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**SECOND AMENDED AND RESTATED DECLARATION OF  
COVENANTS AND RESTRICTIONS FOR  
CASOLAR VAIL  
(ALSO KNOWN AS CASOLAR DEL NORTE)**

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**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
CASOLAR VAIL  
(ALSO KNOWN AS CASOLAR DEL NORTE)**

This Second Amended and Restated Declaration of Covenants and Restrictions for Casolar Vail ("Declaration") will be effective upon recording.

**RECITALS**

**A.** Deane Knox and Leo Payne recorded the Declaration of Covenants and Restrictions for Casolar Vail on February 7, 1979 in Book 281, Page 634 in the records of the Eagle County Clerk and Recorder.

**B.** The Declaration of Covenants and Restrictions for Casolar Vail was amended by the First Amendment recorded on August 31, 1981 in Book 328, Page 408 and the Second Amendment recorded on January 10, 1990 at Reception No. 417097 in Book 520, Page 928 in the records of the Eagle County Clerk and Recorder. The Declaration and these amendments are collectively referred to as the "Original Declaration."

**C.** The Original Declaration was amended and restated in its entirety by the Amended and Restated Declaration of Covenants and Restrictions for Casolar Vail (Also known as Casolar Del Norte) recorded on December 11, 1992 at Reception No. 492588, Book 596, Page 495 in the records of the Eagle County Clerk and Recorder (hereafter referred to as the "Amended and Restated Declaration");

**D.** The Amended and Restated Declaration has been amended by an unrecorded Amendment dated in 1997 and an unrecorded amendment signed and adopted on November 18, 2013.

**E.** Article IX, Section 2 provides that the Declaration may be amended by consent of 51% of the voting membership of the Association.

**F.** This Declaration does not alter the undivided interest of the Lots and does not terminate the Community.

**G.** The purposes of the amendments in this Amended and Restated Declaration include, but are not limited to, the following:

- to update the Original Declaration to comply with current state law;
- to clarify the allocation of maintenance responsibilities between the Association and the Owners;
- to update restrictions in the Community;
- to update provisions so as to allow the Association to efficiently operate the Community and deal with Community concerns; and
- to add provisions that provide tools for the Association to effectively solve problems and enforce the Declaration, Bylaws, and Rules and Regulations.

**H.** Owners holding at least 51% of the total Association vote of all the Lots desire to amend the Original Declaration, have approved this Amended and Restated Declaration, and have determined this Declaration to be reasonable and not burdensome.

NOW, THEREFORE, the Original Declaration is replaced by the covenants, servitudes, easements, and restrictions set forth below:

**ARTICLE 1. NAME AND TYPE**

The type of common interest community is a planned community. The name of the planned community is Casolar Del Norte. The Association's name is the Casolar del Norte Home Owners Association.

**ARTICLE 2. DEFINITIONS**

**Section 2.1** Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Colorado Common Interest Ownership Act or the Colorado Revised Nonprofit Corporation Act. Unless the context otherwise requires, certain terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall be defined as follows:

(a) **Act** means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as such Act may be amended from time to time and as applicable to those common interest communities created prior to July 1, 1992.

(b) **Area of Common Responsibility** means and refers to the Common Area, together with those areas on the Lots and any other areas, which by the terms of this Declaration or by contract or written agreement with any other person or entity become the responsibility of the Association.

(c) **Articles** or **Articles of Incorporation** means the Articles of Incorporation of the Casolar del Norte Home Owners Association, as filed with the Secretary of State of the State of Colorado, and as may be amended from time to time.

(d) **Association** means the Casolar del Norte Home Owners Association, a Colorado nonprofit corporation, its successors or assigns.

(e) **Board** or **Board of Directors** means the body responsible for management and operation of the Association.

(f) **Bylaws** mean the Bylaws of the Casolar del Norte Home Owners Association, as may be amended from time to time.

(g) **Common Area** means all real property owned by the Association for the common use and enjoyment of the Owners, together with all improvements located thereon and all common property owned by the Association, but excluding the Lots.

(h) **Common Expenses** mean the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Community including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Areas and fulfilling the Association's responsibilities.

(i) **Community-Wide Standard** means the standard of conduct, maintenance, or other activity generally prevailing within the Casolar del Norte Community. Such standard may be more specifically determined by the Board of Directors.

(j) **Community** means all property as more particularly described in the Original Declaration and/or Exhibit "A", that is attached hereto and incorporated herein by reference, which is submitted to the provisions of the Act by this Declaration.

(k) **Dwelling Unit** means any room or group of rooms on a Lot as expressly permitted by the Town of Vail, with kitchen facilities designed for or used by one Family (as defined below) as an independent housekeeping unit.

(l) **Family** means an individual, or two or more persons related by blood, marriage, or adoption, excluding domestic servants, living together in a Dwelling Unit used as a single housekeeping unit or a group of not more than four unrelated persons living together in a Dwelling Unit used as a single housekeeping unit.

(m) **Governing Documents** mean this Declaration and all exhibits hereto, the Association's Bylaws, Rules and Regulations, and the plats of the Community, all as may be supplemented or amended from time to time.

(n) **Electronic Record** means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form, such as email, web pages, electronic documents, and facsimile transmission.

(o) **Lot** means and refers to any of the separately numbered lots or plots shown upon any recorded subdivision Plat of the Property, together with all appurtenances thereto and improvements now or hereafter located thereon, with the exception of the Common Area and any public streets or rights-of-way.

(p) **Majority** means those eligible votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

(q) **Mortgage** means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation including, but not limited to, a transfer or conveyance of fee title for such purpose.

(r) **Mortgagee** or **Mortgage Holder** means the holder of any Mortgage.

(s) **Owner** means the record titleholder of a Lot within the Community, including contract sellers, but shall not include those having an interest merely as security for the performance of any obligation. For purposes hereof, the holder of a tax deed on a Lot shall be deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Lot.

(t) **Person** means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

(u) **Plat** means and refers to the plats of the Property and improvements that are subject to this Declaration and that are designated in the Plat recorded in the records of the Office of the Clerk and Recorder of Eagle County. The term Plat shall collectively mean and refer to all plats and supplements thereto for the Property.

(v) **Property** means and refers to real estate that was submitted to the Original Declaration and/or that is submitted to the provisions of this Declaration as described in Exhibit "A" attached hereto and incorporated herein by reference.

(w) **Resident** means any Person staying overnight in a residence on a Lot for a total of more than 30 days, either consecutive or nonconsecutive, in any calendar year, regardless of whether such Person is a tenant or the Owner of such Lot.

(x) **Rules and Regulations** means any instrument, however denominated, adopted by the Association, as allowed for under this Declaration and the Act, for the regulation and management of the Community and/or Lots, including any amendments or revisions.

**ARTICLE 3. ASSOCIATION MEMBERSHIP, ALLOCATION OF VOTES, AND ALLOCATION OF LIABILITY FOR COMMON EXPENSES**

**Section 3.1** **Membership**. All Lot Owners are members of the Casolar del Norte Home Owners Association. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, but the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot owned.

**Section 3.2** **Voting**. The Owner or collective Owners of a Lot shall be entitled to one equally weighted vote for such Lot, subject to the following exceptions:

(a) currently undeveloped Lots 4 and 5 are entitled to .60 of a vote until commencement of construction of a single family Dwelling Unit; and

(b) upon commencement of construction of a Dwelling Unit on Lot 4 and Lot 5, the owner of Lot 4 will be entitled to 1.5 votes and the owner of Lot 5 will be entitled to 1.5 votes.

This alteration of voting rights is based on a reduction in density from the originally planned three Dwelling Units to two Dwelling Units on the Lots and the right for each Dwelling Unit to utilize half of the unbuilt Dwelling Unit's planned square footage. If this condition is not fulfilled, the voting rights set forth above will be void and each Lot will be entitled to one vote.

When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves and as more specifically stated in the Bylaws, otherwise the Lot's vote shall be suspended if more than one Person seeks to exercise it.

**Section 3.3** **Allocation of Liability for Common Expenses**. Except as provided in this section regarding Lots 4 and 5 or elsewhere in the Governing Documents, the amount of all Common Expenses shall be assessed equally among the Lots. Lots 4 and 5 will be assessed at 1.5 times the assessment for all other Lots.

**ARTICLE 4. ASSESSMENTS**

**Section 4.1** **Purpose of Assessments**. The Association has the power to levy assessments. The assessments for Common Expenses are used to fulfill the Association's obligations pursuant to this Declaration and to promote the common benefit and enjoyment of the Owners and Residents in the Community as may be more specifically defined and authorized from time to time by the Association.

**Section 4.2** **Personal Obligation For Assessments**. Each Owner is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) individual Lot assessments that are established pursuant to the terms of this Declaration. These amounts are also the personal obligation of the Person who was the Owner of the Lot at the time when the assessments fell due. The personal obligation to pay any past due sums due the Association will not pass to a successor in title unless expressly assumed by him.

**Section 4.3** **Lien**. All assessments, together with charges, interest, costs, and reasonable attorneys' fees actually incurred (including post-judgment attorneys' fees, costs, and expenses), up to the maximum amount permitted by law, will be a charge on the Lot and a continuing lien upon the Lot against which each assessment is made. The Association has the authority to record a notice of lien in the Eagle County, Colorado, real property records evidencing the lien created under this Declaration. The Association's lien under this article is not subject to the provision of any homestead exemption as allowed under state or federal law. The lien has the priority as set forth in the Act.



**Section 4.4**      **Payment of Assessments**. Assessments will be paid in the manner and on the dates as may be fixed by the Association. No Owner may exempt himself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Areas, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

**Section 4.5**      **Individual Lot Assessments**. The Association has the power to levy individual Lot assessments against Lots pursuant to this section as it deems appropriate.

(a)            Any expense or liability incurred by the Association as a result of the willful, negligent, or wrongful act of an Owner, the Owner's family, guests, or other Residents of the Lot, or any breach by any of these parties of any of the provisions of the Governing Documents, may be an assessment against the Lot, including cost to repair damages and fines.

(b)            Any expense benefiting fewer than all of the Lots, or significantly disproportionately benefiting all Lots, may be assessed equitably against those Lots benefited according to the benefit received. Except as provided in subsection (a) above, expenses incurred for the maintenance, repair, or replacement of the Common Areas or Areas of Common Responsibility will not be assessed as an individual Lot assessment.

**Section 4.6**      **Delinquent Assessments**. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(a)            If the annual assessment, any part or installment thereof, or any other fine, special assessment, or charge is not paid in full within 30 days of the due date, or such other date as may be provided by the Board in the Association's collection policy:

(i)            a late charge in an amount determined by the Board and set forth in the Association's collection policy and administrative expenses may be imposed without further notice or warning to the delinquent Owner; and

(ii)           interest at the rate determined by the Board and set forth in the Association's collection policy, not to exceed the maximum amount permitted by Colorado law may be imposed without further notice or warning to the delinquent Owner.

(b)            If any assessment is payable in installments and an installment remains unpaid for 60 days, then upon written notice to the Owner, the Board may accelerate and declare immediately due all of that Owner's unpaid installments. Upon acceleration, that Owner shall lose the privilege of paying any and all assessments and charges in installments for that fiscal year, unless such privilege is otherwise reinstated in the Board's sole discretion.

(c)            If assessments, fines, or other charges, or any part thereof, remain unpaid more than 30 days after the assessment payments first become delinquent, the Owner's right to vote will be automatically suspended until all amounts owed are paid in full and the Association, acting through the Board of Directors, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, and Colorado law, including reasonable attorneys' fees actually incurred. Enforcement under this section is not dependent upon or related to other restrictions and/or other actions.

(d)            If partial payment of assessments or other charges are made, the amount received may be applied as provided for in the Association's collection policy.

(e)            Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments or related charges, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot. An

action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments or related charges, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien.

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

**Section 4.7**            **Computation of Budget and Assessment.** Prior to the beginning of each fiscal year, the Board will prepare a budget covering the estimated costs of operating the Community during the coming year, including an annual reserve contribution for replacement of improvements that are the Association's responsibility, and the Board will establish the annual assessment. The Board will cause a summary of the budget to be delivered to each member within 90 days after the Board adopts the budget and will set a date for a meeting of the Lot Owners to consider the budget, which meeting will occur within a reasonable time after delivery of the budget summary. The budget and the assessment will become effective unless disapproved at a duly called Association meeting by a vote of a Majority of the total Association membership; provided, however, if a quorum is not obtained at the annual or other meeting called to ratify the budget, the budget will become effective even though a vote to disapprove the budget could not be called at this meeting.

Notwithstanding the foregoing, if the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget has been determined as provided herein, the budget in effect for the current year will continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year. The approval procedure set forth in this section for budgets will also apply to a new budget proposed by the Board.

The budget does not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of Common Expenses on which the Board may base the annual assessments.

**Section 4.8**            **Special Assessments.** In addition to the annual assessment provided for above, the Board may, at any time, and in addition to any other rights it may have, impose a special assessment against all Owners; provided that if the special assessment exceeds 15% of the current budget, the special assessment must be approved in accordance with the meeting and notice procedures set forth above. In order to be effective, any special assessment that exceeds 15% of the current budget will become effective unless disapproved at a duly called Association meeting by a vote of a majority of the total Association membership; provided, however, if a quorum is not obtained at the meeting, the special assessment will become effective even though a vote to disapprove the special assessment could not be called at this meeting.

**Section 4.9**            **Statement of Account.** The Association will furnish to an Owner or the Owner's designee, or to a holder of a security interest or its designee, a statement setting forth the amount of unpaid assessments then levied against the Lot in which the Owner, designee, or holder of a security interest has an interest. The Association will deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party within 14 calendar days after the Association's registered agent receives the request by personal delivery or by certified mail, first class postage prepaid, return receipt requested. The information contained in the statement, when signed by the treasurer of the Association, or managing agent, if any, will bind the Association, the Board, and every Owner as to the person or persons to whom the statement is issued and who rely on it in good faith. The

Association may establish a reasonable fee relating to the statement, which may incorporate any fees imposed by a managing agent.

**Section 4.10**      **Reserves and Surplus Funds**. As part of the annual budget, the Association will establish and fund reasonable reserves for repair and replacement of the Common Area, including private streets, irrigation lines, and other property maintained by the Association. The Association may maintain surplus funds, if any, as unallocated reserves and such funds will not be credited to the Owners in proportion to their Common Expense liability or be credited to them to reduce their future Common Expense assessments. Funds set aside for reserves cannot be expended on other than reserve items without approval of the Board of Directors and in accordance with the Owner budget ratification procedures in Section 4.7 above.

**Section 4.11**      **Borrowing**. The Association has the power to assign its right to borrow money and assign future income, including the right to assign its right to receive Common Expense assessments, but only upon the affirmative vote of a Majority of the Owners present and voting, in person or by proxy, at a duly constituted meeting called for that purpose, or by ballot in lieu of a meeting as provided for in the Bylaws.

## **ARTICLE 5.                    MAINTENANCE RESPONSIBILITY**

**Section 5.1**      **By the Owner**. Each Owner is obligated to maintain and keep in good repair all portions of his or her Lot, including the Dwelling Unit and all improvements made by the Owner to the Lot, unless any portion of a Lot that is expressly made the maintenance obligation of the Association. This maintenance responsibility includes, but is not limited to the following:

- (a)            all portions of the Dwelling Unit, including, but not limited to exterior cladding, paint, stucco, stone, gutters, downspouts and roofs;
- (b)            decks, patios, walkways and other improvements serving the Dwelling Unit that are located on easement areas or Common Areas;
- (c)            any planter boxes, whether stone, wood or another material, adjacent to or abutting a Dwelling Unit and any retaining walls, whether stone, wood, stucco or other materials, adjacent to or abutting or otherwise protecting the Dwelling Unit;
- (d)            driveways serving the Dwelling Unit;
- (e)            sewer lines serving a Dwelling Unit to the point where it intersects the main sewer line that is maintained by the Eagle River Water and Sanitation District;
- (f)            any portion of the heating and air conditioning systems including serving the Lot, whether located within or outside the boundaries of the Lot;
- (g)            individual irrigation systems that are not part of the Association irrigation system, which as of the date of recording of this Declaration include irrigation systems on the following Lots: Lot 6B (1190B Casolar Drive), Lot 7B (1180B Casolar Drive), Lot 7A (1180A Casolar Drive) and Lots 14A and 14B (1148 Sandstone Drive);
- (h)            all communications, television, telephone, cable and electrical lines, receptacles and boxes serving the Dwelling Unit, whether located within or outside the Lot boundaries;
- (i)            non-conforming structures, which as of the date of recording of this Declaration include the following:

- (i) Lot 10B (1150B Casolar Drive): garden, stone patio, steps, stone retaining walls, deer statuary, and iron fence at end of the extra parking/snow storage space,
- (ii) Lot 12B (1121B Vail View Drive): water feature,
- (iii) Lot 7B (1180B Casolar Drive): terraced grass hillside and retaining wall,
- (iv) Lot 11B (1101B Vail View Drive): planting box to rear of Dwelling Unit;
- (v) Lot 7A (1180A Casolar Drive): turf grass by roadside (served by independent irrigation system referenced in Section 5.1 (g));
- (vi) Lot 6B (1190B Casolar Drive): patio, walkways, fencing, landscaping, and stone retaining wall across from garage;
- (vii) Lot 6A (1190A Casolar Drive): four trees next to upper deck; and
- (viii) Lot 8A (1170A Casolar Drive): planting bed on east side of Dwelling Unit adjacent to the road and bordered by stones.
- (j) any other exterior improvements made by an Owner to the Lot or Common Area.

**Section 5.2** **Additional Owner Responsibilities**. In addition, each Lot Owner shall have the responsibility:

- (a) To keep the Lot in a neat, clean, and sanitary condition, including keeping the driveways, walkways and steps serving the Dwelling Unit free and clear of snow, ice, and any accumulation of water or other debris; provided that if the Dwelling Unit is not occupied, snow removal is not required.
- (b) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Lots.
- (c) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.

Subject to the maintenance responsibilities herein provided, if an Owner or Resident performs maintenance or repair performed on or to the Common Area or Area of Common Responsibility without prior written approval of the Association, the cost of the maintenance or repair will be the sole expense of such Owner or Resident and the Owner or Resident is not entitled to reimbursement from the Association even if the Association subsequently accepts the maintenance or repair.

**Section 5.3** **By the Association**. The Association shall maintain and keep in good repair as a Common Expense all Common Areas, other than portions of the Common Areas identified as Owner responsibility in Section 5.2 above. The Association will also maintain the stone/brick retaining wall on the north side of Casolar Drive on either side of the mailboxes. Such maintenance includes, but may not be limited to private street and road maintenance and trash removal. The Association will also take reasonable action to clear and remove snow from Common Areas, as determined by the Board of Directors in the Association's annual or periodic contract with a snow removal contractor. The foregoing maintenance will be performed consistent with the Community-Wide Standard.

If, during the course of performing its maintenance responsibilities, the Association discovers that maintenance, repair, or replacement is required of an item that is the Owner's responsibility, and such maintenance, repair, or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at the Owner's sole expense, without prior notice to the Owner, such being deemed an emergency situation.

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

The Association will repair incidental damage to any Lot resulting from performance of work that is the responsibility of the Association. The Association is not liable to any Owner, Resident, or any, 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 article 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 that are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

**Section 5.4**            **Radon.** The U.S. Environmental Protection Agency ("EPA") states that exposure to elevated levels of radon gas can be injurious. Any test to measure the level of radon gas can only show the level at a particular time under the circumstances occurring at the time of testing. Owners may wish to test for the presence of radon gas and to purchase or install devices that may be recommended by qualified radon specialists. If the devices require exterior modifications to the Dwelling Unit, prior written consent in accordance with the terms of this Declaration is required. Each Owner agrees to hold the Association harmless from any claim or liability with respect to radon gas and related matters.

**Section 5.5**            **Failure to Maintain.** If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association will give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice will be set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors.

Unless the Board of Directors determines that an emergency exists, the Owner shall have 30 days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten days. If the Board determines that: (a) an emergency exists, or (b) an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense. Such costs will be added to and become a part of the assessment to which such Owner is subject and will become and be the personal obligation of the Owner. A lien may assessed against the Lot be collected, as provided for in this Declaration and in the Association's collection policy.

**Section 5.6**            **Maintenance Standards and Interpretation.** The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances do not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this article. No decision or

interpretation by the Board will constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

## **ARTICLE 6. PARTY WALLS**

**Section 6.1** **General Rules of Law to Apply**. Each wall built as a part of the original construction of the residences or Lots that serves and separates any two adjoining Lots or residences constitutes a party wall and, consistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

**Section 6.2** **Sharing of Repair and Maintenance**. The cost of reasonable repair and maintenance of a party wall will be shared by the Owners who make use of the wall in equal proportions.

**Section 6.3** **Damage and Destruction**. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has benefited by the wall may restore it, and the other Owner or Owners thereafter who are benefited by the wall must contribute to the cost of restoration thereof in equal proportions, without prejudice. However, any Owner may call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 6.4** **Right to Contribution Runs With Land**. The right of any Owner to contribution from any other Owner under this article is appurtenant to the land and will pass to such Owner's successors-in-title.

**Section 6.5** **Arbitration**. In the event of any dispute arising concerning a party wall, or under the provisions of this article, each party will appoint one arbitrator. Should any party refuse to appoint an arbitrator within ten days after written request therefor by the Board, the Board will appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one additional arbitrator and the decision by a majority of all three arbitrators will be binding upon the parties. Compliance with this section is a condition precedent to any right of legal action that either party may have against the other in a dispute arising under the provisions of this article.

## **ARTICLE 7. ARCHITECTURAL REVIEW**

**Section 7.1** **Establishment of Architectural Review Committee**. The Architectural Review Committee ("Committee") shall consist of the members of the Board of Directors unless the Board appoints a separate committee. If a separate committee is appointed, the Board has authority to remove any members of the Committee at its sole discretion.

**Section 7.2** **Authority of Association to Hire Consultants**. The Association has the authority to select and employ professional consultants to assist the Committee in discharging its duties when the Board deems it necessary. The anticipated cost of a consultant, if necessary, will be provided to the Owner prior to engagement of such consultant. The cost of such consultants shall be paid by the Owner of any Lot for which plans and specifications have been submitted for approval. The Owner of any such Lot shall be responsible for paying the full cost of each review, whether or not submitted plans and specifications are approved by the Committee, and the Committee may require payment of all such costs prior to approval of plans and specifications. The Committee also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards.

**Section 7.3** **Architectural Covenants**. Except as otherwise provided herein, no Owner, Resident, or any other person may, without first obtaining written approval of the Committee:

(a) make any encroachment onto the Common Areas or other Lots, except to the extent that there is a recorded easement in place for such encroachment;

(b) make any exterior change, alteration, improvement, grading, or other construction (including, but not limited to, fences, energy conservation devices or systems, walls, and landscaping) to the Lot or structures on the Lot; and

(c) make any interior alterations or additions that would affect the structural engineering of the Dwelling Unit or the Dwelling Unit on an adjacent Lot.

**Section 7.4** **Required Action by the Association**. Applications for approval of any exterior modification must be in writing and provide such information as the Committee may reasonably require. Plans and specifications will include, but may not be limited to: floor elevations, plot, drainage, drainage and landscaping plans; snow removal plan; entry and driveway plan, the specifications or principal exterior materials, including window casings, location and character of all utilities and full descriptions of all fences and lighting. The Committee is the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, subject to the approval procedure provided below and provided no decision of the Committee may be arbitrary or capricious. The Association will be entitled to stop any construction that does not conform to the approved plans.

The standard for approval of exterior modifications or improvements includes, but is not limited to: (a) aesthetic consideration; (b) materials to be used; (c) compliance with the Community-Wide Standard, this Declaration, or the architectural guidelines that may be adopted by the Board, if any; (d) harmony with the external design of the existing building, Lots, and structures, and the location in relation to surrounding structures and topography; and (e) any other matter deemed to be relevant or appropriate by the Committee. An objective of the Committee is to seek to assure that no improvement will be so similar or dissimilar to others in the vicinity that monetary or aesthetic values will be impaired.

If the Committee fails to approve or to disapprove such application within 30 days after the application and all information as the Committee may reasonably require have been submitted, then the Owner submitting the application shall issue written notice, via certified mail, to the Association President and Secretary, informing the President of the Owner's intent to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within ten days of receipt of the Owner's notice, the approval will not be required and this section will be deemed complied with as to the items specifically identified in the application; provided, however, even if the requirements of this section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, or the Rules and Regulations of the Association or of any applicable zoning or other laws.

**Section 7.5** **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 of such construction, change, modification, addition, or alteration, unless otherwise agreed to in writing by the Board. AS a condition of approval, the Committee may require an Owner applicant to post a reasonable cash bond with the Association in an amount determined by the Committee. It is the responsibility of every Lot Owner to determine for himself or herself what architectural modifications have been made to his or her Lot by any predecessor-in-interest. At the discretion of the 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.

**Section 7.6** **Limitation of Liability**. Review and approval of any application pursuant to this article may be made on any basis, including solely the basis of aesthetic considerations, and neither the Committee nor the Board of Directors shall bear any responsibility for ensuring the design, quality, structural integrity, or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations, and other governmental requirements. Neither the Association, the Board of Directors, the Committee, nor any member of any of the foregoing shall be held liable for any

injury, damages, or loss arising out of the manner, design, or quality of approved construction on, or modifications to, any Lot, nor may any action be brought against the Association, the Board of Directors, the Committee, or any member thereof, for any such injury, damage, or loss.

**Section 7.7**            **No Waiver of Future Approvals.** Each Owner acknowledges that the members of the Board of Directors and the Committee will change from time to time and that interpretation, application, and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the Board of Directors may adopt different architectural standards for different parts of the Community, based on street visibility and location of the proposed modification in the building. The approval of the Committee 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 Board of Directors, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans, and specifications, drawings, or matters whenever subsequently or additionally submitted for approval or consent.

**Section 7.8**            **Commencement and Completion of Construction.** All changes, modifications, and improvements approved by the Committee hereunder must be commenced within six months from the date of approval. If not commenced within such time, then such approval will be deemed revoked, unless the Committee gives a written extension for commencing the work. All modifications to existing Dwelling Units approved by the Committee hereunder shall be completed in its entirety within 90 days from the date of commencement, unless otherwise agreed in writing by the Committee. All new construction shall be completed within 12 months of commencement. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or part of an approved change, modification, or improvement. The Owner is responsible to provide the Committee with notice of completion and the Committee has authority to inspect the work.

**Section 7.9**            **Variances.** The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in architectural guidelines adopted by the Board. Such variances or adjustments may not be materially detrimental or injurious to other property or improvements in the Community.

**Section 7.10**          **Right to Appeal.** If the Board is not acting as the Committee, an Owner whose plans have been disapproved or conditionally approved may appeal any decision of the Committee to the Board within 30 days of the decision. The Board will review the decision of the Committee pursuant to the criteria set forth in this article and the architectural guidelines, if any. Any decision of the Committee may be overruled and reversed by a majority of the directors by a written decision setting forth the reasons for the reversal when the directors conclude that the Committee's decision was inconsistent with the criteria set forth in this article and/or the guidelines.

**Section 7.11**          **Architectural Guidelines.** The Committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board and included in or with any Rules and Regulations of the Association. Board approval is necessary to affect any proposed architectural guidelines.

**Section 7.12**          **Enforcement.** Any construction, alteration, or other work performed in violation of this article, any other provision of this Declaration, the architectural guidelines, or any applicable zoning regulation will be deemed to be nonconforming. Upon written request from the Board, a violating Owner must, at the Owner's own cost and expense, remove such nonconforming construction, alteration, or other work and restore the Lot to substantially the same condition as it existed prior to such construction, alteration, or work. If the Owner fails to do so, the Association or its designees will have the right, in addition to all other available remedies, to enter the Lot, remove the violation, and restore the property; and any such expenses will be an individual assessment against the Lot to be collected as provided for in Article 4 of this Declaration and in the Association's collection policy. Alternatively, the Association may impose fines after reasonable notice and an opportunity for a hearing.



The Association also has the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this article and its decisions. Furthermore, the Association has the authority to record in the Eagle County records a notice of noncompliance with the provisions of this article. The Association may seek attorney fees incurred in enforcing the provisions of this article.

## **ARTICLE 8. USE RESTRICTIONS**

Each Lot Owner is responsible for ensuring that the Owner's family, guests, tenants, and Residents comply with all provisions of the Governing Documents and the Rules and Regulations of the Association. Furthermore, each Owner and Resident shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants, or Residents, as a result of such person's violation of the Governing Documents, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants, or Residents.

In addition to the following use restrictions, the Board of Directors may adopt Rules and Regulations in accordance with the terms hereof and as specified in the Bylaws.

### **Section 8.1 Use of Lots.**

**(a) Residential /Business Use.** Each Lot and Dwelling Unit will be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Community, except that the Owner or Resident residing in a Lot may conduct ancillary business activities or home occupations within the Lot so long as:

**(i)** the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the Lot;

**(ii)** the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers, or other business invitees in greater volume than would normally be expected for guest visitation to a residential Lot without business activity and the business activity does not have more than one employee;

**(iii)** the business activity is legal and conforms to all zoning requirements for the Community;

**(iv)** the business activity does not increase traffic and parking in the Community in excess of what would normally be expected for residential Lots in the Community without business activity (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services, and other such similar delivery services);

**(v)** the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

**(vi)** the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other Residents of the Community, as determined in the Board's discretion; and

**(vii)** the business activity does not result in a materially greater use of Common Areas or Association services.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves the provision of goods or services to persons other than the provider's family

and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

The Association, its directors, officers, and agents have no liability for any in-home occupation. Owners and Residents are required to comply with permitting requirements and any other requirements of Eagle County, Colorado.

**(b) Occupancy.** Unless a Lot Owner has received prior written Board approval for an occupancy exceeding the limitations of this Section, all occupancies of a Dwelling Unit in excess of four consecutive weeks are limited to not more than four unrelated adults 18 years or older.

**Section 8.2 Leasing.** Lot Owners have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Owner may deem advisable subject to the terms of this Declaration, subject to restrictions of record and subject to the following:

**(a)** “Leasing” or “Renting” for the purposes of this Declaration is defined as regular, exclusive occupancy of a Lot by any person other than the Owner. For the purposes of this Declaration, occupancy by an Owner’s roommate if the Owner occupies the Lot as such Owner’s primary residence shall not constitute leasing under this Declaration.

**(b)** Short term occupancies and rentals may be regulated by the Town of Vail. Owners are required to comply with all Town of Vail ordinances.

**(c)** All leases or rental agreements for periods in excess of 30 days will be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents. Owners are required to provide tenants with copies of the current Declaration and any Rules and Regulations of the Association.

**(d)** Each Owner who leases his or her Lot shall provide the Association, upon request, a copy of the current lease and tenant information, including the names of all occupants; vehicle descriptions, including license plate numbers; and any other information reasonably requested by the Association or its agents.

**(e)** All occupancies, leases, and rental agreements of Lots shall state that the failure of the tenant, lessee, renter, or his or her guests to comply with the terms of the Governing Documents (including, but not limited to, parking restrictions) constitute a default of the occupancy, lease, rental agreement, and of this Declaration and such default will be enforceable by either the Association or the landlord, or by both of them.

**(f)** All occupancies of Lots shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Declaration, the Bylaws of the Association, the Articles of Incorporation, or the Rules and Regulations of the Association. If the Association requests that the Owner evict the Owner’s tenant based on the terms of this Declaration, and the Owner fails to commence such action within 30 days of the date of the Association’s request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association’s request to evict, the Owner delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Lot.

**(g)** Leases shall be for the entire Dwelling Unit.

(h) All Owners who reside at a place other than the Community will provide to the Association an address and phone number(s) where the Owner can be reached in the case of emergency or other Association business. It is the Owner's sole responsibility to keep this information current.

**Section 8.3**            **Subdivision.** Lot numbers 1, 2, 3, 6, 7, 8, 9, 10, 12, 13, 14 and 15 have been subdivided into two parcels with one Dwelling Unit permitted on each parcel (each of which is designated by the Lot number and either A or B) and such Lots may not be further subdivided. Lot 11 has been subdivided into three separate parcels (Lot 11-A, Lot 11-B, an Lot 11-C) and no more than three Dwelling Units may be placed on Lot 11. Lot 4 and Lot 5 may not be subdivided and only one Dwelling Unit may be placed on each of these Lots. Any structure erected on any of these lots maybe divided under a scheme of multiple ownerships as long as such structure contains no more than two Dwelling Units.

**Section 8.4**            **Use of Common Areas.** There will be no obstruction of the Common Areas, nor will anything be kept, parked, or stored on or removed from any part of the Common Areas without the Association's prior written consent, except as specifically provided for in the Governing Documents with regard to Common Areas subject to easement rights. The Association will not be liable to the Owner or his Residents, guests, family members, and invitees, for loss or damage, by theft or otherwise, of any property that may be stored in or upon any of the Common Areas.

**Section 8.5**            **Use of Garages.** Garages will be used solely for the purpose of storing vehicles and other personal property belonging to the Owner or Resident. No Owner or Resident may store any explosives, or any flammable, odorous, noxious, corrosive, and hazardous or pollutant materials or any other goods in the garage that would cause danger or nuisance to the Community. Garages may not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code. If hazardous substances are stored, used, generated, or disposed of in the garage, or if the garage becomes contaminated in any manner for which the Owner or Resident thereof is legally liable, Owner or Resident will indemnify and hold harmless the Association and Board of Directors from any and all claims, damages, fines, judgments, penalties, costs, liabilities, losses, and any and all sums paid from settlement of claims, attorney's fees, consultant fees, and expert fees arising as a result of that contamination by Owner or Resident. Garages may not be converted to living areas; provided that any garage that has been converted as of the date of this Declaration shall be grandfathered.

**Section 8.6**            **Prohibition of Damage, Nuisance and Noise.** Without the prior written consent of the Board of Directors, nothing shall be done or kept on the Property, or any part thereof, that would increase the rate of insurance on the Property or any Lot or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

The residences on the Lots in the Community are built in close proximity to one another, resulting in the sharing of common walls. As a result, noise and vibration may be detectable between Lots. Therefore, an Owner or Resident shall not conduct activities within a Lot or use a Lot in a manner that interferes with or causes disruption to the use and quiet enjoyment of another Lot by its respective Owner and Resident.

Noxious, destructive, offensive, or unsanitary activity may not be carried out upon the Property. No Owner or Resident may use or allow the use of the Lot or any portion of the Property at any time, in any way that may endanger the health or property of other Residents, unreasonably annoy, disturb, or cause embarrassment or discomfort to other Owners or Residents, or, in the Board's discretion, constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Residents a right of redress for actions, activities, or conduct that unreasonably disturbs or impairs the peaceful and safe enjoyment of the residences.

Nothing in this section will be construed to affect the rights of an aggrieved Owner or Resident to proceed individually against a violator hereof for relief from interference with his property or personal

rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage, or otherwise will exist by an aggrieved Owner or Resident against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Resident has not personally pursued all available remedies against the violator for redress provided under Colorado law.

Specific unauthorized and unreasonable annoyances or disturbances shall include, but not be limited to, the following:

(a) any fighting, screaming, shouting, excessively loud talking, playing of music or television, raucous behavior, or insobriety either outside of a Lot at any time or within a Lot, if such conduct can be heard in the normal course of activities in any other Lot(s);

(b) the use of any alarm, equipment, or device, mechanical or otherwise, that creates or produces excessively loud sounds or any vibrations either outside of a Lot at any time or within a Lot if such sounds can be heard or vibrations felt in the normal course of activities in any other Lot(s), except for residence or car alarms that will turn off in a maximum of 15 minutes;

(c) any threatening or intimidating conduct toward any Resident, guest, or pet in the Community;

(d) any conduct that, in the Board's reasonable discretion, creates any danger or risk of injury to others or damage to property in the Community or that creates any threat to health or safety of any other Resident or pet;

(e) any excessively loud play activities either outside of a Lot at any time or within a Lot if such conduct can be heard in the normal course of activities in any other Lot(s);

(f) any conduct that creates any noxious or offensive odor either outside of a Lot at any time or within a Lot if such odors can be detected in the normal course of activities in any other Lot(s);

(g) any incessant or excessive pet noises, including dog barking, if such conduct can be heard in the normal course of activities in any other Lot(s);

(h) any construction or similar activities in a Lot that can be heard in other Lots between the hours of 9:00 p.m. and 7:30 a.m.; and

(i) using or allowing the use of the Lot or the Common Areas in any manner that creates noise between the hours of 10:00 p.m. and 7:00 a.m. that can be heard by persons in another Lot that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort, or convenience of any other Owner, members of his or her family, guests, invitees, or Residents of his or her Lot.

**Section 8.7** **No Damage or Waste**. No Owner, Resident, or agent of either may do any work that would jeopardize the soundness or safety of any structure within the Community, or would impair any easement or other interest in the Community, without prior written consent of all Association Members and their first Mortgagees.

No damage to or waste of the Common Areas or services, including use of water, will be permitted by any Owner or any Resident, guest, family member, or invitee of any Owner. Each Owner and Resident will indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by the Owner or Resident, or the Owner's or Resident's guest, family member, or invitee.

**Section 8.8**      **Water.** Each Dwelling Unit must be connected with the Eagle River Water and Sanitation District's facilities. No private well is permitted to be used as a source of water for human consumption. Each Owner is responsible for paying to the appropriate governmental authority or district all tap fees, water line fees, sewer fees and charges.

**Section 8.9**      **Pets.** No Owner or Resident may keep any animals other than two domesticated dogs or cats on any portion of the Property. A reasonable number of household pets weighing less than two pounds each may also be kept within the Dwelling Unit. The following animals may not be brought into or kept in the Community at any time: livestock; horses; pigs of any type, including pot-bellied pigs; poultry of any kind, including chickens, venomous snakes; or other animals determined in the Association's sole discretion to be dangerous animals. The Association may adopt additional Rules and Regulations to supplement this Section, including but not limited to Rules and Regulations defining generally recognized household pets.

No Owner or Resident may keep, breed, or maintain any pet for any commercial purpose. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Areas or the Lots without the prior written approval of the Association, except dogs that are confined within an enclosed area on the Lot when the pet owner is home. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outside of the residence or an enclosed area on the Lot. Feces left by pets upon the Common Areas, or on the Lots, including the pet owner's Lot, must be removed promptly by the owner of the pet or the person responsible for the pet. Owners will be responsible for the cost of any damage caused by pets residing in their Lot and such amounts will be collected as provided for in this Declaration and the Association's collection policy.

The Board may require after notice and hearing that any pet that, in the Board's opinion, endangers the health of any Owner or Resident or creates a nuisance or unreasonable disturbance, be permanently removed from the Community. If the Owner or Resident fails to comply with such a Board's request to remove a pet, the Association may seek a court order requiring the Owner or Resident to do so.

Any Owner or Resident who keeps or maintains any pet in the Community is deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim, or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Community.

**Section 8.10**      **Parking.**

**(a) General.** Off-street parking spaces are required for each Dwelling Unit as follows: no more than two parking spaces per Dwelling Unit with each space to be no less than nine feet wide and nineteen feet long, and if enclosed and/or covered, not less than seven feet high. At least one parking space per Dwelling Unit will be located within the main building or within an accessory garage whenever such development is reasonable and appropriate for the site and is required by the Design Review Board of the Town of Vail. All Owners, Residents and their guests and lessees must park vehicles within the required parking spaces. Temporary parking of vehicles that do not interfere with normal use of the roadway is permitted; provided that no overnight parking of vehicles on or adjacent to the roadways is permitted. Parking is subject to the Rules and Regulations adopted by the Board.

**(b) Prohibited Vehicles.** No overnight storage or parking of boats, recreational vehicles or large or oversized vehicles (as reasonably determined by the Board of Directors) are permitted in the Community. Emergency vehicles, as defined in the Act, are permitted in the Community. Notwithstanding the above, otherwise prohibited vehicles are allowed temporarily on the Common Areas during normal business hours only for the purpose of serving any Lot or the Common Areas.

**(c) Enforcement.** If any vehicle is parked on any portion of the Community in violation of this section or in violation of the Rules and Regulations, the Association or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after

24 hours the vehicle may be towed. The notice will include the name and telephone number of the person or entity that will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If 24 hours after such notice is placed on the vehicle the violation continues, or occurs again within six months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the vehicle owner or user.

If a vehicle located in the Community is blocking another vehicle or access to another Owner's driveway or garage, is obstructing the flow of traffic, is in a fire lane or in front of a fire hydrant, or would otherwise impede the passage of fire department vehicles, is blocking snow plow lanes or snow storage areas, is parked on any grassy area, or is otherwise creating a hazardous condition, no notice will be required and the vehicle may be towed immediately in accordance with the governmental regulations.

If a vehicle is towed in accordance with this section, neither the Association nor any director, officer, or agent of the Association will be liable to any person for any claim of damage as a result of the towing. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

**Section 8.11**      **Vehicle Repair and Maintenance.** Maintenance, repair, rebuilding, dismantling, repainting, or any kind of servicing of vehicles, trailers, or boats may not be performed or conducted in the Community unless done within a completely enclosed garage that screens the sight and sound of the activity from the street and from adjoining property. This restriction does not prohibit Residents from washing or polishing Residents' vehicles unless limited by watering restrictions.

**Section 8.12**      **Signs.** Except as may be provided in this Declaration or the Rules and Regulations or as may be required by state law or legal proceedings, no signs, house identification signs, mail boxes, poster boards, billboards or advertising structures of any kind will be placed or permitted to remain in the Community without the prior written consent of the Board or its designee.

**Section 8.13**      **Rubbish, Trash, Garbage and Recycling.** All rubbish, trash, garbage and recycling must be regularly removed from the Lot and is not permitted to accumulate in the Dwelling Unit or on the Lot. Disposal of garbage and trash and recycling must be in approved, "bear-proof" receptacles as permitted by law. Such receptacles must be kept inside the Dwelling Unit except during periods of pick-up, as permitted by law or ordinance. Outdoor burning of refuse is not permitted. No incinerators or other device for burning of refuse or refuse indoors will be constructed, installed or used by any Person.

**Section 8.14**      **Unightly, Unkempt, and Hazardous Conditions.** Activities that might tend to cause disorderly, unsightly, or unkempt conditions shall not be pursued or undertaken on any part of the Common Areas or on the Lots. No activities are permitted that are or may be unsafe or hazardous to any person or property. No open fires are permitted on the Common Areas and are only permitted on the Lots if in a contained gas or electric barbecue unit that complies with local ordinances. After notice and hearing, the Association may enter upon any Lot and remove unsightly objects and remedy unsightly or hazardous conditions; provided the Association may not enter the Dwelling Unit except as otherwise permitted in the Governing Documents. The cost of such removal is chargeable to such Owner as an individual assessment.

**Section 8.15**      **Trees.** No trees will be cut, trimmed or removed from the Community except with the prior written approval of the Board.

**Section 8.16**      **Landscaping and Gardening.** Any disturbance by an Owner to the surface area of the Property as the result of construction or work of any other kind, will be removed or eliminated promptly replanting the surface in native grass, by landscaping, or by gardening or by other and similar means; provided that the Owner must comply with the terms of Article 7 of this Declaration.

**Section 8.17**      **Antennas and Satellite Dishes.** No transmission or reception antennas or facilities shall be permitted except as allowed by federal law ("Permitted Antenna"). Except for Permitted

Antennas, no exterior television, transmission or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Site, without written approval of the Architectural Standards Committee.

Permitted Antennas shall be installed in the least conspicuous location available on a Site that permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law.

**Section 8.18**        **Temporary Structures.** Temporary structures, trailers temporarily located in the Community and other temporary structures are permitted only as necessary during construction for construction purposes only; provided that such structures are approved by the Association. Further, no outbuilding or temporary structure may be used on any Lot at any time for residential purposes, either temporarily or permanently.

**Section 8.19**        **Fences.** No fence, wall, or hedge higher than five feet and no chain link fences of any height will be erected or maintained with in the Property.

**Section 8.20**        **Gas and Propane Tanks.** Except gas or propane tanks for barbeque grills maintained in accordance with local ordinances, all gas or propane tanks located within the Property must be buried underground or shielded in some other fashion as approved by the Board pursuant to the requirements of Article 7 of this Declaration.

**Section 8.21**        **Exterior Lighting.** No Owner may install exterior lights without the prior written consent of the Association pursuant to Article 7 of this Declaration. All exterior lighting must also comply with Town of Vail requirements.

**Section 8.22**        **Electric Service Drops.** All power lines located on the Property, including service drops, must be concealed from view by underground installation along their entire lengths.

**Section 8.23**        **Solar Panels.** Upon prior written approval of the Association and subject to Article 7 of this Declaration, solar panels may be placed on an Owner's Lot. The Association may adopt reasonable guidelines regarding installation of solar panels.

**Section 8.24**        **Rules and Regulations.** The Board of Directors may adopt, amend, and repeal Rules and Regulations concerning and governing the Community in furtherance of the provisions of this Declaration and the general plan of development. The Board of Directors may also establish and enforce penalties for infractions of the rules, including, but not limited to fines.

**Section 8.25**        **Use of the Words Casolar Vail, Casolar del Norte, and the Casolar del Norte Home Owners Association.** No Resident or Owner is permitted to use the words Casolar Vail, Casolar del Norte or Casolar del Norte Home Owners Association or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials, or services, the use of which is likely to cause confusion, mistake, or deception as to the source or origin of such goods, materials, or services, without the prior written consent of the Association.

## **ARTICLE 9.            INSURANCE**

### **Section 9.1            Insurance on the Lots.**

(a)            Each Owner is obligated to obtain and keep in full force and effect at all times property insurance for the Dwelling Unit all other insurable improvements on the Lot or easement areas or other improvements made by the Owner or the Owner's predecessor-in-title providing "special form" coverage in an amount equal to the full replacement cost, before application of deductibles. If "special

form” coverage is not reasonably available at reasonable cost, the Owner will obtain, at a minimum, broad form covered causes of loss, in like amounts.

(b) Each Owner may also obtain such other insurance the Owner deems desirable including insurance for personal property and for liability for any injuries occurring to persons on the Lot, on easement areas appurtenant to the Lot or on other improvement constructed by the Owner or the Owner’s predecessor-in-title.

(c) Any insurance policy obtained by an Owner will, to the extent possible at reasonable cost, contain a waiver of the right of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees and against other Owners and Residents.

(d) The Association has no liability for the failure of any Owner to maintain required insurance. Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association.

**Section 9.2** **Damage to or Destruction of Structures on Lots.** In the event of damage to or destruction of structures on a Lot or easement area, the Owner shall proceed reasonably promptly to repair or to reconstruct the damaged structure in a manner consistent with the construction at the time of damage or destruction or such other plans and specifications as are approved in accordance with this Declaration.

**Section 9.3** **Insurance to be Carried by the Association.** The Association will obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration, which insurance coverage includes the following terms and will be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. Insurance policies will provide that the insurer waives its rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners and their respective household members. Insurance premiums for insurance provided by the Association is a Common Expense to be included as a part of the annual assessments levied by the Association.

(a) **Property Insurance on Common Areas.** The Association will obtain property insurance providing “special form” coverage in an amount not less than the full insurable replacement cost of the insured property, less applicable deductibles for any improvements on the Common Areas, if any. If “special form” coverage is not reasonably available at reasonable cost, the Association shall obtain, at a minimum, broad form covered causes of loss, in like amounts.

(b) **Association Liability Insurance.** The Association will obtain general liability insurance in amounts no less than \$1,000,000.00, covering claims for bodily injury or property damage. Coverage will include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association. Each Owner is an insured person under the policy with respect to liability arising out of such Owner’s interest in the Common Areas or membership in the Association.

(c) **Association Fidelity Insurance.** The Association will obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees; provided such coverage shall be at least the amount of reserves plus two months assessments. If such insurance is not reasonably available, the Board will exercise its reasonable business judgment in determining the coverage amounts.

(d) **Directors' and Officers' Liability Insurance.** The Association shall obtain directors' and officers' liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and



responsibilities in acting on behalf of the Association. The directors' and officers' liability policy shall include coverage for non-monetary claims.

(e) **Other Association Insurance.** The Association may obtain insurance against such other risks, of similar or dissimilar nature as it shall deem appropriate with respect to the Association responsibilities and duties.

**Section 9.4** **Claims and Adjustments by the Association.** Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest.

**Section 9.5** **Condemnation Allocations and Distributions.** In the event of a distribution of condemnation proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

## **ARTICLE 10. EASEMENTS**

**Section 10.1** **Easements for Use and Enjoyment.** Every Lot Owner and Resident has a right and non-exclusive easement of ingress and egress, use, and enjoyment in and to the Common Areas that are appurtenant to and pass with the title to his or her Lot, subject to the following provisions:

(a) the right of the Association to have access to the Lots to discharge its rights and obligations, under the Governing Documents, including without limitation, the maintenance responsibility of the Association;

(b) the exclusive right of each Lot Owner to use that portion, if any, of the private driveway appurtenant to the Owner's Lot and Dwelling Unit as shown on the site plan, that is located within the Common Area;

(c) the right of the Association to suspend the voting rights of an Owner for any period during which any assessment or charge against his or her Lot that is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, Bylaws, or Rules and Regulations;

(d) the right of the Association to borrow money as set forth in Article 4 of this Declaration;

(e) the right of the Association to grant easements, leases, and licenses across the Common Area, including cross-easements;

(f) the right of the Association to adopt Rules and Regulations regarding the use of Common Area;

(g) the right of the Association to dedicate or transfer all or any portion of the Common Area subject to approval of Owners holding 67% of the total Association vote, provided that the Board shall have the right to enter into agreements with any public authority for purposes necessary and beneficial, in the Board's discretion, to achieve the goals of the Association without such vote and the granting of easements as provided for above will not be deemed a transfer or dedication; and

(h) the right of the Association to change the use of portions of the Common Area or to close portions of the Common Areas.

Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Areas and facilities located thereon to the members of his or her family, tenants, and guests, and shall be deemed to have made a delegation of all such rights to the Residents of his or her Lot, if leased.

**Section 10.2**      **Easement for Entry.** The Association has an easement to enter onto Lots for maintenance, emergency, or safety purposes. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Resident of the Lot. For the purposes of this section, an emergency justifying immediate entry into a residence on a Lot shall include, but not be limited to, the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation, or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this section shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Lot shall exist.

Each Owner will also afford to other Owners, and to their agents or employees, access over the Owner's Lot (but not the residence) reasonably necessary to allow other Owners to fulfill their respective maintenance, repair, and replacement obligations.

If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Area or any Lot through which access is taken, the Owner responsible for the damage, or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair.

**Section 10.3**      **Sprinkler System Easement.** The Association has an easement to enter the Dwelling Units on Lots 1A (1141A Casolar Drive), 2B (1151B Casolar Drive), 10A (1150A Casolar Drive), and 15A (1150A Sandstone Drive) to maintain and operate sprinkler systems currently maintained or operated by the Association and the Association may continue to obtain electrical service from these Lot Owners for such purpose without charge or expense. If the Association desires to expand the current sprinkler system, the Association may negotiate easements from other Owners to maintain sprinkler control systems within their Dwelling Units.

**Section 10.4**      **Support.** Every portion of a Lot contributing to the support of an abutting Lot shall be burdened with a non-exclusive easement of support for the benefit of such abutting Lot.

**Section 10.5**      **Encroachments.** To the extent that any Lot or Common Area encroaches on any other Lot or Common Area, a valid easement for the encroachment exists. Encroachments referred to herein include, but are not limited to, unintentional encroachments caused by error in the original construction of the Buildings, by error in the Map, by the settling, rising or shifting of the earth, by changes in position caused by repair or reconstruction of the dwellings or any part thereof or by any other movement of any portion of the improvements located upon the community. However, an easement for encroachment shall not exist if the willful conduct by an Owner or the Association caused the encroachment.

**Section 10.6**      **Utilities.** To the extent that any utility line, pipe, wire, or conduit serving any Lot, Lots, or the Common Areas lies wholly or partially within the boundaries of another Lot or the Common Areas, such other Lot, Lots, or the Common Areas shall be burdened with a non-exclusive easement for the use, maintenance, repair, and replacement of such utility line, pipe, wire, or conduit, such non-exclusive easement to be in favor of the Lot, Lots, or Common Areas served by the same and the Association.

**Section 10.7**      **Public in General.** The easements and rights created in this article do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Eagle County, Colorado, records.

**ARTICLE 11. AUTHORITY AND ENFORCEMENT**

**Section 11.1 Compliance With and Enforcement of Governing Documents.**

**(a) Compliance Required.** Every Owner and Resident will comply with the applicable provisions of the Governing Documents. Any aggrieved Owner has the right to take action to enforce the terms of the Governing Documents against another Owner.

**(b) Association Remedies.** The Association may enforce all applicable provisions of the Governing Documents and may impose sanctions for violation thereof. Sanctions may include, without limitation:

**(i)** imposition of reasonable monetary fines, after notice and opportunity for a hearing, which fines will be a lien upon the violator's Lot;

**(ii)** suspension of the right to vote;

**(iii)** suspension of any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

**(iv)** exercise of self-help or action to abate any violation of the Governing Documents in a non-emergency situation, subject to any requirements as may be set forth in this Declaration, including those related to maintenance, repair, or replacement;

**(v)** requiring an Owner, at the Owner's expense, to remove any structure or improvement on the Lot or the Common Area in violation of the Governing Documents and to restore the Lot or the Common Area to its previous condition and, upon failure of the Owner to do so, the Association will have the right to enter the Lot/Common Area, remove the violation and restore the Lot/Common Area to substantially the same condition as previously existed and any action will not be deemed a trespass;

**(vi)** record in the Eagle County, Colorado real property records a notice of violation identifying any uncured violation of the Governing Documents; and

**(vii)** other remedies provided for in this Declaration or by applicable law.

**(c) Emergencies and Legal Action.** In addition, the Association may take the following enforcement procedures to seek compliance with the Governing Documents:

**(i)** exercise self-help in any emergency situation (specifically including, but not limited to, towing vehicles that are in violation of any parking Rules and Regulations); and/or

**(ii)** institute any civil action to enjoin any violation or to recover monetary damages, or both.

**(d) Remedies Are Cumulative.** All remedies set forth in the Governing Documents will be cumulative of any remedies available at law or in equity.

**(e) Costs Incurred By Association.** If the Association exercises any of its rights pursuant to this section, all costs will be assessed against the violating Owner or Resident and there will be a lien against the Lot. Additionally, subject to the Act, the Association will also be entitled to reasonable attorney fees actually incurred, which will be collected as an assessment.

**Section 11.2**      **Failure to Enforce**. The decision to pursue enforcement action in any particular case will be left to the Association's discretion, except that the Association may not be arbitrary and capricious in taking enforcement action. The Association's failure to enforce any provision of the Declaration, Bylaws, or Rules and Regulations is not deemed a waiver of its right to do so thereafter. No claim or right of action exists against the Association for failure of enforcement where: (a) the Association determines that its position is not strong enough to justify taking enforcement action; (b) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (c) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action at law or in equity and has failed to do so.

## **ARTICLE 12.            AMENDMENTS**

Except where a higher vote is required for action under any other provision of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Owners holding at least 51% of the total Association vote.

Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Eagle County, Colorado real property records.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration to correct any scrivener's errors, comply with any applicable state, city, or federal law, and/or to bring the Community into compliance with applicable Rules and Regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD"), and the Veterans Administration ("VA") pursuant to federal law.

Any action to challenge the validity of an amendment adopted under this article must be brought within one year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

## **ARTICLE 13.            GENERAL PROVISIONS**

**Section 13.1**      **Security**. The Association may, but is not required to, from time to time, provide measures or take actions that directly or indirectly improve security in the Community. However, each Owner, for himself and his Residents, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and the Association does not have a duty to provide security in the Community. Furthermore, the Association does not guarantee that non-unit Owners and non-Residents will not gain access to the Community and commit criminal acts in the Community nor does the Association guarantee that criminal acts in the Community will not be committed by other Owners or Residents. Each Owner is responsible to protect his person and property and all responsibility to provide security lies solely with each Owner. The Association is not liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

**Section 13.2**      **Implied Rights**. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

**Section 13.3**      **Electronic Records, Notices, and Signatures**. Notwithstanding any other portion of this Declaration, records, signatures, and notices shall not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws shall govern the giving of all notices required by this Declaration.

Section 13.4 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property perpetually unless otherwise terminated as provided herein.

Section 13.5 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

Section 13.6 Conflicts. In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 13.7 Registration of Mailing Address. Each Owner shall register his or her mailing address with the Association. All notices to be sent to the Owner shall be sent by regular U.S. mail addressed in the name of the Owner at the registered mailing address. If the Owner does not register a mailing address with the Association, all notices shall be sent to the Lot address.

IN WITNESS WHEREOF, the undersigned officers of the Casolar del Norte Home Owners Association hereby certify that this Amended and Restated Declaration was adopted by the Members of the Association.

This 1 day of March, 2016.

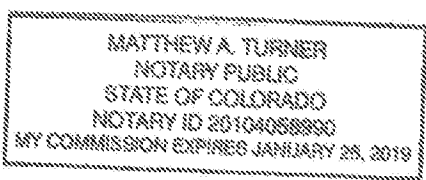
CASOLAR DEL NORTE HOME OWNERS ASSOCIATION, a  
Colorado Nonprofit Corporation

By: *Denna Pylman*  
President

STATE OF COLORADO )  
  ) ss.  
COUNTY OF   Eagle   )

The foregoing Declaration was acknowledged before me by Denna Pylman  
President of the Association, on this 1 day of March, 2016.

*Matthew A. Turner*  
Notary Public  
My commission expires: January 26, 2019



**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PROPERTY**

The property consists of 30 separate Lots that are more particularly described as follows: Lot A-7, A-8 and A-9, Lionsridge Filing No. 1, Eagle County, Colorado.