

**AMENDED AND RESTATED BYLAWS  
OF THE  
HEATHER OF VAIL CONDOMINIUM ASSOCIATION, INC.  
A Colorado nonprofit corporation**

THESE Amended and Restated Bylaws of the Heather of Vail Condominium Association, Inc. are made effective on the date set forth above the signatures of the officers below.

**RECITALS**

WHEREAS, the Heather of Vail Condominium Association, Inc. a Colorado nonprofit corporation ("Association"), desires to amend and restate the original Bylaws (hereinafter the "Original Bylaws") as stated herein to comply with the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et seq.* (the "Act") as applicable to the Association;

WHEREAS, the provisions set forth in these Amended and Restated Bylaws supersede and replace the provisions set forth in the Original Bylaws; and

WHEREAS, these Amended and Restated Bylaws were approved by a majority of the Owners present in person or by proxy and voting at a duly called meeting, notice for which set forth in detail the amendments set forth below.

NOW THEREFORE, the Bylaws of the Association are hereby amended and restated below as follows:

**ARTICLE 1  
OFFICES**

The Heather of Vail Condominium Association (the "Association") is a Colorado nonprofit corporation, with its current principal office address of c/o McNeill Property Management, 2077 N. Frontage Road, Suite D, Vail, Colorado 81657. The Association may also have other offices and may carry on its purposes at such other places within and outside the State of Colorado as the Board may from time to time determine.

**ARTICLE 2  
DEFINITIONS AND ASSENT**

Section 2.1 Definitions. The definitions contained in the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for the Heather of Vail Condominiums ("Declaration"), as amended from time to time and recorded in the office of the Clerk and Recorder of Eagle County, Colorado, shall apply to these Bylaws, and all capitalized terms not otherwise defined in these Bylaws shall have the same meaning as defined terms used in the Declaration or the Act.

Section 2.2 Assent. All present or future Owners, their families, present or future tenants, and their guests and invitees, and any other person using the facilities of the Property as legally described in the Declaration in any manner are subject to the Governing Documents, including these Bylaws. The acquisition, rental or occupancy of any of the Units shall constitute acceptance and ratification of these Bylaws and shall signify that they will be complied with by such person or entity.

### ARTICLE 3 MEMBERSHIP, VOTING, QUORUM AND PROXIES

Section 3.1 Membership and Voting. The Association shall be a nonprofit corporation without certificates or shares of stock. The Association shall have one (1) class of voting membership consisting of all Owners, and, except as otherwise provided for by law or the Governing Documents, each Owner shall be allocated one vote per Unit.

The vote for each such Unit shall be exercised by the Owner or an authorized person appointed by proxy in accordance with these Bylaws and the Colorado Revised Nonprofit Corporation Act, C.R.S. § 7-121-101 *et seq.* Should the Owner not be a natural person (i.e., an estate or trust, corporation, partnership, limited liability company, or other entity), a natural person shall be appointed as the authorized representative of the Owner and the Owner may only vote through the authorized representative. When more than one person holds an interest in any Unit, one owner shall be designated with the voting authority. In the absence of a proxy, the vote allocated to the Unit shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter. The assignment of voting right by proxy or authorization of a person to vote as provided herein, shall be furnished to the Secretary of the Association prior to any meeting in which the voting right is exercised. In no event shall more than one vote be cast with respect to any one Unit.

Association membership shall terminate automatically, without any Association action, whenever an Owner ceases to own a Unit. Termination of membership shall not relieve or release any former Owner from any liability or obligation incurred by virtue of, or in any way connected with, ownership of a Unit, or impair any rights or remedies which the Association or others may have against such former Owner arising out of, or in any way connected with, such membership.

Section 3.2 Quorum. Except as otherwise provided by Colorado law, these Bylaws, or the Declaration, the presence in person, by telephone as provided in Section 3.5 below, or by proxy of **thirty-nine percent (39% = 7 Owners)** of the votes entitled to be cast at such meeting shall constitute a quorum.

Section 3.3 Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of each meeting. All proxies must be in writing and may be either general with an expiration date not to exceed twelve (12) months or be specific for a particular meeting. A proxy holder must be an Owner.

Section 3.4 Majority Vote. Unless a different percentage is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, the affirmative vote of more than fifty percent (50%) of the votes represented at a meeting duly called and convened at which a quorum is present shall be sufficient to transact business and to adopt decisions binding on all Owners.

Section 3.5 Attendance by Telephone. Any regular or special meeting of the Owners may be attended by telephone, subject to the "Conduct of Meetings" provisions of the Policies and Procedures, as may be amended from time to time.

Section 3.6 Revocation of Voting Right – Delinquent Owners. An Owner who is delinquent in the payment of any Assessment or in default of compliance with any of the Governing Documents as determined by the Board shall not be entitled to vote. The delinquent Owner's voting privileges are revoked until the delinquency or default is cured as determined by the Board.

## **ARTICLE 4 MEETINGS**

Section 4.1 Annual Meeting. There shall be an annual meeting of the Owners held at least once each year on any date and location in Eagle County, Colorado, as determined by the Board. The annual meeting shall be held for the purpose of electing Board Members and for the transaction of such other business as may come before the meeting.

Section 4.2 Special Meeting. Special meetings of the Owners for any purpose other than those regulated by statute may be called by the President, by a majority of the Board, or by petition of at least one-fourth (1/4) of the Owners. The notice of any such special meeting shall state the time and place of such meeting and the specific purpose thereof. Any such meeting shall be held within 30 days after receipt by the President of a resolution of the Board or petition by the Owners. Electronic notice of a special meeting shall be given as soon as possible but not less than five (5) business days before the meeting (mailing notice by prepaid United States mail is still required).

Section 4.3 Notice of Meetings.

4.3.1 *Written Notice*. Not less than fifteen (15) nor more than thirty (30) days in advance of any meeting of the Unit Owners, the President or the Secretary shall cause notice to be hand-delivered or sent postage prepaid by United States mail to the mailing address of each Unit or to any other mailing address appearing in the records of the Association as designated in writing by the Unit Owner. The notice shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove an officer or member of the Board. The certificate by the President or Secretary that notice was duly given shall be prima facie evidence thereof.

4.3.2 *Physical Posting of Notice.* The notice of any meeting shall be physically posted in a conspicuous place on the Property, to the extent such posting is feasible and practicable. The posting shall be in addition to any other notice as provided herein.

4.3.3 *Electronic Posting or Electronic Mail Notices.* In addition to printed form, if electronic means are available and practicable, all notices and agendas required by this article shall also be given in electronic form, by posting on a web site or otherwise. If such electronic means are available, the association shall provide notice of all regular and special meetings of Owners by electronic mail to all Owners who so request and who furnish the association with their electronic mail addresses.

4.3.4 *Owners entitled to Notice.* The Board may set a record date for determination of Owners entitled to notice of and to vote at a meeting. If no such record date is set by the Board, the date of mailing of the written notice of meeting shall for all purposes be deemed the record date for such meeting.

Section 4.4 *Adjourned Meetings.* If, at the time and place of meeting, a quorum is lacking, the chairman of the meeting, or the Owners holding a majority of the votes present in person or by proxy, may adjourn the meeting from time to time until a quorum exists. At any adjourned meeting at which a quorum exists, any business may be transacted which might have been transacted at the original meeting.

Section 4.5 *Waiver of Notice.* Any Owner may at any time waive any notice required to be given under these Bylaws, by statute or otherwise. The presence in person or by telephone, of an Owner or an Owner's representative at any meeting of the Owners shall constitute a waiver, unless such presence is for the express purpose of objecting to the meeting for the reason that it was not lawfully called.

Section 4.6 *Place of Meetings.* The place for annual and special meetings shall be the principal office of the Association unless otherwise designated by a resolution of the Board.

Section 4.7 *Election of Directors.* In the election of Directors by Owners, each Owner shall have the right to vote for as many Directors as there are to be elected, and for whose election he is entitled to vote. Cumulative voting shall not be allowed.

Section 4.8 *Secret Ballots for Election of Directors and Other Matters.* Votes for positions on the Board shall be taken by secret ballot for contested elections. A vote on any other matter affecting the common interest community on which all Owners are entitled to vote shall be by secret ballot if the Board requires such in its discretion or if requested by twenty percent (20%) of Owners present at the meeting or represented by proxy. The secret ballots shall be counted by a neutral third party or committee of volunteer Owners who are not Board members and, in case of contested elections, candidates. The results of the vote shall be reported without reference to names, addresses, or other identifying information.

Section 4.9 *Action of Owners Without a Meeting.* Any action required to be taken or which may be taken at a meeting of the Owners may be taken without a meeting and by mail if authorized by a resolution of the Board. In the event that the Board submits a matter to vote

without a meeting, the Secretary shall cause notice to be delivered as provided for notice of meetings with an explanation of the matter to be voted upon, a form of resolution approved by the Board, and a ballot to each Owner at the address shown upon the records of the Association. The notice shall state a date, not less than fifteen (15) nor more than forty (40) days from the date of mailing, by which the ballot must be returned to the Secretary and shall state the address to which the ballots shall be returned. Votes received after that date shall not be effective. Within five (5) days of the return date specified in the notice, the Secretary, in the presence of at least two members of the Board, shall open and count the ballots and shall certify the results of the vote in a notice to the Board and the Owners of the Association.

Section 4.10 Order of Business. The order of business at all meetings of Owners shall be as follows:

- 4.10.1 Roll call;
- 4.10.2 Statement of compliance with procedures for notice of meeting or waiver of notice;
- 4.10.3 Reading of minutes of preceding meeting;
- 4.10.4 Reports of officers;
- 4.10.5 Reports of committees;
- 4.10.6 Election of Directors (annual meetings only);
- 4.10.7 Unfinished business; New business; and
- 4.10.8 Adjournment.

Section 4.11 Rules of Meetings. The Board may prescribe reasonable rules for the conduct of all meetings of the Board and Owners and in the absence of such rules, Robert's Rules of Order shall be used.

## **ARTICLE 5 BOARD OF DIRECTORS**

Section 5.1 Association Responsibilities. The Owners will constitute the Association, who will have the responsibility of governing the Property through a Board of Directors elected by the Owners ("Board"). Determinations of the Board shall be binding on all Owners.

Section 5.2 Number and Initial Board. The affairs of this Association shall be managed by a Board of not less than three (3) no more than five (5) Directors who shall be Owners of the Association. The current number of members of the Board shall be five (5) and this number may be amended from time to time by the Owners or the Board in accordance with these Bylaws. At any time, should there be an insufficient number of Board members willing to

serve, the Board may continue to transact business with the number of Board members it has so long as it is no less than three (3). An Owner who is delinquent in the payment of any Assessment or in default of compliance with any of the Governing Documents as determined by the Board shall not be eligible to be voted onto, or to serve on, the Board. Should the Owner become delinquent or default while serving on the Board, the delinquent or defaulting Owner shall either cure or may be removed from the Board in accordance with Section 5.4.2 below.

Section 5.3 Term of Office of Directors. Elections for Directors shall occur at each annual meeting and every Director appointed or elected to the Board shall serve a term of one (1) year. At the expiration of the term of office of each respective Director, a successor shall be elected by the Owners. The same person can hold consecutive terms and may be re-affirmed into office for a consecutive term by a vote. Each Director shall hold office until such Director's successor is elected by the Association and qualified.

Section 5.4 Removal of Directors; Vacancies. Directors may be removed and vacancies on the Board may be filled as follows:

5.4.1 By the Owners. Any Director may be removed, with or without cause, at any regular or special meeting of the Owners by a vote of a majority of the Owners entitled to vote where a quorum is present. A Director whose removal is proposed by the Owners shall be given notice of the proposed removal at least ten (10) days prior to the date of such meeting and shall be given an opportunity to be heard at such meeting. A successor to any Director removed may be elected at such meeting to fill the vacancy created by removal of the Director.

5.4.2 By the Board. Any Director who has two (2) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any Assessment or in default of compliance with any of the Governing Documents as determined by the Board for more than 90 days may be removed by a majority vote of the Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board.

5.4.3 Death, disability, resignation, or removal. In the event of the death, disability, resignation or removal by the Board, of a Director, the Board may declare a vacancy, and the Board may appoint a successor. Any successor appointed by the Board shall serve for the remainder of the term of the Director replaced.

Section 5.5 Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of a first class residential project. The Board may do all such acts and things as are not by law, the Act, the Articles, these Bylaws or the Declaration either prohibited or directed to be exercised and done by the Owners.

Section 5.6 Other Powers and Duties. The Board shall be empowered and shall have the duties as follows:

5.6.1 to administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Declaration and in the Articles and these Bylaws;

5.6.2 to establish, make and enforce compliance with such reasonable rules and regulations and policies and procedures as may be necessary for the operation, use and occupancy of the Units and the Common Elements, including parking, with the right to amend same from time to time. Such rules and regulations and policies and procedures may include provisions regarding the exclusion of any and all animals from the Property or the limitation and control thereof. A copy of such rules and regulations shall be delivered or mailed to each Owner promptly upon the adoption thereof;

5.6.3 to keep in good order, condition and repair the Common Elements, and all items of personal property owned by the Association, if any, and used in the enjoyment of the Property;

5.6.4 to obtain and maintain to the extent obtainable all policies of insurance required by the Declaration;

5.6.5 subject to the budgeting procedures contained in the Declaration, to periodically fix, determine, levy and collect the Assessments to be paid by each of the Owners towards the Common Expenses of the Association and to adjust, decrease or increase the amount of the Assessments, or place any excess Assessments into designated replacement reserves. Subject to restrictions set forth in the Act, to levy and collect Special Assessments in accordance with the provisions of the Declaration, whenever in the opinion of the Board it is necessary to do so in order to meet increased operating or maintenance expenses or costs, or additional capital expenses, or because of emergencies.

5.6.6 to impose penalties and collect delinquent Assessments by suit or otherwise, to collect costs and reasonable attorney's fees, and to enjoin or seek damages from an Owner as is provided in the Declaration;

5.6.7 to protect and defend the Property from loss and damage by suit or otherwise;

5.6.8 to borrow funds and to give security therefor in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the Declaration or these Bylaws and to execute all such instruments evidencing such indebtedness as the Board may deem necessary or desirable. Any such indebtedness shall be the obligation of the Unit Owner only in the same proportion as their Allocated Interests;

5.6.9 to enter into contracts within the scope of their duties and powers;

5.6.10 to establish bank accounts which are interest-bearing or non-interest bearing, as may be deemed advisable by the Board;

5.6.11 to keep and maintain detailed, full and accurate books and records showing in chronological order all of the receipts, expenses or disbursements pursuant to appropriate specificity and itemization and to permit inspection thereof as is provided in the Declaration and these Bylaws and, upon the vote of Owners representing the Owners of one-third of the Units, to

cause a complete audit, review, or limited review to be made of the books and records by a competent certified public accountant;

5.6.12 to designate and remove the personnel necessary for the operation, maintenance, repair and replacement of the Common Area and the Exterior Maintenance Area;

5.6.13 to suspend the voting rights of an Owner for failure to comply with these Bylaws or the rules and regulations of the Association or with any other obligations of the Owners pursuant to the Declaration;

5.6.14 to buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal with and in, real, personal and mixed property of all kinds, and any right or interest therein, for any purpose of the Association, subject to the Declaration of the Association;

5.6.15 to prepare and deliver annually to each Owner as statement showing all receipts, expenses or disbursements since the last such statement;

5.6.16 in general, to carry on the administration of the Association and to do all of those things necessary and/or desirable in order to carry out the governing and operating of the Community and the Property and to perform all other acts permitted under the Act.

Section 5.7 **Manager.** By a written contract with the Manager, the Board may employ or contract for the services of a Manager to whom the Board may delegate certain powers, functions, or duties of the Association as it shall authorize. The Board may delegate any of the powers and duties granted to it but, notwithstanding such delegation, shall not be relieved of its responsibility under the Declaration, the Articles, Bylaws, or any other Governing Documents of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Board and/or as stated in the contract for services. The Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 5.8 **Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least two (2) meetings shall be held each fiscal year. Notice of regular meetings of the Board shall be given to each Director and Owner personally, by mail, or by electronic mail, at least three (3) business days prior to the day named for such meeting. Agendas for regular meetings of the Board shall be made reasonably available for examination by all Owners or their designated representatives.

Section 5.9 **Special Meetings.** Special meetings of the Board may be called by the President, on his own initiative, or upon on like notice on receipt of a written request to call such a special meeting from at least two (2) Directors. The Secretary shall give no less than three (3) days' notice to each Director and Owner, given personally, by mail, or by electronic mail, which notice shall set forth the time, place and purpose of the meeting.



Section 5.10 Right to Attend. All meetings of the Board, or any committee thereof, are open to every Unit Owner of the Association, or to any person designated by a Unit Owner in writing as the Unit Owner's representative. At an appropriate time determined by the Board, but before the Board votes on an issue under discussion, Unit Owners or their designated representatives shall be permitted to speak regarding the issue. The Board may place reasonable time restrictions on persons speaking during the meeting. If more than one person desires to address an issue and there are opposing views on that issue, the Board shall provide for a reasonable number of persons to speak on each side of the issue. An executive or closed door session may be held in the manner and on matters as provided by the Act.

Section 5.11 Waiver of Notice. Before or at any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 5.12 Board's Quorum. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time for periods of no longer than one (1) week until a quorum is obtained or until a conclusion can be reached. At any such adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

Section 5.13 Compensation. The members of the Board shall serve without salary or compensation. The Board may employ professional consultants for the Association at a compensation established by the Board. Insurance may be maintained by the Association to protect against dishonest acts on the part of its Directors, officers, trustees, employees, managers and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than what would constitute two quarters' current assessments plus reserves as calculated from the current budget of the Association.

Section 5.14 Informal Action by Directors. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as the unanimous vote of the Directors. Such informal action may include consent to vote and vote by electronic mail so long as records of the vote and proper procedure for approval are maintained as required by law.

Section 5.15 Teleconference Meetings. Any regular or special meeting of the Board may be conducted by teleconference, followed by minutes of such meeting, which shall be distributed to each Director. As with in-person Board meetings, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors shall be the acts of the Board.

Section 5.16 Board Committees. The Board may by resolution provide for such standing or special committees as it deems desirable, and discontinue the same at its pleasure. Each such committee shall have such powers and perform such duties, not inconsistent with law, as may be delegated to it by the Board. Vacancies in such committees shall be filled by the Board or as the Board may provide.

## **ARTICLE 6 OFFICERS**

Section 6.1 General. The officers of the Association (who shall be elected from among the members of the Board) shall be a President, a Vice President, a Secretary, and a Treasurer. The officers shall be elected annually by an affirmative vote of a majority of the members of the Board. The Board may elect such other officers, assistant officers, committees and agents, including Vice President, Assistant Secretaries and Assistant Treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board. One person may simultaneously hold more than one office, except the office of President. In all cases where the duties of any officer, agent or employee are not prescribed by the Bylaws or by the Board, such officer, agent or employee shall follow the orders and instructions of the President.

Section 6.2 Resignation and Removal of Officers. An officer may resign at any time by giving written notice of resignation to the Association. The Board may remove any officer at any time, either with or without cause, upon an affirmative vote of a majority of the members of the Board, and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 6.3 Vacancies. A vacancy in any office, however occurring, may be filled by an affirmative vote of a majority of the members of the Board for the unexpired portion of the term.

Section 6.4 President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. He shall have the general and active control of the affairs and business of the Association and general supervision of its officers, agents and employees and all of the general powers and duties which are usually vested in the office of the president of a nonprofit corporation, including but not limited to, the power to appoint committees from among the members from time to time as may be deemed appropriate to assist in the conduct of the affairs of the Association or as may be established by the Board or by Owners of the Association at any regular or special meetings. The President has the authority to prepare, execute, certify and record documents reflecting amendment to the Declaration which is properly amended pursuant to the provisions of the Declaration.

Section 6.5 Vice President. The Vice President shall assist the President and shall perform such duties as may be assigned to them by the President or by the Board. In the absence

of the President, the Vice President elected by the Board shall have the powers and perform the duties of the President.

Section 6.6 Secretary. The Secretary shall keep the minutes of the proceedings of the Owners and the Board. He shall see that all notices are duly given in accordance with the provisions of these Bylaws, the Declaration and as required by law. He shall be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Board. He shall keep at its registered office or principal place of business within or outside Colorado a record containing the names and registered addresses of all Owners, the designation of the Unit owned by each Owner, and, if such Unit is mortgaged, the name and address of each Mortgagee. He shall, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board. Assistant Secretaries, if any, shall have the same duties and powers, subject to supervision by the Secretary.

Section 6.7 Treasurer. The duties of a Treasurer may be assigned by the Board to an accountant or bookkeeper in lieu of electing a Treasurer. If elected, the Treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness and other personal property of the Association and shall deposit the same in accordance with the instructions of the Board. He shall receive and give receipts and acquittances for monies paid in on account of the Association, and shall pay out of the funds on hand all bills, payrolls and other just debts of the Association of whatever nature upon maturity. He shall perform all other duties incident to the office of the Treasurer and, upon request of the Board, shall make such reports to it as may be required at any time. He shall, if required by the Board, give the Association a bond in such sums and with such sureties as shall be satisfactory to the Board, conditioned upon the faithful performance of this duties and for the restoration to the Association of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Association. He shall have such other powers and perform such other duties as may be from time to time prescribed by the Board or the President. The Assistant Treasurers, if any, shall have the same powers and duties, subject to the supervision of the Treasurer.

## **ARTICLE 7 INDEMNIFICATION**

Section 7.1 Indemnification. The Association shall indemnify every Board Member, Officer, their respective successors, personal representatives and heirs, against all loss, costs and expenses, including attorneys' fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Board Member or Officer, except as to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable of negligence or misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of negligence or misconduct in the performance of his duty as such Board Member or Officer in relation to the matter involved. The foregoing rights shall not be exclusive of other

rights to which such Board Member or Officer may be entitled. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason of or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as common expenses; provided, however, that nothing herein shall be deemed to obligate the Association to indemnify any member or owners of a unit who is or has been a Board Member or Officer of the Association with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of the Declaration.

Section 7.2 Other. Contracts or other commitments made by the Board of Managers, an Officer or the Project Manager shall be made as an agent for the Association, and they shall have no personal responsibility on any such contract or commitment.

## **ARTICLE 8 AMENDMENT OF BYLAWS**

Section 8.1 Amendment by the Owners. These Bylaws may be amended by the affirmative vote of more than fifty percent (50%) of the votes of the Owners represented in person or by proxy at a regular or special meeting duly called and convened at which a quorum is present. However, notwithstanding the foregoing, no provisions of these Bylaws may be amended by a number of Owners which is less than the number of Owners that is required within that particular provision to take certain action. Amendments may be proposed by the Board or by petition signed by the holders of at least a majority of the votes. A statement of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment will be voted upon.

Section 8.2 Amendment by the Board. These Bylaws may be amended by the unanimous vote of the Board at any regular or special meeting, provided that a quorum is present at such meeting. A statement of any proposed amendment shall accompany the notice of any regular or special Board meeting at which such proposed amendment will be voted upon. No amendment may be adopted by the Board that conflicts with an amendment adopted by the Owners. A bylaw that fixes a lesser or greater quorum requirement or a greater voting requirement for Owners shall not be amended by the Board.

Section 8.3 Scope of Amendments. These Bylaws may not be amended in a manner inconsistent with the Articles of Incorporation of the Association, the Declaration, or any applicable provision of Colorado law.

## **ARTICLE 9 GOVERNANCE POLICIES**

Section 9.1 Governance Policies. To promote responsible governance in accordance with the Act and public policy, to the extent not covered in the Declaration or these Bylaws, the Association shall:

- (a) Maintain accurate and complete accounting records on a cash or modified accrual

basis; and

(b) Adopt policies, procedures, and rules and regulations concerning:

- (I) Collection of unpaid assessments;
- (II) Handling of conflicts of interest involving board members;
- (III) Conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;
- (IV) Enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines;
- (V) Inspection and copying of association records by unit owners;
- (VI) Investment of reserve funds;
- (VII) Procedures for the adoption and amendment of policies, procedures, and rules;
- (VIII) Disputes between owners and the association, encouraging alternative dispute resolution; and
- (IX) When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis.

(c) Adopt any other policies, procedures, and rules and regulations as may become required by the Act.

## **ARTICLE 10 CORPORATE SEAL**

The Board may provide a suitable corporate seal containing the name of the Association, which seal shall be in the custody and control of the Secretary. The corporate seal shall be circular and shall have inscribed thereon the name of the Association and the word "Colorado" in the circle and the word "Seal" in the middle. If and when so directed by the Board, a duplicate seal may be kept and used by such officer or other person as the Board may name.

## **ARTICLE 11 MISCELLANEOUS**

Section 11.1 Registration of Mailing Address. Owners of a Unit shall furnish a mailing address to the Association within five days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners of the Unit. If there is more than one owner of a Unit, the co-owners shall designate one mailing address to be registered with the Association and used by the Association.

An Owner or Owners shall notify the Secretary of his or their registered address within five days after any change of address.

Such notices shall be written and signed by all of the Owners to which it relates or by such persons authorized to sign on behalf of such Owners.

If no address is registered or if all of the Owners of a single Unit cannot agree, then the address set forth in the deed to the Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

Section 11.2 Notice to Association. Every Owner shall timely notify the Association of the name and address of any Mortgagee, purchaser, transferee or lessee of his Residential Unit. The Association shall maintain such information at the office of the Association.

Section 11.3 Proof of Ownership. Every person becoming an Owner shall immediately furnish to the Board a photocopy or a certified copy of the recorded instrument vesting in that person such ownership, which instrument shall remain in the files of the Association. A Owner shall not be deemed to be in good standing nor shall he be entitled to vote at any annual or special meeting of Owners unless this requirement is first met.

Section 11.4 Character of Association. This Association is not organized for profit. No Owner, member of the Board, officer or person for whom the Association may receive any property or funds shall receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the Association be paid as salary or compensation to, or distributed to, or inure to the benefit of, any of the Board, officers or Owners, except upon a dissolution of the Association; provided, however, (1) that reasonable compensation may be paid to any Owner, manager, Director, or officer while acting as an agent or employee of the Association for services rendered in effecting one or more of the purposes of the Association, and (2) that any Owner, manager, Director, or officer may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the Association.

Section 11.5 Fiscal Year. The fiscal year of the Association shall be determined by the Board and shall be subject to change by the Board as necessary.

Section 11.6 Annual Budget. Within ninety (90) days after the adoption of any proposed budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than ten (10) nor more than fifty (50) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget via veto, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as a subsequent budget proposed by the Board is ratified. The Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Board shall levy, and assess the Association's annual Assessments in accordance with the adopted annual budget, or the budget last ratified as provided herein.

Section 11.7 Captions. The captions and headings in these Bylaws are for convenience only and shall not be considered in construing any provision of these Bylaws.

Section 11.8 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

### CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting President of the Heather of Vail Condominium Association, Inc. a Colorado nonprofit corporation; and

That the foregoing Bylaws constitute the Amended and Restated Bylaws of that Association, as duly adopted by action of the Board and of the Owners on the 21<sup>st</sup> day of October, 2016 to be effective on said date.

IN WITNESS WHEREOF, I have hereunto subscribed my name below.

**HEATHER OF VAIL CONDOMINIUM  
ASSOCIATION, INC.,**  
a Colorado nonprofit corporation

By:

  
\_\_\_\_\_  
Jason Bastien, President