declarant may have against the former Member arising out of the Association Documents.

21002385 4/9/2010 11:16 AM  
31 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County

Dated as of the day and year first above written.

WHISPERING PINES TOWNHOMES ASSOCIATION II, INC.,  
A Colorado Nonprofit Corporation

By: Andrew J. Schrepfer  
Name: Andrew J. Schrepfer  
Title: President

By: Greg McCarty  
Name: Greg McCarty  
Title: Vice President

I, the undersigned, do hereby certify: I am the duly elected and acting Secretary of Whispering Pines Townhomes Association II, Inc., a Colorado nonprofit corporation ("Association"). The foregoing Amended Declaration was duly adopted pursuant to the Declaration. The Association has received the requisite approvals for the foregoing Amended Declaration, as provided in C.R.S. 38-33.3-217(1)(a)(I), from Owners holding at least sixty-seven percent (67%) of the votes in the Association.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the Association this 2nd day of April, 2010.

Whispering Pines Townhomes Association II, Inc.

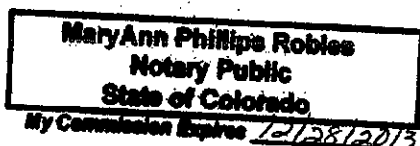
By: Janice L. Barber  
Janice L. Barber, Secretary

STATE OF COLORADO )  
COUNTY OF ARCHULETA ) ss.

The foregoing instrument was acknowledged before me this 2nd day of April, 2010 by the Secretary of Whispering Pines Townhomes Association II, Inc., a Colorado Nonprofit Corporation.

Witness my hand and official seal.

My commission expires: 12/28/2013



Phillips  
MaryAnn Robles  
Notary Public

21002385 4/9/2010 11:16 AM  
32 of 32 DCC R\$161.00 D\$0.00

June Madrid  
Archuleta County



EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS OF  
WHISPERING PINES TOWNHOMES II, PHASE TEN

PROPERTY SUBJECT TO DECLARATION

Parcel 5D,

Whispering Pines Townhouses, Phase Ten,

according to the plat thereof,

recorded in the real property records of Archuleta County, Colorado,

on May 5, 2005, at Reception No. 20504276

at the office of the Clerk and Recorder of The County of Archuleta, State of Colorado



20600330 1/6/2006 1:15 PM June Madrid  
1 of 1 EAS R\$6.00 D\$0.00 Archuleta County



1

DESCRIPTION AUTHOR: BYRON GRECO  
AUTHOR ADDRESS: LA PLATA ELECTRIC ASSOCIATION, INC.  
P.O. DRAWER H  
DURANGO, COLORADO 81302

W.O. NO. \_\_\_\_\_  
PLAT/GRID NO. \_\_\_\_\_  
DOCUMENT NO. 1 OF 1

### LA PLATA ELECTRIC ASSOCIATION, INC. UNDERGROUND UTILITY EASEMENT

Whispering Pines Development Company, LLC and George Pifer, Grantor, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration from La Plata Electric Association, Inc., a Colorado corporation, P.O. Drawer H, Durango, Colorado 81302-2750, Grantee, the receipt of which is acknowledged, hereby grants to Grantee, its successors and assigns a perpetual easement for the distribution of electricity and for the transmission and reception of telecommunication signals, cable TV under and across the following described premises, to wit:

A blanket easement covering all lands within Whispering Pines Townhouses - Phase Ten, less and except the lands underlying the individual townhome units, according to the recorded plat thereof filed in the records of the Clerk and Recorder of Archuleta County, Colorado.

Together with the right of Grantee, its successors, assigns, licensees, lessees and contractors, and their agents and employees to enter upon said premises for the purpose of ingress and egress, inspection, surveying, construction, operation, reconstruction, improvement, enlargement, replacement, alteration, maintenance and removal of electric distribution lines and telecommunication facilities underground, together with their related equipment, including but not limited to, cables, wires, conduits, manholes, and other fixtures and appurtenances related therewith, along with the authority to cut, remove, trim, or otherwise control all trees, brush and other growth on the premises and the adjoining property of Grantor, which in the opinion of Grantee, may interfere with the use of the easement premises by the Grantee, its successors and assigns. Grantor further conveys to Grantee the right of ingress and egress to said premises across any private road on Grantor's property or by such other routes which are mutually acceptable to the parties.

No buildings, structures, signs, wells or changes in grade shall be erected, placed, made or permitted on, over, under or within said premises which in the sole opinion of the Grantee may interfere with the exercise of any of the rights herein granted.

Grantor shall indemnify, hold harmless and defend Grantee from and against any and all claims, demands, losses, damages, liabilities, lawsuits and other proceedings, judgments, and awards, costs, expenses and penalties (including but not limited to reasonable attorney fees) arising directly or indirectly, in whole or in part, (i) from disputes with third parties regarding Grantor's title ownership to the real property in the Easement or to the real property where the ditch which was provided by the Grantor was located for the installation of electric distribution lines and telecommunication facilities by Grantee; or (ii) from the exercising by the Grantee of any of the rights granted under this Easement.

Grantee may sublet and assign this Easement, or any portion thereof, for all or any portion of the rights conveyed herein. Non-use or a limited use of the easement or rights herein conveyed shall not prevent Grantee, its successors, assigns, licensees or lessees from thereafter making use of this easement to the full extent herein authorized.

This Easement constitutes the entire understanding of the parties. All understanding and agreements heretofore made between the parties whether written or oral are merged into this document.

Signed this 12 day of July, 2005.

Whispering Pines Development Company, LLC

By: Marge Alley  
Marge Alley, Managing Director

By: George Pifer  
George Pifer

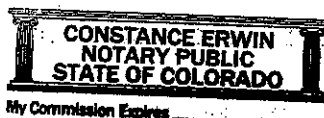
STATE OF COLORADO )  
COUNTY OF ARCHULETA ) ss

The foregoing instrument was acknowledged before me this 12 day of July, 2005, by Marge Alley, Managing Director of Whispering Pines Development Company, LLC and George Pifer.

WITNESS my hand and official seal this day.

Constance Erwin  
Notary Public

My commission expires: 4-27-2009



RETURN TO:  
RANDY FERRIS  
LA PLATA ELECTRIC ASSOCIATION  
P.O. BOX 2750  
DURANGO, CO 81302-2750

NAME OF LINE: Whispering Pines Townhouses ROW AGENT: BG EASEMENT LOCATION: 35N2W2D