

**EXERPTS FROM WILDWOOD TOWNHOMES COVENANTS**

**WILDWOOD TOWNHOMES DEFINITIONS – for June 2020 Annual Meeting**

"**Common Elements**" means all of the Project except the Units.

"**Common Expenses**" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

"**Limited Common Elements**" means a portion of the Common Elements allocated by this Declaration or the Condominium Map for the exclusive use of one or more Units but fewer than all of the Units.

"**Unit**" or "**Condominium Unit**" means a physical portion of the Project that is designated for separate ownership and the boundaries of which are described in the Condominium Declaration and the Condominium Map. The physical portion of the Unit is as contained within the unfinished interior surfaces of the perimeter walls, floors, ceilings, windows and doors of the unit, together with all fixtures and improvements therein contained except for common utility facilities. All finished flooring and any other materials constituting any part of the finished surfaces within the Unit including plaster, paneling, tiles, wallpaper, paint, and any other materials constituting any part of the finished surface thereof are a part of the Unit. All other portions of the walls, floors, or ceilings are part of the Common Elements. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other utility or fixture is within or partially within the designated boundaries of the Unit, any portion thereof serving only the Unit is a Limited Common Element allocated solely to the Unit and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Except only as above provided, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. Any porch, balcony, patio, steps, exterior doors, exterior windows, shutters, awnings, or other fixtures or improvements designed or designated to serve a single Unit, but located outside the boundaries of the Unit, and any fenced portion of yard as permitted by the Association, are Limited Common Elements allocated exclusively to the Unit.

**ARTICLE 13 RESERVATIONS FOR ACCESS REPAIRS & EMERGENCIES**

13.2. Damages. Damage to the interior or any part of a Unit, except for Unit Owner installed or constructed improvements, resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit shall be are expense of the Association; provided, however, that if such maintenance, repair or replacement is caused by the negligence of the Unit Owner, his agents, employees, invitees or tenants then such Unit Owner shall be responsible and liable for all of such damage and the cost thereof shall be the Unit Owner's obligation and shall be immediately paid to the Association upon demand therefore.

13.4. Common Expense. All maintenance, repairs and replacement of the Common Elements, whether located inside or outside of any Unit (unless caused by the negligence, misuse or deliberate act of a Unit Owner, in which case such expense shall be charged to such Unit Owner), shall be an expense of the Association.

**ARTICLE 21 ASSESSMENT FOR COMMON EXPENSES BY THE ASSOCIATION**

21.1. Payment of Assessments. Declarant, for each Unit owned by it, and each Unit Owner by the acceptance of a deed therefore shall be deemed to covenant and agree and shall be obligated to pay to the Association all assessments made by the Association for the purposes provided in this Declaration.

21.2. Apportionment. Assessments for Common Expenses shall be apportioned among all of the Unit Owners in accordance with their Allocated Interests in the Common Elements.

21.3. Special Apportionment of Certain Assessments and Expenses. The following expenses shall be assessed and allocated as follows:

21.3.1. Any **Common Expenses** associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Units to which that Limited Common Element is assigned.

21.3 .2. Any **Common Expense** or portion thereof benefiting fewer than all of the Units shall be assessed exclusively against the Units so benefited.

21.3 .3. Insurance premiums and costs shall be assessed in proportion to the risk.

21.3.4. The cost of utilities shall be assessed in proportion to usage.

21.3.5. If any Common Expenses caused by the misconduct of any Unit Owner, the Association may assess that expense exclusively against such Unit Owner.

## LEGAL REVIEWS

Jacob Wirth, Wildwood Townhome Association attorney, Gunnison

*"Per 13.4, "All maintenance, repairs and replacement of the Common Elements, whether located inside or outside of any Unit (unless caused by the negligence, misuse or deliberate act of a Unit Owner, in which case such expense shall be charged to such Unit Owner), shall be an expense of the Association." Section 13.2 similarly states that Damage to a Unit, except when caused by negligence of another owner, resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements is the responsibility of the Association.*

*The term Common Elements includes both the general and limited common elements as explained in the definition of "Common Elements" in Article 2. The definition of "Unit" in Article 2 specifically provides that any utility or fixture that is within or partially within the designated boundaries of the Unit and any portion thereof serving only the Unit is a Limited Common Element.*

*So if we are talking about a leak in the pipe as it goes into that unit or is in that unit, it is probably a limited common element.*

*If it is a limited common element per 21.3.1, "Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Units to which that Limited Common Element is assigned." Arguably, if the pipe in the kitchen (EXAMPLE PROVIDED TO ATTORNEY) of a Unit broke and caused damage to adjoining units, the repairs caused by that broken pipe are associated with the repair of the pipe and should be assessed against the unit to which that pipe is a limited common element.*

*Regardless, under 21.3.2, any common expense or portion thereof benefitting fewer than all of the units shall be assessed exclusively against the Units so benefited. So, at most you are looking at the damaged units all paying for their own repairs. At the very least, you are looking at the owner with the bad pipe paying for the repairs. Was the pipe a pipe that only served this unit? If not, it is a general common element which means all the impacted owners should be paying for it. If it only serves that owner, then arguably just that owner should be paying for it."*

**Denver Attorney: WINZENBURG, LEFF, PURVIS & PAYNE, LLP**

***Question positioned to attorney by WW Board: "Does Article 21.3.2 indicate clearly that all current and future maintenance, repairs and replacements of the Common Elements expense at the "Cabinettes" and any Unit, be portioned exclusively to the Units so benefited?"***

*"Your Declaration defines "Common Elements" as "all of the Project except for the Units" and "Limited Common Elements" as "a portion of the Common Elements allocated by this Declaration or the Condominium Map for the exclusive use of one or more Units but fewer than all of the Units". Article 21 discusses the apportionment of assessments and states, in relevant part, the following: Section 21.3. Special Apportionment of Certain Assessments and Expenses. The following expenses shall be assessed and allocated as follows: 21.3.1. Any Common Expenses associated with the maintenance, repair or replacement of Limited Common Element shall be assigned against the Units to which that Limited Common Element is assigned. 21.3.2 Any Common Expense or portion thereof benefitting fewer than all of the Units shall be assessed exclusively against the Units so benefited. In response to the question posed above, yes, these portions of the Declaration make it clear that Common Expenses associated with either Limited Common Elements or that benefit fewer than all of the Units shall be assessed exclusively against the Units so benefited."*