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Kristy Archuleta
Archuleta County

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

This Declaration of Covenants, Conditions and Restrictions for MLV TOWNHOMES, is made on the date hereinafter set forth, by BWD, LLC, a Colorado limited liability company and OGI Real Estate Holdings, LLC, with an address of 597 Navajo Trail Drive, Pagosa Springs, CO 81147.

RECITALS

1. MLV Townhomes is a common interest community and sub-association within the planned unit development known as the Mountain Lake Villas (formerly known as The Villas At Pagosa Lodge) created pursuant to the Colorado Common Interest Ownership Act (the "Act"), as set forth in Colorado Revised Statute 38-33.3-101 et. seq. and that certain Master Declaration of Restrictive Covenants of Mountain Lake Villas recorded March 16, 2020 at Reception No. 22001553 ("Master Declaration").

2. MLV Townhomes is a Phased Community pursuant to the Act and Declarant reserves the right to submit the real property described herein to the terms and conditions of this Declaration in phases by way of recordation of a Supplemental Declaration. The initial portion of the real property to be submitted to this Declaration is described as the Initial Property on Exhibit A attached hereto and incorporated herein. The portion of the real property comprising the future phases or future townhome development property which may be subjected to the terms of this Declaration shall be referred to herein as "Annexable Property"

**ARTICLE 1
SUBMISSION; DEFINED TERMS**

Section 1.1 Submission of Property. Declarant hereby declares that the Property shall be held or sold, and conveyed subject to the easements, restrictions, covenants, and conditions which are set forth herein and as described on the Plat for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any rights, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof. Additionally, Declarant hereby submits the Property to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as it may be amended from time to time. In the event of repeal, the Act, on the effective date of this Declaration, shall remain applicable.

Section 1.2 Defined Terms. Each capitalized term not otherwise defined in this Declaration or in the Plat or map shall have the meanings specified or used in the Act.

(a) 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

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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.

(b) Common Elements shall mean any real estate or personal property designated on the Plat or within this Declaration as owned by the Townhomes Community. Common Elements such as roads, sidewalks, trails, entrance features, drainage facilities and detention ponds, and landscaped areas outside the townhome Unit boundaries are the common elements of the Master Association and are not common elements of this Association.

(c) Declarant shall mean BWD, LLC, a Colorado limited liability company, and its successors and assigns as provided herein and in the Act.

(d) First Lienor shall mean any person named as a mortgagee or beneficiary in any first mortgage, or any successor to the interest of any such person under such first mortgage.

(e) Improvements shall mean any site work, construction, installation or modifications of structures or landscaping on the Property or any structure or facility on the exterior of a Unit.

(f) Master Declaration shall mean that Master Declaration of Covenants Conditions and Restrictions for Mountain Lake Villas recorded in the Office of the Archuleta County Clerk and Recorder on March 16, 2020 under Reception No. 22001553, as amended from time to time.

(g) Mortgagee shall mean any person named as Mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

(h) Plat shall mean that certain plat known as The Villas at Pagosa Lodge Planned Unit Development, according to the plat thereof filed August 30, 2006, as Reception No. 20608314, in the office of the Clerk and Recorder, Archuleta County, Colorado and any amendments thereto or any as-built townhome plats, reflecting the phases of MLV Townhomes, recorded with the Archuleta County Clerk and Recorder subject to this Declaration and any amendments or supplements thereto. Plat shall have the same meaning as "Map" in the Act.

(i) Project shall mean the townhomes comprising the common interest community created by this Declaration (the "Townhomes Community") consisting of the maximum townhome units allowed by the Town of Pagosa Springs pursuant to the PUD Agreement (defined below), as amended from time to time (the "Project").

(j) Property shall mean, collectively, the Initial Property and any portion of the Annexable Property that has been added to this Declaration pursuant to the terms set forth herein.

(k) Unit shall mean a townhome unit, the boundaries of which are identified and shown on the recorded as-built plats for each phase of the Project. The term shall refer to the land, if any, which is within the platted boundaries of the Unit as well as any Improvements constructed or located within said boundaries of the Unit.

(l) Unit Owner or Owner shall mean the Declarant or other person (which includes a natural person, a corporation, a limited liability company, a trust, a partnership or any combination thereof) who owns a Unit in the Townhomes Community created by this Declaration but does not include a person or entity having an interest in a Unit solely as security for an obligation.

**ARTICLE 2
NAMES**

Section 2.1 Names.

(a) The name of the development shall be: MLV Townhomes.

(b) The name of the Association is MLV Townhome Owners Association, Inc. (hereinafter the "Association").

**ARTICLE 3
THE ASSOCIATION**

Section 3.1 Authority. The business affairs of the Townhomes Community shall be managed by the Association. The Association shall be governed by its Bylaws, as amended from time to time.

Section 3.2 Powers.

(a) The Association shall have all the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Townhomes Community. Each Owner agrees that the Association has all the powers granted to it by the Colorado Revised Nonprofit Corporation Act and the Act, and any amendments thereto or replacements thereof. Such powers shall include, without limitation, levying Assessments against Owners, imposing a lien on Units for any unpaid or uncollected Assessments or penalties, and foreclosing any such liens, enforcing any deed restrictions and this Declaration, acquiring, holding, owning, leasing, mortgaging and disposing of property (except as such disposition of property may be otherwise limited herein), the adoption of rules and regulations, the defending, prosecuting or intervention in litigation on behalf of all members, the borrowing of monies for Association purposes and the right to pledge future income in order to secure such borrowings. The term "pledge of future income" shall include the right to impose a Special Assessment for repayment of such borrowings and to assign such Special Assessment (and all lien and collection rights appurtenant thereto) to the lender as security for repayment thereof. The Association may exercise any other right, power or privilege, given to it by

this Declaration, the Articles and Bylaws of the Association, or by law.

(b) The Association may assign its future income, including its rights to receive Common Expense assessments, only by the affirmative vote of the Unit Owners of Units to which at least 51 percent of the votes in the Association are allocated, at a meeting called for that purpose.

(c) Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for dealing with the improvements. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointment of the Association as attorney-in-fact as provided in this Article. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, to other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

Section 3.3 Declarant Control. The Declarant shall have all the powers reserved in C.R.S. §38-33.3-303(5) of the Act to appoint and remove officers and members of the Executive Board (also referred to herein as the "Executive Board") during the period of Declarant Control. The period of Declarant Control terminates no later than the earlier of: (1) Sixty days after conveyance of 75 percent of the Units that may be created to Unit Owners other than a Declarant; (2) Two years after Declarant has last conveyed a Unit in the ordinary course of business; or (3) Two years after any right to add new Units was last exercised. A Declarant may voluntarily surrender the right to appoint and remove officers and Executive Board before termination of the periods of Declarant control, but in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 3.4 Memberships. Every Owner, by virtue of being an Owner, and for so long as he or she is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Unit. No Owner, whether one or more persons, shall have more than one membership per Unit owned, but all of the persons owning each Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to such Ownership. An Owner shall not transfer, pledge or alienate his or her membership in the Association in any way except upon the sale or encumbrance of a Unit, and then only to the purchaser or First Lienor of the Unit.

Section 3.5 Other Association Functions. The Association shall undertake those functions and provide those services to the Community as described in this section or otherwise set forth in this Declaration. Further, the Association may undertake, to the extent the Executive Board in its sole discretion so elects, to provide the Community certain other functions or services for the benefit of its members on such bases as the Executive Board may reasonably determine. Such functions may be provided by the Association's employees or an independent contractor retained by the Association. With respect to any of the Community functions or services, the Executive Board

shall have the authority to make common expense Assessments consistent with the provisions of Section 315 of the Act.

Section 3.6 Owner and Board Member Education. The Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owner, the Association and the Executive Board under Colorado law. The criteria for compliance with this Section shall be determined by the Executive Board. In addition, the Board may authorize and account for as a Common Expense, reimbursement of Board members for their actual and necessary expenses incurred in attending education meetings and seminars on responsible governance of the Association. Such educational meetings or seminars must involve the Colorado Common Interest and Ownership Act.

Section 3.7 Responsible Governance Policies. Pursuant to Section 209.5 of the Act, the Executive Board, to promote responsible governance, shall adopt all policies and procedures as required by the Act. The foregoing policies may be embodied in this Declaration or the Bylaws of the Association, or the policies and procedures may take the form of individual written policies adopted by the Executive Board of the Association.

**ARTICLE 4
UNITS**

Section 4.1 Number of Units. The maximum number of Units that Declarant reserves the right to create is thirty-three (33) or such higher number as may be negotiated and approved by the Town of Pagosa Springs pursuant to an amendment to the planned development agreement for Mountain Villas at Pagosa Lodge dated October 15, 2004 (the "PUD Agreement") and as reflected in a Supplemental Declaration. The initial number of Units to be created and subjected to this Declaration shall consist of seven (7) units. Declarant reserves the right to add the Annexable Property to the Townhomes Community upon the recordation of the as-built plats for the subsequent phases of the Project and Supplemental Declarations.

Section 4.2 Identification of Units. The identification number of each Unit shall be identified on each as-built plat recorded for the Project. Units may be a part of a duplex or triplex building.

Section 4.3 Description of Units.

(a) Each Unit may be transferred, leased, devised or encumbered only as one Unit. Any attempted transfer of an appurtenant interest in the Limited Common Element shall be void unless the Unit to which that interest is allocated is also transferred.

(b) Any contract for sale, deed, lease, mortgage, will or other instrument affecting a Unit may describe it by Unit _____, according to the plat thereof recorded on _____, 2020, at

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Reception No. _____ in the records of the Clerk and Recorder of Archuleta County, State of Colorado, as amended from time to time.

(c) With the exception of the Common Elements, each owner is entitled to exclusive ownership and possession of his Unit.

(d) All Units shall be used for residential purposes including short-term vacation rentals so long as in compliance with any applicable laws or ordinances of the Town of Pagosa Springs and subject to the Master Association governing documents.

Section 4.4 Non-Partitionability. No Unit may be partitioned, separated or subdivided into two or more parcels, tracts, or Units.

ARTICLE 5 COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 5.1 Creation of Association Lien and Personal Obligation for Assessments. Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefore whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association (i) Annual Assessments or charges as provided in this Declaration to generally carry out the functions of the Association; (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration and (iii) Default Assessments, if any. Such assessments, together with fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be the personal obligation of the Unit Owner at the time when the assessment or other charges became or fell due. No Owner may exempt himself/herself from liability for any assessment by abandonment of his or her Unit or by waiver of the use and enjoyment of the Common Elements.

The assessments of the Association shall be a continuing lien upon the Unit against which each such assessment is made. A lien under this Section is prior to all other liens and encumbrances on a Unit except: (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a first lien Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Unit shall not affect the Associations' lien except that sale or transfer of any Unit pursuant to foreclosure of any first Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Association's lien as provided in the Act. 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 assessments thereafter becoming due, nor from the lien thereof.

Section 5.2 Apportionment of Common Expenses. Common Expenses are

expenditures made, or liabilities incurred by, or on behalf of, the Association together with any allocations or reserves. Common Expenses shall be assessed against all Units for the upkeep, repair and replacement of all Common Elements and the maintenance of Unit Exteriors and paved parking areas, with each Unit to pay a percentage according to the percentage share described in Exhibit B attached hereto and incorporated herein.

Section 5.3 Purpose of Assessments. The assessments levied by the Association through its Executive Board shall be used generally for the purposes of promoting the recreation, health, safety, and welfare of the residents in the Townhomes Community and for the maintenance, repair, and replacement of Common Elements. Assessments will be made to all Owners or to only some Owners as provided for in this Declaration depending upon whether the assessment is a general or special assessment. Without limitation, said assessments may be used for the following purposes:

(a) Maintenance, repair, and improvement of any Unit driveways, trash dumpster, mailboxes, or signage owned by the Townhome Community;

(b) Weed control, and maintenance, including cutting, trimming, mowing, fertilizing and general upkeep of any common lawns, trees, shrubbery and other common landscaped areas that is owned by the Townhome Community and not the Master Association;

(c) Maintenance, repair and replacement of all Unit Exteriors, including roofs, siding, windows, eaves, doors, decks;

(d) All costs and expenses pertaining to the operation of the Association;

(e) Obtaining and maintaining insurance, establishing and maintaining reserves for maintenance of Common Elements that must be replaced or repaired on a periodic basis, taxes, capital improvements, and satisfying unpaid assessments;

(f) Legal and accounting fees, management fees;

(g) Payment of the Association's proportionate share of expenses for maintenance, repair and improvements of Common Elements described in the Master Declaration, including without limitation, the paved accessways, parking areas, trails, entrance signage, landscaping and drainage and detention facilities.

(h) Any other purpose approved by a majority vote of all the Members of the Association.

Assessments will be made to all owners or to only some owners as provided for in this Declaration.

Section 5.4 Assessment of Utilities. Cable services, gas, water and sewer and electric are separately metered for each Unit and the charges for such utilities shall be paid by the Unit

Owner directly to the utility company providing such service. Water servicing the outside common sprinkler system and electric for outside lighting shall be billed to the Association and shall constitute a Common Expense of the Association. Trash pick up shall be the responsibility and expense of individual Owners and not the Association.

Section 5.5 Annual Assessments/Commencement of Common Expense Assessments.

The Executive Board shall prepare a budget before the closing of each fiscal year of the Association and submit the budget to the Association. Annual Assessments for Common Expenses shall be based upon the Association's estimated advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. The Association shall establish the first assessment year by the action of adopting a budget and the levying of the first Annual Assessments in accordance with its Bylaws.

Within ninety (90) days after adopting a proposed Budget, the Board shall deliver a summary of the proposed Budget to the Owners and set a date for a meeting of the Owners to consider the proposed budget. The date of such meeting shall occur within a reasonable time after the delivery of the summary of the proposed budget to the Owners and may, if convenient, be the annual meeting date. Unless at that meeting 67% of the votes allocated to all Owners, whether or not a quorum is present (unless an annual meeting in which case a quorum is required), rejects the proposed budget, the proposed budget shall be deemed ratified. If the proposed budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent budget proposed by the Board.

If the Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under this Section 5.5, 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 occur within a reasonable time after the delivery of the amendment of the proposed budget to the Owners and may, if convenient, be the annual meeting date. Unless at that meeting, 67% of all of Unit Owners, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

Annual Assessments may be collected in the manner as determined by the Executive Board i.e., annually, quarterly or monthly. Unless the Declarant determines otherwise, Annual Assessments shall begin on the first day of the month following the close of the sale of the first Unit within the Community. Until the commencement of the collection of assessments, the Declarant shall pay all the expenses incurred and paid for by the Association.

Section 5.6 Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, or for other extraordinary expenses. Special Assessments shall be allocated with the same formula as utilized for Annual Assessments. If any assessment is caused by the misconduct of any Unit Owner,

the Association, at its discretion, may assess that expense exclusively against such Owner's Unit.

Section 5.7 Default Assessments. All monetary fines assessed against an Owner pursuant to this Declaration, the Bylaws or any Rules and Regulations (collectively referred to as the "Association Documents"), or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner according to the procedures set forth in the Bylaws.

Section 5.8 Effect of Non-Payment of Assessments. Any assessment, charge or fee provided in this Declaration, or any monthly or other installment thereof, which is not fully paid within thirty (30) days after the date due thereof shall bear interest at the rate of 18% per annum or such higher amount as established by the Executive Board and the Executive Board may assess a late charge thereon. The voting rights of the Unit Owner shall be suspended during a period of delinquency. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the 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 Association without foreclosing, or in any way waiving, the Association's lien therefore.

Section 5.9 Failure to Assess. The omission or failure of the Board to fix the Annual Assessments amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

Section 5.10 Owner Caused Damage. If, due to the act or neglect of an Owner, or such Owner's guests, loss or damage shall be caused to any person or property within the Community, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with the costs of collection and reasonable attorney's fees, may be collected by the Executive Board, at their sole discretion, exclusively from such Owner as an assessment against such Owner in accordance with paragraph 5.7.

Section 5.11. Agreement in Advance Regarding Surpluses. The Board shall establish an adequate reserve fund for the maintenance repair and replacement of those Common Elements that must be periodically maintained, repaired or replaced. To the extent possible, such reserve fund shall be funded through the monthly installments of the annual Common Expense Assessments. Any surplus funds derived from assessments shall be transferred to the reserve fund or used for Association

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operations during the next fiscal year, in the Executive Board's sole discretion. In no event shall any surplus funds be distributed to Owners. Each Owner by acceptance of the deed to the Owner's Unit, for each fiscal year of the Association in which such Unit is owned, hereby authorizes the Executive Board, in its sole discretion, to either use such surplus during the next fiscal year or to transfer to the reserve fund.

Section 5.12 Working Fund Operational Account. For the purposes of capitalization of the Association, the Declarant shall establish an initial working capital fund for the Association for Common Expenses. Upon acquisition of record title to a Unit from Declarant, each Owner of a Unit shall contribute to the working capital fund, a non-refundable sum of \$500.00 at the closing of the sale of the Unit. Said working fund shall be collected and transferred to the Association at the time of closing and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of assessments as such assessments become due and such payment shall not be considered an advance payment of regular assessments. The working capital fund shall be used by the Association, and/or Declarant, for insurance deductibles, capital expenditures for repair or replacement of Common Elements, emergencies, and expenses which do not occur on a regular and on-going basis. The working capital fund may also be used to reimburse the Declarant for Declarant's payment of the foregoing Association expenses. The working capital fund may not be used by the Declarant to defray any of the Declarant expenses or construction costs for completion of the development. The initial working fund capital account shall be established upon the conveyance of the first Unit of the Community by Declarant to a bona fide purchaser.

Section 5.13 Procedure for Collection of Assessments.

Section 5.13.1. Due Date: All monthly installments of Annual Assessments are due on the 1st day of each month and become delinquent if not paid by the 30th day of each month. Interest of eighteen percent (18%) accrues on delinquent amounts or such higher sum as provided in Section 5.8 of the Declaration. All payments are payable to the Association and are mailed as directed by the Executive Board.

Section 5.13.2. Delinquency. When an Owner fails to pay an Association assessment when due, such Owner's voting rights in the Association shall be suspended until the delinquent Assessment has been paid. The Association may also, at any time after expiration of thirty (30) days after the due date and after offering a payment plan as required by the Act, file a Statement of Lien against the Unit with the Archuleta County Clerk and Recorder. Further, the Association may attempt to send a written notification to the Mortgagee or holder of the first deed of trust, if any on the delinquent Owner's Unit.

Section 5.13.3. Application of Payment; Definition of Assessment. Any fine, late charge or other monetary charge or penalty levied by the Association pursuant to the Declaration, the Act, including attorney's fees and costs incurred by the Association and for which the Owner is liable, shall be collectible as an Assessment as that term is defined by the Act.

Payments received from an Owner shall be applied to the Owner's account in the following order:

- a. Attorney's fees and costs incurred by the Association and for which the Owner is responsible pursuant to the Act or the Declarations;
- b. Interest which has accrued on all unpaid charges;
- c. Fines, late charges or other monetary charges or penalties;
- d. Past due Default Assessments;
- e. Past due Special Assessments;
- f. Past due installments of Annual Assessments;
- g. Current Special Assessments; and
- h. Current installment for Annual Assessments.

**ARTICLE 6
LIMITED COMMON ELEMENTS**

Section 6.1 Limited Common Elements.

(a) A "Limited Common Element" ("LCE") means a portion of the Common Elements, designated in this Declaration, or on the Plat, for the exclusive use of one or more but fewer than all of the Units.

(b) The following portions of the Community are designated as Limited Common Elements: (i) party walls between Units are allocated to those Units sharing a wall; and (ii) driveways and backyards designated as LCE on the Plat.

Section 6.2 Expense Allocation for Limited Common Elements. Any Common Expense (including those expenses which require a special assessment) associated with the maintenance, repair or replacement of a Limited Common Element assigned to more than one Unit shall be assessed equally against the Units to which the Limited Common Element is assigned. Any expense associated with the maintenance, repair or replacement of a Limited Common Element assigned to one Unit shall be assessed only against that Unit.

Section 6.3 Allocation of Reserved Limited Common Elements.

(a) Portions of the Common Elements may be allocated as Limited Common Elements. These portions of the Common Elements may include, without limitation, vehicle parking areas and other areas.

(b) The Declarant reserves the right to allocate specified areas which constitute a part of these Common Elements as Limited Common Elements for the exclusive use of the Owners of Units to which these specified areas shall become appurtenant so long as such allocations are reasonable and do not result in a disproportionate use of the Common Elements by any single Owner. The Declarant may assign such Common Elements as Limited Common Element areas pursuant to the

provisions of C.R.S. §38-33.3-208 of the Act (i) by making such an allocation in a recorded instrument or (ii) in the deed to the Unit to which such Limited Common Element area shall be appurtenant or (iii) by recording an appropriate amendment or supplement to this Declaration. Such allocations by the Declarant may be to Units owned by the Declarant. Subsequent to the Declarant control period, the right of allocation pursuant to this Section shall pass from the Declarant to the Executive Board and the Declarant may not thereafter exercise any such right.

Section 6.4 Allocation of Specified Common Elements. The Executive Board may designate parts of the Common Elements from time to time for use by less than all of the Unit Owners or by non-Owners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Executive Board. Any such designation by the Executive Board shall not be a sale or disposition of such portions of the Common Elements.

Section 6.5 Party Walls.

(a) For purposes of this Section 6, “Party Wall” shall mean and refer to a wall which is part of a Unit and located between two or more Units and which separate the two Units.

(b) Mutual reciprocal easements are hereby established, declared and granted for all Party Walls between Units which reciprocal easements shall be for mutual support and shall be governed by this Declaration. Every conveyance of a Unit, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

(c) Notwithstanding any other provision of this Section 6.5, the Association may, in its sole discretion, make any repairs to Party Walls which the Association deems necessary and the cost for such repairs shall be assessed equally against the Units benefited by such repairs unless the repairs are necessitated by willful acts or omissions or negligence of one or more Owner(s) in which case the Owner(s) causing the damage shall pay for all costs of repairs. Any dispute as to which Owner has caused damage to a Party Wall shall be subject to the alternative dispute resolution procedures as set forth in Article 19.

**ARTICLE 7
GENERAL COMMON ELEMENTS**

Section 7.1 General Common Elements.

(a) All Common Elements which have not been designated on the Plat or within this Declaration as Limited Common Elements constitute General Common Elements. All Unit exteriors, including but not limited to, siding, roofing, eaves, windows, doors, decks, and porches (“Unit Exteriors”) shall be maintained and insured as General Common Elements of the Association as described in this Declaration.

(b) Subject to the limitations contained in this Declaration, each Unit Owner shall have the non-exclusive right, with all other Unit Owners, to use and enjoy the General Common Elements in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other Owners. There shall be no obstruction of the General Common Elements, nor shall anything be kept or stored on any part of the General Common Elements without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from, the General Common Elements except upon the prior written consent of the Executive Board.

Section 7.2 Neither an Owner, group of Owners, or the Association shall bring any action for partition or division of the Common Elements, nor by act or omission, seek to abandon, encumber, sell or transfer any of the Common Elements. If any Unit Owner, or group of Unit Owners, violates this paragraph, such Owner or Owners agree that this paragraph may be pleaded as a bar to maintenance of such an action for a partition, and further that the Association shall be entitled to personally collect, jointly and severally, from the parties violating this paragraph, the actual attorney's fees, costs and other damages the Association sustains in connection therewith.

ARTICLE 8 MAINTENANCE

Section 8.1 Maintenance By Owners of Units. Each Owner shall maintain, repair and keep in a clean and sanitary condition all areas comprising the interior of their Unit, including stairways and elevators. Unit Owners shall be responsible for cleaning of Unit windows and clearing and sweeping of the Units decks and porches. Unit Owners shall be responsible for removal of snow from decks and Unit entranceways.

Section 8.2 Owner's Failure To Maintain or Repair. When maintenance or repair has been delegated to an Owner, in the event that a Unit or an LCE attributed thereto is not properly maintained and repaired, or in the event the Unit or LCE is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Unit or LCE, after notice to Owner, the Executive Board shall have the right to enter upon the Unit or LCE to perform such work as is reasonably required to restore the Unit or LCE to a condition of good order and repair. All costs incurred by the Association in connection with such restoration shall be reimbursed to the 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 5 of this Declaration.

Section 8.3 Maintenance By Association.

(a) Maintenance of GCE. The Association shall be responsible for the maintenance and repair of all General Common Elements and the Unit Exteriors as described in 8.3(b) below (unless necessitated by damage caused by the negligence, misuse or tortious act of an Owner or Owner's

agent), and such maintenance and repairs shall be a Common Expense of all Owners. This Association shall not be responsible for maintenance and repair of the Common Elements of the Master Association. In the event the Association does not maintain or repair the General Common Elements, Declarant, or Owner(s), shall have the right, but not the obligation, to do so at the expense of the Association; provided, however, the Association has been given 45 days prior written notice of the need for such repairs.

(b) Maintenance of Unit Exteriors. In addition, the Association shall also be responsible for the maintenance and repair of the following, the costs of which shall be assessed to the Unit to which the repair or maintenance has been made: All Unit exteriors, including but not limited to, siding, roofing, eaves, windows, doors, decks, and porches ("Unit Exteriors"). Costs of the foregoing may be assessed to all Unit Owners as part of a comprehensive plan for maintenance of Unit exteriors, or as a special assessment to individual Unit Owners as determined by the Executive Board; except however, assessments for Units 1 (101) through 4 (104) shall be made as set forth in 8.3(c) below. The Association shall be responsible for such maintenance and repair to ensure that the Community is maintained in good condition and property values are upheld. The Association shall also be responsible for repair and replacement of the LCE driveways for each Unit.

(c) Maintenance of Unit Exteriors for Units 101 through 104. Exterior materials for Units 101, 102, 103 and 104 are different from the remainder of the townhome units and are more costly to maintain. The Association's annual budget will include a separate line item for maintenance and replacement of Unit Exteriors for Units 101 through 104. The expense to perform maintenance and replacement of Unit Exteriors Units 101 through 104 shall be Special Assessment against Units 101 through 104. The Association may collect reserves from Owners of Units 101 through 104 for future maintenance and replacement of the Unit Exteriors for Units 101 through 104.

Section 8.4 Easement For Maintenance. The Association shall have the irrevocable right, to be exercised by the Executive Board or officers or employees of the Association, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the General Common Elements, Limited Common Elements or Unit Exteriors as described in Section 8.3(b), or at any hour, for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the General Common Elements, Limited Common Elements, or Unit Exteriors as described in Section 8.3(b). In the event insurance proceeds are payable to an Owner, but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

Section 8.5 Association Power. The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptibility from another Unit, the General Common Elements or Limited Common Elements. No Owner shall make any addition or other alteration to any portion of the Common Elements or Unit Exteriors as described in Section 8.3(b) without the express consent of the Executive Board.

**ARTICLE 9
DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS**

Section 9.1 Development Rights and Special Declarant Rights. The Declarant reserves the following Development Rights and other Special Declarant Rights (as both terms are defined in the Act) for a period of fifty (50) years after the recording of this Declaration:

- (a) the right to complete or make improvements indicated on the Plat;
- (b) the right to maintain sales offices, management offices and models in Units or on the Common Elements;
- (c) the right to maintain signs on the Property to advertise the sale of the Units;
- (d) the right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this Declaration;
- (e) the right to appoint or remove any officer of the Association or any Director during the Declarant Control Period consistent with the Act;
- (f) the right to develop the Property in Phases, to add the Annexable Property pursuant to Section 9.3 and to construct and create Units, facilities, utilities and improvements thereon;
- (g) the right to enter into and amend the Development Agreement pertaining to Mountain Lake Villas with the Town of Pagosa Springs;
- (h) the right to withdraw any portion(s) of the Annexable Property to this Declaration in Declarant's sole discretion;
- (i) the right to amend these Declarations and/or the Plat in connection with the exercise of the Development Rights and Special Declarant Rights pursuant to Section 9.4 below. Any such amendments, including but not limited to the recordation of a Supplemental Declaration pursuant to Section 9.3(b) below, shall not require the consent or signature of Owners.

No assurances are made by Declarant as to whether Declarant will exercise its Development Rights or the order in which such Development Rights will be exercised. The exercise of Development Rights as to some portions of the Property will not obligate Declarant to exercise them as to other portions. The exercise of the above referenced Special Declarant Rights or rights reserved to Declarant shall not require the consent or approval of the Association or its member.

Section 9.2 Termination of Rights Reserved. Except as otherwise expressly reserved in this Declaration, all rights reserved by and to the Declarant terminate 50 years after the date upon

which this Declaration is recorded or upon the sale of all of the Units which are within the Community up to the maximum number of Units, whichever shall first occur; provided, however, such reserved rights may be: (i) reinstated or extended by mutual agreement of the Association and Declarant, subject to whatever terms; (ii) extended as allowed by law; or (iii) terminated in whole or in part by a written instrument executed by the Declarant in such manner as provided in the Act.

Section 9.3 Declarant's Right to Annex Property.

a. Declarant's Right to Annex. Declarant reserves the right to annex to the Townhomes Community all or any part of the Annexable Property as described on Exhibit A. Each Owner of a Unit hereunder hereby grants to Declarant the right to annex all or any part of the Annexable Property to the Townhomes Community. Declarant makes no assurances that all or any portion of the Annexable Property will be added to the Townhomes Community and Declarant reserves the right to annex all or any portion of the Annexable Property to the Townhomes Community in any order it deems appropriate in its sole and absolute discretion.

b. Annexation Procedure. The annexation of Annexable Property to the Townhomes Community shall be accomplished by the recording of a Supplemental Declaration by Declarant with the Clerk and Recorder of Archuleta County, which Supplemental Declaration shall contain a legal description of the real property and the Units to be added to the Townhomes Community, together with recordation of an as-built plat depicting the real property and location of the units thereon (the "Supplemental Plat"). The Supplemental Plat shall also describe any Common Elements thereby created and, if Limited Common Elements are created, shall designate the Units to which each is allocated. Upon recording of a Supplemental Declaration and Supplemental Plat, the Annexable Property shall be subject to all the covenants, conditions, restrictions, reservations and other provisions set forth in this Declaration and in the Supplemental Declaration. The Supplemental Declaration may include restrictions specific to the Units being added to this Declaration. The Common Elements identified in the Supplemental Plat shall be included in and deemed a part of the Townhomes Community. The Allocated Interests of this Declaration shall be amended to include any additional Units identified in the Supplemental Declaration and Supplemental Plat.

Section 9.4 Declarant's Right To Amend. Without the consent of the Association or Owners, Declarant reserves the right to amend these Declarations, as granted the Declarant under the Act, C.R.S. 38-33.3-217 (1)(a) for conforming same to the requirements of the Federal Home Loan Mortgage Company, Veterans Administration, or any other institution involved in the purchase and sale of home loan mortgages, or any institutional mortgage lender, or any title insurance company of the County of Archuleta, State of Colorado or the United States of America, or any other governmental agency or political subdivision; (b) for the correction of clerical, technical, drafting or typographical errors in the Declaration, Plat or map; (c) for perfecting, clarifying or making the provisions of the Declaration consistent with the Plat and/or for correcting provisions to the Plat to make them consistent with this Declaration; or (d) for including provisions, as may be necessary, to effect Declarant's exercise and implementation of Special Declarant Rights as set forth above.

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ARTICLE 10 ALLOCATED INTERESTS

Section 10.1 Allocated Interests. Allocated Interests means the share of Common Expenses and votes in the Association which are allocated to each Unit.

a. Each Unit shall be entitled to one vote in the Association irrespective of the size of the Unit. The aggregate number of votes in the Project shall be the total number of Units that may be constructed on the Property (i.e., the maximum density as permitted by the Town of Pagosa Springs per the planned unit development as amended from time to time). The Declarant shall be allocated a vote for each constructed and completed Unit owned by it and for each future Unit that may be constructed on the Property. As this is a Phased Community, Declarant must have the ability to vote upon all matters that may affect the phased development.

b. Each Unit shall have a share in the Common Expense liability based upon the allocation formula described in Section 10.2 below.

Section 10.2 Determination of Common Expense Liability. Each Owner of a Unit shall be responsible for that Owner's share of the Common Expenses, which, except as specifically provided in this Declaration, shall be based upon a fraction, the numerator of which is the total square footage of a Unit owned by the Owner and the denominator of which is the total square footage of all Units within the Project as of the date of the calculation. A table depicting the Allocated Interests of each Unit is attached hereto and incorporated herein as Exhibit B. The Declarant shall be obligated to pay its share of the Common Expenses for those completed Units owned by Declarant and for which a certificate of occupancy has been issued; Units which are under construction shall not be assessed.

ARTICLE 11 RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 11.1 Use and Occupancy Restrictions. Subject to the Development Rights and Special Declarant Rights reserved by the Declarant, the following use restrictions apply to all Units (and Unit Owners, their tenants, guests, invitees, and licensees) and to the Common Elements:

(a) **Improvements.** No improvements or structural alterations, including any alteration that may constitute a structural change, or changing the exterior color, configuration or facade constructed on any Unit, shall be made except only as approved by the Executive Board, and shall be consistent with any applicable zoning rules and regulations. Unit Owners must provide the Declarant (during the period of Declarant Control) or the Executive Board, as the case may be, with a set of architectural plans stamped by a certified architect and a list of all contractors and subcontractors which must be approved by the Declarant or the Executive Board as the case may be. The Declarant and/or Executive Board shall be obligated to answer any written request by an Owner for approval of a proposed structural addition, alteration or improvement within 60 days after such request, and failure

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to do so within the stipulated time shall constitute approval by the Declarant and/or Executive Board of such proposed structural addition, alteration, or improvement. Additions, alterations or improvements which affect another Unit shall be permitted if entry into another Unit is necessary for the completion of plumbing or electrical improvements; provided, however, that such entry and the improvements do not unreasonably interfere with another Unit Owner's habitation of their Unit. The Unit Owner requesting the improvement, alteration or addition, shall be responsible for any and all impairments caused by their entry, access or other interference with adjoining Units.

(b) Completion of Construction/Construction Rules. All construction, reconstruction, alterations or improvements, approved by the Executive Board, shall be carried out diligently through completion and shall be completed within six months of the commencement thereof. Owners shall ensure that their builder/contractor and subcontractors are prohibited from doing the following:

- (i) Allowing construction suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Declarant or Board;
- (ii) Use of surface water for construction; or
- (iii) Violation of any state, federal, or local law, ordinance, rule or regulation.

Each Unit Owner, at their expense, shall ensure that clean-up of the Unit and construction site will be performed on a daily basis to keep Common Elements and Limited Common Elements free of trash, mud, construction debris or any other materials or conditions which would detract from the appearance of the building or impede accessibility to the businesses located therein.

Each Unit Owner shall be responsible for the performance and the payment of repairs for any damage done to any Unit, Common Element, Limited Common Element or infrastructure, including without limitation, utility lines or boxes, roads, sidewalks, signage and landscaping, as a result of construction alterations, or improvements caused by a Unit Owner.

(c) Vehicles. Abandoned or inoperable automobiles, recreational vehicles, campers, trailers, or boats of any kind, shall not be stored or parked within the Property. Abandoned or inoperable vehicles shall be defined as any vehicle which either is incapable of legal operation upon a public highway or has not been driven under its own propulsion for a period of 14 days or longer. Nothing in this paragraph shall be construed as prohibiting an Owner from keeping their car, truck or SUV in their garages for more than two weeks without operation. No vehicle may be used for temporary or permanent sleeping or living purposes. The Association shall have the right to remove or tow away any vehicle that is parked in violation of this paragraph. The cost for any removal or towing shall be charged to the responsible Owner.

(d) Noise. No exterior horns, whistles, bells, wind chimes, sound speakers or other sound devices, except security devices used exclusively to protect the security the improvements on any

Unit, shall be used on any Unit in a manner which, in the opinion of the Executive Board, constitutes an unreasonable intrusion on the privacy of the occupants of another Unit.

(e) Nuisance. No offensive or illegal activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise, lights, sounds, odors or other nuisance shall be permitted to exist or operate upon the property so as to be offensive or detrimental to any other part of the property or its Owners or occupants.

(f) Hazardous Activities. No activities shall be allowed or conducted on the property which are or might be unsafe or hazardous to any person or property, nor shall any inherently unsafe or hazardous materials be stored on the Property.

(g) Maintenance and Repair. The Owners shall keep their Units in a clean condition and shall maintain the good appearance and condition of the Unit. If the Unit Owner fails to maintain his or her Unit, (and Limited Common Elements allocated to the Unit), in good repair, the Executive Board may give the Owner written notice of the needed maintenance or repair. If said maintenance or repair is not completed by Owner within 30 days of the mailing of such notice, the Executive Board, at its option, may obtain an injunction against the Owner to force completion of the needed work. In the alternative, the Executive Board may contract with a third party for the needed work and assess the cost of same against the Owner pursuant to the assessment provisions contained herein.

(h) Animals. Except for common household pets, no livestock, poultry, or exotic animals may be kept on the Property unless with the permission of the Executive Board and so long as in compliance with the rules and regulations of the Town of Pagosa Springs. All applicable leash laws strictly followed. There shall be no more than two cats or two dogs and no combination of cats and dogs greater than three in number. No pets shall be bred or maintained for commercial purposes. No animals shall be allowed to run free, or to otherwise constitute a nuisance to any other Unit Owners and Owners shall "clean up" after their pet at all times and in all places within the Townhomes Community. The Owner of any animal shall at all times be personally liable and responsible for all actions of such animals and any damage caused by such animal.

(i) Trash. All garbage and trash shall be dealt with consistent with the applicable codes of the Town of Pagosa Springs. Trash removal is the responsibility of the Owner. Each Owner shall store trash in accordance with the rules and regulations promulgated by the Association, if any. Owners shall keep their Units, including porches, decks, and yards free of trash, refuse, or debris of any kind.

(j) Satellite Dishes. No exterior radio, television, microwave or other antennae or antennae dish, satellite dish or signal capture or distribution device shall be permitted or installed on the Property without the prior approval of the Declarant, or Association Board as the case may be. Should the Declarant, (or Board) approve the placement of a satellite dish on a Unit, it must be located in an unobtrusive location such as a back deck or patio area.

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(k) Decks/Balconies. Decks and balconies shall be used only for the purposes intended and shall in no event be used for storage of unsightly material or trash or for the drying of clothing. It is permissible to store gas grills (no charcoal grills), plants, and patio furniture on decks. Prayer flags may not be strung across decks or balconies.

(l) Landscaping. Maintenance of yard areas which have been designated as LCE, if any, and or which are located within the Unit boundaries shall be maintained by the Unit Owner and plantings within such LCE yard areas shall not require prior approval of the Executive Board. All other landscaping is a common element of the Master Association and shall be maintained by the Master Association.

(m) Association Rules. The Association may, by a majority vote of the Executive Board, adopt, amend and repeal rules and regulations to be known as the Association Rules and Regulations (the "Association Rules"). The purpose of the Association Rules shall be to implement, supplement or otherwise carry out the purposes and intentions of this Declaration; provided such Association Rules must be consistent with this Declaration.

(n) Rentals. Units may be rented for residential purposes; including short-term vacation rentals so long as in compliance with any applicable laws or ordinances of the Town of Pagosa Springs and subject to the Master Association governing documents. Owners shall be held responsible for the acts and omissions of their tenants and shall be liable for all damage caused by their tenants. In addition, Owners shall be liable for any fines imposed as a result of a tenant's failure to comply with these Declarations and any rules or regulations adapted by the Association.

(o) Residential Use. All Units shall be used exclusively for residential purposes only (which includes short-term vacation rentals) and shall not be used for any business, manufacturing, or commercial purpose whatsoever; provided, however, if the appropriate zoning or land use so allows and if prior written approval of the Association is obtained, an Owner may use a specifically designated portion of his or her Unit as a home business or office.

(p) Residential Signs. No signs of any kind shall be erected or maintained for any purpose whatsoever except such signs as have been approved by the Association and are in compliance with the applicable restrictions imposed by the sign code of the Town of Pagosa Springs. Declarant, at its discretion, may erect promotional signs and ordinary real estate "For Sale" signs. Notwithstanding the foregoing restriction on signs, the Association shall not prohibit the display of a political sign in the window of the Owner's Unit so long such sign is displayed no earlier than 45 days before the day of an election and no later than seven days after an election day.

(q) Fencing. Owners are not permitted to erect fencing or patio fencing of any kind within the common areas of the Property. Owners, with prior permission from the Executive Board and with the Board's prior approval of fencing materials, style and height, may erect privacy fencing of Unit LCE backyard areas. Owners will be responsible for maintenance of any such approved fencing.

Section 11.2 Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing arrangement described in C.R.S. §§38-33-110 to 113 of the Act.

**ARTICLE 12
PARKING**

Section 12.1 Parking. All parking areas (except Unit driveways) consist of common parking available for use by guests and invitees of an Owner. These common parking spaces are not intended to be monopolized by a single Owner and shall not be used for overnight parking.

**ARTICLE 13
ENFORCEMENT, AMENDMENT AND REVOCATION**

Section 13.1 Enforcement. These covenants, conditions and restrictions may be enforced as provided hereinafter by the Association, or by separate action by any individual Owner after notification to the Board. In the event that any covenant shall be violated, the offending party shall be notified in writing by any enforcing party according to the Notice and Hearing Procedures as set forth in the Bylaws of the Association. Enforcement may be by any proceeding at law or in equity, and the Association or Owner may seek an order to restrain the violation or recover damages, inclusive of reasonable attorney's fees. Failure by the Association or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter. The Board has the discretion to follow such notification procedures as may be adopted in its Bylaws.

Section 13.2 Amendment. This Declaration may, except as provided in Section 9.3, be amended with 67% of the votes entitled to be cast by members of the Association. During the period of Declarant control, any amendment to this Declaration must also receive the prior written consent of Declarant, which consent Declarant may withhold at its discretion. Consent of First Lienors shall not be required unless the amendment changes the Allocations in the Common Elements or results in a revocation or termination of this Declaration in which case the prior approval of 51% of the First Lienors shall be required. Any instrument amending this Declaration shall be duly executed by the Declarant or President and Secretary of the Association, as the case may be. Notwithstanding the preceding, no amendment shall be permitted that is inconsistent with any of the rights granted, retained or reserved to Declarant hereunder or which attempts to enlarge or expand any obligation of Declarant hereunder unless such amendment is consented to in writing by Declarant.

Section 13.3 Revocation. This Declaration shall not be revoked unless the Owners representing an aggregate interest of 75% or more consent and agree to such revocation by instrument(s) duly recorded.

Section 13.4 Term of Declaration. The term of this Declaration shall be perpetual.

**ARTICLE 14
INSURANCE**

Section 14.1 General Insurance Provisions. The Association shall acquire and pay for, out of the Assessments levied under Article 5, the following insurance policies carried with reputable insurance companies authorized to do business in Colorado:

14.1.1 Property Insurance Coverage. The Association shall obtain hazard insurance coverage of fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost in amounts determined by the Executive Board to represent not less than the full (100%) replacement cost of the then current value of the Units (measured from studs-out) and Common Elements, including any Association personal property whether owned, non-owned or leased by the Association. Maximum deductible amounts for such policy shall be determined by the Executive Board. Each Unit Owner shall be responsible for obtaining insurance covering the finished wall, ceiling and floor surfaces within his/her Unit, for obtaining insurance for all fixtures, appliances and equipment within his/her Unit and for obtaining additional or supplemental insurance covering any additions, alterations or improvements to his Unit which increase the replacement value of his or her Unit. In the event that satisfactory arrangement is not made for additional insurance by the Unit Owner, the Unit Owner shall be responsible for any deficiency in any resulting insurance loss recovery. The Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements.

Such hazard insurance policy must be written by an insurance carrier that has (a) an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports International Edition.

14.1.2 Comprehensive Liability. Comprehensive general public liability and property damage insurance for the Community in such amounts as the Executive Board deems desirable, provided that such coverage shall be for at least \$1,000,000 for bodily injury, including death and property damage arising out of a single occurrence and \$2,000,000 aggregate, insuring the Association, the Executive Board and managing agent, if any, and their respective agents and employees, and the Unit Owners from liability in connection with the operation, maintenance and use of Common Elements and, only if applicable, shall include a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to similar townhomes in Pagosa Springs, Colorado, area including automobile liability insurance if appropriate. The Executive 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 Executive Board that such party has current and satisfactory insurance, including workers compensation insurance, commercial general liability insurance and automobile insurance on all of which the Association is named as an additional insured.

The insurance policies may be carried in multi-coverage form naming the 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 or membership in the Association. Each Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Common Expenses for the Unit, which the Mortgage encumbers. The insurance company shall waive its rights of subrogation under the insurance policy against any Owner or member of the Owner's household. No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss under an insurance policy described above there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance.

Section 14.2 Certificates of Insurance; Cancellation. Certificates of Insurance shall be issued to each Owner and Mortgagee upon request in accordance with applicable law. All policies required to be carried under this Article 14 shall provide a non-contributory mortgagee clause in favor of each First Lienor of a Unit and shall provide the such policy cannot be cancelled by the insurance company without at least thirty (30) days' prior written notice to each Owner and each First Lienor whose address has been provided pursuant to the Association documents. If the insurance described in Article 14 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and to all First Lienors.

Section 14.3 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 14.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 14.5 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 14.4 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Section 14.1 and 14.7 or its agent shall issue certificates or memoranda of insurance to the designated representative named by the Executive Board of the Association. 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 designated representative named by the Executive Board of the Association.

Section 14.5 Repair and Replacement. Any portion of the Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

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14.5.1 The Townhomes Community created by this Declaration is terminated in which case the approval must first be obtained of seventy-five percent (75%) of all Unit Owners;

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

14.5.3 There is a vote not to rebuild by (a) seventy-five percent (75%) of the votes allocated in the Association and entitled to vote and (b) every Owner of a Unit or assigned Limited Common Element that will not be rebuilt; or,

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

The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a Common Expense. 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 Community, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to each Unit's Common Expenses Allocated Interests.

Section 14.6 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses, provided, however, that if the Association's fire and extended coverage insurance covers fixtures, equipment or other property within some but not all of the Units (as required by any agency including FNMA or FHLMC), or other insurance attributable to some but not all of the Units, the Association reserves the right to charge the Owners of such Units for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage.

Section 14.7 Fidelity Insurance. Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others, including any manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than a sum equal to two (2) months' aggregate assessments plus reserve funds. In addition, if responsibility for handling funds is delegated to a manager, such insurance or bonds must be obtained by or for the manager and its officers, employees and agents, as applicable. Such fidelity insurance or bonds shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 14.8 Workers' Compensation Insurance. The Executive 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.

Section 14.9 Owner Insurance. Insurance coverage on the furnishings, appliances, fixtures within the Unit, and other items of personal property belonging to an Owner and any additions and alterations to a Unit which increase the Unit's replacement value above that of the specifications for the Unit as originally sold by Declarant to an Owner, casualty and public liability insurance coverage for each Unit and the work within and use of each Unit or on the Limited Common Elements associated therewith shall be the responsibility of the Owner of the Unit. The Unit Owners shall also carry an Insurance Policy with a loss assessment endorsement. Each Owner of a Unit shall provide the Association with certificates of insurance evidencing the insurance required pursuant to this paragraph, which insurance policies shall name the Association as an additional named insured and shall further provide that the Association shall be given 30 days' advance written notice of any planned change or cancellation in any policy.

Owners are also responsible for and shall obtain, or cause their renter to obtain, renter's insurance (including renter's liability insurance) in the event they rent/lease their Unit. In the event that a renter fails to obtain renter's insurance and a Unit Owner fails to obtain landlord's insurance coverage, a Unit Owner shall be responsible for any loss or deficiency in any resulting insurance loss recovery arising out of the act or omission by its renters.

Section 14.10 Other Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of the Executive Board against any liability asserted against a Member of the Executive Board or incurred by him in his capacity of or arising out of his status as a Member of the Executive Board. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

ARTICLE 15 DAMAGE OR DESTRUCTION

Section 15.1 The Role of the Association Executive Board. In the event of damage or destruction to all or any part of any General Common Elements, Limited Common Elements and any improvements existing thereon, or other property covered by insurance written in the name of the Association (the "Association-Insured Property"), the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property unless any of the provisions of Section 14.5 above are met.

Section 15.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems

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reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.

Section 15.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 15.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and First Lienors.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 15.5, if permitted under the Act, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

Section 15.5 Disbursement of Funds for Repair and Reconstruction. The insurance held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contribution such Owner made as Special Assessments, the remainder to be divided among the Units, first to the First Lienors, and then to the Owners, as their interests appear.

ARTICLE 16 EASEMENTS

Section 16.1 Recording Data. The Property and Units thereon are subject to all easements,

and licenses of record in the real property records of Archuleta County and those easements, rights of way and licenses described herein and on the Plat. In addition, the Property may be subject to other easements or licenses granted by the Declarant pursuant to Article 9 in this Declaration.

Section 16.2 Development Rights. Declarant reserves for itself, its agents, employees and contractors, to enter upon the Property to do what is necessary and advisable in connection with the development of access, utilities, sidewalks and other general improvements necessary for Declarant to successfully complete the development of the Project, including the development of the Project in phases. This general development right reserved by Declarant shall not extend to any Unit after the closing of the Unit to an Owner.

Section 16.3 Owner's Easements of Access and Enjoyment. Every Owner has, and the Declarant hereby grants, a perpetual, non-exclusive easement for access and utilities to and from his or her Unit for the purpose of access to the main entrance road. Every Owner shall have, and the Declarant hereby grants, a perpetual, non-exclusive right and easement in common with all of the other Owners to reasonable use and enjoyment of the General Common Elements, subject to regulation by the Board and restrictions as stated in Article 11. The easements granted hereunder are appurtenant to and shall pass with the title to every Unit, subject to the provisions set forth in this Article. Nothing in this Declaration or the other Association Documents shall be construed as a dedication of the General Common Elements or Utility Easements to public use, or a grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any by such authority or utility, absent and express written agreement to that effect. The General Common Elements and Utility Easements are private amenities that are for the common use, benefit, and enjoyment of the Owners and their permitted guests only.

Section 16.4 Association's Easement. Declarant hereby grants the Executive Board of the Association an easement over, across, and under each Unit to exercise any right held by the Association under this Declaration. Notwithstanding the foregoing, the Association shall not enter upon any Unit without reasonable prior notice to the Owner except in cases of emergency. All necessary easements are hereby declared for maintenance and snow removal upon the sidewalks, driveways, and parking areas within the Property.

Section 16.5 Easement for Encroachments. To the extent that any Unit, Limited Common Element, or Common Element encroaches on any other Unit, Limited Common Element, or Common Element, a valid easement for the encroachment exists. Specifically, an easement for encroachment of the exterior wall of a Unit beyond a boundary designated on the Plat is hereby granted. An easement for encroachment in the Common Elements hereby exists for any overhang of eaves, roofing or decks. This easement does not relieve a Unit Owner of liability in the case of willful misconduct.

Section 16.6 Construction; Declarant's Easement. The Declarant reserves the right to perform warranty work, repairs and construction work in Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repairs until

completion. All work may be performed by the Declarant without the consent or approval of the Association. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey access, utility and drainage easements to the Town of Pagosa Springs, the Association or the State of Colorado.

Section 16.7 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility, road or other easements, permits or licenses over the General Common Elements for the best interest of all Owners, members and future members of the Association.

Section 16.8 Easement in Units for Repairs, Maintenance and Emergencies. Some of the Common Elements are or may be located within a Unit. All Owners shall permit a right of entry to the Executive Board or any other person authorized by the Executive Board, whether the Owner is present or not, for access through each Unit to all Common Elements, from time to time, as authorized by the Executive Board, whether the Owner is present or not, as may be necessary for the routine maintenance, repair, or replacement of any of the Common Elements located thereon or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit.

For routine maintenance and non-emergency repairs, entry shall be made only on a regular business day during regular business hours, after service of at least one day's notice in writing to the Owner. In case of emergency, entry shall be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry.

**ARTICLE 17
CONDEMNATION**

Section 17.1 Rights of Owners. When all or any part of the General Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the General Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 17.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such a taking shall be payable to the Association for the benefit of the Owners and First Lienors and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the General Common Elements on which improvements

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have been constructed, then, unless within 60 days after such taking Declarant and Owners who represent at least 75 % of the votes of all the Owners shall otherwise agree, the Association shall restore or replace such General Common Elements so taken on the remaining land included in the General Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Association. If such General Common Elements are to be repaired or restored, the provisions in Articles 14 and 15 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any General Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed equally among the Units, first to the First Lienor and then to the Owners, according to their Allocated Interests described in this Declaration.

Section 17.3 Complete Condemnation. If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate provided that the approval is first obtained of 51% of all First Lienors of Units (which percentage is measured by votes allocated to such Units), and the portion of the condemnation award attributable to the General Common Elements shall be distributed as provided in Section 17.2 above.

ARTICLE 18 FIRST MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers, or guarantors of holders of first mortgages recorded against Units within the Townhomes Community who qualify as an Eligible Mortgagee. To the extent applicable, necessary, or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Association. "Eligible Mortgagee" means a holder, insurer or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit encumbered by its First Security Interest.

Section. 18.1 Notices of Action. An Eligible Mortgagee shall be entitled to timely written notice of:

- (a) any material condemnation loss or any casualty loss which affects a material portion of the Community or any Unit in which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgagee;
- (b) any default in the performance by an individual borrower of any obligation under the Community constituent documents not cured within sixty (60) days;
- (c) any lapse, cancellation or material modification of any mandatory insurance policy or fidelity bond maintained by the Association;

(d) any proposed action which would require the consent of a specified mortgage of Eligible Mortgages; and

(e) any material judgment rendered against the Association.

Section 18.2 Action by Mortgagee. If this Declaration or any Association documents require the approval of Mortgagees to any action, then, if any Mortgagee fails to respond to any written request for such approval within 30 days after such Mortgage receives notice of the request, such Mortgagee shall be deemed to have approved such request. Notification to Mortgagee shall consist of sending a dated, written notice and copy of any proposed amendment by certified mail to each First Mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof.

ARTICLE 19 DISPUTE RESOLUTION

Section 19.1 Alternative Dispute Resolution. The purpose of the Declaration is to establish a harmonious Townhomes Community. Because the prompt, efficient, fair and non-belligerent resolution of any disputes is desirable, any controversy arising out of or relating to the Association Documents, or a breach thereof, or any other dispute between the Association and any Owner shall be resolved as set forth in this Article. This Article shall satisfy the requirement for an alternative dispute resolution (ADR) policy set forth in CCIOA, Section 38-33.3-124(b).

Section 19.2 Prerequisite/Claims. The parties to a dispute shall exhaust all remedies and procedures as may be required by CCIOA, Section 38-33.3-303.5 (Construction Defects) and/or the Association Documents.

Section 19.3 Direct Communication. If the dispute is not governed by a procedure for resolution as otherwise provided in CCIOA 38-33.3-303.5 (Construction Defects) or the Association Documents, the parties to the disagreement shall set forth their respective positions in the dispute in correspondence to one another or through one another's legal counsel. The written communication shall describe the nature of the dispute, claim or controversy, including the persons involved, and the legal basis of the dispute, claim or controversy and relief or remedy sought. All disputes, claims or controversies should be initiated within a reasonable time after the dispute, claim or controversy has arisen and in no event shall a dispute, claim or controversy be made after the date when such dispute, claim or controversy would be barred by any applicable statute of limitations. The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the dispute, claim or controversy by good faith negotiation.

Section 19.4 Mediation. If the dispute, claim or controversy cannot be resolved through direct communication of the parties within 30 days after the date the dispute, claim or controversy was submitted to a party, either party may request appointment of a neutral and properly

credentialed mediator. The parties shall participate in mediation in good faith until the dispute is resolved or until the mediation terminates. Either party to a mediation may terminate the mediation process without prejudice. If the parties do not settle the dispute, claim or controversy within 60 days after submission of the matter to mediation, the mediator shall issue a notice of termination of the mediation proceedings. Each party shall bear its own costs of mediation, including attorney's fees and each party shall share equally all charges rendered by the mediators and all costs associated with same. The mediation agreement, if one is reached, may be presented to the court as a stipulation.

Section 19.5 No Mediation Requirement. To protect the integrity and promote the enforcement of the Declaration's covenants, restrictions and obligations of the Townhomes Community, the Association may bring the following suits or defend same without the need for mediation and without any need for prior Owner approval:

- (a) any suit by the Association to enforce the provisions regarding Assessments;
- (b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction and such other ancillary or emergency relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the use and occupancy restrictions and provisions (Article 11) of this Declaration;
- (c) any suit by an Owner to challenge the actions of Declarant, the Association, Design Review, or any other committee with respect to the enactment and application of standards or rules or the approval or disapproval of construction plans pursuant to this Declaration; and
- (d) any suit in which the Association has been determined to be an indispensable party.

Any dispute involving matters other than those outlined in this Section 18.5 shall require at least a majority percent of the votes allocated to Owners in the Association prior to the Association's commencing litigation in a court of law or prior to the Association's commencement of arbitration.

Section 19.6 Right to Inspect. If a dispute is based on the land development, design and/or construction of the Improvements within the Community then, subject to Owner's prior written approval which shall not be unreasonably withheld, Declarant shall have the right to access the affected area at a reasonable time(s) for purposes of inspecting the condition complained of including but the not be limited to, any investigative or destructive testing. The Association shall have the same right to inspect for any claims by Owner against the Association in accordance with the above.

In the exercise of the inspection rights contained herein, the party causing the inspection to be made ("Inspecting Party") shall:

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(a) be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any Improvements on the property being inspected (“Inspection Property”);

(b) minimize any disruption or inconvenience to any Person who occupies the Inspection Property;

(c) remove daily all debris caused by the inspection and located on the Inspection Property;

(d) in a reasonable and timely manner, at the inspecting Party’s sole cost and expense, promptly remove all equipment and materials from the Inspection Property and repair and replace all damage and restore the Inspection Property to the condition as of the date of the inspection, unless the Inspection Property is to be immediately repaired.

The repair, replacement and restoration work shall include, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other Improvements on the Inspection Property that were damaged, removed or destroyed by Inspecting Party. In the event the Inspecting Party wishes to make appropriate and necessary repairs to resolve the subject matter of the dispute, the same shall be made upon terms and conditions acceptable to all affected parties.

The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the Inspection Property. The Inspecting Party shall indemnify, defend and hold harmless the Owners, tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorney’s fees, resulting from any breach of this Article by the Inspecting Party.

Section 19.7 Construction Defect Claims. Notwithstanding anything in this Article 19 to the contrary, the Association must comply with all notice and disclosure requirements and conditions as contained within CCOIA, CRS 38-33.3-303.5 prior to the Association’s instituting a construction defect action as defined in the Section 303.5 of CCIOA. If the Association has complied with and followed all procedures as required in the Section 303.5 of CCIOA, the dispute resolution procedures of this Article 18 shall govern the construction defect claim.

Section 19.8 Right to be Heard Prior To Levy of Fine. This ADR policy is not intended to modify any portion of the “notice and hearing procedures” implemented for purposes of determining the occurrence of a violation under Section 11 (use and occupancy restrictions) of the Declaration and the levy of a fine. Prior to the Association’s levy of a fine, if applicable, an Owner shall have the right to be heard according to the Governance Policies and Procedures, Article 4 Notice and Hearing Procedures.

Section 19.9 Amendment. This Article 19 shall not be amended unless such amendment is approved by the Declarant and Owners to whom at least sixty-seven percent of the votes in the Association are allocated.

**ARTICLE 20
MASTER DECLARATION AND MASTER ASSOCIATION**

The Association described in this Declaration is a sub association as described in the Master Declaration. Owners are subject to the terms and conditions of the Master Declaration, including all covenants and restrictions. Owners are subject to the levy of Assessments by the Executive Board of the Mountain Lake Villas Master Association (the "Master Association") and shall pay their proportionate share of common expenses for among other things, the paved access and drives, landscaping, entrance features and signage within the Mountain Lake Villas development. The Executive Board of the Master Association shall levy and bill individual Unit Owners for their share of Master Assessments. Failure of a Unit Owner to pay its share of Master Association assessments may result in a lien upon a Unit and the Master Association shall have all collection remedies afforded it under the Act and Colorado law. If this Association and the Master Association have liens for Assessments created at any time on the same Units, the lien of the Master Association shall take priority over the lien of this Association.

**ARTICLE 21
GENERAL PROVISIONS**

Section 20.1 Severability. Invalidation of any one of these covenants by judgment or court decree shall not affect or impair the terms, provisions and conditions of any other covenants contained herein, which covenants shall remain in full force and effect.

Section 20.2 Covenants Running with the Land. All provisions of this Declaration and Exhibits attached hereto and amendments thereof shall be construed as covenants running with the land, and or every part hereof and interest therein, including but not limited to every Unit and appurtenances thereto, and every Unit Owner and occupant of the Property, or any part thereof, or of any interest therein, and his or her heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of said Declaration and Exhibits annexed hereto and any amendments thereof. The subjection of the Property or surrounding properties to zoning laws and regulations shall not then or thereafter cause any provisions of this Declaration to terminate.

Section 20.3 Conflict Between Documents. In the event of any conflict between the provisions of this Declaration, or the Articles of Incorporation or the Bylaws of the Association, the provisions of the Articles of Incorporation shall control. In the event of any conflict between the Declarations and the Bylaws of the Association, the Declarations shall control. In the event of any conflict between the Declarations and the Plat and plat notes, this Declaration shall be automatically amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of the Plat.

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Section 20.4 Waiver. No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver shall be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.

Section 20.5 Notices. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally, by US mail or by electronic mail (email). If delivery is made by mail, it shall be deemed to have been delivered three (3) days after a copy of the same has been posted in the United States mail, postage prepaid for first class mail and addressed to the receiving party at the address last given by such party to the Association. If delivery is made by email, it shall be deemed to have been delivered to the receiving party at the email address last given by such party to the Association and upon acknowledgment of receipt of the email. Any notice to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

Section 20.6 No Representations or Warranties. Except as otherwise required by Colorado law, no representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its officers, directors, agents or employees in connection with any portion of the Property, or any improvement thereon, as to its or their physical condition, zoning, compliance with applicable laws, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a writing signed by Declarant.

Section 20.7 Binding Effect. Declarant, Owners, lessees, First Lienors, permitted guests and invitees, and their heirs, personal and legal representatives, successors and assigns, or any other person using or occupying the Property, shall be bound by, and shall strictly comply with the provisions of this Declaration, the Bylaws, the Articles, any deed restrictions, and all rules, regulations and agreements lawfully made by the Association.

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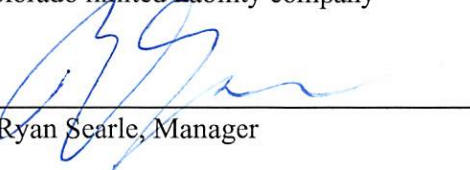
Kristy Archuleta
Archuleta County

Signature Page
for

Amended & Restated Declaration of Restrictive Covenants,
Conditions and Restrictions for MLV Townhomes

IN WITNESS WHEREOF, the BWD, LLC and OGI Realty Holdings, LLC have caused this Amended & Restated Declaration of Restrictive Covenants, Conditions and Restrictions for MLV Townhomes to be executed this 20th day of March 2020.

BWD, LLC
a Colorado limited liability company

By: 
Ryan Searle, Manager

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

The foregoing instrument was acknowledged before me on March 20th, 2020 by Ryan Searle, Manager of BWD, LLC, a Colorado limited liability company.

Witness my hand and official seal,
My commission expires 1/11/21



RORY BURNETT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20174001486
MY COMMISSION EXPIRES JANUARY 11, 2021

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EXHIBIT A
(Legal Description of Property)

Initial Property: Units 1 through 7 of The Villas at Pagosa Lodge Planned Unit Development, according to the plat thereof filed August 30, 2006, as Reception No. 20608314, in the office of the Clerk and Recorder, Archuleta County, Colorado.

Annexable Property:

All that tract of land located within the boundaries of The Villas at Pagosa Lodge Planned Unit Development, according to the plat thereof filed August 30, 2006, as Reception No. 20608314, in the office of the Clerk and Recorder, Archuleta County, Colorado.

TOGETHER WITH a Tract of land, being a portion of Parcel B of the Pagosa Lodge Minor Impact Subdivision, the Plat of which is recorded under Reception No. 20608313, in the office of the Clerk and Recorder, Archuleta County, Colorado, said Tract being more particularly described as follows, to-wit:

Beginning on the North boundary of said Parcel B, whence the Northwest corner of said Parcel B bears South 81° 17' 58" West, 12.55 feet distant;
thence North 81° 17' 58" East, 33.20 feet along the boundary of said Parcel B;
thence South 10° 20' 28" East, 7.025 feet along the boundary of said Parcel B;
thence North 86° 49' 42" West, 34.13 feet to the Point of Beginning.

LESS AND EXCEPT a Tract of land being a portion of Parcel A of The Pagosa Lodge Minor Impact Subdivision, the Plat of which is recorded under Reception No. 20608313, in the office of the Clerk and Recorder, Archuleta County, Colorado, said Tract being more particularly described as follows, to-wit:

Beginning at the most Southeast corner of said Parcel A; thence South 79° 39' 32" West, 61.63 feet along the boundary of said Parcel A;
thence North 10° 20' 28" West, 7.025 feet along the boundary of said Parcel A;
thence North 79° 39' 32" East, 64.97 feet to the boundary of said Parcel A;
thence South 31° 15' 34" West, 9.39 feet along the boundary of said Parcel A to the Point of Beginning.

Annexable Property excludes the lands comprising the Initial Property which are described above and are subject to the terms of this Declaration.

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EXHIBIT B
Table of Allocated Interests

Unit #	Sq. Footage	Share of Common Expenses	Votes*
Unit 1 (101)	1876 / 13,810 sq. ft.	13.59 %	1
Unit 2 (102)	2346 / 13,810 sq. ft.	16.99 %	1
Unit 3 (103)	2442 / 13,810 sq. ft.	17.68 %	1
Unit 4 (104)	1876 / 13,810 sq. ft.	13.59 %	1
Unit 5 (105)	1675 / 13,810 sq. ft.	12.12 %	1
Unit 6 (106)	1791 / 13,810 sq. ft.	12.97 %	1
Unit 7 (107)	1804 / 13,810 sq. ft.	13.06 %	1
Total:	13,810/13,810 sq. ft.	100.0 %	

*See Section 10.1 pertaining to Voting Allocations.

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**AMENDMENT NO.1
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MLV TOWNHOMES**

This Amendment No.1 is made to that certain Declaration of Covenants, Conditions and Restrictions for MLV Townhomes recorded on March 23, 2020 at Reception No. 22001668 in the office of the clerk and recorder for Archuleta County, Colorado (the "Declaration"). The purpose of this amendment is to correct a typographical error in the square footage of units identified in Exhibit B of the Declaration. The undersigned are the sole owners of the property and units subjected to the Declaration and have the authority to amend the Declaration pursuant to Sections 9.4 and 13.2.

Exhibit B to the Declaration is hereby deleted and replaced with the following corrected Exhibit B:

**EXHIBIT B
Table of Allocated Interests**

Unit #	Sq. Footage	Share of Common Expenses	Votes*
Unit 1 (101)	1876 / 13,810 sq. ft.	13.59 %	1
Unit 2 (102)	2346 / 13,810 sq. ft.	16.99 %	1
Unit 3 (103)	2442 / 13,810 sq. ft.	17.68 %	1
Unit 4 (104)	1876 / 13,810 sq. ft.	13.59 %	1
Unit 5 (105)	1804 / 13,810 sq. ft.	13.06 %	1
Unit 6 (106)	1791 / 13,810 sq. ft.	12.97 %	1
Unit 7 (107)	1675 / 13,810 sq. ft.	12.12 %	1
Total:	13,810/13,810 sq. ft.	100.0 %	

*See Section 10.1 pertaining to Voting Allocations.

Rln:

BWD LLC
597 NAVAJO TRAIL DR
Pagosa Springs, CO 81147

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Kristy Archuleta
Archuleta County

Signature Page
for

Amendment No.1 of Declaration of Restrictive Covenants,
Conditions and Restrictions for MLV Townhomes

IN WITNESS WHEREOF, the BWD, LLC and OGI Realty Holdings, LLC have caused this Amendment No. 1 to Declaration of Restrictive Covenants, Conditions and Restrictions for MLV Townhomes to be executed this 30th day of March 2020.

BWD, LLC
a Colorado limited liability company

By: 
Ryan Searle, Manager

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

The foregoing instrument was acknowledged before me on March, 30th, 2020 by Ryan Searle, Manager of BWD, LLC, a Colorado limited liability company.

Witness my hand and official seal,
My commission expires 1/11/21



RORY BURNETT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20174001486
MY COMMISSION EXPIRES JANUARY 11, 2021

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Kristy Archuleta
Archuleta County

OGI Real Estate Holdings, LLC, a Colorado
limited liability company

By: 
Jack Searle, Manager

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

The foregoing instrument was acknowledged before me on March, 30th, 2020 by
Jack Searle, Manager of OGI Real Estate Holdings, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires 1/11/21



RORY BURNETT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20174001486
MY COMMISSION EXPIRES JANUARY 11, 2021