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# WILDHORSE AT PROSPECT

## DECLARATION

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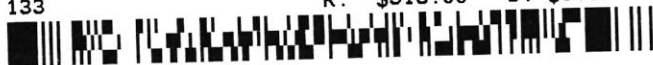
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**PLANNED COMMUNITY DECLARATION**

**FOR**

**WILDHORSE AT PROSPECT**

This planned community declaration (the "Declaration") is made this 13<sup>th</sup> day of Dec, 2006, by Wildhorse, LLC, a Colorado limited liability company ("Declarant") and Wildhorse at Prospect Association, Inc., a Colorado nonprofit corporation (the "Association").

**RECITALS**

A. The undersigned Declarant is the owner of that real property situated in the County of Gunnison, State of Colorado (the "Property") more fully described in Exhibit A attached hereto and incorporated by reference herein.

B. Declarant desires to establish a Planned Community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes 38-33.3-101, et seq., (the "Act"), the name of which is Wildhorse at Prospect.

C. Declarant will construct upon the Property in several phases a total of 55 dwelling units which will consist of 47 single family residences and 4 paired residences (the "Project").

D. Declarant desires to and does hereby establish a plan for the ownership in fee simple of these real property estates, each of which consists of a single family residence;

E. Declarant also desires to and does hereby establish a plan for the co-ownership by all of these single family residence owners of all of the remaining property in the Project (hereinafter defined and referred to as the General Common Areas) as tenants in common.

F. Declarant has recorded in the records of Gunnison County, Colorado a subdivision plat for the Property (the "Plat") depicting the location of the 55 single family residences and the associated Common Areas as well as the boundaries of the Property.

G. In this Declaration, all capitalized words and phrases shall have the same meanings ascribed to them in the Act, subject to the express definitions in Article I below.

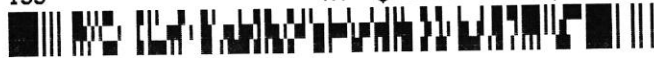
NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the real property, to be a burden and a benefit to Declarant, its successors or assigns, and any person or entity acquiring or owning an interest in the real property and improvements, their personal representatives, devisees, successors or assigns, and shall be in addition to, and not in lieu of, the Master Declarations, as described below. Additionally, Declarant hereby submits the real property to the provisions of the Act.

## ARTICLE 1 DEFINITIONS

Each capitalized term as otherwise defined in this Declaration or in the Plat shall have the same meanings specified or used in the Act. In addition to other defined terms contained herein, the following definitions apply to the real property at the time the same is submitted to condominium ownership under the provisions of this declaration ("Declaration") unless the context shall expressly provide otherwise.

- A. Articles of Incorporation means the Articles of Incorporation for Wildhorse at Prospect Association, Inc., a Colorado non-profit corporation.
- B. Association means the Wildhorse at Prospect Association, Inc., a Colorado non-profit corporation, its successors and assigns. The Articles of Incorporation and Bylaws for the Association shall govern the operations and administration of the Association, the members of which shall be all of the Owners of the Dwelling Units and the Declarant.
- C. Annual Assessment means the Assessment levied annually.
- D. Assessments mean the Annual, Special, and Default Assessments levied pursuant to Article 2 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.
- E. Association Documents means this Declaration, the Articles of Incorporation and the Bylaws of the Association, and any procedures, rules, regulations, or policies adopted under such documents by the Association.
- F. Bylaws means the Bylaws adopted by the Association, as amended from time to time.
- G. Common Area or Common Areas means all the real property within the Project other than the Dwelling Units as well as any improvements upon the Common Areas which are held by the Association for the common use and enjoyment of all of the owners on a non-exclusive basis, all as shown on the Plat. Common Areas shall include, without limitation, common parking areas, improvements





upon the Common Areas, as well as all easements and other appurtenances which benefit the Project.

- H. Common Expenses means (i) all expenses expressly declared to be common expenses by this Declaration or by the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Areas; (iii) insurance premiums for the insurance carried under Article 19; and (iv) all expenses lawfully determined to be Common Expenses by the Executive Board of the Association.
- I. Declarant means and refers to Wildhorse, LLC, a Colorado limited liability company, and its successors and assigns. No party other than Wildhorse, LLC shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the real property records of Gunnison County, Colorado, a written assignment from Wildhorse, LLC of all or a portion of such rights and privileges.
- J. Declaration means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements for Wildhorse at Prospect.
- K. Dwelling Unit means either a single family residence or a paired single family residence constructed upon the Property together with all improvements thereon and all easements and rights of way appurtenant thereto. A Dwelling Unit is also referred to as a Unit.
- L. Executive Board means the governing body of the Association as defined under the Act.
- M. Exterior Maintenance Area means the exterior of any Dwelling Unit, and the Lot containing the Dwelling Unit and any improvements on the Lot, as more fully described on the Plat and in Article 10 of this Declaration.
- N. First Mortgage means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute and liens for assessments pursuant to either of the Master Declarations.
- O. First Mortgagee means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.
- P. Limited Common Areas means those parts of the General Common Areas which are either limited to or reserved for the exclusive use of the Owners of one or more, but less than all, of the Dwelling Units.
- Q. Lot means that portion of the Property within the Project on which a Dwelling Unit is constructed and which is designated as a Lot by location and number in the Plat.

- R. Management Company means the management company appointed by the Executive Board or the Association to perform those management duties, powers, or functions of the Association as the Executive Board may authorize and direct from time to time.
- S. Master Association No. 1 means North Mt. Crested Butte Property Owners Association, a Colorado nonprofit corporation and its successors and assigns.
- T. Master Association No. 2 means Prospect Property Owners Association, a Colorado nonprofit corporation, and its successors and assigns.
- U. Master Declarations mean the Declaration of Covenants, Conditions and Restrictions for Master Association No. 1 as recorded on July 15, 2002 at Reception No. 521959 in the real property records of the Clerk and Recorder of Gunnison County, Colorado, as amended and supplemented from time to time, and the Declaration of Covenants, Conditions and Restrictions for Master Association No. 2 as recorded on July 15, 2002 at Reception No. 521970 in the real property records of the Clerk and Recorder of Gunnison County, Colorado, as amended and supplemented from time to time.
- V. Member shall mean every person or entity that holds membership in the Association by virtue of being an Owner (including the Declarant).
- W. Mortgage shall mean any mortgage, deed of trust, or other document pledging any Dwelling Unit or interest therein as security for payment of a debt or obligation.
- X. Mortgagee means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.
- Y. Owner means and refers to every person or entity that holds record title to a Dwelling Unit.
- Z. Paired Residence means two Dwelling Units constructed in such a manner as to share a common wall.
- AA. Plat means the subdivision plat of the Property depicting the Lots subject to this Declaration recorded in the records of the Clerk and Recorder of Gunnison County, Colorado and all supplements and amendments thereto.
- BB. Project means the planned community created by this Declaration consisting of the Property, the Dwelling Units, and any other improvements constructed on the Property.
- CC. Property means and refers to that certain real property described on Exhibit A attached to this Declaration.

- DD. PUD Guide means the PUD III Guide to the Planned Unit Development Plan of Prospect at Mt. Crested Butte as approved by the Town of Mt. Crested Butte and recorded in the real estate records of Gunnison County, including all tables, plans, exhibits and maps attached to or incorporated into such guide, as such guide may be amended from time to time.
- EE. Residence means a Dwelling Unit constructed on any Lot.
- FF. Rules and Regulations means the rules and regulations of the Association as promulgated, amended or supplemented from time to time by the Executive Board of the Association. The initial Rules and Regulations are attached hereto as Exhibit C.
- GG. Sharing Ratio means the percentage allocation of Assessments to which an Owner's Dwelling Unit is subject as set forth in Exhibit B attached hereto and made a part hereof.
- HH. Special Assessment means an assessment levied pursuant to this Declaration on an irregular basis.
- II. Special Common Areas means those parts of General Common Areas which may be licensed by the Association to the Management Company on an exclusive or nonexclusive basis, or which may be licensed to third parties by or through the Association.
- JJ. Successor Declarant means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded in the office of the Clerk and Recorder of Gunnison County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document. No party other than Wildhorse at Prospect, LLC shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the real property records of Gunnison County, Colorado, a written assignment from Wildhorse at Prospect, LLC as provided herein.
- KK. Supplemental Declaration means an instrument which amends this Declaration or subjects any additional property to this Declaration as more fully provided below.
- LL. Supplemental Plat means a subdivision plat of the Property which may revise any details or information on the most recently recorded Plat or which depicts additional property becoming subject to this Declaration through a Supplemental Declaration.

**ARTICLE 2**  
**NAME, DIVISION INTO RESIDENTIAL UNITS**

Section 2.1 Name. The name of the Project is Wildhorse at Prospect. The Project is a planned community pursuant to the Act.

Section 2.2 Association. The name of the Association is Wildhorse at Prospect Association and the Association has also perfected a registered trade name of "Wildhorse HOA." The initial address for the offices of the Association will be 14 Hunter Hill Road, Mt Crested Butte, CO, 81225. Declarant has caused to be incorporated under the laws of the State of Colorado the Association as a non-profit corporation with the purpose of exercising the functions as herein set forth.

Section 2.3 Number of Dwelling Units. The number of Dwelling Units initially submitted to this Declaration is fifty-five (55). Declarant reserves the right for itself and any Successor Declarant to expand the number of Dwelling Units upon the Property to a maximum of sixty (60) Dwelling Units. Any expansion of this nature must occur within ten years from the date on which this Declaration is recorded.

Section 2.4 Identification of Dwelling Units. The address or other identification for each Dwelling Unit is shown on the Plat.

Section 2.5 Description of Dwelling Units.

- A. Each Dwelling Unit shall be inseparable and may be leased, devised or encumbered only as a residence.
- B. Each Dwelling Unit within a Paired Residence shall be treated as a Dwelling Unit in all respects. However, specific maintenance and repair responsibilities may be assigned to each Paired Residence under this Declaration or under any rule or regulation adopted by the Association.
- C. Title to a Dwelling Unit may be held and owned by more than one person as joint tenants or as tenants in common or in any real property tenancy relationship recognized in Colorado. A Dwelling Unit may also be held and owned by an entity. A representative of the Owner of each Dwelling Unit shall register the Owner's mailing address with the Association along with other contact information including facsimile transmission numbers and e-mail addresses. All notices, assessment invoices and other communications may be sent to an Owner at either the registered mailing address or by facsimile or e-mail transmission according to the information provided to the Association.
- D. Any contract of sale, deed, lease, deed of trust, last will and testament, or other instrument affecting a Dwelling Unit may describe it by its address or Dwelling Unit number, Wildhorse at Prospect, County of Gunnison, State of Colorado,

according to the Plat thereof recorded \_\_\_\_\_ 20\_\_ at Reception No. \_\_\_\_\_, and any recorded amendment and supplement thereto.

- E. Each Dwelling Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed accordingly, the Common Areas shall not be assessed separately but shall be assessed with the Dwelling Units as provided pursuant to Colorado Revised Statutes Subsections 39-1-103(10) and 38-33.3-105(2).
- F. No owner of a Dwelling Unit shall bring any action for partition or division of any part or all of the Common Areas.
- G. Each Dwelling Unit shall be used and occupied solely for residential dwelling purposes in accordance with the restrictions and provisions contained in this Declaration, in the Master Declarations, and in the PUD Guide, and as permitted by any applicable zoning ordinance or rules. No Dwelling Unit shall be used to for any kind of commercial purpose other than an office in the home. The use of any Dwelling Unit by an Owner, tenant or guest in connection with any type of time share, interval ownership, condominium hotel or any species of non-equity membership occupancy right is strictly forbidden. Any occupancy of a Dwelling Unit shall be only as permitted by and subject to the appropriate and applicable governmental zoning and use ordinances, rules and regulations from time to time in effect, including without limitation, the terms and provisions of the Master Declarations and the PUD Guide. Notwithstanding the foregoing, Declarant, for itself and its successors and assigns, hereby retains a right to utilize any Dwelling Unit or Units as sales offices, management offices or model residences so long as Declarant, or its successors or assigns, continues to be an Owner of a Dwelling Unit. The use by Declarant of any Dwelling Unit as a model residence, office or other use shall not affect the Unit's designation on the Plat as a separate Dwelling Unit.
- H. An Owner shall have the right to enter into a long term lease (six months or more) of his or her Dwelling Unit upon such terms and conditions as the Owner may deem advisable. However, any such lease shall be in writing and shall provide that the lease is subject to the terms of the Association Documents. In addition, a Dwelling Unit may be leased only for the uses provided in the Association Documents and may not violate any use restriction imposed by the Association Documents or by the Association. Any failure of a lessee to comply with the terms of the Association Documents shall be a default under the lease, and the default remedies thereunder (including eviction remedies) shall be enforceable by the Association.
- I. No Dwelling Unit shall be permitted to be owned by any "organizational timesharing or club membership interest." For this purpose, this phrase shall mean any arrangement through or under which the owners of stock in any corporation, the members of any nonprofit corporation or club, the partners in any general or limited partnership, the members of any limited liability company

or other association, or the joint venturers in any joint venture shall undertake or attempt by means formal or informal, to share the right to use a Dwelling Unit. However, the phrase will not include any arrangement involving a corporation, partnership, limited liability company, or joint venture when there are twelve or fewer shareholders, members, partners or joint venturers. For purposes of this Section, husbands and wives will be counted as one shareholder, member, partner or joint venturer.

**ARTICLE 3**  
**OWNERSHIP AND USE OF**  
**GENERAL COMMON AREAS**

- A. Ownership. The General Common Areas shall be owned in common by all of the Owners of the Dwelling Units and shall remain undivided. By the acceptance of the deed or other instrument of conveyance or assignment, each Owner specifically waives his or her right to institute and/or maintain a partition action or any other action designed to cause a division of the General Common Areas, and each Owner specifically agrees not to institute any action therefore. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the Association incurs in connection therewith.
- B. Use. Each Owner may use the General Common Areas in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners, subject to such reasonable rules and regulations as may, from time to time, be established pursuant to the Bylaws of the Association. Further, the use of any Limited or Special Common Areas may be limited as more specifically provided in this Declaration.
- C. Management Company Services and Occupancy. The Executive Board shall have authority to select, hire, terminate, negotiate and otherwise deal with the Management Company. Subject to oversight by the Executive Board, the Management Company will provide services to the Association and the Project, including maintenance of landscaping and the exterior portions of Dwelling Units. Furthermore, the Executive Board may negotiate with the Management Company for the exclusive or non-exclusive use of Special Common Areas necessary or desirable for the Management Company to satisfy its obligations under a management contract with the Association, with or without requiring the Management Company to pay a fee for the use of these areas, all as the Executive Board shall deem advisable in its sole judgment.

Notwithstanding the foregoing, the Executive Board may enter into agreements with Declarant, other residential homeowners associations, private membership clubs, or third parties for the purpose of sharing or licensing the use of the

General and Special Common Areas on terms and conditions that the Executive Board deems reasonably equitable to the Owners.

- D. Rental Management. The Executive Board shall have authority to designate an approved rental manager or agent to administer rental operations for the benefit of those Owners who desire to rent their Dwelling Units from time to time on a short term basis (less than six months). The Executive Board shall promulgate rules governing all short term rental operations.
- E. Community Center. The Declarant shall have the right (but not the obligation) to construct a community center consisting of a pool and clubhouse as part of the General or Special Common Areas. The community center facilities may be constructed in phases. Owners of Dwelling Units and their guests shall be entitled to use the community center facilities, if constructed, under the terms of rules to be adopted by the Executive Board. Any such use shall be non-exclusive. Declarant shall have the right to permit or license the use of the community center facilities by members of other private membership clubs, homeowner associations or organizations. All community center facilities of the Association will be part of the General or Special Common Areas, and all expenses attendant thereto shall be Common Expenses as defined in this Declaration and as further determined by the Executive Board. The Executive Board may enter into agreements with the Declarant, other homeowner associations, other private membership clubs, or third parties for the purpose of sharing the use and costs of operating, repairing and maintaining the community center facilities on terms and conditions that the Executive Board deems reasonably equitable to the Owners.

#### ARTICLE 4 LIMITED AND SPECIAL COMMON AREAS

- A. Limited Common Areas. A portion of the General Common Areas is reserved for the exclusive use of less than all of the Owners, and such areas are referred to as Limited Common Areas and are reserved: (i) as provided in Section 38-33.3-202 of the Act; or (ii) as identified on the Plat specifying to which Dwelling Units the Limited Common Areas are allocated. All of the Owners of Dwelling Units in the Project shall have a non-exclusive right in common with all of the other Owners to the use of sidewalks, pathways, common stairways, paved areas, skiways, trails, and roads and streets located within the entire Project, unless designated on the Plat as a Limited or Special Common Area. No reference thereto, whether such Limited Common Areas are exclusive or non-exclusive need be made in any deed, instrument of conveyance, or other instrument.
- B. License and Easement. Declarant reserves an easement upon and across the General Common and Special Common Areas for the purpose of permitting access to and passage through and over these areas by members of other common interest ownership associations or clubs and their guests in connection

with licensed or permitted use of the Association's recreational and other facilities as may be negotiated and implemented by the Executive Board or the Management Company from time to time. The Association is also empowered by and through its Executive Board to grant a license through or over portions of the General or Special Common Areas to Master Association No. 1, Master Association No. 2, the operator of the ski area, to other community associations, and to the Management Company. The Association may also sublicense General or Special Common Areas to any of these parties or to others on an exclusive or nonexclusive basis for use in fulfilling the obligations of the Association arising hereunder or of the Management Company. Any such license or sublicense shall be upon those terms and conditions that the Executive Board deems advisable in its sole judgment.

**ARTICLE 5**  
**SEPARATE ASSESSMENT AND**  
**TAXATION NOTICE TO ASSESSOR**

Each Dwelling Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed. The General Common Areas shall not be assessed separately but shall be assessed with the Dwelling Units as provided pursuant to Colorado Revised Statutes Subsections 39-1-103(10) and 38-33.3-105(2). In the event that for a period of time any taxes or assessments are not separately assessed to each Dwelling Unit Owner, but are assessed on the real property as a whole, then each Dwelling Unit Owner shall pay his or her proportionate share thereof in accordance with his or her percentage Ownership in the General Common Areas.

**ARTICLE 6**  
**MEMBERSHIP AND VOTING**

- A. Membership Corporation. The Association shall be a nonprofit membership corporation without certificates or shares of stock. There shall be one (1) membership in the corporation for each Owner of a Dwelling Unit. No person or entity other than the Declarant or the Owner of a Dwelling Unit may be a Member of the Association.
- B. Membership and Voting Rights. There shall be one class of Association membership. Members shall be Owners, including the Declarant so long as the Declarant continues to own an interest in a Dwelling Unit. Members who are Dwelling Unit Owners shall be entitled to one (1) equal vote for each Dwelling Unit in which they own an interest. If more than one person holds such interest in any Dwelling Unit, all such persons shall be Members. In any situation where there is more than one Owner of a Dwelling Unit, the vote for such Dwelling Unit shall be exercised as the Owners determine among themselves. However, such Owners must advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the vote for the Dwelling Unit shall be suspended if more than one person seeks to exercise it.





- C. Transfer of Membership. An Owner shall not transfer, pledge or alienate his or her membership in the Association in any way, except upon the sale or encumbrance of his or her Dwelling Unit and then only to the Purchaser or Mortgagee of his or her Dwelling Unit.
- D. Declarant Control. Notwithstanding anything to the contrary provided for in the Association Documents, Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove directors and officers shall be set out in the Bylaws of the Association. Declarant may voluntarily relinquish such power as evidenced by a notice executed by Declarant and recorded in the Office of the Clerk and Recorder for Gunnison County, Colorado but, in such event, Declarant may require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

## ARTICLE 7 ASSOCIATION OPERATIONS

- A. Compliance with Association Documents. Each Owner shall comply with every provision, covenant, condition, restriction and easement contained in the Association Documents as well as in the Master Declarations. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Dwelling Unit for the benefit of all other Dwelling Units and for the benefit of any interest or right retained by Declarant.
- B. Books and Records. The Association shall maintain and make available to Members and others for inspection, in accordance with the requirements of the Act, current copies of the Association Documents and the books, records, and financial statements of the Association as well as any other documents or information specified in the Act for this purpose. The Association may charge a reasonable fee for copying any materials or documents.
- C. Management Company. The Executive Board shall employ or contract for the services of the Management Company. The Executive Board may delegate certain powers, functions, or duties of the Association to the Management Company as the Executive Board may determine. This delegation shall not modify specific requirements in the Association Documents for approval of certain actions by the Executive Board or Owners. The Management Company shall not have the authority to make expenditures except upon prior approval

and direction by the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the Management Company of any duty, power or function so delegated by written instrument executed by or on behalf of the Executive Board. The Management Company may be terminated by the Executive Board or the Association in accordance with the applicable provisions of the Act.

- D. Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and ever other duty or obligation implied by express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.
- E. Limitation Upon Liability of Association. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR PORTIONS OF THE PROPERTY, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THOSE PORTIONS OF THE PROPERTY TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION OR WHICH MAY BE CAUSED BY THE IMPROVEMENTS OR ARISE FROM THE ACTIONS OF OTHER OWNERS OR PERSONS.

## ARTICLE 8 USE AND OCCUPANCY OF DWELLING UNITS

- A. Residential Use. All Dwelling Units shall be used and occupied by the Owner, the Owner's family and the Owner's guests and tenants for residential purposes only. Any commercial use of a Dwelling Unit is strictly prohibited. However, leasing of Dwelling Units shall be permitted subject to this Declaration and such rules affecting leases and lease terms as the Executive Board may prescribe. No Owner shall offer, sell or lease any interest in a Dwelling Unit under a timesharing, interval ownership plan, non-equity membership club, floating interval rental program or under any similar plan which provides occupancy rights for any Dwelling Unit.
- B. Leases. The Executive Board may, by resolution or rule, prescribe minimum lease terms for the occupancy of Dwelling Units. The Executive Board may require that Dwelling Units be rented on a long term basis (six months or more) using a form of lease containing addenda incorporating the covenants and rules of the Association Documents in the Owner's lease. The Executive Board may also require that any leases be reviewed and approved by the Executive Board or the Management Company, and that the Association may require the



payment of a fee reasonably based on the administrative expense to the Association. The Executive Board may require that an Owner proposing to lease his or her Dwelling Unit deliver a duplicate original or photo static copy of the original lease to the Association prior to the date of occupancy by the lessee.

An Owner proposing to lease his or her Dwelling Unit on a long term basis, or the lessee of a Dwelling Unit, may be required to deposit with the Association a lease deposit in an amount determined by resolution of the Executive Board and which may be graduated in rates based on the length of the lease, type of occupancy, or other facts deemed appropriate in the sole discretion of the Executive Board. The lease deposit may be used as security for the payment of liquidated damages if any lessee or member of a lessee's family or other occupant violates the Association Documents or damages the General Common Areas or improvements. In the event the requirements of the Association Documents are complied with, and no damage is incurred, the deposit shall be returned in full. Such actions may be taken in addition to, and not in lieu of, any other enforcement remedies available to the Association as set forth in this Declaration, the Bylaws, or the Rules and Regulations.

- C. Compliance with Rules. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, the Bylaws of the Association, the Rules and Regulations adopted by the Association and the decisions and resolutions of the Association adopted pursuant thereto as the same may be amended from time to time. Failure of any Owner or occupant to comply with any of the governing documents shall be grounds for an action to recover sums due for damages or injunctive relief or both, and for reimbursement of all costs and attorneys fees incurred in connection therewith, which action shall be maintainable by the Management Company or the Executive Board in the name of the Association on behalf of the Owners or, in a proper case by an aggrieved Owner or the Declarant.
- D. Parking Spaces. Declarant reserves the right to locate and delineate parking spaces upon portions of the Limited and General Common Areas within the Project for use by Owners and their guests as well as by other permitted persons. These parking spaces shall be subject to any easements reserved by the Declarant or to any licenses granted by the Declarant or the Association.
- E. Special Declarant Rights. As long as Declarant or any nominee of Declarant upon whom it confers the rights provided herein owns any Dwelling Units, Declarant, its agent and/or its nominee shall have the right and privilege to maintain general and sales offices in or about the Project including, without limitation thereto, model residences and to have the right and privilege to have their employees or agents present at the Project to meet the public for any purpose, to show Dwelling Units, to use the General Common Areas and any unsold Dwelling Unit which is not under contract and, without limitation, do any and all things necessary or appropriate by them to sell Dwelling Units, all without

charge or contribution except as otherwise provided herein. The use by Declarant of any Dwelling Unit as a model residence or office shall not affect its designation on the Plat as a separate Dwelling Unit. The Declarant has the right to use any part of the General Common Areas for posting of signs and advertising.

## **ARTICLE 9** **RULES AND REGULATIONS**

The Association or the Executive Board may periodically make, adopt, amend and modify reasonable Rules and Regulations governing the use of the Units, Limited Common Areas, Special Common Areas and General Common Areas. These Rules and Regulations shall be substantially consistent with the right and duties established in this Declaration. The Association, the Declarant or any aggrieved Owner may take judicial action against any Owner to enforce compliance with the Rules and Regulations and with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law. The Association shall also be entitled to recover all costs and attorney fees incurred with any enforcement action. The initial Rules and Regulations are attached hereto as Exhibit C. Each Owner understands and acknowledges on behalf of themselves and their occupants, tenants, and invitees that the Executive Board may amend, add to, modify or delete the initial Rules and Regulations.

## **ARTICLE 10** **MAINTENANCE, LANDSCAPING AND SPECIAL EASEMENTS**

- A. Maintenance. In order to maintain a uniform appearance and a high standard of maintenance within the Project, the Association shall maintain the Exterior Maintenance Area, as more fully set forth below.
- (1) Residential Exteriors. Subject to the insurance responsibilities set forth elsewhere in this Declaration, the Association shall maintain the exterior of all Dwelling Units, which shall include and be limited to, painting of the exterior (including decks and porches), roof repair, and exterior window washing unless any of the foregoing are covered by an Owner's insurance. The maintenance shall be performed on a periodic basis as determined by the Executive Board. The color or type of materials used to maintain the Dwelling Units shall also be determined by the Executive Board. The Owner shall be responsible for repair or replacement of broken window panes and all other exterior repairs. In the event insurance proceeds are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is that of the Association, such

repairs or replacement will be completed by the Association at the Owner's cost.

- (2) Landscaping, Sidewalks and Driveway. The Association shall maintain landscaping of the Lots and the Common Areas, including, but not limited to, lawns, trees and shrubs and other improvements within these areas. The Association shall also maintain all walls, gates, sidewalks and driveways and provide snow removal services. The maintenance and work provided under this Section shall be performed at such time and in such a manner as the Executive Board or the Management Company shall determine.
  - (3) Association's Right to Grant Owner's Maintenance Area. The Executive Board may grant the maintenance responsibility of certain areas of each Dwelling Unit to the Dwelling Unit Owner, and the Dwelling Unit Owner will be obligated to accept said maintenance responsibility, provided that the Owner undertakes and performs such work in a uniform and nondiscriminatory manner. Furthermore, the Executive Board shall have the right to promulgate reasonable rules and regulations regarding maintenance by an Owner.
- B. Special Easement. The Association and the Executive Board and their respective representatives are hereby granted a nonexclusive easement to enter upon and use the Exterior Maintenance Area as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article.
- C. Maintenance Contract. The Management Company or Executive Board may employ or contract for the services of a maintenance provider to perform certain delegated powers, functions, or duties of the Association to maintain the Common Areas and Exterior Maintenance Area. The maintenance provider shall have the authority to make expenditures upon prior approval and direction of the Executive Board or the Management Company. The Association or the Management Company shall not be liable for any omission or improper exercise by the maintenance provider for any such work.
- D. Responsibility of Owners. The Owners shall be responsible for maintaining all portions of their Dwelling Units other than the Exterior Maintenance Areas, unless modified by Sections A and C above. The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Dwelling Unit or any part of the Common Areas. No Owner shall make any addition or other alteration to any portion of the Exterior Maintenance Area without the express consent of the Executive Board. The Executive Board shall have discretion to refer approval of any proposed alteration or addition to an architectural control committee or to a vote of the Owners at such level of voting

approval as the Executive Board determines to be appropriate. If an Owner or any Owner's tenant, employee or guest causes damage to the Exterior Maintenance Area or the Common Areas by any negligent or unauthorized activity or misconduct, the Owner shall reimburse the Association for the cost of any repairs or replacements which may be required.

- E. Obligation of Owner to Maintain and Repair. Owners shall properly maintain or repair their Dwelling Units and any associated improvements which are within their areas of maintenance responsibility. Owners shall also take reasonable steps to repair and reconstruct any elements of their Dwelling Units or any associated improvements which are within their area of maintenance responsibility and which have been damaged or destroyed as a result of a casualty. Under these circumstances, Owners shall repair or reconstruct to the extent necessary to place the damaged or destroyed elements in substantially the same condition in which they existed prior to the damage or destruction. Upon the failure of any Owner to comply with these requirements, the Association, after notice to the Owner and with the approval of the Executive Board shall have the right to enter upon the Dwelling Unit to perform such work as is reasonably required to restore the Dwelling Unit and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Dwelling Unit, along with interest at the rate of 8% per annum. All unreimbursed costs and interest shall be a lien upon the Dwelling Unit. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with this Declaration. In addition, the Association shall be entitled to institute a civil action against the Owner(s) of the Dwelling Unit to recover damages for all such costs and interest, as well as any other relief which may be permitted by applicable law.

## ARTICLE 11 ARCHITECTURAL STANDARDS

- A. Architectural Standards. Except as provided herein, no Owner, tenant, occupant, or any other person may make any improvement to or encroachment onto the Limited Special or Common Areas. Except as permitted by the Act, no Owner, tenant, occupant or any other person may make any exterior modification, alteration, or construction (including painting and landscaping) or erect, place or post any object, sign, antenna, clothesline, playground equipment, storm door or window, door knob or knocker, artificial vegetation, exterior sculpture, fountains, flags, or thing on the exterior of a Dwelling Unit, in any windows, or upon any Limited, Special or General Common Areas without first obtaining the prior written approval of the Executive Board. The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the Dwelling Units and structures and the location in relation to surrounding structures and topography. The Executive Board may promulgate specific rules relating to the permissible

installation, location and size of satellite dishes or other exterior antennae or communications apparatus.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the Executive Board may reasonably require. The Executive Board shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations. The Executive Board shall be entitled to stop any construction which is not in conformance with approved plans. The Executive Board may publish written architectural standards for exterior alterations or additions. Any requested change must be in harmony with the external design of the Dwelling Units and the location in relation to surrounding structures and topography.

In the event that the Executive Board or its designated representative fails to approve or to disapprove such application within forty-five (45) days after the application and such information as the Executive Board may reasonably require shall have been delivered to and received by the Executive Board, its approval will not be required and this subparagraph will be deemed complied with; provided, however, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the By-Laws, or the Rules and Regulations.

- B. Architectural Control. The Executive Board shall have jurisdiction over all architectural control and design issues unless the Executive Board delegates to other Dwelling Unit Owners the authority to serve on an architectural control committee. The Executive Board may delegate such authority to individual Dwelling Unit Owners by resolution, or the Executive Board may call for a special election by the Association to select the Dwelling Unit Owners to whom the authority shall be delegated. The chairperson of any such committee shall be a member of the Executive Board.
- C. Condition of Approval. As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration. In the discretion of the Executive Board, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.
- D. Limitation of Liability. Review and approval of any application pursuant to this paragraph is made on the basis of aesthetic considerations only, and the Executive Board shall bear no responsibility for ensuring the structural integrity or soundness of approved construction or modifications. In addition, the Executive Board shall bear no responsibility for ensuring compliance with building codes



and other governmental requirements. Neither the Association, the Executive Board, nor any member of any of the foregoing, shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Dwelling Unit, Limited, Special or General Common Area.

- E. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Executive Board will change from time to time, and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of the Executive Board of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Executive Board shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.
- F. Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant or the Executive Board, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Declarant, or the Executive Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be specifically assessed against the Dwelling Unit and collected as an assessment pursuant to this Declaration.

In addition to the foregoing, the Executive Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions.

If any Owner or occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Area or the Limited, Special or General Common Areas or upon a Dwelling Unit in violation of this Section, he or she does so at his or her sole risk and expense. The Executive Board may require that the change, alteration or construction be disturbed in order to facilitate the repair or maintenance of underlying utility or other common services and General Common Areas within the Project without reimbursement to the Owner or occupant for any expense he or she may have incurred in making the change, alteration or construction.



**ARTICLE 12**  
**RESERVATION FOR ACCESS,**  
**MAINTENANCE, REPAIR AND EMERGENCIES**

The Association shall have the irrevocable right, to be exercised by the Management Company or Executive Board of the Association, to have access to each Dwelling Unit from time to time during reasonable hours under the particular circumstances as may be necessary for the maintenance, repair or replacement of any of the General Common Areas or Limited Common Areas therein or accessible therefrom or for making repairs therein necessary to prevent damage to the General Common Areas, Limited Common Areas, or to another Dwelling Unit. In the event a Dwelling Unit Owner causes damage to the Limited, Special or General Common Areas or any part of another Dwelling Unit resulting from the misuse or negligence of such Owner or his or her tenants, guests or invitees, then such Owner shall be solely responsible for all expenses to restore the affected Dwelling Units and/or affected Limited, Special or General Common Areas to their condition prior to such damage.

The Management Company shall retain a passkey to each Dwelling Unit. No Dwelling Unit Owner shall alter any lock or install a new lock on the front entrance door without the written consent of the Management Company. In the event such consent is given, the Dwelling Unit Owner shall provide the Management Company with a duplicate key. Failure to comply with this requirement could result in forced entry by the Executive Board or Management Company at the Owner's expense. Further, each Owner hereby specifically authorizes the Management Company or Executive Board to remove or re-key any lock installed in contravention of this provision at the Owner's expense, and in addition to assess a penalty against Owner of \$100.00 per month for each month that the Owner refuses to comply with this provision of the Declaration.

The Association shall not be liable for injury or damage to person or property caused by the Areas or by any Owner or by any other person or caused by any utility, rain, snow or ice which may leak or flow from any portion of the Limited, Special or General Common Areas. The Association shall not be liable to the Owner of any Dwelling Unit or such Owner's occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Limited or General Common Areas. The Association shall not be liable to any Owner or any Owner's occupant, 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 Declaration where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. 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.

The Association shall repair incidental damage to any Dwelling Unit resulting from performance of work which is the responsibility of the Association.

**ARTICLE 13**  
**EASEMENTS**

- A. Easement for Encroachment. If any portion of the General Common Areas encroaches upon a Dwelling Unit, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of a Dwelling Unit encroaches upon the General Common Areas or upon an adjoining Dwelling Unit, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any improvements comprising part of the General Common Areas are partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location and, as a result of such rebuilding, any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the General or Limited Common Areas or on the Dwelling Units.
- B. Easement for Construction Facilities. Until the conveyance by Declarant of the last Dwelling Unit within the Project, or September 1, 2020, whichever is sooner, Declarant reserves an easement on, over and across the General Common Areas for the purposes of storing and operating construction trailers, construction yards, and construction materials and equipment used in conjunction with the development and construction of the Project.
- C. Easement for Utilities. Until the conveyance by Declarant of the last Dwelling Unit within the Project, or September 1, 2020, whichever is sooner, Declarant reserves an easement on, over or across the Limited, Special and General Common Areas to benefit any utility company or governmental agency providing utility services, including, but not limited to, water, sewer, storm sewer, gas, electric, telephone, and cable television to the Project or to other parcels of real property adjoining the Project whether or not such parcels or real property are owned by Declarant or third parties. Declarant shall also have the right to grant such easements and permit the holder of such easements to install, replace, repair, maintain and operate its utility lines and/or facilities over and across that portion of the Project described in the applicable easement.
- D. Other Easements. In addition to the easement reserved by declarant as described in Article 4, Section B above, Declarant hereby declares that the Project is now, or may hereafter become, subject to, those certain easements, licenses and/or recorded documents as set forth in Exhibit D attached hereto and incorporated herein by this reference.

**ARTICLE 14**  
**TERMINATION OF 'MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION**

Subsequent to the completion of the improvements described on the Plat, no labor performed or materials furnished or incorporated in a Dwelling Unit with the consent or at the request of a Dwelling Unit Owner or his or her agent or his or her contractor or subcontractor shall be the basis for filing of a lien against the Dwelling Unit of any other Owner not expressly consenting to or requesting the same, or against the General Common Areas. Each Owner shall indemnify and hold harmless the Association and each of the other Owners from and against all liability arising from the claim of any lien against the Dwelling Unit of any other Owner or against the General Common Areas for construction performed or for labor, materials, services or other products incorporated into the Project at the direction of said Owner. Notwithstanding the foregoing, any mortgagee of a Dwelling Unit who shall become an Owner of a Dwelling Unit pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless the Association or any other Owner against liability for claims arising prior to the date such mortgagee becomes an Owner.

**ARTICLE 15**  
**ADMINISTRATION AND MANAGEMENT**

- A. Management. The administration and management of the Project shall be governed by the Association Documents. An Owner of a Dwelling Unit, upon becoming an Owner, shall be a Member of the Association and shall remain a Member for the period of his or her ownership of a Dwelling Unit. The Association shall be initially governed by an Executive Board as is provided in the Bylaws. The Association may delegate by written agreement any of its duties, powers and functions related to the day-to-day administration and management of the Association to the Management Company. However, the contract between the Management Company and the Association shall provide that the contract may be terminated by either party in accordance with the requirements of the Act.
- B. Certificate of Identity. There may be recorded from time to time a certificate of identity which shall include the names and addresses of the officers of the Association and the Executive Board members as well as the name and address of the Management Company. Such certificate shall be conclusive evidence of the specified information with regard to any person relying thereon in good faith.
- C. Annual Disclosures. The Managing Agent shall take appropriate steps to implement and maintain compliance by the Association with the annual disclosure and record retention requirements of the Act. The Executive Board shall provide oversight and review of this process to assure that all required disclosure and record retention functions are carried out in an efficient and practical manner.



- D. Policy Governance Statements. The Executive Board shall adopt such written policy governance statements from time to time as may be required by the Act. Copies of each policy governance statement shall be made available to all Members.

**ARTICLE 16**  
**ASSESSMENTS**

- A. Covenant of Personal Obligation of Assessments.

- (1) From and after the date of the first conveyance of a Dwelling Unit to an Owner other than Declarant, all Owners of Dwelling Units depicted on the Plat and submitted to this Declaration shall be obligated to pay the estimated Common Expenses (hereinafter sometimes referred to as Common Expense Assessments or Assessments) imposed by the Executive Board of the Association to meet the cost of Common Expenses and reserves which are determined by the Executive Board to be necessary or appropriate. Declarant shall be obligated, as any other Owner, in reference to Dwelling Units owned by Declarant and submitted to this Declaration, to pay the estimated Common Expense Assessments imposed by the Executive Board to meet the Common Expenses and required reserves.
- (2) In the event that the Association is required to perform any maintenance or repair of an Exterior Maintenance Area or an appurtenant Limited Common Element which is the maintenance responsibility of such Owner, the Owner shall be liable to reimburse the Association for the resulting expenses. This obligation shall be an additional assessment enforceable against the Owner and the Dwelling Unit in the same manner as other assessments.
- (3) Assessments for the estimated Common Expenses shall be due in advance on the first day of each calendar quarter. If any such quarterly installment shall not be paid within thirty (30) days after it shall become due, the Executive Board may assess a late charge as reasonably determined from time to time by the Executive Board as well as interest on the unpaid principal at a rate not to exceed 21% per annum, costs, and attorney fees. Each Owner hereby agrees that the Association's lien on a Dwelling Unit for Assessments shall be superior to the Homestead Exemption provided by C.R.S. Section 38-41-201 and other similar state and federal laws. Each Owner hereby agrees that the acceptance of the deed or other instrument of conveyance in regard to any Dwelling Unit within the Project shall signify the Owner's waiver of the exemption right granted by the Colorado statutes and similar federal laws with respect to any lien of the Association.

- B. Allocation and Proration of Common Expense Assessments. The allocation of Common Expense assessments is based on the number of Dwelling Units within the Project with each Dwelling Unit bearing an equal allocation as shown in Exhibit B. In the event the ownership of a Dwelling Unit, title to which is derived from Declarant, commences on a day other than the first day of the assessment period, the Common Expense Assessments for the assessment period will be prorated.
- C. Common Expense Assessments. Common Expense Assessments shall be based upon a budget of Common Expenses established by the Executive Board in accordance with Subsection D below for the payment of all estimated expenses relating to or connection with the administration, maintenance, ownership, repair, operation, addition, replacement, alteration and improvements of the Common Areas of the Project and all personal property owned by the Association as well as for the payment of all expenses connected with other functions and responsibilities of the Association. This sum may include, but shall not be limited to, such expense items as: management fees and expenses, the proportional expense of the operations for any recreational facilities as determined from time to time by the Executive Board, taxes and special assessments until separately assessed, premiums for insurance, landscaping and care of grounds, common utility expenses (which shall include gas, electricity, telephone/fire alarm service lines, CATV services), repairs and renovations, trash collection, wages, expenses and liabilities incurred by the Association's Executive Board on behalf of the Owners under or by reason of the Association Documents, funds for reasonable contingency reserves, working capital and/or sinking funds, and any and all other costs and expenses relating to the Limited, Special and General Common Areas or the Project.
- D. Budget.
- (1) The fiscal year for the Association shall commence on September 1 but the Executive Board may change the Association's fiscal year at any time. At least 60 days before the beginning of each fiscal year, the Executive Board shall prepare a budget of the estimated Common Expenses for the coming year. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Dwelling Units.
  - (2) Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of the

Members reject the budget of General and Limited Common Expenses, the budget will automatically be ratified, whether or not a quorum is present. In the event that a proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually.

- E. Utility Charges. Each Owner shall be obligated to pay all charges for any separately metered utilities which service his or her Dwelling Unit. In the event that any utilities, such as water and sewer, are master metered, then such utility service shall be part of the General Common Expenses hereinbefore provided.
- F. Obligation to Pay Assessments. The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or a release of the Owners from their obligations to pay such expenses or assessments.
- G. Reserve Fund. Subject to Subsection D above, the Association shall be obligated to establish a reserve fund for the maintenance, repair and replacement of those General and Limited Common Areas that must be replaced periodically. The reserve fund shall be funded through the quarterly payments of the General Common Expense Assessments, and such reserve funds shall be held by the Association pursuant to its investment policy statement and accounted for separately.
- H. Special Assessments. In addition to the Assessments authorized above, the Association, through its Executive Board, may from time to time determine, levy and assess in any assessment year with or without a vote of the Members, a special assessment for the purpose of defraying, in whole or in part, the unbudgeted costs or payments for any deficit remaining from a previous period, for fees and expenses of any substantial or extraordinary construction, reconstruction, repair, demolition, replacement or maintenance of the General, Limited or Special Common Areas or any improvements within the Project, or any facilities located thereon, specifically including any fixtures and personal property related thereto. In the event, however, that any special assessment will exceed \$20,000.00 per Dwelling Unit for applicable Dwelling Units in any particular assessment year, then the special assessment, if proposed by the Executive Board, shall be subject to a majority vote of the Members. This limitation, however, shall not apply to any emergency repair or maintenance assessments. The amounts determined, levied and assessed pursuant hereto shall be assessed to each Owner in accordance with his or her undivided interest in the General Common Areas; and shall be due and payable as set forth in any notice of special assessment promulgated by the Executive Board.

- I. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Dwelling Unit as follows:
- (1) To cover the costs of maintaining and repairing the Exterior Maintenance Area.
  - (2) To cover the costs, including overhead and administrative costs, of providing benefits, items or services to the Dwelling Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Executive Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, Dwelling Unit maintenance, janitorial service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner.
  - (3) To cover costs incurred in bringing any Dwelling Unit into compliance with the terms or requirements of the Association Documents or any costs incurred as a consequence of the conduct of the Owner or occupants of the Dwelling Unit, their agents, contractors, employees, licensees, invitees or guests.
- J. Liability for Assessments. All Owners of a Dwelling Unit shall be jointly and severally liable to the Association for the payment of all assessments attributable to such Dwelling Unit, including the annual assessment for Common Expenses and special assessments assessed against the Dwelling Unit. Any such assessments shall be a personal and individual debt of the Owner thereof. No Owner may exempt himself or herself from liability for the assessment by abandonment of his or her Dwelling Unit or by waiver of the use or enjoyment of all or any part of the Limited or General Common Areas. Litigation to recover a money judgment for unpaid assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney fees in connection therewith shall be maintainable without foreclosing or waiving the assessment lien provided in this Declaration.
- K. Lien for Assessments.
- (1) All sums assessed but unpaid for the share of Common Expenses, whether general, special or specific, chargeable to any Dwelling Unit, shall constitute a lien on such Dwelling Unit superior to all other liens and encumbrances, except only for:
    - (a) Real estate taxes and special assessment liens on the Dwelling Unit in favor of any public or quasi-public assessing entity.

- (b) Liens and encumbrances recorded before the recordation of this Declaration, including liens for assessments pursuant to either of the Master Declarations.
- (c) Any priority lien granted to the Association pursuant to the Act and all sums unpaid on a first mortgage or first lien priority deed of trust of record, including advances and all unpaid obligatory sums as may be provided by such encumbrances.

To evidence such lien, the Executive Board may, but shall not be obligated to, prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of the accrued interest and late charges thereon, the name of the Owner of the Dwelling Unit and a description of the Dwelling Unit. Any such notice may be signed by a representative of the Management Company, one of the members of the Executive Board, or by one of the officers of the Association and shall be recorded in the office of the Clerk and Recorder of the County of Gunnison, Colorado. The recording of any written notice of lien shall not constitute a condition precedent nor delay the attachment of the lien and such lien shall be a perpetual lien upon the Dwelling Unit and attaches without notice at the beginning of the first day of any period for which any assessment is levied or assessed. Such lien may be enforced by the Association through a judicial foreclosure of the defaulting Owner's Dwelling Unit as well as in an action at law against the Owner personally obligated to pay the same or both.

- (2) An Owner shall be required to pay the costs, expenses and attorney fees incurred by the Association in regard to any such default, including the cost of preparation and filing the lien, and, in the event of foreclosure proceedings, all additional costs, expenses and attorneys' fees incurred. An Owner of the Dwelling Unit being foreclosed shall be required to pay to the Association the monthly Common Expense Assessments for the Dwelling Unit during the period of foreclosure, and the Association shall be entitled to request a receiver to collect the same. The Association shall have the power and authority to bid for the Dwelling Unit at a foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same during such proceeding and its ownership thereof.
- (3) Any mortgagee holding a lien on a Dwelling Unit may pay, but shall not be required to pay, any unpaid Common Expenses payable with respect to such Dwelling Unit, and upon such payment, such mortgagee shall have a lien on such Dwelling Unit for the amounts paid on the same rank as the lien of his or her encumbrance without the necessity of having to record a notice or claim of such lien. The Association shall report to the first





mortgagee of a Dwelling Unit, upon written request, any unpaid Common Expense Assessments remaining unpaid for longer than thirty (30) days after the same is due or other default of any covenant, condition, obligation or term of this Declaration not cured within thirty (30) days; provided, however, that such mortgagee must first have furnished to the Association notice of such encumbrance.

- (4) Any recorded lien for nonpayment of the Common Expenses may be released by recording a release of lien executed by a member of the Executive Board, an officer of the Association or by a representative of the Management Company. The cost of preparing, filing and recording any release shall be paid by the affected Unit Owner to the Association in advance of obtaining the release.
  - (5) Notwithstanding the terms and conditions of this Declaration, in the event of any default on the part of any Owner under any first mortgage which entitles the holder thereof to foreclose the same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of this Declaration relating to the liability of a grantee for the unpaid Common Expense Assessments of his or her grantor, but only to the extent permitted under the Act. Further, no first mortgagee shall be liable for any unpaid Common Expense Assessments accruing prior to the time such mortgagee becomes the Owner of any Dwelling Unit pursuant to the remedies in its mortgage, but only to the extent permitted under the Act. A lien of the Association, when delinquent, may be enforced in the same manner as provided for the judicial foreclosure of mortgages under the laws of the State of Colorado. Notwithstanding the foregoing, the Association's lien for delinquent assessments shall be prior to a first mortgage of record to the extent provided for by the Act.
- L. Working Capital Fund Contributions. In order to provide the Association with adequate working capital funds, the initial purchaser of a Unit shall make a one-time nonrefundable payment to the Association of \$500 upon the purchase of his or her Dwelling Unit. This payment to the Association for working capital funds shall be in addition to any quarterly installments of the annual Common Expense Assessments which may be due at the time of such purchase.
- M. Master Association Assessments. All Owners shall be obligated to pay any assessments which may be levied from time to time by Master Association No. 1 or Master Association No. 2. The Association may collect any such assessments in its agency capacity, and the Association may also enforce payment of such assessments as more specifically described in Section 29.2 below.



**ARTICLE 17**  
**LIABILITY FOR COMMON EXPENSE**  
**UPON THE TRANSFER OF RESIDENTIAL UNIT**

Upon the written request of any Owner or any mortgagee, or prospective mortgagee or grantee of a Dwelling Unit, the Association or the Management Company shall issue a written statement setting forth the amount of the unpaid Common Expenses, if any, with respect to the subject Dwelling Unit, the amount of the current monthly Assessment and the date that such Assessment becomes due, credit for any advanced payments of Assessments, but not including accumulated amounts for reserves or sinking funds, if any, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party within fourteen (14) business days, all unpaid Common Expenses which become due prior to the date of making such request shall be subordinate to the lien of a mortgagee which acquired its interest in the Dwelling Unit subsequent to requesting such statement. The grantee of a Dwelling Unit, except for any first mortgagee who comes into possession of a Dwelling Unit pursuant to foreclosure of its mortgage or by the taking of a deed in lieu thereof to the extent permitted under the Act, shall be jointly and severally liable with the grantor for all unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

**ARTICLE 18**  
**MORTGAGING A RESIDENTIAL UNIT - PRIORITY**

An Owner shall have the right from time to time to mortgage or encumber his or her Dwelling Unit by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first lien priority under applicable law. The Owner of a Dwelling Unit may create junior mortgages, liens or encumbrances on the following conditions:

- A. That any such junior mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligation liens for Common Expenses and other obligations created by this Declaration, the Articles of Incorporation and the Bylaws for the Association as well as any assessment obligations which may be due or will become due under the Declaration or under any of the Master Declarations.
- B. That the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his or her right, title and interest in and to the proceeds under any related insurance policy. Such release shall be furnished forthwith by a junior mortgagee upon written request from one or more of the members of the Executive Board of the Association.

**ARTICLE 19**  
**INSURANCE AND FIDELITY BONDS**

- A. General Insurance Provisions. The Association shall maintain, to the extent reasonably available:
- (1) Property insurance on the General Common Areas for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping and other items normally excluded from property policies; and
  - (2) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the General Common Areas and the Association, in an amount, if any, deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Association, the Management Company, and their respective employees, agents, and all persons acting as agents. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the General Common Areas. The insurance shall cover claims of one or more insured parties against other insured parties.
  - (3) The Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Dwelling Units that the Association is not obligated to insure to protect the Association or the Owners.
- B. Cancellation. If the insurance described in Subsection A above is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.
- C. Policy Provisions. Insurance policies carried pursuant to Subsection A above must provide that:
- (1) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the General Common Areas or membership in the Association;



- (2) The insurer waives its rights to subrogation under the policy against any Owner or member of his or her household;
  - (3) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
  - (4) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.
- D. Insurance Proceeds. Any loss covered by the property insurance policy described in Subsection A above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and mortgagees holding a first security interest in a Dwelling Unit as their interests may appear. Subject to the provisions of Subsection G below, the proceeds must be disbursed 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 or the regime created by this Declaration is terminated.
- E. Association Policies. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to any portion of the Project, it shall have the authority' to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.
- F. Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Subsection A above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and to each Owner and mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

G. Repair and Replacement.

- (1) Any portion of the General Common Areas for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:
  - (i) The Project and the Planned Community regime created thereunder by this Declaration is terminated;
  - (ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
  - (iii) Eighty percent of the Owners and all directly adversely affected Owners agree in writing not to rebuild; or
  - (iv) Prior to the conveyance of any Dwelling Unit to a person other than Declarant, the mortgagee holding a deed of trust or mortgage on the damaged portion of the General Common Areas rightfully demands all or a substantial part of the insurance proceeds.
- (2) The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If all are not repaired or replaced, the insurance proceeds attributable to the damaged General Common Areas must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or mortgagees, as their interests may appear in proportion to their respective ownership interests in the General Common Areas.

H. Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are General Common Expenses.

I. Fidelity Insurance. Fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than (1) \$50,000, or (2) two months' current Assessments plus reserves as calculated from the current budget of the Association, whichever is greater. In addition, if responsibility for handling funds is delegated to the Management Company, such bond may be obtained for the Management Company and its officers, employees and agents, as applicable. Any such fidelity coverage shall name the Association as an obligee, and such bonds shall contain waivers by the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.



- J. Workmen's Compensation Insurance. The Executive Board shall obtain workmen's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.
- K. Directors' and Officers' Liability Insurance. The Executive Board shall obtain a policy of directors' and officers' liability insurance which shall provide protection to officers of the Association and members of the Executive Board in the performance of their duties and obligations on behalf of the Association. The terms of the policy shall be determined by the Executive Board with the advice of the Association's counsel.
- L. Other Insurance. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.
- M. Insurance Obtained by Owners. Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation; and provided further that the liability of the carriers issuing insurance obtained by the Executive Board shall not be affected or diminished by reason of any such additional insurance carried by any Owner. All Owners are required to file copies of any such policies with the Association. Insurance coverage on furnishings, draperies, wallpaper and other items of personal or other property, improvements or betterments belonging to an Owner and public liability coverage within each Dwelling Unit shall be the sole and direct responsibility of the Owners thereof, and the Executive Board, the Association and the Management Company shall have no responsibility therefore.
- N. Limitations. In the event that there shall be any damage or destruction to, or loss of, or taking of a Unit which exceeds Fifty Thousand (\$50,000.00) Dollars or any damage or destruction to, or loss of, or taking of the General Common Areas which exceeds One Hundred Thousand (\$100,000.00) Dollars, then notice of such damage or loss or taking shall be given by the Association to each first mortgagee of said Condominium Units within ten (10) days after the occurrence of such event and the cost of repair determined. The Executive Board shall not obtain any insurance policy where:
1. under the terms of the insurance company's charter, bylaws, or policy, a contribution or assessment may be made against the mortgagor or mortgagee's designee; or
  2. by the terms of carrier's charter, bylaws or policy, any loss payments are contingent upon action by the company's board of directors, policyholders or members; or

3. the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or the mortgagor from collecting insurance proceeds.

**ARTICLE 20**  
**ATTORNEY-IN-FACT**

- A. Appointment. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project upon its damage, destruction or obsolescence.
- B. Insurance Proceeds. Title to any Dwelling Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant, or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with the real property upon its damage, destruction or obsolescence as is hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary, shall have complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a Dwelling Unit Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each Dwelling Unit and the General, Special and Limited Common Areas having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacements unless the Owners and the first mortgagees agree not to rebuild in accordance with the provisions set forth hereunder.
  - (i) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to cause the repair and restoration of the improvements.
  - (ii) If the insurance proceeds are insufficient to repair and reconstruct the improvements, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment, if permitted under the Act, to be made against all of the Owners and their Dwelling Units.

Any such deficiency assessment shall be a Common Expense and made pro rata according to each Owner's percentage interest in the General Common Areas and shall be due and payable within thirty (30) days after written notice thereof.



The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his or her Dwelling Unit and may be enforced and collected as provided in this Declaration. In addition, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Dwelling Unit of any Owner refusing or failing to pay such deficiency assessment, within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Dwelling Unit of the delinquent Owner shall be required to pay the Association the costs and expenses for filing the notices, interest on the amount of the assessment at the rate of eighteen percent (18%), and all reasonable attorneys' fees and costs incident to a sale. The proceeds derived from the sale of such Dwelling Unit shall be used and disbursed by the Association, as attorney-in-fact in the manner required by the Act or other applicable law.

Notwithstanding the provisions of this Article hereinabove, if all adversely affected Owners agree in writing not to repair and reconstruct improvements within the General Common Areas, and if no alternative improvements are authorized, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the General Common Areas by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with the Act.

Notwithstanding the provisions of this Article, all of the Owners and the first mortgagees of record may agree not to repair or reconstruct the improvements and to terminate the Project. In this event, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary' or Assistant Secretary, the entire Project shall be sold by the Association pursuant to the provisions of this paragraph, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in the Declaration, the Plat, Articles of Incorporation and Bylaws. Assessments for Common Expenses shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association. Such proceeds shall be divided by the Association according to each Owner's interest in the General Common Areas, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Dwelling Units. Each such account shall be in the name of the Association and shall be further identified by the Dwelling Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgagee encumbering the Dwelling Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire property. Such apportionment shall be based upon each Dwelling Unit Owner's



interest in the General Common Areas. The total funds of each account shall be used and disbursed, without contribution, from one account to another by the Association, as attorney-in-fact for the same purposes and in the same order as is provided in (B)(1) through (B)(5) of this Article.

- C. Obsolescence. The Owners may agree that the General Common Areas are obsolete and adopt a plan for the renewal and reconstruction, which plan must have the unanimous approval of all first mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the Owners. However, an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen (15) days after the date of adoption of such plan that such Dwelling Unit shall be purchased by the Association for the fair market value thereof. The Association shall then have thirty (30) days within which to cancel such plan. If such plan is not cancelled, the Dwelling Unit of the requesting Owner shall be purchased according to the following procedures: If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned herein shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an appraiser. If the two designated or selected appraisers are unable to agree, they shall appoint another appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, each appraiser previously appointed shall nominate two appraisers, and from the names of the four appraisers so nominated, one shall be drawn by lot by the Owner in the presence of the other appraisers, and the person whose name was so drawn shall be the umpire. The decision of the appraisers as to the fair market value, or in the case of their disagreement, then the decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse the proceeds for the same purposes and in the same order as is provided in Section B(1) through B(5) of this Article, except as modified herein.

The Owners, with the consent of all first mortgagees of record at that time, may agree that the Dwelling Units are obsolete and that the same should be sold. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire premises shall be sold by the Association, as Attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the Bylaws. The sales proceeds shall be apportioned between the Owners on the basis of each



Owner's percentage interest in the General Common Areas, and such apportioned proceeds shall be paid into separate accounts, each such account representing one (1) Dwelling Unit and each such account shall be further identified by the Dwelling Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in Section B(1) through B(5) of this Article.

## **ARTICLE 21** **CONDEMNATION**

- A. Consequences of Condemnation. If at any time or times during the continuance of the Residential Project pursuant to this Declaration, all or any part of the Residential Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu thereof or in avoidance thereof, then all compensation, damages, or other proceeds therefrom, the sum of which is hereinafter referred to as the "Condemnation Award" shall be payable to the Association, and the provisions of this Article shall apply.
- B. Complete Taking. In the event that the entire Project is taken or condemned or sold or otherwise disposed of in lieu hereof or in avoidance thereof, the ownership pursuant thereto shall terminate. The Condemnation Award shall be apportioned among the Owners on the basis of each Owner's undivided interest in the General Common Areas; provided, however, that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such apportionment the same standard shall be employed. The Association shall, as soon as practical, determine the share of the Condemnation Award to which each Owner is entitled, and such shares shall be paid into separate accounts and disbursed as soon as practical for the same purposes and in the same order as is provided in Section C below.
- C. Partial Taking. In the event that less than the entire Project is taken or condemned or sold or otherwise disposed of in lieu thereof or in avoidance thereof, the ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined under the following provisions. As soon as is practical, the Association shall reasonably and in good faith allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners, unless otherwise required under the Act, as follows:
- (1) The total amount allocated to taking of or injury to the General Common Areas shall be apportioned among Owners on the basis of each Owner's undivided interest in the General Common Areas;

- (2) The total amount allocated to severance damages shall be apportioned to the Owners of those Dwelling Units which were not taken or condemned;
  - (3) The respective amounts allocated to the taking of or injury to a particular Dwelling Unit or to improvements an Owner has made within his or her own Dwelling Unit shall be apportioned to the Owner of that particular Dwelling Unit involved; and
  - (4) The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable under the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective first mortgagees.
- D. Reorganization. In the event a partial taking results in the taking of a Dwelling Unit, the Owner thereof shall automatically cease to be a member of the Association, and his or her Ownership interest in the General Common Areas shall terminate and vest in the Owners of the remaining Dwelling Units. Thereafter, the Association shall reallocate the ownership, voting rights, and assessment ratios determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners of the remaining Dwelling Units for the amendment of this Declaration.
- E. Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the procedures contained in this Declaration.
- F. Notice of Condemnation of first Mortgagees. In the event that any portion of the Project shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and first mortgagee.
- G. Conflict with Act. In the event any conflict shall arise between the provisions of this Article and the Act, the Act shall govern.

## **ARTICLE 22** **PERSONAL PROPERTY FOR COMMON USE**

The Association, as attorney-in-fact for all of the Owners, may acquire and hold for the use and benefit of the Dwelling Unit Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be owned by all of the Dwelling Unit Owners in the same



proportion as their respective interests in the General Common Areas, and such interest therein shall not be transferable except with a transfer of a Dwelling Unit. A transfer of a Dwelling Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Dwelling Unit under foreclosure shall entitle the purchaser of the beneficial interest in such personal property associated with the foreclosed Dwelling Unit.

**ARTICLE 23**  
**ANNEXATION OF ADDITIONAL PROPERTY**

- A. Submission of Additional Improvements. Declarant may from time to time exercise all reserved development rights to make subject to and dedicate to the provisions of this Declaration additional improvements containing Dwelling Units or other facilities. In such case, Declarant shall file an Amendment to the Declaration and a Supplemental Plat in accordance with the requirements of the Act. Until such time as an Amendment to the Declaration is filed, the initial property subject to this Declaration shall be as depicted upon the Plat. An Amendment to the Declaration and a Supplemental Plat filed pursuant to this Section shall not require the consent of any person except the owner of such property, if other than Declarant.
- B. Allocation of Interests. Each additional Dwelling Unit which is added to the Project shall be allocated one vote. Allocation of liability for Common Expenses for additional Dwelling Units submitted to this Declaration shall be based on the percentage of undivided interests in the General Common Areas of the Association in proportion to the square footage of all Dwelling Units within the Project. Upon the submission of additional Dwelling Units to the Declaration, the Supplemental Declaration shall set forth the allocation of interests for all Dwelling Units by exhibit.

**ARTICLE 24**  
**DURATION AND AMENDMENT**

This Declaration shall run with and bind the real property and shall inure to the benefit of and be enforceable by the Declarant, the Association, or any Owner of any Dwelling Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless terminated or revoked as hereinafter provided. The separate Dwelling Unit estates created by the Declaration and the Plat shall continue until this Declaration is revoked or terminated.

Other than with respect to a permitted amendment under Article 23 above, this Declaration may be amended at any time by the affirmative vote or written consent of

not less than sixty-seven percent (67%) of the Members. A statement of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment shall be voted and acted upon. Any amendment must be proposed by the Executive Board or by petition signed by at least fifty-one percent (51%) of the voting strength of the members.

Notwithstanding anything contained in this Article the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required to be taken under that clause or the Act for such action.

## **ARTICLE 25** **RESORT ACTIVITIES**

Resort Activities. Each Owner is hereby advised of the following matters affecting the real property and the Owner's use and enjoyment thereof:

- A. The real property is located adjacent to a public skiing facility and recreation area ("Ski Facility"), which area may generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof. Such activities generally associated with the Ski Facility include, without limitation:
- (1) vehicular and residential traffic including, without limitation: (a) buses which transport skiers and others around Mt. Crested Butte and between the base of the Ski Facility and the parking lots located adjacent to Mt. Crested Butte; (b) buses, vans, snowcats, snowmobiles and other vehicles which transport residents and guests of Mt. Crested Butte and employees and agents of the Ski Facility operator over, around, and through the Ski Facility and Mt. Crested Butte; and (c) construction vehicles and equipment;
  - (2) activities relating to the construction, operation and maintenance of ski trails, skiways and skier bridges and tunnels relating to the Ski Facility, including, without limitation: (a) tree cutting and clearing, grading and earth moving, and other construction activities; (b) construction, operation and maintenance of access roads, snow-making equipment and chair lifts, gondolas and other skier transportation systems; and (c) operation of snow grooming vehicles and equipment and safety and supervision vehicles; and,
  - (3) activities relating to the use of the Ski Facility, including, without limitation, skiing, snow-boarding, hiking, horseback riding, bicycling and other recreational activities and organized events and competitions relating to such activities.



- B. Substantial construction-related activities relating to the development of the real property and other projects within or near Mt. Crested Butte may cause considerable noise, dust and other inconveniences to the Owners.

Each Owner by accepting a deed to a Dwelling Unit acknowledges that the impacts, disturbances and activities outlined above may occur in and around the real property. Each Owner, by accepting a deed to a Dwelling Unit, hereby forever waives and releases any claims which Owner may have against the Declarant and the operator of the Ski Facility and their respective successors and assigns as a result of arising out of or in any way relating to the impacts, disturbances and activities outlined above.

**ARTICLE 26**  
**REGISTRATION OF MAILING ADDRESS**

Each Owner shall register his or her mailing address with the Association, and all notices or demands, except routine statements and notices, intended to be served upon an Owner shall be sent by certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address, any such notice shall be deemed given when so mailed. All notices, demands or other notices intended to be served upon the Executive Board of the Association shall be sent certified mail, postage prepaid as follows:

Wildhorse at Prospect Association, Inc.  
P.O. Box 1305  
Crested Butte, CO, 81224

Any change in the Association's address shall be duly recorded in the Office of the Clerk and Recorder, County of Gunnison, Colorado.

As long as the Declarant owns any Unit within the Building, the Declarant shall be copied on all notices to the Association at the following address:

Wildhorse, LLC  
15 Benchmark Rd., Suite 203  
P.O. Box 3465  
Avon, CO 81620

**ARTICLE 27**  
**RESERVATION OF DEVELOPMENT RIGHTS**  
**AND SPECIAL DECLARANT RIGHTS**

- A. Development Rights. The Declarant hereby reserves in this Declaration the following development rights: (a) to construct additional improvements and



Dwelling Units upon the Property and to create additional recreational or other facilities, Dwelling Units, General Common Areas or Limited Common Areas upon the Property; and (b) to convert Dwelling Units into General Common Areas or Limited Common Areas. These development rights must be exercised within ten years of the date of recording this Declaration.

B. Special Declarant Rights. The Declarant reserves the following special rights for so long as Declarant owns any Dwelling Unit within the Project for development and sale in the ordinary course of business, which may be exercised, where applicable, anywhere within the Properties:

- (1) To complete any improvements indicated on maps, plats, or development plans filed with the Declaration:
- (2) To exercise a development right reserved in sub-Section A above:
- (3) To maintain sales offices, management offices, signs advertising on the Project;
- (4) To use easements through the Special and General Common Areas for the purpose of making improvements to the Project;
- (5) To appoint and remove any director or officer of the Association as provided in the Bylaws.

The Declarant may assign any special rights, development rights, or other special rights and obligations of the Declarant set forth in this Declaration or the Bylaws to any affiliate of the Declarant or a builder or a lender, and Declarant may allow any such person to exercise such rights on behalf of the Declarant. The method of exercising such rights shall be subject to the agreement of the parties thereto, which shall not require recordation in the Public Records.

Any or all of the special rights identified in this section, development rights, or any of the other special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

**ARTICLE 28**  
**REAL AND PERSONAL PROPERTY FOR COMMON USE**

The Association, through action of its Executive Board, may acquire and hold tangible and intangible personal property and real property. The Association, through action of its Executive Board, may dispose of tangible and intangible personal property,



and real property, subject, to the limitations of the Act. The Declarant and its designees, subject to the limitations of the Act, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the Project, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

The Association, through action of its Executive Board, may mortgage or encumber real property of the Association, subject to the limitations of the Act. In addition, the Executive Board specifically shall have the right to assign its future income, including the right to receive Common Expense Assessments, for the obligations of the Association.

## **ARTICLE 29**

### **COVENANTS RELATING TO THE MASTER ASSOCIATIONS**

Section 29.1 Master Declaration Matters. Each owner, by accepting a deed to a Dwelling Unit, recognizes that the Property is subject to the Master Declarations. Each Owner, by accepting a deed to a Dwelling Unit, acknowledges that he has received a copy of the Master Declarations. The Owner agrees to perform all of his obligations to the Master Associations as they may from time to time exist, including, but not limited to, the obligation to pay assessments as required under each Declaration and under all other governing documents of the Master Associations.

Section 29.2 Enforcement of Master Declarations.

- A. The Association shall have the power, subject to the primary power of the Executive Board of the Master Associations, to enforce the covenants and restrictions contained in the Master Declarations, but only if said covenants and restrictions relate to the Property, and to collect assessments on behalf of the Master Associations.
- B. This Declaration is intended to supplement the Declarations of the Master Associations as they apply to the Property. In addition to all of the obligations which are conferred or imposed upon the Association pursuant to this Declaration, the Bylaws or the Articles, the Association shall be subject to all of the obligations imposed upon it pursuant to the Master Declarations and the bylaws of the Master Associations. The Association and all committees thereof shall also be subject to all superior rights and powers which have been conferred upon the Master Associations pursuant to their Declarations and bylaws. The Association shall take no action in derogation of the rights of, or contrary to the interests of, the Master Associations.



**ARTICLE 30**  
**GENERAL**

- A. If any of the provisions of this Declaration or the application thereof in any circumstance be invalidated, this event shall not affect the validity of the remainder of the Declaration. The application of any such provision in any other circumstances shall not be affected in these circumstances.
- B. Any notice required to be sent to any mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last-known address of persons who appear as a mortgagee on the records of the Association at the time of such mailing.
- C. The provisions of this Declaration shall be in addition to and supplemental to the Act, the laws of the State of Colorado, and to all other provisions of law.
- D. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.
- E. The provisions of this Declaration shall be liberally construed to effectuate its purpose.

IN WITNESS WHEREOF 13<sup>th</sup> day of December, 2006.

DECLARANT: WILDHORSE, LLC, a Colorado limited liability company

By: Wildhorse Development, LLC, a Colorado limited liability company, it's Manager

By: Eagle Resort Development, LLC, a Colorado limited liability company, Manager of Wildhorse Development, LLC.

By: *Dan L. Fitchett, Jr.*  
Dan L. Fitchett, Jr., Managing Member

*Richard B. Barnes*  
Richard B. Barnes, Managing Member

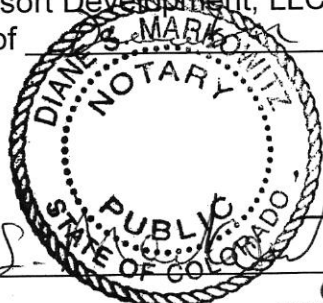


STATE OF COLORADO )  
 )ss.  
COUNTY OF Gunnison )

The foregoing Planned Community Declaration was signed and sworn to before me by Dan L. Fitchett, Jr., Managing Member of Eagle Resort Development, LLC, a Colorado limited liability company, on this 13<sup>th</sup> day of March, 2006.

Witness my hand and official seal.

My commission expires: 6/3/2008



Diane S. Markowitz  
Notary Public

Address: 525 State River Dr  
CB, CO 81224

My Commission Expires 06/03/2008

STATE OF COLORADO )  
 )ss.  
COUNTY OF Gunnison )

The foregoing Planned Community Declaration was signed and sworn to before me by Richard B. Barnes as Managing Member of Eagle Resort Development, LLC, a Colorado limited liability company, on this 13<sup>th</sup> day of December, 2006.

Witness my hand and official seal.

My commission expires: 6/3/2008

Diane S. Markowitz  
Notary Public

Address: 525 State River Dr.  
CB, CO 81224



My Commission Expires 06/03/2008



MORTGAGEE CONSENT

\_\_\_\_\_, a \_\_\_\_\_, the owner and holder of that certain Mortgage from Wildhorse, LLC, a Colorado limited liability company, to the Public Trustee of Gunnison County, Colorado. said Mortgage having been recorded on \_\_\_\_\_ in Book \_\_\_, Page \_\_\_ in the Office of Clerk and Recorder of Gunnison County, Colorado, hereby consents to the execution of this Planned Community Declaration for Wildhorse, LLC, and by said Consent, agrees to subject itself, its successors and assigns, to the provisions of such instrument.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
(Name of Mortgage holder)

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO )  
                                  )  
                                  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing was signed and sworn to before me by \_\_\_\_\_, as \_\_\_\_\_ for \_\_\_\_\_, a Colorado \_\_\_\_\_, on behalf of the \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2006.


Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
Address: \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**  
**Legal Description of the Property**

Wildhorse at Prospect, Town of Mt. Crested Butte, subject to the common interest ownership declaration for Wildhorse at Prospect Owners Association, Inc., dated \_\_\_\_\_ and recorded on 12/15/2006 as Reception No. 571466 in the records of Gunnison County, Colorado.

S Dominguez Gunnison County, CO 571667  
12/15/06 10:31 AM Pg: 52 of 63  
133 R: \$316.00 D: \$0.00  


**EXHIBIT B****TABLE OF ALLOCATED INTERESTS**

<b>Lot</b>	<b>Percentage Share of Common Expenses</b>	<b>Vote in the Affairs of Association</b>	<b>Lot</b>	<b>Percentage Share of Common Expenses</b>	<b>Vote in the Affairs of Association</b>
1	1.82	1	28	1.82	1
2	1.82	1	29	1.82	1
3	1.82	1	30	1.82	1
4	1.82	1	31	1.82	1
5	1.82	1	32	1.82	1
6	1.82	1	33	1.82	1
7	1.82	1	34	1.82	1
8	1.82	1	35	1.82	1
9	1.82	1	36	1.82	1
10	1.82	1	37	1.82	1
11	1.82	1	38	1.82	1
12	1.82	1	39	1.82	1
13	1.82	1	40	1.82	1
14	1.82	1	41	1.82	1
15	1.82	1	42	1.82	1
16	1.82	1	43	1.82	1
17	1.82	1	44	1.82	1
18	1.82	1	45	1.82	1
19	1.82	1	46	1.82	1
20	1.82	1	47	1.82	1
21	1.82	1	48	1.82	1
22	1.82	1	49	1.82	1
23	1.82	1	50	1.82	1
24	1.82	1	51	1.82	1
25	1.82	1	52	1.82	1
26	1.82	1	53	1.82	1
27	1.82	1	54	1.82	1
			55	1.82	1

EXHIBIT C

**RULES AND REGULATIONS OF  
WILDHORSE AT PROSPECT ASSOCIATION, INC  
PLANNED COMMUNITY**

Wildhorse at Prospect Association, Inc. ("Association"), acting through its Executive Board, has adopted the following rules and regulations ("Rules and Regulations"). These Rules and Regulations may be amended from time to time by the Executive Board or by the Owners. Wherever in these Rules and Regulations initial capitalized terms are used, these terms shall have the meanings set forth in the Declaration of the Association.

All Owners and occupants of Dwelling Units at Wildhorse at Prospect (the "Subdivision") shall comply with these Rules and Regulations and the provisions of the Association's governing documents.

**1. Occupancy And Commercial Use Restrictions**

1.1 Occupancy Restrictions. The use of each Dwelling Unit is restricted to that of a single family residence and such other accessory uses as may be permitted by the Executive Board. The term "single family residence" means a single housekeeping Dwelling Unit utilized for residential purposes.

1.2 No Commercial Use. No industry, business, trade or commercial activities shall be conducted, maintained or permitted in any part of a Dwelling Unit, nor shall any Dwelling Unit be used or rented for transient, hotel or similar short-term occupancy arrangements without the consent of the Executive Board. Home offices for business or professional pursuits are permitted, but any such activities must be conducted without employees, commercial deliveries or public visits.

**2. General Restrictions and Requirements**

2.1 No device, appliance, equipment, machinery or fixture creating overloading of standard electrical circuits or causing loud or annoying noise may be used within or outside of any Dwelling Unit without permission of the Manager. The use of any such device that may cause an adverse effect upon any of the Owners or upon any of the Dwelling Units is strictly prohibited. Any damage resulting from a violation of this subsection shall be the responsibility of the Owner or the occupant of the applicable Dwelling Unit where the misuse occurs.

2.2 Unless otherwise approved in writing by the Executive Board, all exterior windows in any Dwelling Unit that are located in spaces up to a height of seven feet above the floor level must have window treatments. Any portion of window treatments which are visible from outside a Dwelling Unit must be neutral in color as well as harmonious with the exterior surfaces of the Dwelling Unit.

2.3 Each Owner or tenant of a Dwelling Unit shall keep the exterior surfaces and landscaped areas of the Dwelling Unit in a clean state and pleasant appearance.



2.4 Owners or tenants shall not paint, stain, stucco or otherwise alter the appearance or color of any exterior surface of a Dwelling Unit without obtaining the prior written consent of the Manager.

2.5 No structural change or modification to any Dwelling Unit or landscaping shall be commenced, constructed, permitted or caused by any Owner or occupant without the prior written consent of the Executive Board. Any Owner or tenant of a Dwelling Unit shall indemnify and hold the Association and the other Owners harmless against all claims, damages or losses resulting from any construction or similar activities.

2.6 No awning, canopy or shutter shall be affixed to or placed upon the exterior walls, doors or roof or exposed on or at any window of any Dwelling Unit except as permitted by the Manager. The use of charcoal briquettes for any type of barbeque grill, fire pit or similar apparatus is strictly forbidden.

2.7 With the exception of propane tanks used in standard barbeque grills and heating lamps, no inflammable, combustible, explosive or otherwise dangerous fluid, chemical or substance shall be kept in any Dwelling Unit or adjacent area without the prior written consent of the Manager.

2.8 Except for signs used to market the sale of a Dwelling Unit or signs that may be required by the Town of Mt. Crested Butte, no signs, banners, flags wind socks or similar items shall be erected, posted or displayed at any location within the Subdivision except as may be permitted by applicable law or regulation or by the Manager.

2.9 No wind chimes, exterior speakers or other devices or decorative items shall be installed or used in such a manner as to cause annoying or unreasonably loud sounds.

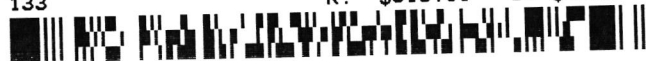
2.10 Every lease agreement for a Dwelling Unit must be in writing and must require the tenants to comply with the terms of the Declaration, these rules and regulations and the Association's governing documents. Each lease agreement must also provide that any failure of compliance shall be an event of default under the terms of the lease agreement.

**USE OF COMMON AND EXTERIOR AREAS**

**3. Exterior Surfaces and Common Areas.**

3.1 Owners and tenants may not obstruct established view corridors or place, erect, store or display any large item within the Subdivision outside a Dwelling Unit without the prior written consent of the Manager. The Executive Board shall have the right to require trees and other landscape improvements to be trimmed, modified or replaced in order to maintain the integrity of the established view corridors at all times. The landscaped and other exterior areas of the Subdivision shall be kept free and clear of refuse, debris and unsightly material.

3.2 Items of personal property shall not be stored on any deck, patio or porch within the Subdivision at any time. Patio furniture consisting of all weather chairs and tables and similar accessories may be maintained on any patio, deck or porch, provided that they are of a design and



color that is in keeping with the architectural scheme of the neighborhood and further provided that such items of patio furniture are maintained in a continuous state of good condition and repair.

3.3 The exterior spaces within the Subdivision shall be used only for the purposes for which they were designed and are reasonably suited as an incident to the residential nature of the Subdivision. Bicycles, skateboards or any other type of scooter or mobile device may not be stored or kept in any location within the Subdivision that might result in an obstruction of vehicular or pedestrian traffic. The Manager shall have the authority to prohibit any types of recreational or sports activities within the Subdivision that the Manager deems to be intrusive and irritating or capable of increasing the risk of harm or injury to person or property.

3.4 No structural change or modification within the Subdivision to any landscaping or parking improvements shall be commenced, constructed, maintained or caused by any Owner, tenant or other person without the prior written consent of the Manager. No landscaping or parking improvements shall be constructed in or removed from the Subdivision except upon the prior written consent of the Manager. Each Owner and tenant of a Dwelling Unit shall indemnify and hold the Association and the other Owners harmless against all loss or damage resulting from such activities.

3.5 Unless otherwise authorized by the Executive Board, no Owner or tenant may construct, erect, place, maintain or modify any items within the exterior areas of the Subdivision such as (but not limited to) basketball hoops, swing sets, trampolines and similar sports and play equipment, clotheslines, garbage containers, woodpiles, walls, fences, dog runs, animal pens or satellite dishes and antennas. A private CATV network system will be installed within the Subdivision, and this system will not require external antennas of any nature. No owner or occupant shall modify or tamper with this system

3.6 Owners and tenants may maintain planters and flower boxes upon exterior areas and surfaces within the Subdivision as long as such planters and boxes are of a uniform appearance and are consistent with the architectural scheme of the neighborhood. Unless the Manager shall have consented otherwise in writing, all planters and flower boxes maintained on porches and balconies within the Subdivision shall be located on the top or the inside of the surrounding railings and maintained in a continuous state of good repair and condition.

3.7 Any yard sculpture or other similar item erected or installed in an exterior area must be consistent with the architectural scheme of the neighborhood and may only be erected or installed with the prior written consent of the Executive Board.

#### **4. Actions of Owners, Tenants and Occupants**

4.1 No noxious, offensive, dangerous or unsafe activity shall be permitted in any Residential Unit or within the Complex, nor shall anything be done in any Residential Unit or within the Complex that constitutes an annoyance or nuisance to the other Owners, tenants and occupants or interferes with their peaceful enjoyment. No Owner, tenant or occupant of a Residential Unit shall make or permit any disturbing noises nor do or permit anything to be done that will interfere with the rights, comforts or convenience of the other Owners, tenants or occupants within the Complex. The use of outdoor speakers to transmit music or other recordings or to broadcast or





transmit any type of television or radio program is absolutely prohibited without the prior written consent of the Manager.

4.2 No offensive or unlawful conduct may take place within the Subdivision. All Owners, tenants and occupants within the Subdivision shall comply with the Master Declarations, the PUD II Guide for the Subdivision, all covenants, conditions and restrictions of record which affect the Subdivision, and all applicable federal and Colorado laws as well as the Town ordinances. Any person who violates or fails to comply with these covenants, laws and ordinances shall hold the Association harmless from all fines, penalties, costs and prosecutions for any such violation or noncompliance.

4.3 No animals, livestock, birds or reptiles of any kind shall be raised, bred or kept in any part of the Subdivision without the written consent of the Manager. However, an Owner or tenant of a Dwelling Unit may keep up to two domesticated dogs, cats, birds or other household pets within a Dwelling Unit as long as such pets are not kept for commercial purposes. Any person accompanying or owning a pet within the Subdivision shall comply with all applicable leash laws and ordinances. A person accompanying any pet within the Subdivision shall remove all droppings. Any Owner, tenant or occupant of a Dwelling Unit that maintains a pet shall be deemed to have agreed to indemnify and hold the Association and all other Owners and tenants harmless from any loss, claim or liability of any kind arising by reason of keeping or maintaining such pet.

4.4 Owners, tenants and occupants of a Dwelling Unit shall hold the Association and the other Owners and tenants harmless for the actions of their agents, invitees, tenants, guests, children and pets.

## 5. General Administrative Rules

5.1 Indemnification for Actions of Others. Dwelling Unit Owners and occupants shall hold the Association and other Dwelling Unit Owners and occupants harmless for the actions of their children, tenants, guests, pets, servants, employees, agents, invitees or licensees.

5.2 Employees of Management. No Dwelling Unit Owner or occupant shall have the right to send any employee of the Association or any Manager or employee of the Manager out of the Subdivision on any private business of the Dwelling Unit Owner or occupant, nor shall any employee be used for the individual benefit of the Dwelling Unit Owner or occupant, unless in the pursuit of the mutual benefit of all Dwelling Unit Owners, or pursuant to the provision of special services for a fee to be paid to the Association.

## 6. Insurance

6.1 Insurance Coverage. The Association will carry insurance to cover liability risks and property and casualty losses for the Common Areas and for the structural portions of each Dwelling Unit. The Association will not carry insurance covering loss or damage to personal property, floor and window coverings, fixtures, draperies, wallpaper, and improvements located within Dwelling Units as well as liability insurance covering injury or death to persons as a result of accidents or other events occurring within Dwelling Units. Owners are responsible for insuring against such losses, damages, and liability. All insurance policies obtained by an Owner to cover such matters



shall contain waivers of subrogation against the Association and shall be so written that the liability of the carriers issuing insurance for the Association shall not be affected or diminished thereby. At the request of the Management Company or the Association, an Owner shall file copies of all such insurance policies obtained by the Owner with the Association. Each Owner shall be liable for any increase in premiums or coverage for insurance maintained by the Association as a result of improvements installed or made by an Owner within his or her Dwelling Unit, and each Owner shall promptly notify the Association in writing of any such improvements or fixtures which may cause or require any such increase in premiums or coverage.

6.2 Increase in Rating. Dwelling Unit owners and occupants must maintain each Dwelling Unit in a safe condition at all times. Temperatures within a Dwelling Unit must be kept above 45 degrees F., even while the Dwelling Unit is unoccupied. Nothing shall be done or kept in a Dwelling Unit by an Owner or occupant which will increase the premium for any insurance carried by the Association or any other Owner within the Subdivision without the prior consent of the Executive Board. No Dwelling Unit owner shall permit anything to be occur which will result in the cancellation of any such insurance or which would be in violation of any law.

6.3 Rules of Insurance. Dwelling Unit Owners and occupants shall comply with the rules and regulations contained in any fire and liability insurance policy providing coverage within the Subdivision.

6.4 Reports of Damage. Damage by fire or accident affecting the Subdivision, and persons injured by or responsible for any damage, fire or accident must be promptly reported to the Manager.

## 7. Rubbish And Trash

7.1 Deposit of Trash and Rubbish. Trash must be placed in closed trash containers which are no larger than a capacity of 35 gallons. Trash containers must be stored in garages and may only be placed at designated curbside locations on scheduled trash pick-up days. Trash containers must be placed at the appropriate curbside location by 8:00 AM on such days and must be returned to garages promptly after the refuse carrier has collected the trash. Trash containers may not be left outside overnight under any circumstances.

7.2 Trash Storage. No storage of trash will be permitted in or outside any Dwelling Unit in such manner as to permit the spread of fire, odors, seepage or encouragement of vermin. No accumulation of rubbish, debris or unsightly materials shall be permitted in the exterior areas or any Common Area, except in designated trash storage containers.

7.3 Recycling. Recycling is encouraged, and Dwelling Unit Owners and occupants should make reasonable attempts to recycle trash products in accordance with the prevailing procedures and rules established by the trash collection service.

## 8. Motor Vehicles

8.1 Recreational, Disabled and Stored Vehicles. Disabled and stored vehicles may not be parked in any exterior space within the Subdivision. Boats, boat trailers, trucks with a load

capacity of one (1) ton or more, recreational vehicles, snowmobiles, ATV's, motorcycles, dirt bikes, golf carts, motor homes and vehicles used primarily for commercial purposes or containing exterior writings of an annoying or commercial nature may not be parked in any exterior space within the Subdivision. In addition, Owners and their guests or tenants must comply at all times with the recorded PUD Guide for the subdivision concerning motor vehicles.

8.2 Trucks, Trailers, Campers, Recreational Vehicles, Boats and Commercial Vehicles.

Trucks and other vehicles having more than four tires, trailers, and commercial vehicles are prohibited in the roadways, Common Areas and driveways, except for temporary loading and unloading, for periods not in excess of ten hours, or as may be designated by the Executive Board. Construction equipment used on behalf of the Association in the actual repair or maintenance of the Subdivision will not be so restricted during such use. No campers, recreational vehicles or boats may be parked at any location with the Subdivision except in areas designated by the Executive Board, and only then with the prior written approval of the Executive Board.

8.3 Parking Restrictions. The ordinances of the Town of Mt. Crested Butte and the restrictive provisions of the recorded PUD Guide for the Subdivision apply at all times to vehicles which are parked within the Subdivision. All vehicles must be parked in garages, driveways or designated spaces. Vehicles may not be parked in, on, or along any roadways. Parked vehicles shall not be permitted to block access to parking areas, fire hydrants, sidewalks running perpendicular to drives, pedestrian crossing areas, or designated fire lanes. A vehicle which is in violation of these rules will be towed after reasonable efforts have been made to contact the person, Dwelling Unit Owner or occupant to whom the vehicle is registered. In addition a Twenty Five Dollar (\$25) per day fine may be levied against the person, Dwelling Unit Owner or occupant to whom the vehicle is registered, following notice and hearing, for the period of time that the vehicle violates these rules.

8.4 Guest and Tenant Passes. Vehicles parked in any Common Area for more than 8 hours without a guest or tenant pass or sticker will be deemed to be owned by trespassers and will be removed. Guest and tenant passes will be issued to Dwelling Unit Owners requesting them. In the case of a tenant pass, such pass will be issued only after the Owner files with the Executive Board a copy of the Owner's lease with the tenant. Each vehicle will be registered in the name of the occupant (guest or tenant) and Dwelling Unit Owner. The Dwelling Unit Owner, upon receipt of the passes, will assume responsibility for displaying such passes and will also be responsible for the actions of the vehicle's owner and any towing charges of vehicles, if applicable. Towing charges and any damages to Association property incurred due to the conduct of the owner of the vehicle, if not promptly paid, shall become a Common Expense assessment against the Owner obtaining the passes, which expense shall be levied following notice and hearing.

8.5 Visitor and Guest Parking. Visitor or guest passes or stickers shall be limited in duration.

8.6 Snowmobiles, Off Road and Unlicensed or Immobile Vehicles. The use of motorcycles, motorbikes, snowmobiles, dune buggies, or any motorized off road vehicles including trail bikes, and other similar four wheel drive vehicles, not used in maintenance, is prohibited except where licensed and equipped for passage on public highways and actually used by licensed drivers on the paved portions of the Subdivision. Motorcycles and motor bikes may be used only for transportation to and from a Dwelling Unit. Each vehicle shall be equipped so as to maximize

muffling of engine noise during use for transportation to and from a Dwelling Unit. Except for other motor assisted bicycles and wheel chairs as permitted by state law, all highway vehicles used or parked within the Subdivision will be licensed and properly equipped and in operating condition for safe travel on the public highways. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any portion of the Common Areas. Except for temporary repairs not involving immobility in excess of ten hours, highway vehicles will not be disassembled, repaired, rebuilt, painted or constructed on the Subdivision. Following notice and hearing, the Association may remove, at the cost of the Dwelling Unit Owner responsible, any vehicle remaining immobile in excess of forty-eight hours.

8.7 Compliance with Law. All persons will comply with applicable Gunnison County, Town of Mt. Crested Butte and State of Colorado laws.

**9. Fines and Other Enforcement Remedies.**

9.1 Every violation of these rules and regulations as well as any failure to comply with any provision of the Declaration (collectively, the “governing documents”) shall be deemed to be a nuisance. Such action shall cause the offending person(s) to be subject to all of the available legal and other remedies provided for abating or correcting the violation. In addition, all public and private remedies allowed at law or equity will be available and enforceable against anyone in violation of any of the provisions of the governing documents.

9.2 The failure of any Owner to comply with the governing documents or to enforce and require compliance with the governing documents on the part of any tenant or guest of such Owner will also be grounds for an action on the part of the Association to recover civil damages or to obtain injunctive relief in order to remedy the violation. Reasonable notice and an opportunity for a hearing will be given to the delinquent Owner prior to commencing any legal proceedings.

9.3 Any action to enforce compliance with the governing documents may be brought by the Association, the Manager in the name of the Association and on behalf of all Owners, or by any aggrieved Owner or Owners.

9.4 In addition to the remedies set forth above, any violation of the governing documents shall give to the Association, and to the Manager on behalf of the Association, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest of the Owners and provisions of the governing documents. Any such procedure shall be at the expense of the Owner or other person responsible for the offending condition.

9.5 All of the remedies set forth above are cumulative and not exclusive.

9.6 The failure of the Association, the Executive Board, the Manager, or any aggrieved Owner to enforce compliance with the governing documents or take any step to remedy a violation of the governing documents will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the governing documents at any future time.



9.7 No member of the Executive Board, the Manager or any Owner will be liable to any other Owner or to any tenant for the failure to enforce any provision of the governing documents at any time.

9.8 If legal assistance is obtained to enforce any of the provisions of the governing documents, or in any legal proceeding for damages or for the enforcement of the governing documents or the restraint of violations of the governing documents, the prevailing party will be entitled to recover all costs incurred by the prevailing party in such action, including reasonable attorney fees (and legal assistant fees) as may be incurred or as may be determined by the court.

**10. Complaints; Dispute Resolution**

10.1 In addition to the remedial procedures set forth in Section 9 above, if a dispute should arise between any of the Owners concerning any claimed violation of these Rules and Regulations, or any Owner is aggrieved as to violation of any of the provisions of these Rules and Regulations, such Owner may bring his or her grievance, in writing, before the Executive Board for a resolution. The Owner against whom the complaint is directed shall be entitled to respond to the complaint within ten days following receipt of a copy of the complaint. Following receipt of a response to the complaint, or the expiration of ten days following receipt of the complaint by the responding Owner, the Executive Board shall proceed to review the grievance and act as arbitrator or may appoint a panel which may include the Manager. The Executive Board shall conduct a hearing, with notice to all affected Owners, at which each Owner will be entitled to present testimony and cross-examine opposing parties on the issues presented in the grievance. The Executive Board shall render a decision within thirty days following a hearing, and the Executive Board's decision shall be binding on all parties.

10.2 Any complaint of an Owner against the Association arising out of these Rules and Regulations shall be subject to mediation and arbitration as determined by the current alternative dispute resolution policy statement promulgated by the Executive Board.

**11. Consent in Writing**

Any consent or approval required by these Rules must be obtained in writing prior to undertaking the action to which it refers.

APPROVED AND ADOPTED this 13<sup>TH</sup> day of October, 2006, by the undersigned as members of the initial Executive Board of Wildhorse at Prospect.

\_\_\_\_\_  
Daniel L. Fitchett, Jr.

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Richard B. Barnes

**EXHIBIT D**

**Easements and Title Exceptions**

1. Amended Exchange Agreement recorded on November 18, 1998 at Reception Number 488698.
2. Terms, conditions, provisions, obligations and restrictions of that certain Special Warranty Deed recorded on April 1, 2005 at Reception Number 552315.
3. Covenants, conditions and restrictions but omitting restrictions, if any, based on race, color, religion or national origin, as contained in instruments recorded on July 15, 2002 at Reception Number 521970, first amendment recorded March 1, 2004 at Reception Number 539405, Assignment of Declarant's Rights recorded March 1, 2004 at Reception Number 539413, Assignment of Development Rights recorded April 1, 2005 at Reception Number 552316, Second Amendment recorded April 1, 2005 at Reception Number 552317, Amended Bylaws recorded September 23, 2005 at Reception Number 558501, Planned Community Declaration recorded September 23, 2005 at Reception Number 558502
4. Terms, conditions, provisions, obligations or restrictions of that certain PUD III Guide recorded on July 15, 2002 at Reception Number 521967.
5. Snowmaking Easement Agreement recorded on April 1, 2005 at Reception Number 552318.
6. Right of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patent recorded on November 18, 1998 at Reception Number 488713.
7. The effects of that certain Ordinance recorded on May 21, 2001 at Reception Number 510801.
8. Any terms, conditions, provisions, obligations or restrictions of that certain Annexation and Development Agreement recorded on May 21, 2001 at Reception Number 510805, Amendment to the Annexation and Development Agreement recorded May 23, 2002 at Reception Number 520820, Second Amendment to the Annexation and Development Agreement recorded October 7, 2002 at Reception Number 524489.
9. Conservation Easement Covenant recorded on July 15, 2002 at Reception Number 521965.
10. Irrevocable License Agreement recorded on July 15, 2002 at Reception Number 521966.
11. Memorandum of Understanding recorded on July 15, 2002 at Reception Number 521968.
12. Consolidated Service Plan for Reserve Metropolitan District No. 1 and No. 2 recorded on September 6, 2001 at Reception Number 513960.
13. Order for Inclusion recorded on April 26, 2002 at Reception Number 519993 and June 20, 2002 at Reception Number 521263.
14. Order and Decree recorded on September 6, 2001 at Reception Number 513962.
15. Order of Inclusion recorded on June 19, 2001 at Reception Number 511658.



16. Easement Agreement recorded on February 9, 2005 at Reception Number 550743.
17. Raw Land Road Easement as disclosed by instrument recorded on July 19, 2002 at Reception Number 522090.
18. Terms, conditions, provisions, obligations and restrictions of that certain Notice of Option recorded on April 4, 2005 at Reception Number 552365 and Memorandum of Agreement recorded April 4, 2005 at Reception Number 552366.
19. Terms, conditions, restrictions, provisions, notes and easements as disclosed on Plat(s) recorded on September 23, 2005 at Reception Number 558500, and May 21, 2001 at Reception Number 510802, and Improvement Survey dated October 16, 2006 by Schmuesser, Gordon, Meyer.