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Kristy Archuleta  
Archuleta County

**SECOND AMENDED & RESTATED  
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
COBBLESTONE TOWNHOMES**

**FEBRUARY 1, 2023**

*Return to  
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TABLE OF CONTENTS

ARTICLE I ESTABLISHMENT OF TOWNHOME ..... 2

    1.1 Townhome Declaration ..... 2

    1.2 Covenants Running with the Land ..... 2

ARTICLE II DEFINITIONS ..... 2

    2.1 Basic Definitions ..... 2

    2.2 Gender and Number ..... 8

ARTICLE III UNITS AND COMMON ELEMENTS ..... 8

    3.1 Units ..... 8

    3.2 Allocated Interests ..... 8

    3.3 Limited Common Elements ..... 9

    3.4 Separate Taxation of Units ..... 9

    3.5 Description of Units ..... 10

ARTICLE IV THE TOWNHOME ASSOCIATION ..... 10

    4.1 Formation of the Townhome Association ..... 10

    4.2 Purposes and Powers ..... 10

    4.3 Townhome Association Documents ..... 11

    4.4 Access to Books and Records ..... 12

ARTICLE V MEMBERSHIP AND VOTING ..... 12

    5.1 Membership ..... 12

    5.2 Voting, Generally ..... 13

    5.3 Notice of Meetings ..... 13

    5.4 Participation in Meetings ..... 13

    5.5 Fractional Voting ..... 14

    5.6 Proxies ..... 14

    5.7 Rejection of Votes ..... 14

    5.8 Compliance with the Act ..... 14

    5.9 No Voting Rights for Townhome Association ..... 14

ARTICLE VI BOARD OF DIRECTORS ..... 14

    6.1 Number, Qualifications and Election of Directors ..... 14

    6.2 Powers of the Board of Directors ..... 15

    6.3 Consideration by Entire Board ..... 15

    6.4 Removal of Directors ..... 15

    6.5 Attorney-Client Privilege ..... 16

ARTICLE VII ASSESSMENTS, COMMON EXPENSES, BUDGETS  
& LIENS ..... 16

7.1 Obligations for Assessments ..... 16

7.2 Shares of Common Expenses ..... 17

7.3 Budgets ..... 18

7.4 General Assessments ..... 19

7.5 Special Assessments ..... 21

7.6 Specific Assessments ..... 21

7.7 Assignment of Assessments ..... 22

7.8 Effect of Non-Payment of Assessments ..... 22

7.9 Assessment Lien ..... 23

7.10 Waiver of Homestead Exemption ..... 24

7.11 Estoppel Certificate: Notice to Mortgagees ..... 24

7.12 Sale of Unit; Transfer Payments ..... 25

ARTICLE VIII UTILITY AND OTHER SERVICES ..... 25

8.1 Water and Sewer Services ..... 25

8.2 Natural Gas ..... 26

8.3 Electric ..... 26

8.4 Cable Television ..... 26

8.5 Telephone and Data Transmission ..... 26

8.6 Trash Removal ..... 27

8.7 Snow Removal ..... 28

8.8 Other Utilities ..... 28

ARTICLE IX MAINTENANCE OF COMMON ELEMENTS AND UNITS ... 28

9.1 Maintenance of Common Elements ..... 28

9.2 Maintenance of Units ..... 28

9.3 Owner’s Failure to Maintain or Repair ..... 29

9.4 Mechanic’s Liens and Indemnification ..... 29

9.5 Townhome Association Warranty Disclaimer ..... 29

ARTICLE X COVENANTS, CONDITIONS AND RESTRICTIONS..... 30

10.1 Applicability of Covenants, Conditions and Restrictions ..... 30

10.2 Townhome Association Documents..... 30

10.3 Transfer of Title and Notice of Conveyance, Assignment  
or Encumbrance ..... 30

10.4 Use of Units..... 30

10.5 Use of Common Elements ..... 31

10.6 Alterations ..... 31

10.7 Nuisances, Hazardous Activities and Unsightliness ..... 32

10.8 Signs . . . . . 32  
10.9 Compliance with Laws . . . . . 33  
10.10 Compliance with Insurance . . . . . 33  
10.11 Subdivision, Rezoning and Timesharing . . . . . 33  
10.12 Parking Spaces . . . . . 33  
10.13 Deliveries, Trash Removal and Other Services . . . . . 33  
10.14 Exterior Storage . . . . . 33  
10.15 Animals . . . . . 33  
10.16 Annoying Sounds or Odors . . . . . 34  
10.17 No Unsightliness . . . . . 34  
10.18 Restrictions on Garbage and Trash . . . . . 34  
10.19 No Temporary Structures . . . . . 34  
10.20 Restriction on Antennae, Pipes and Utility Lines . . . . . 34  
10.21 Right of Board Regarding Rules and Regulations and Policies . . . 34  
10.22 Restrictions Subject To The Act . . . . . 34

ARTICLE XI EASEMENT AND RESERVATIONS . . . . . 35

11.1 Utility Easement . . . . . 35  
11.2 Townhome Association’s Easement . . . . . 35  
11.3 Owners’ Easements . . . . . 36  
11.4 Liabilities of Owners for Damage . . . . . 36  
11.5 Power to Grant Easements . . . . . 37  
11.6 Easement for Encroachments . . . . . 37  
11.7 Emergency Access Easement . . . . . 37  
11.8 Recorded Easements and Licenses . . . . . 37

ARTICLE XII INSURANCE . . . . . 37

12.1 General Insurance Provisions . . . . . 37  
12.2 Property Insurance Coverage . . . . . 37  
12.3 Comprehensive Liability . . . . . 38  
12.4 Form . . . . . 38  
12.5 Owner’s Insurance . . . . . 38  
12.6 Certificates of Insurance: Cancellation . . . . . 39  
12.7 Insurance Proceeds . . . . . 39  
12.8 Insurer Obligations . . . . . 39  
12.9 Repair and Replacement . . . . . 39  
12.10 Common Expenses . . . . . 40  
12.11 Workers’ Compensation Insurance . . . . . 40  
12.12 Other Insurance . . . . . 40  
12.13 Unit Owner’s Claim . . . . . 40  
12.14 Deductibles . . . . . 40

ARTICLE XIII CONDEMNATION ..... 41

    13.1 Condemnation of All Units ..... 41

    13.2 Condemnation of Fewer Than All Units ..... 41

    13.3 Condemnation of Common Elements ..... 41

ARTICLE XI MORTGAGEEE PROTECTIONS ..... 42

    14.1 Benefit of Mortgagees ..... 42

    14.2 Notice of Actions ..... 42

    14.3 Consent Required ..... 42

    14.4 Notice of Objection ..... 42

    14.5 First Mortgagees' Rights ..... 43

    14.6 Limitations on First Mortgagees' Rights ..... 43

ARTICLE XV ENFORCEMENT AND REMEDIES ..... 43

    15.1 Enforcement ..... 43

    15.2 Attorneys' Fees ..... 45

    15.3 Interest ..... 45

    15.4 Nonwaiver ..... 45

ARTICLE XVI TERM AND AMENDMENTS ..... 46

    16.1 Term ..... 46

    16.2 Termination ..... 46

    16.3 Amendments ..... 46

ARTICLE XVII DISCLOSURES AND WAIVERS ..... 47

    17.1 Unit Size and Value ..... 47

    17.2 View Impairment ..... 47

    17.3 Safety and Security ..... 47

    17.4 Disruption from Development and Construction ..... 47

    17.5 Waiver by Owners ..... 48

    17.6 Validity of Amendments ..... 48

    17.7 No Representations or Warranties ..... 48

ARTICLE XVIII MISCELLANEOUS ..... 49

    18.1 Interpretation of the Townhome Declaration ..... 49

    18.2 Severability ..... 49

    18.3 Townhome Map ..... 49

    18.4 Reference to Townhome Declaration and Deeds ..... 49

    18.5 Caption and Titles ..... 49

    18.6 Exhibits ..... 49

    18.7 Governing Law ..... 49

**\*22300995\***

22300995  
6 of 58

3/13/2023 2:13 PM  
R\$298.00 DS\$0.00

Kristy Archuleta  
Archuleta County

18.8 Notices ..... 49  
18.9 No Public Dedication ..... 50

v

LIST OF EXHIBITS

EXHIBIT A Legal Description of the Townhome ..... 51  
EXHIBIT B Common Elements Interests and Assessments .....52

v

**SECOND AMENDED & RESTATED**

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

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COBBLESTONE TOWNHOMES (this “Second Amended and Restated Townhome Declaration”) is made as of February 1, 2023, by the Cobblestone Townhome Owners’ Association, Inc., a Colorado nonprofit corporation (defined below as “the Townhome Association”) and the Owners (as hereinafter defined).

**RECITALS**

A. The Townhome Association and Owners desire to amend and restate that certain Amended & Restated Declaration Of Covenants, Conditions And Restrictions For Cobblestone Townhomes acknowledged December 10, 2014, recorded on December 10, 2014, at Reception No. 21407414 in the office of the Archuleta County Clerk and Recorder (the “2014 Declaration”), which in turn had amended and restated that certain Declaration of Covenants, Conditions, and Restrictions for Cobblestone Townhomes recorded on November 15, 2013, at Reception No. 21307739 in the office of the Archuleta County Clerk and Recorder ( “the Original Declaration”).

B. The purpose for amending and restating the 2014 Declaration is to, among other things, (i) correct typographical errors; (ii) make modifications and clarifications to certain insurance provisions, and other provisions; (iii) recognize the completion of the Townhome and the end of the Development Rights Period and the Declarant Control Period, ; and (iv) amend and create additional provisions that bring the Townhome Association and the Townhome Association Documents into compliance with changes in Colorado law governing the operation of common interest pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes §§ 38-33.3-101 et. Seq. (the “Act”).

C. The real property described on Exhibit A, attached hereto and made a part hereof, is owned by the Townhome Association and the Owners and is hereby subjected to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Second Amended and Restated Declaration. The common interest community created by the Original Declaration, as amended by the 2014 Declaration and this Second Amended and Restated Declaration is a phased community pursuant to C.R.S. 38-33.3-103 (21.5).

D. This Second Amended and Restated Declaration shall supersede and replace, in their entirety, the Original Declaration and the 2014 Declaration of record in Archuleta County real property records. The changes in this Second Amended and Restated Declaration are intended to be effective prospectively only in respect to the Declarant’s duties and responsibilities set forth in the 2014 Declaration.

In consideration of the foregoing, the Townhome Association and the Owners hereby declare as follows:

**ARTICLE I  
ESTABLISHMENT OF TOWNHOME**

1.1 **Townhome Declaration.** BWD, LLC, a Colorado limited liability company (“Declarant”), created the townhome named “**COBBLESTONE TOWNHOMES**” on and from the Townhome Area (as such term is defined below) and declared that the Townhome Area would be held, sold, and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of the Original Declaration, and subsequently amended and restated the Original Declaration in the 2014 Declaration.

1.2 **Covenant Running with the Land.** All covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of the 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 the Townhome Declaration shall bind and inure to the benefit of 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 Second Amended and Restated Townhome Declaration, the following terms have the meanings given in this Section.

(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 5.2 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 B.

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

(e) “Assessment” means a General Assessment, a Special Assessment, or a Specific Assessment levied and assessed pursuant to ARTICLE VII below.

(f) “Assessment Lien” has the meaning given to that term in Section 7.9(a) below.

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

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

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

(j) “Townhome” means COBBLESTONE TOWNHOMES, the townhome common interest community created pursuant to the Act on the Townhome Area by the Original Declaration, as amended and restated, consisting of the Units and the Common Elements.

(k) “Townhome Area” means the real property set forth on Exhibit A, 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 the Townhome Declaration in accordance with the terms and conditions contained herein. A preliminary plat for the development of the real property comprising the Townhome Area is included in the DIA.

(l) “Townhome Association” means Cobblestone Townhome Owner’s Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

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

(n) “Townhome Map” means the recorded as-built plats for each phase of the project as the same may be amended or supplemented from time to time.

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

(p) “**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.

(q) “**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.

(r) “**Declarant**” means BWD, LLC a Colorado limited liability company, 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 and obligations of Declarant set forth in the Townhome Declaration or any other Townhome Association Document.

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

(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 electronic means or first class mail to all Owners; (ii) mailing or electronically transmitting 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.

(u) “**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.

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

(w) “**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:

space; and  
(a) Any balcony, patio, deck, basement, roof or mezzanine or outside

(b) Any Common Elements;

(x) "**General Assessment**" has the meaning given to that term in Section 7.4 below.

(y) "**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, 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 Second Amended and Restated Townhome Declaration, or by the Townhome Map as Units or Limited Common Elements.

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

(aa) "**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 the Townhome Declaration 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.

(bb) "**Including**" means "including, but not limited to."

(cc) "**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.

(dd) "**Limited Common Elements**" means those portions of the Common Elements allocated by this 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 physical portion of the Townhome that is designated on the Townhome Map as **Limited Common Element,** or **LCE.**

(ii) any shutters, awnings, window 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.

(iii) any shutters, awnings, window boxes, doorstops, stoops, porches, balconies, and patios allocated exclusively to that Unit.

(iv) 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 is a part of the Limited Common Elements subject to Special Assessment and apportionment pursuant to Section 7.5(b) below. Nonstructural walls located wholly within a Unit are Limited Common Elements appurtenant to the Units in which they are located.

(ee) **Majority** means any percentage greater than 50%.

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

(gg) **Membership** means a membership in the Townhome Association and the rights granted to and obligations imposed upon Owners pursuant to this Second Amended and Restated Townhome Declaration and the other Townhome Association Documents to participate in the Townhome Association.

(hh) **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.

(ii) **Mortgagee** means any Person named as a mortgagee or beneficiary in any Mortgage and aii successor to the interest of any such Person under a Mortgage.

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

(kk) **Officer** means a duly elected or appointed officer of the Townhome Association.

(ll) **“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. **“Owners”** means one or more Owner, or all the Owners collectively, as the context requires.

(mm) **“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.

(nn) **“Purchaser”** means a Person who acquires legal title to the fee simple interest in any Unit or portion thereof.

(oo) **“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.

(pp) **“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.

(qq) **“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.

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

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

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

(uu) **“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, floors, doors, and windows thereof, the bottom of the ceiling joists, and the top of the subflooring in the case of pier and beam foundations and the top of the slab in the case of slab foundations, including all lath, furring, wallboard, plasterboard, plaster, paneling, floor and ceiling tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof. All other portions of the walls, floors or ceilings are a part of the Common Elements. A Unit shall include any drywall (and related taping, bedding, and texture), wall paneling, wood flooring, 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. Units do not include the undecorated or unfinished surfaces of the perimeter walls, floors, or ceilings. All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. The lower boundary for each Unit is the top of the subflooring in the case of pier and beam foundations and the top of the slab in the case of slab foundation. The upper Unit boundary for each Unit is the bottom of the ceiling joists.

(vv) **“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 thl1.1e singular.

**ARTICLE III  
UNITS AND COMMON ELEMENTS**

3.1 **Units**

(a) **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 the Townhome Declaration.

(b) **Partition.** Except as expressly provided to the contrary in this Second Amended and Restated 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, severed, or separated from the Unit or any part thereof.

(c) Notwithstanding anything to the contrary contained in **Section 3.1(a)** above, **Section 3.1(b)** above or elsewhere in this Second Amended and Restated Townhome Declaration, 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 B** 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 B.**

(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 Second Amended and Restated Townhome Declaration, an Allocated Interest may not be partitioned or severed 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 Second Amended and Restated 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 Second Amended and Restated 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 Second Amended and Restated 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 Second Amended and Restated 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 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.

**3.5 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 the Second Amended 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 definition of Unit is in Section 2.1(uu). The provisions of §38-33.3-202 of the Act, entitled "Unit Boundaries," are applicable to the Units except to the extent inconsistent with this Declaration.

**ARTICLE IV  
THE TOWNHOME ASSOCIATION**

4.1 Formation of the Townhome Association. Declarant formed the Townhome Association on or about October 22, 2014.

**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 as provided in this Declaration ;

(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 Second Amended and Restated Townhome Declaration to the contrary, the Townhome 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;
- (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 Second Amended and Restated Townhome Declaration amends and restates the 2014 Declaration, setting et 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 Second Amended and Restated Townhome Declaration as amended and restated touch and concern the Townhome Area 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 Second Amended and Restated Townhome Declaration and the terms and conditions of the Townhome Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Second Amended and Restated 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 twenty one (21) 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'

**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 Second Amended and Restated 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 Townhomes. 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 shall be void and have no force or effect. .

(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, 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 within the Townhome Area. The voting allocation is more particularly described in Exhibit B attached hereto and incorporated herein.

(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, except that the Board 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 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, **“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 Second Amended and Restated Townhome Declaration or in the Bylaws of the Townhome Association, no term pertaining to voting requirements in this Second Amended and Restated 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.** The Board 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, each Membership, in accordance with the Allocated Interests, shall be entitled to one vote for each position on the Board 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. Except as provided in this Second Amended and Restated 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 Second Amended and Restated Townhome Declaration; (ii) terminate the Townhome created pursuant to this Second Amended and Restated 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 Second Amended and Restated 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.

(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 Removal of Directors. Notwithstanding any provision of this Second Amended and Restated 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 Director, with or without cause.

6.5 **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.** 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) Special Assessments; (iii) Specific Assessment; and (iv) 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 Second Amended and Restated Townhome Declaration or any other Townhome Association Document.

(b) **Obligation to Pay.** Notwithstanding the definition of the term "Owner," a Person who acquires a Unit in a foreclosure sale or by deed-in-lieu of foreclosure shall be personally liable for all Assessments and other charges that the Townhome Association is required or permitted or levy or impose on that Unit or on the Owner of that Unit. 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, 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 is not properly exercising its duties and powers under this Second Amended and Restated 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 Subsection, 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 other entities for payment of Common Expenses.

**7.2 Shares of Common Expenses.**

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

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

(d) 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 public street adjacent to which the building is located;

(ii) Maintenance and repair of the streets and walkways, including any lighting serving such streets and 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 public street adjacent to which the building is located;

(iii) Maintenance of the landscaping of the common areas and streets 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 public street adjacent to which the building is located.

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

(e) 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.

(f) 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 Second Amended and Restated Townhome 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 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.

(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. 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 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 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, reject the proposed amendment. A quorum is not required for such meeting.

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 shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board 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 so elects, General Assessments may be paid in monthly installments. Unless the Board otherwise provides, General Assessments shall be due and payable in advance on the first day of each month or other applicable pay period as established by the Board. If any Owner is delinquent in paying any Assessments or charges levied against his Unit, the Board 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 15<sup>th</sup> day following the due date unless otherwise specified by resolution of the Board.

(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, 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 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, 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 deems appropriate. By way of example, such assessments could include any portion of an assessment intended for exterior maintenance, insurance, or replacement reserves which pertain to a particular Unit. 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 are referred to in this Second Amended and Restated 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 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 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) Deductibles. Any insurance deductible paid by the Townhome Association in connection with an insurance claim pursuant to Article 13.

(e) 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.

(f) 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.

(g) 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 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.

7.8 Effect of Non-Payment of Assessments. Any Assessment, charge or fee provided for in this Second Amended and Restated 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 other entities for payment of Common Expenses.

7.9 **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 the Original 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 Second Amended and Restated 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 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.

7.10 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.

7.11 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 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.

**7.12 Sale of Unit; Transfer Payments.**

(a) Payment at Closing. At the closing of the sale of a Unit to a Purchaser, the Purchaser shall pay to the Townhome Association a transfer payment in an amount equal to one-sixth of the then current annual General Assessment applicable to the Unit for the fiscal year in which the sale of the Unit occurs. The Townhome Association may use the transfer payment to cover expenses related to the transfer, operating expenses, and other expenses it incurs pursuant to this Townhome Declaration and the Bylaws.

(b) No Credit Against Other Assessments. Payments by Purchasers to the Townhome Association at closings under Section 7.12(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 Assessments. Upon the sale of a Unit from one Owner to another, the Townhome Association shall not be obligated to return to the transferor any 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. The Board may cause the common meter to be converted to separate meters for each Unit, or otherwise allocate water usage among the Units using technology the Board within its sole discretion considers to be reasonably accurate and reliable. If separate meters are installed, each Owner will open an account with such utility provider within seven days of notice by the Townhome Association and pay all charges for consumption of water directly to the utility or service company providing the same. If a technology other than separate metering is adopted, the Owners shall pay the Townhome Association for all charges allocated to the Units by the Townhome Association. The cost of conversion from a common meter to separate meters or installation of the alternate technology may be allocated by the Board as Specific Assessments against each Unit.

(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. The Townhome Association shall be responsible for obtaining natural gas services for all portions of the Townhome as long as natural gas services are reasonably available.. Natural gas service to all Units shall be separately metered.

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.

8.4 Cable Television.

(a) If available, Owners may obtain cable television 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 the Townhome. Owners are responsible for trash removal for their respective Units and Limited Common Elements, and for removal of all trash introduced to the General Common Elements by the Owner or the Owner's Guests. The Townhome Association may adopt and enforce Rules and Regulations further defining and implementing trash removal obligations.

(b) Common Expenses. If the Townhome Association incurs expenses for trash removal services, Common Expenses incurred by the Townhome Association for trash removal services shall be allocated as follows:

(i) All expenses incurred by the Townhome Association for trash removal services from the General Common Elements that can be identified as having been introduced to the Townhome by an Owner or the Owner's Guests shall be charged to the Owner as a Specific Assessment.

(ii) All other 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 if not already budgeted by the Board.

(ii) All 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 expenses from the expenses described in Sections 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.** The Townhome Association is responsible for snow removal from Cobblestone Lane and parking areas that are part of the General Common Elements where and when necessary, using snow blowing equipment, shovels, etc. as deemed appropriate by the maintenance company hired by the Townhome Association. Owners are responsible for removal of snow from driveways, sidewalks, doorsteps, entryways, decks, and patios. The Board may adopt additional specific guidelines in the Rules and Regulations related snow removal.

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, 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 Second Amended and Restated Townhome Declaration, the 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, 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, remove, 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 all portions 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 driveways, walkways, porches, 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 its Limited Common Elements 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, 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 Second Amended and Restated 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, the Townhome Association, 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 **Townhome Association Warranty Disclaimer.** **THE TOWNHOME ASSOCIATION EXPRESSLY DISCLAIMS ANY WARRANTIES WITH RESPECT TO UNITS AND 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, CONSTRUCTION IN A WORKMANLIKE MANNER, ABSENCE OF ANY DEFECTS, CONFORMANCE TO ANY PLANS AND SPECIFICATIONS, COMPLIANCE WITH BUILDING CODES OR OTHER REQUIREMENTS, OR ABSENCE OF MOLD, RADON, RADIATION OR ELECTROMAGNETIC FIELDS.** The provisions of this Section shall not limit any warranties made by Declarant or third parties not affiliated with Declarant or the Townhome Association.

**ARTICLE X  
COVENANTS, CONDITIONS AND RESTRICTIONS**

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

10.2 **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.

10.3 **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.

10.4 **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 Townhome 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 Townhome 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.

**10.5 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.

**10.6 Alterations.**

(a) Prohibited Alterations. Except as otherwise expressly provided in this Second Amended and Restated Townhome Declaration, an Owner of a Unit may not make any improvement or alteration to a Common Element, any improvement or alteration to the exterior of its Unit, 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.

(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 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 the Board or as otherwise provided in the Townhome Association Documents), and then only in strict accordance with the terms and conditions of the Townhome Association Documents.

**10.7 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. By accepting a deed to a Unit, each Owner acknowledges that the Townhome is a part of Cobblestone Townhomes 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, and each Owner specifically accepts the disturbances occurring in relation to the activities above and hereby waives, and holds 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, trailers, toy haulers, snow mobiles, off road vehicles, or people living in RV's shall be permitted in the Townhome Area.

**10.8 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 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 may adopt Rules and Regulations prohibiting, restricting, or regulating political signs.

10.9 **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.

10.10 **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.

10.11 **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 Second Amended and Restated 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.

10.12 **Parking Spaces. Assignment of Parking Spaces.** Townhome parking spaces will be provided for Owner’s Guest as required by the Town of Pagosa Springs. There shall be no additional assigned outside parking for Owners. Common Area parking is for Guests only.

10.13 **Deliveries, Trash Removal and Other Services.** Each Owner acknowledges that the Townhome 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 Townhome. Accordingly, by accepting title to a Unit, an Owner acknowledges that the Townhome 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 Townhome 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.

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

10.15 **Animals.** Except as may be otherwise authorized in writing by the 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 the Townhome. Owners must clean up all feces from their animals at all times and at all places within the boundaries of the Townhome. 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.

10.16 **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.

10.17 **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.

10.18 **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.

10.19 **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.

10.20 **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.

10.21 **Right of Board Regarding Rules and Regulations and Policies**. In furtherance of the purposes of this Second Amended and Restated 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.

10.22 **Restrictions Subject To The Act**. Notwithstanding anything in this Second Amended and Restated Townhome Declaration to the contrary, no restrictions in this Second Amended and Restated 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 XI  
EASEMENT AND RESERVATIONS**

**11.1 Utility Easement.**

(a) Creation of Easements. Subject to the terms and conditions of this Second Amended and Restated Townhome Declaration and all other Townhome Association Documents, the Townhome Association 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 Townhome Association. The Townhome Association may, but is not obligated to, authorize the release of portions of the general easement created pursuant to this Section 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, 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 10.6 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, and other utility and service companies.

**11.2 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 Second Amended and Restated Townhome Declaration or any other Townhome Association Document; and

(ii) perform any obligation imposed upon the Townhome Association by this Second Amended and Restated 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.

11.3 **Owners' Easements.** Subject to Section 11.4, 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 Second Amended and Restated 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. 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 MAY BE USED AND ENJOYED AS A RESULT OF OWNING A PARTICULAR UNIT. FOR PRIVACY PURPOSES, WALKING BEHIND ANOTHER OWNER'S UNIT IS PROHIBITED.** 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 Townhome Association, such as, but not limited to, for closure for repairs and maintenance

11.4 **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 Guest of the Owner, and for any violation by such Owner or Guest of this Second Amended and Restated 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 Second Amended and Restated 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.

11.5 **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.

11.6 **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.

11.7 **Emergency Access Easement.** The Townhome Association 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.

11.8 **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 or of use as of the date of Recordation of this Second Amended and Restated Townhome Declaration. In addition, the Townhome Area is subject to all easements created or permitted by this Second Amended and Restated Townhome Declaration.

**ARTICLE XII  
INSURANCE**

12.1 **General Insurance Provisions.** The Townhome Association shall acquire and pay for, out of the Assessments levied under Article VII, the insurance policies described in Section 12.2 and Section 12.3 carried with reputable insurance companies authorized to do business and licensed to provide insurance in Colorado:

12.2 **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 including* any fixtures, equipment or other property within the Units when originally sold by Declarant to an Owner and like-kind replacements therefor, *but excluding the incremental costs related to* any betterments and improvements made by Owners (after the transfer of title to the Unit by Declarant). 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 Townhome 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 7.9 hereof in the event the Townhome Association pays such premium for an Owner. Subject to Section 12.4 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.

12.3 **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 Townhome Association is named as an additional insured.

12.4 **Form.** The insurance policies may be carried in blanket policy form 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, or if the Owner is an entity, its equity owners and members of their households. 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 Townhome Association's policy shall provide primary insurance.

12.5 **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. If the Owner has a vacation rental license issued by the City of Pagosa Springs or is using the Unit as a short term rental within the meaning of the City of Pagosa Springs Code of Ordinances, the Owner will maintain short term insurance coverage. Each Owner of a Unit shall provide the Townhome 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.

12.6 **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 Townhome 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.

12.7 **Insurance Proceeds.** Any loss covered by the property insurance policy described in Section 12.1 must be adjusted with the Townhome 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 Townhome Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 12.8 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.

12.8 **Insurer Obligation.** An insurer that has issued an insurance policy for the insurance described in this Article 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 Mortgagee.

12.9 **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 Townhome 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 Townhome 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; or

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

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, any excess insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to each Unit's Allocated Interests.

12.10 **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 Townhome 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.

12.11 **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.

12.12 **Other Insurance.** The Townhome Association may but is not required to maintain flood insurance if any part of the Townhome is located within a Special Flood Hazard Area on a Flood Insurance Rate Map. If required or deemed necessary and not maintained by the Townhome Association, flood insurance will be the sole responsibility of each Owner.

12.13 **Unit Owner's Claim.** Any 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.

12.14 **Deductibles.** Any applicable deductible in connection with an insurance claim shall be the responsibility of the Owner of the Unit involved in the claim. If more than one Unit is involved

in a claim, the responsibility for the deductible shall be apportioned by the Board between the Owners of the affected Units on a basis the board considers equitable. The Townhome Association may pay the deductible and levy a Special Assessment against the affected Unit or Units pursuant to Section 7.5(b) above.

**ARTICLE XIII  
CONDEMNATION**

13.1 **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.

13.2 **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.

13.3 **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 Owners to represent all 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 XIV  
MORTGAGEE PROTECTIONS**

14.1 **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.

14.2 **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; and

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

14.3 **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 51% 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; or

(b) **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.

14.4 **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 30 days following the date of written notice of such proposed action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.



**14.5 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.

**14.6 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;

(b) prevent the Townhome Association or the Board 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.

**ARTICLE XV  
ENFORCEMENT AND REMEDIES**

**15.1 Enforcement.**

(a) General. Every Owner and Guest 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 Second Amended and Restated Townhome Declaration, subject to the further provisions of this Subsection. Before an aggrieved Owner may prosecute any proceeding at law or in equity enforcing the provisions of this Second Amended and Restated Townhome Declaration or seeking other relief relating to a violation or attempted violation of the provisions of this Second Amended and Restated Townhome Declaration, the Owner will first give written notice to the Board specifying the violation or attempted violation of the provisions of this Second Amended and Restated 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 Second Amended and Restated

Townhome Declaration. The Board may initiate a proceeding at law or in equity to enforce the provisions of this Second Amended and Restated 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 Second Amended and Restated Townhome Declaration. The aggrieved Owner may exercise any of its rights to enforce the provisions of this Second Amended and Restated 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 Second Amended and Restated 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 Second Amended and Restated Townhome Declaration with respect to the Townhome Association or the Common Elements shall be enforceable by any Owner by a proceeding for injunctive or declaratory relief.

(c) Additional Remedies. Each provision of this Second Amended and Restated Townhome Declaration with respect to the Owner or a Unit shall be enforceable 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 15.1(c) above, if an Owner fails to perform or observe any covenant or condition to be performed or observed by such Owner under this Second Amended and Restated 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, 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 Second Amended and Restated 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.

15.2 Attorneys' Fees. In the event of any dispute under or with respect to this Second Amended and Restated 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.

15.3 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 may establish from time to time, from the due date of such unpaid amount until the date paid.

15.4 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 Second Amended and Restated 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 XVI  
TERM AND AMENDMENTS**

16.1 **Term.** The covenants, conditions, restrictions, reservations, easements, Assessments, charges and liens set forth in this Second Amended and Restated Townhome Declaration shall run with and bind the Townhome Area until the Second Amended and Restated Townhome Declaration is terminated pursuant to Section 16.2 below.

16.2 **Termination.** Subject to the rights of Mortgagees under ARTICLE XV above, the Owners may terminate the Townhome and this Second Amended and Restated 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 Second Amended and Restated 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 Second Amended and Restated Townhome Declaration shall have no further force or effect, and the Townhome Association shall be dissolved.'

16.3 **Amendments.**

(a) Amendments of Second Amended and Restated Townhome Declaration by Owners. Except as otherwise expressly provided in this Second Amended and Restated Townhome Declaration, and subject to provisions elsewhere contained in this Second Amended and Restated Townhome Declaration requiring the consent of others, any provision, covenant, condition, restriction or equitable servitude contained in this Second Amended and Restated 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 16.3(a), the prior approval of 51% of First Mortgagees shall be required if an amendment substantively and adversely affects the security interest of the First Mortgagee.

(c) Amendment Required by Agencies. Prior to 50 years after recording of this Second Amended and Restated Townhome Declaration, any provision, covenant, condition, restriction, or equitable servitude contained in this Second Amended and Restated 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 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 Townhome is a part, of a certificate setting forth the amendment or repeal in full.

**ARTICLE XVII  
DISCLOSURES AND WAIVERS**

17.1 **Unit Size and Value.** Notwithstanding anything to the contrary contained in this Second Amended and Restated Townhome Declaration or any other Townhome Association Document, the Townhouse Association makes no warranties or representations whatsoever, and each Owner acknowledges and agrees that the Townhouse Association 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.

17.2 **View Impairment.** Notwithstanding anything to the contrary contained in this Second Amended and Restated Townhome Declaration or any other Townhome Association Document, the Townhouse Association 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 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 the Townhouse Association or any third party.

17.3 **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 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 and its Board and committees 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.

17.4 **Disruption from Maintenance.** Notwithstanding anything to the contrary contained in this Second Amended and Restated Townhome Declaration or any other Townhome Association Document, the Townhouse Association makes no warranties or representations whatsoever that the maintenance of the Townhome will not cause certain disruptions and inconveniences to Owners and Guests. In that regard, each Owner acknowledges and agrees that maintenance of the Townhomes, is

likely to cause noise, dirt, dust, odors, traffic disruption, temporary closure of facilities and other inconveniences associated with such maintenance.

17.5 **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 and finally waives all claims against the Townhome Association, its employees, Board members, 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 17.4, including, without limitation, any actual or alleged failure to provide adequate security or ineffectiveness of security measures undertaken.

17.6 **Validity of Amendments.** As provided by the Act, any action to challenge the validity of an amendment of this Second Amended and Restated 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.

17.7 **No Representations or Warranties.** No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by the Townhome Association, its Board Members, its agents, or its 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 Second Amended and Restated 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. THE TOWNHOME ASSOCIATION DISCLAIMS 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 THE TOWNHOME ASSOCIATION IS ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED AND MADE MANDATORY IN THIS SECOND AMENDED AND RESTATED 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, the Board and its members, 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 Second Amended and Restated Townhome Declaration if the action or failure to act was in good faith and without malice.

**ARTICLE XVIII  
MISCELLANEOUS**

**18.1 Interpretation of the Second Amended and Restated Townhome Declaration.**

Except for judicial construction, the Townhome Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Second Amended and Restated 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.

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

18.3 **Townhome Map.** Declarant has caused the Townhome Map to be prepared and Recorded in accordance with the Act.

**18.4 Reference to Second Amended and Restated 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 Second Amended and Restated 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.

18.5 **Caption and Titles.** All captions and titles of headings of Articles and Sections in this Second Amended and Restated 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.

18.6 **Exhibits.** All exhibits attached to this Second Amended and Restated Townhome Declaration are a part of, and are incorporated into, this Second Amended and Restated Townhome Declaration.

18.7 **Governing Law.** This Second Amended and Restated Townhome Declaration shall be governed by and construed in accordance with Colorado law.

18.8 **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 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. Notices to any Mortgagees shall be given in accordance with the provisions of the Act, unless otherwise specified in this Second Amended and Restated Townhome Declaration.

18.9 **No Public Dedication.** Nothing contained in this Second Amended and Restated 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.

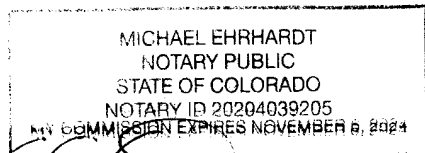
COBBLESTONE TOWNHOMESOWNERS' ASSOCIATION, INC.

By:   
President of the Board of Directors


STATE OF COLORADO )  
 ) ss.  
COUNTY OF ARCHULETA )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 2023 by KRISTIN McCOLLUM, President of the Board of Directors of COBBLESTONE TOWNHOMESOWNERS' ASSOCIATION, INC.

Witness my hand and official seal.



SEAL  
My commission expires: Nov 6, 2024

  
Notary Public

I, Richard E. Roberts, Secretary of the COBBLESTONE TOWNHOMES OWNERS' ASSOCIATION, INC., certify that the above and foregoing Second Amended & Restated Declaration Of Covenants, Conditions & Restrictions For Cobblestone Townhomes dated February 1, 2023, were duly adopted by at least 67% of the votes in the Townhome Association during the months of January, February, and March, 2023.

  
RICHARD E. ROBERTS



**\*22300995\***

22300995  
57 of 58

3/13/2023 2:13 PM  
R\$298.00 D\$0.00

Kristy Archuleta  
Archuleta County

**EXHIBIT A**

**SECOND AMENDED & RESTATED  
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
COBBLESTONE TOWNHOMES**

**Legal Description of the Townhome**

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)

**\*22300995\***

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58 of 58

3/13/2023 2:13 PM  
R\$298.00 D\$0.00

Kristy Archuleta  
Archuleta County

**EXHIBIT B**

**SECOND AMENDED & RESTATED  
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
COBBLESTONE TOWNHOMES**

Common Elements Interests and Assessments

Townhome Unit No.	Undivided Interest in General Common Elements and Common Expenses	Undivided Interest in LCE and Common Expenses for LCE	Allocated Voting Interest
<b>Unit</b>			
1	<u>7.00%</u>	<u>7.00%</u>	<u>1/16</u>
2	<u>7.00%</u>	<u>7.00%</u>	<u>1/16</u>
3	<u>5.29%</u>	<u>5.29%</u>	<u>1/16</u>
4	<u>7.00%</u>	<u>7.00%</u>	<u>1/16</u>
5	<u>7.00%</u>	<u>7.00%</u>	<u>1/16</u>
6	<u>7.00%</u>	<u>7.00%</u>	<u>1/16</u>
7	<u>7.00%</u>	<u>7.00%</u>	<u>1/16</u>
8	<u>7.00%</u>	<u>7.00%</u>	<u>1/16</u>
9	<u>5.29%</u>	<u>5.29%</u>	<u>1/16</u>
10	<u>5.29%</u>	<u>5.29%</u>	<u>1/16</u>
11	<u>7.00%</u>	<u>7.00%</u>	<u>1/16</u>
12	<u>7.00%</u>	<u>7.00%</u>	<u>1/16</u>
13	<u>5.29%</u>	<u>5.29%</u>	<u>1/16</u>
14	<u>5.29%</u>	<u>5.29%</u>	<u>1/16</u>
15	<u>5.29%</u>	<u>5.29%</u>	<u>1/16</u>
16	<u>5.29%</u>	<u>5.29%</u>	<u>1/16</u>
	<u>100%</u>	<u>100%</u>	<u>100%</u>

The above percentages are based upon the approximate square footage attributed to each Unit.