



# THE PEAKS AT SNOWMASS DECLARATION OF PROTECTIVE COVENANTS

## ARTICLE 1: Dedication

**Section 1.1. Property Dedicated.** 159 Developers, LLC, a Colorado limited liability company (“Declarant”) hereby makes, declares, and establishes the following covenants, restrictions and easements, which shall be binding upon and affect the real property more particularly described as:

The Peaks at Snowmass Phase 1, including Lots 1 through 6, both inclusive, according to the plat of The Peaks at Snowmass recorded in the real property records of Gunnison County, Colorado as Reception No. 697566 (the “Plat”).

All real property described on the Plat as The Peaks at Snowmass Phase 1, including Lots 1-6 as shown thereon and all common area included in The Peaks at Snowmass Phase 1 are the “Property.” The “Property” does not include the Lot E Remainder Parcel as shown on the Plat (the “Lot E Remainder Parcel”), which is not subjected to this The Peaks at Snowmass Declaration of Protective Covenants (these “Covenants”). The Lot E Remainder Parcel is owned by Declarant free and clear of any right, title or interest of any Owner, as defined below, or the Association, as defined below, unless and until the Lot E Remainder Parcel is subjected to these Covenants through the exercise of Declarant’s reserved rights to develop the Lot E Remainder Parcel into additional townhome units or lots through the recordation of a supplemental plat and supplemental covenants. The Lot E Remainder Parcel is referred to in these Covenants as the “Expansion Property.” The Expansion Property includes the property identified on the Plat as the “30.0’ Private Right of Way and Utility Easement” (the “Right of Way”), which is a right of way and utility easement for the benefit of the Peaks at Snowmass Phase 1 and all Lots and will also be used as a right of way and utility easement for the Expansion Property, both as it currently exists and may be subdivided in the future.

**Section 1.2. Dedication.** These Covenants shall run with the Property and shall be binding upon all persons and entities having any right, title or interest in and to the Property or any Townhomes, units, Lots, tracts, or parts thereof, their heirs, successors and assigns and their tenants, employees, guests, agents and invitees and shall inure to and be for the benefit of each Owner of a Townhome within the Property and the Association (as defined below). These Covenants are imposed for the benefit of all Owners and all future owners of Lots and areas located within the Property and to provide for the preservation of values of the Property and to provide and preserve the covenants, easements, restrictions, assessments, liens and all other matters set forth in the Covenants, all of which are for the benefit of the Property.

## ARTICLE 2: Definitions

**Section 2.1.** “Association” means The Peaks at Snowmass Association, a Colorado



nonprofit corporation.

**Section 2.2.** “Buildings” means the buildings shown on the Plat, as amended, and the term “Building” means a building as shown on the Plat. At this time, there are three Buildings, each with two Townhomes.

**Section 2.3.** “CCIOA” means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as amended.

**Section 2.4.** “Common Elements” means all of the real property and improvements shown on the Plat except for the Lots. There are no limited common elements. The General Common Elements (which may also be referred to as “G.C.E.” or “GCE” in these Covenants or on the Plat) include all areas designated as common area or open space, which are to be treated as GCE. Any Common Element not specifically identified as GCE in the Plat or these Covenants is nevertheless General Common Element. The Common Elements are owned by the Association.

**Section 2.5.** “Common Expenses” means expenditures made or liabilities incurred by the Association. Common Expenses may include all expenses for promoting the health, safety, and welfare of the occupants of the Project, preserving and improving the Lots and Townhomes and their value, and all costs, fees, and other expenses for the Association to comply with its obligations under the Governing Documents and Colorado law.

**Section 2.6.** “Governing Documents” means the Plat, these Covenants, the Articles of Incorporation of the Association, the Bylaws of the Association, and all of the rules, regulations, policies, procedures and other resolutions of the Association. The rules, regulations, policies and procedures of the Association are referred to herein as the “Regulations.”

**Section 2.7.** “Lots” refers to Lot 1 through Lot 6, both inclusive, as shown on the Plat. The term “Lot” refers to an individual Lot. Each Lot includes the Townhome, as defined below, on such Lot.

**Section 2.8.** “Owner” means the owner or owners of a Lot and the Townhome on the Lot.

**Section 2.9.** “Townhomes” means collectively the Townhomes constructed on the Lots. The Townhomes are individually referred to herein as a “Townhome”. Each Townhome consists of all of the Townhome, including the land beneath the Townhome and all interior and exterior elements of the Townhome, including the roof over the Townhome. The Owners of adjoining Townhomes are the owners as tenants in common of the shared wall between the Townhomes (as further defined below, the “Party Wall”). The Party Wall does not include the drywall or other interior finishes that may be applied to the drywall.

### **ARTICLE 3: CCIOA Provisions**

**Section 3.1. Planned Community.** The name of the common interest community is The Peaks at Snowmass. The Peaks at Snowmass is a planned community. The Peaks at Snowmass is located in Gunnison County, Colorado. The Peaks at Snowmass is subject to CCIOA.



**Section 3.2. Declarant Control Period.** Declarant reserves the right to appoint, add and remove directors to the board of directors of the Association until May 1, 2053, or until such earlier time as the declarant control period is required by CCIOA to terminate.

**Section 3.3. Identification of Elements; General Matters.** The Lots and Townhomes are more particularly described on the Plat, which is incorporated herein by this reference. There are no limited common elements. The Owners of each Lot shall have 1 vote in the Association and shall have responsibility for an equal share of the Common Expenses. Accordingly, each Owner will be allocated 1/6 of the vote in the Association and 1/6 of the common expense assessments in the Association. All recorded easements, licenses, and similar matters are set forth on the Plat. The Peaks at Snowmass is subject to CCIOA, and the Association is entitled to exercise all rights, privileges, powers granted to associations under CCIOA and any other Colorado law. The Association is the Owner of the Common Elements. Notice to Owners shall be provided as required by law and, if not otherwise set forth by law, by mailing the same by first class mail to the most recent address for the Owner on file with the Association and, if none, to the mailing address with the Gunnison County Assessor, and also by emailing the same to the most recent address on file for such Owner with the Association, if any. Except with respect to any notice from the Association to any Owner, if any Lot is owned by more than one person, or by a partnership, joint venture, corporation, or other legal entity that is not a natural person, the Owners of the Lot shall designate to the Association, in writing, the name and address of the agent of the Owner to whom all legal or official assessments, liens, levies, or other such notices may be properly and lawfully mailed, and, upon failure to so designate an agent, the Association shall be deemed to the agent for receipt of notices to such Owners.

**Section 3.4. Each Building Responsible For Its Expenses.** Any Assessment for any Common Expense that relates only to one Building, if any, shall be assessed only to the Owners of Townhomes in that Building and shall be assessed equally among those Owners. Snow removal contracted for by the Association is not a Common Expense to be apportioned on a Building by Building basis. The fact that repairs or replacements may be made as a Common Expense does not relieve any Owner of any liability, including damages and costs of repair, for any tortious, criminal or other conduct (including inaction that creates liability), including liability, if any, for the actions or inactions of any Owner's licensees or invitees. Each Owner shall perform its own snow removal for its own driveway on its Lot at its own expense and such snow removal is not a Common Expense or other Building by Building expense. If at any time the water or sewer charges are not individually metered for any Lots and the Owners of those Lots fail to pay any water or sewer charges on time, the Association shall pay such water and sewer charges in accordance with the rules and regulations of the Crested Butte Water and Sanitation District and shall charge and assess each such Owner for a proportionate share of such charges with each such Owner paying one share.

## **ARTICLE 4: Uses And Design Review**

**Section 4.1. General Use.** The use of Lots and Townhomes and the remainder of the Property shall be limited to those uses permitted by the Town of Mt. Crested Butte, Colorado and the Association as may be further limited or defined by the Association's Governing Documents; provided, however, that the Property, including the Lots and Townhomes, shall be used exclusively



for single family residential use. The Association's Regulations may allow, allow with limitations, or prohibit matters such as short-term rentals and in-home occupations; provided, however that the Regulations may not permit any activities or improvements prohibited for the Property by the Town of Mt. Crested Butte, Colorado or these Covenants. No Townhome may be further subdivided.

**Section 4.2. Specific Restrictions.** The following uses are not permitted by any Owner, including any guest, invitee, licensee, or renter of any Owner, on the Property including on or at any Townhome or Lot:

- a. Except as permitted by law, posting of any signs other than for sale signs.
- b. Installing, maintaining or otherwise making any exterior lighting or other exterior improvement without approval of the Association and any necessary approval of the Town of Mt. Crested Butte, Colorado.
- c. Parking any abandoned vehicle, which may be further defined by the Association, but shall mean at a minimum any vehicle which has not been driven under its own propulsion for a period of one month or longer.
- d. Operating or otherwise using any wood burning or charcoal bar-b-que grill or other device used for cooking, or open or semi-enclosed fireplaces, including any chiminea and other outdoor fireplaces, except as may be specifically authorized in the Association's Regulations. The Association may prescribe rules for the use of all grills and fireplaces, including propane, through its Regulations.
- e. Erecting, maintaining, installing or using sheds and other new buildings.
- f. Timeshares and multiple ownership structures that function, operate or result in use like timeshares.
- g. Parking and storage on General Common Elements, including without limitation parking on the roadway or turnaround or open space.
- h. Parking outside of garages except on driveways.
- i. Installing, maintaining or using any sprinkler or lawn watering system.
- j. Parking or storage in the Emergency Vehicle Turnaround as shown on the Plat, including without limitation temporary parking.

**Section 4.3. Regulations.** All Owners and their tenants and guests are required to comply with all Governing Documents, including without limitation the Regulations. Each Owner shall be liable for any violation of the Governing Documents, including without limitation the Regulations, by his or her tenants, guests, and all other persons on the Property at the request of, or upon the permission of, such Owner. Each Owner shall be required to maintain insurance of a type and in the amounts to be set forth in the Regulations, if required by the Regulations.

**Section 4.4. Standards for Upkeep and Design.** As part of the Association's Regulations, the Association shall provide rules, regulations, policies and procedures establishing: (1) the standards and design requirements for those exterior items allowed to be placed or maintained by Owners, if any, including exterior remodeling and refinishing, (2) the standards for any improvements, and (3) the process for requesting and approving new improvements and alterations to existing improvements.



**Section 4.5. Maintenance by Owners.** Each Owner shall maintain his or her Townhome and Lot, including without limitation, driveway, and yards, in good condition as defined in the Regulations. Each Owner shall be responsible, at its own expense, for the upkeep, repair and replacement of all utilities on the Owner's Lot. If an Owner fails to maintain his, her or its Townhome or Lot in accordance with the Governing Documents, the Association may assess the Owner for the estimated cost of repair, have such performs repaired as are required by the Governing Documents, and refund the Owner any amounts assessed that were not required for such repairs, if any. Each Owner is responsible for maintaining and replacing, and must utilize, the snow and ice melt system for the Owner's Townhome and Lot, including the driveway.

**Section 4.6. Party Walls.** The common wall separating any two Townhomes, the footings underlying the wall, and the portion of roof overlying said wall shall constitute and shall be referred to herein as a "Party Wall."

- a. To the extent not inconsistent with these Covenants, the general rules of law regarding party walls and liability for damage due to negligence, willful acts, and omissions shall apply to each Party Wall.
- b. Any damage occurring to a Party Wall shall be promptly repaired, and the cost shall be borne in equal shares by the Owners sharing the Party Wall, except that damage to the Party Wall that is occasioned by the act or the negligence of one Owner or Owner's licensee, invitee or agent or deterioration that occurs on the surface of a Party Wall that is within one Townhome, shall be promptly repaired to at least its former condition and paid for by that Owner. The Owners of each Townhome agree to maintain the Party Wall adjoining their Townhomes in good repair and shall not neglect or allow the Party Wall to fall into disrepair.
- c. Each Owner shall have the sole responsibility of maintaining the finished surfaces of a Party Wall located within the Owner's Townhome.
- d. Each Owner sharing a Party Wall shall have the right to enter the Party Wall to maintain the utility installations located therein, as long as he or she restores it to its original condition.
- e. Each Owner sharing a Party Wall shall have the right to repair the Party Wall and to charge the other Owner for that Owner's proportionate share of the costs.
- f. Each Owner sharing a Party Wall has the right of contribution against the other Owner for negligent acts or omissions which damage the Party Wall, or which cause the interior of the Party Wall to be exposed to the elements. Rights of contribution run with the land.
- g. Any insurance proceeds covering damage to a Party Wall must be applied to repair unless the Owners of both Townhomes agree otherwise.



- h. The Owners of each Townhome sharing a Party Wall shall have a perpetual easement in and to that part of the other Townhome on which the Party Wall is located, for party wall purposes, including mutual support, maintenance, repair, replacement, and inspection.

#### **4.7 Easements.**

4.7.1 Each Lot shall be subject to an easement for encroachment created by construction, settling and overhang as designed or constructed by Declarant, and a valid easement for such encroachment and for the maintenance of same shall and does exist. If a townhome building is partially or totally destroyed and then rebuilt, minor encroachments due to construction shall be permitted and a valid easement for said encroachment and the maintenance thereof shall exist.

4.7.2 There is hereby created a nonexclusive blanket easement upon, across, over and under all of the Lots and the improvements situated thereon in favor of the Association for the benefit of all Owners for the installation, replacement, repair and maintenance of all utilities and common facilities including but not limited to water, sewer, gas, telephone, electricity and cable television.

4.7.3 There is hereby created in the Association a blanket easement for drainage over the entire Property, except the Townhomes.

4.7.4 Declarant reserves an easement for construction, landscaping maintenance, utilities, drainage, ingress and egress over, in, upon, under, and across any Lot and Common Element, including all open space, together with the right to store materials on such Common Element and to make such other use of such Common Element as may be reasonably necessary or incident to the construction of improvements on the Property and the Expansion Property. However, Declarant may not exercise such rights in a way which unreasonably interferes with the occupancy, use, enjoyment, or access to Townhomes by Owners. Such easement includes the right to store material on the Common Elements, including the open space and roadways.

### **ARTICLE 5: Duties and Powers**

**Section 5.1. Association Duties.** The Association shall be responsible for all upkeep, repair and replacement of the Common Elements, which specifically do not include decks, patios, porches, and driveways. The Owners of each Townhome shall insure that portion of the roof over that Owner's Townhome. The Association shall be responsible for all upkeep, repair and replacement for all utilities, including water, sewer and electrical, located on Common Elements. The Association shall perform snow removal for the roadway and turnaround as a Common Expense for all Owners.

**Section 5.2. Association Powers.** Subject to the specific provisions of the Governing Documents, the Association shall have all the power, authority and rights afforded to an



association under Colorado law, including CCIOA and the Colorado Nonprofit Corporation Act, and may:

- a. Adopt and amend bylaws, policies, procedures and rules and regulations, including a schedule of fines and enforcing the same through a fine process promulgated by the Association;
- b. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses;
- c. Hire and terminate managing agents and other employees, agents, and independent contractors;
- d. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or on behalf of owners of the Townhomes;
- e. Make contracts and incur liabilities;
- f. Regulate the use, maintenance, repair, replacement, and modification of the Common Elements;
- g. Cause additional improvements to be made as a part of the Common Elements;
- h. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except that the Common Elements may be conveyed or subjected to a security interest only pursuant to law;
- i. Grant easements, leases, licenses, and concessions through or over the Common Elements;
- j. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements;
- k. Impose charges for late payment of assessments, recover reasonable attorney fees and other legal costs for collection of assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated;
- l. Impose reasonable charges for the preparation and recordation of amendments to these Covenants or statements of unpaid assessments;
- m. Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;
- n. Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;
- o. Obtain and maintain directors and officers liability insurance, general public liability



insurance, and crime insurance coverage;

- p. Adopt and amend rules, regulations, policies and procedures regarding domestic or other household pets, subject to such limitations as may be imposed by any other governing entity;
- q. Provided they are consistent with these Covenants and Colorado law, adopt and amend the Regulations through the Association's board of directors, including policies, procedures, rules and regulations: (1) permitted or required by CCIOA, (2) as contemplated by these Covenants, (3) as otherwise governing all use of the Property and construction and maintenance of improvements on the Property, including the Buildings, Lots and Townhomes, and (4) providing a reasonable interpretation, which shall be binding on all Owners, for any ambiguity in these Covenants; and
- r. Exercise any other powers necessary and proper for the governance and operation of the Association.

**Section 5.3. Membership.** Every person or entity holding an ownership interest in any Lot, and by whatever means acquired, shall automatically become a member of the Association (hereinafter, "Member"), in accordance and in compliance with the Governing Documents. If ownership of any Lot is jointly held or held in any sort of fractional ownership, then the appertaining membership shall also be jointly held. Notwithstanding the foregoing, however, there shall not be more than one membership for each Lot. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. Timeshares and multiple ownership structures that function, operate or result in use like timeshares are prohibited. Nothing in this section permits fractional ownership that operates like a timeshare. The Regulations may more specifically define what types of fractional ownership operate like a timeshare and are thus prohibited but, in the absence of any additional definitions in the Regulations, fractional ownership operates like a timeshare when it results in serial occupancy rather than shared and generally simultaneous co-occupancy by all of the fractional owners.

**Section 5.4. Voting Rights.** All voting rights of the Association shall be exercised by the Members, each membership being entitled to one (1) vote for the appertaining Lot. If a membership is jointly held, all holders are entitled to participate in the affairs of the Association but must act unanimously with respect to any vote to be cast for their membership. If the holders of a membership interest, that is jointly held, fail to act unanimously, they will be treated as having abstained. The Association shall be entitled to presume that the vote, if properly cast, is the united expression of such joint owners, and shall not be required to otherwise inquire as to the authority of any one joint holder to act on behalf of the others. Any designation of a proxy to act for joint holders of a membership must be signed by all such holders.

## **ARTICLE 6: Enforcement; Lien Rights**

**Section 6.1. Assessments.** Each Owner is personally obligated to pay to the Association common expense assessments, special expense assessments, and delinquent assessments for that Owner's Townhome together with all late charges, late fees, interest and attorney's fees incurred





in the collection of those assessments as provided by law and the Governing Documents. When a Lot is owned by multiple owners, each owner shall have joint and several liability for all assessments against such Lot. Any assessments which are not paid when due shall be delinquent. The Association shall, and does hereby, have a lien upon the Lots to secure the payment of any and all Association assessments. All sums assessed by the Association chargeable to an Owner shall constitute a lien on such Owner's Lot. The Association shall have such lien rights and assessment rights and other rights as are set forth in CCIOA. The priority of the Association's lien shall be as set forth in CCIOA. The Association's lien is perfected by the recordation of these Covenants and shall not require any further action to be perfected. The due dates and dates of delinquency for Assessments shall be as set forth in the Regulations. For all delinquent assessments, the Association may charge a late charge or fee and may also charge interest at the maximum rate allowed by applicable law or 18% per annum, whichever is less. The amount of any late charges and fees and the interest rate, if less than 18% per annum, shall be set forth in the Regulations. In addition to any other remedy provided by law, the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and in the event of any such action all interest, costs, reasonable costs of collection, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. All late charges, penalties, interest, reasonable costs of collection, costs of appeal, and reasonable attorneys' fees of the Association incurred with respect to the delinquent Owner shall be part of, and included in, the Association's lien on the Lots. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his or her Lot. The Association shall keep a summary of assessments collected and expenses paid. Acceptance of ownership of a Lot is acceptance of these Covenants by such Owner and constitutes the Owner's agreement to be bound by these Covenants and all Governing Documents.

**Section 6.2. Waiver.** To the fullest extent permitted by law, each Owner individually and for their family members, owners, and their agents, employees, tenants, guests and invitees expressly covenants and agrees that no cause of action nor claim of any kind shall lie or be taken against the Association, or the members of the board of directors of the Association or the duly appointed representative(s) or agent(s) of said Association for any personal injury, property or other economic damage arising from or in connection with the use of the Common Elements by any person, or of any property within the Property unless caused by an intentional or reckless act or omission of the Association. Furthermore, notwithstanding any other provision of these Covenants or any other document of the Association, to the fullest extent permitted by law the Association shall not be liable for any injury or damages suffered within a Lot or the Common Elements.

## **ARTICLE 7: Provisions Relating To The Town Of Mt. Crested Butte**

**Section 7.1. Solid-Fuel Burning Devices.** The installation and maintenance of solid-fuel burning devices on the Property, including the Lots, is prohibited except as permitted by the Town Code for the Town of Mt. Crested Butte, Colorado in effect at the time of the installation of the device.

**Section 7.2. Fencing.** The Association may adopt design and maintenance standards for fencing by Owners as part of the Association's Regulations. Any fencing that is not erected and



maintained in accordance with the Association's Regulations is prohibited. Until such time as such fencing Regulations are adopted, Owners shall not erect or maintain any fencing on their Lots.

**Section 7.3. Exterior Lighting.** No exterior lighting shall be installed or maintained except in accordance with all applicable Town of Mt. Crested Butte, Colorado regulations that exist at the time of installation. No exterior lighting may be installed by any owner without first receiving approval by the Association in accordance with the Regulations.

**Section 7.4. Noxious Weeds.** The Association shall be responsible for treating and removing noxious weeds on all Common Elements. The Association shall exercise reasonable efforts to eliminate noxious weeds from the subdivision using best practices at the time such efforts are made.

**Section 7.5. Standards to Ensure Compatible Uses.** All Lots will be used for single family residential purposes only. Owners are not permitted to engage in storage outside of fully enclosed Buildings except for the parking of vehicles in accordance with, at the locations permitted by, and as defined by, the Association's Regulations and these Covenants. All parking must comply with the Association's Regulations, which may limit parking, establish locations for parking, and other matters relating to parking. All Townhomes shall be used in a manner consistent with the residential area. No Owner shall have or allow more than two motor vehicles to be parked outside on that Owner's Lot at any time. No Owner may engage in any use that produces noise in excess of the permitted levels under state statute in effect at the time or any more restrictive Town of Mt. Crested Butte, Colorado standards. Owners shall not park or store any of the following on a Lot except within a fully enclosed garage:

- a. Motor homes, recreational vehicles (RVs), campers mounted on pickups, and pop-up campers;
- b. Motorcycles, all-terrain vehicles (ATVs), and snowmobiles;
- c. Trailers of any kind;
- d. Boats, kayaks, and inflatable rafts;
- e. Inoperable vehicles (a vehicle which has not been driven under its own power for a period of one week or longer);
- f. Bicycles (more than two), skis, snowboards, sleds, and other recreation equipment;
- g. Construction equipment, tools, snowblowers, and other equipment; and
- h. Trucks larger than 1-ton trucks.

**Section 7.6. Domestic Animals.** Each Owner shall be permitted to have not more than two dogs and two cats; provided, however, that the board of directors of the Association may allow a greater number upon a showing of good cause. No livestock, including chickens, are permitted. Dogs shall be kept under control at all times, including through leashes and other forms of effective



restraint. Hamsters and other, similar, confined pets that will not be outdoors at any time are permitted.

## **ARTICLE 8: Duration; Amendment; Miscellaneous**

**Section 8.1. Duration.** These Covenants shall be perpetual in duration. These Covenants shall run with the Property, including the Lots and Common Elements.

**Section 8.2. Termination.** The conditions, restrictions, stipulations, agreements and covenants herein contained may not be waived, abandoned, terminated or amended except upon the approval of the Association and the Owners of the Townhomes.

**Section 8.3. Amendment.** These Covenants and the Plat may be amended only in accordance with the provisions for amendment set forth in CCIOA and upon the approval of the Owners of at 66% of the Townhomes and such amendment shall be effective against the holders of mortgages and holders of deeds of trust encumbering the Townhomes, notwithstanding the fact that such holders have not approved such amendment. No amendment or modification of these Covenants or the Plat may amend, alter, modify or otherwise terminate Declarant's reserved rights under these Covenants, including without limitation all development and special declarant rights reserved by Declarant, unless such amendment or modification is in writing and signed by Declarant and such signature is duly notarized.

**Section 8.4. Construction; Severability.** These Covenants, to the extent possible, shall be construed so as to give validity to all of the provisions hereof and to the fullest extent permitted by law. If any provision of these Covenants is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect. Each provision of these Covenants is distinct and severable.

**Section 8.5. Jurisdiction and Venue.** The exclusive proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of these Covenants, the Governing Documents and the Plat shall be the County Court or District Court of Gunnison County, Colorado.

**Section 8.6. Enforcement.** Any action to enforce any provision of these Covenants may be brought by the Association, its representatives, successors and assigns, and/or by any of the Owners.

**Section 8.7. No Waiver.** The failure to enforce or obtain compliance as to any violation of the Governing Documents shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

**Section 8.8. Attorney Fees and Costs.** In the event of any legal action or arbitration to interpret or enforce any of the provisions of these Covenants or to restrain the violation of these Covenants, whether judicial, nonjudicial or administrative, the prevailing party shall be awarded all reasonable costs, fees and expenses incurred by it in such action, including all reasonable attorneys' fees that it may incur and all costs and fees incurred in collection and appeal.



**Section 8.9. Reconciliation.** In the event of any conflict between these Covenants and the Plat, these Covenants control and prevail.

## **ARTICLE 9: Rights Reserved to Declarant**

**Section 9.1. Expansion Property.** Declarant, for a period of time set forth in section 9.2 of these Covenants, expressly reserves for Declarant or Declarant's representatives, successors and assigns, the right to expand The Peaks at Snowmass common interest community project by adding or constructing up to 10 additional townhome units or lots, which shall be new Lots, in up to 5 additional buildings on the Expansion Property. When added to the subdivision, any Expansion Property so added will be treated as "Property" under these Covenants. Such expansion shall be accomplished by Declarant filing for recording in the office of the Clerk and Recorder of Gunnison County, Colorado, a supplemental plat and supplemental declaration for each building containing such information with respect to each building as the Town of Mt. Crested Butte, Colorado requires. The definitions and provisions in these Covenants shall automatically be expanded to encompass and refer to the project as so expanded. Each additional townhome unit or lot and the land upon which it is located shall be subject to all the terms and conditions of these Covenants as new Lots with all the incidents pertaining thereto as specified herein, upon the recording of each supplemental plat and supplemental declaration in the office of the Clerk and Recorder of Gunnison County, Colorado. Upon recording any such supplemental declaration and supplemental plat adding new Lots, the voting and common expense allocations in the Association shall be amended as set forth in such supplemental declaration. The real property comprising the Expansion Property shall not be deemed to be part of The Peaks at Snowmass, is owned in fee simple by the Declarant, and may be conveyed free and clear of these Covenants until such time as Declarant records a supplemental plat and supplemental declaration for such real property adding the same to The Peaks at Snowmass. The Expansion Property is not at this time a Common Element. Until added by Declarant's supplement plat and supplemental declaration is added, the Expansion Property is not part of The Peaks at Snowmass.

**Section 9.2. Reservation of Rights.** The Declarant specifically reserves the right to exercise in any order all development rights and special declarant rights as set forth in CCIOA and these Covenants for the maximum time limit allowed by law or May 1, 2053, whichever occurs first, including without limitation, the following:

9.2.1 Declarant shall be entitled to appoint and remove the members of the Association's executive board and officers of the Association during the term of Declarant Control. "Declarant Control" begins with the appointment of the initial executive board. The period of Declarant Control shall terminate at the earlier of the time period set forth in section 9.2 above or upon termination of Declarant Control as set forth in the Act, whichever occurs first.

9.2.2 The right to complete or make any improvements as set forth on the Plats, or as required by the Town of Mt. Crested Butte, Colorado, including all Townhomes.

9.2.3 The right to maintain signs to advertise the project.



9.2.4 The right to dedicate a future public or private easement as shown on the Plats and to utilize all easements reserved in these Covenants.

9.2.5 The right to construct the project in phases.

9.2.6 The right to maintain a sales office in the project.

9.2.7 The right, without consent of any Owner or mortgagee or lienholder being required, at any time and from time to time to: (a) complete improvements indicated on the Plats, (b) maintain and relocate sales offices, management offices, signs advertising the project and models, of any size within one or more Lots, (c) amend the Plats to (i) ensure that the language and all particulars that are used on the Plats and contained in these Covenants are consistent; (ii) establish and relocate utility easements, access easements, and parking spaces; (iii) to amend the Plats and these Covenants to correct typographical, clerical, technical and other scrivener's errors; (iv) to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the department of housing and urban development, the federal housing administration, the veterans administration, the federal home loan mortgage corporation, the government national mortgage association, or the federal national mortgage association; and (v) as may be otherwise permitted by the Act; and (d) to exercise any other Declarant rights or development rights provided for herein.

9.2.8 The right to use the statutory easement(s) through the common elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising special declarant rights as provided in C.R.S. § 38-33.3-216(1).

9.2.9 The right to use common areas, including the general common elements, during construction of the Townhomes.

9.2.10 The right to expand the project, add new units, lots and townhomes, and record supplemental plats, as provided herein.

9.2.11 The right to amend these Covenants and Plats, as provided herein and as otherwise may be permitted by CCIOA.

9.2.12 The fact that Declarant may exercise one or more of Declarant's development rights or other special declarant rights on one portion of the Property will not operate to require Declarant to exercise a development right or other special declarant right with respect to any other portion of the Property.

9.2.13 Declarant reserves the right to unilaterally amend these Covenants and any Plat in connection with the exercise of any development rights or any other special declarant rights to the extent permitted by CCIOA, including to record one or more supplemental declarations and supplemental plats to add new units and lots as set forth in this Article 9.



9.2.14 Notwithstanding any other provision of the Covenants, all development rights and other special declarant rights reserved under these Covenants to the Declarant apply to not only the Property, but also to the Expansion Property.

9.2.15 Notwithstanding any other provision of these Covenants: (i) Declarant may exercise its development rights with respect to all or any portion of the Expansion Property at different times, including without limitation the right to add new units, including new lots and townhomes that will become Lots and Townhomes; (ii) no assurances are made with respect to which portions, if any, of the Expansion Property will be the subject of Declarant's exercise of its development rights; (iii) no assurances are made with respect to the order in which those portions, if any, of the Expansion Property will be the subject of Declarant's exercise of its development rights; and (iv) if any development right is exercised in any portion of the Expansion Property, that development right need not, but may, be exercised in all or any other portion of the remainder of the Expansion Property.

9.2.16 The right to amend these Covenants and the Plat to create new Lots, new Townhomes, and new Common Elements and new Limited Common Elements for the Expansion Property.

9.2.17 The right to construct and install utility lines and other utility infrastructure for the purpose of furnishing utility and other services, including access, to Buildings, including future Buildings, Lots and Townhomes.

9.2.18 The right to dedicate and use the Right of Way for ingress, egress, and utilities for future Lots, tracts and other parcels on the Lot E Remainder Parcel.

9.2.19 Those rights reserved in Section 9.1 of these Covenants.

IN WITNESS WHEREOF, Declarant has executed these Covenants as of the 16<sup>th</sup> day of July, 2024.

159 Developers, LLC,  
a Colorado limited liability company

By: *William J. Lacy, Jr.*  
William J. Lacy, Jr., Manager

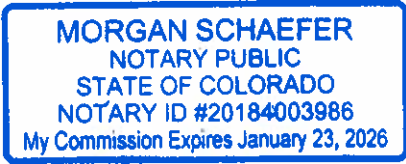
STATE OF COLORADO )  
  ) ss.  
COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of July, 2024, by William J. Lacy, Jr. as Manager of 159 Developers, LLC, a Colorado limited liability company. Witness my hand and official seal.

My commission expires: Jan 23, 2026



Notary Public



**[SIGNATURES CONTINUE ON FOLLOWING PAGE]**

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Page 15 of 16  
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159 Developers, LLC,  
a Colorado limited liability company

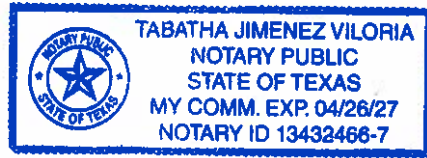
By: Neal Daniel Dow  
Neal Daniel Dow, Manager

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF GUNNISON    )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of July, 2024, by Neal Daniel Dow as Manager of 159 Developers, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 04/26/27.

Tabatha Jimenez Vioria  
Notary Public



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