

**ATTACHMENT TO
ARTICLES OF INCORPORATION
OF
THE ROCKY PEAK VILLAGE OWNERS ASSOCIATION**

ARTICLE 1 - Introduction; Certain Definitions

Rocky Peak Village, a subdivision in Routt County, Colorado, shall be established as a residential planned community pursuant to the provisions of the Colorado Common Interest Ownership Act, as amended. Capitalized terms used but not defined herein shall have the meaning set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for Rocky Peak Village that shall be recorded in the real estate records of Routt County, Colorado (the "Declaration"). Terms defined in the Declaration include, without limitation, "Assessments," "Association," "Association Control Period," "Bylaws," "Common Area," "Common Expense," "Declaration," "Executive Board," "Exterior Maintenance Area," "Managing Agent," "Member," "Owner," "Person," "Policy" or "Policies," "Rules and Regulations," "Sharing Ratio," and "Unit." The term "Director" shall have the meaning ascribed to it in the Bylaws. The terms defined in C.R.S. §38-33.3-103 shall have the same meanings when used in these Articles of Incorporation.

ARTICLE 2 – Name

The name of this corporation shall Rocky Peak Village Owners Association. The corporation is sometimes referred to in these Articles of Incorporation and in the corporation's Bylaws as the "Association."

ARTICLE 3 – Purposes and Powers

3.1 Purposes. The Association shall operate the residential planned community known as Rocky Peak Village, a subdivision located in Routt County, Colorado (the "Subdivision" or "Project"), in accordance with the Declaration, as amended from time to time, the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, *et seq.* and the Colorado Revised Nonprofit Corporation Act, C.R.S. §7-121-101, *et seq.*, as either may be amended from time to time. The objects and purposes of the Association include:

- (a) To act as the association of the Owners of Units in the Project;
- (b) To provide for and accomplish the repair, maintenance, conservation, administration, improvement, replacement, management, operation, insuring, restoration and supervision of the Exterior Maintenance Area, the Common and any and all real and personal property acquired (by purchase, lease or otherwise) by the Association for the common use of the Owners;

(c) To carry out the purposes of and to enforce the provisions of the Declaration, these Articles of Incorporation, the Bylaws, the Policies and the Rules and Regulations, as amended from time to time;

(d) To define membership and the voting rights of the Members;

(e) To regulate and control the relationships among the Owners of Units, in connection with their ownership of the Units;

(f) To promote the health, safety, welfare and common benefit of the Owners of the Units in the Project;

(g) To pay the Common Expenses and to assess and collect from the Owners funds necessary to pay Common Expenses; and

(h) To engage in any lawful business or activity.

3.2 Powers. In furtherance of the foregoing purposes, the Association shall have and may exercise any and all powers and authority, and do any and all acts which are delegated, described or provided, expressly or implicitly, to the Association in the Declaration, these Articles of Incorporation, the Bylaws, the Policies and the Rules and Regulations, and the Association shall have and may exercise any and all permitted acts, powers, rights and privileges which are granted to a unit owner's association for a common interest community under the laws of the State of Colorado. The statements of purposes and powers set forth in these Articles of Incorporation shall be construed as statements of both purposes and powers. The purposes and powers stated in each clause or phrase shall not be limited or restricted by reference to or inference from the terms or provisions of any other clause or phrase, but shall be broadly construed as independent purposes and powers. As part of the powers of the Association, but not in limitation of the full plenary power of the Association, the Association shall have the power:

(a) **Real and Personal Property.** To acquire, by gift, purchase, trade or any other method, and to own, lease from third parties, operate, build, manage, use, rent, sell, hold, develop, improve, encumber, dispose of and otherwise deal in and with real and personal property of every kind and character, tangible and intangible, wherever located, and interests of every sort therein.

(b) **Borrowing.** To borrow funds or raise moneys in any amount for any of the purposes of the Association, and from time to time to execute, accept, endorse and deliver, as evidences of such borrowing, all kinds of instruments and securities, including but without limiting the generality of the foregoing, promissory notes, drafts, bills of exchange, warrants, bonds, debentures, property certificates, trust certificates and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment and performance of such securities by mortgage on, or pledge, conveyance, deed or assignment in trust of, the whole or any part of the assets of the Association, real, personal or mixed, including contract rights, whether at the time owned or hereafter acquired, subject, however, to any limitations provided in the Declaration.

(c) Contracts. To enter into, make, amend, perform and carry out, or cancel and rescind, contracts, leases, permits and concession agreements for any lawful purposes pertaining to its business.

(d) Assessments. To fix, determine, levy and collect the Annual, Special and Default Assessments pursuant to the Declaration, including without limitation assessments to fund any reserve deemed appropriate by the Executive Board, and to levy and collect fines, fees (including, without limitation, attorneys' fees), late charges, costs and interest in accordance with the Declaration and/or the Bylaws, and to exercise and enforce any and all remedies provided in the Declaration for collection of such Assessments, reserves, fees, late charges, costs and interest.

(e) Rule-Making. To make, amend and enforce Policies and Rules and Regulations with regard to the management, use, occupancy, appearance, operation, maintenance, repair and replacement of the assets of the Association, the Exterior Maintenance Area, the Common Area and with regard to the use and occupancy of the Units and Common Area.

(f) Construction, Management, Maintenance and Repair. To provide for the management, maintenance and repair of the Project, including the Exterior Maintenance Area, and construct, install, erect, replace, maintain, repair, manage and supervise any improvements now or hereafter installed or existing on, under, within or above the Exterior Maintenance Area, Common Areas or any real property or property interests owned by the Association.

(g) General Powers. To do everything necessary, suitable or proper for the accomplishment of any of the purposes, the attainment of any of the objectives, or the furtherance of any of the powers above set forth, either alone or in connection with other corporations, firms or individuals, and either as principal or agent, and to do every act or thing incidental or appurtenant to, or growing out of, or connected with any of the aforesaid objectives, purposes or powers, and to do any act authorized or permitted by the Declaration.

(h) Powers Conferred by Law. The Association shall have all powers provided or permitted by the Declaration, and shall have all powers provided or permitted by the Colorado Common Interest Ownership Act and the laws of Colorado for nonprofit corporations.

The foregoing enumeration of specific powers shall not limit or restrict in any manner the general powers of the Association and the enjoyment and exercise thereof as now are or as may hereafter be conferred by the laws of Colorado or the Declaration.

3.3 Dividends, Distributions, Etc. The Association shall not pay any dividends. No distribution of the corporate assets to Members shall be made until all corporate debts are paid, and then only upon final dissolution of the Association. Upon dissolution and after winding up the affairs of the Association, funds remaining after payment of all debts shall be distributed among the Owners Units in accordance with their Sharing Ration, and assets other than funds

shall be distributed, transferred and conveyed to the Owners as tenants in common, in accordance with their Sharing Ratio.

ARTICLE 4 – Membership and Voting Rights

4.1 Members. Any Person or combination of Persons owning an undivided fee simple interest in a Unit (including Declarant as respects Units from time to time owned by Declarant) in the Project shall automatically be a member of the Association. Such membership shall be continuous throughout the period that such ownership continues and shall terminate automatically whenever ownership ceases. Members may not resign from membership in the Association, but membership shall be automatically transferred upon conveyance of such member's Unit. Termination of membership shall not relieve or release any former Member from any liability or obligation incurred by virtue of or in any way connected with ownership of a Unit, or impair any rights or remedies which the Association or others may have against such former Owner and member arising out of or in any way connected with such ownership or membership in the Association.

4.2 Individual Membership. Any individual acquiring an ownership interest in a Unit shall automatically become an individual member of the Association.

4.3 Organizational Membership. Any Person, other than an individual, who acquires an ownership interest in a Unit, such as a corporation, partnership, limited liability company, association or trust, shall automatically become an organizational member of the Association.

4.4 One Class. The individual members and organizational members shall constitute one class of members of the Association, being Owners who own fee simple interests in Units.

4.5 Voting Members. The Association shall have voting members.

4.6 Number of Votes. Each Unit shall be allocated one (1) vote on all and any matters to be voted on by the members of the Association. The allocation of votes shall be calculated on the basis of one (1) vote per Unit. If a Unit is owned entirely by one individual or one organizational member, such individual member or the designated representative of the organizational member with respect to such Unit may cast and vote the vote allocated to such Unit. If, however, a Unit is owned in fee simple by two or more persons, whether in joint tenancy or tenancy-in-common or otherwise, then all persons owning fee simple interests in such Unit shall from time to time, by majority vote amongst them or by any other method to which they all agree, select and designate in writing to the Association one individual who shall be entitled to vote and cast the vote allotted to such Unit. The Association shall maintain a record of the individual entitled from time to time to vote on behalf of all persons owning fee simple interests in such Unit, and until the Association is notified in writing to the contrary, only such designated individual, or the written proxy of such designated individual, may cast the vote allotted to such Unit, and any action taken by such individual purporting to act on behalf of such persons shall be binding upon such persons. Division of the votes allocated to a single Unit among multiple Owners of such Unit shall not be allowed; rather, the vote allotted to a Unit shall be voted entirely and undivided for or against or in abstention of an issue or matter put to vote among the members of the Association.

4.7 **Voting Procedures.** Voting procedures shall be as specified in the Bylaws.

ARTICLE 5 – Executive Board

5.1 **Executive Board.** The control and management of the affairs of the Association and the disposition of its funds and property shall be vested in the Directors. All of such Directors shall constitute the Executive Board. The number of Directors shall be not less than one (1) nor more than five (5), as may be set by the Bylaws from time to time in effect, and each Director shall serve for a term of one year to three years, as may be set by the Bylaws from time to time in effect and until his successor shall be duly elected and shall qualify. The affirmative vote of a majority of a quorum of Directors shall be required for the transaction of the business of the Directors at any meeting. Members of the Association shall be entitled to such votes in the election of Directors as are provided for in Article 4. Cumulative voting shall not be allowed in the election of Directors. The initial Executive Board shall consist of one (1) Director, and the name and address of such Director, to serve until the first annual meeting of the Association and until his successor(s) shall be duly elected and qualified, is as follows:

INITIAL DIRECTOR

| <u>Name</u> | <u>Address</u> |
|-------------------|--|
| Peter A. Kreissig | P.O. Box 882078 Steamboat Springs, CO 80488 |

5.2 **Special Declarant Rights.** Subject to Section 5.3 below, Declarant reserves the right for Declarant, or any Person designated by Declarant in a writing delivered to the Executive Board, to appoint and remove the Directors and the officers of the Association at any time and from time to time, in the sole discretion of the Declarant or the designee of Declarant, with or without cause, but only during the Association Control Period described in the Declaration. The Declarant may voluntarily surrender the right to appoint and remove the Directors and the officers of the Association before termination of the Association Control Period, but in that event the Declarant may require, for the duration of the Association Control Period, that specified actions of the Association or the Executive Board, as described in a recorded instrument executed by the Declarant, shall be approved by the Declarant before such actions become effective.

5.3 **Election of Directors.** Pursuant to the Colorado Common Interest Ownership Act, not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Unit Owners other than Declarant, at least one Director, and not less than twenty-five percent (25%) of the Directors of the Executive Board, shall be elected by Unit Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than Declarant, not less than one-third (1/3) of the Directors of the Executive Board must be elected by Unit Owners other than Declarant.

ARTICLE 6 – Officers

The Association shall have such officers as may from time to time be prescribed by the Bylaws. Their terms of office and the manner of their designation or selection shall also be determined according to the Bylaws from time to time in effect, subject to Article 5 above.

ARTICLE 7 – Managing Agent

The Executive Board shall have power from time to time to appoint a property manager or Managing Agent, which may be a corporation or other entity, to carry on and perform maintenance, repair, management, operations, billing and accounting and any other functions, responsibilities and obligations (whether like or unlike the foregoing) for the Association. The Association may, but shall not be required to, record in the real property records of Routt County, Colorado from time to time its acknowledged certification of the name and address of such manager or managing agent, which certificate shall be conclusive evidence of the identify of such managing agent until a later certificate is recorded. The Declarant, or any officer, director, partner, manager, shareholder or joint venturer of Declarant, or any entity controlled by Declarant, or any affiliate of Declarant, may be and act as Managing Agent or own or have an interest in the property management firm for the Association.

ARTICLE 8 – Indemnification

The Association shall indemnify, to the maximum extent permitted by law, any person who is or was a Director, officer, agent, fiduciary or employee of the Association against any claim, liability or expense arising against or incurred by such person made party to a proceeding because he is or was a Director, officer, agent, fiduciary or employee of the Association or because he is or was serving another entity or employee benefit plan as a Director, officer, partner, trustee, employee, fiduciary or agent at the Association's request. The Association shall further have the authority to the maximum extent permitted by law to purchase and maintain insurance providing such indemnification.

ARTICLE 9 – Bylaws

The initial Bylaws shall be as adopted by the Executive Board. The Executive Board, by a majority vote, shall have the power to alter or amend the Bylaws, and the Bylaws may also be amended, altered or repealed by the affirmative vote of more than fifty percent (50%) of the votes of the membership of the Association, except where a higher voting requirement is imposed by law, the Declaration, these Articles of Incorporation or the Bylaws. Any alteration or amendment in the Bylaws made by vote of the membership of the Association shall not be further altered or amended by the Executive Board. The Bylaws may contain any provisions for the regulation or management of the affairs of the Association which are not inconsistent with law, the Declaration or these Articles of Incorporation.

ARTICLE 10 – Amendment

The Association reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation by the affirmative vote of the holders of more than

fifty percent (50%) of the votes of the membership of the Association, except where a higher voting requirement is imposed by law, the Declaration or these Articles of Incorporation.

ARTICLE 11 – Certain Liabilities of Directors

The personal liability of a Director to the Association or to the members of the Association for monetary damages for breach of fiduciary duty as a Director is hereby eliminated, except that such provision shall not eliminate or limit the liability of a Director to the Association or to the members of the Association for monetary damages for:

- (a) Any breach of a Director's duty of loyalty to the Association or to the members of the Association;
- (b) Acts or omissions not in good faith or which involve intention misconduct or a knowing violation of law;
- (c) Acts specified as being prohibited in C.R.S. §7-128-403 or C.R.S. §7-128-501(2), as amended, or any successors thereto; or
- (d) Any transaction from which a Director derived an improper personal benefit.