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After Recording Return To:
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DECLARATION

OF

461 MUSE TOWNHOMES

A PLANNED COMMUNITY

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First Draft

**DECLARATION
OF
461 MUSE TOWNHOMES
A PLANNED COMMUNITY**

THIS DECLARATION is made on the date hereinafter set forth by KBZ Investments, LLC, a Colorado limited liability company ("**Declarant**").

RECITALS

A. Declarant is the owner of certain real estate in the Grand County, State of Colorado, which is more particularly described as set forth in **Exhibits A and B** attached hereto and by reference made a part hereof.

B. Declarant desires to create a planned community on the real estate described in **Exhibits A and B** under the name of "461 Muse Townhomes," in which portions of the real estate described in **Exhibit B** will be designated for separate ownership and uses of a residential nature and in which portions of the real estate are to be owned by an owners' association.

C. Declarant has caused the "461 Muse Townhome Association, Inc.," a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado, as an owners' association, for the purpose of exercising the functions set forth in this Declaration.

NOW, THEREFORE, Declarant declares and states as follows:

ARTICLE 1 SUBMISSION/DEFINED TERMS

Section 1.1 Submission of Property.

The Declarant hereby submits the real estate described in **Exhibit A** together with and subject to all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the "**Property**") to the terms and conditions of this Declaration. The Community shall be deemed to be a small planned community exempt from 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 (the “Act”) Name and Type

The type of Common Interest Community is a Planned Community. The name of the Community is “461 Muse Townhomes.” The name of the Association is the “461 Muse Townhome Association, Inc.”

Section 1.2 Property.

The Community is located in the Grand County, State of Colorado. The initial Property of the Community is described in **Exhibit A**. The Community may be subject to easements or licenses granted pursuant to this Declaration, or granted by authority reserved in any recorded document or established in the Act.

Section 1.3 Defined Terms.

Each capitalized term in this Declaration or in the Plat shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration:

(a) “Act” shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, *et seq.*, as it may be amended from time to time.

(b) “Assessment” shall include all common expense assessments, insurance assessments, utility assessments, and any other expense levied to a Lot pursuant to this Declaration or the Act.

(d) “Association” shall mean 461 Muse Townhome Association, Inc., a Colorado nonprofit corporation, and its successors.

(e) “Board of Directors” or “Board” shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.

(f) “Common Elements” shall mean all real property owned by the Association for the common use and enjoyment of the Owners and such property as Declarant may convey to the Association.

(g) “Common Expense” shall mean any expenditure made a liability received by or on behalf of the Association, together with any allocations to

reserves.

(h) "Common Expense Assessment" shall mean the Assessment for allocation of Common Expenses among the Lots and Owners, as provided in this Declaration and the Act.

(i) "Community" shall mean the planned community known as "461 Muse Townhomes," and the real property subject to this Declaration and as further defined by the recorded plats and the legal descriptions contained therein, and the Members of the Association.

(j) "Declarant" shall mean the Declarant named in this Declaration, and any successor and/or assignee designated by written notice or assignment executed by the Declarant designated in this Declaration and executed by the transferee and recorded, to the extent any rights or powers reserved to Declarant are transferred or assigned to that party.

(k) "Development" or "Special Declarant Rights" shall mean those rights set forth in this Declaration and those rights set forth in the Act.

(l) "Executive Board," "Board" or "Board of Directors" shall mean the body, regardless of name, designated in this Declaration to act on behalf of the Association.

(m) "Exhibit A" shall mean and refer to Exhibit A as attached to and incorporated in this Declaration, and as Exhibit A may be amended or supplemented, from time to time.

(n) "Governing Documents" shall mean this Declaration, the Plat, any Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.

(o) "Improvement(s)" shall mean structures installed within or upon a Lot.

(p) "Limited Common Elements" shall mean those portions of the Common Elements, if any, designated by Declarant for the exclusive use of one or more but fewer than all of the Lots.

(q) "Lot" or "Unit" shall be defined to enable these terms to be used interchangeably, as appropriate, and shall mean and refer to any plot of land shown upon any recorded subdivision Map or Plat of the Property with the exception of Common Elements, if any.

(r) "Map" shall mean and refer a recorded map(s) of the Property and Improvements that are subject to this Declaration. More than one map or supplement thereto may be recorded, and, if so, then the term "Map" shall collectively mean and refer to all maps and supplements thereto.

(s) "Member" shall mean and refer to those persons entitled to membership as provided in the Bylaws and as set forth in this Declaration.

(t) "Owner" shall mean any person or entity that owns a Lot.

(u) "Plat" shall mean and refer to the plat(s) of the Property and Improvements that are subject to this Declaration. More than one Plat or supplement thereto may be recorded, and, if so, then the term "Plat" shall collectively mean and refer to all plats and supplements thereto.

(v) "Property" or "Real Estate" (as "real estate" is used in the Act) shall mean the property described in this Declaration together with all easements, rights, and appurtenances thereto and the buildings and Improvements erected or to be erected thereon.

(w) "Rules and Regulations" shall mean any instruments, however denominated, which are adopted by the Association for the regulation and management of the Community, including architectural guidelines, and including any amendment to those instruments.

(x) "Townhome" or "Townhouse" shall mean the residential dwelling improvement constructed on a Lot which is designed and intended for use and occupancy as a residence by a single family.

ARTICLE 2 EASEMENTS

Section 2.1 Utility, Plat, and Plat Easements.

Easements for utilities and other purposes over and across the Lots and Common Elements may be as shown upon the recorded Plats of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by or under the authority reserved in any recorded document.

Section 2.2 Owners' Easements of Enjoyment/Acknowledgments.

(a) Every Owner shall have a right and easement access to their Lot and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply.

(ii) The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements, and the right of the Association to close or limit the use of any Common Elements.

(iii) The right of the Association to suspend the voting rights and rights to use the Common Elements by an Owner for any period during which any Assessment against their Lot remains unpaid; and for any infraction of its published Rules and Regulations.

(iv) The right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements.

Section 2.3 Drainage Easements.

An easement is hereby granted to the Association and Declarant and local government, their officers, agents, employees, successors and assigns to enter upon,

across, over, in and under any portion of the Property subject to this Declaration for the purpose of changing, correcting or otherwise modifying the grade of the Property, the Lots or drainage channels so as to improve the drainage of water. Said easements shall be deemed to also include easements for the collection of storm water runoff. Every Lot and the Common Elements shall be burdened with easements for natural drainage of storm water runoff from other portions of the Property; provided, no Person shall alter the natural drainage on any Lot so as to materially increase the drainage of water onto adjacent portions of the Property or any Lot without the consent of the Owner of the affected property. Any damage to any Improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any utility company.

Section 2.4 Utilities.

Declarant hereby creates and reserves to the Association, a blanket easement upon, across, over and under the Association for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, waste water treatment, effluent irrigation systems, gas, telephone, electricity and master television antenna or cable systems, if any; *provided, however*, such easement shall not encumber or affect any portion of the Real Estate that is anticipated to be improved, or that has been improved, with a residence, improvement or any related structure, such as a patio or garage. By virtue of this blanket easement, it shall be expressly permissible for the Association to erect and maintain the necessary facilities, equipment and appurtenances on the Property and to affix, repair, and maintain landscaping, fencing, water, treated waste water, effluent irrigation and sewer pipes, gas, electric, telephone and television wires, circuits, conduits and meters, and such other improvements or facilities. If any utility or quasi-utility company furnishing a service covered by the general easement created in this Section requests a specific easement, a separate right and authority to grant such easement upon, across, over or under any part or all of the Property is reserved, provided the easement granted does not conflict with the terms hereof. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property. Any damage to any improvement caused by Declarant or the Association in exercising its rights under this Section will be repaired promptly by the entity causing the damage. The foregoing, however, shall not be deemed to render the Association or Declarant liable for any damage caused by any third party, including, without limitation, any

utility company.

Section 2.5 Measures Related to Provision of Common Utilities.

(a) The Association shall have an easement to enter a Townhome to inspect for events which may be causing waste of water or heat provided as a Common Expense. If the inspection reveals that the Owner has failed to maintain the Townhome so as to prevent waste of common utility services provided for as a Common Expense, the Board shall follow the procedures provided for in this Declaration.

(b) The Board, upon resolution, shall have the authority to require all Owners to do any act or perform any work involving portions of the Community which are the Owner's maintenance responsibility, which will, in the Board's sole discretion, conserve utilities.

(c) The Board of Directors shall have right, but not the obligation, to install water, electricity or other commonly provided utility conservation devices (including, but not limited to, toilets and shower heads) as a Common Expense of the Association; provided, however, if the Association installs such equipment as a Common Expense and the utility provider has a rebate program, the Association shall be entitled to the rebate.

Section 2.6 Emergency Easements.

A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties.

Section 2.7 Delegation of Use.

Any Owner may delegate their right of enjoyment to the Common Elements and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Lot.

Section 2.8 Disclaimer of Liability.

The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Area or any of its improvements, fixtures, and facilities. It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Area, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership

Every person who is a record Lot Owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person holds an interest in any Lot, all such persons shall be Members.

Section 3.2 General Purposes and Powers of the Association

The Association, through its Executive Board, shall perform functions and manage the Community as provided in this Declaration so as to protect the value and desirability of the Community and the Lots and to further the interests of the residents, occupants, tenants and guests of the Community and members of the Association. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association

The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Plat, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Executive

Board. The Executive Board may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility.

Section 3.4 Specific Powers.

The Association shall have the powers, authority and duties as necessary and proper to manage the business and affairs of the Community. The Association shall have all of the powers, authority and duties permitted or set forth in the Act. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Owners present at a meeting called for that purpose.

Section 3.5 Association Agreements.

Any agreement for professional management of the Community or any contract providing for services of the Declarant, may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon 30 days' written notice. The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Declarant Control period unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the turnover date upon not more than 30 days' notice to the other party thereto.

Section 3.6 Bulk Service Agreements.

The Association shall have the power and authority to enter into one or more bulk service agreements for such terms and rates as it deems appropriate in order to provide the Owners with any of the following services: cable television, community satellite television, electronic entertainment, information or communication services, trash removal or any other service the Association believes to be in the best interests of the Owners. If such a bulk service agreement is executed, the costs shall be allocated a Common Expense of the Association.

Section 3.7 Allocated Interests.

Common Expense liability and votes in the Association allocated to Lots are as follows:

(a) The percentage of liability for Common Expenses, on an equal basis between each Lot in the Community (1/12);

(b) The percentage of liability for expenses related to a Limited Common Element, shall be allocated on an equal basis to those to whom the Limited Common Element is assigned (1/12);

(c) Lot Owners shall be entitled to one (1) vote for each Lot owned. When more than one person holds an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Lot's vote shall be suspended in the event more than one Owner of a Lot attempts to cast it.

If Lots are added to the Community, pursuant to the provisions of this Declaration and the Act, the formulas set forth above, or then in use, shall be used to reallocate the Allocated Interests.

Section 3.8 Duty to Accept Common Elements and Facilities Transferred by Declarant.

The Association shall accept any Common Elements or property, including any Improvements thereon, and personal property transferred to the Association by Declarant and equipment related thereto, together with the responsibility to perform any and all functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Executive Board, be transferred to the Association free and clear of all liens (other than the lien of property taxes and Assessments not then due and payable), but shall be subject to the terms of this Declaration and any Supplemental Declaration applicable thereto.

Section 3.9 Power to Operate and Charge for Facilities and Services.

The Association shall have the power to acquire, create, own and operate any and all such facilities and services as it deems appropriate, including, without limitation, landscape maintenance and refuse collection, or any other similar or dissimilar function, and to establish charges for the use of facilities and services. The charges may include admission, rental or other fees and charges for any use of property, facilities or services of the Association. Such charges or fees shall be as determined from time to time by the Executive Board.

Section 3.10 Right to Notice.

Notice of matters affecting the Community shall be given by the Association or through access to Association records, as further provided in the Bylaws or as otherwise provided by the Board of Directors.

Section 3.11 Indemnification.

To the full extent permitted by law, each officer, director, committee member or volunteer of the Association shall be and hereby are indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or volunteer at the time such expenses are incurred; except in such cases wherein such officer, director, committee member or volunteer is adjudged guilty of breaching his or her duty of care (as set forth in the Act) in the performance of his or her duties.

Section 3.12 Declarant's Control of the Association.

The Declarant shall have the power to appoint and remove officers and members of the Board so long as Declarant Owns any property within the Community. Upon sale of the 4 Unit, the Owners other than the Declarant shall be entitled to elect one member to the Board of Directors. Upon sale of 5 of the Units, the Owners other than the Declaration shall be entitled to elect a majority of the Members to the Board of Directors.

ARTICLE 4 LOTS AND COMMON ELEMENTS

Section 4.1 Number of Lots.

The number of Lots initially included in the Community is six. Declarant has the reserved right to create and add additional Lots up to a total of 6 Lots .

Section 4.2 Identification of Lots/Lot Descriptions.

The identification of each Lot is shown on the Plat. Every contract for sale, deed, lease, security interest, will or other legal instrument shall legally describe a Lot by its identifying lot number, followed by the name of the Community, with reference to the Plat and the Declaration. An illustrative description is as follows:

Lot or Unit _____, Block _____, _____, according to the Declaration recorded _____, 20__, at Reception No. _____ and the recorded map, in the records of the Clerk and Recorder, the Grand County, State of Colorado.

Reference to the Declaration and Plat in any instrument shall be deemed to include any supplement(s) or amendment(s) to the Declaration and Plat, without specific references thereto.

Section 4.3 Common Elements.

The property described in **Exhibit D** and any improvements thereon are the initial Common Elements to be deeded by the Declarant to the Association. Portions of any Common Elements may be designated as a part of a Lot. The improvements on the Common Elements may be changed from time to time by the Executive Board of the Association. Portions of the Common Elements may be designated by Declarant as a part of a Lot or as a Limited Common Element to a Lot or Lots. Portions of Lots not yet conveyed by Declarant to a third party Owner may become Common Elements or Limited Common Elements, pursuant to rights reserved elsewhere in this Declaration. Portions of Lots may become Common Elements, pursuant to rights reserved elsewhere in this Declaration.

Section 4.4 Limited Common Elements.

The Declarant reserves, for itself, through seven years after the recording of this Declaration, the right to allocate areas of the Community as Limited Common Elements, for the exclusive use of the owners of Lots to which those specified areas shall become appurtenant. The Declarant may allocate or assign Common Elements or Limited Common Element areas (1) by making such an allocation in a recorded instrument, or (2) in the deed to the Lot to which such Limited Common Element shall be appurtenant, or (3) by recording an appropriate amendment or supplement to this Declaration, or (4) by recording a supplement to the Plat or by recording a map. Such allocations by the Declarant may be made as a matter of reserved right.

Section 4.5 Initial Limited Common Elements.

The property described in **Exhibit E** are the initial Limited Common Elements, the exclusive use of which is assigned to the Lots indicated on **Exhibit F**. The Declarant reserves the right to assign rights to use to any Limited Common Element to additional Lots and reserves the right to assign additional Limited Common Elements.

Section 4.6 Allocation of Expenses for Limited Common Elements.

In the event a Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, those Common Expenses shall be assessed equally against the Lots to which the Limited Common Element is assigned.

ARTICLE 5 ASSESSMENTS

Section 5.1 Creation of Association Lien and Personal Obligation to Pay Assessments.

Declarant, for each Lot, shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefor, 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 annual Common Expense Assessments, insurance Assessments, and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late fees, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner of such Lot at the time when the Assessment or other charges became or fell due. The Association annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, and additional fees charged by the managing agent, including but not limited to,

administration and witness fees, and/or any other charges that may be assessed and/or levied or may be agreed to in the process of collecting past due Assessments, including but not limited to, credit card convenience fees from whatever source, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums owed to the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration.

Section 5.2 Annual Assessment.

The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. The budget shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. Unless at the budget meeting, Owners to whom are allocated a majority or more of the votes in the Association vote to reject the proposed budget, the proposed budget will be ratified, whether or not a quorum is present; provided however, any portions of the proposed budget pertaining to any Limited Common Elements expenses will be ratified unless Owners holding a majority or more of the votes allocated to the Lots encumbered thereby vote to reject such portions of the budget. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Executive Board.

Section 5.3 Special Assessments.

In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction,

restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. The proposed Special Assessment shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The proposed Special Assessment may be vetoed by a majority of the total Association vote. A proposed Special Assessment will be ratified unless Owners representing more than a majority of the votes allocated to the Lots that will be subject to the special Assessment vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials. Lots to which a Unit has not yet been constructed and received a certificate of occupancy shall only pay 25% of the Common Expense Assessment.

Section 5.4 Supplemental Assessments.

The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

- (a) Those amounts expended by the Association for the benefit of any individual Lot or any occupant thereof, including but not limited to: Lot insurance; improvement, repair, replacement and maintenance specific to a Lot; improvement, repair, replacement or maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;
- (b) Any extraordinary maintenance, repair, improvement or replacement costs of any area which the Association maintains required on fewer than all the Lots;
- (c) Any extraordinary insurance costs incurred as a result of the value of a particular Owner's Townhome or the actions of an Owner (or his agents, guests, licensees, invitees or lessees);
- (d) All fines and costs assessed against an Owner pursuant to the Governing Documents; and
- (e) Any other expenditures or charges which the Board, in its sole

discretion, chooses to allocate to a Lot and are reasonably determined to be allocable to a particular Lot.

Section 5.5 Commencement of Assessments.

The obligation to pay Assessments against fewer than all of the Lots as provided for in this Declaration shall commence as to each Lot on the first day of the month following the later of: (a) the month in which the Lot is made subject to this Declaration or (b) the month in which the Association first establishes and ratifies a budget and levies Assessments pursuant to this Declaration. The first annual Common Expense Assessment levied on each Lot, whether levied at partial or full rate as provided in this Declaration, shall be prorated according to the number of months remaining in the fiscal year at the time Assessments commence on the Lot. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 5.6 Application of Payments.

All sums collected on a delinquent account shall be remitted to the Association's attorney until the account is brought current. All payments received on an account of any Owner or the Owner's Lot shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner.

Section 5.7 Effect of Non-Payment of Assessments.

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 10 days after the due date thereof, as established by the Executive Board, shall bear interest at the rate established by the Executive Board, on a per annum basis to accrue monthly, from the due date, and the Association may assess a reasonable late fee thereon as determined by the Executive Board.

(b) Failure to make payment within 60 days of the due date thereof shall cause the total amount of such Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option

of the Board.

(c) Further, the Association may foreclose its lien and/or bring an action at law or in equity, or all of the same, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof. 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 therefor. Likewise, the obtaining of a money judgment shall not preclude the foreclosure of the Association's lien so long as the judgment remains unsatisfied.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 5.8 Lien Priority.

The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of

any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 5.9 Working Fund.

The Association may require the first Owner of each Lot (other than Declarant) to make a non-refundable payment to the Association in an amount equal to one-fourth of the annual Common Expense Assessment against that Lot in effect at the closing thereof, which sum shall be held, without interest, by the Association as a working fund. Said working fund shall be collected and transferred to the Association at the time of closing of the initial sale by Declarant of each Lot, as aforesaid, and shall be for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of Assessments as the same become due.

Section 5.10 Owner's Negligence or Misconduct.

In the event that the need for maintenance, repair, or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission or misconduct of an Owner, or the Owner's agents, employees, guests, customers, or invitees, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If such expenses, costs and fees incurred by the Association are not repaid to the Association within seven days after the Association shall have given notice to the Owner of such expenses, costs, and fees, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration. Such expenses, costs, and fees shall automatically become a default Assessment determined and levied against such Lot, and the Association may proceed in accordance with the applicable provisions of this Declaration.

Section 5.11 Borrowing.

The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Owners present and voting, in person or by proxy, at a duly constituted meeting called for that purpose.

ARTICLE 6 PARTY WALLS

Section 6.1 General Rules of Law to Apply.

Each wall which is built as a part of the original construction of a Townhome upon the Property and placed on the dividing line between the Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 6.2 Sharing of Repair and Maintenance.

The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

Section 6.3 Destruction by Fire or Other Casualty

If a party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 6.4 Weatherproofing.

Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for in this Declaration, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6.5 Right to Contribution Runs with Land.

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6.6 Arbitration.

In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the parties may submit the dispute to mediation. If the dispute cannot be resolved through mediation, the parties may pursue the dispute in arbitration or through a legal proceeding before a court.

ARTICLE 7 MAINTENANCE AND SERVICE RESPONSIBILITIES

Section 7.1 Association Maintenance and Service Responsibilities.

(a) The Board of Directors of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance and service responsibilities. The Association shall maintain, repair, replace, and keep in good repair in a workman like manner as a Common Expense those items set forth in **Exhibit F** of this Declaration.

(b) Association Discretion. The Association may, in its sole discretion, assume the obligation for maintenance or repair of additional property, either real or personal, that lies within or outside the Community. The Association shall have the right to assume such obligation even if the obligation currently lies with Owners or other entities, provided however, the Association shall provide Owners with 15 days prior written notice of any such change. The Association, in its sole discretion, shall determine the time and manner in which any maintenance, whether required or assumed, shall be performed as well as the color or type of materials used.

(c) Maintenance of Common Area by Owner. Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Area or any portion of the Lot that is Association maintenance responsibility by an Owner or occupant shall be performed at the sole expense of such Owner or occupant, and the Owner or occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

(d) Damage to Lot by Association. The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. As finish levels can have varying degrees, such

repairs will be complete only to the extent of being "paint-ready." Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

(e) Liability of Association.

(i) The Association shall not be liable for injury or damage to person or property caused by or resulting from any water, rain, snow or ice which may leak or flow from any portion of the Common Area or from any device, pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except:

(A) for injuries or damages arising after the Owner of a Lot has put the Association on written notice of a specific leak or flow from any portion of the Common Area or device, pipe, drain, conduit, appliance or equipment for which the Association has a maintenance responsibility; and

(B) only if the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter.

(ii) The Association shall not be liable to the Owner of any Lot or such Owner's tenant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Area.

(iii) The Association shall not be liable to any Owner, or any Owner's tenant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

(iv) No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience

or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 7.2 Owner's Maintenance Responsibility.

(a) Except as otherwise provided in this Declaration, each Owner shall have the obligation to maintain, repair and replace all portions of the Owner's Lot and the Limited Common Area, if any, appurtenant thereto as further set forth in Exhibit C of this Declaration.

(b) The Association, upon written resolution of the Board, shall have the authority to require all Owners to do any act or perform any work involving portions of the Community which are the Owner's maintenance responsibility, which will, in the Association's sole discretion, conserve common utilities.

(c) The Association shall have right, but not the obligation, to install water, electricity or other commonly provided utility conservation devices (including, but not limited to, toilets and shower heads) as a Common Expense of the Association. If the Association installs such equipment as a Common Expense and the utility provider has a rebate program, the Association shall be entitled to the rebate.

Section 7.3 Owner Responsibilities.

Each Owner shall have the responsibility to:

(a) perform his or her maintenance responsibility in such manner so as not to unreasonably disturb other persons in Townhomes;

(b) promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible;

(c) pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up

any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants, guests, with the cost thereof to be added to and become part of the Owner's next chargeable Assessment; and

(d) An Owner shall be liable for all injuries or damages to person or property caused by or resulting from the Owner's maintenance or lack of maintenance of the Lot or any appurtenant Limited Common Area, if any.

Section 7.4 Mold.

Each Owner shall be required to take necessary measures to retard and prevent mold from accumulating in the Townhome, and the Common Area, including but not limited to appropriate climate control, removal of visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces and cleaning of the same. No Owner shall block or cover any heating, ventilation or air conditioning ducts. Owners shall immediately notify the Board in writing of the following: (a) any evidence of water leaks, water infiltration or excessive moisture in a Townhome; (b) any evidence of mold that cannot be removed by the Owner with a common household cleaner; (c) any failure or malfunction in heating, ventilation or air conditioning; (d) any inoperable doors, windows, heating, ventilation or air conditioning ducts. The receipt of notice by the Association shall not create any additional Association maintenance responsibility other than those set forth in this Declaration. Owners shall be responsible for any damage to his or her Lot and personal property, to any other Lot or the Common Area, as well as any injury to the Owner or occupants resulting from the Owner's failure to comply with this section. Owners shall be responsible for all costs and expenses incurred by the Board to remove mold and/or damage within his or her Lot, to any other Lot or to the Common Area if the Owner fails to meet the requirements of this Section.

Section 7.5 Inspection, Repair and Replacement of Designated Owner Maintenance Components.

The Association shall have the right, but not the obligation, to conduct a periodic inspection, on a schedule to be determined by the Board of Directors, of designated Owner maintenance components as may be set forth in the Rules and Regulations. If, in the Board of Directors' sole discretion, the component needs to be maintained, repaired or replaced, the Association may provide such maintenance, repair or replacement

(even though such component may be the Owner's responsibility) and the cost of such periodic inspection, maintenance, repair or replacement may be assessed against the Owner of the Townhome served by such component pursuant to this Declaration.

Section 7.6 Failure to Maintain.

If the Association determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, except in the case of an emergency, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Association.

Unless the Association determines that an emergency exists, the Owner shall have 10 days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within 10 days. If the Board determines that: (I) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as provided in this Section; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the Assessment to which such Owner is subject, shall become and be a lien against the Lot, and shall be collected as provided in this Declaration for the collection of Assessments.

If the Board determines that the need for maintenance or repair is a Common Expense and is caused through the willful or negligent act of any Owner, or occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or occupant's Lot, shall become a lien against the Lot, and shall be collected as provided in this Declaration for the collection of Assessments.

ARTICLE 8 RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

All Property within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Executive Board or by an appropriate committee (subject to review by the Executive Board) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules. The following use restrictions are also subject to the Development Rights and Special Declarant Rights reserved by the Declarant.

Section 8.1 Use of Lots/Occupancy of Improvements on Lots.

Occupancies of Improvements on the Lots shall be primarily for residential use, as a residential dwelling, as provided for in this Declaration. Secondary commercial and business uses, without any adverse external effect on the nature, perception, operation or ambiance of the Community as a first-class residential community are expressly permitted, subject to restrictions of record and local zoning ordinances and regulations. No Lot within the Community shall be used for any purpose other than as allowed by the local zoning codes.

Section 8.2 Design Approval Required.

Improvements to the Lot must first be approved by the Board, except for the initial construction of Units by the Declarant, as allowed for in this Declaration. Temporary Structures.

Except during construction of Improvements on a Lot, no trailer, mobile home, tent or shack or other temporary building or similar structure shall be placed upon any Lot. No shed or other outbuilding shall be used or permitted to be kept or stored on any portion of a Lot, either temporarily or permanently, unless approved by the Architectural Review Committee.

Section 8.3 Landscaping Requirements and Restrictions.

All portions of a Lot not improved with a residence, driveway, walkways, patios or decks (referred to as the unimproved area of a Lot) shall be landscaped by the Owner. All landscaping shall be installed in accordance with landscaping plans submitted to and

approved by the Architectural Review Committee. All landscaping plans shall be drawn to scale and shall set forth the location of landscaping, type of landscape materials, and be in accord with the requirements of this paragraph and other provisions of this Declaration. The unimproved area of a Lot, once improved with a residence, shall be fully landscaped, as approved by the Committee, no later than nine months after the issuance of a certificate of occupancy for occupancy of the initial improvements, or the first date of occupancy for residential purposes, whichever first occurs. The landscaping of each Lot, having once been installed, shall be maintained in a neat, attractive, sightly and well-kept condition, which shall include lawns mowed, hedges, shrubs, and trees pruned and trimmed, adequate watering, replacement of dead, diseased or unsightly materials, and removal of weeds and debris. Yard and other decorative or unique landscaping ornaments are prohibited without the express written approval of the Committee.

Section 8.4 Plat Restrictions.

The restrictions, if any, included on the plat for the Property are incorporated in this Declaration by this reference.

Section 8.5 Lot Maintenance.

Owners are responsible for the maintenance, repair and replacement of the Improvements and properties located within their Lot boundaries which are not specifically the obligation of the Association to maintain, replace and keep in good repair. Each Lot, at all times, shall be kept well maintained, in good repair, and replacement, and in a clean, sightly, and wholesome condition. Trash, litter, junk, boxes, containers, bottles, cans implements, machinery, lumber or other building materials shall not be permitted to remain exposed upon or within any Lot so that the same are visible from any neighboring Lot, or any street, except as necessary during a period of construction. During construction of Improvements on a Lot, the Owner and their contractors, if any, shall keep the Owner's Lot in a neat and maintained order, without construction debris on the Lot, and without debris blown or otherwise deposited or left elsewhere in the Community. The Association and its agents, after 30 days' notice to the Owner, shall have the authority to enter, replace, maintain, repair and clean up Lots which do not conform to the provisions of this Section, and to charge and collect from the Lot Owners thereof all reasonable costs related thereto as an Assessment hereunder.

Section 8.6 Fences and Privacy Walls.

Fences, and/or privacy walls must have prior written approval of the Board.

Section 8.7 Restrictions on Vehicles, Vehicular Parking, Storage and Repairs.

(a) Vehicles and trailers shall be parked only in the garages, in the driveways serving the Lots, or in appropriate spaces or areas designated by the Executive Board. Vehicles shall be subject to such reasonable Rules and Regulations as the Board may adopt.

(b) The following may not be parked or stored within the Community, unless such parking or storage is within a garage on a Lot, or unless authorized in writing by the Association or is otherwise exempted by Colorado law: oversized vehicles, trucks or pickup trucks over 3/4 ton, commercial vehicles, vehicles with commercial writing on their exteriors, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by rule or regulation. The foregoing may be parked as a temporary expedience for loading or delivery of goods or services. Overnight parking is prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of any Common Area, Lots, or any improvement located thereon.

(c) No abandoned, unlicensed or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot or within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable, unlicensed or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Association.

(d) No motor vehicle may impede the safe and efficient use of streets within the Community by residents, obstruct emergency access to/from the Community or interfere with the reasonable needs of other residents to use their driveway, streets, or guest parking within the Community.

(e) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages in the Community. This provision shall not be deemed to prevent washing and polishing of a vehicle, together with those activities normally incident and necessary to such washing and polishing, provided washing is done with a hose with a shut off valve to prevent waste of water. Minor repairs may be performed, provided they may be completed the day commenced, there is no damage (e.g., oil, residue) to paved areas, and all equipment and parts are removed upon completion of the work. No vehicles may be left unattended on jacks or jack stands.

(f) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

(g) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 72 hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If 72 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges.

(h) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot or Townhome, is obstructing the flow of traffic, is parked on any grassy area, is parked in a space which has been assigned as exclusively serving another Lot, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(i) If a vehicle is towed or booted in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 8.8 Trash Removal Restriction.

No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Lot, unless placed in a suitable container suitably located. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or receptacles shall be maintained in an exposed or unsightly manner. If trash removal is a service ever offered by the Association to Owners, then the Association shall have the exclusive right to engage a trash removal contractor on behalf of the Owners.

Section 8.9 Roof Apparatus.

No types of refrigerating, cooling or heating apparatus shall be permitted on a roof or in a window, and no such apparatus shall be permitted elsewhere on a Lot, except when appropriately screened and approved by the Architectural Review Committee.

Section 8.10 No Wind Generators.

No wind generators of any kind shall be constructed, installed, erected, or maintained on the Lots.

Section 8.11 Clotheslines and Storage.

Except for retractable clotheslines which comply with reasonable aesthetic regulations adopted by the Board and except as otherwise permitted by Colorado law, no nonretractable clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted on any Lot unless the same, in each instance, is expressly permitted in writing by the Association. Owners shall deem to hold the Association harmless from any claim resulting from any

clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Lot.

Section 8.12 Restrictions on Animals and Pets.

Pets, including cats, dogs, birds, reptiles, or other household animals, hereinafter for brevity termed "animal," may be kept, maintained or harbored on a Lot, *if* the animal is not a nuisance to other Owners or occupants. No Owner or resident shall maintain any animal which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or occupants in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations. If an animal is deemed a nuisance, the Owner or person having control of the animal shall be given a written notice to correct the problem. If not corrected, that Owner, upon a second written notice, will be required to remove the animal from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any. The written notices provided for in this Section shall be issued by the authorized representative of the Association or, if there is no authorized representative then by one or more of the members of the Board of Directors of the Association. Animals may not be kept for any commercial purposes. When on the Common Area, animals must be on a leash and under the control of the Owner of the animal. Feces left by animals upon the Common Area, on any Lot or in any Townhome, must be removed promptly by the owner of the animal or the person responsible for the animal. Animals shall not be allowed to defecate or urinate on any patio or balcony in the Community. Owners shall hold the Association harmless from any claim resulting from any action of their animals.

Section 8.13 Restriction on Further Subdivision of Lots.

Lots in the Community may not be further subdivided into smaller or a larger tracts or Lots, without the written approval of the Board.

Section 8.14 Nuisances.

No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Lot or Common

Elements, or any portion of the Community by Owners. Further, no improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. As used in this Declaration, the term "nuisance" shall not include activities of Declarant or its assignees which are reasonably necessary to the development and construction of Improvements within this Community; *provided, however*, that such activities shall not reasonably interfere with any Owner's use and enjoyment of their Lot, or any Owner's ingress and egress to or from their Lot or a public way.

Section 8.15 Use of Common Elements.

There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association.

Section 8.16 Antenna.

Exterior television, satellite or other antenna are allowed only to the extent expressly permitted under applicable federal statutes or regulations ("Permitted Antennas"). Permitted Antennas shall be installed in the least conspicuous location available on the Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station, or similar device of any type shall be erected, installed, or maintained on a Lot.

Section 8.17 No Unsightliness.

All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure.

Section 8.18 Restriction on Signs and Flags.

Signs, posters, billboards, and flags (including flag poles) may be displayed in accordance with Colorado law. The Association may prohibit signs and flags bearing commercial messages, and may establish reasonable, content-neutral regulations

addressing the number, placement, or size of the signs and flags, and other objective factors as permitted by Colorado law.

Section 8.19 Prohibition of Marijuana Distribution and Growing.

No Owner or occupant of a Lot may utilize such Lot for the purpose of growing or distributing marijuana or medical marijuana. This prohibition may further be clarified by the Board of Directors through Rules and Regulations. Owners will be responsible for any damage resulting from a violation of this restriction, including but not limited to increased water and utility charges.

Section 8.20 Prohibited Activities.

No Owner or occupant of a Lot may engage in any activity or practice which, in the sole discretion of the Board, is considered a threat to the health and/or safety of other Owners and residents within the Community, including but not limited to, hoarding, creating conditions conducive to indoor fires, allowing Townhomes to fall into a state of disrepair to the point that rodents or other pests enter, or any other conditions which could cause damage or harm to other Townhomes in the Community.

Section 8.21 Restriction on Sale of a Lot.

The right of an Owner to sell, transfer or otherwise convey their Lot shall not be further restricted or subject to any right of first refusal or similar restriction.

Section 8.22 No Restrictions on Mortgaging of a Lot.

There are no restrictions on the right of the Owners to mortgage or otherwise encumber their Lot. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 8.23 Rules and Regulations.

In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Executive Board, or its successors and assigns. The Executive Board may establish and enforce penalties for the infraction thereof.

Section 8.24 Use of the Words 461 Muse Townhomes and 461 Muse Townhomes Association, Inc.

No resident shall use the words 461 Muse Townhomes or 461 Muse Townhome Association, Inc. or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

ARTICLE 9 ARCHITECTURAL REVIEW

Section 9.1 Required Approval.

No structures, including, but not limited to, primary residence, accessory buildings, sheds, swimming pools, antennas, flag poles, fences, walls, exterior lighting, landscaping, yard or decorative ornaments or any other Improvement shall be constructed erected or installed on a Lot, nor shall any alteration or change to the exterior of the Improvements, the exterior of a residence, to a Lot or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced within the Community unless complete plans and specifications shall have been first submitted to and approved in writing by the Board of Directors. Only house numbers and mail boxes which have been approved by the Board shall be used and maintained on any Lot within the Community. The Board may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed Improvement (plotted horizontally and vertically), location and size of driveways, walls, and grading plan, as well as such other materials and information as may be required by the Committee.

Section 9.2 Architectural Guidelines.

The Board may propose architectural guidelines from time to time, which guidelines may be approved by the Board of Directors and included in or with any Rules and Regulations of the Association.

ARTICLE 10 INSURANCE/CONDEMNATION

Section 10.1 Insurance to be Carried by the Association.

The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth in this Declaration, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. All insurance purchased by the Association shall be purchased from companies with ratings of "A" or better, to the extent that insurance is available at reasonable cost to the Association through such companies.

Section 10.2 Real Property Insurance on the Townhouses and Common Elements.

(a) The Association shall obtain insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements located on the Common Areas, the Townhomes, and the other property of the Association.

(b) The Association's insurance policy shall cover that property within the Community as set forth in **Exhibit F** of this Declaration, regardless of ownership.

(c) If the Board of Directors changes policies so that a lesser level of coverage is provided, the Board shall notify all Owners in writing at least 10 days prior to the commencement of the policy with reduced coverage.

(d) All policies shall contain a standard non-contributory mortgage clause in favor of each first mortgagee, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such first mortgagee, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of Grand County.

(e) The Association may also obtain any additional endorsements which it deems advisable and in the best interests of the Community by the Board of Directors.

(f) The insurance described in this Section shall be inflation coverage insurance, if such insurance is available, which shall at all times represent 100% of the replacement value of all facilities in the Common Area except land, foundation, excavation and other items normally excluded from coverage and except for any deductible provisions as permitted under this Article.

(g) At least every three years, the Association may obtain an appraisal for insurance purposes which shall be maintained as a permanent record showing that the insurance in any year represents 100% of the replacement value of each Lot and the facilities in the Common Area.

(h) The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

Section 10.3 Association Flood Insurance.

The Association shall obtain flood insurance to the extent required by the Federal Emergency Management Agency (FEMA) or any other governmental agency.

Section 10.4 Liability Insurance.

The Association shall obtain a comprehensive policy of public liability and property damage liability insurance covering all of the Townhomes (excluding liability within each Townhome) and the Common Areas, including structural coverage of the Townhomes, in such limits as the Board may from time to time determine, but not in any amount less than a combined single limit of \$1,000,000.00, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Lots and the Common Area. The foregoing liability insurance shall name the Association as the insured.

Section 10.5 Fidelity Insurance.

The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees, volunteers and employees

and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustees and employees" shall not include any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees, as required by law. If the Association retains a Managing Agent, the Managing Agent shall be required to provide such fidelity insurance covering itself and its employees and naming the Association as the loss payee.

Section 10.6 Workers Compensation.

The Association shall obtain and maintain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in forms now or hereafter required by law.

Section 10.7 Director and Officer Liability Insurance.

The Association shall purchase directors' and officers' insurance in an amount reasonably necessary to protect the directors and officers.

Section 10.8 Other Insurance.

The Association may obtain insurance against such other risks, of similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 10.9 Miscellaneous Terms Governing Insurance Carried by the Association.

The Association shall maintain, to the extent reasonably available and necessary, policies with the following terms or provisions:

- (a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.
- (b) All policies of insurance shall contain waivers of subrogation

against any Owner or member of his or her household.

(c) All policies of insurance shall contain waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least 45 days prior written notice to all of the Owners, holders of First Mortgages, and the Association.

(d) If requested, certificates of insurance and renewals thereof, together with proof of payments of premiums, shall be delivered to all First Mortgagees at least 10 days prior to expiration of the then current policies.

(e) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, and the officers of the Association, as insureds.

(f) Prior to renewing casualty insurance and not less than every three years, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement cost of the Townhomes and the Common Area, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause.

(g) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(h) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner, only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy,

as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 10.10 Insurance Obtained by Owners.

Each Owner shall be responsible for maintaining insurance which covers his Lot to the extent not covered by policies maintained by the Association. Such insurance shall include, but may not be limited to, furnishings and personal or other property in the Townhome and liability insurance for injury, death or damage in the Townhome or upon the Lot. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

Section 10.11 Insurance Premium.

Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 10.12 Managing Agent Insurance.

The manager or managing agent, if any, shall be insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage.

Section 10.13 Waiver of Claims Against Association.

As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another and the Board, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by these persons.

Section 10.14 Adjustments by the Association.

Any loss covered by an insurance policy described above shall be adjusted by the

Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any first mortgagee. The Association shall hold any insurance proceeds in trust for the Association, Owners and first mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners and first 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. If the insurance proceeds are insufficient to cover the cost of repair or reconstruction, the Association may levy a Special Assessment to cover the short fall (or deductible) pursuant to this Declaration.

Section 10.15 Duty to Repair.

Any portion of the Property and Common Area for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Owner.

Section 10.16 Condemnation and Casualty Insurance Allocations and Distributions.

In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be to the parties as their interests and rights are determined or allocated by record or as set forth in the Act.

Section 10.17 Responsibility for Payment of Deductible Amount.

Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

- (a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area unless the damage is the liability of an Owner, his family, guests, or invitees, as set forth in this Declaration, in which case the Association shall seek reimbursement of the deductible amount as an Assessment in compliance with and under the terms of this Declaration. Any Owner who receives the proceeds of any Association insurance shall be responsible for the payment of the deductible in proportion to the percentage of insurance proceeds received. Such deductible shall be due within 10 days of notification and shall be considered a Common Expense Assessment allocated directly to the Lot and shall be collected as provided in this

Declaration.

(b) Any loss falling within the deductible portion of the Association policies to property for which Owners have repair and maintenance responsibility shall be paid or absorbed by the Owners of the Lots involved in the same proportion as each Owner's claim bears to the total amount of insurance proceeds paid for the occurrence.

(c) The Owner shall pay or absorb the deductible for any loss to the Lot that would be the responsibility of the Owner in the absence of insurance unless: (1) the loss is caused by the negligent or willful act or omission of the Association or another Owner, in which case the negligent party shall be responsible for the deductible, or (2) the loss is caused by the failure of another Owner to maintain any portion of the Lot, including any appliance, equipment, or fixture in a Lot, which that Owner is responsible to maintain in good working order and condition, in which case the Owner who has failed to maintain any such portion of the Lot resulting in damage to another's Lot will be responsible for the deductible. If a negligent Owner or Owner who fails to maintain their Lot as provided in this Declaration fails to pay the deductible for damage to a Lot, the Association may, but shall not be obligated to seek the deductible on behalf of the Owner suffering the loss as provided in this Declaration for the collection of Assessments.

(d) If a Lot or Party Wall is damaged, then the Owner of that Lot or the Owners sharing the Party Wall shall have primary responsibility, either directly or through his insurance company, for handling and paying for, any work, repairs, reconstruction or replacement.

Section 10.18 Insurance Assessments.

If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. Notwithstanding the Special Assessment procedure set forth this Declaration, the insurance Assessment shall be ratified unless vetoed by 90% of the Members pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time.

Section 10.19 Association as Attorney-in-Fact.

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

Section 10.20 Payment of Claims to Delinquent Owners.

Notwithstanding anything to the contrary in this Declaration, the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in payment of Assessments owed to the Association under this Declaration hereof, then the Association may retain and apply such proceeds recovered to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

ARTICLE 11 DISPUTE RESOLUTION PROCEDURES

Section 11.1 Alternate Dispute Resolution.

The (a) Declarant, (b) Association (including its officers, directors and committee members), (c) all Owners, and (d) any other person or entity not otherwise subject to this Declaration who agrees to submit to this Article (a "Bound Party") agree to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party hereby covenants and agrees to submit all claims, grievances, controversies or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Rules and Regulations of the Association, the design or construction of

any improvements on the Property, or otherwise relating to the Community (the "Claims") to the dispute resolution procedures set forth in this Article, with the exception of the "Exempt Claims" described in this Article.

Section 11.2 Exempt Claims.

The provisions of this Article shall not apply to, and the term "Claims" shall not include, any of the following: (a) the imposition and collection of Assessments or other charges levied under the Assessments section of this Declaration, including actions to foreclose assessment liens; (b) a suit by the Association to obtain a injunctive relief; (c) proceedings involving challenges to ad valorem taxation, (d) counterclaims brought by the Association in proceedings instituted against it; (e) excluding claims against the Declarant, claims of the Association; and (f) claims against a non-Bound Party.

Section 11.3 Claim Resolution Procedures.

All Claims other than Exempt Claims shall be resolved using the following procedures in lieu of litigation:

(a) Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely (i) the nature of the Claim, including the date, time, location, persons involved, and Respondent's role in the Claim, (ii) the basis of the Claim (i.e. the provisions of this Declaration, the Bylaws, the Articles, Rules or Regulations or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(c) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts

will be beneficial to the Parties and to the welfare of the Community.

(d) If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association or such other mediator upon which the Parties may agree.

(e) If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons or entities not a Party to the foregoing proceedings.

(f) If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(g) Each Party shall, within ten (10) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(h) Subject to subsection (i) below, if the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within twenty (20) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to

arbitration in accordance with the appropriate rules of the American Arbitration Association, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided nothing herein shall release or discharge Respondent from any liability to persons not a party to the foregoing proceedings.

(i) If a Claim alleges that any improvements located on the Properties suffer from construction or design defects, the following additional requirements must be satisfied before such a Claim may be submitted to arbitration: (a) if the Claim relates to one or more Townhomes or Single Family Homes, the written approval of the Owner of each such Townhome or Single Family Home and the First Mortgagee on each such residence shall be obtained; (b) if the Claim relates generally to improvements on the Common Areas, the written approval of at least 67% of all Owners must be obtained, together with the written approval of First Mortgagees holding First Mortgages on at least 67% of the Lots; and (c) if the Claim is to be pursued by the Association, the Association shall hold a meeting of the Members no sooner than ten (10) days following the Association providing a written statement to all Owners and First Mortgagees discussing the potential Claim. Such written statement must include at least the following information: (I) a statement of the Claim and the Declarant's response thereto, including any settlement offer; (II) an estimate of the time and costs of pursuing such Claim, (III) the potential impact of the Claim on the marketability of the Lots; and (IV) a statement advising the Owners of their duty to disclose the Claim or alleged defect to prospective purchasers of their Lots. Such written statement shall also be sent to the Declarant at least ten (10) days before such meeting and the Declarant shall have the right to attend and make a presentation at such meeting.

(j) This Article is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration law of the State of Colorado. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(k) If the Claims are resolved through negotiation or mediation as provided above, each Bound Party shall bear all of its own costs incurred in resolving the Claims, including its attorney fees and mediation expenses, unless

the Bound Parties otherwise agree. If the Claims are not resolved through negotiation or mediation as provided above and the Claims go to binding arbitration, the "Prevailing Party" shall receive as a part of its Award from the opposing Party(ies) all of its costs, including attorney fees, costs for other representatives in resolving such Claim, and any expenses incurred as a result of the dispute resolution procedures of this Article.

(l) For purposes of subparagraph (k) above, if the Award is equal or more favorable to Claimant than Claimant's Settlement Demand, the Claimant shall be deemed to be the Prevailing Party; if the Award is equal to or less favorable to Claimant than any Respondent's Settlement Offer, such Respondent shall be deemed to be the Prevailing Party. If neither of the above apply, neither party shall be deemed a Prevailing Party and each shall bear its own costs and expenses, including attorney fees.

(m) If the parties agree to resolve any claim through negotiation or mediation as set forth above, and any party thereafter fails to abide by the terms of such agreement, or if any party fails to comply with the award, then any other party may file suit or initiate administrative proceedings to enforce such agreement or award without need to comply with the provisions of this article. In such event, the party taking action to enforce the agreement or award shall be entitled to recover from the non-complying party (or if more than one noncomplying party, from all such parties pro rata) all costs incurred in enforcing such agreement or award, including without limitation, attorney fees and costs.

(n) This Article 12 shall not be amended without the express written consent of the Declarant.

ARTICLE 12 GENERAL PROVISIONS

Section 12.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association, acting through the Board, may enforce all

applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, at the Board's discretion, the fine may first be assessed against the violator; provided, however, if the fine is assessed against the violator and is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board and the opportunity for a hearing have been provided);

(ii) suspending the right to vote;

(iii) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Lot and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass;

(v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Lot.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to not pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case:

(i) the Association's legal position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) that it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Section 12.2 Attorney Fees.

If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any provision of the Governing Documents, the Association may require reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner or an Owner's family member, guest, tenant, invitee or licensee, shall be charged as an Assessment and shall constitute a lien against the Lot.

Section 12.3 Severability.

Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 12.4 Term of Declaration.

The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 12.5 Amendment of Declaration, Map or Plat by Declarant.

If Declarant shall determine that any amendments to this Declaration or the Plat shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement or for any changes to property not yet part of the Community, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to the expiration of seven years from the date this Declaration is recorded. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this section on behalf of each Owner and holder of a security interest. Each deed, security interest, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be

deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 12.6 Amendment of Declaration by Owners.

Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Members holding at least 67% of the votes in the Association and with the written consent of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. Except to the extent expressly permitted in this Declaration or the Act, no amendment may create or increase any special Declarant's rights, increase the number of Lots in the Community, or change the boundaries of any Lot or the Allocated Interests of a Lot, or the uses to which any Lot is restricted, without compliance with the Act. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the Grand County, State of Colorado of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 12.7 Amendment Required by Mortgage Agencies.

Prior to seven years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which a holder of a first lien security interest, or FHA, VA, HUD, FHLMC ("Freddie Mac"), GNMA ("Ginnie Mae"), FNMA ("Fannie Mae"), or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Grand County, State of Colorado of a certificate setting forth the amendment or repeal in full.

Section 12.8 FHA/VA Approval.

As long as the Declarant has the right to appoint and remove officers and directors of the Association, the following actions shall require the prior approval of the

VA (so long as the VA is guaranteeing any mortgage in the Community), and FHA (so long as FHA is insuring any mortgage in the Community): annexation of additional property to the Community; mergers and consolidations; dedication of Common Property to any public entity; dissolution; mortgaging of Common Property, and any amendment of a material adverse nature to first mortgagees of the Declaration, Bylaws or Articles of Incorporation.

Section 12.9 Security Disclaimer.

The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-Owners and non-occupants will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by other Owners or occupants. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures taken.

Section 12.10 Captions.

All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 12.11 Interpretation.

The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 12.12 Singular Includes the Plural.

Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neutral.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized agent this ____ day of _____, 20__.

KBZ INVESTMENTS, LLC,
a Colorado limited liability company,

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Declaration was acknowledged before me by _____, as _____, of KBZ Investments, LLC, a Colorado limited liability company, on this ____ day of _____, 20__.

Notary Public

My commission expires: _____

EXHIBIT A
DESCRIPTION OF PROPERTY

[need legal description from title commitment if adding Lots initially with this Declaration]

Property added to the Community may be subject to the following easements and interests of record:

- 1.
- 2.
- 3.
- 4.
5. Other instruments of record.

First Draft

First Draft

EXHIBIT D
INITIAL COMMON ELEMENTS

[to be inserted]

First Draft

EXHIBIT E
INITIAL LIMITED COMMON ELEMENTS

[to be inserted]

First Draft

EXHIBIT F
MAINTENANCE AND INSURANCE OBLIGATIONS

“A” = Association obligation

“O” = Owner obligation

“NA” = not applicable

The term “maintenance” includes repair and replacement unless otherwise noted on the Chart.

	MAINTENANCE	INSURANCE
BUILDING EXTERIORS		
Residence-structure, including foundation, columns, girders, beams and supports	A	A
Siding, sheathing, wrap, brick, trim, molding, and other exterior facade surfaces	A	A
Exterior stoops, steps, and concrete surfaces	A	A
Gutters and downspouts	A	A
Porches, patios, and balconies	A	A
Roof shingles and roof underlay	A	A
Shutters and awnings	O	O
Chimneys (exterior portions) and chimney caps	A	A
Window screens	O	O
Interior glass surfaces--cleaning	O	O
Glass--repair and replacement	O	O
Window panes and frames--painting and staining	O	O
Window components --maintenance,	O	O

	MAINTENANCE	INSURANCE
repair, and replacement, including:		
1. Panes		
2. Frames		
3. Rail		
4. Casing		
5. Apron		
6. Side Jamb		
7. Outer Sill		
Window trim and caulking	O	O
Skylights	A	A
Exterior Townhome doors and garage doors--painting and staining	A	A
Garage doors-- maintenance and repair	O	O
Garage door openers	O	O
Exterior Townhome doors including peep holes, doorknobs and lock mechanisms--maintenance and repair	O	O
Storm doors	O	O
Balcony/patio sliding glass doors	O	O
Exterior light fixtures	O	O
UTILITIES		
Utilities <u>outside</u> Townhomes and garages servicing more than one Townhome:	A	A
1. Electrical and other wires		
2. Water and sewer pipes		
3. Cables		
4. Circuit boxes		

	MAINTENANCE	INSURANCE
5. Water meters 6. Circuit breakers		
Utilities <u>outside</u> Townhomes and garages servicing only one Townhome: 1. Electrical and other wires 2. Water/sewer pipes 3. Cables 4. Circuit boxes 5. Water meters 6. Circuit breakers	○	○
Utilities <u>inside</u> Townhomes or garages and servicing only that Townhome: 1. Furnaces 2. Heating equipment 3. Thermostats 4. Ducts 5. Conduits 6. Water pipes 7. Electrical wiring 8. Electrical outlets 9. Telephone wiring 10. Telephone outlets 11. Light switches 12. Hot water equipment 13. Cable wiring 14. Compressors 15. Sump pumps 16. Circuit breakers	○	○
Utilities <u>inside</u> unit but servicing more than one unit:	○	○

	MAINTENANCE	INSURANCE
<ol style="list-style-type: none"> 1. Furnaces 2. Heating equipment 3. Thermostats 4. Ducts 5. Conduits 6. Water pipes 7. Electrical wiring 8. Electrical outlets 9. Telephone wiring 10. Telephone outlets 11. Light switches 12. Hot water equipment 13. Cable wiring 14. Compressors 15. Sump pumps 16. Circuit breakers 17. Boiler equipment (if any) 		
Air conditioners, including condensers and lines running from/to such equipment	○	○
RESIDENCE INTERIORS		
Furnishings, including all personal property such as furniture, electronics, jewelry, and clothing	○	○
Window coverings	○	○
Permanent fixtures including but not limited to: <ol style="list-style-type: none"> 1. ceiling fans 2. hand rails 3. cabinets 4. countertops 5. bathtubs and showers 6. sinks 	○	○

	MAINTENANCE	INSURANCE
7. toilets		
Appliances including: 1. oven 2. range 3. refrigerator 4. dishwasher 5. washer/dryer 6. countertop microwave	○	○
Fireplaces, including: 1. chimney (interior portions) 2. chimney back 3. façade 4. screen 5. flue 6. damper	○	○
Interior non-perimeter walls, floors, and ceilings, including finished and unfinished surfaces, doors, drywalls, studs, insulation, hardware, and other material lying within such walls, floors, and ceilings	○	○
Finished surfaces of perimeter walls and ceilings, including: 1. drywall 2. paint 3. wallpaper 4. paneling	○	○

	MAINTENANCE	INSURANCE
5. texture		
Finished surfaces of perimeter floors--including: 1. tile 2. vinyl 3. hardwood 4. carpeting	O	O
Any components lying between the perimeter drywalls and residence exterior, including but not limited to: 1. insulation 2. girders 3. beams 4. pipes 5. wiring 6. plumbing	O	O
Subflooring	O	O
Party walls (walls dividing Townhomes and shared by owners/residents on each side)	O	O
Basements	O	O
Crawl spaces	O	O
Garage interiors, including any drywall or improvements therein	O	O
GROUNDS		
Retaining walls	A	A
Landscaping	A	A
Irrigation system and time clocks	A	A

	MAINTENANCE	INSURANCE
Private roads, drives, and sidewalks	A	A
Driveways	A	A
Fences surrounding private patios	O	O
Private parking areas	A	A
Monuments and signage	A	A
Perimeter fence	A	A
OTHER		
Snow removal from driveways and sidewalks	A	A
Garbage pick-up	A	A
Common Area existing in Community and not otherwise listed	A	A
Any personal property of Owners not otherwise listed	O	O
Any Owner installed exterior/interior improvement not otherwise listed	O	O