

**SECOND AMENDED AND RESTATED  
INNSBROOK PROTECTIVE COVENANTS**

**THE INNSBROOK OWNERS' ASSOCIATION, INC.,**  
a Virginia nonstock corporation

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**SECOND AMENDED AND RESTATED  
INNSBROOK PROTECTIVE COVENANTS**

**THESE SECOND AMENDED AND RESTATED INNSBROOK PROTECTIVE COVENANTS** (this “**Declaration**”) are made as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by **THE INNSBROOK OWNERS’ ASSOCIATION, INC.**, a Virginia nonstock corporation (hereinafter referred to as “**Association**”) (Grantor and Grantee for indexing purposes).

**RECITALS**

**R-1.** By the Innsbrook Protective Covenants dated September 25, 1981, recorded in the Clerk’s Office for the Circuit Court of Henrico County, Virginia (the “**Clerk’s Office**”) in Deed Book 1841, at Page 1106 (as amended and supplemented from time to time, the “**Original Declaration**”), Innsbrook Corporation subjected certain property located in the County of Henrico, Virginia, known as “Innsbrook Corporate Center” or “Innsbrook,” as more particularly described therein, to the terms and provisions of the Declaration, and such additional property annexed thereto pursuant to the provisions therein.

**R-2.** By the Assignment of Development and Declarant’s Rights dated December 27, 1999, recorded in the Clerk’s Office on February 22, 2000, in Deed Book 2981, at Page 1244, Innsbrook Corporation assigned, among other things, the declarant’s rights reserved under the Original Declaration, to Innsbrook North Associates. Subsequently Innsbrook Corporation terminated its corporate existence.

**R-3.** By the Assignment of Development and Declarant's Rights dated December 22, 2008, recorded in the Clerk's Office on February 12, 2009, in Deed Book 4603, at Page 2336, Innsbrook North Associates assigned, among other things, the declarant's rights under the Original Declaration, to Sidney J. Gunst, Jr. ("Gunst"). Subsequently Innsbrook North Associates terminated its existence.

**R-4.** By the Assignment of Development and Declarant's Rights dated January 4, 2009, recorded in the Clerk's Office on February 12, 2009, in Deed Book 4603, at Page 2346 (the "2009 Assignment"), Gunst assigned, among other things, the declarant's rights under the Original Declaration, to the Association. The 2009 Assignment delegated the right to exercise certain of the assigned declarant's rights (the "**Delegated Rights**") to the Association's Architectural Review Committee (the "**ARC**").

**R-5.** Among other amendments, the Original Declaration was amended and restated pursuant to the Amended and Restated Innsbrook Protective Covenants dated May 12, 2011, recorded in the Clerk's Office in Deed Book 4875, at Page 149 (as amended from time to time, the "**Current Declaration**").

**R-6.** Section 7.02 of the Current Declaration provides that the Current Declaration may be terminated, extended, modified, or amended, with the written consent of the Owners of at least fifty-one percent of the property encumbered by the Current Declaration, as more specifically set forth therein.

**R-7.** Pursuant to Section 7.02 of the Current Declaration, the Association hereby amends the Current Declaration and replaces the Current Declaration in its entirety with the written consent of the requisite majority of Owners, as evidenced by the written consents attached hereto as **Exhibit B** and certified in the Certification of the Association President attached hereto.

**R-8.** The Association desires to amend and restate the Current Declaration with these Second Amended and Restated Innsbrook Protective Covenants as more specifically set forth herein, and the ARC evidences its consent to same as evidenced by the signatures of ARC authorized representatives attached hereto.

## **ARTICLE I**

### **GENERAL PROVISIONS**

**1.01 Establishment of Covenants.** The Association, with the requisite approval of the Owners as set forth in Section 7.02 of the Current Declaration as evidenced by the written consents attached hereto as **Exhibit B** and made a part hereof, and the consent of the ARC, hereby amends and restates the Current Declaration in its entirety, and declares that the Property which is subject to the Current Declaration as described in **Exhibit A** attached hereto and made a part hereof, and the Improvements located or to be located thereon, shall hereafter be held, transferred, sold, leased, conveyed, and occupied subject to the covenants, easements, restrictions, and conditions set forth in these Second Amended and Restated Innsbrook Protective Covenants (as amended, this “**Declaration**”), which shall replace and supersede the Current Declaration in its entirety, and which shall run with the real property and be binding on all parties having any right, title or interest in the Property, or any part thereof, their heirs, assignees, and successors in interest, and shall inure to the benefit of each Owner thereof.

**1.02 Purpose of Declaration.** The general purpose of this Declaration is to insure that the Property, and all additional land as shall be added thereto pursuant to Section 1.04, which together is and shall be known as “Innsbrook”, will be developed, improved, and used in such a manner that: Improvements located therein will provide a harmonious and appealing appearance and function; land uses and functions therein will be compatible and complimentary; and Owners of land therein will be protected against any use of other land located in Innsbrook which might

unreasonably depreciate or detract from the value and use of their land. The specific purpose of this Declaration is to ensure the Upkeep, operation, and preservation of the Property as a high-quality, mixed-use office, residential, industrial, and commercial center, with such other uses as are consistent with the Design and Development Guidelines and other standards adopted by the Board of Directors and as permitted by applicable zoning.

**1.03 Definitions.** Terms used in this Declaration shall have the meanings set forth below, and if not defined below, as otherwise defined in the Association Documents.

1) “**Act**” means the Virginia Nonstock Corporation Act, Chapter 10 of Title 13.1 of the Code of Virginia (1950), as amended from time to time.

2) “**Additional Assessment**” has the meaning set forth in Section 4.01.

3) “**Annual Assessment**” has the meaning set forth in Section 4.01.

4) “**Annual Capital Reserve Fund**” has the meaning set forth in Section 4.02.

5) “**Applicable Laws**” mean any and all laws, statutes, regulations, ordinances, administrative rulings, or lawful orders of government authorities with jurisdiction over the Property or any portion thereof, the Association, or any Owner, Subassociation, or Occupant hereunder.

6) “**ARC**” means the Architectural Review Committee appointed by the Board pursuant to Article V.

7) “**Articles of Incorporation**” mean the Articles of Incorporation of the Association, as amended from time to time.

8) “**Assessment**” or “**Assessments**” means the sums levied by the Association against Sites to pay Common Expenses and other expenditures of the Association, including

without limitation, Annual Assessments, Additional Assessments, and Individual Assessments as more particularly set forth in Article IV.

9)     **“Association”** means The Innsbrook Owners’ Association, Inc., a Virginia nonstock corporation, and its successors and assigns.

10)    **“Association Documents”** mean collectively, the Articles of Incorporation, this Declaration, all Supplementary Declarations, the Bylaws, the Design and Development Guidelines, and any Resolutions and Rules and Regulations, as amended from time to time. Any exhibit, schedule, certification, or amendment to an Association Document is an integral part of that document.

11)    **“Board”** or **“Board of Directors”** means the Association’s Board of Directors elected in accordance with this Declaration and the Articles of Incorporation.

12)    **“Bylaws”** mean the Bylaws of the Association, as amended from time to time.

13)    **“Clerk’s Office”** means the Clerk’s Office for the Circuit Court of the County.

14)    **“Common Area”** means any land, easement or license conveyed to the Association for the use of Owners or for which the Association is responsible for any Upkeep. Common Area shall not include Subassociation Common Area unless the context requires otherwise.

15)    **“Common Expenses”** mean all expenditures made or incurred by or on behalf of the Association in accordance with the Association Documents, together with all funds assessed by the Association for the creation and maintenance of reasonable reserves pursuant to

the provisions of the Association Documents. Except when the context clearly requires otherwise, any reference to Common Expenses includes Limited Common Expenses.

16) “**County**” means the County of Henrico, Virginia. All references to approval by the County mean approval by the appropriate agency or official of the County.

17) “**Current Declaration**” has the meaning set forth in the Recitals.

18) “**Declaration**” means these Second Amended and Restated Innsbrook Protective Covenants, as amended from time to time.

19) “**Delegated Rights**” has the meaning set forth in the Recitals.

20) “**Design and Development Guidelines**” means the Development Guidelines promulgated by the ARC and adopted by the Board from time-to-time pursuant to Section 5.03, as amended from time to time. The Design and Development Guidelines may differ for different types of Sites, Site uses, and different portions of the Property.

21) “**Endowment Fund**” has the meaning set forth in Section 10.01.

22) “**Endowment Fund Payment Schedule**” has the meaning set forth in Section 10.02.

23) “**Gunst**” has the meaning set forth in the Recitals.

24) “**Hazardous Materials**” mean any substance designated as a hazardous waste; hazardous substance; hazardous material; medical waste; special waste; radioactive material; pollutant; contaminant; toxic substance; pesticide; or other compound, element, or substance in any form designated with words of similar meaning and regulatory effect under any Applicable Laws; petroleum and petroleum products, derivatives, wastes, or additives; polychlorinated biphenyls; asbestos; and any other substance for which liability or standards of conduct may be imposed under Applicable Laws.

25) **“Improvements”** mean and include, but are not limited to, buildings, appurtenances, outbuildings, underground installations, slope alterations, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, windbreaks, plantings, planted trees and shrubs, poles, signs, utilities, water lines, sewer, electrical and gas distribution facilities, loading areas, and all other structures or landscaping improvements of every type and kind.

26) **“Individual Assessment”** has the meaning set forth in Section 4.01.

27) **“Limited Common Expenses”** mean Common Expenses benefiting one or more but less than all of the Owners, which shall be assessed against the Sites benefited pursuant to Section 4.02.

28) **“Member”** has the meaning set forth in Section 3.01.

29) **“New Development”** has the meaning set forth in Section 10.02.

30) **“Occupant”** means any Person who or which has purchased, leased, rented, or is otherwise legally entitled to occupy and use any Site or portion thereof.

31) **“Operating Budget”** has the meaning set forth in Section 4.02.

32) **“Original Declaration”** shall have the meaning set forth in the Recitals.

33) **“Owner”** means the record owner, whether one or more Persons, of fee simple title to any Site, or portion thereof, if developed under any form of common ownership, but excluding those Persons holding such interest merely as security for the performance of an obligation. Although the term “Owner” is sometimes used to refer to a Member of the Association, in the case of a Subassociation, individual Owners shall not be Members of the Association unless the applicable Supplemental Declaration provides otherwise. Multiple Owners of a single Site shall together be deemed one Owner of that Site for purposes of the Association Documents.

34) **“Person”** means any individual, corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, or any other entity or organization.

35) **“POA Act”** means the Virginia Property Owners’ Association Act, Chapter 18 of Title 55.1 of the Code of Virginia (1950), as amended from time to time.

36) **“Proffers”** mean any and all proffered conditions approved by the County which are applicable to all or any portion of the Property, and any amendments thereto, which are incorporated herein by reference hereto, subject to Section 13.06.

37) **“Property”** means the land described in **Exhibit A** attached hereto and made a part hereof; provided, however, that in the event that the Current Declaration encumbers land not described in **Exhibit A**, then the Current Declaration shall govern and such land shall be deemed to be part of the Property notwithstanding anything to the contrary contained in **Exhibit A**.

38) **“Residence Owner”** shall have the meaning set forth in Section 13.09.

39) **“Rules and Regulations”** mean the rules and regulations adopted by the Board of Directors pursuant to Section 3.10, as amended from time to time. The Rules and Regulations may differ for different types of Sites, Site uses, and different portions of the Property.

40) **“SIAD”** shall have the meaning set forth in Section 9.03.

41) **“SIE”** shall have the meaning set forth in Section 9.01.

42) **“SIE Board”** shall have the meaning set forth in Section 9.01.

43) **“SIE Budget”** shall have the meaning set forth in Section 9.02.

44) **“Site”** means any subdivided parcel of land under one ownership which is part of the Property (which shall include all of any parcel subjected to common use or common ownership by more than one Person), but shall not include any Common Area owned in fee simple

by the Association, any Street Right-of-Way, or other part of the Property at any time owned by any governmental entity for roads or other facilities related to development of any portion of the Property.

45) **“Street Right-of-Way”** means any right-of-way dedicated for use as a public road.

46) **“Subassociation”** means any property owners’ association or condominium unit owners’ association governing some but less than all of the Property pursuant to documents recorded in the Clerk’s Office.

47) **“Subassociation Common Area”** means the common area owned by a Subassociation and the common elements of a condominium governed by a Subassociation.

48) **“Supplementary Declaration”** or **“Supplemental Declaration”** means any amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

49) **“Upkeep”** means care, inspection, maintenance, clearing of snow and the treatment of ice, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement, and reconstruction.

**1.04 Additions of Territory.** The Board may at any time, and from time to time, add other territory which is contiguous to the Property upon the recording of a Supplemental Declaration in the Clerk’s Office, which Supplemental Declaration shall contain, at a minimum, the following: (i) a reference to this Declaration, which reference shall state the date of recording hereof and the book or books and page number or numbers in the Clerk’s Office where this Declaration is recorded; (ii) a statement that the provisions of this Declaration, except to the extent

otherwise provided therein, apply to the added territory; and (iii) the legal description of the added territory. This Declaration shall, except to the extent otherwise provided in the Supplemental Declaration, apply to the added territory in the same manner as if it were originally covered by this Declaration; and thereafter the rights, powers, and responsibilities of the Owners of any part of the Property (including the added territory) shall be the same as with respect to the original territory, and the rights, privileges, duties, and liabilities of the Owners of Sites within the added territory shall be the same as in the case of the Property.

**1.05 Use of New Technology.** Due to the ongoing development of new technologies and corresponding changes in business practices, to the extent permitted by Applicable Laws now or in the future: (i) any notice required to be sent or received; (ii) any signature, vote, consent or approval required to be obtained; (iii) the conduct of any meeting; or (iv) any payment required to be made under the Association Documents may be accomplished using the most advanced technology available at that time if such use is a generally accepted business practice. The use of technology in implementing the provisions of the Association Documents dealing with notices, payments, signatures, votes, consents, or approvals shall be governed by Section 55.1-1832 of the POA Act and any Rules and Regulations adopted by the Board as provided for herein. If any Owner or Subassociation does not have the capability or desire to conduct business using electronic or other technological means, the Association shall make reasonable accommodation, at its expense, for such Person to conduct business with the Association without use of such electronic or other means until such means has become generally (if not universally) accepted in the jurisdiction in which the Property is located.

**ARTICLE II**  
**PROTECTIVE COVENANTS; SITE MAINTENANCE**

**2.01   Permitted Uses.** The Property is a mixed-use development for general office, commercial, industrial, residential, and other permitted uses, and each and every portion of the Property may be occupied and used for any purposes for which such portion of the Property is zoned and designed and which are permitted under local zoning ordinances and the Design and Development Guidelines. No portion of the Property shall be used for any other purpose without the prior written approval of the Board of Directors. The Board's approval of other uses may be conditioned or withheld at the Board's discretion.

**2.02   Prohibited Uses.** The following uses and operations shall be prohibited on the Property:

1)     **No Unsafe Activities or Waste.** Nothing shall be done or kept on the Property which will increase the rate of insurance for the Common Area or any part thereof; including, without limitation, any activities which are unsafe or hazardous with respect to any Person or property, without the prior written consent of the Board of Directors. No Person shall permit anything to be done or kept on the Property which will result in the cancellation of any insurance on the Common Area or any part thereof or which would be in violation of any Applicable Laws. No waste will be committed on the Property.

2)     **Compliance with Laws.** No unlawful use shall be made of the Property or any part thereof, and all Applicable Laws shall be observed; provided, however, that the Association and the Board of Directors shall have the power, but not the obligation, to enforce such Applicable Laws, enforcement being the primary responsibility of government officials. All Applicable Laws shall be complied with, by and at the sole expense of the Owner, the Association,

or the Subassociation, as the case may be, and, if the Association, then the cost of such compliance shall be a Common Expense or Limited Common Expense, as appropriate.

3) Noise. No Person shall cause any noise, vibration, or sound that is objectionable because of its volume, duration, intermittent beat, frequency, or shrillness (except for security devices) anywhere on the Property, nor shall any Person permit or engage in any activity, practice, or behavior for the purpose of causing annoyance, discomfort, or disturbance to any Person lawfully present on any portion of the Property. This provision shall not be construed to forbid reasonable levels of noise associated with permissible activities, as determined by the Board from time to time, or any work involved in the construction or Upkeep of any portion of the Property so long as such work is undertaken and carried out: (i) with the minimum reasonably practical disturbance to Persons occupying other portions of the Property; (ii) in such a way as does not violate the rights of any Person under other provisions of this Declaration; and (iii) in accordance with all applicable restrictions in the Association Documents.

4) Hazardous Materials. There shall be no emissions of dust, smoke, sweepings, dirt, fly ash, cinders, odors, fumes or gases, or other substances into the atmosphere (other than normal residential chimney emissions); no production or storage of any Hazardous Materials; and no discharge of Hazardous Materials into the ground or any body of water. No waste nor any substance or materials of any kind shall be discharged into any public sewer serving the Property or any part thereof in violation of any Applicable Laws. No unusual fire or explosive hazards shall be permitted.

5) Obstructions. No Person shall obstruct any of the Common Area or otherwise impede the rightful access of any other Person to any portion of the Property upon which such Person has the right to be or place, or cause or permit anything to be placed, on or in any

portion of the Common Area except in the ordinary course of enjoyment of the Common Area, without the prior written approval of the Board of Directors. Nothing shall be altered, constructed in or on, or removed from the Common Area except with the prior written approval of the Board of Directors.

6) Miscellaneous. Any activity which creates a nuisance or is not harmonious with the intent of this Declaration, as reasonably determined by the Association or the Board, shall be prohibited.

**2.03 Additions to Sites.** No Owner of a Site may: (i) add to such Site any land which is not subject to this Declaration (or substantially equivalent protective covenants which are recorded in the Clerk's Office); or (ii) extend, create, or grant an easement for, or dedicate for public use, any right-of-way (for vehicular or pedestrian use) which provides ingress to and egress from the Site to and from any land not subject to this Declaration (or substantially equivalent protective covenants which are recorded in the Clerk's Office), without the prior written consent of the Board. It is the intent of this Section 2.03 to prohibit the use of any land not a part of Innsbrook for the addition to, enlargement of, or use in connection with the use of any Site, without the prior written consent of the Board.

**2.04 Future Common Area Improvements.** In the event that additional Improvements are proposed to be added to the Common Area, whether by Association or any other Person, the inclusion of such Improvements for maintenance by the Association shall be first subject to approval by the Board, such approval to be granted or withheld in the Board's sole discretion. If any such Improvements are approved by the Board, such Improvements, when complete, shall be turned over to the Association for Upkeep.

## **2.05 Site Maintenance.**

1) Sites. The Owner or Subassociation owning or governing a Site shall at all times keep the Site and Improvements located thereon in a safe and clean condition, properly dispose of waste and debris, and ensure the Site complies in all respects with all Applicable Laws and the Association Documents, as applicable. Each Owner or Subassociation owning or governing a Site shall remove any rubbish, debris, or waste of any character whatsoever which may accumulate on its Site or on any portion thereof. Trash storage and collection shall be in accordance with Applicable Laws and the Association Documents. Vacant Sites shall be kept free of weeds and underbrush and shall be mowed regularly so that the Site at all times presents a neat and attractive appearance. Where the property line of any Site or portion thereof abuts a Street Right-of-Way, the obligations imposed hereunder shall extend to the edge of the street pavement.

2) Improvements. No Improvement shall be permitted to fall into disrepair, and each Owner or Subassociation, as the case may be, is responsible for the Upkeep of all Improvements. Each Improvement shall at all times be kept in good condition and repair and be adequately painted or otherwise finished in accordance with Applicable Laws and the Association Documents, as applicable.

3) Landscaping. Every Site shall be landscaped according to plans approved by the ARC and as specified in the Design and Development Guidelines. The Owner or Subassociation owning or governing a Site or portion thereof shall at all times maintain the required landscaping in a sightly and well-kept condition, including, without limitation, such replanting and replacement as is from time-to-time required. The Owner or Subassociation, as the case may be, will provide hose bibs, underground lawn irrigation systems, and other appropriate

facilities as required by the Design and Development Guidelines and the ARC in the vicinity of the landscaped areas in order to facilitate their maintenance.

### **ARTICLE III** **ASSOCIATION; BOARD; COMMON AREA**

**3.01 Members.** Members of the Association shall at all times be, and be limited to, such Persons who constitute Owners of Sites; provided, however, that if an Owner owns a Site subject to a Subassociation, then such Owner is not a Member of the Association, unless the applicable Supplementary Declaration provides otherwise and the Board has provided its prior written approval. In such case, the Subassociation shall be the Member and shall act on all matters before it on behalf of the Owners of Sites subject to such Subassociation in accordance with Section 3.02. If more than one Person owns a Site, then all such Persons shall collectively constitute one Owner and be one Member of the Association, except in the case where the Site is subject to a Subassociation, as set forth above. Membership in the Association is mandatory and automatic with ownership of a Site. Each Person who is a Member of the Association is entitled to attend all open meetings of the Association.

**3.02 Subassociation Membership.** Subassociation Members shall cast their votes through a representative designated by and under the direction of the board of directors or the governing body of such Subassociation, as dictated by the Subassociation governing documents or condominium instruments, as the case may be. If the Subassociation governing document or condominium instruments do not so dictate or the board of directors or governing body of the Subassociation does not designate a representative, the representative shall be the president of the Subassociation. The Subassociation board of directors shall provide the Board of Directors with the name and contact information of its designated representative and shall notify the Board of Directors in writing of any change in its designated representative.

**3.03 Board of Directors.** The Board of Directors is responsible for the management, Upkeep, and operation of the Property and the administration of the Association as set forth in the Association Documents. Unless otherwise specifically provided in the Act, the POA Act, or the Association Documents, all rights, powers, easements, obligations, and duties of the Association shall be performed by the Board of Directors on behalf of the Association without the joinder or approval of any Person. The Board of Directors shall be elected in accordance with the Bylaws. Directors shall serve one-year terms and shall not be subject to term limits.

**3.04 Voting.** Each Member shall be entitled to one vote for each acre of land, or fraction of an acre equal to one-half acre or more, contained within the applicable Site, in the election of directors to the Board and in all other matters on which the Members are entitled to act, except as may be otherwise provided herein. Notwithstanding anything to the contrary contained herein, in the event land is subject to a Subassociation, the calculation of acreage as set forth in this Section 3.04 shall include all such land subject to the Subassociation, including without limitation any Subassociation Common Area, and not just the Sites located within.

**3.05 Association Maintenance.** The Association shall, except as otherwise provided in the Association Documents or other instrument creating the obligation or as a matter of law, at its expense, perform Upkeep to the Common Areas, including without limitation easements, so designated on plats that have been recorded in the Clerk's Office and any such plats that may be recorded in the Clerk's Office in the future; median strips in public roads; buffer strips; jogging trails; lakes; medians (or islands) in the roads and at entrance to the Property; signs identifying Innsbrook, and all decorative structures and other amenities located in medians or Common Areas.

**3.06 Common Areas and Easements, Ownership.** The Association acknowledges and agrees that all Common Areas and easements, if any, previously provided by the Innsbrook

Corporation and/or Innsbrook North Associates have been, and will continue to be maintained by the Association as provided herein, except for Subassociation Common Areas which shall be the responsibility of each Subassociation.

**3.07    Liens on Common Area.** Within thirty days after the receipt of notice thereof, each Owner and Subassociation shall, either by payment of bond or otherwise, cause any mechanic's, materialmen's, or other lien affecting any portion of the Common Area located within such Owner's Site or the Subassociation Common Area, as the case may be, and arising by reason of any work or materials ordered by the Owner or Subassociation or any action taken by the Owner or Subassociation to be discharged of record. To the extent the Association performs work in the Common Area located within a Site or Subassociation Common Area, the Association shall indemnify the Owner of such Site, or the Subassociation in the case of Subassociation Common Area, against all materialmen's or mechanic's liens resulting from such work.

**3.08    Pledge of Revenue.** The Board of Directors shall have the right and power to assign and pledge revenues to be received by the Association including but not limited to Annual Assessments and Additional Assessments in order to secure the repayment of sums borrowed by the Association. Any such assignment and pledge shall be subject to the same limitations as may be imposed with respect to Assessments themselves, to the extent applicable.

**3.09    Committees.** The Board of Directors may appoint from time to time any one or more committees to perform any or all functions and exercise any or all rights of the Board under the Association Documents as the Board deems fit and as appropriate and in accordance with the Bylaws. In appointing any committee, the Board shall ensure that appropriate representation on such committee of the different types of Sites is established to the extent such representation is warranted.

### **3.10 Rules and Regulations and Design and Development Guidelines.**

1) Adoption; Variances. The Board of Directors shall have the power to adopt, amend, and repeal Rules and Regulations restricting and regulating the use, enjoyment, and occupancy of all or any portion of the Property or governing any other business of the Association – including, but not limited to, the charging or assessment of certain fees or interest, the conduct of virtual meetings, and the processes and procedures governing the conduct of meetings – which may supplement, but may not be inconsistent with, the provisions of this Declaration. The Board of Directors shall also have the ability to adopt Design and Development Guidelines promulgated and proposed by the ARC as set forth herein. The Board of Directors may issue temporary or permanent exceptions or variances to any prohibitions set forth in the Rules and Regulations and Design and Development Guidelines, for good cause shown.

2) Distribution. Copies of the Association Documents and amendments thereto shall be made available by the Board of Directors to each Owner, Subassociation, and to each Occupant requesting the same, all of which shall further be published on the Association website or portal or by other means which makes same available to the foregoing.

3) Limitations. The Rules and Regulations and Design and Development Guidelines shall not unreasonably interfere with the development, use, operation, or enjoyment of the Property as ordinarily intended by those entitled and will be enforced in a non-discriminatory manner against all applicable Owners.

### **3.11 Disclaimer of Liability.**

1) Bailee. The Board of Directors, the Association, and any Owner shall not be considered a bailee of any personal property stored or placed on the Common Area (including property located in vehicles parked on the Common Area), whether or not

exclusive possession of the particular area is given to an Owner for parking or otherwise, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

2) **Operational.** The Association shall not be liable for any of the following: (i) failure of water supply or utility service or other services which are to be obtained by the Association or paid for as a Common Expense; (ii) personal injury or property damage caused by the elements or by any Owner, or any other Person, or resulting from electricity, water, snow, or ice which may leak or flow from or over any portion of the Property or from any pipe, drain, conduit, appliance, or equipment; or (iii) any secondary or consequential damages of any type. No diminution, offset or abatement of any Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property by the Association or from any action taken by the Association to comply with any law, statute, regulation, ordinance or order or directive of any governmental authority. This Section is not intended nor shall it be construed to relieve any insurer of its contractual obligations under any policy benefiting the Association or an Owner.

#### **ARTICLE IV** **ASSESSMENTS**

**4.01 Generally.** Funds to, among other things, operate, administer, and manage the Association and perform the Upkeep of the Common Area, will be provided by assessment of the Members as provided for herein and in the POA Act. Such Assessments may be annual assessments (“**Annual Assessments**,” or each an “**Annual Assessment**”), individual assessments (“**Individual Assessments**,” or each an “**Individual Assessment**”), as provided for herein, or such

additional, special, maintenance, or other Assessments as are permitted herein or as otherwise permitted by the POA Act (collectively, “**Additional Assessments**,” or each an “**Additional Assessment**”).

**4.02 Operating Budget.** Before the beginning of each fiscal year, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount considered necessary for the ensuing fiscal year to pay the cost of the operation, administration, and management of the Association and the Upkeep of the Common Area and, to the extent provided in the Association Documents, Upkeep of the Sites or Subassociation Common Area, and other expenses that may be declared to be Common Expenses by the Association Documents or by action of the Board of Directors, including, without limitation, services provided to certain Owners, Subassociations, Sites, Common Area, or Subassociation Common Area (the “**Operating Budget**”). The Operating Budget also shall include an annual capital reserve fund for such reasonable amounts as the Board of Directors considers necessary to provide working capital (available cash for day-to-day expenses which is otherwise uncommitted), a general operating reserve (including an amount to cover operating losses due to insurance deductibles), and reserves for contingencies (potential costs or liabilities which have not been incurred but which should be planned for), and reserves for replacements, subject to the provisions hereof (collectively, the “**Annual Capital Reserve Fund**”). Before the beginning of each fiscal year, the Board of Directors shall make available a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and shall make such budget available to each Owner or Subassociation, as the case may be. Such budget shall constitute the basis for determining the Annual Assessment against each Site. The budget shall also reflect the separate assessment of Limited Common Expenses, including, without limitation, certain expenses (and reserves) relating

to or benefiting one or more but less than all of the Sites, whether categorized by location, type of expense, provided service, or otherwise. Such expenses shall be assessed as Limited Common Expenses only against the Sites benefited.

**4.03 Annual Assessments.** The Board of Directors shall levy Annual Assessments against Sites for each fiscal year based upon the Operating Budget, and each Owner shall thereupon become liable for its pro rata share of such total based upon the ratio of the number of acres within a Site owned by such Owner to the total number of acres of all Sites owned by all Owners (all to the nearest tenth of an acre), which shall be payable as determined by the Board of Directors. For this purpose, Common Areas, including easements, so designated on recorded plats and Street Rights-of-Way recorded in the Clerk's Office shall not be deemed owned by any Owner. Notwithstanding anything to the contrary contained herein, in the event land is subject to a Subassociation, the calculation of acreage as set forth in this Section 4.03 shall include all such land, including without limitation any Subassociation Common Area, and not just the Sites located within.

**4.04 Additional Assessments.** In addition to all other Assessments authorized in this Declaration, if additional funds are required during any fiscal year, the Board of Directors may levy Additional Assessments against Sites, and each Owner shall be liable for its pro rata share of such total based upon the ratio of the number of acres within a Site owned by such Owner to the total number of acres of all Sites owned by all Owners (all to the nearest tenth of an acre). The Board of Directors shall give written notice of any such Additional Assessment to the Owners and Subassociations, as the case may be, specifying the amount and reason therefor, and such Additional Assessment shall, unless otherwise specified in the notice, be payable in full with the

next periodic installment which is due more than ten days after the date of such notice or in equal period installments as the Board may determine.

**4.05 Individual Assessments.** Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors shall assess an Owner's Site individually: (i) for the amount of any costs incurred by the Association in performing Upkeep that the Owner failed to perform as provided in Section 2.05; (ii) for any costs incurred by the Association in accordance with Article VII; and (iii) for the amount of any costs that are the responsibility of the Owner pursuant to Article X. Each such Individual Assessment shall be due ten days after written notice thereof is given to the Owner unless the notice specifies a later date.

**4.06 Additional Services to Owners and Subassociations.** The Association may, in the sole discretion of the Board of Directors, provide additional services to Owners and to any Subassociation on a contractual basis at the request of authorized Persons. The charges for such services shall be assessed against such Owners' Sites or charged to the Subassociation pursuant to the contract for such additional services.

**4.07 Installment Payments and Due Dates.** On or before the first day of each fiscal year, and the first day of each succeeding payment period in such fiscal year, each Owner shall pay to such Person, at such place or in such manner as the Board of Directors may direct, that installment of the Annual Assessment or such Additional Assessment as is due during such period. The Board of Directors shall establish one or more payment periods and the due dates for each such payment in each fiscal year; provided, however, that payments shall be due not less than quarterly nor more frequently than monthly unless specifically provided otherwise herein. All Assessments and other sums, regardless of the source, collected by the Board of Directors may be commingled into a single fund.

**4.08 Subassociation Assessments.** With respect to any Assessments provided for herein which are payable by Owners of Sites which are subject to a Subassociation, unless the Board of Directors determines otherwise, the Board of Directors shall collect Assessments directly from the Subassociation. In such event, payment of such Assessments shall be an obligation of such Subassociation, but each Owner shall remain personally liable for the Assessment against such Owner's Site and each such Site shall remain subject to a lien for Assessments; provided, however, that upon an Owner's payment of that portion of an Assessment that is attributable to such Owner's Site to the applicable Subassociation, such Site, upon the Association's receipt of reasonable proof of such payment, shall not be subject to further lien or remedies for such Assessment by the Association or the Subassociation. Subassociations shall make all commercially reasonable efforts to collect Assessments from the respective Owners and shall, upon request from the Association, provide all requested documentation evidencing each Owner's payment of the same. If Assessments are collected from such Subassociation, then all notices regarding Assessments against such Sites shall be sent to such Subassociation, but notices of any intention to lien an Owner's Site shall also be sent to the Owner of the Site with a copy to the Subassociation. This Section shall not limit or waive any of the Association's remedies for non-payment of Assessments.

**4.09 Unpaid Assessments.** The Association shall take commercially reasonable efforts to collect Assessments in the Board's reasonable discretion. Any Assessment, or installment thereof, not paid within thirty days after the due date shall be delinquent and shall accrue a late charge in such amounts as may be established from time-to-time by the Board of Directors. Late charges may differ depending upon the type of Site. Any Assessments levied by the Association which are not paid by an Owner or Subassociation within thirty days from the date of invoice and

which the Owner or Subassociation fails to correct following ten days' written notice from the Board, shall bear interest at a rate per annum as determined by the Board of Directors from time-to-time in a Resolution or as provided in the Bylaws, from such date until paid, and shall, to the fullest extent permitted by law, constitute a lien upon the Site owned by such Member or each such Owner within a Subassociation. Such lien shall have priority over all other liens, including without limitations mortgages, deeds of trust, or any other lien hereafter placed upon any Site, except a first mortgage or deed of trust securing a loan by a bona fide institutional lender, to which such lien shall be subordinate. The lien for Assessments may be enforced and foreclosed in any manner permitted by Applicable Laws. The Association, through its duly authorized agents, shall have the power to bid on the lien property at any foreclosure sale, and to acquire, lease, mortgage, and convey the same. The amount of any such lien may be enforced by suit or otherwise, at the election of the Board, and the Owner will reimburse the Association for all reasonable attorney's fees and expenses incurred in so doing, the amount of which shall also constitute a lien on the Site as herein provided.

**4.10 Enforcement Against Subassociations.** If a Subassociation fails to pay in full any Assessment or charge due to the Association from such Subassociation within thirty days after the date when due, in addition to any remedies available to the Association against the Owner or the Subassociation under the Association Documents or as a matter of law, the Association may directly enforce any Assessments or charges due from the non-compliant Owner subject to such Subassociation and notify such Owner that all Assessments or other charges shall be paid directly to the Association until such Owner is notified otherwise. The Association may then retain such portion of the sums collected to satisfy the amount due from the Subassociation and shall remit any sums collected in excess of Assessments or charges due to such Subassociation.

**4.11 Acceleration.** If an Assessment against an Owner or Subassociation is payable in installments, upon a default by such Owner or Subassociation in the timely payment of any two consecutive installments, the maturity of the remaining total of the unpaid installments of such Assessment may be accelerated, at the option of the Board of Directors, and the entire balance of the Assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Owner or Subassociation, as the case may be. If an Owner or Subassociation is delinquent in payment of Assessments for a prior fiscal year, then the entire Assessment (otherwise payable in installments) shall be due and payable in full when assessed, upon receipt of notice of such Assessment by the defaulting Owner or Subassociation.

**4.12 Effect of Failure to Prepare or Adopt Budget.** Any failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's or Subassociation's obligation to pay the allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Owner or Subassociation shall continue to pay Assessments at the rate established for the previous fiscal year until notified of the new payment which is due on the first day of the next payment period which begins more than ten days after such new annual or adjusted budget is adopted and the Owner or Subassociation receives such notice.

**4.13 Owner Liability.** Each Owner of a Site, by acceptance of a deed therefor (whether or not so stated in any such deed or other conveyance instrument), covenants and agrees to pay to the Association all Common Expenses, including Limited Common Expenses and other charges assessed by the Board of Directors pursuant to the provisions of this Declaration. Each Owner shall be personally liable for all Assessments against such Owner's Site. No Owner may be

exempted from liability for the assessment for Common Expenses by reason of waiver of the use or enjoyment of any of the Common Area or by abandonment of the Site. No Owner shall be liable for the payment of any part of the Common Expenses assessed against the Site subsequent to the date of recordation of a conveyance by such Owner in fee of such Site. Prior to or at the time of any such conveyance, all liens, unpaid charges, and Assessments shall be paid in full and discharged. The purchaser of a Site shall be jointly and severally liable with the selling Owner for all unpaid Assessments against the latter. The Site also shall remain subject to a lien for the amount owed to the Association in accordance with this Section until such amount has been paid.

**4.14 Exemptions.** The following portions of the Property shall be exempt from the Assessments created herein:

- 1) Common Area owned in fee simple by the Association; and
- 2) Subassociation Common Area; provided, however, that notwithstanding anything to the contrary contained in this Declaration, Subassociation Common Area shall be included in the calculation of the acreage of any Site subject to a Subassociation.

## **ARTICLE V**

### **ARCHITECTURAL REVIEW COMMITTEE**

**5.01 Composition and Authority.** The ARC shall consist of five members. At least three of the five ARC members shall be Owners, and if such Owners are not individuals, their authorized representatives. Any member of the ARC who is not an Owner must be qualified with architectural, development, or other real estate experience appropriate to the affairs of the ARC, as reasonably adjudged by the Board.

**5.02 Appointment.** ARC members shall be appointed by the Board annually in its meeting following the annual meeting of the Association. The Board shall vote on each ARC member individually and each nominee shall require a vote of two-thirds of the Board to be

appointed to the ARC. ARC members shall serve one-year terms and shall not be subject to term limits.

**5.03 Responsibilities of the ARC.** The ARC shall be responsible for promulgating Design and Development Guidelines for the Property, which Design and Development Guidelines shall be subject to approval by the Board by a two-thirds majority. The Design and Development Guidelines shall govern the external appearance, design, development, redevelopment, construction, and alteration of all Improvements and Sites within Innsbrook. The ARC shall be responsible for reviewing and approving or disapproving all applications, plans, and specifications for Improvements and Sites, including proposals for rezoning or subdivision of any Site, as set forth herein.

**5.04 Fees.** The Board of Directors and ARC may charge reasonable fees for the processing and review of any applications, including, but not limited to, review of any plans and specifications by a professional architect or engineer, as appropriate, and for any inspections which may be necessary in considering applications or ensuring compliance, such fees being the responsibility of the Owner or Subassociation applicant, as the case may be. The Association shall pay all ordinary and necessary expenses of the ARC (except for such reasonable fees the ARC may charge as permitted herein, which shall be the responsibility of the applicant), which shall be a Common Expense.

**5.05 Retention of Third-Party Consultants.** The ARC shall have the ability to retain third-party consultants as necessary to perform its obligations hereunder. Such authority shall include the right to retain architects, engineers, or other consultants to review and advise the ARC regarding applications and plans and specifications provided in connection therewith. Each Owner

or Subassociation shall be responsible for all expenses associated with such services and shall reimburse the Board for such expenses upon demand.

**5.06 Delegated Rights.** The Delegated Rights of the ARC as set forth in the 2009 Assignment shall hereby revert to the Board. The ARC, as a committee of the Board, shall exercise the rights permitted of it as set forth herein, at the Board's discretion.

**5.07 ARC Voting.** In approving or disapproving any applications, each member of the ARC shall have one vote, and a vote of at least three members of the ARC shall be required for all approvals. Any member of the ARC having a conflict of interest, as reasonably determined by the ARC, with respect to any vote shall disclose the conflict and recuse themselves from the vote. For purposes of this Section, a conflict of interest shall mean any transaction in which the ARC member stands to acquire any personal advantage or profit or such other conflict as is recognized under the Act. In the event that the ARC is unable to reach a decision by a majority vote on a matter, then the ARC will immediately notify the Board, and the decision shall proceed to the Board for a two-thirds vote of the Board at the next Board meeting, or at a special meeting of the Board convened pursuant to the Association Documents and the POA Act.

**5.08 No Right of Appeal.** Decisions of the ARC, or those made by the Board as set forth in Section 5.07, shall be final and not subject to appeal. Notwithstanding the foregoing, the Board shall have the right, but not the obligation, to overturn any ARC decision with a two-thirds Board vote.

**5.09 Approvals; Disapprovals.** Any approval or disapproval of an application by the ARC pursuant to this Article V must be submitted to the Owner or Subassociation, as the case may be, in writing, and the ARC shall provide a copy of same to the Board of Directors. In denying any

application, the ARC will specify the reasons for such denial and may provide suggestions for alterations to such plans and specifications that may satisfy the ARC standards.

#### **5.10 Submission Process and Approval of Plans.**

1) Plans Submission. Before submitting an application to the County for any rezoning or before commencing the construction or exterior alteration of any buildings, enclosures, fences, signage, loading docks, parking facilities, storage yards, storage tanks, landscaping or any other structures or Improvements on or to any Site or Subassociation Common Area or portions thereof, the Owner of every such Site or portion thereof or Subassociation of the Subassociation Common Area, as the case may be, shall first submit four sets of plans, specifications, and landscape plans to the ARC for its written approval, as hereinafter provided. One such copy of said plans, specifications, and landscape plans will become the sole property of the ARC.

2) Requirements. No Improvements shall be erected, placed, or altered on any Site or part thereof until plans and specifications evidencing compliance with requirements of the Design and Development Guidelines and showing, at a minimum, plot layout and all exterior elevations, with materials and colors therefore and structural design, signs, and landscaping, shall have been submitted to and approved in writing by the ARC. Such plans and specifications shall be submitted in writing with the signature of the Owner of the Site or part thereof, or the Owner's authorized agent, and shall be accompanied by the request of such Owner or agent specifying for which part of such plans and specifications approval is sought. Nothing herein shall be construed to require the submission of plans for the alteration of the interior of an existing building, or approval thereof, unless any planned interior alteration will substantially change the primary use of the Improvements.

3) Design and Development Guidelines. Approval shall be based upon compliance with the Design and Development Guidelines, including, among other things, adequacy of Site dimensions; storm drainage considerations; conformity and harmony of external design with neighboring structures, Improvements, operations, and uses; relation of topography, grade, and finished ground elevation of the Site being improved to that of neighboring Sites; proper facing of main elevation with respect to nearby streets; general guidelines as established by the Board from time to time; the Proffers; and conformity of the plans and specifications to the use, purpose, and general plan and intent of this Declaration. In the case of a rezoning, approval shall be based upon the application's adherence with the general intent of this Declaration and the Design and Development Guidelines, as reasonably determined by the ARC, and compliance with all applicable zoning ordinances and other Applicable Laws.

4) Time for Approval. If the ARC fails either to approve or to disapprove such plans and specifications within thirty days after the same have been received by the ARC, then the applicant may submit a second request for approval to the ARC. Following the applicant's second request, if the ARC fails to either approve or disapprove the application within fifteen days of the ARC's receipt of same, the Owner or Subassociation, as the case may be, may apply to the Board for approval. In such event, the applicant will provide the Board with such documentation substantiating its request as reasonably requested by the Board. The Board will take the matter up at its next regularly scheduled meeting that is at least thirty days after the Board's receipt of the request, or in a special meeting convened for the purpose of considering the application, such decision to be made by a two-thirds vote of the Board.

5) Rezoning Applications. If the ARC or Board approves a rezoning application, the Owner or Subassociation may submit the zoning application to the County for

approval; provided, however, that any material modification, amendment to, or conditions to the zoning application must be approved by the ARC or Board in the manner set forth herein. At the request of the Owner or Subassociation, the Association shall provide a written certificate confirming approval by the ARC of the zoning application.

6) Plan of Development Approval. If all or any portion of a Site has been Rezoned as approved by the ARC in accordance with the procedures set forth in Section 5.10(5) above, and if the Owner desires to develop the Site, the Owner shall first submit four complete copies of the proposed plan of development to the ARC, with a request in writing for approval by the ARC, prior to submitting the plan of development application to the County. The ARC shall review the plan of development in accordance with the requirements hereof and of the Design and Development Guidelines and the County's land use plan. If the ARC has approved a plan of development, the Owner may thereafter submit the plan of development to the County for its approval; provided, however, if there are any material modifications or amendments to such plan of development required in order to obtain approval by the County, such material modifications or amendments must be approved by the ARC in accordance with the procedures set forth herein prior to commencement of any construction on the Site. Upon the Owner's request, if the ARC has approved a plan of development, the Association shall deliver a certificate to the Owner confirming such approval.

**5.11 Site Variation.** Because the size and topography of each Site is different, the required set-back from front, side, and rear lot lines of a Site shall, subject to Applicable Laws and the Proffers, be determined and stated by the ARC for each Site, based upon the proposed use, layout of Improvements, the location and amount of parking, landscaping, the shape and size of

the Site, aesthetics, the use and layout of other Sites in the vicinity, and such other considerations as are deemed relevant by the ARC and the Board.

**5.12 Subdivision.** No Site shall be subdivided and no dedication of any part of a Site for public or private right-of-way shall be made without the prior written consent of the ARC, unless otherwise permitted in the Design and Development Guidelines. Any Site which is subdivided and which contains or will contain residential dwellings is required to be governed by a Subassociation.

**5.13 Exceptions.** The ARC may grant exceptions to any requirements of the Design and Development Guidelines so long as such exceptions materially and substantially comply with the intent of the Design and Development Guidelines – any other deviations must be approved by the Board by a two-thirds vote. Such exceptions shall be granted by the ARC or the Board, as the case may be, only when, in their reasonable opinion, the exception will not violate the general intent or purpose of this Declaration. Every exception granted by the ARC or the Board shall be made in writing. The granting of any exception with respect to any Site or part thereof shall not be deemed an amendment of this Declaration, shall not entitle any other Owner or Occupant to similar rights or privileges in the absence of a specifically granted exemption, and shall create no negative reciprocal easements in favor of any other party.

**5.14 Limitation of Association's, Board's, and the ARC's Liability.** Neither the Association, the Board, the ARC, nor any of their successors or assigns shall be liable in damages to any Person submitting plans to them for approval, or to any Owner or Occupant of land affected by this Declaration, by reason of a mistake in judgment, negligence, or malfeasance arising out of or in connection with the approval or disapproval, or failure to approve any such plans. Every Person who submits plans to the ARC for approval agrees,

by submission of such plans, and every Owner or Occupant of any of the Property agrees by acquiring title thereto or an interest therein, that it will not bring any action, proceeding, or suit against the Association or the ARC to recover any such damages. In case of conflict between plan review and the provisions of this Declaration, this Declaration shall govern the rights and obligations of the parties. The ARC's approval of any building plans, specifications, site or landscape plans or elevations, or any other approvals or consents given by the ARC pursuant hereto or otherwise, is given solely to protect the aesthetics of Innsbrook and shall not be deemed a warranty, representation, or covenant that such buildings, Improvements, landscaping, or other actions taken pursuant thereto or in reliance thereon, complies with, or is not in violation of any Applicable Laws.

## **ARTICLE VI**

### **SUBASSOCIATIONS**

**6.01   Subassociations.** Any portion of the Property may also be subjected to a declaration which grants rights or obligations with respect to a portion of the Property to a Subassociation addressing circumstances particular to that specific portion of the Property. Any obligations created under any such declaration shall be in addition to obligations created hereunder. The votes appurtenant to the Sites subject to a Subassociation shall be cast by representatives as set forth in Article III.

**6.02   Upkeep.** The Association shall not have any responsibility for the Upkeep of any Subassociation Common Area except for those responsibilities and duties specifically enumerated within the Association Documents, any Supplementary Declaration, or other document to which the Association is a party. Notwithstanding the general provisions for Upkeep of the Common Area set forth herein, other specific Upkeep responsibilities and allocations of Upkeep costs shall

be determined by any provisions therefor indicated in either a Supplementary Declaration or plat recorded when subjecting such Common Area to the Declaration.

**6.03    Subassociation Records.** Each year, not later than the first of November and the first of June, or more frequently as requested by the Board, each Subassociation shall furnish to the Association a statement listing the Owners, identified by Site, name, and address, subject to the Subassociation and indicating the status of such Owners' payment of Assessments due to the Association. Each Subassociation shall cause to be kept, in accordance with generally accepted accounting standards, records of Assessments collected and not collected, but due, by the Subassociation. The Association and its duly authorized representatives, at reasonable times during business hours, shall have access to such records at the place where the same are kept, for the purpose of inspecting and auditing within five years after the expiration of any calendar year.

**6.04    Restrictions on Use.** The restrictions on use set forth herein shall apply to all portions of the Property; provided, however, that if a Subassociation enforces restrictions at least as restrictive as provided for herein, the Subassociation and not the Association shall enforce such restrictions with respect to that portion of the Property subject to the jurisdiction of the Subassociation, except as the Board of Directors otherwise determines.

## **ARTICLE VII** **ENFORCEMENT**

**7.01    Reciprocal Rights, Covenants Run With Land.** All restrictions, conditions, covenants, and agreements contained herein are made for the direct, mutual, and reciprocal benefit of each and every Site, or part thereof, in favor of every other Site or part thereof; shall create reciprocal rights and obligations between the respective Owners of all Sites, and privity of contract and estate between grantees and lessees of said Sites or parts thereof, their heirs, successors, and

assigns; and shall as to the Owner of each Site, its heirs, successors, and assigns, operate as covenants running with the land, for the benefit of all other Sites or parts thereof.

**7.02 Right of Entry.** Provided there is no disruption of the applicable Owner's development, use, or operation of its Site or any Subassociation Common Area, the Board of Directors, through its authorized officers, employees, and agents, may enter upon any Site or Subassociation Common Area at all reasonable times, for the purpose of ascertaining whether such Site or Subassociation Common Area or the construction, erection, placement, remodeling, or alteration of any Improvements thereon are in compliance with the provisions of the Association Documents without the Association or the Board of Directors, or such officer, employee, or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions (but the Owner may be entitled to have a representative present during any such entry or entries, and such entry may be subject to reasonable rules and safety protocols of the Owner during periods of construction).

**7.03 Association Cure Rights.** Should the Owner or Subassociation of any Site or part thereof fail to either: (i) comply with any of the Association Documents or (ii) fail to remedy any deficiency, all as reasonably determined by the Board, then the Board of Directors, through its authorized offices, employees, agents, and designees, shall have the right, privilege, and license, following ten days' written notice to the Owner of the Site or the Subassociation, as the case may be, to enter the Site and take all action reasonably necessary, including the performance of any Upkeep or curing any deficiency, making any reasonable Improvements, and/or taking any corrective action, as the Board, in its reasonable discretion, shall deem to be required under this Declaration, all at the expense of the Owner or Subassociation, as the case may be, and such entry shall not be deemed a trespass or wrongful act by any such Person solely by reason of such action

or actions. Any expense incurred by the Association associated with the actions taken pursuant to this Section 7.03 shall be paid to Association within ten (10) days after written notice to the Owner or Subassociation of the amount due, or such other timeframe as indicated in the notice, and the amount shall become a lien upon the Site and be enforceable as provided in this Declaration and the POA Act.

**7.04 Additional Liability.** Each Owner and Subassociation shall be liable to the Association for the expense of all Upkeep rendered necessary by such Owner's or Subassociation's act or omission regardless of negligence or culpability. Such liability shall include, but not be limited to, any increase in casualty insurance rates occasioned by use, misuse, occupancy, or abandonment of any Site or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation. Any costs, including without limitation legal fees, incurred as a result of a failure to comply with the Association Documents by any Owner or Subassociation, or for which any Owner or Subassociation is deemed responsible hereunder, may be assessed against such Owner's Site or such Subassociation, as the case may be.

**7.05 Suspension of Rights; Other Remedies.**

1) The Board of Directors, shall have the power to suspend an Owner's voting rights for monetary violations or non-monetary violations of the Association Documents beyond applicable notice and cure periods, provided that once an Owner or Subassociation cures the underlying violation which gave rise to the suspension, the suspension at issue shall be automatically lifted (for purposes of clarity, such suspension of voting rights shall not affect any consent or approval rights granted to any Owner or Subassociation under this Declaration).

2) The Board of Directors also shall have the power to suspend the right of an Owner, a Member, or Occupant, and the right of such Person's household, company, guests, employees, customers, tenants, agents, and invitees, to use the Common Area, for any violation of any provision of any of the Association Documents, for such period of time such violation continues, except as may otherwise be provided by Applicable Laws; provided, however, that the Association shall not suspend the right to use of the private streets for necessary, ordinary, and reasonable vehicular and pedestrian ingress and egress to and from such Owner's Site or suspend any easement over the Common Area required for the effective development, operation, and use of the Property, including those for drainage, utilities, or telecommunications or similar services to the Sites.

3) If a utility service is paid for as a Common Expense or a Limited Common Expense and an Owner does not pay the Assessment for such Common Expense or Limited Common Expense for a period of more than sixty days, then such utility service may be discontinued to such Owner until payment of the Assessment for such service is made; provided, however, that such suspension shall not endanger the health, safety, or property of any Owner or Occupant.

**7.06 Charges.** The Board of Directors shall have the power to impose charges in the case of an Owner or a Subassociation found by the Board to be in violation of the Association Documents (personally or under the provisions of the Association Documents). Charges are Individual Assessments and shall be collectible as such and, if against an Owner, shall also constitute a lien against the Owner's Site to the extent permissible under Applicable Laws. Imposition of a charge does not preclude the liability of an Owner or Subassociation for

reimbursement to the Association of any and all costs incurred by the Association in enforcing such violations.

**7.07 Due Process.** In Association enforcement of violations of the Association Documents, due process shall be provided to those entitled as may be required by the POA Act.

**7.08 Specific Enforcement.** All provisions of this Declaration shall be specifically enforceable by any court of competent jurisdiction upon petition by any party entitled to enforce them as herein provided.

**7.09 Failure to Enforce Not a Waiver of Rights.** The failure of the Association or any Owner of any of the Property to enforce any covenants herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other provision of this Declaration.

**7.10 Attorney's Fees.** In any legal or equitable proceeding for the enforcement of, or to remedy the violation of the Association Documents, the non-prevailing party or parties shall pay the reasonable attorney's fees and costs, including, but not limited to, filing fees, court reporter fees, expert witness fees, and disbursements actually incurred, of the prevailing party, or parties, in such amount as may be adjudged reasonable by the court in any such proceeding. Such fees shall become a lien against the Site owned by the non-prevailing party and be enforceable as provided herein. All remedies provided herein or otherwise available, at law or in equity, shall be cumulative and not exclusive.

## **ARTICLE VIII**

### **TERM, TERMINATION, AND MODIFICATION**

**8.01 Term.** This Declaration, every provision hereof and every covenant, condition, and restriction contained herein shall continue in full force and effect for a period of twenty years from the date of recordation, after which it shall be automatically extended for successive periods

of ten years, unless an instrument, approved by vote of a majority of the Members of the Association as provided in Section 8.02, modifying or terminating this Declaration, has been recorded.

**8.02 Termination and Modification.** This Declaration, or any provision hereof, may be terminated, extended, modified, or amended, as to the whole of the Property or any portion thereof, with the written consent of the Members representing fifty-one percent of the Property based on the number of square feet owned as compared to the total number of square feet of land subject to this Declaration, to the nearest tenth of a square foot. No such termination, extension, modification, or amendment shall be effective until a proper instrument in writing has been recorded in the Clerk's Office. In addition to other amendments permitted to be made pursuant to this Declaration, upon the vote of two-thirds of the members of the Board of Directors, the President of the Association may unilaterally sign and record in the Clerk's Office a corrective amendment or supplement to the Declaration to correct a mathematical mistake, an inconsistency or a scrivener's error, or clarify an ambiguity in the Declaration with respect to an objectively verifiable fact (including without limitation recalculating the liability for Assessments or the number of votes in the Association appertaining to a Site).

**8.03 Partial Vacation of Declaration.** Notwithstanding any other provision of this Declaration, the Association may, by recordation of an appropriate "Notice of Partial Vacation" in the land records of the Clerk's Office, remove this Declaration from any Property otherwise subject to it provided: (i) that no subdivision plat respecting such Property shall have been recorded in the Clerk's Office and shall not have been vacated; and (ii) any person having record title to any of the Property to be relieved from this Declaration must join in the "Notice of Vacation" for it to be

effective as to their Property. For the purposes of this Section 8.03, trustees under Deeds of Trust shall not be deemed to have record title and need not join in the “Notice of Vacation.”

## **ARTICLE IX**

### **CREATION OF SPECIAL INTEREST ENTITIES**

**9.01    General.** The Board of Directors is authorized to create unincorporated business associations, Virginia nonstock corporations, or other entities that are formed for the purpose of promoting the common interests within Innsbrook of two or more Owners (and/or their tenants) in a manner that will protect and enhance, and not diminish, the “Innsbrook” brand (an “**SIE**”). Any SIE created by the Board shall be wholly owned by the Association. The Board may terminate any SIE at any time, at the sole discretion of the Board. The affairs of an SIE shall be managed by a board of directors for the SIE (the “**SIE Board**”). The SIE Board shall be composed of all Owners who desire to join the SIE. Any Owner may join the SIE and may withdraw from the SIE, at the Owner’s option, upon written notice to the Board and the SIE Board. Any Owner who joins an SIE may, at the Owner’s option, appoint others (including tenants who lease space in Innsbrook from the Owner) to represent the Owner’s interest on the SIE Board. The intent of this Declaration is to permit the creation of SIEs to promote joint interests of various Owners (or their tenants) in Innsbrook, in a manner that will promote and enhance the image of Innsbrook. The Board shall not create any SIE for the purpose of promoting any political party or agenda, nor any religious group or activity. An SIE Board may appoint committees or subcommittees, whose members shall be Owners who are on the SIE Board, or their duly appointed representatives.

**9.02    Budget.** An annual budget for the SIE shall be prepared and approved by the SIE Board and the Board as soon as possible after formation of the SIE, and thereafter prior to December 1 of each year (an “**SIE Budget**”). The SIE Budget shall specify the amount of funds required to be raised during the budget year through Additional Assessments made by the

Association as outlined in Section 9.03 below, shall specify the Owners on the SIE Board whose Sites will be subject to the Additional Assessment, and the amount that each Owner subject to the Additional Assessment shall be responsible to pay. The SIE Budget shall be submitted to the Board, and the Board shall direct the Association to pay the expenses of the SIE, at the written direction of the SIE Board, to the extent that funds are available to the Association through Additional Assessments as more particularly set forth in Section 9.03 below. The SIE Board shall be entitled to raise funds for its use through means other than the Additional Assessments as well.

**9.03 Special Interest Assessment Districts.** The Board is authorized to create special purpose assessment districts (“**SIAD**”) for the purpose of funding the affairs of an SIE. The Site of every Owner who is a member of the SIE Board shall be included in any SIAD created for purposes of funding the SIE. Any Additional Assessment made pursuant to the SIAD created for that SIE shall reflect the amounts determined in the SIE Budget approved by the SIE Board. Each Owner whose Site is subject to the SIAD will pay an Additional Assessment to the Association, such Additional Assessment only affecting Sites owned by the Owners who are members of the SIE as of January 1 of each year. All Additional Assessments made pursuant to an SIAD shall be used solely for purposes of funding the affairs of the SIE. Any funds collected from such Additional Assessment shall be held by the Association in a separate account and used only for paying expenses of the SIE, as directed in writing by the SIE Board, provided, however, that such funds need not be held in a segregated account. The Association shall have the same right to enforce the Additional Assessments for the SIAD as for any other Assessment or Additional Assessment permitted pursuant to this Declaration and the Bylaws of the Association.

**ARTICLE X**  
**ENDOWMENT FUND**

**10.01 Endowment Fund.** The Association shall create an endowment fund (the “**Endowment Fund**”) to be used for water quality improvement projects, infrastructure improvement projects, and such other projects as determined necessary by the Board of Directors in its sole and reasonable discretion in order for Innsbrook to remain a high quality urban mixed-use community. The Endowment Fund shall be separate from the Annual Capital Reserve Fund that is funded by Annual Assessments as part of the annual Operating Budget. The Operating Budget and the Annual Capital Reserve Fund shall continue to be used for annual and/or short-term operating and capital improvement projects within Innsbrook. The first priority for the Endowment Fund shall be to provide funding for water quality improvement projects, infrastructure improvement projects, and such other projects as the Board believes necessary or desirable in order to maintain the water quality of the lake system in Innsbrook (whether such projects are within the lake system, other Common Area, or on any Site or Sites within Innsbrook); however, the Board shall have the authority to utilize the Endowment Fund to supplement the Annual Capital Reserve Fund and/or the Operating Budget should the Board determine that (i) such supplementary support is reasonably necessary; and (ii) such supplementary support will not be to the detriment of the water quality requirement herein.

**10.02 Funding Mechanism.** The Board may (i) establish a schedule of one-time payments for all new developments or re-development of previously developed Sites within Innsbrook (referred to herein as “**New Development**”), and (ii) establish the event or circumstances which shall determine when payments shall be made to the Endowment (the “**Endowment Fund Payment Schedule**”). The Endowment Fund Payment Schedule shall be equally applied to all New Development on a universal basis. The event or circumstances which

shall determine when payments shall be made to the Endowment Fund shall in no event be later than ten days after either (a) the first draw on a construction loan obtained for such New Development, or (b) thirty days after the commencement of New Development construction on a Site (excluding site work or building demolition) in the event there is no construction loan for such New Development. The Board may modify the Endowment Fund Payment Schedule from time-to-time based on the reasonable expectation of future capital needs resulting from the extent, nature, and timing of New Development within Innsbrook. Disbursements from the Endowment Fund by the Board shall be made as reasonably determined by the Board from time-to-time. The Endowment Fund Payment Schedule for New Development may be established on a different basis for each type of Site, however, the Payment Schedule shall be applied consistently as to each type of Site. For example, multi-family projects may be assessed on the basis of the number of apartment or condominium units, hotels on the basis of room keys, and office and retail properties on the basis of square footage, provided that all New Development projects within any project type designated by the Board are assessed on the same basis as other New Development projects within that project type. Endowment Fund payments that are required of an Owner of a Site under New Development shall constitute Assessments and are enforceable against any such Owner in the same manner as any Assessment would be enforceable against such Owner.

## **ARTICLE XI**

### **INSURANCE AND INDEMNIFICATION**

**11.01 Insurance.** The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain the following forms of insurance in addition to any other insurance as reasonably determined to be necessary or desirable by the Board with the premiums for all such insurance constituting a Common Expense of the Association.

1) a property insurance policy written on a Special Covered Causes of Loss Form for all insurable improvements on the Common Area, including coverage for loss or damage by fire or other hazards, extended coverage, and vandalism and malicious mischief, in amounts sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. All property insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available.

2) a commercial general liability policy applicable to the Common Area covering the Association and the Owners for all damage or injury caused by the negligence of the Association or any of its Owners or agents arising from the operation, Upkeep, or use of the Common Area.

3) if reasonably available, directors' and officers' liability insurance in commercially reasonable amounts.

4) fidelity insurance on Directors, officers, employees and other persons handling or responsible for the Association's funds, naming the Association as the insured. The fidelity coverage shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

**11.02 Association Insurance Primary and Noncontributory.** In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants or their mortgagees, and the insurance carried by the Association shall be primary.

**11.03 Authority to Adjust Losses.** Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board of Directors; provided, however, that no

Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

**11.04 Policy Requirements.** The Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

- 1) a waiver of subrogation by the insurer as to any claims against the Board of Directors, the Owners, and their respective tenants, servants, agents and guests;
- 2) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
- 3) that no policy may be canceled, invalidated, or suspended on account of the actions of any one or more individual Owners;
- 4) that no policy may be canceled, invalidated or suspended on account of any defect or the conduct of any Director, officer, or employee of the Association or its duly authorized management agent without prior demand in writing delivered to the Board to cure the defect or to cease the conduct, and the allowance of a reasonable time thereafter within which a cure may be effected by the Board, its management agent, any Owner, or Mortgagee; and
- 5) that no policy may be canceled or substantially modified without at least thirty days prior written notice to the Board.

**11.05 Indemnification.** Each Owner and each Subassociation shall indemnify, defend, and hold the Association and its members, Directors, employees, and agents harmless from and against all suits, causes of action, losses, costs, damages, fines, penalties, expenses (including, but not limited to, attorneys' fees, court reporter fees, expert witness fees, filing fees, and disbursements actually incurred), contracts, prosecutions, judgments, liabilities, and claims of any nature arising out of or caused by the negligence or willful misconduct of the Owner or the

Subassociation or their respective managers, officers, directors, employees, agents of any kind, licensees, invitees, and contractors, including, but not limited to, those arising out of any claim against the Association resulting from the Association's undertaking to correct a violation on any Site.

## **ARTICLE XII**

### **RECONSTRUCTION AND REPAIR**

**12.01 When Reconstruction or Repair Required.** Except as otherwise provided in this Article XII, if all or any part of any Improvement located on the Common Area is damaged or destroyed by fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration thereof. The Association shall not use the proceeds of casualty insurance received as a result of damage or destruction of Improvements located on the Common Area for purposes other than the repair, replacement, or reconstruction of such Improvements except as otherwise provided herein.

#### **12.02 Procedure for Reconstruction and Repair of Common Area.**

1) **Cost Estimates.** Immediately after a fire or other casualty causing damage to any portion of any Improvement located on or in the Common Area, the Board of Directors shall obtain reliable and detailed estimates of the cost of restoring and repairing such Improvement to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

2) **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the original construction of any Improvement located on the Common Area, subject to any modifications required by changes in Applicable Laws and using

new building materials and technology to the extent feasible; provided, however, that other action may be taken if approved in accordance with Section 8.02.

**12.03 Disbursement of Construction Funds for Common Area.** The proceeds of insurance collected on account of a casualty and the sums received by the Board of Directors from the collection of Assessments hereunder shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

a) If the estimated cost of reconstruction and repair is less than twenty-five percent of the total Annual Assessment for Common Expenses for that fiscal year, then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors.

b) If the estimated cost of reconstruction and repair is twenty-five percent or more of the total annual Assessment for Common Expenses for that fiscal year, then the construction fund shall be disbursed in payment of such costs upon approval of an architect or engineer qualified to practice in the jurisdiction where the Property is located and employed by the Board of Directors to supervise such work, with payments to be made from time-to-time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other Persons who have rendered services or furnished materials in connection with the work stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such design professional for the services and materials described; and (iii) the cost as estimated by such design professional for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund

remaining after payment of the sum so requested. The Board of Directors shall be entitled to rely on such certificate.

c) Shortfalls. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds or shall be deemed a Common Expense or Limited Common Expense, as appropriate, and an Assessment therefor shall be levied subject to the provisions hereof.

d) Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds. If, after payment of the costs of all reconstruction and repair, and the refund of any excess payments made by Owners in proportion to their contributions, there remains any surplus fund, such fund shall be paid to the Association and shall be placed in the appropriate reserve account.

**12.04 When Reconstruction and Repair of Common Area Not Required.** If destruction of the Improvements located on the Common Area is insubstantial, the Board of Directors may elect not to repair such insubstantial damage. Otherwise, any decision not to repair or restore Improvements on the Common Area shall be made in accordance with Section 8.02. If damaged Improvements are not repaired, then the Board of Directors shall remove all remnants of the damaged Improvements and restore the Site thereof to an acceptable condition compatible with the remainder of the Common Area and the balance of any insurance proceeds received on account of such damage shall be placed in the appropriate reserve account.

**ARTICLE XIII**  
**MISCELLANEOUS PROVISIONS**

**13.01 By Whom Enforceable.** This Declaration may be enforced by the Association or any Owner, but none of them shall have any obligation to do so nor be liable to any Person in the event of their failure so to do.

**13.02 Constructive Notice and Acceptance.** Every Person who or which now or hereafter owns or acquires any right, title, or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired such right, title or interest.

**13.03 Paragraph Headings; Cross References.** Paragraph headings, where used herein, are inserted for convenience or reference only, are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular paragraphs to which they refer, and accordingly shall not be deemed or construed to affect the meaning of any provision hereof. To the extent the Articles of Incorporation or Bylaws contain cross-references to certain Sections in this Declaration which have been altered as a result of amendments thereto, then the cross-references shall mean the Sections as may have been renumbered, to the extent still applicable.

**13.04 Order of Precedence.** Except as otherwise provided in this Declaration, the provisions of this Declaration shall supersede anything to the contrary contained in the Current Declaration, including the 2009 Assignment.

**13.05 Severability.** If any provision or portion of any provision of this Declaration is held to be invalid, void, or unenforceable by any court, the invalidity or unenforceability of such

provision or portion of such provision shall not affect the validity of the remainder of that provision or the remaining provisions hereof.

**13.06 Proffers.** The Proffers are incorporated in and shall be deemed to be a part of this Declaration to the same extent as if set forth fully herein. If the Board of Supervisors or the Planning Commission of the County shall approve any further amendment to or modification of the Proffers, such action shall not change such Proffers as a part of this Declaration unless approved in writing by the Board, and unless so approved, the Proffers shall continue to be binding upon all Owners of Sites in Innsbrook.

**13.07 Written Notice.** Except as otherwise specified by Applicable Laws, whenever written notice is required or specified herein, such written notice shall be deemed made and given only when: (i) delivered in person, (ii) deposited in the United States mail, certified, with return receipt requested, postage paid, (iii) sent by e-mail with delivery receipt requested; or (iv) deposited, prepaid, with a guaranteed overnight national courier service, such as Federal Express or UPS, for next business day delivery, and addressed to the address or e-mail address of the Owner on file with the Association, or for notices to the Association, addressed to the Association as set forth on the Association-sanctioned website. Notices will be deemed received when actually received if delivered in person; three business days after deposit in the United States mail as provided in subsection (ii) herein; upon delivery if sent via e-mail; or the next business day following deposit with a guaranteed overnight courier service as provided in subsection (iv) herein. Any Owner may change its address or appoint an agent for notice purposes by providing written notice to the Association in the manner provided in this Section 13.07. The Association may change its address for notice purposes by providing written notice to any applicable Owner in the manner provided in this Section 13.07, by publishing its change of address by a general notice

distributed to all the Owners in the manner permitted under its Bylaws, or by publishing its address or the address of its agent on the Association-sanctioned website.

**13.08 Easement for Emergency Access.** The Association and each Owner, on behalf of themselves and their successors and assigns, hereby grants an easement: (i) to all police, fire, ambulance, and other rescue personnel over and through all or any portion of the Property for the lawful performance of their functions during emergencies; and (ii) to the Association over and through all Sites and Subassociation Common Area, if emergency measures are required in any Sites or Subassociation Common Area to reduce a hazard thereto or to any other portion of the Property. The Association is hereby authorized but not obligated to take any such measures. Each Owner hereby releases the Association from and against any claim arising from the Association's failure to take any such action and covenants not to sue the Association or any agent, officer, director, or employee thereof for failure to take any such action.

**13.09 Residence Owner.** "Residence Owner" means the record owner, whether one or more Persons, of fee simple title to residential sites located on other land which adjoins Innsbrook, and which is developed by the Declarant, or which has been conveyed by Declarant and is developed by others as approved by Declarant. Each Residence Owner shall have and is hereby granted a revocable license to use, solely for recreational purposes, the jogging trails and lakes located in Innsbrook, created, or reserved for the use of all Owners, but Residence Owners shall not be Members of the Association. The Association shall have the right to suspend or revoke the license at any time, with or without cause, but it may, in the alternative and without in any way limiting such right, suspend or revoke the license granted herein as to any Residence Owner who breaches the conditions of the license, if after written notice has been given of a breach of the terms of the license, such Residence Owner within a period of six months after such notice again

breaches the terms of the license. Notwithstanding anything to the contrary contained in this Declaration, the term “Declarant” as used in this Section 13.09 shall mean Innsbrook North Associates, and where the context so requires, its successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this Declaration and caused their names to be signed hereto on the dates as specified.

**ASSOCIATION:**

**THE INNSBROOK OWNERS' ASSOCIATION, INC.,**  
a Virginia nonstock corporation

By: \_\_\_\_\_  
Jane duFrane, President

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by Jane DuFrane, as President of THE INNSBROOK OWNERS' ASSOCIATION, INC., a Virginia nonstock corporation, on behalf of said corporation.

My Commission expires: \_\_\_\_\_  
Notary registration no.: \_\_\_\_\_

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

**ARC:**

**ARCHITECTURAL REVIEW COMMITTEE OF  
THE INNSBROOK OWNERS' ASSOCIATION, INC.,**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chair

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, as Chair of the ARCHITECTURAL REVIEW COMMITTEE of THE INNSBROOK OWNERS' ASSOCIATION, INC., a Virginia nonstock corporation, on behalf of said committee.

My Commission expires: \_\_\_\_\_  
Notary registration no.: \_\_\_\_\_

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

**CERTIFICATION OF ASSOCIATION PRESIDENT  
TO SECOND AMENDED AND RESTATED  
INNSBROOK PROTECTIVE COVENANTS**

I, Jane duFrane, President of The Innsbrook Owners' Association, Inc. (the "Association"), hereby certify that the Association has complied with the procedures set forth in Section 7.02 of the Current Declaration, as defined in the Recitals of these Second Amended and Restated Innsbrook Protective Covenants ("Declaration") and Section 55.1-1829 of the Virginia Property Owners' Association Act, and that the written consent of the requisite percentage of Owners was obtained as evidenced by the signed Written Consent Forms attached to this Declaration as Exhibit B, and made a part hereof, and being the Owners of more than \_\_\_\_\_ acres of land of the approximate \_\_\_\_\_ acres of Property and representing approximately \_\_\_\_\_ percent of the Property subject to this Declaration.

\_\_\_\_\_, 202\_\_

\_\_\_\_\_  
Jane duFrane, President

**EXHIBIT A**

Description of Property Subject to Declaration to be Inserted

**EXHIBIT B**

Attach Written Consents

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