

**AMENDED AND RESTATED DECLARATION**

**FOR**

**THE LODGE AT LIONSHEAD II**

**(FORMERLY THE LODGE AT LIONSHEAD)**

## TABLE OF CONTENTS

<b>ARTICLE 1 – CHANGE OF NAME OF THE COMMUNITY AND OF THE ASSOCIATION</b>	<b>3</b>
<b>ARTICLE 2 – DEFINITIONS</b>	<b>3</b>
<b>ARTICLE 3 – LOCATION, MAP, UNIT BOUNDARIES, COMMON AND LIMITED COMMON ELEMENTS</b>	<b>5</b>
SECTION 3.1    LOCATION .....	5
SECTION 3.2    MAP .....	6
SECTION 3.3    UNITS AND BOUNDARIES .....	6
SECTION 3.4    COMMON ELEMENTS.....	6
SECTION 3.5    LIMITED COMMON ELEMENTS .....	6
<b>ARTICLE 4 – ASSOCIATION MEMBERSHIP, ALLOCATION OF VOTES, AND ALLOCATION OF LIABILITY FOR COMMON EXPENSES</b>	<b>7</b>
SECTION 4.1    MEMBERSHIP .....	7
SECTION 4.2    ALLOCATED INTERESTS .....	7
SECTION 4.3    VOTING.....	7
SECTION 4.4    ALLOCATION OF LIABILITY FOR COMMON EXPENSES.....	7
SECTION 4.5    ASSOCIATION RIGHT TO ACQUIRE PROPERTY .....	8
<b>ARTICLE 5 – ASSESSMENTS</b>	<b>8</b>
SECTION 5.1    PURPOSE OF ASSESSMENT.....	8
SECTION 5.2    PERSONAL OBLIGATION FOR ASSESSMENTS .....	8
SECTION 5.3    ASSOCIATION LIEN .....	8
SECTION 5.4    DUE DATES .....	9
SECTION 5.5    NO OFFSETS .....	9
SECTION 5.6    DELINQUENT ASSESSMENTS .....	9
SECTION 5.7    COMPUTATION OF BUDGET AND ASSESSMENT.....	10
SECTION 5.8    SPECIAL ASSESSMENTS .....	10
SECTION 5.9    STATEMENT OF ACCOUNT.....	10
SECTION 5.10    SURPLUS FUNDS AND COMMON PROFITS .....	11
SECTION 5.11    BORROWING.....	11
SECTION 5.12    MORTGAGES AND LIABILITY FOR ASSESSMENTS .....	11
SECTION 5.13    WORKING CAPITAL.....	11
<b>ARTICLE 6 – MAINTENANCE RESPONSIBILITIES</b>	<b>11</b>
SECTION 6.1    MAINTENANCE OF UNITS BY OWNERS AND MAINTENANCE OF IMPROVEMENTS MADE BY AN OWNER, OR PRIOR OWNER.....	11
SECTION 6.2    ADDITIONAL ASPECTS OF MAINTENANCE RESPONSIBILITIES OF OWNERS .....	12
SECTION 6.3    MAINTENANCE BY AN OWNER OR OCCUPANT OF PARTS OF THE COMMON ELEMENTS .....	13
SECTION 6.4    MAINTENANCE BY THE ASSOCIATION .....	13
SECTION 6.5    COVENANTS RELATED TO INSURANCE COVERAGE .....	14
SECTION 6.6    MOLD AND/OR MILDEW .....	15
SECTION 6.7    FAILURE TO MAINTAIN .....	15
SECTION 6.8    MAINTENANCE STANDARDS AND INTERPRETATION.....	15
<b>ARTICLE 7 – USE RESTRICTIONS AND COVENANTS</b>	<b>16</b>
SECTION 7.1    RESIDENTIAL AND LODGING USES ALLOWED FOR RESIDENTIAL UNITS .....	16
SECTION 7.2    BUSINESS USES LIMITED FOR RESIDENTIAL UNITS .....	16
SECTION 7.3    LEASING RESTRICTIONS FOR RESIDENTIAL UNITS .....	17
SECTION 7.4    USE RESTRICTIONS AND OWNERSHIP LIMITATIONS ON TIMESHARES, INTERVAL OWNERSHIPS, VACATION CLUBS AND OTHER SIMILAR PLANS.....	20
SECTION 7.5    USE OF COMMERCIAL UNITS.....	20

SECTION 7.6	USE OF COMMON ELEMENTS .....	20
SECTION 7.7	USE OF LIMITED COMMON ELEMENTS .....	21
SECTION 7.8	USE OF BALCONIES, PATIOS AND DECKS – STORAGE RESTRICTIONS .....	21
SECTION 7.9	PROHIBITIONS ON DAMAGE, NUISANCE AND NOISE.....	21
SECTION 7.10	PET COVENANTS AND REASONABLE PETS ALLOWED OWNERS – PETS NOT ALLOWED BY LODGING GUESTS OR RENTERS.....	23
SECTION 7.11	PARKING .....	23
SECTION 7.12	HEATING OF UNITS IN COLDER MONTHS .....	25
SECTION 7.13	SIGNS .....	25
SECTION 7.14	FLAGS AND HOLIDAY DISPLAYS .....	25
SECTION 7.15	RUBBISH, TRASH, GARBAGE AND RECYCLING.....	25
SECTION 7.16	REGULATION OF THE COMMON ELEMENTS .....	25
SECTION 7.17	ANTENNAS AND SATELLITE DISHES.....	26
SECTION 7.18	GRILLING .....	26
SECTION 7.19	RULES AND REGULATIONS.....	26
SECTION 7.20	USE OF THE WORDS 'LODGE AT LIONSHEAD II' .....	26

**ARTICLE 8 – INSURANCE 26**

SECTION 8.1	OWNERS’ INSURANCE/UNIT CONTENTS AND MORE.....	27
SECTION 8.2	INSURANCE DURING RENOVATIONS OF A UNIT .....	27
SECTION 8.3	ASSOCIATION’S INSURANCE.....	28
SECTION 8.4	ASSOCIATION BLANKET CASUALTY/HAZARD INSURANCE .....	28
SECTION 8.5	TERMS AND PROVISIONS OF THE ASSOCIATION’S COMMERCIAL GENERAL LIABILITY AND COMMERCIAL PROPERTY INSURANCE.....	28
SECTION 8.6	ADDITIONAL INSURANCE TO BE OBTAINED BY THE ASSOCIATION .....	29
SECTION 8.7	EXCLUSIONS .....	30
SECTION 8.8	FIRST MORTGAGEES .....	30
SECTION 8.9	INSURANCE BENEFICIARIES .....	30
SECTION 8.10	COPY OF POLICY .....	30
SECTION 8.11	ASSOCIATION AS TRUSTEE/INSURANCE REVIEW.....	30
SECTION 8.12	LICENSED IN COLORADO-CERTIFICATES .....	30
SECTION 8.13	INSURANCE DEDUCTIBLES .....	31
SECTION 8.14	PAYMENT OF CLAIMS TO DELINQUENT OWNERS .....	31
SECTION 8.15	NO PRIORITY TO OWNERS OR THE ASSOCIATION ON INSURANCE PROCEEDS .....	31

**ARTICLE 9 – ARCHITECTURAL CONTROLS AND COVENANTS 31**

SECTION 9.1	AUTHORITY OF BOARD CONSULTANTS AND COSTS TO OWNERS .....	31
SECTION 9.2	ARCHITECTURAL STANDARDS .....	31
SECTION 9.3	ALTERATION OF UNITS .....	32
SECTION 9.4	REQUIRED ACTION BY THE BOARD FOR ADDITIONAL MODIFICATIONS .....	33
SECTION 9.5	ENCROACHMENTS ONTO COMMON ELEMENTS.....	34
SECTION 9.6	CONDITIONS OF APPROVAL FOR MODIFICATIONS AND PRIOR MODIFICATIONS .....	34
SECTION 9.7	LIMITATION OF LIABILITY.....	34
SECTION 9.8	NO WAIVER OF FUTURE APPROVALS .....	34
SECTION 9.9	RENOVATION AND CONSTRUCTION REQUIREMENTS OF OWNERS .....	34

**ARTICLE 10 – CHANGES AS MAY BE MADE TO THE COMMUNITY (OBSCOLESCENCE,  
ADDITIONAL UNITS, SALE OF COMMON ELEMENTS, RELOCATION OF  
BOUNDARIES, AND REPAIR AND RECONSTRUCTION) 35**

SECTION 10.1	OBSCOLESCENCE.....	35
SECTION 10.2	ADDITIONAL UNITS.....	36
SECTION 10.3	SALE OF COMMON ELEMENTS AND/OR UNIT EXPANSIONS .....	36
SECTION 10.4	RELOCATION OF BOUNDARIES .....	36
SECTION 10.5	REPAIR AND RECONSTRUCTION - DAMAGE OR DESTRUCTION .....	36

<b>ARTICLE 11 – EASEMENTS AND AGREEMENTS</b>	<b>37</b>
SECTION 11.1 EASEMENTS FOR USE AND ENJOYMENT .....	37
SECTION 11.2 EASEMENT FOR ENTRY .....	38
SECTION 11.3 SUPPORT .....	39
SECTION 11.4 ENCROACHMENTS .....	39
SECTION 11.5 UTILITIES .....	39
SECTION 11.6 NO PUBLIC RIGHTS .....	39
SECTION 11.7 AGREEMENTS AMONGST LODGE AT LIONSHEAD PHASES .....	39
<b>ARTICLE 12 – AUTHORITY AND ENFORCEMENT</b>	<b>39</b>
SECTION 12.1 GENERAL .....	39
SECTION 12.2 ADDITIONAL ENFORCEMENT RIGHTS .....	40
SECTION 12.3 FAILURE TO ENFORCE .....	40
<b>ARTICLE 13 – AMENDMENTS</b>	<b>41</b>
SECTION 13.1 VOTE REQUIRED .....	41
SECTION 13.2 NOTICE REQUIRED .....	41
SECTION 13.3 RECORDING OF AMENDMENTS .....	41
SECTION 13.4 LIMITED BOARD AUTHORITY TO MAKE AMENDMENTS .....	41
SECTION 13.5 LIMIT ON CHALLENGES .....	41
<b>ARTICLE 14 – SALES AND RIGHT OF FIRST REFUSAL</b>	<b>41</b>
SECTION 14.1 GENERAL .....	41
SECTION 14.2 NOTICE OF OUTSIDE OFFER .....	41
SECTION 14.3 PERIOD OF TIME .....	42
SECTION 14.4 NO ACCEPTANCE OF FIRST REFUSAL .....	43
SECTION 14.5 CERTIFICATE OF COMPLIANCE .....	43
SECTION 14.6 UNIT OWNER ALSO A MEMBER OF BOARD .....	43
SECTION 14.7 CONDITIONS PRECEDENT TO PURCHASE BY ASSOCIATION .....	43
SECTION 14.8 EXEMPTION FROM RIGHT OF FIRST REFUSAL .....	43
SECTION 14.9 MISCELLANEOUS .....	44
<b>ARTICLE 15 – GENERAL PROVISIONS</b>	<b>44</b>
SECTION 15.1 SECURITY .....	44
SECTION 15.2 DISPUTE RESOLUTION .....	44
SECTION 15.3 IMPLIED RIGHTS .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
SECTION 15.4 ELECTRONIC RECORDS, NOTICES AND SIGNATURES .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
SECTION 15.5 DURATION .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
SECTION 15.6 SEVERABILITY .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>EXHIBIT A – LEGAL DESCRIPTION OF THE PROPERTY</b>	<b>ERRO</b>
R! BOOKMARK NOT DEFINED.	
<b>EXHIBIT B – ALLOCATED INTERESTS</b>	<b>ERRO</b>
R! BOOKMARK NOT DEFINED.	

**AMENDED AND RESTATED DECLARATION  
FOR  
THE LODGE AT LIONSHEAD II**

This Amended and Restated Declaration (“Declaration”) is effective upon recording.

**RECITALS**

A. A ‘declarant’ recorded a Condominium Declaration for The Lodge at Lionshead (the “Original Declaration”) in the office of the Clerk and Recorder for Eagle County, Colorado on August 7, 1991 in Book 559 at Page 492 and as Reception No. 455622 (“Original Declaration”) and a condominium map therefor recorded with the Eagle County Clerk and Recorder June 22, 1976 in Book 247 at Page 107, as amended by that Second Amended Condominium Plat recorded with the Eagle County Clerk and Recorder July 14, 2009 as Reception No. 200914585 (collectively, “Original Map”) creating The Lodge at Lionshead condominium community (the "Community").

B. The Original Declaration has been amended by the following documents of record:

- 1) Amendment recorded in office of the Clerk and Recorder for Eagle County, Colorado on October 14, 1994 in Book 652 at Page 526 and as Reception No. 548563;
- 2) Amendment recorded in office of the Clerk and Recorder for Eagle County, Colorado on October 25, 2001 as Reception No. 770775; and
- 3) Amendment to the Condominium Declaration for the Lodge at Lionshead adding Right of First Refusal, recorded October 22, 2004 at Reception No. 895386 of the records of the Eagle County Clerk and Recorder.

C. As amended of record, the Original Declaration is referred to in this Declaration as the “Amended Declaration.”

D. The Community is governed and operated by The Lodge at Lionshead II Condominium Association, a Colorado nonprofit corporation, formerly known as Lionshead Phase II Condominium Association, Inc. (the "Association").

E. The primary goals of the Association are to preserve the value and desirability of the Community and the Units and to further the interests of the Owners and Members of the Association.

F. The Association and the requisite percentage of Owners of the General Common Elements desire to amend and restate the Amended Declaration for the following reasons:

- to further preserve the value and desirability of the Community and Units
- to further the interests of the Owners and Members of the Association
- to update the Amended Declaration to comply with and be consistent with current state law
- to clarify the allocation of maintenance responsibilities and insurance between the Association and the Owners
- to delete rights that were reserved by the initial declarant that are no longer applicable
- to update provisions so as to allow the Association to efficiently operate the Community and deal with Community concerns
- to add provisions that provide tools for the Association to effectively solve problems and enforce the Declaration, Bylaws and Rules and Regulations
- to address and specify the number of votes needed for changes as may be proposed to the Community, including:
  - the exercise of rights to further develop the Community
  - obsolescence
  - addition of Units
  - sale of part of the Common Elements by the Association
  - Unit expansion
  - relocation of unit boundaries

G. The amendments to the Amended Declaration, as set forth in this Declaration, do not implement any of the following:

- development rights set forth in this Declaration (those rights are reserved, as set forth in this Declaration)
- an obsolescence determination (that right is reserved to the Members, by vote of the Members, as set forth below)
- creation of additional Units (those rights are reserved to the Members, as set forth below)
- sale of part of the Common Elements (those rights are reserved to the Members, as set forth below)
- unit expansion or relocation of Unit boundaries (those rights are reserved, as set forth below)
- change any allocated interests
- terminate the Community

H. Paragraph 18 of the Amended Declaration provides that the Amended Declaration may be amended as follows:

"Except as otherwise herein provided, this Declaration shall not be revoked unless all Owners and all first mortgagees of record as to the Condominium Units consent and agree to such revocation by instrument(s) duly recorded. This Declaration may be amended by Owners representing sixty percent, or more, of the General Common Elements consenting and agreeing to such amendment by

written instruments duly recorded; provided however, that the undivided interests in and to the General Common Elements appurtenant to each Unit; and the provisions of this Declaration governing the sharing of common expenses shall have a permanent character and not be altered without the consent of all of the Unit Owners and their first mortgagees of record as expressed in written Amendment(s) or Supplement(s) to this Declaration duly recorded."

I. Owners holding at least 60% of the total Association allocated vote have determined that the amendments by this Declaration are:

- reasonable, and
- not burdensome

J. Owners holding at least 60% of the total Association allocated vote desire to amend the Amended Declaration and have approved this Declaration. The Association desires to fully amend and restate the Amended Declaration as herein provided.

NOW, THEREFORE, the Amended Declaration is replaced by the covenants, servitudes, easements and restrictions set forth in this Declaration.

## **ARTICLE 1 – CHANGE OF NAME OF THE COMMUNITY AND OF THE ASSOCIATION**

The Owners and Association hereby change the name of the Community to The Lodge at Lionshead II, a Condominium Community (formerly known as The Lodge at Lionshead). The name of the Association is The Lodge at Lionshead II Condominium Association, a Colorado nonprofit corporation (formerly known as Lionshead Phase II Condominium Association, Inc.).

## **ARTICLE 2 – DEFINITIONS**

Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation have their normal, generally accepted meanings or the meanings given in the Act or the Colorado Revised Nonprofit Corporation Act. Unless the context otherwise requires, terms used in this Declaration, the Bylaws and the Articles of Incorporation are 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, as that Act applies to common interest communities created before July 1, 1992, and as parts of the Act are made expressly applicable by the terms of this Declaration. "Act" also includes applicable parts of the Condominium Ownership Act.

(b) Amended Declaration means the Original Declaration as amended of record, including by those amendments set forth in Recital B of this Declaration.

(c) Articles or Articles of Incorporation means the Articles of Incorporation of The Lodge at Lionshead II Condominium Association (formerly known as Lionshead Phase II Condominium Association, Inc.), as amended, filed with the Secretary of State of the State of Colorado.

(d) Association means The Lodge at Lionshead II Condominium Association, a Colorado nonprofit corporation, formerly known as Lionshead Phase II Condominium Association, Inc., its successors or assigns.

(e) Board or Board of Directors means the body responsible for management and operation of the Association. Except as otherwise provided in this Declaration, the Bylaws or the Act, the Board may act in all instances on behalf of the Association and in its sole discretion.

(f) Bylaws mean the Bylaws of the Association.

(g) Commercial Unit means a Unit designated as such on Exhibit "B" hereto.

(h) Common Elements or General Common Elements mean those portions of the property subject to this Declaration, which are not included within the boundaries of a Unit, as more particularly described in this Declaration or on the Map.

(i) 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 Elements.

(j) Community means the condominium community created by the Declaration.

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

(l) Governing Documents mean this Declaration and all exhibits hereto, the Association's Articles of Incorporation, Bylaws, rules, regulation, and policies, and the Map, all as may be supplemented or amended from time to time.

(m) 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 transmissions.

(n) Limited Common Elements mean a portion of the Common Elements reserved for the exclusive use of those entitled to occupy one or more, but less than all, Units, as more particularly set forth in this Declaration or in the Map.

(o) Manager means the company or individual or both, depending on context, engaged by the Association or employed by the Association to assist the Association in operating and administration of the Association and the Community.



(p) Map means the Original Map and all amendments or supplements as recorded in the office of the Clerk and Recorder of Eagle County, Colorado.

(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) Occupant means any Person staying overnight, regardless of whether such Person is a tenant, guest, lodging guest, or Owner of such Unit.

(t) Original Declaration means as set forth in Recital A of this Declaration.

(u) Original Map means the condominium map recorded with the Eagle County Clerk and Recorder.

(v) Owner means the record titleholder of a Unit within the Community, and does not include a Mortgage Holder. For purposes hereof, the holder of a tax deed on a Unit is deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Unit.

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

(x) Property means all that property as more particularly described in Exhibit "A" of this Declaration attached hereto and incorporated herein by this reference, subject to change as allowed for in this Declaration.

(y) Residential Unit means a Unit designated as such on Exhibit "B" hereto.

(z) Unit means that portion of the Community intended for individual ownership and use as more particularly described in this Declaration and shall include the undivided ownership in the Common Elements assigned to the Unit by this Declaration.

### **ARTICLE 3 – LOCATION, MAP, UNIT BOUNDARIES, COMMON AND LIMITED COMMON ELEMENTS**

Section 3.1 Location. The Community subject to this Declaration and the Act is located in Eagle County, Colorado, as more particularly provided in Exhibit "A" to this Declaration attached hereto.

Section 3.2 Map. The Map relating to the Community is in the records of the Clerk and Recorder of Eagle County, Colorado. The Map is incorporated by reference as fully as if the same was set forth in its entirety.

Section 3.3 Units and Boundaries. The Community currently consists of 27 separate Units, Common Elements and Limited Common Elements and their appurtenant percentage of undivided interest in the Common Elements. Each Unit shall be conveyed as a separately designated and legally described fee estate subject to the Act and the Governing Documents. Each Unit includes that part of the structure, which lies within the following boundaries:

(a) Vertical Boundaries. The vertical boundaries of each Unit shall be the vertical planes formed by the unfinished interior surfaces of the perimeter walls.

(b) Horizontal Boundaries. The horizontal boundaries of the Unit are the unfinished interior surfaces of the floors and ceilings.

(c) Additional Information to Interpret Unit Boundaries.

(i) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, surface texture, wallpaper, paint, finished flooring and any other materials constituting the finished surfaces are part of the Unit and all other portions of the floors, walls and ceilings are part of the Common Elements.

(ii) Each Unit includes the spaces and improvements lying within the boundaries of the Unit, including windows, window frames, doors and door frames.

(iii) In interpreting deeds of Units and the Map, the existing physical boundaries of a Unit as originally constructed, or of a Unit reconstructed in substantial accordance with the original Map thereof, shall be conclusively presumed to be its boundaries rather than the boundaries in the Map, regardless of settling or lateral movement of the building in which the Unit was located, and regardless of minor variance between the boundaries shown on the Map or in a deed and those of the Unit.

(iv) The ownership of each Unit shall include, and shall pass with each Unit, whether or not separately described in the conveyance thereof, that percentage of the right, title and interest in the Common Elements attributable to such Unit, together with membership in the Association.

Section 3.4. Common Elements. The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit. The Common Elements are owned by the Unit Owners as tenants-in-common. No Owner or any other person may bring any action for partition or division of the whole or any part, except as allowed in this Declaration. Each Owner and the Association may use the Common Elements for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Owners.

Section 3.5. Limited Common Elements.

(a) Map Designations. Limited Common Elements located in the Community and related to the Unit(s) to which they are assigned are those portions of the Common Elements limited, restricted or reserved for exclusive use by a particular Unit or Units as shown on the Map.

(b) Assignment of Limited Common Elements by the Association. A Common Element not previously assigned as a Limited Common Element may be so assigned and a Limited Common Element may be reassigned by the Association, acting through the Board, without the need for a vote of the Members of the Association, upon written application to the Association by the Unit Owner or Owners for whose exclusive use such Common Element is requested or whose use of the Limited Common Element previously assigned is directly affected. Upon such application, the Association shall prepare and execute an amendment to the Declaration or Map assigning the Common Element as a Limited Common Element or reassigning the Limited Common Element, which amendment shall be executed by the Owner or Owners making such application.

(c) Re-assignments. If a Limited Common Element of an Owner is desired to be exchanged or assigned to another Owner, that is permissible, with an amendment to be prepared by those Owners, approved by the Association, acting through the Board, and recorded. The Assignment of rights of Owners of Limited Common Elements may be limited by other provisions of this Declaration.

#### **ARTICLE 4 – ASSOCIATION MEMBERSHIP, ALLOCATION OF VOTES, AND ALLOCATION OF LIABILITY FOR COMMON EXPENSES**

Section 4.1 Membership. All Unit Owners, by virtue of their ownership of a fee or undivided fee interest in any Unit in the Community, are members of the Association. Membership is not intended to 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 Unit owned.

Section 4.2 Allocated Interests The percentage of undivided interest in and to the Common Elements attributable to each Unit, common expense liability and allocated vote for each Unit, is set forth in Exhibit “B” attached and incorporated by this reference.

Section 4.3 Voting. When more than one Person holds an ownership interest in any Unit, the allocated vote for such Unit shall be exercised as those Owners determine among themselves, otherwise the Unit's allocated vote is suspended if more than one Person seeks to exercise it.

#### Section 4.4 Allocation of Liability for Common Expenses.

(a) General Allocations. Except as provided below or elsewhere in the Governing Documents, the amount of all Common Expenses shall be assessed against all the Units in accordance with the Unit's percentage interest in the Common Elements as more particularly shown on Exhibit “B” to this Declaration.

(b) Specific Special Assessments. The Association, acting through the Board of Directors, shall have the power to levy specific special assessments against Units pursuant to this Declaration and this Section as, in its discretion, it shall deem appropriate, including the following:

(i) Any Common Expenses benefiting less than all of the Units or significantly disproportionately benefiting all Units may be specifically specially assessed equitably among all of the Units that are benefited according to the benefit received. Expenses incurred for the maintenance, repair or replacement of the Common Elements shall not be specifically specially assessed, except as provided below.

(ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensees or invitees of any such Unit or Units may be specifically specially assessed against such Unit or Units.

(iii) Failure of the Board of Directors to do so is not grounds for any action against the Association or the Board of Directors and is not waiver of the Board's right to exercise its authority under this Section in the future.

Section 4.5 Association Right to Acquire Property. The Association, acting through the Board, continues to have the right to acquire, in the Association's name, additional property.

## **ARTICLE 5 – ASSESSMENTS**

Section 5.1 Purpose of Assessment. The Association shall have the power to levy assessments as set forth in this Declaration. The assessments for Common Expenses set forth in this Declaration are to be used for the general purposes of preserving the value and desirability of the Community and the Units, and to promote the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Units in the Community, as may be more specifically authorized from time to time by the Association, acting through the Board.

Section 5.2 Personal Obligation for Assessments. Assessments are the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due. Each Owner of any Unit is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges.
- (b) Special assessments.
- (c) Specific special assessments against any particular Unit which are established pursuant to the terms of this Declaration, including but not limited to, reasonable fines imposed in accordance with the terms of this Declaration.

Section 5.3 Association Lien. All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees, costs and expenses), are a charge on the Unit and shall be and are a continuing lien upon the Unit against which each assessment is made. The Association shall have the authority to record a notice of such lien in the Eagle County, Colorado real property records evidencing the lien

created under this Declaration. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. The lien set forth in this Declaration has the priority as set forth in the Act.

Section 5.4 Due Dates. Assessments shall be paid in such manner and on such dates as may be fixed by the Association, acting through the Board of Directors. Unless otherwise provided by Board resolution, the annual assessments shall be paid in equal quarterly installments due on the first day of each quarter, as determined by the Board of Directors.

Section 5.5 No Offsets. No Owner may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Elements, 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 5.6 Delinquent Assessments.

(a) All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(b) 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 later date as may be provided by the Board:

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

(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; and

(iii) upon 30 days' written notice to the Owner, the Board may accelerate and declare immediately due all of that Owner's unpaid installments. Upon acceleration, that Owner may, in the Board's sole discretion, lose the privilege of paying any and all assessments and charges in installments for that fiscal year.

(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 their allocated vote, the inclusion of their vote in the total percentage or vote needed and their right to use the recreational facilities may 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 attorney's 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 is made, the amount received may be applied first to post-judgment attorney's fees, costs and expenses, then to costs and attorney's fees not reduced to a judgment, then to interest, then to late charges, then to fines and other charges permitted under this Declaration, then to delinquent assessments and then to current assessments.

#### Section 5.7 Computation of Budget and Assessments.

(a) Proposed Budget. For each fiscal year, the Board is to prepare a proposed budget, from which annual assessments are derived for that fiscal year, covering the estimated costs of operating the Community for that year. The proposed budget may include an annual reserve contribution for replacement of improvements that are the Association's responsibility.

(b) Notice to Owners/Meeting of Owners. The Association is to cause a summary of the proposed budget to be delivered to each member after the Board has adopted the proposed budget. The Association is to set a date for a meeting of the Owners to consider the proposed budget.

(c) Budget Approval. The proposed budget is deemed ratified and becomes effective unless disapproved or vetoed at a meeting of Owners, with disapproval allowed and reserved as a veto right by a majority of the eligible and allocated Association vote. If a quorum is not obtained at the Owner meeting called to ratify the budget, the budget becomes effective even though a vote to disapprove the budget could not be achieved at the Owner meeting. If a majority of the eligible and allocated votes in the Association disapproves/vetoes 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 allowed for above, the budget in effect for the current year continues 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 applies to any budget proposed by the Board. Once ratified, the budget does not operate as a limitation on expenditures by the Association, but, rather, the ratified budget is merely an estimate of Common Expenses on which the Association bases the annual assessments.

Section 5.8 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, propose a special assessment against all Owners in accordance with the meeting and notice procedures set forth above. In order to be effective, any special assessment (except with regard to the power to impose specific special assessments and regarding repair or reconstruction of casualty damage to or destruction of all or part of the Community where no advance notice to, meeting of, or approval by Owners is required) shall become effective unless disapproved or vetoed at a duly called Owner meeting by a vote of a majority of the total eligible and allocated interests of the Association. If a quorum is not obtained at such meeting, the budget proposed becomes effective even though a vote to disapprove or veto it could not be achieved at that meeting.

Section 5.9 Statement of Account. The Association is to 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 Unit in which the Owner, designee or holder of a security interest has an interest. The Association is to 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 registered agent of the Association receives the request by personal delivery or by certified mail, first class postage prepaid, return receipt requested. The information contained in such statement, when signed by the Treasurer of the Association, or Manager, if any, shall be binding upon the Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith. The Association, acting through the Board, may establish a reasonable fee relating to such statement.

Section 5.10 Surplus Funds and Common Profits. Common profits of the Association from whatever source are to be applied to the payment of Common Expenses. Any surplus funds remaining after the payment of Common Expenses and after any prepayment of or provision for reserves, shall, at the option of the Board of Directors and in its sole discretion, be: (1) distributed to the Owners; or (2) credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit.

Section 5.11 Borrowing. The Association, acting through the Board and without the vote or approval of the Owners, shall have the power to borrow money and assign future income, including the right to assign its right to receive Common Expense assessments.

Section 5.12 Mortgages and Liability for Assessments. Where the Mortgagee holding a first Mortgage of record, or other purchaser of a Unit obtains title pursuant to judicial or non-judicial foreclosure of a first Mortgage, it shall not be liable, nor shall the Unit be subject to a lien, for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title except as provided in the Act. Any unpaid share of Common Expenses or assessments is deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns. Additionally, such acquirer is responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

Section 5.13 Working Capital. Each Owner has funded working capital of the Association, with payment of 2 (two) times the amount of the then estimated monthly common assessment. As Units are re-conveyed, each new Owner is required to reimburse the seller for their deposit, and if assessments have increased, to fund the Unit's additional working capital, based on total funding of 2 (two) times the amount of the then estimated monthly common assessment. Working capital deposits do not relieve an Owner from making the regular monthly payments of the monthly common assessments.

## **ARTICLE 6 – MAINTENANCE RESPONSIBILITIES**

Section 6.1 Maintenance of Units by Owners and Maintenance of Improvements Made by an Owner, or Prior Owner. Each Owner shall have the obligation to maintain and keep in good repair all portions of their Unit and all improvements made by the Owner to their Unit or to their Limited Common Elements, or as made by any prior Owner. This maintenance responsibility includes, and is not limited to, the following:

(a) the materials making up the finished surfaces of the walls, floors and ceilings, including, but not limited to plaster, dry-wall, paneling, wall paper, paint, wall and floor tile, carpet and flooring;

(b) all glass surfaces (including exterior cleaning, particularly, beyond the minimum number of exterior window surface cleanups as may be provided by the Association);

(c) windows, window frames (except for periodic painting, staining and/or cleaning of the exterior window frames), casings and locks (including caulking of windows) and screens;

(d) all doors, doorways, door frames, and hardware that are part of the entry system of the Unit (except for periodic painting, staining and/or cleaning of the exterior surface of entry doors and door frames);

(e) all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit from the point where such lines enter the Unit (including all electricity, water, or sewer pipes, lines, ducts, conduits, or other apparatus serving only the Unit), except for fire sprinkler system components;

(f) any fireplace (including the firebox, but excluding the chimney, flue and chimney caps) that serves only the Unit;

(g) all planking on LCE balconies; and

(h) all communications, television, telephone, cable and electrical lines, receptacles and boxes serving only the Unit located within the boundaries of the Unit.

Section 6.2 Additional Aspects of Maintenance Responsibilities of Owners. Each Unit Owner shall also have the responsibility:

(a) to perform all maintenance responsibilities in such manner so as not to unreasonably disturb other persons in other Units;

(b) to keep in a neat, clean and sanitary condition any Limited Common Elements serving their Unit, including the patio and awnings of their Unit;

(c) to promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible;

(d) to pay for the cost of repairing, replacing or cleaning up any component of the Community (including another Owner's Unit as well as the Common Elements) which is the responsibility of the Unit Owner but which such Owner fails or refuses to perform (which the Association shall have the right, but not the obligation, to do);

(e) to pay for the cost of repairing, replacing, or cleaning up any component of any part of the Community which, although the responsibility of the Association or another Unit Owner, is necessitated by reason of the willful or negligent act of the Unit Owner, their family,



tenants or guests, with the cost thereof to be added to and become part of the Unit Owner's next chargeable assessment.

Section 6.3 Maintenance by an Owner or Occupant of Parts of the Common Elements. Subject to the maintenance responsibilities set forth in this Declaration, any unauthorized maintenance or repair performed on or to the Common Elements performed by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements) is to be performed at the sole expense of such Owner or Occupant. That Owner or Occupant is not entitled to reimbursement from the Association even if the Association accepts the maintenance or repair. Additionally, the Owner responsible for the unauthorized maintenance or repair completed on the Common Elements may also be responsible for the costs of any additional work performed on the Common Elements, as deemed necessary by the Board of Directors, to remedy the unauthorized maintenance or repair.

Section 6.4 Maintenance by the Association.

(a) The Association shall maintain and keep in good repair as a Common Expense all Common Elements, including any Limited Common Elements, (but excluding any Owner-added improvements to the Limited Common Elements appurtenant to the Owners' Unit, regardless of whether the improvement was approved by the Association) and all components of the fire sprinkler system whether located inside or outside of a Unit. Snow removal from the deck appurtenant to Unit 410, if desired by the Owner of Unit 410, shall be solely at that Owner's expense and such expenses shall be an assessment against Unit 410.

(b) The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

(c) If, during the course of performing its maintenance responsibilities hereunder, the Association discovers that maintenance, repair or replacement is required of an item which 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 hereunder.

(d) If the Board determines that the need for maintenance or repair of the Common Elements is caused through the willful or negligent act of any Owner, or Occupant 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 or Occupant's Unit, and such cost shall become the personal obligation of the Owner, a lien against the Unit, and shall be collected as set forth in this Declaration for the collection of assessments.

(e) The Association shall repair incidental damage to any Unit resulting from performance of work that is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to

such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

(f) The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from any utility, rain, water, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner of a Unit has put the Association on notice of a specific leak or flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this 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 which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 6.5 Covenants Related to Insurance Coverage.

(a) The Association, acting through the Board of Directors, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of their Unit:

- (i) which are the maintenance responsibility of the Unit Owner; or
- (ii) which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Community; or
- (iii) which may reduce the insurance premium paid by the Association for any insurance coverage; or
- (iv) otherwise assist the Board in procuring or maintaining such insurance coverage.

(b) In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any requirement made by the Board of Directors pursuant to the above subsection, the Association, upon 15 days written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work at the Unit Owner's sole cost. Such cost is to be added to and become a part of the assessment to which the Owner is subject, the personal obligation of the Owner and a lien against the Unit, to be collected as set forth in this Declaration for the collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this Section, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of

the Unit, except that access may be had at any time without notice in an emergency situation.

Section 6.6 Mold and/or Mildew. Mold and/or mildew can grow in any portion of the Community that is exposed to a regular source of moisture. Therefore, the Association and the Unit Owners agree to:

- (a) promptly investigate to determine the source of the problem and the extent of the condition upon the discovery of any water leaks;
- (b) repair any such leaks in their respective areas of maintenance responsibility in a good and workmanlike condition;
- (c) ensure that any building material which has absorbed water or moisture as a result of a water leak and has not been completely dried as part of the repair of the water or moisture damage is removed and replaced; and
- (d) clean any area where mold and/or mildew appears with industry-accepted product designed to inhibit the growth of mold and/or mildew.

Section 6.7 Failure to Maintain. If the Board of Directors determines that any Owner has failed or refused to discharge properly their obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall 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 shall 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 ten 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 set forth in this Declaration;

then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be the personal obligation of the Owner and a lien against the Unit, and shall be collectable as set forth in this Declaration for the collection of assessments.

Section 6.8 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 shall 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 shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

## **ARTICLE 7 – USE RESTRICTIONS AND COVENANTS**

Each Owner of a Unit shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of the Governing Documents and the rules and regulations of the Association. Each Owner and Occupant 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 Occupants, 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 Occupants.

Section 7.1 Residential and Lodging Uses Allowed for Residential Units. Except as permitted in Section 7.2, each Residential Unit is only to be used for residential and/or lodging purposes. Not more than one portion of each Residential Unit may be separately rented for overnight lodging as a "lock-off" or separate accommodation, except as otherwise provided in Section 7.3(c)(ii).

### Section 7.2 Business Uses Limited for Residential Units.

(a) No trade or business of any kind may be conducted in or from a Residential Unit or any part of the Community, except in or from a Commercial Unit, and that the Owner or Occupant residing in or occupying a Residential Unit may conduct ancillary business activities within the Residential Unit 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 Unit;

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

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

(iv) the business activity does not increase traffic in the Community in excess of what would normally be expected for residential Units 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 Occupants of the Community, as determined in the Board's or Manager's discretion; and

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

(b) The terms "business" and "trade," as used in this Declaration, have their ordinary, generally accepted meanings, and include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which 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 for the business or trade.

### Section 7.3 Leasing Restrictions for Residential Units.

(a) Leases. In order to protect the equity of the individual Unit Owners, and to carry out the purpose for which the Community was formed by preserving the character of the Community as a resort community, leasing of Residential Units is governed by the restrictions imposed by this Section.

(b) Notice of Long Term Lease. At least 7 days before entering into a lease for a term of over 6 months ("Long Term Lease"), the Owner shall provide the Association with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. If a lease is disapproved, the Board shall notify the Owner of the action to be taken to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

(c) Leasing Covenants and Restrictions. Owners have the right to lease or allow occupancy of a Unit, upon such terms and conditions as the Owner may deem advisable, subject to the following:

(i) "Leasing" or "Renting" for the purposes of this Declaration is defined as regular, exclusive occupancy of a Unit by any person other than the Owner. For the purposes of this Declaration, occupancy by a roommate of an Owner who occupies the Unit as such Owner's primary residence shall not constitute leasing under this Declaration.

(ii) Long Term Leases shall be for or of the entire Unit.

(iii) The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements, including, but not limited to, the use of any and all recreational facilities.

(iv) Each Owner is strongly encouraged to conduct full background checks, including credit and criminal reports, for each lease applicant for a Long Term Lease.

(v) When an Owner who is leasing his or her Unit fails to pay any annual or special assessment or any other charge for a period of more than 30 days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all rent up to the amount of all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(vi) Owners are required to provide tenants under a Long Term Lease with copies of the current Declaration and any rules and regulations of the Association.

(vii) All Long Term Leases shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents.

(viii) The Association shall have the authority to require a particular lease form or addendum to implement the provisions of this Section.

(ix) Each Owner covenants and agrees that any Long Term Lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

Compliance with Declaration, Bylaws, and Rules and Regulations.

1. The Owner and lessee shall comply with all provisions of the Declaration, Bylaws and Association rules and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance.

2. The Owner shall cause all Occupants of his or her Unit to comply with the Declaration, Bylaws and Association rules, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants are fully liable and may be sanctioned for any such violation.

3. If a Unit is leased or occupied in violation of this Article or if the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, the Association's Board of Directors shall

be authorized, in addition to all other available remedies, to levy fines against the lessee and/or Owner, and to suspend all voting and/or Common Element use privileges of the Owner, Occupants and unauthorized tenant(s).

4. If a Unit is leased or occupied in violation of this Article, the Association may require the Owner to evict the tenant.

5. If the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, such violation is deemed to be a default under the terms of the lease and shall authorize the Owner or the Association, as more fully described herein, to terminate the lease without liability and to evict the lessee in accordance with Colorado law.

6. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner, in accordance with the terms hereof.

7. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Unit.

(x) All occupancies, leases and rental agreements of Units shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Governing Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

(xi) Each Owner who leases his or her Unit 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.

(xii) All occupancies of Units 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.

(xiii) 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 15 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.

(xiv) 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 Unit.

(xv) All Owners who reside at a place other than the Unit shall provide to the Association a postal and e-mail address and phone number(s) where the Owner can be reached in the case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(xvi) The Association shall have the authority to adopt rules and regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

(xvii) There shall be no subleasing of Units or assignment of leases without prior written Manager or Board approval.

(xviii) Units may be rented or leased on a short-term basis only through the Association's on-site Manager of the Community, and shall not be so rented or leased through the Owner or any other Person, including without limitation any outside property management company or agent, website, or service. For purposes of this subsection, "short-term basis" shall mean the renting or leasing of a Unit for any period of time six months or shorter.

Section 7.4 Use Restrictions and Ownership Limitations on Timeshares, Interval Ownerships, Vacation Clubs and Other Similar Plans. No Unit is to be used by or as a "timeshare" or pursuant to an "interval ownership plan," "vacation club" or other similar plan, without the prior written approval of the Board in its sole discretion. No Owner of any Unit may offer, sell or own any interest in a Unit under a "timesharing," "interval ownership" plan, "vacation club" or any similar plan without the specific prior written approval of the Board in its sole discretion.

Section 7.5 Use of Commercial Units. Each Commercial Unit may be used only for office and related administrative purposes which are approved in advance by the Board and allowed under applicable government laws and regulations, including zoning regulations, and reasonable rules and regulations of the Association. No other uses or purposes are permitted, including without limitation as a store, shop, retail establishment, bar, lounge or restaurant. Each specific uses of, and all signage or displays for the Commercial Units, including any changes thereof, requires the written prior approval of the Board. The Commercial Units including a proposed alteration thereto are also subject to all provisions of Article 9 of this Declaration.

Section 7.6 Use of Common Elements. No obstruction of the Common Elements is allowed. Nor may anything be kept, parked, or stored on or removed from any part of the Common Elements without the prior written consent of the Manager, except as specifically set forth in this Declaration. The Association is not liable to the Owner of any Unit or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements.



Section 7.7 Use of Limited Common Elements. Except as otherwise set forth in this Declaration, the use of the Limited Common Elements assigned to the Unit(s) is restricted exclusively to the Owners of the Unit(s) to which such Limited Common Elements are assigned and said Owner's Occupants, guests, family members and invitees.

Section 7.8 Use of Balconies, Patios and Decks – Storage Restrictions.

(a) Balconies, patios and decks shall be maintained at all times in a clean, neat and uncluttered manner. Only propane/gas grills approved by the Manager and patio furniture may be placed or stored on a patio, deck or balcony. No other objects or items may be placed or stored on a patio, deck or balcony including without limitation laundry garments, clothing, bedding, rugs, mops, appliances, indoor furniture or other household items, except as may be authorized by the Manager.

(b) Objects are not permitted to hang over or be attached to any fence, railing, or wall, or otherwise protrude outside the vertical plane formed by the exterior surface of the fence, railing, wall or other exterior surface.

(c) Penetration of the surface of the patios and decks is prohibited.

Section 7.9 Prohibitions on Damage, Nuisance and Noise.

(a) Without the prior written consent of the Manager, nothing may be done or kept on the Community, or any part thereof, that would increase the rate of insurance on any Unit 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.

(b) The Units in the Community are built in close proximity to one another, resulting in the sharing of common walls, floors and ceilings. As a result, noise and vibration may be detectable between Units or between Units and the Common Elements. An Owner or Occupant may not conduct activities within a Unit or use a Unit in a manner that interferes with or causes disruption to the use and quiet enjoyment of another Unit by its respective Owner and Occupants.

(c) Noxious, destructive, offensive or unsanitary activity may not be carried on upon the Community or in the Units. No Owner or Occupant may use or allow the use of the Unit or any portion of the Community at any time, in any way, which may endanger the health or property of other Occupants, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Occupants, or, in the Board's or Manager's discretion, constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Occupants a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Community. In this regard, specific unauthorized and unreasonable annoyances or disturbances include, and are not limited to, the following:

(i) No Unit Owner or Occupant may use or allow the use of the Unit or the Common Elements in any manner which creates noise between the hours of 11:00 p.m. and 7:30 a.m. which can be heard by persons in another Unit that will, in the Board's or Manager's sole discretion, unreasonably interfere with the rights, comfort or convenience of any other Owner, members of their family, guests, invitees, or Occupants of their Unit.

(ii) No Owner, Occupant or agent of such Owner or Occupant may do any work which, in the Board's or Manager's reasonable opinion, would jeopardize the soundness or safety of the Community or any structure thereon, would reduce the value thereof, or would impair any easement or other interest in the Community.

(iii) No damage to or waste of the Common Elements, or any part thereof, is permitted by any Owner or any Occupant, guest or invitee of any Owner. Each Owner and Occupant indemnifies and holds harmless 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 such Owner or Occupant, or the Owner's or Occupant's guest or invitee.

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

(v) The use of any alarm, equipment, or device, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations either outside of a Unit at any time or within a Unit, if such sounds can be heard or vibrations felt in the normal course of activities in any other Unit(s).

(vi) Any threatening or intimidating conduct towards any Occupant, guest or pet at the Community.

(vii) Any conduct which, in the Board's or Manager's reasonable discretion, creates any danger or risk of injury to others or damage to property at the Community or which creates any threat to health or safety of any other Occupant or pet.

(viii) Any excessively loud play activities either outside of a Unit at any time or within a Unit if such conduct can be heard in the normal course of activities in any other Unit(s).

(ix) Any conduct which creates any noxious or offensive odor either outside of a Unit at any time or within a Unit if such odors can be detected in the normal course of activities in any other Unit(s). Specifically, smoking within a Unit is restricted to the extent smoke affects persons in another Unit, and, at the sole discretion of the Board or Manager.

(x) Any incessant or excessive pet noises, including dog barking, if such conduct can be heard in the normal course of activities in any other Unit(s).

(xi) Any similar action or activity outside of a Unit on the Community, or which occurs inside a Unit but which interferes with the peaceful use and enjoyment of other Units or the Common Elements by any other Owner, members of their family, guests, invitees, or Occupants of their Unit.

Section 7.10 Pet Covenants and Reasonable Pets Allowed Owners – Pets not Allowed by Lodging Guests or Renters.

(a) An Owner, their family members and an Owner's permitted guests (other than renters) may keep a reasonable number and reasonable types of pets. The Board of Directors may adopt rules and regulations defining reasonable number of and types of pets.

(b) No structure for the care, housing, or confinement of any pet may be constructed or maintained on any part of the Common Elements, including Limited Common Elements.

(c) Dogs must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Elements; provided, however, dogs need not be leashed when within fenced patio or deck areas when attended.

(d) Feces left by pets upon the Common Elements, Limited Common Elements, or in Units, including the pet owner's Unit, must be removed promptly by the owner of the pet or the person responsible for the pet.

(e) The Association, acting through the Board may require that any pet which, in the Board's or Manager's opinion, endangers the health of any Owner or Occupant or creates a nuisance or unreasonable disturbance, be permanently removed from the Community upon 10 days written notice. If the Owner or Occupant fails to comply with such notice, the Association may remove the pet and/or obtain a court order requiring the Owner or Occupant to do so.

(f) Any Owner or Occupant who keeps or maintains any pet upon the Community is deemed to have agreed to indemnify and hold the Association and its 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.

(g) Notwithstanding anything to the contrary contained in this Section, renters are not allowed to have any pets in a Unit or in the Community.

Section 7.11 Parking.

(a) All parking spaces and areas, and driveways and the use thereof shall be subject to reasonable regulation and control by the Association acting through the Board, including by the establishment of reasonable rules and regulations.

(b) Any vehicle parked at the Community must display a valid and current Association parking pass.

(c) Boats, trailers, jet-skis, snowmobiles and trailers for same, panel trucks, buses, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles), recreational vehicles (RV's and motor homes) are prohibited.

(d) Vehicles used for commercial purposes and vehicles with commercial writings on their exteriors may be parked on the Common Elements only with the prior written approval of the Manager.

(e) Emergency vehicles, as defined in the Act, are permitted on the Community to the extent provided for in the Act.

(f) Prohibited vehicles may be allowed temporarily on the Common Elements during normal business hours for the purpose of serving any Unit or the Common Elements; provided, however, no such vehicle may remain on the Common Elements overnight or for any other purpose unless prior written consent of the Manager is first obtained.

(g) No unlicensed vehicles may be parked on the Common Elements.

(h) No abandoned or inoperable passenger cars or other vehicles of any kind may be stored or parked on the Common Elements.

(i) An "abandoned or inoperable vehicle" is defined as any passenger car, truck, motorcycle, boat, trailer, camper house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which for a period of 2 days or longer, does not have an operable propulsion system, has one or more flat tires or has another condition preventing the regular and normal operation and movement of the vehicle.

(j) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's rules and regulations, the Manager may place a notice on the vehicle specifying the nature of the violation and stating that after 24 hours the vehicle may be towed or booted. The notice may include the name and telephone number of the person or entity that will do the towing or booting 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 thereafter occurs again within six months of such notice, the Manager may have the vehicle towed or booted in accordance with the notice, without further notice to and at the sole expense of the vehicle owner or user.

(k) If a vehicle located in the Community property is blocking another vehicle or access to another Owner's parking space, is obstructing the flow of traffic, or otherwise creates a hazardous condition, no notice is required and the vehicle may be towed or booted immediately in accordance with the governmental regulations. If a vehicle is towed or booted in accordance with this Section, neither the Association nor any director, officer or agent of the Association is liable to any person for any claim of damage as a result of the towing or booting activity.

(l) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or any kind of servicing of vehicles may be performed or conducted in the Community. This restriction does not prevent washing and polishing of any motor vehicle or

motor-driven cycle, together with those activities normally incident and necessary to washing and polishing.

(m) Owners agree that during Unit renovation they have only 1 parking space available for their contractors use. Contractor must pick up a valid parking pass from the management office and display on the dashboard at all times. All additional parking must be procured off site. Owner may request permission to park additional contractor vehicles on site when occupancy may allow for it. Any approvals will be in the Manager's sole discretion.

Section 7.12 Heating of Units in Colder Months. To prevent breakage of water pipes during colder months of the year resulting in damage to the Community, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units must be maintained with the heat in an "on" position and at a minimum temperature setting of 55° Fahrenheit (except during power failures or periods when heating equipment is being repaired) whenever the temperature is forecasted to or does reach 32° Fahrenheit or below. Owners and Occupants of Units must take all reasonable steps on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the times specified above when the heating equipment is not working properly, the Owner or Occupant must immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment.

Section 7.13 Signs. No signs, advertising posters, political placards or billboards of any kind are to be erected, placed, or permitted to remain in the Community without the prior written consent of the Manager, except one professional security sign not to exceed six inches by six inches in size may be displayed from within a Unit, and political signs as permitted by Colorado law. The Board has the right to erect reasonable and appropriate signs on behalf of the Association.

Section 7.14 Flags and Holiday Displays. A standard residential size American flag may be placed on a flag staff attached to the door frame of a Unit or on the patio appurtenant to a Unit and a religious symbol not larger than three inches in width and nine inches in height may be posted on the doorframe of the Unit. In addition, reasonable seasonal decorative lights that are visible outside the Unit may be displayed within the Unit between Thanksgiving and January 15.

Section 7.15 Rubbish, Trash, Garbage and Recycling. All rubbish, trash, garbage and recycling is to be regularly removed from the Unit and is not allowed to accumulate in a Unit. No garbage, trash or recycling may be placed on the Common Elements or Limited Common Elements outside the Unit, temporarily or otherwise, except in designated receptacles. Rubbish, trash, and garbage are to be disposed of in appropriate sealed bags and either placed in the trash cans or proper receptacles designated by the Manager for collection or removed from the Community. Recycling is to be placed only in recycling receptacles designated by the Manager. All Occupants of a Unit shall comply with all applicable laws, Town of Vail ordinances, and rules and regulations regarding recycling.

Section 7.16 Regulation of the Common Elements. The pursuit of hobbies or other activities on the Common Elements, which might tend to cause disorderly, unsightly, or unkempt conditions, may not be pursued or undertaken without the permission of the Manager.

Section 7.17 Antennas and Satellite Dishes.

(a) Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Community, including the Unit or Limited Common Elements; provided, however, that the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Unit Owners:

(i) No transmission antenna, of any kind, may be erected anywhere on the Community, including the Units, without written approval of the Manager.

(ii) No direct broadcast satellite (DBS) antenna or broadband radio service (BRS) antenna larger than one meter in diameter shall be placed, allowed or maintained upon the Community, including the Units and the Limited Common Elements.

(iii) DBS and BRS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed within a Unit or on the Limited Common Elements appurtenant to the Unit in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

(b) If a Unit is transferred which includes a satellite dish or antenna, the grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

Section 7.18 Grilling. The use of outdoor grills on any portion of the Community is governed by applicable state laws and local ordinances having jurisdiction over the Community.

Section 7.19 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 and suspension of rights to use the recreational facilities.

Section 7.20 Use of the Words "Lodge at Lionshead II". No Occupant or Owner may use the words "The Lodge at Lionshead II", "Lodge at Lionshead II", 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 8 - INSURANCE**

Section 8.1 Owners' Insurance/Unit Contents and More.

(a) Every Unit Owner is obligated to obtain and maintain, at all times, insurance covering those portions of their Unit to the extent not insured by policies maintained by the Association, including covering the following:

(i) the inner carpeted, decorated, and finished surfaces of the Unit's walls (including both perimeter and partition walls), floors, and ceilings;

(ii) fixtures, including cabinetry, counter tops, bathroom fixtures and hardware, and lighting;

(iii) contents, personal property, appliances (including built-in appliances, refrigerator, range, microwave, dishwasher, and laundry washer and dryer), and furnishings of the Unit;

(iv) liability arising from or within the Unit; and

(v) such other insurance as an Owner may choose.

(b) The Association has no liability for the failure of any Unit Owner to maintain required insurance.

(c) Upon request by the Association, a Unit Owner shall furnish a copy of such insurance policy or policies to the Association.

Section 8.2 Insurance During Renovations of a Unit.

(a) Prior to commencement of any work within an Owner's Unit, whether the work is to be started by the Owner or by a contractor, subcontractor or worker, the contractor or those doing the work, may be required to obtain and maintain, at all times (while work is performed), Commercial General Liability insurance with a minimum \$1,000,000 Each Occurrence, and \$2,000,000 General Aggregate limits. If required by the Association, this insurance shall be 'primary' on any loss. If required, this insurance may underwrite Owner's indemnity obligations to the Association and the Community, if indemnity obligations of the Owner are required and obtained by the Association.

(b) Additionally, Owner or Owner's contractor, at Owner's expense or that contractor's expense, shall be required to obtain and maintain any other insurance required by law, including without limitation Workers' Compensation/Employers Liability and Automobile Insurance with a minimum \$500,000 limit; and such other insurance specified by the Association.

(c) The Commercial General Liability policy shall name the Association and its members and Manager as additional insureds. Owner shall provide to the Association an undertaking by the insurance company issuing each policy that each such policy will not be

cancelled, not renewed or substantially changed except after 30 days prior written notice to Association of the intent to do so. The Commercial General Liability Policy and the Workers Compensation Policy shall include a waiver of subrogation endorsement in favor of the Association, its members and agents.

(d) Approval, disapproval or failure to act by the Association regarding any insurance supplied shall not relieve Owner of full responsibility for liability for claims, damages and accidents.

(e) Certificates of insurance for all coverage shall be provided to the Association prior to commencement of any remodel work. The Association may impose additional insurance requirements.

Section 8.3 Association's Insurance. The Association is to obtain and maintain at all times, as a Common Expense, insurance as required in this Declaration.

Section 8.4 Association Blanket Casualty/Hazard Insurance. To the extent reasonably available at reasonable cost, the Association shall obtain and maintain Commercial Property insurance which shall insure any property the nature of which is a Common Element and all of the Units but only up to and including the un-finished interior surfaces of the perimeter and partition walls, floors and ceilings of the Units, together with all service equipment contained therein (including all components of the fires sprinkler system whether located inside or outside of a Unit), plus windows, window frames, doors and door frames, in an amount equal to the full replacement value, without deduction for depreciation. Such insurance and coverage of the Association shall not include with respect to Units: fixtures (such as cabinetry, counter tops, bathroom fixtures and hardware, and lighting); appliances, (such as refrigerator, range, microwave, dishwasher and laundry); furnishings, furniture, personal property and contents; and the finished surfaces of perimeter and partition walls, floors, and ceilings within the Units (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet and any other floor covering). The Association is to utilize reasonable efforts to secure Blanket Property Limit coverage for buildings and business personal property on a "Special Causes of Loss Property Form" or equivalent coverage in an amount equal to full replacement cost, before application of deductibles, of all improvements located in the Community as to which it is the responsibility of the Association to obtain insurance. If "all risk" coverage is not reasonably available at reasonable cost, the Association is to obtain, at a minimum, Broad Form Causes of Loss coverage, in like amounts.

Section 8.5 Terms and Provisions of the Association's Commercial General Liability and Commercial Property Insurance. The Association is to use reasonable efforts to obtain policies that will provide the following:

(a) Each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association.

(b) The insurer waives its rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners and their respective household members, except for employee dishonesty, forgery or alteration coverage.



(c) No act or omission by any Unit Owner not under the control of the Association will void the policy or be a condition to recovery under the policy.

(d) Ordinance or law coverage, including demolition cost coverage and increased cost of construction coverage.

(e) Any "Other Insurance" clause contained in the master policy is to expressly exclude individual Unit Owners' policies from its operation.

(f) The master policy may not be canceled, substantially modified, or subjected to non-renewal without at least 30 days prior notice in writing to the Board of Directors and all first Mortgagees of Units, except in instances of nonpayment of premiums, which requires at least 10 days prior written notice.

(g) The commercial property insurance should not contain a co-insurance provision, but if it does, an Agreed Value provision should be obtained and maintained, to waive the co-insurance provision.

(h) All insurance policies of the Association are primary if there is other insurance in the name of the Owner.

(i) An Inflation Guard Endorsement or similar coverage that provides for a potential increase in Building Limit during the term of the insurance policy.

(j) Steam Boiler and Machinery Coverage or equipment breakdown coverage with a minimum liability per accident equal to the lesser of \$2 million or the insurable value of the building housing the boiler or machinery. In the alternative, the Association may purchase separate stand-alone Boiler and Machinery coverage.

Section 8.6 Additional Insurance to be Obtained by the Association. In addition to the insurance required above, the Board is also to obtain and maintain the following as a Common Expense.

(a) Workers' Compensation insurance if and to the extent necessary to meet the requirements of law.

(b) Public liability insurance in amounts no less than \$1,000,000.00 Per Occurrence, and Directors and Officer's Liability Insurance or association professional liability insurance in such amounts as the Board may determine. The public liability insurance is to contain a cross liability endorsement.

(c) Fidelity insurance, if reasonably available, covering officers, directors, employees, management company employees and other persons who handle or are responsible for handling Association funds in an amount consistent with the best business judgment of the Board of Directors.

(d) Such other insurance as the Board of Directors may determine to be necessary or desirable.

Section 8.7 Exclusions. Insurance carried by the Association as a Common Expense is not required to include (i) any part of a Unit that is not depicted on the Map; (ii) any Common Element leased to an Owner on a long-term basis for use in connection with that Owner's Unit; (iii) any part of a Unit that was not included as part of the collateral for the initial loan made for the initial purchase of the Unit; or (iv) public liability insurance for individual Owners for liability arising within the Unit.

Section 8.8 First Mortgagees. Nothing contained in this Declaration gives any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Unit on which there is a first Mortgagee endorsement is to be disbursed jointly to such Unit Owner and the first Mortgagee. This is a covenant for the benefit of any such first Mortgagee and may be enforced by any such first Mortgagee.

Section 8.9 Insurance Beneficiaries. All insurance purchased by the Association pursuant to this Article will run to the benefit of the Association, the Board of Directors, officers, all agents and employees of the Association, the Unit Owners and their respective first lien Mortgagees, as their interests may appear of record.

Section 8.10 Copy of Policy. The Board of Directors is to make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs. Each Owner has the right to obtain additional coverage at his/her own expense.

Section 8.11 Association as Trustee/Insurance Review. All insurance coverage for the Association is to be written in the name of the Association as trustee for itself. The Board of Directors shall endeavor at least every two years to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association. Such review may be performed, and is deemed reasonably performed, by the Board requesting the Association's insurance agent to verify that insurance policies in existence meet the needs of the Association and satisfy the requirements of this Declaration.

Section 8.12 Licensed in Colorado/Certificates. All policies of insurance are to be written with a company licensed to do business in the State of Colorado. The company is to provide insurance certificates to each Owner and each first Mortgagee upon request.

(a) Exclusive authority to adjust losses under policies obtained by the Association is vested in the Association's Board of Directors; provided, however, no first Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(b) In no event may the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Unit Owners or their first Mortgagees. Upon request by the Association, any Unit Owner who obtains an individual insurance policy covering any portion of the Community, other than improvements

and betterments made by such Owner at their expense and personal property belonging to such Owner, is to file a copy of such individual policy or policies with the Board of Directors within 30 days after the request. Such Owner is also to promptly notify, in writing, the Board of Directors in the event such policy is cancelled.

Section 8.13 Insurance Deductibles. The Association's insurance policies may contain a reasonable deductible, and the amount is not subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property. In the event of an insured loss, any required deductible is a maintenance expense to be paid by the Owner or Owners who suffered such loss, unless the loss is caused by the negligent or willful act or omission of the Association or another Owner, in which case the negligent party or parties who committed a willful act or omission is responsible for the deductible. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to the total cost of repair, subject to the above standard regarding negligence and willful conduct. If the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Unit Owner is responsible for paying the deductible pertaining to their Unit, if any, subject to the above standard regarding negligence and willful conduct. If any Owner or Owners fail to pay the deductible when required under this Section, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to this Declaration.

Section 8.14 Payment of Claims to Delinquent Owners If proceeds of an insured loss under the Association's master hazard insurance policy are to be paid or distributed to an Owner delinquent in the payment of any sums due the Association, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency is to be paid by the Association to the affected Unit Owner.

Section 8.15 No Priority to Owners or the Association on Insurance Proceeds No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

## **ARTICLE 9 – ARCHITECTURAL CONTROLS AND COVENANTS**

Section 9.1 Authority of Board Consultants and Costs to Owners. The Association, acting through the Board, has the authority to select and employ professional consultants to assist it in discharging its duties under this Article, with the cost of such consultants to be paid by the Owner of any Unit for which plans and specifications have been submitted for approval. The Owner of any such Unit is responsible for paying the full cost of each review, whether or not submitted plans and specifications are approved by the Board, and the Association may require payment of all such costs prior to approval of plans and specifications. The Board also may charge reasonable fees to cover the cost of review or inspections performed and any such fees may be published in the design standards, and any fees or costs incurred to complete necessary updates to the governing documents as a result of said architectural project.

Section 9.2 Architectural Standards. No Owner, Occupant, or any other person may, without first obtaining written approval of the Board:

- (a) make any encroachment onto the Common Elements or Limited Common Elements;
- (b) make any exterior change, alteration, or construction (including painting and landscaping); and
- (c) erect, place or post any object, sign, clothesline, speaker, light, storm door or window, fountain, flag, personalized or customized exterior door mat, or thing on the exterior of the building, in any windows (other than appropriate window treatments as set forth in this Declaration), or on any Limited Common Elements, except as set forth in this Declaration or by Colorado law.

Section 9.3 Alteration of Units. Alterations to the interiors of Units, relocation of the boundaries between adjoining Units, and subdivision of Units are subject to the following restrictions, in addition to the terms of the Act and this Declaration:

(a) Alterations to the Interiors of the Units. Owners desiring to make any interior modifications or alterations to a Unit affecting the Common Elements or structure or load bearing portions of a Unit must make application to the Association, acting through the Board, as described below in order for the Board to make the determination of whether its approval is required.

(i) No Owner or Occupant may make any interior modifications to or place an excessive load on any structural or load bearing portions of a Unit without first obtaining the prior written Board approval. Such approval is not to be granted unless the Owner has presented to the Board a report or drawing prepared by a licensed structural engineer showing that compensating measures will be taken to ensure the structural integrity of the Unit and the Community. All building code requirements must be complied with and necessary permits and approvals secured for any modifications.

(ii) No Owner or Occupant may make any alteration within a Unit which involves connecting to Common Element pipes, lines, conduits and/or other apparatus for access to common utilities without prior written Board approval.

(iii) There will be no openings, vents or modifications to any exterior walls or surfaces, including the roof of the building without prior written approval of the Board. Where venting is required for fireplaces, clothes dryers or appliances every effort will be made to use existing flues and venting.

(iv) No Owner may introduce or cause any “new” or increased noise to surrounding Units as a result of their completed renovation. Some specific areas of requirement are to install a Board approved sound attenuation type product under all new hard surface (wood, stone, tile etc.) flooring. No Owner may install any Jacuzzi or hot tubs or the like with vibration noises or electronic sound systems that impact the use and enjoyment of surrounding Units.

(b) Combining Units. If any Owner acquires an adjoining Unit, such Owner has the right (subject to the prior written approval of the first lien Mortgagees of the Units involved) to

remove all or any part of any intervening partition and/or to create doorways or other apertures between the adjoining Units, if no portion of any structural or load bearing portions of the Owner's Units or any other Units are materially weakened or removed, the Board has approved the plans described above and no portion of any Common Elements is damaged, destroyed or endangered. Alteration of chutes, flues, ducts, conduits, wires or other apparatus contained in the adjoining Units is to be handled by the Owner, without adverse effect on any of the other Units or their occupants, and is to be relocated by such Owner if such facilities serve any other part of the Community. The alterations permitted in this Section are not to be deemed an alteration or relocation of boundaries between adjoining Units. If combined, the Units so combined, may be subdivided back to their prior status following the process reviewed in this Section.

(c) Relocation of Boundaries. There may be no reallocation of boundaries between Units, except as allowed in other provisions of this Declaration.

(d) Subdivision of Units. No Unit may be subdivided into a smaller Unit or Units.

Section 9.4 Required Action by the Board for Additional Modifications.

(a) When required under the terms of this Declaration, applications for approval of any architectural modification are to be in writing and shall provide such information as the Board may reasonably require. The Board is the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations; provided no decision of the Board is arbitrary or capricious. The Association, acting through the Board, is entitled to stop any construction that does not conform to the approved plans. Association approval is not required for any improvements located solely within a Unit and which do not impact any Common Elements.

(b) The standard for approval of such improvements shall include, but not be limited to:

- (1) aesthetic consideration;
- (2) materials to be used;
- (3) compliance with the Community-Wide Standard, this Declaration, or the design standards which may be adopted by the Board, if any;
- (4) harmony with the external design of the existing building, Units and structures, and the location in relation to surrounding structures and topography; and
- (5) any other matter deemed to be relevant or appropriate by the Board.

(c) If the Board fails to approve or to disapprove such application within 30 days after the application and all information as the Board may reasonably require have been submitted, then the Owner submitting the application may issue written notice, via certified mail, to the Association president, 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 10 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

in this Declaration authorizes 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 9.5 Encroachments Onto Common Elements. The Board may license or permit Unit Owners to make encroachments onto the Common Elements as it deems acceptable. Such permission or approval, if granted, is to be provided in writing to the Owner. If any Owner or Occupant makes any other exterior change, alteration, or construction (including landscaping) upon the Common Elements or Limited Common Elements without permission or approval as described in this Article, they do so at their sole risk and expense. The Board may require that such unapproved change, alteration or construction be removed or that it remain on the Common Elements or Limited Common Elements without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

Section 9.6 Conditions of Approval for Modifications and Prior Modifications. As a condition of approval for a requested architectural change, modification, addition, or alteration, and as a subsequent condition now imposed on a Unit or other modifications made by an Owner or their predecessor-in-interest prior to the recording of this Declaration, an Owner, on behalf of himself or herself and their successors-in-interest, assumes all responsibilities for maintenance, repair, replacement and insurance of such change, modification, addition, or alteration, unless otherwise agreed to in writing by the Association, acting through the Board. In the discretion of the Board, an Owner may be requested to verify such condition of approval or such subsequent condition by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

Section 9.7 Limitation of Liability. Review and approval of any application pursuant to this Article may be made on any basis including aesthetic considerations. The Board of Directors does not 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, nor member of any of the foregoing are liable for any injury, damages or loss arising out of the manner, design, or quality of approved construction on or modifications to any Unit, nor may any action be brought against the Association, the Board of Directors, or any member thereof, for any such injury, damage or loss.

Section 9.8 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors 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 Board of Directors 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, does not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 9.9 Renovation and Construction Requirements of Owners.

(a) All changes, modifications and improvements approved by the Board hereunder must be commenced within 6 months from the date of approval.

(b) If not commenced within such time, then such approval is deemed revoked, unless the Board gives a written extension for commencing the work.

(c) All work approved by the Board hereunder is to be completed in its entirety within 2 years from the date of commencement, unless otherwise agreed in writing by the Board.

(d) All approved changes, modifications, and improvements must be completed in their entirety.

(e) An Owner may not construct only a portion or part of an approved change, modification, or improvement.

**ARTICLE 10 – CHANGES AS MAY BE MADE TO THE COMMUNITY  
(OBSOLESCENCE, ADDITIONAL UNITS, SALE OF COMMON ELEMENTS,  
RELOCATION OF BOUNDARIES, AND REPAIR AND RECONSTRUCTION)**

Section 10.1 Obsolescence.

(a) Termination and Adoption of Plan for Renewal and Reconstruction. The Owners representing allocated interests of 67% or more, by eligible allocated votes, may approve and determine that the Community is obsolete, terminate the Community and adopt a written plan for the renewal and reconstruction. Written notice of the adoption of such a plan is to be given to all Owners and a copy of such plan is to be recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, and the expense of renewal and reconstruction is payable by all of the Owners as Common Expenses.

(b) Obsolescence; Sale of Obsolete Units and Common Elements. If the Owners representing allocated interests of 67% or more by eligible allocated votes approve that the Community is obsolete and should be sold, then the Community may be terminated and sold. In that event, the Association shall immediately record in the Office of the Clerk and Recorder of the Eagle County, Colorado, a notice setting forth such facts. Upon the recording of such notice by the Association, the Community shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Community Map, and the Articles of Incorporation and Bylaws of the Association.

Unless otherwise agreed in writing by an Owner, the sale proceeds (and any insurance proceeds) shall be apportioned among the Owners in proportion to each Owner's undivided interest in the Common Elements, and such apportioned proceeds shall be paid into

separate accounts, each such account representing one Unit. Each such account shall be in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner and designated as an agency account. From each separate account the Association, as attorney in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in this Article.

Section 10.2 Additional Units. The Owners representing an aggregate ownership interest in the Common Elements of 67% or more by eligible allocated votes may vote and approve additional Units to the Community. The decision to add units shall be evidenced by an amendment to this Declaration recorded in the Office of the Clerk and Recorder of the Eagle County, Colorado. The amendment must specify a date after which the authority to add Units will be void unless new Units are created and a reallocation of the allocated interests, based on each Units' percentage of the total square footage of all Units is also recorded.

Section 10.3 Sale of Common Elements and/or Unit Expansions. The Owners representing an aggregate ownership interest in the Common Elements of 67% or more by eligible allocated votes may vote and approve the conveyance of portions of the Common Elements to a third party or to an existing Unit Owner. The agreement to convey portions of the Common Elements shall be evidenced by an agreement entered into by the Association. That agreement shall be recorded in the Office of the Clerk and Recorder of the Eagle County, Colorado. If not approved in advance, the agreement must specify a date after which the agreement will be void unless approved by the requisite percentage of Owners, and may include any reallocation of the Units' ownership of the Common Elements (including any Units added pursuant to the agreement) based on each Units' percentage of the total square footage of all Units within the Community. Proceeds from the conveyance shall be held by the Association and utilized for operations and/or improvements to the Community, which may include the Units and Common Elements.

Section 10.4 Relocation of Boundaries. The Owners of the Units involved, may, in coordination with their holders of any Mortgage on their Unit, relocate boundaries between their Units, with the vote and approval of other Owners with ownership interests in the Common Elements of at least 67% of the eligible allocated votes, and with the approval of the Board of Directors. The relocation, if so approved, and if implemented, must be implemented by a date specified in the approvals, or the approval will be void. To implement the relocation, the Declaration and Map shall be amended by recorded supplements, in form and substance satisfactory to the Board of Directors of the Association, and deeds shall be given among the involved Owners, in form and substance satisfactory to the Board of Directors of the Association.

Section 10.5 Repair and Reconstruction - Damage or Destruction. In the event of damage to or destruction of all or any part of the Community as a result of fire or other casualty, unless Unit Owners holding at least 67% of the total eligible and allocated votes, including the Owner or Owners of any damaged Unit or Units, vote not to proceed with the reconstruction and repair of the structure, the Board of Directors or its duly authorized agent is to arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each holder of a first Mortgage is entitled to written notice of the damage, and



nothing in these documents shall be construed to afford a priority to any Unit Owner with respect to the distribution of proceeds to any such Unit.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to the Community, the Board of Directors is to obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to substantially the condition that existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to failure of the Association to maintain coverage as provided in this Article, the additional cost is a Common Expense. If, for any other reason, the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by the Board, the additional costs are to be assessed against the Owners of the Unit(s) damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. This assessment is not considered a special assessment as allowed in this Declaration. If there are surplus funds after repair and reconstruction is completed, such funds shall be common funds of the Association to be used as directed by the Board.

(c) Floor Plans and Specifications. Any such reconstruction or repair is to be substantially in accordance with the Map and specifications under which the Community was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original Map and specifications are approved by the Board of Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.

(d) Encroachments. Encroachments upon or in favor of Units that may be created as a result of such reconstruction or repair do not constitute a claim or basis for any proceeding or action by the Unit Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Community was originally constructed. Such encroachments are allowed to continue in existence for so long as the reconstructed building stands.

(e) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Unit Owners on account of such casualty constitutes a construction fund, which is to be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Article to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

## **ARTICLE 11 – EASEMENTS AND AGREEMENTS**

### **Section 11.1 Easements for Use and Enjoyment.**

(a) Every Unit Owner and Occupant shall have a right and non-exclusive easement of ingress and egress, use and enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to their Unit, subject to the following provisions:

(i) the rights of the Unit Owners to the exclusive use of the Limited Common Elements assigned to their respective Units;

(ii) the right of the Association to have access to the Units and Limited Common Elements assigned to a Unit to discharge its rights and obligations, under the Governing Documents, including without limitation, the maintenance responsibility of the Association;

(iii) the right of the Association to suspend rights of an Owner to use the recreational facilities for any period during which any assessment or charge against their Unit which is set forth in this Declaration remains unpaid and for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;

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

(v) the right of the Association to grant easements, leases and licenses across the Common Elements;

(vi) the right of the Association to dedicate or transfer all or any portion of the Common Elements subject to approval of Owners holding 67% of the total eligible and allocated Association vote; and

(vii) the right of the Association to change the use of portions of the Common Elements or to close portions of the Common Elements.

(b) Any Unit Owner may delegate their right of use and enjoyment in and to the Common Elements and facilities located thereon to the members of their family, their tenants and guests, and is deemed to have made a delegation of all such rights to the Occupants of their Unit.

Section 11.2 Easement for Entry. The Association has an easement to enter into Units for maintenance, emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, Managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in performing their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit. For the purposes of this Section, an emergency justifying immediate entry into a Unit shall include, but not 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 is liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights in this

Declaration 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 Unit shall exist.

Section 11.3 Support. Every portion of a Unit and all Common Elements contributing to the support of an abutting Unit shall be burdened with a non-exclusive easement of support for the benefit of such abutting Unit.

Section 11.4 Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, a valid easement for the encroachment exists. The easement does not relieve a Unit Owner of liability in case of willful misconduct.

Section 11.5 Utilities. To the extent that any utility line, pipe, wire, or conduit serving any Unit, Units or the Common Elements lies wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units, or the Common Elements 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 Unit, Units, or Common Elements served by the same and the Association. At the sole expense of the Association, without need for a membership vote, and without the consent of any affected Unit Owner, the Board of Directors, on behalf of the Owner can relocate any portion of the heating, plumbing, ventilating, exhaust, electrical or other utility system serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as well and at no greater cost to the Unit Owner as existed prior to the relocation.

Section 11.6 No Public Rights. 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.

Section 11.7 Agreements Amongst Lodge at Lionshead Phases. It is acknowledged that there are certain agreements which are not of record amongst the Association and the condominium associations of and for The Lodge at Lionshead I and The Lodge at Lionshead III with respect to certain shared facilities and services, including the expenses therefor.

## **ARTICLE 12 – AUTHORITY AND ENFORCEMENT**

Section 12.1 General. Every Owner, guest, tenant and invitee shall comply with this Declaration, the Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Unit Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations. In addition to any rights the Association may have against an Owner's family, guests, tenants or occupants, 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 Occupants.

(a) The Association, acting through the Board, shall have the power to impose reasonable fines, which constitute a lien upon the Owner's Unit, for violation of any duty imposed under the Declaration, Bylaws or rules and regulations. If any Occupant of a Unit violates the Declaration, Bylaws or rules and regulations, a fine may be imposed against the

Owner and/or Occupant after notice to the alleged violator and an opportunity to be heard in accordance with the Association's covenant and rule enforcement procedure.

(b) In any enforcement action taken by the Association under this Article, to the maximum extent permissible under the Act, all costs incurred by the Association in abating a violation or otherwise taking action to enforce the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred, may be assessed against the violating Owner and/or Occupant.

(c) Nothing in this Declaration limits the rights of an aggrieved Owner or Occupant to proceed individually against a violator hereof for relief from interference with their property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their personal property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise may exist by an aggrieved Owner or Occupant against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Occupant has not personally pursued all available remedies against the violator for redress provided under Colorado law.

Section 12.2 Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help and/or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity for compliance with the hearing procedure. The Board may also suspend an Owner's right to vote, the inclusion of their vote in the total percentage or vote needed for any action of the Members, and suspend the Owner's rights to use the recreational facilities (as well as the rights of the Owner's family, tenants, guests and Occupants to use such facilities) for violation of any duty imposed under the Declaration, Bylaws or Association rules. The Association also has the authority to record in the Eagle County real property records a notice of violation identifying any uncured violation of the Declaration, Bylaws or rules and regulations regarding the Unit and or the Unit Owner.

(a) The Association or its duly authorized agent shall have the power to enter upon any portion of the Common Elements, including the Limited Common Elements, to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws or the rules and regulations. Such removal, abatement and restoration is to be accomplished at the violator's sole cost and expense. If the Association exercises its right subject to this Section, all costs are to be assessed against the violating Owner or Occupant and constitute a lien against the Unit. Additionally, subject to the Act, the Association is entitled to reasonable attorney's fees actually incurred and collected as an assessment pursuant to this Declaration.

Section 12.3 Failure to Enforce. The failure of the Board to enforce any provision of the Declaration, Bylaws or rules and regulations shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Association for failure of enforcement where:

- (i) the Board determines that the Association's position is not strong enough to justify taking enforcement action;

- (ii) 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
- (iii) 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 13 - AMENDMENTS**

Section 13.1 Vote Required. This Declaration may be amended by the affirmative vote of the Unit Owners holding at least 67% of the total Association vote.

Section 13.2 Notice Required. Notice of any meeting or other action by which a proposed amendment will be considered shall notice and state the consideration of the proposed amendment and the subject matter of the proposed amendment.

Section 13.3 Recording of Amendments. No amendment is effective until certified by the president and secretary of the Association and recorded in the Eagle County, Colorado real property records.

Section 13.4 Limited Board Authority to Make Amendments. The Board of Directors, without the necessity of a vote by the Owners, may amend this Declaration to correct any scrivener's errors, comply with any applicable state, city or federal law, and/or to allow an Owner or a purchaser from an Owner to obtain a first Mortgage loan on a Unit or to bring the Community into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae") or any similar successor or other agencies.

Section 13.5 Limit on Challenges. Any challenge to 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 14 - SALES AND RIGHT OF FIRST REFUSAL**

Section 14.1 General. No Owner, except the Association, or its successor or assigns, may sell the Owner's Unit or any interest therein except by complying with the provisions of this Article.

Section 14.2 Notice of Outside Offer. In the event any Owner of a Unit other than the Association or its successors in interest or assigns, shall wish to sell the same, and shall have received a bona fide offer therefore from a prospective purchaser, the remaining Owners shall be given written notice thereof together with an executed copy of such offer and the terms thereof. Such notice and copy shall be delivered to the Board for and on behalf of all of the Owners.

(a) If the offer referred to in Section 14.2 is not in writing, then the Owner shall give prompt written notice to the Board of such offer, the name and address of the proposed purchaser, the terms of the proposed transaction, and such other information as the Board may reasonably require.

(b) The giving of such notice shall constitute a warranty and representation by the Owner to the Board, for the benefit of the remaining Owners, that the Unit Owner believes such offer to be bona fide in all respects.

Section 14.3 Period of Time. On the next business day after such receipt of notice of an outside offer, the Board shall mail or otherwise transit, including by electronic mail, to each Owner at the address of such Owner shown in the records of the Association, the information as to the outside offer obtained from the offering Owner in compliance with Section 14.2.

(a) For a period of ten calendar days beginning on and including the date of the actual mailing of such information, the Owners, whether one or more of them, shall have the right to purchase such Unit on the same terms and conditions as contained in such outside offer.

(b) In order to perfect such right, the remaining Owners, whether one or more of them, must on or before the end of such ten-day period, actually deliver to the Board a written notice or notices of election to purchase and a matching down payment or deposit as provided to the selling Owner to so purchase.

(c) If within such ten-day period there is so delivered only one written undertaking and deposit, the Owner so delivering such election and deposit will be deemed to have the full right to further pursue such purchase in accordance with this Article.

(d) If within such ten-day period more than one written election is so delivered, such elections shall be deemed simultaneously delivered, and the Board shall give immediate notice of that fact by telephone, facsimile, e-mail or other suitable means to all Owners who have delivered such election. If two or more remaining Owners so deliver elections, such delivering Owners shall have the right for a period of six calendar days beginning on and including the tenth day to agree among themselves as to a form of undivided or entity ownership, and so notify the Board in writing.

(i) If no such agreement is delivered to the Board on or before the sixth day of this six-day period, the Board shall promptly conduct a random drawing between the Owners to determine the relative priorities to so purchase, and the priorities so determined shall be conclusive. Time being of the essence herein, should any Owner who has priority to purchase fail to do so by his prescribed time on the date set for closing, then the Owner with the next priority as determined by the above-described drawing shall have the right to close such purchase before the end of the following business day.

(ii) On or before the end of such six-day period, the Owners or Owner determined by the Board to be entitled to further pursue the election hereunder shall enter into a written bilateral contract with the Owner, who has complied with Section 14.2 to purchase the Unit upon the same terms and conditions as contained in the outside offer. The closing of such transaction shall be held on or before the date specified in the original outside offer, provided, however, that such closing may be continued for no more than 14 days to allow for compliance with this Paragraph.

Section 14.4 No Acceptance of First Refusal. If, within the ten-day period for the delivery by a remaining Owner or Owners of an election as provided by Section 14.3, no such election or elections are so delivered, the Owner who has complied with Section 14.2 shall be free to accept and close upon the basis of the outside offer with the person or persons who made such outside offer. If the offering Owner shall not within the period provided in the outside offer close the transaction with the outside offeror on the same terms and conditions as were originally contained in such outside offer, or in the event any Owner other than the Association shall attempt to sell his Unit without affording to the other Owners the right of first refusal herein provided, such sale shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser who shall be subject to eviction and removal, forcibly or otherwise with or without process of law.

Section 14.5 Certificate of Compliance. After full compliance by the offering Owner with the terms and provisions of this Article, and after all periods of time provided for the pursuit by the remaining Owners of their remedies afforded by this Article have expired, upon the request of the offering Owner, the Board will instruct the Secretary or Manager of the Association to prepare, execute and acknowledge a certificate, to be made in recordable form, identifying the Unit and the grantee thereof, stating that the provisions of this Article have been complied with and that any right or rights of first refusal theretofore vested in the remaining Owners have been terminated, or that the Unit is exempt under the provisions of Section 14.5 hereof; and such certificate shall be conclusive upon the Board and the remaining Owners in favor of all persons who in good faith rely thereon.

Section 14.6 Unit Owner also a Member of Board. An Owner who is also a member of the Board or an officer of the Association shall not be barred by reason of his or her office from exercising the right of first refusal provided for in this Article, but he shall not take a personal part in the actual conduct of the drawing to determine priorities if such a drawing is required pursuant to this Article.

Section 14.7 Conditions Precedent to Purchase by Association. The Association itself shall not have a right to purchase a Unit under the terms and provisions of this Paragraph without the prior written consent of all of the remaining Owners and an express agreement that they will pay their proportionate part of any assessments necessitated by such a purchase and assume their proportionate part of any existing or future lien.

Section 14.8 Exemption from Right of First Refusal. The right of first refusal herein provided for shall not apply with respect to any sale or conveyance by an Owner of the Owner's Unit to the Owner's spouse, any of the Owner's children, parent or parents, brothers or sisters, grandchildren, or any of their spouses, or any one or more of them or to any entity for their benefit, or to the acquisition of a Unit by a mortgagee or purchaser who acquired his interest by or through foreclosure or by deed in lieu of foreclosure. The right of first refusal herein provided for shall, however, apply with respect to any purchaser of such Unit from such mortgagee. The right of refusal shall neither apply to transfers by operation of law upon death of an individual Owner to his surviving joint tenant(s) nor to the transfer of a deceased's interest to a devisee by will or his or her heirs at law under intestacy law; nor to the transfer by the other legal persons or entity empowered to own a Unit to the remaining owners thereof; nor to the transfer of all or any part of an Owner's interest to a corporation or other entity, provided, however, that at least fifty

percent of the ownership of such entity is thereafter owned and retained by that Owner. A transfer of ownership by one or more owners of a corporation or other entity owning a Unit, whereby less than fifty percent of the ownership is retained by the owners of that entity, shall be deemed subject to the provisions of this right of first refusal in the other Owners and such person(s), owner(s) or grantee(s) acquiring an interest in such entity shall be subject to all of the provisions of this Article. The transfer of an Owner's interest to a trustee for his or her exclusive benefit, or the acquisition or transfer of any Unit by the Association shall also be exempt from this right of first refusal.

Section 14.9 Miscellaneous. In no case shall the right of first refusal reserved herein affect the right of an Owner to subject the Owner's Unit to a bona fide trust deed, mortgage or other security instrument. The failure of or refusal by the Owners to exercise the right to so purchase shall not constitute or be deemed to be a waiver of such right to purchase when an Owner receives any subsequent bona fide offer from a prospective purchaser.

## **ARTICLE 15 - GENERAL PROVISIONS**

Section 15.1 Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community. Each Owner, for themselves and their tenants, 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-occupants 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 Unit Owners or Occupants. It is the responsibility of each Owner to protect their person and property and all responsibility to provide such security lies solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

Section 15.2 Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property Manager of the Association, a Unit Owner or Occupant must request and attend a hearing or meeting with the Board of Directors. Any such request shall be in writing and be personally delivered to any member of the Board of Directors or the property Manager, if any, of the Association. The Owner or Occupant shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall seek to schedule a time for the hearing/meeting in cooperation with the Owner. Ideally, this hearing/meeting will be sought and held within 10 days. If, after reasonable attempts by the Association, acting through the Board and/or Manager, a mutually acceptable time, date and place for a hearing/meeting has not been set, then, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than ten or more than 21 days from the date of receipt of the request.



Section 15.4 Electronic Records, Notices and Signatures. Records, signatures and notices shall not be denied validity or effectiveness solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws govern the giving of all notices required by this Declaration.

Section 15.5 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property perpetually unless terminated.

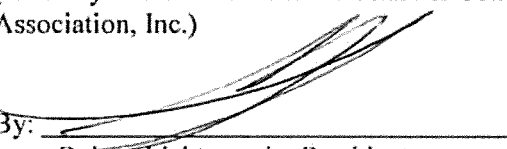
Section 15.6 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned officers of the Association certify that this Amended and Restated Declaration was duly adopted by the Members of the Association.


This 13<sup>th</sup> day of May, 2015.

**THE LODGE AT LIONSHEAD II CONDOMINIUM ASSOCIATION**, a Colorado nonprofit corporation (formerly known as Lionshead Phase II Condominium Association, Inc.)

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

  
Robert Lichtenstein, President

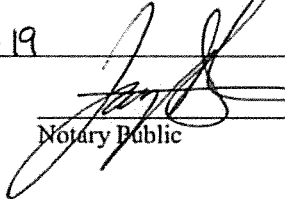
By: \_\_\_\_\_

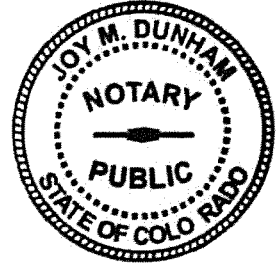
  
Peggy Sciotto, Secretary

STATE OF Colorado )  
 ) ss.  
COUNTY OF Eagle )

The foregoing Declaration was acknowledged before me by Robert Lichtenstein, as President of The Lodge at Lionshead II Condominium Association, on this 13<sup>th</sup> day of May, 2015.

My commission expires: 5.18.19

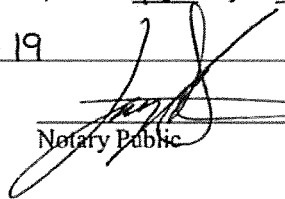
  
\_\_\_\_\_  
Notary Public

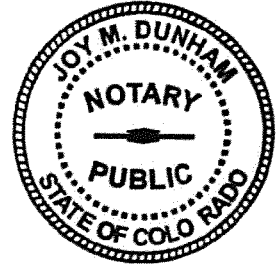


STATE OF Colorado )  
 ) ss.  
COUNTY OF Eagle )

The foregoing Declaration was acknowledged before me by Peggy Sciotto, as Secretary of The Lodge at Lionshead II Condominium Association, on this 13<sup>th</sup> day of May, 2015.

My commission expires: 5.18.19

  
\_\_\_\_\_  
Notary Public



**EXHIBIT A – LEGAL DESCRIPTION OF THE PROPERTY**

A parcel of land situated in a part of Lot 7, Block 1, Vail/Lionshead, First Filing, Town of Vail, County of Eagle, State of Colorado, per the plat thereof recorded May 10, 1970 at Reception No. 113260 in the office of the Eagle County Clerk and Recorder, said parcel being more particularly described as follows:

Beginning at the Northeast corner of said Lot 7; said point also being on the right of way of East Lionshead Circle; thence along the boundary of said Lot 7 the following six (6) courses:

- 1) S04°53'18"E a distance of 67.00 feet;
- 2) S59°35'30"E a distance of 21.54 feet;
- 3) S01°32'38"E a distance of 133.09 feet;
- 4) S63°25'24"W a distance of 75.00 feet;
- 5) N81°23'24"W a distance of 207.15 feet;
- 6) N04°35'22"E a distance of 38.25 feet;

Thence departing said boundary S86°53'18"E 50.50 feet; thence N04°35'22"E 20.00 feet; thence S86°53'18"E 57.00 feet; thence S04°35'22"W 20.00 feet; thence S86°53'18"E 46.50 feet; thence N04°35'22"E 72.57 feet; thence S75°51'00"W 14.12 feet; thence N03°00'00"E 5.64 feet; thence N87°00'00"W 1.56 feet; thence N03°00'00"E 33.95 feet; thence N75°51'00"E 16.93 feet; thence N04°35'22"E 75.00 feet to a point on the northerly boundary of said Lot 7, said point also being on the southerly right of way of East Lionshead Circle; thence along said northerly boundary S86°53'18"E 72.25 feet to the point of beginning, containing 0.745 acres more or less.

Subject to an easement granted by the Declarant to the Owners of Units 101 and 301, Vail/Lionshead Condominiums, for parking one automobile per each Unit within that part of the General Common Elements designated for indoor parking on the Map, such easement to last as long as the Property is subject to this Declaration, and subject to specific location within such indoor parking area as designated by the Association or its Manager, and rules and regulations imposed by the Association.

**EXHIBIT B – ALLOCATED INTERESTS**

<b>RESIDENTIAL CONDOMINIUM UNIT DESIGNATIONS</b>	<b>ALLOCATED INTERESTS</b>
110	4.184
120	3.872
130	3.872
140	3.872
150	3.872
160	3.872
210	4.160
220	3.872
230	3.872
240	3.872
250	3.872
260	3.872
270	3.872
280	1.201
290	1.253
310	1.546
320	1.225
330	1.225
340	1.546
350	6.350
360	6.438
370	6.438
380	5.081
410	10.038
C-1*	2.871
<b>RESIDENTIAL TOTAL</b>	<b>96.148</b>
<b>COMMERCIAL CONDOMINIUM UNIT DESIGNATIONS</b>	<b>ALLOCATED INTERESTS</b>
C-2	1.049
C-3	2.803
<b>COMMERCIAL TOTAL</b>	<b>3.852</b>
<b>GRAND TOTAL</b>	<b>100.00</b>

\*Unit C-1 was originally a Commercial Unit and was converted to a Residential Unit.