

otherwise on the exterior of Units which create an unsightly appearance. Sporting equipment (e.g., skis, snowboards, bikes, mountain bikes, kayaks, children's toys, etc.), must be stored completely inside the Unit and shall not be allowed to remain outside except when in actual use. No laundry or wash shall be dried or hung outside anywhere within the Community.

3.11 Association Landscaping & Fencing. All landscaping on the Lots shall be the responsibility of the respective Lot Owner, subject to the approval of the Association. No Owner or Occupant shall perform any landscaping activities within the Community (other than the planting, grooming or removal of grass, trees, bushes or other vegetation, or the planting or tending of gardens) without the express prior written approval of the Board of Directors. Fences are not allowed unless permission to install a fence is approved in writing by the Board of Directors prior to installation.

3.12 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or Occupant of a Unit, any member of the Board of Directors, and any authorized representative thereof, shall have the right to enter upon and inspect any Unit, except for any Unit that is in fact occupied (which shall require the permission of the occupant except in the case of emergency, as provided in Section 5.4 below), for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such individuals shall not be deemed guilty of trespass by reason of such entry.

3.13 Insurance Risks. No Lot or Unit may be used for any use which would constitute an unusual fire hazard, would result in jeopardizing any insurance maintained on any part of the Community or would result in any increase in the premium for that insurance.

3.14 Nuisance. No Unit, Common Element or Lot may be used for any use (i) constituting a public or private nuisance; (ii) consisting of the manufacture of any product; or (iii) which causes undue odor, noise, vibration or glare, including, without limitation, the use of any equipment or machine. No audio system in a Unit or on a Lot may be operated in a manner that is audible from within any other Unit or Lot.

3.15 Parking.

(a) All vehicles and motorcycles must be parked in the assigned stalls labeled and signed "For Residents Only".

(b) While the Association may have access to parking spaces in a parking lot in the Community or adjacent to the Community, such parking spaces will allow overnight parking without the prior approval from the Board or the Managing Agent. All vehicles parked overnight in any Community parking lot must display a signed placard with the dates such parking is allowed signed by the Managing Agent or a member of the Board. The Association may promulgate additional parking rules as it determines necessary.

(c) It is prohibited to park inoperable vehicles, RV, trailers, vehicles over seven feet in height or over 22 feet in length in any parking space.

3.16 Signs and Exterior Decorations. No signs of any kind shall be displayed to the public view on or from any portion of a Unit or Lot without first obtaining the written approval of the Board. The size, number, design and location of such signs requiring approval shall be approved by the Board. No exterior decorations that are visible for public view from outside the Unit will be allowed without first obtaining the written approval of the Board. American flags and service flags are allowed to the extent provided by Colorado and federal law, however, the Board may adopt reasonable rules and regulations regarding the size and manner of display of flags.

3.17 Overloading. A Unit may not be used for any use beyond the maximum loads the floors of the Project are designed to carry and no apparatus, equipment, fixtures or other property of any nature may be located within the Unit if the same, singularly or in the aggregate, would violate the maximum loads that the structural flooring in the Project is designed to support.

3.18 Animals and Pets. No animals, livestock, insects, rodents, poultry, reptiles, birds or other pets may be kept within the Buildings, Units or Common Elements.

3.19 Trash. No trash, ashes, building materials, firewood or other unsightly items should be thrown, dumped or stored on the Project, except as designated by the Association. There shall be no burning or other disposal of refuse out of doors. Each Owner shall use the trash receptacle provided to such Owner for the temporary storage of refuse. The Association shall arrange for trash pick-up for the entire Community. Trash receptacles may only be placed in designated community trash locations or arranged by the Association for trash removal between the hours of 6 a.m. and 7 p.m.

3.20 Design Guidelines and Construction Rules and Regulations. All Owners and contractors shall comply with the design guidelines and construction-related rules and regulations regulating any construction activities adopted by the Board of Directors. Such regulations may affect, without limitation, the following: trash and debris removal; restoration of damaged property; conduct and behavior of contractors, subcontractors and Owners' representatives on the Project at any time; fire protection; completion and compliance deposit; schedule; inspection(s); and reimbursement to the Association for professional fees related to approval of any construction activities, as deemed reasonably necessary by the Board.

3.21 Antennae. Except for equipment within easements authorized herein below, above, no exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device shall be permitted on a Lot without first obtaining the written consent of the Board. The Association may install one or more exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device for the Community.

3.22 Outside Burning. There shall be no exterior fires, including barbecues, without prior written approval of the Board. No Owner shall permit any condition upon a Lot which creates a fire hazard or is in violation of fire prevention regulations.

3.23 Leasing. If an Owner leases a Unit, the Owner shall be liable for any violation of the Association Documents committed by the Owner's tenant. The Owner shall have the right to obtain reimbursement from the tenant for any sums paid by the Owner on behalf of the tenant. Any lease of a Unit must be in writing and must state that it is subject to the requirements of the Association Documents. Any lease of a Unit must contain compatible use and activity restrictions as are provided for in the Association Documents.

3.24 Window Coverings; Windows and Glass Doors. The back or window-side of all window coverings consisting of drapes, curtains and blinds must be backed with a dark brown, taupe, dark-grey or black material. The material must be a solid color, no patterns are permitted. Each Unit shall have interior window coverings at all times. Each Owner shall maintain, repair and replace, at such Owner's sole cost and expense, window coverings in accordance with the Rules and Regulations. No exterior windows or glass doors within the Units may have any reflective or tinted substance placed on them. No unsightly materials may be placed on any window or glass door or be visible through such window or glass door, and all glass doors must be approved by the Board in writing prior to installation.

3.25 Recreational Equipment. No bicycles, tricycles, skateboards, roller blades or other types of wheeled, non-motorized vehicles, skis, ski boots and ski equipment (collectively, the "Equipment") may be left on or placed on any Common Element or on the Lot. All Equipment must be stored within a Unit.

3.26 Barbecue Grills. No grills of any kind may be on balconies or any of the Common Elements. Unit Owners may place propane or gas grills on exterior ground level patios or decks. No charcoal grills are permitted.

3.27 Prohibition on Marijuana. It is prohibited to smoke, sell, grow, or manufacture marijuana, cannabis and/or products derived therefrom for the purposes of medicinal or recreational use in the Community. The provisions of this paragraph shall not ever be amended without the written consent of Declarant and without regard to whether the Declarant owns any portion of the Property at the time of the amendment.

3.28 Use of Limited Common Element Patios. It is prohibited to use patios and/or decks as outside storage. Only appropriate exterior furniture and approved grills may be located thereon.

3.29 Use of Limited Common Element Crawl Space. No Owner shall allow any change to a crawl space unless such change has been approved in writing by the Board prior to such change. The Owners acknowledge that the Utility and Fire Suppression Easement is accessed through the crawl space. No Owner shall allow any obstruction of access to the Utility and Fire Suppression Easement. Crawl spaces may be only used for storage of non-hazardous materials.

3.30 Health, Safety and Welfare, Rules and Regulations. In the event any uses, occupancies, activities, and facilities within the Community are deemed by the Board of Directors to be an unreasonable annoyance or nuisance, or to adversely affect the health, safety or welfare of Owners or Occupants, the Board of Directors may adopt reasonable Rules and Regulations of general application in order to appropriately restrict and regulate such uses, occupancies, activities or facilities within the Community. Such Rules and Regulations shall be consistent with the purposes and provisions of this Declaration.

#### **ARTICLE 4** Declarant's Reserved Rights

4.1 Declarant's Rights. Declarant hereby expressly reserves to itself and its successors and assigns the following described rights, which include development rights and special Declarant rights, any one or more of which rights may be exercised, in the sole and absolute discretion of Declarant, at any time and from time to time during the period commencing upon the recording of this Declaration in the County and ending on the date of termination of such rights established under Section 4.3 below. It is expressly understood that Declarant shall not be obligated to exercise any one of these reserved rights.

Except as limited by this Article 4, such reserved rights may be exercised upon or in connection with all or any portion of the Community described on attached Exhibit A. Such rights may be exercised with respect to different parcels of the Project at different times, and in connection therewith Declarant hereby states that (i) no assurances are made regarding the boundaries of the different Lots or Units or with respect to the order in which such Lots or Units may be subjected to the exercise of these reserved rights, even if a reference to a phase or phasing appears in a legal description, Plat, P.U.D. Agreement or other agreement relating to the Project, and (ii) if a particular reserved right is exercised in any portion of the Project subject to that reserved right, that reserved right is not required to be exercised in all or any portion of the remainder of that Project.

The reserved rights hereinafter set forth may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Units and other portions of the Community hereafter made, whether by Declarant or otherwise, shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the rights reserved by and to Declarant in this Article 4, even though no specific reference to such rights appears in the conveyancing instruments. Nothing in this Article 4 shall limit or impair any legal rights that Declarant may have independent of these reserved rights, or any other rights granted or reserved to Declarant by other provisions of this Declaration.

The following rights are hereby reserved to Declarant and its successors and assigns:

- (a) *Sales, Marketing and Management*. The right to construct, locate or operate, and to maintain upon, and to remove from, any portion of the Community (including Lots or Units) owned by Declarant, and/or the Common Elements, in the discretion of

Declarant, and in such number, size and location as may be reasonably required by Declarant in connection with the completion of improvements, the management of the development, and/or the promotion, marketing, sale or rental of Lots or Units, the following:

(i) Sales offices, management offices and/or construction offices, and structures containing or relating to the same. Such offices to the extent they are not situated upon a Lot or in a Unit, are hereby declared to be personal property and shall in any case be removable by Declarant or its successors or assigns promptly upon the Declarant or its successors or assigns ceasing to be a Unit Owner.

(ii) Signs identifying and advertising the Community and the Lots/Units therein, or relating to development or construction thereon.

(iii) Model Units.

(iv) Parking areas and facilities, and lighting, necessary or desirable in the marketing of the Community and the Lots/Units to prospective Owners.

(v) Employees in offices; equipment, vehicles; and marketing and construction materials together with the right to attract, invite or bring prospective purchasers of Lots/Units into the Community at all times.

(b) *Merger.* The right to merge or consolidate the Community with another common interest community of the same form of ownership.

(c) *Declarant Control of Association.* The right to appoint or remove any member of the Board of Directors or officer of the Association, as more specifically set forth in Section 7.6 below, but only for and during the "Period of Declarant Control of Association" as defined in Section 7.6.

(d) *Withdrawal Rights and Procedures.* The right at any time and from time to time to withdraw from the Community any Declarant owned Lots/Units or Common Elements.

Withdrawal shall be accomplished by the recording by Declarant of an amendment to this Declaration and an amendment to the Plat. Upon the recording of such amendments, the withdrawn Lots/Units and/or Common Elements shall no longer be part of the Community or subject to this Declaration in any way.

Each Declarant owned Lot/Unit, and each Declarant owned Common Element, is hereby described and declared to be a separate portion of Project that is subject to this right of withdrawal, and Declarant expressly reserves the right to withdraw one or more Declarant owned Units and/or all or a portion of any Declarant owned Common Element from the Community, and to vacate any platted easements thereon. Once a Lot/Unit has been

conveyed to a Unit Owner other than Declarant, that portion of the Project is no longer subject to this right of withdrawal. Likewise, once a Common Element has been conveyed to the Association, that portion of the Project is no longer subject to this right of withdrawal.

The withdrawn property shall be subject to whatever easements, if any, may be essential for access or utility service to, or operation or management or use or enjoyment of, the Community or any part thereof. Similarly, the owner(s) of the withdrawn property shall have whatever easements, if any, are reasonably necessary for access or utility service to or for use or enjoyment of the withdrawn property over and across the Common Elements within the Community. At the time any withdrawal of Project is accomplished, Declarant shall record whatever documents are necessary to establish such reciprocal easements in the Garfield County records.

In the event any real property is withdrawn from the Community as provided herein, the definitions used in this Declaration shall be automatically contracted to encompass and refer to the Community as contracted, e.g., "Community" shall mean the real property described herein minus any real property withdrawn therefrom; similarly, "Common Elements", "Lots", and "Units" shall mean and include those areas as described herein less those so designated on any amendment to a Declaration or Plat relating to any real property which is withdrawn pursuant to this Article 4. References to this Declaration shall mean this Declaration as so amended.

The recording of amendments to the Declaration and Plat which reallocate the allocated Interests in the Community shall automatically:

- (i) Vest in each existing Unit Owner the reallocated Allocated Interests appurtenant to the Owner's Lot and Unit; and
  - (ii) Vest in each existing Mortgagee a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot or Unit.
- (e) *Other Reserved Development Rights.* The right with respect to all or any Declarant owned portion of the Community (including the Units) to (a) create Common Elements; (b) create additional Lots and Units; (c) subdivide Lots and Units as set forth in Section 4.7 above; (d) combine Units; (e) convert Lots or Units or portions of Lots or Units into Common Elements; and (f) convert Common Elements or portions of Common Elements into Lots/Units.

4.2 Transfer of Declarant's Reserved Rights. Any one or more rights created or reserved under this Article 4 for the benefit of Declarant, specifically including without limitation the right to subdivide a Lot, Unit and Common Elements and to record a Reallocation Amendment in connection therewith, may be transferred to any Person by an instrument describing the right or rights transferred and recorded in Garfield County. Such instrument shall be executed by the transferor Declarant and the transferee. The provisions of Section 38-33.3-304 of the Act shall apply to any transfer of Declarant's reserved rights.

4.3 Termination of Declarant's Reserved Rights. With the exception of Declarant's right to appoint or remove Executive Board members and officers of the Association, which is addressed in Section 7.6 below, the rights reserved to Declarant in this Article 4 shall automatically terminate and expire upon the first to occur of (i) the date which is thirty (30) years after the recording of this Declaration, or (ii) Declarant's relinquishment and surrender of such rights by recorded instrument. Declarant may from time to time relinquish and surrender one or more but less than all of the reserved rights, in which event the unrelinquished reserved rights shall remain fully valid and effective for the remainder of the term thereof. The Association may extend the time period for exercise of a development right, or reinstate a lapsed development right, subject to whatever terms, conditions and limitations the Association may impose on the subsequent exercise of the development right. The extension or renewal of a development right and any terms, conditions and limitations shall be included in an amendment executed by Declarant or the owner of the real estate subject to the development right and the Association.

## **ARTICLE 5**

### **Easements**

5.1 Easements for Incidental Encroachments. If any portion of a Building encroaches upon a Common Element, including any future encroachments arising or resulting from the repair or reconstruction of a Building subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such incidental encroachment. In addition, there is hereby created, granted and reserved to each Owner a non-exclusive easement over, upon and beneath the Common Elements and the Units of other Owners for the horizontal and lateral support of each Owner's Unit.

5.2 Association Utility Easement over Common Elements. There is hereby created, granted and reserved to the Association, its agents, employees, service providers, and assigns a perpetual, non-exclusive easement over, across, upon and under the Common Elements for construction, installation, operation, maintenance, repair, removal and replacement of utilities and utility lines, pipes, wires, circuits, conduits, meters, fire sprinkler systems, facilities and systems for the benefit of the Community or any part thereof, including but not limited to water, sewer, gas, telephone, electricity, cable TV and other common TV and communication systems, if any, together with an easement for access, ingress and egress to accomplish such purposes. The Association or other Person exercising such utility easement rights shall be obligated to restore, reseed, replant and re-landscape the surface of any disturbed area to as close to its original condition as possible, as promptly as possible following completion of any utility work.

5.3 Association Common Utility Easement within Lots and Units. There is hereby created, granted and reserved to the Association, its agents, employees, service provides, and assigns a perpetual, nonexclusive easement along the course of all utility lines (including lines for the master fire sprinkler system in each building) that may exist from time to time within the Lots and Units and that serve more than one Lot or Unit, for the operation, maintenance, repair, removal and replacement of such common utility lines, together with an easement for access, ingress and egress

over the Lots and Units to accomplish such purposes. The Association or other Person or entity exercising such utility easement rights shall be obligated to repair any damage occasioned by the exercise of such rights.

5.4 Association Administrative Easement over Common Elements. There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, nonexclusive easement over, across, upon and under the Common Elements and a right to use the Common Elements for purposes of enabling the Association to perform its various responsibilities and to exercise its various rights under this Declaration.

5.5 Association Easement Upon Lots for Maintenance, Repair and Emergencies. There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement and right to enter upon and in all Lots as necessary for the performance of the Association's rights and responsibilities under this Declaration (including the exercise of the Association's common utility easement rights) and for the making of emergency repairs or reconstruction to the Buildings, the Lots, and/or the Common Elements. For routine maintenance and non-emergency repairs (including routine maintenance and repair of common utility lines within the Lot, including lines for each Building's fire sprinkler system), entry to a Lot or Unit shall be made only on a regular business day during regular business hours, after giving at least one day's notice in writing to the Owner or Occupant. In case of emergency, where there is an imminent threat of damage or injury to person or property, entry shall be made at any time provided that a reasonable effort is made, under the circumstances, to give notice of such intended entry. The Board of Directors is hereby granted the authority to use such reasonable force as may be necessary under the circumstances to gain entry into a Unit in case of an emergency, if no other reasonable means of entry is available. The Association shall be responsible for the cost and expense of repairing all damages to property occurring as a result of such forcible entry, which costs shall be considered Common Expenses, unless the emergency and damage results from the willful act or negligence of an Owner or Occupant, in which event such Owner shall be solely responsible for the costs of repairing/restoring such damage. These costs can be levied, assessed and collected by the Board of Directors as a Reimbursement Assessment pursuant to the provisions of this Declaration.

5.6 Declarant Easement over Common Elements. There is hereby created, granted and reserved to Declarant and its successors and assigns a non-exclusive easement over, across, upon and under all Common Elements (including without limitation all easements benefitting the Association), including a right of access, ingress and egress thereto, and a right to use such Common Elements, and each and every part thereof, for all purposes reasonably related to (a) Declarant's development, improvement, maintenance, management, marketing and sale of the Community and all portions thereof, and/or (b) Declarant's exercise and implementation of the rights reserved to Declarant under this Declaration, and/or (c) the discharge by Declarant of any of its obligations under this Declaration or any other Declarant obligations relating to the Community. Declarant's rights with respect to this easement shall terminate upon the first to occur of (i) the date which is thirty (30) years after the recording of this Declaration, or (ii) Declarant's relinquishment of all or a portion of this easement right by recorded instrument.

5.7 Blanket Emergency Services Easement. There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or Persons, now or hereafter serving the Community and its Owners and Occupants, a perpetual, non-exclusive blanket Emergency Services Easement over, upon, along and across all properties and areas within the Community, for use in the lawful performance of their duties.

5.8 Utility and Fire Suppression Easement. There is hereby created, granted and reserved to the Association, its agents, employees, service provides, and assigns a perpetual, nonexclusive easement in each crawl space for the installation, removal, maintenance, repair and replacement of utilities, including but not limited to, domestic water, gas, electric, sprinkler and CAT 5 cable, together with an easement for access, ingress and egress over the Lots to accomplish such purposes. The Association or other Person or entity exercising such utility easement rights shall be obligated to repair any damage occasioned by the exercise of such rights. No Owner shall allow any obstruction of access to this easement.

5.9 Easements Deemed Created. All conveyances of Lots hereafter made, shall be deemed and construed to grant and reserve all of the easements referred to in this Article 5 and elsewhere in this Declaration, even though no specific reference to such easements appears in the conveyancing instruments.

5.10 Recorded Easements and Licenses. In addition to the easements described in this Article 5 and elsewhere in this Declaration, any recorded easements and licenses appurtenant to or included in the Community are made a part hereof by this reference, including, but not limited to those encumbrances listed on attached Exhibit C.

## **ARTICLE 6**

### **Common Elements**

6.1 Use and Enjoyment of Common Elements. Each Owner shall have the nonexclusive right to use and enjoy the Common Elements in common with all other Owners (a) for all purposes for which such Common Elements were established, and (b) as required for purposes of access and ingress to and egress from (and use, occupancy and enjoyment of) any Lot owned by the Owner or Common Elements available for the Owner's use. This right to use and enjoy the Common Elements shall extend to each Owner, Occupant, and the family members, guests and invitees of each Owner, and shall be appurtenant to each Lot, subject at all times to the provisions of this Declaration, the Articles and Bylaws, and any Rules and Regulations adopted by the Board of Directors from time to time. No Owner or Occupant shall place any structure or improvement whatsoever upon the Common Elements, nor shall any Owner or Occupant engage in any activity which will temporarily or permanently impair free and unobstructed access to or use of all parts of the Common Element by all Owners and by the Association.

6.2 Association may Regulate Use of Common Elements. The Association, acting through the Board of Directors, shall have the right and authority to regulate the use of the Common Elements by the promulgation, enforcement and interpretation from time to time of such Rules and Regulations relating thereto as the Association considers necessary or appropriate for the protection and preservation of the Common Elements and the enhancement of the use and enjoyment thereof by the Owners and Occupants.

6.3 Association to Maintain and Improve Common Elements. The Association, its agents and employees, shall maintain, snowplow as necessary, and otherwise manage the Common Elements and the exterior Lots, including, but not limited to, any improvements, landscaping, water features, streets, parking areas, sidewalks, walkways, common utilities, and recreational and other facilities located thereon. The Association shall construct, alter and remove such improvements and landscaping upon the Common Elements as the Association in its discretion considers necessary, desirable or appropriate from time to time, and shall do all such other and further acts which the Board of Directors deems necessary or appropriate to preserve, protect and enhance the Common Elements and the beauty thereof in accordance with the general objectives for the Community reflected in this Declaration.

6.4 Owner Liability for Owner or Occupant Damage to Common Elements. Each Owner shall be liable to the Association for any damage to Common Elements, the Lots, or for any expense, loss or liability suffered or incurred by the Association in connection with the Common Elements or Lots arising from (a) the negligence or willful misconduct of such Owner or of any Occupant, agent, employee, family member, guest or invitee of such Owner, or (b) any violation by such Owner or any Occupant, agent, employee, family member, guest or invitee of such Owner of any law, regulation, or code, including without limitation any environmental law, or of any provisions of this Declaration, or the Rules and Regulations relating to the Common Elements. Each Owner shall indemnify, defend and hold the Association harmless from any loss, damage, expense or liability arising from the circumstances described in subsections (a) or (b) immediately above. The Association shall have the power to levy and collect a Reimbursement Assessment against an Owner to recover the costs, expenses, damages, losses or liabilities incurred by the Association as a consequence of any such negligence, willful misconduct or violations by the Owner or the Owner's Occupant.

6.5 Damage or Destruction to Common Elements. In the event of damage to or destruction of the Common Elements or the Lots, including improvements thereon, by fire or other casualty, the Association shall repair or replace the same in accordance with the provisions of Section 8.2 below. Repair, reconstruction, or replacement of Common Elements shall be accomplished under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the same for future maintenance, repair, improvement, and operation of Common Elements or for any other use deemed appropriate by the Board of Directors. Damage to any personal property within a Lot shall be the responsibility of the Owner(s) of the Lot(s).

6.6 Condemnation of Common Elements. If any Common Element or part thereof or interest therein is taken under exercise of the power of eminent domain or by purchase in lieu thereof, the portion of any award in condemnation or the price payable for the deed in lieu that is attributable to the Common Element taken or purchased shall be paid to the Association. The Association shall