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Archuleta County

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September 1, 2013

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
COBBLESTONE TOWNHOMES**

Name of Common Interest Community:	Cobblestone, LLC
Type of Common Interest Community:	Townhomes
Name of the Association:	Cobblestone Owner's Association

Rtn: Jack Searle
841 Hersch Ave
Pagosa Springs CO 81147



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LIST OF EXHIBITS

- EXHIBIT A Legal Description of Cobblestone
- EXHIBIT B Legal Description of Townhome Area
- EXHIBIT C Legal Description of Annexable Property
- EXHIBIT D Common Elements Interests and Assessments
- EXHIBIT E Recording Data for Recorded Easements and Licenses



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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COBBLESTONE TOWNHOMES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COBBLESTONE TOWNHOMES(as amended from time to time, this “**Townhome Declaration**”) is made as of _____, 2013, by JACK B. SEARLE (together with its successors and assigns, “**Declarant**”).

RECITALS

A. Declarant owns the real property located in the City of Pagosa Springs and County of Archuleta, State of Colorado, that is more particularly described on **Exhibit A** attached hereto and made a part hereof.

B. Declarant incorporates all of the terms, conditions, and plat notices of The Cobblestone Planned Development Plat, recorded in office of the Archuleta County, Colorado Clerk and Recorder on _____, 2013, as Reception No. _____. Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors, and assigns of parties having any right, title or interest in all or any part of the Property, and any property annexed in accordance with the terms hereof. Additionally, Declarant hereby submits the Property and any property annexed in accordance with the terms hereof to the provisions of the Colorado Common Interest Ownership Act.

C. The Townhome Area is hereby subjected to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Townhome Declaration.

TOWNHOME DECLARATION

In consideration of the foregoing, Declarant hereby declares as follows:

ARTICLE I

ESTABLISHMENT OF TOWNHOME

1.1 **Townhome Declaration.** Declarant hereby creates a townhome named “**COBBLESTONE TOWNHOMES**” on and from the Townhome Area (as such term is defined below) and declares that the Townhome Area shall be held, sold, and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of the Townhome Declaration.



1.2 **Covenant Running with the Land.** All covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of this Townhome Declaration are and shall be covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Townhome Declaration shall bind and inure to the benefit of the Declarant, the Owners (as that term is defined below), the Townhome Association (as that term is defined below), all other parties now or hereafter having any right, title or interest in the Townhome Area or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

ARTICLE II

DEFINITIONS

2.1 **Basic Definitions.** As used in this Townhome Declaration, the following terms have the meanings given in this Section 2.1.

(a) **“Act”** means the Colorado Common Interest Ownership Act, *Colorado Revised Statutes 38-33.3-101 through 38-33.3-319*, as the same may be amended from time to time.

(b) **“Agency”** or **“Agencies”** shall mean collectively the Federal National Mortgage Association (Fannie Mae); Federal Home Loan Mortgage Corporation (Freddie Mac); the Government National Mortgage Association (GNMA); the Federal Home Loan Mortgage Corporation (FHLMC); the Department of Housing and Urban Development (HUD); the Veterans Administration (VA); the Colorado Housing and Finance Authority (CHFA); or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by any such entities.

(c) **“Allocated Interest”** shall mean the allocation of votes in the Townhome Association to any applicable Unit as set forth in Section 5.3 hereof and as allowed for in the Act, the allocation to each Unit of the undivided ownership interest in each of the Common Elements and the allocation to each Unit of the Common Expenses as set forth in Section 7.2. The formulas used to establish the Allocated Interests are set forth on Exhibit D.

(d) **“Applicant”** has the meaning given to that term in Section 10.2 below.

(e) **“Articles”** means the Articles of Incorporation of the Townhome Association, as the same may be amended or supplemented from time to time.

(f) **“Assessment”** means a General Assessment, a Service Area Assessment, a Special Assessment or a Specific Assessment levied and assessed pursuant to ARTICL VII below.

(g) **“Assessment Lien”** has the meaning given to that term in Section 7.10(a) below.



(h) “**Board of Directors**” or “**Board**” means the board of directors of the Townhome Association. As used in the Townhome Association Documents, the Board of Directors is intended to be the “**Executive Board**,” as that term is used in the Act.

(i) “**Buildings**” means each of the buildings constructed as part of the Townhome.

(j) “**Bylaws**” means the Bylaws of the Townhome Association, as the same may be amended or supplemented from time to time.

(k) “**Townhome**” means COBBLESTONE, LLC the townhome common interest community created pursuant to the Act on the Townhome Area by this Townhome Declaration, consisting of the Units and the Common Elements.

(l) “**Townhome Area**” means the real property set forth on **Exhibit B**, attached hereto and made a part hereof, as the same stretches to the edge of any curb that abuts a gutter or road, including the sidewalks thereon, and any and all Improvements constructed thereon from time to time and any real property that is later made subject to this Townhome Declaration in accordance with the terms and conditions contained herein.

(m) “**Townhome Association**” means Cobblestone, LLC Townhome Owner’s Association, a Colorado Limited Liability Company and its successors and assigns.

(n) “**Townhome Association Documents**” means this Townhome Declaration, the Articles, the Bylaws, and the Rules and Regulations, as the same may be amended from time to time.

(o) “**Townhome Declaration**” means this Townhome Declaration of Covenants, Conditions and Restrictions for COBBLESTONE TOWNHOMES, as the same may be amended or supplemented from time to time.

(p) “**Townhome Map**” means the Recorded Townhome Map for the Project as the same may be amended or supplemented from time to time.

(q) “**Common Elements**” means the General Common Elements and the Limited Common Elements.

(r) “**Common Expenses**” means: any and all costs, expenses and liabilities incurred by or on behalf of the Townhome Association, included, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements; (B) providing facilities, services and other benefits to Owners; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto; (E) regulating and managing the Townhome; and (F) operating the Townhome Association; and reserves for any such costs, expenses and liability.

(s) “**Conflict of Interest**” means any circumstances in which any Director or officer or any parent, grandparent, spouse, child or sibling or any Director or officer or any

business, trust, retirement plan or entity of any of them would receive a financial or pecuniary benefit from any transaction, act or omission of the Board or the Townhome Association.

(t) “**Declarant**” means Jack B. Searle, and successors and assigns as provided herein and in the Act. Notwithstanding the definition of Successor Declarant, a successor entity to Declarant formed by merger or consolidation of Declarant shall automatically be deemed a successor and assign of Declarant for all purposes and as to all rights of Declarant set forth in this Townhome Declaration or any other Townhome Association Document.

(u) “**Declarant Control Period**” has the meaning given to that term in Section 6.4(a) below.

(v) “**Development Rights**” means all “**Development Rights**” (as such term is defined in the Act) that Declarant reserves for itself in this Townhome Declaration.

(w) “**Development Rights Period**” shall have the meaning set forth in Section 16.5

(x) “**Director**” means a duly elected or appointed member of the Board of Directors.

(y) “**Disclosed**” or “**Disclosure**” means any and all means of disclosure of information to Unit Owners or others that may be required by or if not required by, then permitted under the Act, including, (i) posting the information on the Townhome Association Website with notice of the web address sent via e-mail or first class mail to all Owners; (ii) mailing the information to all Owners; (iii) personally delivering the information to all Owners; or (iv) maintaining a literature table or binder at the Townhome Association’s principal place of business.

(z) “**First Mortgage**” means any Mortgage which is not subordinate to any other lien or encumbrance, except liens for taxes or other liens which are given priority by statute.

(aa) “**First Mortgagee**” means a Mortgagee under a First Mortgage.

(bb) “**Floor Area**” shall mean the aggregate from time to time of the actual number of square feet of floor space of all floors in any Unit whether or not actually occupied, within the exterior façade or exterior line of the exterior walls, except party and interior common walls as to which the center thereof instead of exterior faces thereof shall be used, and includes areas which are used primarily to house mechanical, electrical (including electrical equipment to operate point of sale equipment), telephone, HVAC and other such building operating equipment, whether physically separated or whether otherwise required by building codes; the term “**Floor Area**” shall not include the following:

- (a) Any balcony, patio, deck, basement, roof or mezzanine or outside space;
- (b) Any Common Elements;
- (c) Any community meeting rooms not exclusively serving any one Occupant and/or;



(d) Any Building used solely in connection with the maintenance of the Common Element.

(cc) **“General Assessment”** has the meaning given to that term in Section 7.4 below.

(dd) **“General Common Elements”** means all of the Townhome, other than the Units and the Limited Common Elements. Without limiting the generality of the preceding sentence, the General Common Elements include, without limitations:

(i) all improvements, including, without limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, utility systems, mechanical systems, sprinkler systems, exhaust and ventilation systems, storage areas, roofs, chimneys, drainage facilities, common patios, common balconies, common decks, common porches, corridors, lobbies, courtyards, stoops, exits and entrances, yards, sidewalks, walkways, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, gardens and related facilities upon the Townhome Area, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use, except for those Improvements that are designated by the Act, by this Townhome Declaration or by the Townhome Map as Units or Limited Common Elements.

(ee) **“Guest”** means any family member, employee, agent, independent contractor, lessee, sublessee, tenant, customer, licensee or invitee of an Owner.

(ff) **“Improvement”** means any landscaping, improvement, structure, or appurtenance of every type and kind, including, without limitation, grading, excavation and filling or similar disturbance to the surface of the land; landscaping features; clearing or removal of trees, shrubs, grass or plant; satellite dish; antenna; Units; buildings; outbuildings; underground drains; recreational improvements; patios and patio covers; decks; awnings; exterior paint, trim, and other finish materials; walkways; trails; additions to existing structures; alteration to exterior surfaces of approved buildings, structures, landscaping, or grading (including without limitation, any change of exterior appearance, color, roofing materials or texture); alteration of any drainage pattern established by Declarant on, across or over any Common Elements; sprinkler systems; garages and carports; driveways; paving and gravel; fences; walls (whether for screening or retention); stairs; exterior lighting; signs; exterior tanks and utilities (whether for air conditioning, cooling, heating, water softening or any other purpose); or any change to, or demolition or destruction (by voluntary action) of, any of the foregoing, or any other exterior change visible from any location outside a Unit.

(gg) **“Including”** means “including, but not limited to.”

(hh) **“Interested Director”** means any Director with a Conflict of interest with regard to any particular transaction, act or omission being considered by the Board or the Townhome Association.



(ii) **“Limited Common Elements”** means those portions of the Common Elements allocated by this Townhome Declaration or by operation of the Act for the exclusive use of one or more Units, but fewer than all the Units. Without limiting the generality of the foregoing, **“Limited Common Elements”** include, without limitation:

(i) any shutters, awnings, windows boxes, windows and doors located at the boundaries of Units, utility systems, mechanical systems, exhaust and ventilation systems, fireplaces, patios, balconies, decks, porches, courtyards, waiting areas, restrooms, entrances, exits and walkways and other areas and improvements that are designed to serve fewer than all the Units.

(ii) any physical portion of the Townhome that is designated on the Townhome Map as **“Limited Common Element,”** or **“LCE.”**

If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a mechanical system or any fixture lies partially within and partially outside of the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the General Common Elements. Nonstructural walls located wholly within a Unit are Limited Common Elements appurtenant to the Units in which they are located.

(jj) **“Majority”** means any percentage greater than 50%.

(kk) **“Member”** means an Owner of a Unit entitled to Membership Limited in the Townhome Association.

(ll) **“Membership”** means a membership in the Townhome Association and the rights granted to and obligations imposed upon Owners pursuant to this Townhome Declaration and the other Townhome Association Documents to participate in the Townhome Association.

(mm) **“Mortgage”** means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

(nn) **“Mortgagee”** means any Person named as a mortgagee or beneficiary in any Mortgage and any successor to the interest of any such Person under a Mortgage

(oo) **“Notice and Opportunity to be Heard”** means prior written notice and an open hearing before the Board of Directors, or a committee appointed by the Board of Directors, as provided in the Bylaws (regardless of whether such hearing is actually attended by the Owner).

(pp) **“Notice of Completion”** has the meaning given to that term in Section 10.19 below.

(qq) **“Officer”** means a duly elected or appointed officer of the Townhome Association



(rr) **“Owner”** means the record holder of legal title to the fee simple interest in any Unit or portion thereof. If there is more than one record holder of legal title to a Unit, each record holder shall be an Owner and the term **“Owner”** as used herein shall mean all such Owners. The term **“Owner”** includes Declarant to the extent that Declarant is the record holder of legal title to the fee simple interest in a Unit.

(ss) **“Person”** means any natural person, corporation, partnership, limited liability company, Townhome Association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real Townhome Area under the laws of the State of Colorado.

(tt) **“Purchaser”** means a Person, other than Declarant or a Successor Declarant, who acquires legal title to the fee simple interest in any Unit or portion thereof.

(uu) **“Recordation”** and **“Recorded”** and **“Record”** means the filing for record of any document in the office of the Clerk and Recorder of the County of Archuleta, State of Colorado.

(vv) **“Rules and Regulations”** means any instruments adopted by the Townhome Association for the regulation and management of the Townhome, as the same may be amended from time to time.

(ww) **“Sale Period”** means the period commencing on the date on which Declarant forms the Townhome Association and ending on the day when the last Unit created pursuant to this Townhome Declaration has been sold by Declarant or a Successor Declarant to a Purchaser and Declarant no longer has any right to include any Annexable Property in the Townhome.

(xx) **“Service Areas”** means an area or areas within the Townhome Area (whether or not contiguous), in which the Units shares Limited Common Elements and/or receive special benefits or services from the Townhome Association that it does not provide to all Units within the Townhome; or, for which certain costs are incurred that benefit some Units, but not others. For example, and by way of illustration and not limitation, all Units within a particular building may constitute a separate Service Area. Service Areas may or may not be governed by a separate Townhome Association under the Act.

(yy) **“Service Area Assessment”** has the meaning given to that term in Section 7.3(d) below.

(zz) **“Service Area Expenses”** means all expenses that the Townhome Association incurs to expects to incur in connection with the ownership, maintenance and operation of Limited Common Elements attributable to the Units within a particular Service Areas, or in providing benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area. Service Area Expenses may include a reasonable administrative charge in such amount as the Board of Directors deems appropriate, provide that any such administrative charge is applied uniformly among all Service Areas receiving the same service. For example, by way of illustration and not



limitation, all expenses relating to maintenance of portions of a particular building may be Service Area Expenses.

(aaa) **“Share of Common Expenses”** means the Share of Common Expenses allocated to each unit in accordance with the terms and conditions of Section 7.2 below. The Share of Common Expenses is an Allocated Interest.

(bbb) **“Special Assessment”** has the meaning given to that term in Section 7.5(a) below.

(ccc) **“Special Declarant Rights”** means all **“Special Declarant Rights”** (as such term is defined in the Act) that Declarant reserves for itself in this Townhome Declaration.

(ddd) **“Specific Assessment”** has the meaning given to that term in Section 7.6 below.

(eee) **“Successor Declarant”** means any Person who succeeds to any Special Declarant Right. However, a Person shall be deemed a Successor Declarant only if such Person is designated as such and to whom the rights of Townhome Declarant under this Townhome Declaration are assigned, in a Recorded instrument signed by Declarant and such Person, which instrument may limit by designation the particular rights or interest of Declarant to which such Person succeeds.

(fff) **“Supplemental Declaration”** means a recorded supplement to this Townhome Declaration, which may submit additional Townhome Area to this Townhome Declaration, create easements over the Townhome Area described in the Supplemental Declaration, impose additional obligations or restrictions on such Townhome Area designate Service Areas or change the boundaries of Service Areas, withdraw Townhome Area from this Townhome Declaration, or any of the foregoing.

(ggg) **“Total Townhome Floor Area”** means the Floor Area of all Units in the Townhome.

(hhh) **“Unit”** means a physical portion of the Townhome that is designated for separate ownership by an Owner and depicted on the Townhome Map and consisting of enclosed rooms and bounded by the unfinished perimeter walls, ceilings, floors, doors, and windows thereof. A Unit shall include any drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, windows and window frames, shutters, awnings, doorsteps, doors and door frames. The Unit shall also include any fireplace or stove hearth, facing brick, tile or fire box. The Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings, and floors; provided, however, that a Unit shall not include any of the structural components of the building or utility or service lines located within the individual Unit but serving one or more other Units, and the Unit does not include the undecorated or unfinished surfaces of the perimeter walls, floors or ceilings of a Unit.

(iii) **“Units That May Be Created”** means the aggregate total of 16 Units.



2.2 **Gender and Number**

Wherever the context of this Townhome Declaration so requires: (a) words used in the masculine gender shall include the feminine and neuter genders; (b) words use in the neuter gender shall include the masculine and feminine genders; (c) words used in the feminine gender shall include the masculine and neuter genders; (d) words used in the singular shall include the plural; and (e) words used in the plural shall include the singular.

ARTICLE III

UNITS AND COMMON ELEMENTS

3.1 **Units**

(a) Creation of Units. Declarant hereby creates sixteen (16) Units within the Townhome, the boundaries and identifying numbers of which are shown on the Townhome Map. Declarant reserves the right to create a maximum of sixteen (16) Units.

(b) Reservation by Declarant. Declarant reserves the right, at any time prior to the expiration of the Development Rights Period, to add to the Townhome and Annexable Property, or any part or parts thereof, and, to the extent permitted by the Act, other real property at any time pursuant to and in accordance with ARTICLE XV below.

(c) Subdivision by Owners. No Owner may alter such Owner's Unit, subdivide its Unit or relocate the boundaries between its Unit and an adjacent Unit, except as provided by this Townhome Declaration.

(d) Partition. Except as expressly provided to the contrary in this Townhome Declaration, the Allocated Interests for any Unit, the right to use Limited Common Elements and the Membership in the Townhome Association appurtenant to the Unit may not be partitioned or separated from the Unit or any part thereof.

(e) Notwithstanding anything to the contrary contained in Section 3.1(c) above, Section 3.1(d) above or elsewhere in this Townhome Declaration:

(i) nothing in Section 3.1(c) above Section 3.1(d) above or elsewhere in this Townhome Declaration shall prevent or limit Declarant's exercise or enjoyment of any Special Declarant Right; and

(ii) an Owner's rights to use any General Common Element or any Limited Common Element appurtenant to the Owner's Unit shall extend to the Owner's Guests.



3.2 Allocated Interests

(a) Formula For Determining Allocated Interests. Each Unit shall have an undivided ownership interest in the Common Elements, which shall be appurtenant to each Unit, allocated to each Unit as follows and shall be expressed as a percentage and calculated as the Area of the Unit divided by the Total Townhome Floor Area, the quotient of which multiplied by 100.

(b) Initial Allocated Interests. The Allocated Interests appurtenant to each of the initial Units of the Townhome are set forth on **Exhibit D** attached here to and made a part hereof. The interest of each Owner of a Unit in the Limited Common Elements is set forth on **Exhibit D**.

(c) Reallocations. If any Units are added to or withdrawn from the Townhome, or if the Area of one or more Units is increased or decreased, the Allocated Interests for all Units within the Townhome after such addition or withdrawal, increase or decrease shall be recalculated and reallocated in accordance with the formula set forth in Section 3.2(a) above.

(d) No Partition of Allocated Interests. Except as expressly provided to the contrary elsewhere in this Townhome Declaration, an Allocated Interest may not be partitioned from the Unit to which it is appurtenant, and any purported conveyance, encumbrance or transfer of an Allocated Interest made without the Unit to which Allocated Interest is appurtenant shall be void.

(e) Owners Common Elements Easement. Every Owner and the family members, Guest, tenants, and licensees of each Owner shall have a perpetual right and easement of access over, across, and upon the General Common Elements for the purpose of entering and exiting such Owner's respective Unit, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:

(i) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Townhome Declaration and the Townhome Map; and

(ii) the right of the Townhome Association to adopt and modify, from time to time, any and all Rules and Regulations concerning the Common Elements as the Townhome Association may determine the necessary or prudent, subject to the terms of this Townhome Declaration.

Notwithstanding the foregoing, the Townhome Association shall take no action which unreasonably restricts any Owner's or its family members, Guests, tenants and licensee's right and easement of access over, across, and upon the General Common Elements to its Unit.

3.3 Limited Common Elements. Except as expressly provided to the contrary in this Townhome Declaration, the allocation of the Limited Common Elements shown on the Townhome Map or by operation of the Act may not be altered without the consent of all Owners whose Units would be affected by such reallocation and then, only in accordance with the terms and conditions



of the Act. Subject to the provisions of this Townhome Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to the Owner's Unit, in common with the Owners of other Units, if any, to which such Limited Common Elements are appurtenant.

3.4 **Service Areas.**

(a) **Authorization.** Units may also be part of one or more Service Areas in which the Units within such Service Area share Limited Common Elements or receive benefits or services from the Townhome Association that it does not provide to all Units within the Townhome or which is allocated costs that are logically attributable to those Units within the Service Area. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives or the Limited Common Elements it shares. A Service Area may be comprised of Units of more than one type and may include Units that are not contiguous.

(b) **Creation of Service Areas.** Declarant may initially designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area either in **Exhibit A** or in a Supplemental Declaration.

(c) **Changes to Service Area.** During the Sale Period, Declarant may unilaterally expand, decrease or otherwise change Service Area boundaries and may create new Service Areas. In order to evidence any such expansion, decrease or other change, Declarant shall cause a Supplemental Declaration to be Recorded that sets forth such expansion, decrease or other change. In addition, the Board of Directors may, by resolution or Supplemental Declaration: (i) designate Service Areas and assign Units to them upon petition of Owners of at least 67% of the Units affected by the proposed designation; and (ii) expand Service Area boundaries upon petition of Owners of at least 67% of the Units within the affected Service Area and Owners of at least 67% of the Units that would be added to the Service Area; and (iii) decrease or otherwise change (but not expand) Service Area boundaries upon petition of Owners of at least 67% of the Units within the affected Service Area.

3.5 **Separate Taxation of Units.** Pursuant to the Act, each Unit shall constitute a separate parcel of real estate and will be separately assessed and taxed.

3.6 **Description of Units.**

(a) **Conveyance.** To convey, encumber or otherwise affect legal title to a Unit an instrument must describe the Unit as follows:

Unit _____, _____, County of Archuleta, State of Colorado, according to this Townhome Declaration of Covenants, Conditions and Restrictions for COBBLESTONE TOWNHOMES, recorded under Reception No. _____ of the records of the Clerk and Recorder for the County of Archuleta, State of Colorado, and the Townhome Map recorded under Reception No. _____ of the records of the Clerk and Recorder for the County of Archuleta, State of Colorado.

(b) Description. The provisions of §38-33.3-202 of the Act, entitled “Unit Boundaries,” are generally applicable to the Units. The Unit boundaries are generally shown on the Map, and are generally enclosed and bounded by the following boundaries:

(i) All lath, furring, wallboard, plasterboard, plaster, paneling, interior glass surfaces, floor and ceiling tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements.

(ii) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture which lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a General Common Element.

(iii) Subject to the provisions of Section 3.6(a) above, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

(iv) Any exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit’s boundaries, are Limited Common Elements allocated exclusively to that Unit.

(v) Any shutters, awnings, window boxes, doorstops, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the Unit’s boundaries, are Limited Common Elements allocated exclusively to that Unit except to the extent that the exterior glass face of the Unit which serves as the exterior surface of and Exterior Wall of a Townhome Unit shall be a General Common Element.

(vi) The lower boundary for each Unit is the exterior surface of the floor of the lowest level of the Unit. The upper Unit boundary for each Unit is the interior surface of the Ceiling of the highest level of each Unit.

(c) Buildings. All portions of each Building, excluding the Units and the Limited Common Elements allocated (on the Map or pursuant to this Declaration) to fewer than all the Townhome Units in the Building, are General Common Elements.

ARTICLE IV

THE TOWNHOME ASSOCIATION

4.1 Formation of the Townhome Association. On or before the date on which Declarant conveys the first Unit to a Purchaser, Declarant shall form the Townhome Association.



4.2 **Purposes and Powers.**

(a) **Purposes of Townhome Association.** The Townhome Association's purposes are:

(i) to manage, operate, insure, construct, improve, repair, replace, alter and maintain the Common Elements;

(ii) to provide certain facilities, services and other benefits to the Owners;

(iii) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby;

(iv) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto;

(v) to enter into agreements with other Persons, including, without limitation, easements, licenses, leases and other agreements.

(vi) to take any action that it deems necessary or appropriate to protect the interest and general welfare of Owners; and

(vii) to regulate and manage the Townhome.

(b) **Powers of Townhome Association.** Unless expressly prohibited by law or any of the Townhome Association Documents, the Townhome Association may:

(i) take any and all actions that it deems necessary or advisable to fulfill its purposes;

(ii) exercise any powers conferred on it by the Act or any Townhome Association Document; and

(iii) exercise all powers that may be exercised in Colorado by a homeowner association and applicable law.

Notwithstanding any provision of this Townhome Declaration to the contrary, the Cobblestone Association is not empowered to institute or conduct any legal action that fails to comply with the requirements and limitations stated in the Articles or in the Act.

(c) **Additional Powers of Townhome Association.** Without in any way limiting the generality of Section 4.2(b) above, the Townhome Association may, but is not obligated to:

(i) provide certain facilities and services to the Owners, such as water, sewer, gas, electric, cable television, telephone and other utility services and trash collection facilities and services.



(ii) acquire, sell, lease and grant easements over, across and through Common Elements in accordance with the Act;

(iii) borrow monies and grant security interests in the Common Elements and in the assets of the Townhome Association as collateral therefore in accordance with the Act:

(iv) make capital improvements, repairs and replacements to Common Elements; and

(v) hire and terminate managing agents and other employees, agents and independent contractors and

(vi) all powers expressly granted to the Townhome Association in Section 302 of the Act

4.3 **Townhome Association Documents.**

(a) **Purpose of Documents.** This Townhome Declaration creates the Townhome and sets forth certain covenants, condition, restriction, reservations, easements, Assessments, charges and liens applicable to the Townhome Area. The Articles create the Townhome Association. The Bylaws provide for the regulation and management of the Townhome Association, and the Rules and Regulations provide for the regulation and management of the Townhome. The obligations, burdens and benefits created by this Townhome Declaration touch and concern the Townhome Area (including real Townhome Area later made subject to this Townhome Declaration as provided herein, as of the date such Townhome Area is so made subject) and are, and shall be, covenants running with the Townhome Area for the benefit of all such Townhome Area. The Townhome Association and each Owner shall comply with and benefit from each term, provision, covenants, conditions, restrictions, reservation, easement and other provision contained in the Townhome Association Documents.

(b) **Conflict/Inconsistency.** If there is any conflict or inconsistency between the terms and conditions of this Townhome Declaration and the terms and conditions of the Townhome Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Townhome Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control. If there is any conflict or inconsistency between the terms and conditions of any Townhome Association Document and the mandatory provisions of the Act or other applicable law, the Act or such applicable law, as the case may be, shall control.

4.4 **Access to Books and Records.** Within five days of receipt of a request therefor, the Townhome Association shall allow Owners, Mortgagees and their respective agents to inspect and copy current copies of the Townhome Association Documents and the books, records, budgets, and financial statements of the Townhome Associations (prepared in accordance with generally accepted accounting principles) during normal business hours and under other reasonable



circumstances. The Townhome Association may charge a reasonable fee for copying such materials not to exceed the Townhome Association's actual costs of copying. The books and records maintained by the Townhome Association pursuant to this Section 4.4 shall include, but need not be limited to:

- (a) Minutes of all Board, Townhome Association and Owner meetings;
- (b) Records of all actions taken by the Board, Townhome Association or Owners in lieu of meetings;
- (c) Records of all actions taken by a committee of the Board acting on behalf of the Board or the Townhome Association;
- (d) All waivers of notice requirements for Owner meetings, Townhome Association meetings, Boards meetings or committee meetings;
- (e) The Townhome Association Documents;
- (f) All resolutions of the Board that affect Owners;
- (g) All written communications to Owners and minutes of Owner meetings for the past three years;
- (h) A list of names and the home or business addresses of current Board members and officers;
- (i) The most recent annual report of the Townhome Association (if any); and
- (j) All financial audits or reviews as required by the Act for the past three years.

ARTICLE V

MEMBERSHIP AND VOTING

5.1 **Membership.**

(a) **Membership With Unit.** Every Person who is an Owner of any Unit that is subject to this Townhome Declaration shall be a Member of the Townhome Association and shall be subject to all of the same rights and duties assigned to an Owner under the Townhome Association Documents. There shall be one Membership in the Townhome Association for each Unit within Cobblestone. The Person or Persons who constitute the Owner shall automatically be the holder of the Membership appurtenant to the Owner's Unit, and the Membership shall automatically pass with fee simple title to the Unit. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for Membership. Where more than one person holds an interest in any Unit, all those Persons shall



be Members, but there shall be only one voting Membership per Unit, and such Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee, or my any individual designated from time to time by the Owner in a written instrument delivered to the secretary of the Townhome Association.

A Membership may be transferred or encumbered only in connection with the conveyance or encumbrance of a fee simple interest in the Unit to which the Membership is appurtenant. Any transfer or encumbrance of a Membership other than as permitted in this Section 5.1 shall be void and have no force or effect. To the extent that there are unsold Units owned by Townhome Declarant, shall have the same rights and duties as the Owner of such units as are assumed by other Owners of any Unit.

(b) Assignment of Voting Rights. Notwithstanding anything to the contrary in Section 5.1(a) above, an Owner may assign its voting rights to any Person by duly executed proxies timely delivered to the Townhome Association.

5.2 Voting, Generally. Each Membership shall have the right, subject to the other provision of this ARTICLE V, to cast votes for the election of the Board;

(a) Bylaws. Except to the extent otherwise addressed in this Declaration or the Townhome Articles, the Bylaws shall provide the manner, time, place, conduct and voting procedures for Owner meetings for the purpose of electing the Board.

(b) No Fractionalized Voting. Votes allocated to any Unit must be cast as a block and without dividing or fractionalizing such vote or votes.

(c) No Cumulative Voting. Cumulative voting shall not be permitted in the election of the Board or for any other purpose.

(d) Secret Ballots. In the election for one or more members of the Board, secret written ballots shall be used. In any voting matter other than the election of members of the Board of Directors, secret written ballots shall be used if requested by twenty percent (20%) of the Unit Owners present at the meeting or represented by proxy. In any election in which secret written ballots are used, those ballots shall be counted by a neutral third party or by a committee of volunteers. Such volunteers shall be Unit Owners who are selected or appointed at an open meeting, in a fair manner, by the chair or the Board or other person presiding during that portion of the meeting. The volunteers shall not be Board Members and, in the case of a contested election for a Board position, shall not be candidates.

(e) Voting Allocation. One vote shall be allocated to each Unit that has been or may be constructed. Only Units for which a certificate of occupancy has been issued shall be allocated votes.

(f) Voting Rights. Voting rights will be suspended when a member is over 30 days past due on dues/assessments.



5.3 **Notice of Meetings.** The Townhome Association shall provide to all Owners written or electronic notice of any and all meetings of the Owners (whether annual or special meetings) in accordance with the Bylaws. In addition, if the Townhome Association maintains a website (**“Townhome Association Website”**) such notice shall be posted on the Townhome Association Website. All notices sent via e-mail must be sent within 24 hours prior to the meeting for which the notice is being provided.

5.4 **Participation In Meetings.** Every Owner or such Owners representative designated in writing, shall have the right, but not the obligation to attend any meeting of the Townhome Association or of the Board of Directors, except that the Board of Directors may designate certain discussions or information to be confidential and may exclude Owners therefrom if and to the extent permitted by the Act. All Owners shall have the right, but not the obligation to speak, at all Owners meetings. At Board of Directors meetings, Owners may speak during the Board’s periods of discussion and deliberation only if authorized by a majority vote of a quorum of the Board. However, all Owners have the right to address the Board without authorization at any Board meeting prior to the Board taking action on any particular item. Notwithstanding the foregoing, the Board may place reasonable restrictions on the number of speakers and the time allotted to speakers on any particular issue if the Board deems it would be appropriate for the effective functioning of the meeting.

5.5 **Fractional Voting.** Each Membership shall be entitled to the number of votes allocated to it in accordance with Section 5.2(e) above, regardless of the number of Owners of the Unit to which the Membership is appurtenant. Fractional Voting shall not be allowed. If the Owners of a Unit cannot agree among themselves as to how to cast their votes on a particular matter, then that Unit’s vote shall not be counted for purposes of that matter. If any Owner casts a vote representing a Membership appurtenant to a particular Unit, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners with whom such owner shares the Membership, unless objection thereto is made by an Owner of that Unit to the Person presiding over the meeting at the time the vote is cast. If more than the number of allocated votes is cast for any particular Membership, none of such votes shall be counted, and all of such votes shall be deemed null and void.

5.6 **Proxies.** Written proxies conducted in accordance with the Bylaws may be used in any matter on which a vote is taken.

5.7 **Rejection of Votes.** The Townhome Association has the right to reject a vote or proxy, consent, written ballot, waiver, appointment or proxy appointment revocation if the Townhome Association has a good faith basis to doubt the validity of a signature or the signatory’s authority to sign for the Owner. For purposes of this Section 5.7, **“good faith”** means done with honesty, fairness and without malice, intent to defraud or to take unfair advantage.

5.8 **Compliance With The Act.** Notwithstanding any provision in this Townhome Declaration or in the Bylaws of the Townhome Association, no term pertaining to voting requirements in this Townhome Declaration or in the Bylaws shall be construed so as to violate the Act.



5.9 **No Voting Rights For Townhome Association.** The Townhome Association shall have no voting rights for any Membership appurtenant to any Unit owned by the Townhome Association.

ARTICLE VI

BOARD OF DIRECTORS

6.1 **Number, Qualifications and Elections of Directors.**

Number of Directors. The Board of Directors shall consist of three (3) Directors, who shall be elected by the Members in accordance with the allocation of votes as set forth in Section 5.2(e).

(a) **Qualifications.** Each person elected to be a Director must be an Owner of a Unit.

(b) **Election of Directors.** In any election of Directors to the Board of Directors, each Membership, in accordance with the Allocated Interests, shall be entitled to one vote for each position on the Board of Directors to be elected.

(c) **No Cumulative Voting.** Cumulative voting shall not be allowed in the election of Directors, or for any other purpose.

6.2 **Powers of the Board of Directors.** Except as provided in this Townhome Declaration, the Articles and the Bylaws, the Board may act on behalf of the Townhome Association in all instances.

6.3 **Consideration by Entire Board.**

(a) **Limitations of Board.** The Board may not act on behalf of the Townhome Association to: (i) amend this Townhome Declaration; (ii) terminate the Townhome created pursuant to this Townhome Declaration; (iii) elect Directors of the Board, other than to fill a vacancy for the unexpired portion of a Director's term; or (iv) determine the qualifications, powers and duties, or terms of office, of Directors.

(b) **Delegation of Powers.** By resolution, the Board may delegate portions of its authority to an executive committee or other committees, or to officers, agents, employees or managers of the Townhome Association. No such delegation shall relieve the Board of ultimate responsibility for management of the Townhome Association's affairs. All managers, officers, agents and independent contractors shall be subject to the terms of the Act and this Townhome Declaration and the Townhome Association Documents that are applicable to them. The Townhome Association shall have the power to terminate any management agreement without penalty whatsoever, upon written notice of termination to the manager, which notice need not be more than 90 days in advance of the effective date of termination; whether or not such management agreement was entered into before expiration of the Declarant Control Period.



(c) Policies and Procedures. The Board shall adopt all policies specifically required to be adopted by the Act. The Board may, from time to time, modify, amend or revoke any such policies to the extent such action is not expressly prohibited by the Act.

(d) Disclosure of Policies. All policies and procedures adopted by the Board from time to time (collectively, **"Policies"**) shall be Disclosed to all Unit Owners.

6.4 **Declarant Control Period.**

(a) Appointment of Directors. Subject to the terms and conditions of **Sections 6.4(b) and (c)** below, but notwithstanding anything else to the contrary contained in this Townhome Declaration or in any other Townhome Association Document. Declarant shall have the exclusive right to appoint and remove all Directors and Officers during the Declarant Control Period. Persons appointed by Declarant to be Directors and Officers need not be Owners of Units or employees of Declarant. The term **("Declarant Control Period")** means the following period or such longer period as hereafter may be allowed by the Act: the period commencing on the date on which Declarant forms the Townhome Association and ending on the earliest to occur of:

(i) the date that is 60 days after conveyance to Purchasers of 75% of the maximum number of Units that may be created by Declarant under this Townhome Declaration;

(ii) the date that is two years after the last conveyance of a Unit by Declarant or a Successor Declarant in the ordinary course of business ; or

(iii) the date that is two years after any right to add new Units was last exercised.

(b) Surrender of Appointment Rights. Declarant may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Townhome Association or the Board of Directors, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

(c) Removal of Appointed Directors. Notwithstanding anything to the contrary contained in Section 6.4(a) above, not later than 60 days after the conveyance of 25% of the Units that may be created under this Townhome Declaration of Purchasers, or such longer period as hereafter may be allowed by the Act, at least 25% of the Board of Directors must be elected by Owners other than Declarant, and not later than 60 days after the conveyance of 50% of the Units that may be created under this Townhome Declaration to Purchasers, or such longer period as hereafter may be allowed by the Act, at least 33 1/3% of the Board of Directors must be elected by Owners other than Declarant. Declarant shall remove Directors appointed by Declarant as may be necessary to comply with the provisions of this Section 6.4(c).



(d) Election by Owners. Upon termination of the Declarant Control Period, the Owners shall elect a Board of Directors, at least a Majority of who must be Owners other than Declarant or designated representatives of Owners other than Declarant. Such Directors shall take office upon election. Each Director shall hold office for a term of one year.

6.5 Removal of Directors. Notwithstanding any provision of this Townhome Declaration or any other Townhome Association Document to the contrary, the Owners of Units, by a 67% vote of all Memberships appurtenant to Units represented and entitled to vote at any meeting at which a quorum of Owners of Units is present, may remove any Residential Director, with or without cause, other than a Residential Director appointed by Declarant during the Declarant Control Period. Only Declarant may remove a Director appointed by Declarant during the Declarant Control Period, or fill a vacancy created by the removal of a Director appointed by Declarant during the Declarant Control Period.

6.6 Attorney-Client Privilege. The Board may keep confidential any information expressed to or received from or the opinion of legal counsel for the purpose of keeping and maintaining the attorney-client privilege.

ARTICLE VII

ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

7.1 Obligations for Assessments.

(a) Agreement to Pay. Declarant, for each Unit it owns, hereby covenants and agrees, and each Owner, by accepting a deed to a Unit (regardless of whether stated in such deed) or entering into a contract of sale for any Unit, shall be deemed to have covenanted and agreed, to pay to the Townhome Association all: (i) General Assessments; (ii) Service Area Assessments; (iii) Special Assessments; (iv) Specific Assessment; and (v) other fines and charges that the Townhome Association is required or permitted to levy or impose on such Owner or such Owner's Unit pursuant to this Townhome Declaration or any other Townhome Association Document.

(b) Obligation to Pay. Notwithstanding the definition of the term "Owner."

(i) a Person who acquires a Unit in a foreclosure sale shall be personally liable for all Assessments and other charges that the Townhome Association is required or permitted to levy or impose on that Unit or on the Owner of that Unit commencing on the date of the foreclosure sale; and

(ii) A Person who acquires a Unit by deed-in-lieu of foreclosure shall be personally liable for all Assessments and other charges that the Townhome Association is required or permitted to levy or impose on that Unit or on the Owner of that Unit commencing on the date on which the Owner of the Unit executes the deed-in-lieu of foreclosure.



(iii) Notwithstanding the foregoing, no First Mortgagee who acquires a Unit by foreclosure or deed-in-lieu of foreclosure shall be liable for delinquent Assessments that accrued more than six (6) months prior to the date that such First Mortgagee acquired the Unit.

(c) Personal Nature of Obligation. In addition to the Assessment Lien against an Owner's Unit, each Assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the Assessment arose. No Owner shall be exempt from liability for any such Assessment or other charges by waiving the use or enjoyment of any Common Element or by abandoning a Unit against which such Assessments or other charges are made. No abatement of any Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to any Common Elements, from any action taken to comply with any law or any determination of the Board of Directors, or for any other reason. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reductions thereof shall be permitted for any reason, including without limitation, any claim that the Townhome Association or the Board of Directors is not properly exercising its duties and powers under this Townhome Declaration or any other Governing Document. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner.

(d) Joint and Several Obligations. Except as provided in this Section 7.1(d) and Section 7.10(a) below, the obligation to pay to the Townhome Association any Assessment or other charges levied against any Unit shall be a joint and several obligation of the Owner of such Unit and such Owner's successor, assigns, heirs, devisees and personal representatives. A Person acquiring fee simple title to a Unit shall be joint and severally liable with the former Owner of the Unit for all Assessments and other charges that had accrued and were payable when such Person acquired fee simple title to the Unit, for so long as such Person holds fee simple title to the Unit. If there is more than one Owner of a Unit, each Owner shall be jointly and severally liable with the other Owners of the Unit for all Assessments and other charges levied on the Unit or any Owner of the Unit.

(e) Enforcement. Each Assessment or other fine or charge, together with interest and penalties thereon and all costs and expenses incurred by the Townhome Association to collect such Assessment or other charge, including all fees and disbursements of attorneys, accountants, appraisers, receivers and other professionals engaged by the Townhome Association in connection therewith, may be recovered by a suit for a money judgment by the Townhome Association without foreclosing or waiving any Assessment Lien securing the same, or any other right or remedy of the Townhome Association.

(f) "In-Kind" Contributions. The Townhome Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials or a combination of services and materials with Declarant or other entities for payment of Common Expenses.

(g) Subsidies. During the Sales Period, Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a the subsidy (in addition to any Assessments paid by Declarant). Any such subsidy may be in cash and/or "in-kind" contribution of services, materials, or a combination thereof. Any such subsidy may be treated as



either a contribution, an advance against future Assessments due from Declarant, or a loan, in Declarant's discretion. Any such anticipated subsidy by Declarant and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the Townhome Association's budget. Payment of such subsidy by Declarant in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years unless otherwise provided in a written agreement signed by the Townhome Association and Declarant.

7.2 **Shares of Common Expenses.**

(a) **Determined by the Board of Directors.** Except as otherwise set forth in this Townhome Declaration, the Townhome Association's Common Expenses shall be determined by the Board of Directors and the Board of Directors shall determine the percentage of Common Expenses relating specifically to General Common Elements, the percentage of Common Expenses relating to Limited Common Elements.

(b) **Allocation to Units.** The Share of Common Expenses allocated to a Unit shall be an amount equal to (i) the percentage interest of the Unit in the General Common Elements multiplied by the total amount of Common Expenses allocated by the Board of Directors to the General Common Elements plus (ii) the percentage interest of the Unit in the Limited Common Elements, multiplied by the total amount of Common Expenses allocated by the Board of Directors to the Limited Common Elements.

(c) **Additional Allocations.** Any Common Expenses that are attributable solely to a Service Area shall be allocated to the Units within the Service Area.

(d) **Initial Allocations.** The Share of Common Expenses attributable to the (16) Units are set forth on **Exhibit D** attached hereto and made a part hereof.

(e) **Maintenance Expenses Included.** The expenses for General Common Elements shall include, but not be limited to, expenses incurred as follows:

(i) Maintenance of the common areas between each building within the Townhome and outside of each building within the Townhome from the external boundary of such building to edge of the curb of the street on which the building is located;

(ii) Maintenance and repair of the walkways, including any lighting serving such walkways between each building within the Townhome and outside of each building within the Townhome from the external boundary of such building to edge of the curb of the street on which the building is located;

(iii) Maintenance of the landscaping of the common areas and walkways between each building within the Townhome and outside of each Building from the external boundary of such building to edge of the curb of the street on which the building is located.

(iv) Maintenance and repair of the building exteriors shall include roofing, exterior finishes, fascia and soffit, and windows.



(f) Reallocation upon Additional or Withdrawal of Units. If any Units are added to or withdrawn from the Townhome, or the Ares of one or more Units is increased or decreased, the Share of Common Expenses for all Units within the Townhome after such addition, withdrawal, increase or decrease shall be recalculated in accordance with the formula set forth in Section 3.2(a) above.

(g) Declarant's Obligations. Until the Townhome Association levies an Assessment, Declarant shall pay all Common Expenses. With respect to those Assessments that Declarant is obligated to pay after the commencement date for Assessments, Declarant's obligations may be satisfied in the form of cash or by "in kind" contributions of services or material, or by a combination of these. Such "in kind" contributions shall abate or reduce Declarant's assessment obligation by the commercially reasonable value of such contributions, as determined in the Board of Director's reasonable discretion.

(h) Right to Reimbursement. The characterization of a particular expense as a Common Expense shall not preclude the Townhome Association from seeking reimbursement for, or a contribution toward, such expense from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Townhome Declaration, any Supplemental Declaration, any other recorded or unrecorded covenants or agreements, or any applicable laws, whether statutory or common law.

7.3 Budgets.

(a) Adoption. Prior to the first levy of a General Assessment for Common Expenses, and , thereafter, at least 60 days before the beginning of each fiscal year, the Board of Directors shall cause a proposed budget for the Townhome Association to be prepared and adopted annually. Within 90 days after the Board adopts any proposed budget for the Townhome Association, the Board will mail, by ordinary first-class mail, or otherwise deliver, a summary of the proposed budget to all Owners and will set a date for a meeting of the Owners for consideration of the proposed budget. Such meeting will occur within a reasonable time after mailing or other delivery of the summary. The Board will give notice to the Owners of such meeting as provided for in the Bylaws. The budget proposed by the Board does not require actual approval of the Owners and will be deemed approved by the Owners in the absence of a veto at such noticed meeting, which must be by Owners representing at least 80% of the votes allocated to all the Units, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed will continue in effect until such time as a subsequent budget proposed by the Board is not vetoed. For the first fiscal year of the Townhome Association, the Board may adopt Declarant's estimated budget for the Townhome Association and assess General Assessments based on it if the Board submits such budget to the Owners for consideration in accordance with this Section 7.3 within 60 days after adopting it.

(b) Books and Records. The books and records of the Townhome Association shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified person selected by the Board of Directors. Such person need not be a certified public accountant except in the case of an audit. A person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high



school level, or bona fide home study. The audit or review report shall cover the Townhome Association's financial statements which shall be prepared using generally accepted accounting principles, or the cash basis of accounting. Copies of the audit or review shall be made available to any Owner upon request not later than 30 days after its completion; provided that the Townhome Association may charge a reasonable fee to cover the cost of copies. An audit under this subsection shall be required only if both of the following conditions are satisfied:

(i) The Townhome Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000); and

(ii) An audit is requested by the Owners of at least one-third of the Units represented by the Townhome Association.

(iii) If required by an Agency, notwithstanding the foregoing, the Townhome Association shall have prepared an audited financial statement for the preceding fiscal year, which audited financial statement shall be made available to all Unit Owners and First Mortgagees upon written request therefore, within 120 days after the end of the Townhome Association's fiscal year.

(iv) A review shall be required only when requested by the Owners of at least one-third of the Units.

(c) Amendment. If the Board of Directors deems it necessary or advisable to amend an annual budget that has been adopted by the Owners under Section 7.3(a) above, the Board of Directors may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than 15 days, nor more than 50 days, after the delivery of the summary of the proposed amendment. The proposed amendment shall become effective (and shall be deemed ratified by the Owners) unless at that meeting Owners representing no less than 67% of the votes allocated to all Memberships and, during the Sales Period, Declarant, rejects the proposed amendment. A quorum is not required for such meeting.

(d) Service Area Assessment. At least 60 days before the beginning of each fiscal year, the Board of Directors shall adopt a proposed annual budget for each Service Area that reflects the estimated Service area Expenses that the Townhome Association expects to incur for the benefit of such Service Area in the following fiscal year. Such budget shall include a contribution to a reserve fund for repairs and replacements of capital items maintained as a Service Area Expense. Service Area Expense shall be allocated and levied as an assessment (a "**Service Area Assessment**") equally among all Units within the Service Areas benefited thereby; provided however, if so specified in the Supplemental Declaration applicable to the Service Area or a resolution of the Board of Directors or if so directed by petition signed by a majority of the Owners within such Service Area, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion to the benefit received. Within 30 days after adopting a proposed budget for a Service Area, the Board of Directors shall deliver a summary of the proposed budget and notice of the Service Area Assessment reflected in such



budget to all Owners of Units within such Service Area and set a date for a meeting of such Owners to consider ratification of the proposed budget. The date of such meeting shall not be less than 10 days, nor more than 50 days, after the delivery of the summary of the proposed budget to such Owners. Such budget and the Service Area Assessment reflected in such budget shall automatically become effective (and shall be deemed ratified by the Owners whose Units are within such Service Area) unless at the meeting referred to above Owners of at least 67% of the Units within such Service Area and, during the Declarant Control Period, Declarant, rejects the proposed budget and Service Area Assessment. A quorum is not required for such meeting. If the Owners within any Service Area disapprove a proposed Service Area budget, the Townhome Association shall not be obligated to provide the services anticipated to be funded by such budget. If the Board of Directors fails for any reason to determine a Service Area budget for any year, then until such time as a budget is determined for such Service Area, the budget for such Service Area in effect for the immediately preceding year shall continue for the current year.

7.4 **General Assessments.**

(a) **Levy of Assessments.** After the Owners ratify (or are deemed to have ratified) an annual budget under Section 7.3(a) above, the Townhome Association shall levy an assessment for Common Expenses (a **“General Assessment”**) on each Unit. The amount of the General Assessment payable with respect to each Unit shall equal the product obtained by multiplying (A) the amount set forth in the annual budget ratified by the Owners as the amount of Common Expenses to be raised by General Assessments, by (B) that Unit's Share of Common Expenses determined pursuant to Section 7.2(a) above. General Assessments and Service Area Assessments shall be paid in such manner and on such dates as the Board of Directors may establish, which may include discounts for early payment or similar time/price differentials. The Board of Directors may require advance payment of Assessments at closing of the transfer of title to a Unit and may impose special requirements for Owners with a history of delinquent payment. If the Board of Directors so elects, General Assessments and Service Area Assessments may be paid in two or more installments. Unless the Board of Directors otherwise provides, General Assessments and Service Area Assessments shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or charges levied against his Unit, the Board of Directors may require any unpaid installments of all outstanding Assessments to be paid in full immediately. Any Assessment or installment thereof shall be considered delinquent on the 15th day following the due date unless otherwise specified by resolution of the Board of Directors.

(b) **Ratification.** If the Owners ratify (or are deemed to have ratified) an amendment to the General Assessment portion of an annual budget pursuant to Section 7.3(a) above, the amount of the General Assessment levied against each Unit shall be adjusted accordingly, as shall the amount of each Owner's periodic installments, if any. Without limiting the generality of the foregoing, if an amendment increases the amount of General Assessments payable, then, unless otherwise specified by the Board of Directors, the amount of each installment due after such amendment shall equal the quotient obtained by dividing; (i) the difference obtained by subtracting the amount of General Assessments already paid as to a Unit for the applicable fiscal year from the amended amount of General Assessments payable for the applicable fiscal year, by (ii) the number of installment payments to be made over the remainder of that fiscal year.



(c) Rejection of Budget. If the Owners reject an annual budget for any fiscal year pursuant to Section 7.3(a), prior to the beginning of that fiscal year, the Owners shall continue to pay the General Assessment (in periodic installments if periodic installments had been approved by the Board of Directors for the prior fiscal year) to the Townhome Association at the rate payable during the prior fiscal year until such time as the Owners ratify a new annual budget for the then current fiscal year. Once the Owners ratify a new annual budget, the Townhome Association shall levy on each Unit the General Assessment for the then current fiscal year and each Owner's periodic installments shall be adjusted as necessary to pay the new General Assessment in equal periodic installments over the remainder of such fiscal year, giving the Owners credit for any installments that the Owners have previously paid to the Townhome Association during such fiscal year.

(d) No Waiver. The failure of the Townhome Association to levy a General Assessment for any fiscal year shall not be deemed a waiver, modification or release of the Owners' liability for the Share of Common Expenses allocated to such Owner's Unit.

(e) Special Allocations. Notwithstanding anything to the contrary contained in this Section 7.4, if any Common Expense benefits fewer than all of the Units, the Townhome Association may levy a General Assessment for such Common Expenses exclusively against the Units benefited thereby, equally or in any other equitable proportions as the Board of Directors deems appropriate. Such General Assessment may be levied where or not a Service Area has been created with respect to such Units. Without limiting the generality of the foregoing, any Common Expenses attributable to a Limited Common Element shall be shared on a pro rata basis among the Units to which such Limited Common Element is appurtenant (meaning those Limited Common Elements that an Owner is entitled to use and enjoy by virtue of such Owner's ownership of a particular Unit designated as one of the Units benefited by an entitled to use such Limited Common Elements).

7.5 Special Assessments.

(a) General. The Assessments that the Townhome Association may levy pursuant to this Section 7.5 are referred to in this Townhome Declaration as "Special Assessments."

(b) Limited Common Elements. Notwithstanding anything to the contrary contained in Section 7.4 above, if any Common Expense is attributable to the operation, maintenance, repair, replacement, alteration or improvement of a Limited Common Element, the Townhome Association may levy an Assessment for such Common Expense against the Units to which that Limited Common Element is assigned, equally, in proportion to the Shares of Common Expenses attributable to those Units or in any other equitable proportion as the Townhome Association reasonably deems appropriate.

(c) Inclusion in Budget Required. Each Special Assessment levied against any Unit shall be shown on an annual budget, or an amendment to an annual budget, ratified by the Owners pursuant to Section 7.3 above and shall be paid as and when required by the Townhome Association.



7.6 **Specific Assessments.** The Assessments that the Townhome Association may levy pursuant to this Section 7.6 are referred to in this Master Declaration as “**Specific Assessments.**” The Townhome Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

(a) **Costs of Services.** To cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Units or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board of Directors may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, janitorial service, and pest control), which Specific Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner.

(b) **Costs of Compliance.** To cover costs incurred in bringing any Units into compliance with the terms of the Townhome Association Documents, or costs incurred as a consequence of the conduct (whether action or omission) of the Owner or occupants of the Units, their agents, contractors, employees, licensees, invitees, or guests or incurred as a consequence of any violation of any covenant or condition of any Townhome Association Document by the Owner or occupant of the Unit(s), their agents, contractors, employees, licensees, invitees, or guests.

(c) **Fines, Fees.** As a fine, penalty, fee or other charge, imposed upon an Owner for the violation of any covenant or condition of any Townhome Association Document by the Owner or occupants of the Owner’s Unit, their agents, contractors, employees, licensees, invitees, or guests.

(d) **Enforcement Costs.** To cover all enforcement costs, collection costs, attorneys’ fees and other costs and expenses incurred by the Townhome Association as a result of or in connection with any of the foregoing described above in this Section 7.6.

(e) **Inclusion in Budget Not Required.** Specific Assessments need not be shown on an annual budget, or on an amendment to an annual budget, ratified by the Owners in accordance with Section 7.3 above.

(f) **Notice and Opportunity to be Heard.** With respect to any Specific Assessment, or portion thereof, levied pursuant to Section 7.6(c) or 7.6(d) above, other than as a late charge, interest, fee, collection cost, enforcement cost, including, without limitation, reasonable attorney’s fees and costs, the Owner of the Unit against which the Townhome Association seeks to levy the Specific Assessment shall be provided Notice and Opportunity to be Heard. Owners of Units against which Specific Assessments have been levied shall pay such Specific Assessments within 30 days of receipt of demand therefor from the Townhome Association, unless such demand states a different time period for payment.

7.7 **Intentionally Omitted**

7.8 **Assignment of Assessments.** The Townhome Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Townhome Association or otherwise.



7.9 **Effect of Non-Payment of Assessments.** Any Assessment, charge or fee provided for in this Townhome Declaration, or any monthly or other installment thereof, that is not fully paid within 10 days after the due date thereof, as established by the Board, shall bear interest at the rate of interest as may be determined, from time to time, by the Board, not to exceed 21% per annum, and the Townhome Association may assess a reasonable late charge thereon as determined by the Board. Further, the Townhome Association may bring an action at law or in equity, or both, against the Persons personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien. An action at law or in equity by the Townhome Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Townhome Association without foreclosing, or in any way waiving, the Townhome Association's lien therefor. Foreclosure or attempted foreclosure by the Townhome Association of its lien shall not be deemed to estop or otherwise preclude the Townhome Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, that are not fully paid when due. The Townhome Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Townhome Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. Furthermore, the Townhome Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials or a combination of services and materials with Declarant or other entities for payment of Common Expenses.

7.10 **Assessment Lien.**

(a) **General.** The Townhome Association shall have a lien on each Unit for any Assessment levied against that Unit and for any fines, late charges, penalties, interest and attorneys' fees, disbursements and costs of collection imposed against the Owner of such Unit under any Townhome Association Document (the "**Assessment Lien**"). The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien shall secure each installment from the time it becomes due, including the due date set by any valid Townhome Association acceleration of installment obligations.

(b) **Priority.** An Assessment Lien is prior to all other liens and encumbrances on a Unit, except:

(i) liens and encumbrances Recorded prior to the Recordation of this Townhome Declaration;

(ii) liens for real estate taxes and other governmental assessments or charges against the Unit;

(iii) a First Mortgage which was Recorded before the date on which the Assessment sought to be enforced became delinquent;



(iv) a First Mortgage Recorded after the date on which the Assessment sought to be enforced became delinquent, provided that such priority shall only exist with respect to an amount equal to six (6) months of General Assessments; and

(v) such other liens or encumbrances to which the Act requires an Assessment Lien are subordinate.

(c) Notice and Perfecting. The Recording of this Townhome Declaration constitutes record notice and perfection of an Assessment Lien on each Unit. No further Recordation of any claim of any Assessment Lien is required.

(d) Extinguishment of Lien. An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within six years after the full amount of the Assessment secured thereby becomes due.

(e) No Waiver. This Section 7.10 does not prohibit actions or suits to recover sums secured by an Assessment Lien or the Townhome Association from taking a deed-in-lieu of foreclosure.

(f) Receiver. In any action by the Townhome Association to collect Assessments or to foreclosure an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be owed by the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Townhome Association during the pendency of the action to the extent of the Townhome Association's Assessments.

(g) Foreclosure. An Assessment Lien may be foreclosed in like manner as a mortgage on real estate. Periodic Assessments shall be payable during the period of foreclosure of an Assessment Lien.

(h) Rights of Board at Foreclosure Sale. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage, and encumber or convey the same. A judgment or decree in any action brought under this Section shall entitle the Townhome Association to costs and reasonable attorneys' fees, which shall be an additional Assessment, and is enforceable by execution. Any payments received by the Townhome Association in the discharge of an Owner's obligation may be applied to attorneys' fees and costs first, then late fees, penalties and interest, and then the oldest balance due. In any action by the Townhome Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from that Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver first to the costs of the receivership, including receiver's fees, and then to the Townhome Association during the pendency of the action to the extent of the Townhome Association's Assessments. If a holder of a first or second lien in a Unit forecloses that lien, the purchaser at the foreclosure sale is not liable for any unpaid Assessments against that Unit which became due before the sale, other than the Assessments which are prior to that lien as provided in the Act. Any unpaid Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Owners, including the purchaser. Sale or transfer of any Unit



shall not affect the lien for said assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture, shall only extinguish the lien of assessment charges as provided by applicable Colorado law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture, shall relieve any Unit from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

7.11 **Waiver of Homestead Exemptions.** By acceptance of the deed or other instrument of conveyance of a Unit, and Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended, as the same may apply to the Assessment Lien.

7.12 **Estoppel Certificates: Notice to Mortgagees.**

(a) **Statement of Assessments.** The Townhome Association shall furnish to an Owner or such Owner's designee or to a Mortgagee or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Townhome Association's registered agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within 14 calendar days after receipt of the request and is binding on the Townhome Association, the Board of Directors and every Owner. If no statement is furnished to the Owner, the Mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Townhome Association shall have no right to assert the priority of its Assessment Lien upon the Unit for unpaid Assessments which were due as of the date of the request.

(b) **Mortgagee Cure Rights.** If a First Mortgagee delivers to the Townhome Association a written request for notice of unpaid Assessments levied against a Unit subject to a First Mortgage held by that First Mortgagee, the Townhome Association shall report to the First Mortgagee any unpaid Assessments levied against such Unit that remain unpaid for more than 60 days after the same shall have become due. The First Mortgagee may pay any such unpaid Assessment, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such First Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as a lien of the First Mortgage held by such First Mortgagee.

7.13 **Working Capital.**

(a) **Initial Payment.** The Townhome Association shall obtain initial working capital funds for Common Expenses as follows. At the closing of the sale of a Unit by Declarant to a Purchaser, the Purchaser shall pay to the Townhome Association an amount determined by the Townhome Association up to an amount equal to the Townhome Association's estimate of not less than two months of Common Expenses (based on the then- current budget) applicable to the Unit for the fiscal year in which the sale of the Unit occurs. The Townhome Association may use the working capital funds to cover initial start-up expenses, operating expenses and other expenses it incurs pursuant to this Townhome Declaration and the Bylaws. If the Townhome Association



elects not to collect working capital funds as provided above, then working capital funds may be paid by Declarant.

(b) No Credit Against Other Assessments. Payments by Purchasers to the Townhome Association at closings under Section 7.13(a) above shall not be credited against, or relieve Purchasers from, their obligation to pay other Assessments levied against Units by the Townhome Association.

(c) Return of Working Capital. Upon the sale of a Unit from one Owner to another, the Townhome Association shall not be obligated to return to the transferor any working capital funds that the Townhome Association received from the transferor or from any of the transferor's predecessors in interest.

ARTICLE VIII

UTILITY AND OTHER SERVICES

8.1 Water and Sewer Services.

(a) Obligation of Townhome Association. The Townhome Association shall be responsible for obtaining water and sewer services for all portions of the Townhome. Water service to each building will be measured by a common meter. The Board shall allocate, as Special Assessments against each Unit, the Common Expenses for water service provided to each building based on the consumption of water used by the townhome and the Limited Common Elements appurtenant thereto, based on a common meter to measure such consumption. The meter may be owned by the entity providing such water service or by the Townhome Association as required by the Board. Each Owner of a Unit shall pay a prorated portion of all charges for consumption of water by the townhome and the Limited Common Elements appurtenant thereto directly to the entity providing such water service or to the Townhome Association, as required by the Board.

(b) Common Expenses. The Common Expenses for sewer service to the Townhome shall be allocated as follows. Each Unit shall be allocated, as a Special Assessment, a portion of the total Common Expenses for sewer service in the same proportion that the Common Expenses allocated to such Unit for water service for the same period bears to the total Common Expenses for water service for the Townhome for that period.

(c) Water for irrigation is a Common Expense.

8.2 Natural Gas.

(a) Obligation of Townhome Association. The Townhome Association shall be responsible for obtaining natural gas services for all portions of the Townhome. Natural gas service to all Units shall be separately metered.



(b) Common Expenses. To the extent natural gas cannot be separately metered, Common Expenses for natural gas services shall be allocated among the Units and charged to the Owners.

8.3 Electric. The Townhome Association shall be responsible for obtaining electric services for the General Common Elements. Electric service to each Unit shall be separately metered and charged to the Owner of the Unit and each Owner shall pay all charges for consumption of electricity in such Owner's Unit directly to the utility or service company providing the same. If, at any time, it is no longer possible to have electric service to each Unit separately metered and charged, the Townhome Association shall be responsible for obtaining electric service to all Units. In that event, the Board shall allocate all Common Expenses for electric services among all Units and charge the Owners in accordance with their Shares of Common Expenses as part of the General Assessments.

8.4 Cable Television.

(a) If available, cable television can be provided to each unit upon request. Any and all expenses related to access cable television service or satellite services will be the responsibility of each Unit Owner.

8.5 Telephone and Data Transmission.

(a) Obligation of Owners. Each Owner shall be responsible for obtaining telephone services for its Unit and the Limited Common Elements designed to serve only its Unit and shall pay all costs, expenses, fees, rates and other charges incurred in connection therewith, including, without limitation, any connection fees, directly to the telephone company providing the same.

(b) Data Transmission Services. The Board may (but without any obligation to do so), at any time, determine that the Townhome Association should be responsible for obtaining data transmission services serving all Units. In that event, the Townhome Association shall obtain such services and shall allocate all Common Expenses for such services among all Units and charge the Owners in accordance with their Shares of Common Expenses as part of the General Assessments. If the Board does not determine that the Townhome Association should be responsible for obtaining data transmission services serving all Units, the Board shall have the authority to select and approve one or more providers of data transmission services to the Townhome and Owners and Guests shall obtain data transmission services, if desired, only from a data transmission service provider approved by the Board. As a condition of approval, the Board may require that a data transmission service provider enter into an agreement with the Townhome Association, upon terms and conditions satisfactory to the Board. Each Owner shall pay all charges for data transmission services provided to such Unit directly to the data transmission service provider or to the Townhome Association, as required by the Board.

(c) Data Transmission for General Common Elements. If, at any time, the Board determines that data transmission service is necessary for the General Common Elements, the Board shall determine what, if any, data transmission services are necessary and shall be responsible for obtaining those services. In that event, the Board shall allocate all Common

Expenses for such data transmission services among all Units and charge the Owners in accordance with their Shares of Common Expenses as part of the General Assessments.

8.6 **Trash Removal.**

(a) **Responsibility of Townhome Association.** The Townhome Association shall not be responsible for obtaining trash removal services for all portions of the Townhome.

(b) **Common Expenses.** If the Townhome Association becomes responsible for obtaining trash removal services, Common Expenses incurred by the Townhome Association for trash removal services shall be allocated as follows:

(i) All Common Expenses incurred by the Townhome Association for trash removal services for the Units and Limited Common Elements shall be allocated among the Units equally, as Special Assessments, without regard to usage, and shall be charged to the Owners of the Units.

(ii) All Common Expenses incurred by the Townhome Association for trash removal services for the General Common Elements (to the extent that the Townhome Association can distinguish those Common Expenses from the Common Expenses described in clauses 8.6(b)(i) and (ii) above) shall be allocated among all Units and charged to the Owners in accordance with the Shares of Common Expenses appurtenant to the Units as a portion of the General Assessments.

8.7 **Snow Removal.**

(a) **Responsibility of Townhome Association.** The Townhome Association is responsible for snow removal. It will be the Association's responsibility to remove snow from the common areas and individual units where and when necessary. This will be handled using snow blowing equipment, shovels, etc. as deemed appropriate by the maintenance company hired by the Association.

8.8 **Other Utilities.** If the Townhome Association incurs Common Expenses for any utility service not described above, or if the manner of providing or metering any utility service described above changes from the manner in which such service is provided or metered as of the date of this Townhome Declaration, the Board may allocate the Common Expenses incurred for such new utility service or changed utility service in any reasonable and equitable manner, unless at a meeting of Members, whether or not a quorum is present, by an affirmative vote of at least 67% of the votes allocated to all Memberships, the Members reject the proposed allocation.

ARTICLE IX

MAINTENANCE OF COMMON ELEMENTS AND UNITS

9.1 **Maintenance of Common Elements.** Except as otherwise provided in this Townhome Declaration, The Townhome Association, or its duly designated agent, shall maintain

the Common Elements in good order and condition and shall otherwise manage and operate the Common Elements as it deems necessary or appropriate, including establishing and maintaining an adequate reserve fund for replacement of improvements in the Common Elements. In performing its duties set forth in this Section 9.1, the Townhome Association may:

- (a) construct, modify, add to, repair, replace or renovate any improvements that are located on or constitute a part of any Common Element;
- (b) plant and replace trees, shrubs and other vegetation on any Common Element;
- (c) place, maintain and replace signs upon any Common Element;
- (d) adopt and enforce Rules and Regulations regulating the use of Common Elements; and
- (e) take any other actions as the Townhome Association deems necessary or advisable to protect, maintain, operate, manage or regulate the use of the Common Elements.

9.2 Maintenance of Units. Each Owner, at such Owner's sole cost and expense, shall maintain in good order and repair the interior of its Unit, including the fixtures and utilities located in the Unit. All fixtures, equipment and utilities installed and included in a Unit serving only that Unit, commencing at a point where the fixtures, equipment and utilities enter the individual Unit, shall be maintained and kept in repair by the Owner of that Unit. An Owner shall also maintain and keep in repair all windows and other glass items related to such Owner's Unit and any entry door or doors serving such Unit. An Owner shall not allow any action or work that may impair the structural soundness of the improvements, or may impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of the building. Each Owner, at such Owner's sole cost and expense, shall maintain in good order and repair the Limited Common Elements assigned solely to its Unit, other than those Limited Common Elements that the Townhome Association chooses to maintain for reasons of uniformity or structural considerations. Without limiting the generality of the preceding sentence, the Townhome Association may maintain all exterior patios, roofs, decks, skylights and other such exterior portions of the Townhome, even if such portions are Limited Common Elements appurtenant to a single Unit, and all costs incurred by the Townhome Association in that regard shall be charged to Owners as Specific Assessments in accordance with Section 7.6 above. The Townhome Association shall not be responsible for snow removal from any patios or decks designated as Limited Common Elements. Each Owner shall ensure that its Unit is sufficiently heated to prevent the freezing of water and sewer lines serving the Townhome.

9.3 Owner's Failure to Maintain or Repair. In the event that portions of a Unit or other improvements are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained improvement lies with the Owner of the Unit, or in the event that such improvements 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 Townhome Association, after written notice to the Owner and the expiration



of a 30-day cure period, and with the approval of the Board of Directors, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and other improvements to a condition of good order and repair; provided, however, if such repair and reconstruction due to an event of casualty cannot be reasonably performed within such 30-day cure period, the Owner shall have such time as reasonably required to perform such repair and reconstruction so long as the work has been commenced within such cure period and is diligently pursued to completion. All costs incurred by the Townhome Association in connection with the restoration shall be reimbursed to the Townhome Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid assessment levied in accordance with ARTICLE VII of this Townhome Declaration

9.4 **Mechanic's Liens and Indemnification.** No labor performed or materials furnished and incorporated into a Unit with the consent or at the request of an Owner or an agent, contractor or subcontractor of an Owner shall be the basis either for filing a lien against the Unit of any other Owner not expressly requesting or consenting to the same in writing, or against the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and any Mortgagee from and against all liability arising from any claim or lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or supplies incorporated in the Owner's Unit at the Owner's request.

9.5 **Limited Warranties.**

(a) **Common Element Warranty.** Declarant hereby warrants to the Townhome Association that the Common Elements, including any improvements thereon, will be constructed by Declarant in a good and workmanlike manner and will be free from material defects in workmanship and materials for a substantial completion of construction of the Common Elements (the "**Common Element Warranty**"). Declarant's Common Element Warranty with respect to landscaping shall not apply in cases of failure by the Townhome Association to properly irrigate or otherwise maintain such landscaping, but shall be applicable only to defective landscaping materials installed by Declarant. The Common Element Warranty made to the Townhome Association in this Section 9.5 is the only warranty, express, implied, or statutory, made by Declarant to the Townhome Association or to Owners with respect to the Common Elements. **THE EXPRESS COMMON ELEMENT WARRANTY GIVEN IN THIS SUBSECTION 9.5(a) IS IN LIEU OF, AND THE TOWNHOME ASSOCIATION AND EACH OWNER HEREBY WAIVES, ANY OTHER WARRANTIES WITH RESPECT TO THE COMMON ELEMENTS, EXPRESS, IMPLIED OR STATUTORY, WHETHER ARISING UNDER FEDERAL OR STATE LAW, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, SUITABILITY FOR HABITATION, FITNESS, FITNESS FOR A PARTICULAR PURPOSE, CONFORMANCE TO ANY PLANS AND SPECIFICATIONS, COMPLIANCE WITH BUILDING CODES OR OTHER REQUIREMENTS, OR ABSENCE OF MOLD, RADON, RADIATION OR ELECTROMAGNETIC FIELDS, DECLARANT EXPRESSLY DISCLAIMS ALL WARRANTIES CONCERNING THE COMMON ELEMENTS EXCEPT ONLY FOR DECLARANT'S COMMON ELEMENT WARRANTY.** The provisions of this Section 9.5



shall not limit any warranties made by third parties not affiliated with Declarant, such a nurserymen supplying landscaping materials.

(b) TIME TO ASSERT COMMON ELEMENT WARRANTY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS TOWNHOME DECLARATION. EACH OWNER, BY ACCEPTING TITLE TO A UNIT, AND THE TOWNHOME ASSOCIATION, ACKNOWLEDGES AND AGREES THAT DECLARANT'S LIABILITY, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE, WITH RESPECT TO THE COMMON ELEMENTS, IS LIMITED TO THE REMEDY PROVIDED IN DECLARANT'S COMMON ELEMENT WARRANTY ABOVE. UNDER NO CIRCUMSTANCES SHALL DECLARANT BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, ANY DAMAGES BASED ON A CLAIMED DIMINUTION IN THE VALUE OF THE COMMON ELEMENTS OR ANY OWNER'S UNIT, EVEN IF DECLARANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE COMMON ELEMENT WARRANTY ABOVE MAY BE BROUGHT BY THE TOWNHOME ASSOCIATION OR ANY OWNER MORE THAN SIX MONTHS AFTER SUBSTANTIAL COMPLETION OF CONSTRUCTION OF THE COMMON ELEMENTS, REGARDLESS OF WHEN THE CAUSE OF ACTION HAS ACCRUED OR IS DISCOVERED, ANY SUCH CLAIMS BY ANY OWNER MAY ONLY BE BROUGHT AGAINST DECLARANT IN ANY ACTION BY THE TOWNHOME ASSOCIATION AS PROVIDED FOR IN SUBSECTION 9.5(c) BELOW.

(c) ARBITRATION OF CLAIMS RELATED TO COMMON ELEMENT WARRANTY. ALL CONTROVERSIES AND DISPUTES RELATED TO THE DECLARANT'S COMMON ELEMENT WARRANTY ABOVE AND ALL CLAIMS BY ANY OWNER OR THE TOWNHOME ASSOCIATION AGAINST DECLARANT DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATED TO THE COMMON ELEMENT WARRANTY ABOVE SHALL BE SUBMITTED BY THE TOWNHOME ASSOCIATION TO AND SETTLED BY CONCLUSIVE BINDING ARBITRATION UNDER THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. THIS ARBITRATION PROVISION IS IRREVOCABLE AND PROVIDES THE EXCLUSIVE FORUM FOR THE RESOLUTION OF ALL SUCH CONTROVERSIES, DISPUTES AND CLAIMS. THE RESULTS OF THE ARBITRATION SHALL BE FINAL AND BINDING UPON ALL PARTIES TO THE ARBITRATION AND UPON ALL OWNERS AND ALL PERSONS CLAIMING BY, THROUGH OR UNDER THE OWNERS, AND JUDGMENT MAY BE ENTERED UPON SUCH RESULTS IN ACCORDANCE WITH APPLICABLE LAW IN ANY COURT OF COMPETENT JURISDICTION. NO DEMAND FOR ARBITRATION HEREUNDER, REGARDLESS OF THE NATURE OF THE CLAIM FOR RELIEF, MAY BE HAD OR MAINTAINED UNLESS SUCH DEMAND FOR ARBITRATION IS MADE AND PROCESS SERVED WITHIN SIX MONTHS AFTER THE CAUSE OF ACTION RELATING TO THE DISPUTE, CLAIM OR CONTROVERSY HAS ACCRUED OR, IF EARLIER, SIX MONTHS AFTER SUBSTANTIAL COMPLETION OF CONSTRUCTION OF THE COMMON ELEMENTS. ANY ACTION BY DECLARANT TO INSPECT, REPAIR OR REPLACE ANY CLAIMED DEFECT SHALL NOT ACT TO EXTEND THE TIME LIMIT SET FORTH ABOVE IN THIS SUBSECTION 9.5(c). TO THE EXTENT THAT DECLARANT DOES NOT PREVAIL IN THE ARBITRATION,



DECLARANT SHALL PAY ANY AND ALL COSTS AND EXPENSES ASSOCIATED WITH THE ARBITRATION, INCLUDING BUT NOT LIMITED TO THE ARBITRATOR'S EXPENSES AND BOTH THE TOWNHOME ASSOCIATION'S AND DECLARANT'S REASONABLE ATTORNEYS' FEES. TO THE EXTENT THAT THE TOWNHOME ASSOCIATION DOES NOT PREVAIL IN THE ARBITRATION, THE TOWNHOME ASSOCIATION SHALL PAY ANY AND ALL COSTS AND EXPENSES ASSOCIATED WITH THE ARBITRATION, INCLUDING BUT NOT LIMITED TO THE ARBITRATOR'S EXPENSES AND BOTH THE TOWNHOME ASSOCIATION'S AND DECLARANT'S REASONABLE ATTORNEYS' FEES.

(d) No Consolidation of Claims Related to Common Element Warranty. NO ARBITRATION OR LITIGATION ARISING OUT OF OR RELATING TO ANY CLAIM THAT THE TOWNHOME ASSOCIATION MAY ASSERT AGAINST DECLARANT WITH RESPECT TO THE COMMON ELEMENT WARRANTY SHALL INCLUDE, BY CONSOLIDATION OR JOINDER OR CLASS CERTIFICATION OR IN ANY OTHER MANNER (INCLUDING WITHOUT LIMITATION, INCLUSION AS AN ORIGINAL OR ADDITIONAL THIRD PARTY TO ANY ARBITRATION OR LITIGATION), ANY PERSON OR ENTITY OTHER THAN THE TOWNHOME ASSOCIATION ITSELF. DECLARANT HAS THE RIGHT TO SPECIFICALLY ENFORCE THIS SUBSECTION 9.5(d).

ARTICLE X

DESIGN REVIEW

10.1 **Required Approval.** Changes to the exterior of any building (after initial installation or construction by Declarant) on a Unit, including those that meet any of the criteria listed below must first be submitted in writing to and approved in writing by the Association:

- (a) the Improvement increases the gross interior square footage of a building;
- (b) the addition of any exterior decks, balconies or other additions;
- (c) the Improvement effects a substantial change or alteration to the architectural style and character of a building or the Townhome Area, including, without limitation, to exterior appearance, finish material, color or texture, in the opinion of the Board of Directors;
- (d) the addition of an accessory or additional structure to the Unit;
- (e) the Improvement results in a substantial change to the roof plane or lines of a building;
- (f) the demolition or destruction by voluntary action of any building, structure or other Improvement;
- (g) the installation or modification of any landscaping;



(h) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, or change of drainage pattern; and

(i) changes in the exterior color or texture of the building.

10.2 **Action of the Association.** The Board of Directors may require the applications of Owners or other Person applying for approval (collectively, "**Applicants**") be accompanied by payment of a fee, in an amount determined the Board for processing of the application, together with the plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors showing exterior design, height, materials, colors, location of the proposed and existing Improvements (plotted horizontally and vertically), as well as such other materials and information as may be required by the Board of Directors. The Board of Directors may require the submission of additional plans, specifications or other information prior to approving or disapproving the change. Until receipt by the Board of Directors of all required materials in connection with the proposed improvement to the Townhome Area, the Board of Directors may postpone review of any materials submitted. Additionally, if the applicant Owner is in default hereof, any review shall be suspended until such default is cured. The Board of Directors shall exercise its reasonable judgment to the end that all renovations, remodels, additions and changes subject to regulation of this Townhome Declaration shall comply with the requirements of this Townhome Declaration, any guidelines issued by the Board of Directors or the Declarant (the "**Design Guidelines**"), and any Design Criteria adopted as provided for in this Townhome Declaration. The Board of Directors shall approve any proposed improvement only if it deems in its reasonable discretion that the change to the Townhome Area meets the criteria set forth herein. Decisions of the Board of Directors shall be conclusive and binding on all interested parties, subject to the right of an Owner to appeal to the Board, as provided for in this Townhome Declaration. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance of structures with neighboring structures, effective location and use of Improvements on nearby Units, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Townhome Declaration. Any denial shall be in writing and shall reasonably set forth the basis for the denial. The Board of Directors may condition its approval of plans and specifications on such changes therein as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving the material submitted. The Board of Directors may consider and review any and all aspects of construction, construction of other improvements and locations, quality and quantity of landscaping, and may disapprove aspects thereof which may, in the opinion of the Board of Directors, adversely affect the living, work, or other environment or enjoyment of one or more Owners or of the general value of Townhome Area within Cobblestone, LLC. The Board of Directors is also permitted to consider technological advances in design, materials and construction and such design, materials and construction may or may not be permitted in accordance with the opinion of the Board of Directors.

10.3 **Establishment of the Board of Directors.** The Board may, from time to time, adopt, promulgate, amend or otherwise revise the Design Criteria, any design guidelines, or any other standards, Rules and Regulations and procedures governing Design Review for the purposes of:



(a) Further enhancing, defining, or interpreting what items or improvements are covered by this ARTICLE X;

(b) Providing for changes in technology, industry standards, style, materials, safety issues, consistency with updated building codes or other laws of ordinances, or for any other reason that the Board deems to be proper, necessary or in the best interests of the Townhome; provided that neither the Board nor the Board of Directors in its review or approval of any application, will be deemed to be giving any opinion, warranty or representation as to compliance with any of the foregoing; and

(c) The Board of Directors is hereby authorized to retain, at the expense of the Townhome Association, the services of one or more consulting architects, landscape architects, engineers, urban designers or other professionals to advise and assist the Board of Directors in performing the design review functions prescribed in this ARTICLE X.

Any guidelines, standards, Rules and Regulations, procedure or amendment thereto, shall apply to construction, additions, modifications, installations or items placed on a Unit occurring after the date such guidelines, standards, Rules and Regulations, procedures or amendments are published or otherwise made available to all Owners.

10.4 **Design Criteria.** The Board of Directors may adopt written Design Criteria, rules, standards, and procedures (collectively, "**Design Criteria**") from time to time, which Design Criteria shall be deemed included in any Rules and Regulations adopted by the Townhome Association. The Design Criteria shall not be inconsistent with the provisions of this Townhome Declaration, and if there are any inconsistencies, the provisions of this Townhome Declaration shall control.

10.5 **Reply and Communication.** The Board of Directors shall reply in writing to all submittals of plans made in accordance with this ARTICLE X, within 30 days after the completion of submittals or presentation of them to the Board of Directors at one of its meetings, whichever occurs later, the Board of Directors shall respond in writing in one of the following ways: (a) approval as submitted; (b) approval with conditions; (c) deferral of action pending receipt and review of further information required by the Board of Directors; or (d) disapproval. If no action is taken, it shall be deemed that the Board of Directors has deferred its action. Subject to the provisions of this ARTICLE X, the decision of the Board of Directors shall be final on all matters submitted to it pursuant to this Townhome Declaration. All communications and submittals shall be addressed to the Board of Directors at such address as the chairman of the Board of Directors may designate.

10.6 **Variances.** The Board of Directors may grant reasonable variances or adjustments from the Design Criteria or from any conditions and restrictions imposed by this ARTICLE X in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the Design Criteria or such other conditions and restrictions. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Units or Common Elements, nor architecturally



disharmonious with the remainder of the Townhome Area, nor deviate substantially from the general intent and purpose of the Design Criteria or this Townhome Declaration. No variance or adjustment granted by the Board of Directors shall be deemed to apply to any other building, Person, improvement or Unit, other than the applicant.

10.7 **Appeal Rights of Applicants.** Subsequent to the Period of Declarant Control, if any application of an Applicant is disapproved by the Board of Directors, then the Applicant shall have the right of appeal to the Board. In considering the appeal, the Board shall only overturn the Board of Directors decision if the Board determines that the Board of Directors abused its discretion or acted in an arbitrary or capricious manner.

10.8 **No Deemed Waivers.** No action or failure to act by the Board of Directors or by the Board, shall constitute a waiver or estoppel with respect to future action by the Board of Directors or the Board, with respect to any improvement to Townhome Area. Specifically, the approval by the Board of Directors of any improvement to Townhome Area shall not be deemed a waiver of any right or an estoppel to withholding approval or consent for any similar improvement or Townhome Area or any similar proposals, plans, specifications or other materials submitted with respect to any other improvement to Townhome Area.

10.9 **Limitation in Liability.** The Board of Directors and the members thereof, as well as any representative of the Board of Directors designated to act on its behalf, shall not be liable in damages or otherwise to the Townhome Association or to any Owner or other Person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under this Townhome Declaration. The Board of Directors, nor any of its members, shall not be responsible for structural, engineering or any other defects in plans approved or for violations of any building or zoning code or other land use regulations, or for construction, completion, utility, value, quality, or any other aspect of any improvement or project that it approves.

10.10 **Records.** The Board of Directors shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any Owner during reasonable business hours.

10.11 **Enforcement of this Article.**

(a) **Violations/Non-Conformance.** Any improvement to a Unit made in violation of this ARTICLE X or of any design guidelines or the Design Criteria shall be deemed to be nonconforming. Should the Board of Directors determine that any improvement has been done without approval or was not done in substantial compliance with the description and materials furnished, and any conditions imposed, or was not completed with due diligence, the Board of Directors, acting on behalf of the Townhome Association, shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of the noncompliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance. Upon receipt of any such notice, the Owner of the Unit upon which such improvement is made shall, at such Owner's own cost and expense, remove such structure or improvement and restore the Unit to substantially the same condition as existed prior to the nonconforming improvement. Should the Owner fail to take such action within the time specified in the notice of noncompliance, the

Townhome Association shall have the right to record a copy of such notice of noncompliance in the office of the Clerk and Recorder for the county in which the Unit is located. Further, the Townhome Association shall have the right to enter the Unit, remove the violation, and restore the Unit to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as an Assessment. The provisions of this Section 10.11 shall be in addition to all other legal and equitable remedies the Townhome Association shall have.

(b) Legal Proceedings/Costs. In addition to the enforcement rights of the Townhome Association set forth above, the Board of Directors shall have the right, but not the obligation, to institute, maintain and prosecute proceedings in law or equity against the person or persons violating or attempting to violate any of the terms and provisions of this ARTICLE X. In any action instituted or maintained under this ARTICLE X, the Board of Directors, shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Board of Directors to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(c) Notice of Completion. Upon completion of the approved Improvements to the Townhome Area, the Owner shall give written a notice of completion to the Board of Directors. Until the date of receipt of a notice of completion, the Board of Directors shall not be deemed to have notice of completion of such improvement to Townhome Area.

(d) Inspection. The Board of Directors or its duly authorized representative shall have the right to inspect any improvement to the Townhome Area prior to or after completion; provided that the right of inspection shall terminate 60 days after the Board of Directors receives a notice of completion from the Owner.

10.12 Compensation of Members. The members of the Board of Directors may, at the sole discretion of the Board, be entitled to reasonable compensation for expenses incurred by them in performance of their duties. Any decision to provide such compensation may be determined and memorialized in writing by formal action of the Board.

10.13 Indemnification. To the full extent permitted by law, each member or the Board of Directors shall be and is hereby indemnified by the Townhome Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such member in any proceeding to which such member may be a party, or in which such member may become involved, by reason of being or having been a member of the Board of Directors, whether or not such member is a member of the Board of Directors at the time such expenses are incurred. This indemnification shall not apply to cases where such member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties.

10.14 Address. The address of the Board of Directors shall be the address of the Townhome Association.



10.15 **Obtaining Governmental Approvals.** The Owner or other Person requesting approval, shall obtain, prior to commencement of construction of any improvements to Townhome Area, all permits, licenses, certificates, consents and any other approvals necessary or required pursuant to any law, ordinance, resolution, order, rule or regulation of any governmental authority having jurisdiction ("**Governmental Approvals**") in order for Applicant to construct, operate and maintain the improvements to Townhome Area. The Governmental Approvals shall be deemed to include, but not be limited to, building approvals by the city in which the Unit is located.

10.16 **Committee Guidelines or Rules.** The Board of Directors may issue guidelines or rules relating to the procedures, materials to be submitted, design requirements or standards and additional factors, which will be taken into consideration in connection with the approval of any proposed improvement. The guidelines or rules may specify circumstances under which the strict application of limitations or restrictions under this Townhome Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances or for other reasons determined by the Board of Directors. The guidelines or rules may waive the requirement for approval of certain improvements or exempt certain improvements from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Townhome Declaration.

10.17 **Prosecution of Work After Approval.** After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible, subject to delays caused by adverse weather conditions, and in complete conformity with the description of the proposed Improvement, any plans and specifications and other materials approved by the Board of Directors in connection with the proposed Improvement and any conditions imposed by the Board of Directors. If the Board of Director's approval requires that construction commence within a specified time period and construction does not commence within the required period, the approval shall expire, and the Applicant must reapply for approval before commencing any activities in connection with the Improvement. Once construction is commenced, it shall be diligently pursued to completion. If the Board of Director's approval set a deadline for completion, then all work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Board of Directors, in its sole and absolute discretion, grants an extension in writing.

10.18 **Inspection of Work.** The Board of Directors and its designated representatives shall have the right to inspect any Improvement prior to or after completion, provided that the right of inspection shall terminate 60 days after the Board of Directors shall have received a Notice of Completion from the Applicant. The Board of Directors and its designated representatives may enter upon any Unit at any reasonable time or times to inspect the progress, work status or completion of any Improvement. In addition to the remedies described in Section 10.11, above, the Board of Directors may withdraw approval of any Improvement and require all activity at such Improvement be stopped, if deviations from the approved plan or approved construction practices are not corrected or reconciled promptly after written notification to the Applicant specifying such deviations.



10.19 **Notice of Competition.** Upon completion of the Improvement, the Applicant shall give written notice of completion ("**Notice of Completion**") to the Board of Directors. Until the date of receipt of such a Notice of Completion, the Board of Directors shall not be deemed to have notice of completion of such Improvement, whether or not the Board of Directors or its designated representatives have made inspections of the Improvement.

10.20 **Notice of Noncompliance.** If, as a result of inspections or otherwise, the Board of Directors finds that any Improvement has been commenced or completed without obtaining the approval of the Board of Directors, or was not done in substantial compliance with the plans, specifications and other materials approved by, and any conditions imposed by, the Board of Directors, or has not been accomplished as promptly and diligently as possible, then the Board of Directors shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event, within 60 days after the Board of Directors receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

10.21 **Correction of Noncompliance.** If the Board of Directors gives an Applicant a notice of noncompliance, the Applicant shall remedy or remove the same within a period of not more than 45 days from the date of receipt by the Applicant of the notice, except that if Section 10.7 above is applicable, the Applicant shall remedy or remove the noncompliance within a period of not more than 45 days from the date of receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not remove the noncompliance within the time period required by this Section 10.21, the Board of Directors or Declarant or, if Section 10.7 above is applicable, the Board of Directors, shall have the rights and remedies set forth in Section 10.11 above, in addition to all other rights and remedies it may have under this Townhome Declaration, at law or in equity.

10.22 **Certificate of Compliance.** Any Owner may request in writing that the Townhome Association issue a certificate of compliance certifying that there are no known violations of this ARTICLE X or any design guidelines with regard to the Owner's Unit or other Townhome Area. The Townhome Association, after confirming the necessary facts with the Board of Directors, shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Any Person, without actual notice to the contrary, shall be entitled to rely on such certificate with respect to all matters set forth therein. Issuance of such a certificate shall prevent the Townhome Association from taking enforcement action against an Owner for any violation of this ARTICLE X or any design guidelines with regard to the Owner's Unit or other Townhome Area known to the Townhome Association on the date of such certificate.

ARTICLE XI

COVENANTS, CONDITIONS AND RESTRICTIONS

11.1 **Applicability of Covenants, Conditions and Restrictions.** Except as otherwise provided in this Townhome Declaration, the covenants, conditions and restrictions set forth in the ARTICLE XI shall apply to all Units and Common Elements.

11.2 **Townhome Association Documents.** Each Owner shall comply with, and shall require its Guests to comply with, all provisions of the Townhome Association Documents that apply to such Owner or such Owner's Unit.

11.3 **Intentionally Omitted**

11.4 **Transfer of Title and Notice of Conveyance, Assignment or Encumbrance.**

(a) **Notice to Townhome Association.** Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Townhome Association at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require and, following the completion of such sale or transfer, shall promptly furnish to the Townhome Association a copy of the conveyance deed or other transfer instrument. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including Assessment obligations, until the date upon which the Townhome Association receives such notice and copy of transfer instrument, notwithstanding the actual date of the transfer of title.

(b) **Required Disclosures.** The Owner desiring to sell or otherwise transfer title to his or her Unit shall comply with the provisions of the Act.

(c) **Encumbrance of Unit.** Any Owner desiring to encumber title to his or her Unit shall give the Townhome Association at least seven days' prior written notice of the name and address of the Mortgagee, the date of such encumbrance, and such other information as the Board may reasonably require and, following the completion of such encumbrance, shall promptly furnish to the Townhome Association a copy of the Mortgage creating the encumbrance.

11.5 **Use of Units.**

(a) **Business Uses.** Each Unit shall be used and occupied primarily as a residence. No industry, business, trade, occupation, or otherwise designed for profit, altruism, exploration, or otherwise; that cannot be operated strictly from inside the Owner's Unit (some allowed examples: Accountant, Broker, etc.) working within the residential interior of their Unit, with no impact on neighboring Units; shall be conducted, maintained, or permitted in any Unit except as hereinafter expressly provided. The foregoing shall not, however, be construed in such a manner as to prohibit a Unit Owner from: (i) maintaining his personal professional library in a Unit; (ii) keeping his personal business or professional records or accounts in a Unit; (iii) handling his personal business or professional telephone calls or correspondence from a Unit; (iv) maintaining a computer or other office equipment within the Unit; or (v) utilizing administrative help or meeting with business or professional associates, clients, or customers in the Unit. Any accessory business use of a Unit, permitted by this Section, must be in compliance with all applicable statutes, ordinances and governmental regulations, must not have any adverse impact on the Association (including but not limited to, unreasonable use of the Common Elements and insurance concerns) and must be conducted in accordance with this Declaration and the Bylaws and rules and regulations of the Association.



(b) Leasing of Units. Nothing in any Townhome Association Document shall prohibit leasing of any Unit or required approval of the Townhome Association prior to leasing of a Unit. All leases shall require that the tenant of lessee thereof (and any assignees or subleases) comply with all of the Townhome Association Documents.

11.6 Use of Common Elements.

All Owners and their Guests may use the General Common Elements and the Limited Common Elements designed to serve their Units for the purposes for which such Common Elements are intended. Notwithstanding the preceding sentence, neither an Owner nor a Guest may use any Common Element in any manner that unreasonably interferes with the rights of other Owners in and to the Common Elements. Without limiting the generality of the foregoing, no Owner shall cause, or permit its Guests to cause, waste to any Common Element. The Owners' rights to use the Common Elements are subordinate and subject to all of the rights and powers of the Townhome Association with respect to the Common Elements, including, without limitation, the Townhome Association's right and power to adopt rules regulating the use of the Common Elements. No Owner or Guest shall place any obstructions on any part of the Common Elements, without the prior written approval of the Townhome Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Townhome Association.

11.7 Alterations.

(a) Prohibited Alterations. Except as otherwise expressly provided in this Townhome Declaration, an Owner of a Unit may not make any improvement or alteration to a Common Element or any improvement or alteration to its Unit that affects any Common Element or any other Unit, without the prior written consent of the Townhome Association and the approval of the Board of Directors.

(b) Partitions. An Owner who owns adjoining Units may remove or alter any intervening partition, even if the partition in whole or in part is a Common Element, if those acts do not impair the structural integrity, electrical systems or mechanical systems or lessen the support of any portion of the Townhome, provided, however, that such Owner obtains the prior written consent of the Townhome Association and the approval of the Board of Directors to remove or alter any partition, such consent not to be unreasonably withheld.

(c) New Improvements. No new Improvement shall be constructed on the Townhome Area, and no construction, alterations, installations or other work to or affecting the exterior surface of any existing Improvement shall be made, except as required or approved by the Townhome Association (acting through its Board of Directors, design review board or as otherwise provided in the Association Documents), and then only in strict accordance with the terms and conditions of the Association Documents.



11.8 **Nuisances, Hazardous Activities and Unsightliness.**

(a) **Nuisances.** No Person shall conduct any activity on the Townhome Area which creates a nuisance.

(b) **Hazardous Activities.** No Person shall conduct any activity on the Townhome Area which is or might be hazardous to any Person or Townhome Area.

(c) **Unsightliness.** No unsightliness shall be permitted at the Townhome Area.

(d) **Construction.** Normal construction activities shall not be considered to violate the terms and conditions of this Section 11.8. By accepting a deed to a Unit, each Owner acknowledges that the Townhome is a part of Cobblestone, LLC and that noises, lights, traffic, activity and odors common to commercial activities, as well as construction activities, may exist on, in or near the Buildings or the Townhome Area, at any time and from time to time. None of these activities shall be deemed to be a violation of this Section 11.8, and each Owner specifically accepts the disturbances occurring in relation to the activities above and hereby waives, and holds Declarant, the Townhome Association, and the officers and directors of the Townhome Association, and all members of any committees of each such Townhome Association, harmless from and against any and all claims or damages of Owner and Owner's Guests in any way arising out of or relating to the activities and disturbances described above.

(e) No inoperable or junk vehicles, RV's, or people living in RV's shall be permitted at the Townhome Area.

11.9 **Signs.**

(a) **Restrictions.** No signs whatsoever shall be erected or maintained on the Townhome Area, except: (i) such signs as may be required by legal proceedings; (ii) not more than one professional security sign of such size deemed reasonable by the Board of Directors in its sole discretion; (iii) political signs erected no earlier than 45 days prior to an election and removed within seven days after an election. To the extent that the Act at any time permits the Townhome Association to prohibit, restrict or regulate political signs, the Board of Directors may adopt Rules and Regulations prohibiting, restricting or regulating political signs.

11.10 **Compliance with Laws.** Nothing shall be done or kept at the Townhome Area in violation of any law, ordinance, rule, regulation or other requirement of any governmental or quasi-governmental authority.

11.11 **Compliance with Insurance.** Except as may be approved in writing by the Townhome Association, nothing shall be done or kept at the Townhome Area that may result in the cancellation of any insurance maintained by the Townhome Association or may result in an increase in the rates of any such insurance.

11.12 **Subdivision, Rezoning and Timesharing.**

(a) **Subdivision Without Approval.** No Unit may be subdivided.



(b) Rezoning Without Approval. No application for rezoning any portion to the Townhome Area, and no applications for variances or use permits, shall be filed with any government or quasi-governmental authority, unless the proposed rezoning, variance or use permit has been approved by 100% of the votes allocated to all Memberships and the uses that would be permitted under the rezoning, variance or use permit comply with this Townhome Declaration and the other Townhome Association Documents.

(c) Timesharing. No Owner shall offer, sell or otherwise transfer any interest in any Unit under a “timesharing,” “fractional ownership,” “fractional sharing,” “interval ownership,” or “interval estate” plan or similar plan.

(d) Exemption for Declarant. The covenants, conditions and restrictions set forth in Section 11.12 (a) through (c) above shall not apply to Declarant’s development of the Townhome Area or to Declarant’s exercise of any Special Declarant Right.

11.13 Parking Spaces.

(a) Assignment of Parking Spaces. Townhome parking spaces will be provided or Owner’s Guest as required by the Town of Pagosa Springs. There shall be not additional assigned outside parking for Owners. Common Area parking is for guests only.

(b) Additional Common Elements. Declarant reserves the right (but shall have no obligation) to construct and create additional General Common Elements or Limited Common Elements. Declarant may prepare, execute and record a supplemental map or Declaration that identifies the Common Element.

11.14 Deliveries, Trash Removal and Other Services. Each Owner acknowledges that Cobblestone is intended to be a residential development and that vehicular traffic serving residential uses (including the Units) and non-residential uses will be accommodated within Cobblestone. Accordingly, by accepting title to a Unit, an Owner acknowledges that the Association has the right to regulate all deliveries and all trash removal services, and each Owner agrees to observe and comply with any provisions of the Association Documents regarding deliveries and trash removal services. Owners shall not and shall not permit their Guests to litter. No burning of trash, garbage or other waste materials is permitted at the Townhome Area.

11.15 Exterior Storage. No Owner shall store any materials or items on or in any Common Area.

11.16 Animals. Except as may be otherwise authorized in writing by the Executive Board, there shall be the following restrictions with respect to animals:

No animals, livestock, or poultry of any kind shall be raised, bred or kept on the Townhome Area or within any Unit except common small household pets, including dogs and cats. All dogs must be on a leash at all times when being walked outside a townhome. There shall be no more than two (2) dogs or two (2) cats and no combination of dogs and cats exceeding (3) in any one Unit. No pets shall be kept, maintained or bred for any commercial purpose. All pets shall be

maintained at all times so that they are not a nuisance to other residents in Cobblestone. Owners must clean up all feces from their animals at all times and at all places within the boundaries of Cobblestone. Owners must agree to find new homes for their pets if the pet becomes a nuisance to other residents. Excessive barking shall be considered a nuisance for the purpose of this Section. Each Owner shall be responsible and liable for any damage to persons or property caused by the pets of the Owner.

11.17 **Intentionally Omitted.**

11.18 **Annoying Sounds or Odors.** No sound or odor shall be emitted from any Townhome Area within the Townhome that is noxious or offensive to others.

11.19 **No Unsightliness.** All unsightly facilities, equipment, objects and conditions shall be enclosed within an owner's garage, including snow removal equipment and garden or maintenance equipment except when in actual use.

11.20 **Restrictions on Garbage and Trash.** No refuse, garbage, trash, lumber, grass, shrub and tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any Unit except within an enclosed structure or appropriately screened from view, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pickup.

11.21 **No Temporary Structures.** Except as may be specifically permitted under the Rules and Regulations, no tent, shelter, shack, shed, storage facility, fenced in area, dog kennel, dog run, temporary structure or temporary building shall be placed upon any Townhome Area within the Townhome except with the prior written consent of the Townhome Association.

11.22 **Restriction on Antennae, Pipes and Utility Lines.** Pipes for water, gas, sewer, drainage or other purposes and wires, poles, antennae and other facilities for the transmission and reception of electricity, and utility meters or other utility facilities, shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. Any exterior radio antenna, television antenna, satellite dish or other antennae of any type shall be installed or maintained in compliance with the Rules and Regulations.

11.23 **Intentionally Omitted**

11.24 **Intentionally Omitted**

11.25 **Declarant's Exemption:** Nothing contained in this Townhome Declaration or in any other Townhome Association Document shall be construed to prevent.

(a) **Development Rights.** Declarant's exercise and enjoyment of any Development Right or Special Declarant Right or any other rights of Declarant under this Townhome Declaration or any other Townhome Association Document or the Act; or



(b) Construction. The conduct by Declarant or its employees or agents of any activity, including, without limitation, the erection or maintenance of temporary structures, improvements or signs, the storage of construction materials, equipment and tools and the creation and use of construction staging areas, necessary or convenient to the development, construction, marketing or sale of Townhome Area within or adjacent to the Townhome, including, without limitation, on any portion of the Annexable Property.

11.26 Right of Board Regarding Rules and Regulations and Policies. In furtherance of the purposes of this Townhome Declaration, and subject to the Board's duty to exercise judgment and reasonableness on behalf of the Townhome Association, the Board may adopt, amend or repeal Rules and Regulations and Policies concerning and governing the Townhome or any portion thereof. The Board may establish and enforce penalties for any infraction thereof.

11.27 Restrictions Subject To The Act. Notwithstanding anything in this Townhome Declaration to the contrary, no restrictions in this Townhome Declaration covering the use of any Unit shall be effective to the extent that restrictions on such use are prohibited or limited by the terms of the Act.

ARTICLE XII

EASEMENT AND RESERVATIONS

12.1 Declarant's Easements Over Common Elements.

(a) Common Elements and Units. Declarant hereby reserves for itself, its successors and assigns a general easement over, across, through and under each Unit and each Common Element (including, without limitation, Limited Common Elements, including elevators) to:

- (i) discharge Declarant's obligations under this Townhome Declaration;
- (ii) exercise any of Declarant's rights under this Townhome Declaration, including, without limitation, Development Rights and Special Declarant Rights; and
- (iii) make improvements in and to the Townhome Area, the Annexable Property or any other real estate owned by Declarant, including, without limitation, construction or modification of improvements in any Unit.

(b) Notice to Owners. Notwithstanding the foregoing provisions of subsection 12.1(a), Declarant shall not enter any Unit without reasonable prior notice to the Owner thereof, except in cases of emergency.

(c) Creation of Easements and Other Rights. Declarant hereby reserves for itself, its successors and assigns, the right to:

- (i) establish from time to time utility and other easements, permits or licenses over, across, through and under the Common Elements; and



(ii) create other reservations, exceptions and exclusions for the best interest of the Townhome Association.

12.2 Utility Easement.

(a) Creation of Easements. Subject to the terms and conditions of this Townhome Declaration and all other Townhome Association Documents, Declarant hereby reserves for itself, its successors and assigns a general easement over, across, through and under the Townhome Area for ingress to, egress from, and installation, replacement, repair and maintenance of, all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity and cable communication that service the Townhome Area or any portion thereof as well as any such lines and systems which service Townhome Area owned, managed or maintained by the Association. The Townhome Association may, but is not obligated to, authorize the release of portions of the general easement created pursuant to this Section 12.2 upon the request of any Owner showing good cause therefor.

(b) Facilities and Equipment. Pursuant to this easement, a utility or service company may install and maintain facilities and equipment on the Townhome Area and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Improvements to provide service to the Units or the Common Elements. Notwithstanding anything to the contrary contained in this Section 12.2, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated on any portion of the Townhome Area, except in accordance with terms and conditions of Sections 11.7 and 11.19 above. Any utility or service company using this general easement shall use its best efforts to install, repair, replace and maintain its lines and systems without disturbing the uses of Owners, the Townhome Association, Declarant and other utility and service companies.

12.3 Townhome Association's Easement.

(a) Access. The Townhome Association shall have a general easement over, across, through and under each Unit and each Common Element to:

(i) exercise any right held by the Townhome Association under this Townhome Declaration or any other Townhome Association Document; and

(ii) perform any obligation imposed upon the Townhome Association by this Townhome Declaration or any other Townhome Association Document, including, without limitation, maintaining the Common Elements and the other Townhome Association Townhome Area and otherwise managing and operating the Common Elements, all as provided in Section 9.1 above. For such purpose, the Townhome Association shall have the right to allow any managing agent or Townhome Area manager hired by the Townhome Association to use such easement.

(b) Entry Limitation. Notwithstanding the foregoing, the Townhome Association shall not enter any Unit without reasonable prior notice to the Owner thereof, except in cases of emergency.



12.4 Owners' Easements. Subject to Section 12.5, below, each Owner shall have a nonexclusive easement over the Common Elements to use and enjoy the Common Elements and for ingress and egress, subject to: (a) any restrictions contained in any deeds of Common Elements to the Townhome Association; (b) the right of the Townhome Association to suspend rights to use all or a portion of the Common Elements for any period during which any Assessment against such Owner's Unit remains unpaid or for any infraction of this Townhome Declaration or the Townhome Association Documents; (c) the right of the Townhome Association to allow public use of the Common Elements, with or without a fee or charge; (d) the right, power and authority of the Townhome Association to grant any dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act; (e) the right of the Townhome Association to close or limit the use of the Common Elements while maintaining, repairing and making replacement in the Common Elements or as determined by the Board; and (f) the right of the Townhome Association to charge fees for the use of any recreational facility or other amenity situated on the Common Elements and to impose membership requirements; (h) the Development Rights and Special Declarant Rights reserved in this Townhome Declaration and subject to all other provisions of this Townhome Declaration and the Townhome Association Documents. Such easement shall be appurtenant to and shall pass with the title to every Unit. Without limiting the generality of the foregoing, the Townhome Association may establish Rules and Regulations governing use of the Common Elements. **NO OWNER SHOULD ASSUME BY REASON OF THE PROXIMITY OF SUCH OWNER'S UNIT TO ANY AMENITY OR FACILITY THAT SUCH OWNER WILL HAVE RIGHTS TO USE AND ENJOY SUCH AMENITY OR FACILITY, AND EACH PURCHASER SHOULD CAREFULLY INVESTIGATE WHAT COMMON ELEMENTS AND LOCAL COMMON ELEMENTS MAY BE USED AND ENJOYED AS A RESULT OF OWNING A PARTICULAR UNIT. FOR PRIVACY PURPOSES, WALKING BEHIND ANOTHER OWNER'S UNIT IS PROHIBITED. THERE WILL BE DESIGNATED COMMON AREA WALKING PATHS PROVIDING ACCESS TO THE RIVER.** Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the General Common Elements and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association, such as, but not limited to, for closure for repairs and maintenance

12.5 Liability of Owners for Damage. Each Owner shall be liable to the Townhome Association for any damage to Common Elements or for any expense or liability incurred by the Townhome Association that may be sustained by reason of negligence or willful misconduct of such Owner or a guest of the Owner, and for any violation by such Owner or guest or invitee of this Townhome Declaration or any Rule or Regulation. The Townhome Association shall have the power to levy and collect an Assessment against an Owner to cover the costs and expenses incurred by the Townhome Association on account of any such damage or any such violation of this Townhome Declaration or of the Rules and Regulations, including interest and attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

12.6 Power to Grant Easements. The Townhome Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under the



Common Elements for any lawful purpose, including without limitation, the provision of emergency services, utilities (including, without limitation, water, sanitary sewer, storm sewer, gas and other energy services), telephone, cable television, fiber optic and other telecommunication services, and other uses or services to some or all of the Owners.

12.7 **Easement for Encroachments.** To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, an easement shall exist for that encroachment, but such easement shall not relieve an Owner of liability in the case of willful misconduct.

12.8 **Emergency Access Easement.** Declarant hereby grants a general easement to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or Persons to enter upon the Townhome Area in the proper performance of their duties.

12.9 **Recorded Easements and Licenses.** The Townhome Area shall be subject to all easements and licenses as shown on any Recorded plat affecting the Townhome Area and to any other easements or licenses of Record and other matters of Record set forth on **Exhibit E** hereto (the "**Permitted Exceptions**") or of use as of the date of Recordation of this Townhome Declaration. In addition, the Townhome Area is subject to all easements created or permitted by this Townhome Declaration.

ARTICLE XIII

INSURANCE

13.1 **General Insurance Provisions.** Not later than the time of the first conveyance by Declarant of a Unit to a purchaser, the Townhome Association shall acquire and pay for, out of the Assessments levied under Article VII, the following insurance policies carried with reputable insurance companies authorized to do business and licensed to provide insurance in Colorado:

13.2 **Property Insurance Coverage.** Property insurance, with extended coverage, including fire, vandalism, malicious mischief, all-risk, replacement cost, inflation guard endorsements (when they can be obtained), in amounts determined by the Board to represent not less than the full then current insurable replacement cost of the Common Elements, *and including* all fixtures, interior and exterior walls and floors, partitions, decorated and finished surfaces of interior and exterior walls, floors, and ceilings, doors, windows and other elements or materials which comprise a part of the Units as originally sold by Declarant to an Owner and which are to be financed by a Mortgage to be purchased by an Agency, *and including* any fixtures, equipment or other property within the Units when originally sold by Declarant to an Owner and which are to be financed by a Mortgage to be purchased by an Agency, *but excluding* any betterments and improvements made by Owners (after the transfer of title to the Unit by Declarant) and building excavations and foundations. Maximum deductible amounts for such policy shall be determined by the Board; *provided, however*, that if any Agency requires specific deductibles, the Board shall follow such Agency's requirements. The Townhome Association shall obtain insurance covering the specifications of each Unit as



originally sold by Declarant to an Owner. Each Owner shall be responsible for obtaining additional or supplemental insurance covering any additions, alterations or improvements to his Unit that increase the replacement value of his Unit (after the transfer of title to the Unit by Declarant). In the event that satisfactory arrangement is not made for additional insurance by the Owner, the Owner shall be responsible for any deficiency in any resulting insurance loss recovery and the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. Any additional premiums attributable to the original specifications of a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Section 7.10 hereof in the event the Townhome Association pays such premium for an Owner. Subject to Section 13.4 below, such property insurance policy must be written by an insurance carrier that has an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports International Edition, or any other policy rating acceptable to the Agencies.

13.3 Comprehensive Liability. Comprehensive general public liability and property damage insurance in such amounts as the Board deems desirable, provided that such coverage shall be for at least \$1,000,000 for bodily injury, including deaths and property damage arising out of a single occurrence insuring the Townhome Association, the Board, any manager or managing agent, or both, if any, and their respective agents and employees, and the Owners from liability in connection with the operation, maintenance and use of the Common Elements including a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Townhome Association and such other risks as are customarily covered with respect to Townhomes similar to the Townhome in the Pagosa Springs area including automobile liability insurance if appropriate. The Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Board that such party has current satisfactory insurance, including workers compensation insurance, commercial general liability insurance and automobile insurance on all of which the Association is named as an additional insured.

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



13.5 **Owners' Insurance.** Insurance coverage on the furnishings and other items of personal property belonging to an Owner and any additions and alterations to a Unit which increase the Unit's replacement value above that of the specifications for the Unit as originally sold by Declarant to an Owner, casualty and public liability insurance coverage for each Unit and the work within and use of each Unit or on the Limited Common Elements associated therewith shall be the responsibility of the Owner of the Unit. The Unit Owners shall also carry an Insurance Policy with a loss assessment endorsement. Each Owner of a Unit shall provide the Association with certificates of insurance evidencing the insurance required pursuant to this paragraph, which insurance policies shall name the Townhome Association as an additional named insured and shall further provide that the Townhome Association shall be given 30 days advance written notice of any planned change or cancellation in any policy.

13.6 **Certificates of Insurance: Cancellation.** Certificates of insurance shall be issued by the Townhome Association to each Owner and Mortgagee upon written request to the Townhome Association. All policies required to be carried under this Article 13 shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty (30) days prior written notice to each Owner and each First Mortgagee whose address is shown in the records maintained pursuant to the Townhome Association's documents. If the Townhome Association's insurance described in Article 13 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and to all First Mortgagees.

13.7 **Insurance Proceeds.** Any loss covered by the property insurance policy described in Section 13.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Townhome 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 13.8 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Townhome 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.

13.8 **Insurer Obligation.** An insurer that has issued an insurance policy for the insurance described in this Article 13 or its agent shall issue certificates or memoranda of insurance to the Townhome 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 Townhome Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses, and to any service of any other Mortgage.



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

(i) The common interest community created by this Declaration is terminated in which case the approval must first be obtained from Owners holding at least sixty-seven percent (67%) of the votes in the Association, and 51% of the First Mortgagees having a security interest in any Unit.

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

(iii) There is a vote not to rebuild by (a) Owners holding at least sixty-seven percent (67%) of the votes of the Association, and (b) every Owner of a Unit or assigned Limited Common Element that will not be rebuilt; or

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

The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a Common Expense, except as otherwise determined by the Board. If all the Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to each Unit's Allocated Interests.

13.10 **Common Expenses.** Premiums for insurance that the Townhome Association acquires and other expenses connected with acquiring such insurance are Common Expenses, *provided, however*, that if the Association's property and extended coverage insurance covers Limited Common Elements, fixtures, equipment or other property within or associated with some but not all of the Units, or other insurance attributable to some but not all of the Units, the Townhome Association reserves the right to charge the Owners of such Units for which the Townhome Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage as calculated by or through the Townhome Association.

13.11 **Fidelity Insurance.** Fidelity insurance or fidelity bonds must be maintained by the Townhome Association to protect against acts and inaction on the part of its officers, directors, trustees and employees, and on the part of all others, including any manager hired by the Townhome Association, who handle or are responsible for handling the funds belonging to or administered by the Townhome Association in an amount not less than the greater of (a) \$50,000, or (b) the estimated maximum of funds, including reserve funds, in the custody of the Townhome Association or management agent as the case may be, at any given time during the term of each policy as calculated from the current budget of the Association but in no event less than a sum equal to three (3) months' aggregate assessments plus reserve funds. In



addition, if responsibility for handling funds is delegated to a manager, such insurance or bonds must be obtained by or for the manager and its officers, employees and agents, as applicable. Such fidelity insurance or bonds shall name the Townhome Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

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

13.13 **Other Insurance.** The Townhome Association shall maintain flood insurance if any part of the Townhome is located within a Special Flood Hazard Area on a Flood Insurance Rate Map, equal to the lesser of 100% of the insurable value of the Townhome or the maximum coverage available under the appropriate National Flood Insurance Program with a maximum deductible amount of not more than the limits required by any Agency. The Association shall also maintain Directors and Officers insurance to the extent reasonably available and in such amounts as the Board may deem appropriate on behalf of the Board and its officers against any liability asserted against a member of the Board or an Association officer or incurred by him in his capacity of or arising out of his status as a member of the Board or an officer. The Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Townhome's Association's responsibilities and duties or as requested by an Agency.

13.14 **Unit Owner's Claim.** Any Unit Owner may make a claim against any insurance policy maintained by the Townhome Association to the extent provided in and subject to the condition of the Act.

ARTICLE XIV

CONDEMNATION

14.1 **Condemnation of All Units.** If the entire Townhome is taken by condemnation or similar proceeding, the Townhome shall terminate as of the date of the taking, and any condemnation award payable in connection therewith shall be paid to the Townhome Association and then disbursed by the Townhome Association in accordance with the terms and conditions of the Act.

14.2 **Condemnation of Fewer Than All Units.** If one or more Units, but less than the entire Townhome, are taken by condemnation or similar proceeding:

(a) any condemnation award payable in connection therewith shall be paid to the Unit Owner and their Mortgagees as their interests may appear;

(b) the Allocated Interests appurtenant to those Units shall be reallocated; and



14.3 **Condemnation of Common Elements.**

(a) If any Common Element is taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Townhome Association and used by the Townhome Association:

(i) first, to repair any damage to Common Elements resulting from the condemnation or similar taking; and

(ii) second, for any other Common Expenses.

(b) The Townhome Association shall not be required to pay all or any portion of the condemnation award received for the condemnation or similar taking of a Limited Common Element to the Owners of the Units served by such Limited Common Element, unless the Townhome Association deems it necessary or appropriate to do so.

(c) Notwithstanding the foregoing, in all cases the Townhome Association is hereby designated as the attorney-in-fact for all Unit Owners to represent all Unit Owners with respect to the receipt of proceeds resulting from any condemnation or insurance, and any negotiations, settlements, proceedings or agreements in connection therewith.

ARTICLE XV

SPECIAL DECLARANT RIGHTS

15.1 **Improvements.** Declarant hereby reserves for itself, its successor and assigns the right, but is not obligated, to construct;

(a) any improvements shown on the Townhome Map; and

(b) any other buildings, structures or improvements that Declarant desires to construct on the Townhome Area, the Annexable Property or any other real Townhome Area owned by Declarant, regardless of whether the same ever become part of the Townhome.

15.2 **Development Rights.**

(a) Declarant hereby reserves for itself, its successors and assigns:

(i) the right to amend this Townhome Declaration to add to the Townhome all or any portion of the Annexable Property or any other real Townhome Area owned by Declarant or owned by a third party (if Declarant and such third party have consented to such addition) as permitted pursuant the Act; In accordance with the foregoing, each Owner of a Unit within the Project grants to Declarant the right to annex the Annexable Property to the Project and to modify such Owner's right to the Common Areas as more particularly set forth in this Article. Declarant reserves the right to annex all or any portion of the Annexable Property to the Project, in



one or more parcels, in such order, in such phases, and in such a manner as Declarant deems fit in its sole and absolute discretion.

(ii) the right to subdivide any Unit owned by Declarant, which is in addition to Declarant's rights stated in Section 15.2(a)(i) above;

(iii) the right to combine any Units owned by Declarant;

(iv) the right to convert any Unit owned by Declarant into Common Elements;

(v) the right to convert any General Common Element into a Limited Common Element and to allocate such Limited Common Element to one or more, but fewer than all, Units;

(vi) the right to withdraw from the Townhome any portion of the Annexable Property or other real Townhome Area owned by Declarant or owned by a third party (if Declarant and such third party have consented to such withdrawal) and located within the Townhome at any time prior to the conveyance of a Unit located in such portion to a third-party purchaser;

(vii) right to make this Townhome and Townhome Association subject to a Master Association;

(viii) the right to exercise any other Development Right or Special Declarant Right as such terms are defined in this Townhome Declaration and the Act; and

(ix) those other rights reserved to Declarant under this Townhome Declaration.

(b) In exercising any development right reserved hereunder, Declarant shall execute and Record an amendment to this Townhome Declaration (a "**Supplemental Declaration**") and the Townhome Map to the extent required by and in accordance with the requirements of the Act. The Supplemental Declaration shall incorporate the covenants, conditions and restrictions set forth herein and contain such additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and provisions as Declarant may impose on such annexed property taking into account the unique and particular aspects of the proposed development of the real property encumbered by such Supplemental Declaration. Declarant shall have the right to reserve in a Supplemental Declaration any and all development rights which Declarant deems necessary or appropriate to complete the development of the property being annexed to the Project or which is otherwise necessary to meet the unique and particular aspects of such property.

(c) Declarant makes no assurances (A) that all or any portion of the Annexable Property will be annexed to the Project or (B) that, in the event a portion of the Annexable Property is annexed to the Project, all or any other portion of the remainder of the Annexable Property will be annexed to the Project. Furthermore, Declarant shall have the right at

any time to effectuate a subdivision of the Annexable Property from the Project and develop the Annexable Property in any manner Declarant chooses.

(d) Upon recordation of a Supplemental Declaration and a Supplemental Map, the property described therein shall be subject to all covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this Declaration. In the event any real property is annexed to the Project as provided herein, the definitions used in this Declaration shall automatically be expanded to encompass and refer to the Project as expanded. Accordingly, the term "Project" shall mean the real property described herein plus all additional real property annexed thereto pursuant to a Supplemental Declaration. The terms "Common Area" and "Units" shall include those areas described as such herein and on the Townhome Map as well as those areas so designated within any Supplemental Declaration or upon any Supplemental Map. References to this Declaration shall mean this Declaration as so supplemented by any Supplemental Declaration.

(e) Upon recordation of a Supplemental Declaration and Supplemental Map, every Owner of a Unit in such annexed area shall, by virtue of ownership of such Unit, be a Member of the Association and shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other Member, which rights and obligations shall include, but shall not be limited to, the right to vote in Association matters, the right to use Common Elements, and the obligation to pay Assessments. Assessments for Units within the area annexed to the Project shall commence as of the date of the recording of the Supplemental Declaration and shall be prorated as of such date.

(f) Except as may otherwise be provided herein, upon the annexation of any property to the Project, each Owner's Allocated Interest shall be reallocated; and a revision of Exhibit B, as attached hereto, shall be filed with the Supplemental Declaration, indicating each Owner's revised Allocated Interest.

15.3 Sales Offices and Models. Declarant hereby reserves for itself, its successors and assigns the right to maintain and remove sales offices, management offices and models within any Unit owned or leased by Declarant. Declarant also reserves for itself, its successors and assigns the right to construct and maintain signs advertising the Townhome on any and all Common Elements.

15.4 Merger. Declarant hereby reserves for itself and its successors and assigns the right to merge or consolidate the Townhome with any other Townhome.

15.5 Exercising Special Declarant Rights and Development Rights. Declarant may exercise its Special Declarant Rights and Development Rights at any time prior to the later to occur of the date on which the Declarant Control Period expires or the date that is 7 years after the date on which this Townhome Declaration is Recorded (the "**Development Rights Period**"). Declarant may exercise its Special Declarant Rights and Development Rights in any order, and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights and Development Rights. If Declarant exercises any Special Declarant Right or Development Right with respect to any portion of the Townhome Area or the Annexable



Property, Declarant may, but is not obligated to, exercise that Special Declarant Right or Development Right with respect to any other portion of the Townhome Area or the Annexable Property. Notwithstanding anything to the contrary contained in this Townhome Declaration, Declarant may exercise any Special Declarant Right or Development Right described in this ARTICLE XV and any other right reserved to Declarant in this Townhome Declaration, without the consent of the Townhome Association or any of the Owners.

15.6 **Interference with Special Declarant Rights and Development Rights.** Neither the Townhome Association nor any Owner may take any action or adopt any Rule or Regulation, including, without limitation, modifying any Townhome Association Document, that interferes with or diminishes any Special Townhome Right or Development Right, without Declarant's prior written consent. Any action taken in violation of this Section 15.6 shall be null and void and have no force or effect.

15.7 **Rights Transferable.** Declarant may transfer any Special Declarant Right or Development Right reserved to it under this ARTICLE XV or under any other provision of this Townhome Declaration in accordance with the terms and conditions of the Act.

ARTICLE XVI

MORTGAGEE PROTECTIONS

16.1 **Benefit of Mortgagees.** This Article establishes certain standards and covenants, which are for the benefit of Mortgagees. This Article is supplemental to, and not in substitution of, any other provisions of this Townhome Declaration, but in the case of any conflict, this Article shall control.

16.2 **Notice of Actions.** If requested in writing to do so, the Townhome Association shall give prompt written and dated notice by certified mail of the following to each First Mortgagee making such request:

(a) **Condemnation and Casualty.** Any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the First Mortgagee;

(b) **Delinquencies.** Any delinquency in the payment of Assessments on other failure of any Unit Owner to apply with the terms of this Declaration which remains uncured for 60 days by an Owner whose Unit is encumbered by a First Mortgage held by such First Mortgagee;

(c) **Insurance.** Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Townhome Association;

(d) Matters Requiring Consent. Any proposed action which would require the consent of First Mortgagees as set forth in this Article, including, without limitation, any proposed amendment to this Townhome Declaration (together with a copy of such proposed amendment) or information regarding how to obtain a copy of the proposed amendment), and in the event of a proposed amendment, the Townhome Association shall give notice thereof, at least once per week, in a newspaper of general circulation in the county where the Townhome Association is located; and

(e) Judgments. Any judgment rendered against the Townhome Association.

16.3 Consent Required.

Notwithstanding anything to the contrary contained in this Townhome Declaration, the Townhome Association may not take any of the following actions without the consent of 67% of the First Mortgagees (based on one vote for each Unit encumbered by a First Mortgage):

(a) Termination of Townhome. By act or omission seek to abandon or terminate the Townhome, except after condemnation or substantial casualty;

(b) Change In Allocated Interest. Except as provided herein for condemnation, casualty and the exercise of Special Declarant Rights, change the Interests in General Common Elements, Shares of Common Expenses or votes in the Townhome Association of any Unit;

(c) Subdivision of Units. Subdivide, partition, or relocate the boundaries of any Unit, except as permitted with respect to Special Declarant Rights or Development Rights;

(d) Subdivision of Common Elements. Abandon, subdivide, partition, encumber, sell or transfer the Common Elements (the granting of easements for public utilities or for other purposes provided for in this Townhome Declaration shall not be deemed transfers);

(e) Use of Hazard Insurance Proceeds. Use hazard insurance proceeds for losses to any portion of the Common Elements for other than repair, replacement, or reconstruction of such Common Elements, except as provided by the Act;

(f) Merger of Townhome. Merge the Townhome with any other common interest community, except as permitted with respect to Special Declarant Rights or Development Rights; or

(g) Other Amendment. Amend this Townhome Declaration, except as allowed by the Act.

16.4 Notice of Objection. Unless a First Mortgagee provides the Townhome Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within 60 days following the date of written notice of such proposed amendment or action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

16.5 First Mortgagees' Rights.

(a) First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or Improvements thereon, and may pay overdue premiums on hazard insurance policies, for the Common Elements. First Mortgagees making such payment shall be owed immediate reimbursement from the Townhome Association.

(b) A First Mortgagee shall be entitled to cure any delinquency of the Owner of a Unit encumbered by its First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

16.6 Limitations on First Mortgagees' Rights.

No requirement for approval or consent by a First Mortgagee provided in this Article shall operate to:

(a) deny or delegate control over the general administrative affairs of the Townhome Association by the Owners or the Board of Directors;

(b) prevent the Townhome Association or the Board of Directors from commencing, intervening and/or settling any legal proceeding; or

(c) prevent any insurance trustee or the Townhome Association from receiving and distributing any insurance proceeds in accordance with the requirements of ARTICLE XIII above.

16.7 Declarant Rights. No provisions or requirement of this ARTICLE XVI shall apply to any Special Declarant Rights or Development Rights or other rights reserved to Declarant in this Townhome Declaration.

ARTICLE XVII

ENFORCEMENT AND REMEDIES

17.1 Enforcement.

(a) General. Every owner and occupant of a Unit shall comply with the Townhome Association Documents, and each Owner shall have the right to enforce against the Townhome Association or any other Owner, applicable covenants in this Townhome Declaration, subject to the further provisions of this subsection 17.1(a). Before an aggrieved Owner may prosecute any proceeding at law or in equity enforcing the provisions of this Townhome Declaration or seeking other relief relating to a violation or attempted violation of the provisions



of this Townhome Declaration, the Owner will first give written notice to the Board specifying the violation or attempted violation of the provisions of this Townhome Declaration, the facts and circumstances surrounding the violation, and the name of the Person alleged to have violated or attempted to have violated the provisions of this Townhome Declaration. The Board may initiate a proceeding at law or in equity to enforce the provisions of this Townhome Declaration, to prevent a violation or to obtain damages (for damage to the Common Elements or otherwise) resulting from the violation, or may otherwise enforce the provisions of this Townhome Declaration. The aggrieved Owner may exercise any of its rights to enforce the provisions of this Townhome Declaration if (i) the alleged violation or attempted or alleged violation results or would result in direct and immediate physical damage to the Owner's Unit; or (ii) the Townhome Association fails to enforce or cause enforcement of the violated provisions of this Townhome Declaration within 60 days after the Board receives the Owner's notice (or if the alleged violation or attempted alleged violation cannot reasonably be remedied or enforced within 60 days, if the Townhome Association fails to take reasonable steps to begin such remedy or enforcement within 60 days and fails to diligently pursue such remedy or enforcement to its completion).

(b) Injunctive Relief. Each provision of this Townhome Declaration with respect to the Townhome Association or the Common Elements shall be enforceable by Declarant or by any Owner by a proceeding for injunctive or declaratory relief.

(c) Additional Remedies. Each provision of this Townhome Declaration with respect to the Owner or a Unit shall be enforceable by Declarant or by the Townhome Association by any and all remedies available at law or in equity, including, but not limited to, all or any combination of the following remedies:

- (i) a proceeding for injunctive relief;
- (ii) a suit or action to recover damages; or
- (iii) in the discretion of the Townhome Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and its Guests from the use of any Common Elements and from participation in any Townhome Association affairs;
- (iv) requiring an Owner, at its expense, to remove any structure or Improvement on that Owner's Unit in violation of the Townhome Association Documents and to restore the Unit to its previous condition, and upon failure of the Owner to do so, the Board or its designee shall have the right to enter the Townhome Area, remove the violation and restore the Townhome Area to substantially the same condition as previously existed, and any such action shall not be deemed a trespass;
- (v) levying specific Assessments against the Owner's Unit to cover costs incurred by the Townhome Association to bring a Unit into compliance with the Townhome Association Documents (including, without limitation, reasonable attorney's fees and costs).

(d) Cure, Fines and Assessments. In addition to the rights and remedies described in Section 17.1(b) above, if an Owner fails to perform or observe any covenant or



condition to be performed or observed by such Owner under this Townhome Declaration or any other Townhome Association Document, the Townhome Association shall have the following rights and remedies:

(i) The Townhome Association may, but is not obligated to, cure such failure to comply at the Owner's sole cost and expense. If the Townhome Association cures any such failure to comply, the Owner shall pay to the Townhome Association the amount of all costs incurred by the Townhome Association in connection therewith, plus an additional amount equal to 15% of such costs for administrative expenses, within 30 days after the Owner receives a written invoice therefor from the Townhome Association.

(ii) The Townhome Association may impose fines upon the Owner, as a Specific Assessment and in accordance with a schedule of fines adopted and modified from time to time by the Board of Directors, but no fine shall imposed until after Notice and Opportunity to be Heard. The Owner shall pay any such fine to the Townhome Association within 30 days after the Owner receives written invoice therefor from the Townhome Association.

(iii) With respect to an Owner's failure to pay an installment of any Assessment, the Townhome Association may accelerate the due date for the payment of the full amount of the Assessment.

(iv) The Townhome Association shall have all other rights and remedies available to it under this Townhome Declaration, at law or in equity.

(e) Cumulative Remedies. All rights and remedies of the Townhome Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

17.2 Attorneys' Fees. In the event of any dispute under or with respect to this Townhome Declaration or any other Townhome Association Document, the prevailing party shall be awarded from the non-prevailing party all of its costs and expenses in connection therewith, including, without limitation, the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party. In the event that the Owner is the prevailing party, the Townhome Association shall not allocate any of the Townhome Association's costs and expenses, including attorneys' fees, in connection with the dispute to that Owner's Unit, despite allocation of such expenses to other Units as Common Expenses. It shall not be necessary for the Townhome Association to institute legal proceedings in order to recover its costs and expenses, including attorneys' fees.

17.3 Interest. If an Owner fails to pay to the Townhome Association any Assessment or other amount due to the Townhome Association as and when the same becomes due, the Owner shall pay to the Townhome Association interest on such unpaid amount at the rate of



18% per annum, or such other rate as the Board of Directors may establish from time to time, from the due date of such unpaid amount until the date paid.

17.4 **Nonwaiver.** Failure by Declarant, the Townhome Association or any Owner to enforce any covenant, condition, restriction, reservation, easement, Assessment, charge, lien or other provision of this Townhome Declaration or any other Townhome Association Document shall in no way be deemed to be a waiver of the right to do so thereafter.

ARTICLE XVIII

TERM AND AMENDMENTS

18.1 **Term.** The covenants, conditions, restrictions, reservations, easements, Assessments, charges and liens set forth in this Townhome Declaration shall run with and bind the Townhome Area until the Townhome Declaration is terminated pursuant to Section 18.2 below.

18.2 **Termination.** Subject to the rights of Mortgagees under ARTICLE XVI above, the Owners may terminate the Townhome and this Townhome Declaration, by the vote of 67% of the votes allocated to all Memberships. If the necessary votes are obtained, the agreement of the Owners to terminate the Townhome and this Townhome Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the Act. Upon Recordation of the termination agreement, the Townhome shall be terminated, this Townhome Declaration shall have no further force or effect, and the Townhome Association shall be dissolved. Notwithstanding the foregoing, the Owners may not terminate the Townhome during the Sales Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

18.3 **Amendments.**

(a) **Amendments of Townhome Declaration by Owners.** Except as otherwise expressly provided in this Townhome Declaration, and subject to provisions elsewhere contained in this Townhome Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Townhome Declaration may be amended, repealed, added to, or changed by the addition of new or different covenants, conditions or restrictions at any time and from time to time upon approval of Owners of Units to which at least 67% of the votes in the Townhome Association are allocated or such higher percentage as may be required by the Act.

An amendment to repeal shall be effective upon the recordation, in the real property records of all counties of which the Townhome is a part, of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Townhome Association.

(b) **Amendments Requiring Consent of First Mortgagees.** Notwithstanding the foregoing, and in addition to the requirements of Section 18.3(a), the following amendments to the Townhome Declaration shall require the prior approval of 51% of First Mortgagees:



- (i) voting rights;
- (ii) increases in Assessment by more than 25%;
- (iii) reductions in reserves for maintenance of Common Elements;
- (iv) Reallocation of interests in the Common Elements;
- (v) Redefinition of any unit boundaries;
- (vi) Convertibility of any units into common elements or visa versa;
- (vii) Expansion or contraction of the project, or the addition, annexation or withdrawn of property from the Project;
- (viii) Hazard or fidelity insurance;
- (ix) Imposition of any restrictions on leasing;
- (x) Impositions on Owners right to sell or convey their Units;
- (xi) Decision by the Townhome Association with 50 or more units to establish self-management if the project had previously been professionally managed;
- (xii) Restoration or repair after casualty or condemnation other than as specified in the Townhome Association Documents; and
- (xiii) Any provisions that expressly benefit mortgage holders, insurers or guarantors of a First Mortgage.

(c) Amendment Required by Agencies. Prior to 50 years after recording of this Townhome Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Townhome Declaration that an Agency or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Townhome Association, and shall not require the approval of any Owner. Any such amendment or repeal shall be effective upon the recordation in the real Townhome Area records of all counties of which the Community is a part, of a certificate setting forth the amendment or repeal in full.

(d) Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Townhome Declaration to the contrary, any proposed amendment or repeal of any provision of this Townhome Declaration reserving Development Rights or Special Declarant Rights or for the benefit of Declarant, or the assignees, shall not be effective unless Declarant, and its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate upon the expiration of the Declarant Control Period.

(e) Right of Declarant to Amend. Declarant may otherwise amend this Townhome Declaration without the consent of any Owner to the extent permitted by the Act.



ARTICLE XIX

DISCLOSURES AND WAIVERS

19.1 **No Assurance of Future Development.** Notwithstanding anything to the contrary contained in this Townhome Declaration or any other Townhome Association Document, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of Cobblestone, LLC can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be made subject to this Townhome Declaration, or that any such land, whether or not it has been subjected to this Townhome Declaration, is or will be committed to or developed for a particular use, or that such use will continue in effect.

19.2 **Unit Size and Value.** Notwithstanding anything to the contrary contained in this Townhome Declaration or any other Townhome Association Document, Declarant makes no warranties or representations whatsoever, and each Owner acknowledges and agrees that Declarant has not made and Owner is not relying upon any representations, with respect to such Owner's Unit, the size of the Unit, the size of any other Unit, the living or usable area of the Unit, the value of the Unit, or any other matter relating to the Unit or its suitability for Owner's intended purposes. In that regard, each Owner acknowledges and agrees that the Owner is not relying upon any square footage figures reflected in marketing or other materials distributed to Owner or Owner's agents, or otherwise represented to Owner, as such square footage figures may not reflect the actual living or usable area of the Unit (which may be smaller), and marketing and other materials distributed to Owner or Owner's agents may not comport with the square footage of the Unit for purposes of allocating voting rights and expenses within the Townhome applicable to the Unit.

19.3 **View Impairment.** Notwithstanding anything to the contrary contained in this Townhome Declaration or any other Townhome Association Document, Declarant makes no warranties or representations whatsoever that any scenic view or vista from any Unit will be preserved without impairment. In that regard, each Owner acknowledges and agrees that any scenic view or vista existing at any time may be lost as a result of construction of new buildings, structures or other improvements on any portion of the Annexable Property (whether or not such building, structure or improvement becomes part of the Townhome) or any adjacent area or modification of existing buildings, structures or other improvements, or as a result of the growth of trees, plants or other landscaping or as a result of any other cause and that scenic views or vistas may be impaired by actions of Declarant or any third party.

19.4 **Safety and Security.** The Townhome Association may, but shall not be obligated to, maintain or support certain activities within the Townhome designed to promote or enhance the safety and security of Owners and their Guests. No representation or warranty is made by Declarant or the Townhome Association that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Townhome, cannot be compromised or circumvented or that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and agrees, and shall be responsible for informing all of its Guests, that the Townhome Association, its Board and committees, and the Declarant are not insurers or guarantors of security or safety and that each Person within the Townhome assumes all risks of bodily injury and loss or damage to Townhome Area, including Units and the contents of Units, resulting from acts of third parties.



19.5 **Disruption from Development and Construction.** Notwithstanding anything to the contrary contained in this Townhome Declaration or any other Townhome Association Document, Declarant makes no warranties or representations whatsoever that the development of Cobblestone, LLC will not cause certain disruptions and inconveniences to Owners and Guests. In that regard, each Owner acknowledges and agrees that development of Cobblestone, LLC, including construction of buildings, structures and other improvements, is likely to cause noise, dirt, dust, odors, traffic disruption, temporary closure of facilities and other inconveniences associated with construction and development.

19.6 **Waiver by Owners.** By accepting title to a Unit, the Owner thereof acknowledges and agrees to each of the foregoing disclosures and disclaimers set forth in this ARTICLE XIX and fully and finally waives all claims against Declarant, its employees and agents with respect thereto or in any way arising therefrom or from the matters disclosed or disclaimed and against the Townhome Association, its Board and committees, and its employees and agents with respect to or in any way arising from the matters disclosed or disclaimed in Section 19.4, including, without limitation, any actual or alleged failure to provide adequate security or ineffectiveness of security measures undertaken.

19.7 **Validity of Amendments.** As provided by the Act, any action to challenge the validity of an amendment of this Townhome Declaration must be brought within one year after the amendment is recorded in the real Townhome Area records of all counties of which the Townhome is a part.

19.8 **No Representations or Warranties.** No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Townhome, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in this Townhome Declaration. ANY AND ALL WARRANTIES WITH RESPECT TO ANY PORTION OF THE TOWNHOME AREA OR ANY IMPROVEMENTS THEREON, EXPRESS OR IMPLIED, WHETHER ARISING UNDER FEDERAL OR STATE LAW (INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY SPECIFICALLY DISCLAIMED. DECLARANT AND THE TOWNHOME ASSOCIATION DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSON OR TOWNHOME AREA WITHIN THE TOWNHOME AREA. BY ACCEPTING A DEED TO A UNIT, AN OWNER AGREES THAT DECLARANT AND THE TOWNHOME ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED AND MADE MANDATORY IN THIS TOWNHOME DECLARATION AND THE TOWNHOME ASSOCIATION DOCUMENTS, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR TOWNHOME AREA WITHIN THE TOWNHOME AREA OR THE EXPANSION TOWNHOME AREA. To the greatest extent permitted by applicable law, the Townhome Association, its Board, the Board of Directors and its members, Declarant and any member, agent, employee, officer, director, or representation of any of them shall not be liable to any person or entity for any action or failure to act under this Townhome Declaration if the action or failure to act was in good faith and without malice.



ARTICLE XX

MISCELLANEOUS

20.1 **Interpretation of the Townhome Declaration.** Except for judicial construction, the Townhome Association, by its Board of Directors, shall have the exclusive right to construe and interpret the provisions of this Townhome Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Townhome Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and Townhome Area benefited or bound by the covenants and the provisions hereof.

20.2 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Townhome Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

20.3 **Townhome Map.** Declarant shall cause the Townhome Map to be prepared and Recorded in accordance with the Act.

20.4 **Reference to Townhome Declaration and Deeds.** Deeds to and instruments affecting any Unit or any other part of the Townhome may contain the provisions set forth herein by reference to this Townhome Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, Assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other Person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

20.5 **Successors and Assign of Declarant.** Any reference in this Townhome Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written Recorded instrument expressly assigning such rights and powers

20.6 **Caption and Titles.** All captions and titles of headings of Articles and Sections in this Townhome Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

20.7 **Exhibits.** All exhibits attached to this Townhome Declaration are a part of, and are incorporated into, this Townhome Declaration.

20.8 **Governing Law.** This Townhome Declaration shall be governed by and construed in accordance with Colorado law.

20.9 **Notices.** All Owners of each Unit shall have one and the same registered mailing address to be used by the Townhome Association or other Owners for notices, demands, and all other communications regarding Townhome Association matters. The Owner or the representative of the Owners of a Unit shall furnish such registered address and electronic mail address (email) to the secretary of the Townhome Association within 10 days after transfer of title



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to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized to represent the interests of all Owners of the Unit. If no address or email is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed the registered address of the Owners, and any notice shall be deemed duly given if delivered or sent to the Unit. All notices and demands intended to be served upon the Townhome Association shall be sent to the following address or such other address as the Townhome Association may designate from time to time by notice to the Owners:

Cobblestone Owner's Association

_____ Colorado _____

Attention: _____

Notices to any Mortgagees shall be given in accordance with the provisions of the Act, unless otherwise specified in this Townhome Declaration.

20.10 **No Public Dedication.** Nothing contained in this Townhome Declaration shall be deemed to be a dedication of any portion on the Townhome Area to the general public or for the general public or for any public purpose whatsoever. Declarant has caused its name to be signed as of the day and year first written above.

JACK B. SEARLE

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Jack B. Searle.

Witness my hand and official seal.

SEAL

My commission expires: _____

Notary Public



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EXHIBIT A

TOWNHOME DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
COBBLESTONE TOWNHOMES

Legal Description of Cobblestone

Lot 2A-X of the Jackson Minor Subdivision, recorded under the plat named "Town of Pagosa Springs Plat Amendment 2013 – 05" (Plat #974. Reception # 21306572)



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EXHIBIT B

TOWNHOME DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
COBBLESTONE TOWNHOMES

Legal Description of Townhome Area

Not applicable, will be amended at completion of development if necessary
See Exhibit A for additional property information.



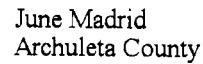
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EXHIBIT C

TOWNHOME DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
COBBLESTONE TOWNHOMES

Legal Description of Annexable Property

Not applicable, will be amended at completion of development if necessary
See Exhibit A for additional property information.





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EXHIBIT E

TOWNHOME DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
COBBLESTONE TOWNHOMES

Recording Data for Easement and Licenses

Not applicable, will be amended at completion of development if necessary
See Exhibit A for additional property information.