

CONSTRUCTION POLICY AGREEMENT

Prefatory Material

The Northwoods Condominium Association (the "Association") has enacted policies as well as rules and regulations (collectively, the "Guidelines" or the "Regulations") governing construction or renovation activities within or upon any residential unit ("Unit"). Prior to undertaking any construction or renovation activities, the Owner(s) of the affected Unit(s) and their contractor (the "Contractor") must enter into this written agreement with the Association to follow certain required procedures. This agreement has been created and approved by the Board of Directors ("Board") of the Association and contains the requirements and obligations to which Owners and the Contractor must adhere under these circumstances. By executing this agreement, the Owner(s) and the Contractor are signifying their agreement to comply with the Regulations - not only for their mutual benefit, but also for the benefit of the other owners in the Association and the Association itself. All of the owners in the Association and the Association will become third-party beneficiaries of this agreement.

Before any construction or renovation work may be commenced, the Board must approve the proposed work (the "Project") in writing. In addition, the Project must be approved by the Town of Vail and any other governmental entity or department having jurisdiction over the Project. This agreement must be executed by the Owner(s) of the applicable Unit(s), the Contractor and the Association's manager (the "Manager"), and the required fees and deposit must be paid to the Association prior to the commencement of any work upon the Project.

During the period from April 20, 2015 until November 20, 2015, the Association's premises underwent a major exterior renovation and improvement project (the "Renewal Project"). The Board has determined that any remedial or other work related to the Renewal Project must take priority over any individual unit remodel or renovation work. As a result, any Project of this nature may be modified and rescheduled as the Board or the Association's Architectural Review Committee ("ARC") deems necessary or appropriate in order to accommodate remedial or other work related to the Renewal Project.

Agreement

This agreement is executed as of the ___ day of _____, 20__ by and between the Association, _____ ("Contractor") and the owner or owners of Unit(s) _____, who are _____. Unless otherwise defined in this agreement, all capitalized words and phrases shall have the same meaning ascribed to such words and phrases in the original Declaration and Supplemental Declarations for the Association as recorded in the records of Eagle County, Colorado.

Recitals

- A. The Association wishes to encourage Unit owners to enhance the desirability of their Units by repairing and maintaining the interior spaces as well as undertaking any remodeling and renovation activities that are consistent with the improvement of their Units. However, the Association is also mindful of the privacy and rights of other owners and their guests as well as the need to prevent any unnecessary intrusions within the complex.
- B. In order to minimize the disruption of such activities and to control the impact of these activities upon the Limited and Common Elements, the Association has developed rules and requirements that must be followed by the Owner and by all persons or entities performing any construction work (the "Work") in or upon the Unit with the exception of minor repairs or replacement of carpets or paint.
- C. The Owner, with a full understanding of the purpose and philosophy of the construction policy adopted by the Association, and with the recognition that a higher degree of responsibility falls upon the Owner to respect the rights and property of other owners, has requested permission of the Board to undertake construction activities within and upon the Unit as more fully described in the summary description of the Project attached hereto as Exhibit A.
- D. The Board is willing to grant permission to Owner to undertake the Work. Any permission to commence and perform work on the Project is granted only with the assurance that all construction and related activities will be conducted in accordance with the Regulations and the conditions set forth in this agreement, and with the additional assurance that all required deposit and fees will be paid in a timely manner to the Association.

Accordingly, Owner and Contractor are willing to enter into this agreement with Association as follows:

- 1. Definitions. As used in this agreement, the following capitalized words and phrases will have the specific meanings:
 - 1.1 "Manager" denotes either Patrick Pinnell or Colette Jackson or any of their successors as may be specifically approved by the Board.
 - 1.2 "Plans and Specifications" shall mean the final architectural or other drawings for the Work as approved by the Board or the Manager.
 - 1.3 "Construction Periods" shall mean the permitted periods of time during any year that any work is commenced and performed on the Project. These periods of time begin on the next day following the end of the ski season and extend until the last Friday in June and begin again on Labor Day and extend until the last Friday in November before Thanksgiving.
 - 1.4 "Construction Contract" shall mean the written agreement of the Contractor to perform or cause the performance of the Work.

- 1.5 "Project" shall mean the construction work and activities as described in Exhibit A.
 - 1.6 "Construction Schedule" shall mean the written time schedule prepared by Contractor and approved by the Manager or any member of the ARC. The Construction Schedule shall indicate the beginning and ending dates for completion the Project as described in Exhibit B attached hereto. The Construction Schedule may be unilaterally extended or modified by the Manager or by any member of the ARC at any time in order to accommodate the Renewal Project.
 - 1.7 "Guidelines" shall mean the current version of the rules, regulations and procedures adopted by the ARC for the purpose of reviewing and approving Project applications and administering the oversight responsibilities of the ARC.
 - 1.8 "ARC shall mean the Architectural Review Committee appointed by the Board to administer the Guidelines.
 - 1.9 "Limited Common Elements" and "Common Elements" shall have the meanings ascribed to such phrases in the Association's Declaration.
2. Approval of Project. Owner shall submit to the ARC a written request in the format required by the Manager outlining the scope of the proposed Project accompanied by preliminary drawings for the Project. The proposed Project may include expansion requests, but any such request is strictly limited to potential expansion areas as approved by the ARC and the payment of a required unit expansion fee as determined by the Board. The written request shall be accompanied by all entity authority documents as described in Section 20.8 below. After reviewing the request, the ARC may request additional information, may conditionally approve the request, or may unconditionally approve or disapprove the request. In the event of disapproval, the ARC shall provide its reasons in writing. Any conditions attaching to any approval shall be described in Exhibit C attached hereto. The approvals which are issued by the ARC shall be for the purpose of confirming that the design of the Work is consistent with and does not violate any of the Guidelines or this agreement, that the work is aesthetically and architecturally compatible and consistent with the surrounding buildings and overall design of the Northwoods complex, and that the Work will not adversely affect the structural integrity of the Common Elements or any of the systems comprising and including part of the Common Elements.
 3. Construction Schedule. Owner agrees and acknowledges that the approval of the Project and the Construction Schedule does not grant any vested development rights to Owner or any other person or entity. The Construction Schedule may be modified and extended by the Manager or by any member of the ARC for any reason that is unilaterally deemed necessary or appropriate to protect the integrity of the Association's improvements and the efficacy of the Project. In addition, the Manager or any member of the ARC will have the right to issue and enforce work stoppage orders concerning the Project at any time, and Owner releases Contractor and the Association from any resulting liability and claims. Owner and Contractor agree that strict adherence to the approved Construction Schedule is mandatory. If circumstances arise that could result in any material delay in the schedule, Owner and Contractor will notify the Manager

immediately. Any extensions or changes in the Construction Schedule must be approved by the ARC.

4. Project Plans and Specifications. The final Project Plans and Specifications must be certified and signed by a Colorado licensed architect or mechanical or structural engineer and must be identified by date and number of pages. Copies of these final Plans and Specification and all supplemental documents must be attached hereto as Exhibit D and will be incorporated herein by this reference. The ARC may conditionally or unconditionally approve the Exhibit D documents or request additional information. The ARC may also disapprove these documents if the ARC determines that they are inconsistent with previously submitted and approved preliminary plans. **NO WORK SHALL COMMENCE UNTIL THE ARC HAS APPROVED THE FINAL PLANS AND SPECIFICATIONS IN WRITING AND COPIES OF THE FINAL PLANS AND SPECIFICATIONS HAVE BEEN RECEIVED BY THE MANAGER.** Owner and Contractor agree to perform the Work and complete the Project substantially in accordance with the approved final Plans and Specifications. At the expense of Owner, the ARC may elect in its sole discretion to retain the independent services of architects, structural, electrical or mechanical engineers, or other consultants in order to assure or confirm that the Work will not adversely affect any component of the Limited or Common Elements and that the Work is being performed in accordance with the Construction Schedule, the Guidelines and this agreement. The failure of the ARC to retain these types of professional services shall not be actionable and shall in no way reduce or mitigate the responsibility and liability of Owner and Contractor.
5. Completion Date. The Project shall be deemed to have been completed for all purposes under this agreement at such time as the Town of Vail has issued a temporary or permanent certificate of occupancy, and the Project and all affected common areas have been inspected and approved in writing by the ARC. No approval by the ARC may be issued until excess materials and debris have been removed, all affected construction areas have been vacuumed and broom swept, and all common areas have been remediated to the satisfaction of the Manager at the expense of Owner.
6. Construction and Other Fees. Owner shall be responsible for the payment of all permitting and other fees incurred in connection with the Project. In addition, Owner shall pay to the Association prior to commencement of the Work a common area depreciation fee in an amount equal to 4 percent of the contract price of the Work but not to exceed the amount of \$4,000.00. The ARC has the discretion to waive the payment of a portion of or all of the fees under certain circumstances. For example, the ARC might consider a full or partial waiver in a situation where the Contractor strictly limits access of construction personnel to residential units only through decks, porches and other external apertures.
7. Insurance.
 - 7.1. Contractor and Owner, as their interests may require, shall procure and maintain general liability or builders' risk insurance policies covering all construction liability risks for the Project throughout the period of construction as required by, and as may be acceptable to, the Manager or any member of the ARC. The Association shall be designated as a named insured party under the builders' risk policy, and the policy shall be in an amount equal to 100 percent of the insurable value of the Work. In addition, Contractor and Owner must procure and maintain unemployment and workers'

compensation insurance as well as motor vehicle, rental equipment and materials storage coverage along with any other insurance that may be required by the Manager. The liability insurance coverage shall not be less than \$1 million per occurrence and \$5 million in the aggregate. Umbrella policy coverage will be permitted if approved by either the Manager or a member of the ARC. To the extent reasonably possible, all insurance policies required by this agreement shall contain a waiver of subrogation endorsement or clause.

- 7.2 Owner acknowledges and understands that the Association's master insurance policy for property damage does not provide coverage for any claim of loss or damage to interior improvements within the Unit that exceed the original finish levels when the Unit was first sold and delivered. Owner further acknowledges and understand that Owner has the responsibility and obligation of obtaining a unit owner insurance policy at Owner's expense that will provide property damage and loss coverage for all interior unit improvements that may exceed the original finish levels in the Unit.
 - 7.3 Prior to commencement of any Work, Contractor and Owner must deliver to the Manager certificates of insurance evidencing all required coverage. The certificates must confirm that the policies are in full force and effect and must also confirm the amounts of the applicable insurance policies, the amount of any deductible portion as permitted by the Manager, and that the Association and its officers, board members and managers are all designated as co-insured or additional insured parties. The certificates must also confirm that any attempted cancellation or modification of any of the applicable policies will not be effective until 30 days after written notice of such action is delivered to the Manager. Each certificate shall also contain the procuring agent's written representation that the insurance carrier is authorized to do business in Colorado.
 - 7.4 The Manager or any member of the ARC may require some or all of the material suppliers and subcontractors for Contractor to provide and maintain insurance to cover risks associated with the Project. Any such insurance shall be in the policy amounts and terms as may be required by the Manager or by any member of the ARC.
8. Hazardous Materials Testing. Contractor or Owner, through any engineering consultant or service provider approved by the Manager, must conduct appropriate tests in and about the area of the Project as required by the Manager for the presence of mold, asbestos or any other hazardous building materials or conditions. The test results must be promptly submitted to the Manager for review and approval. The Manager will have full authority to stop the Work at any time in order to arrange for any abatement or protective measures that the Manager deems to be appropriate. The expense of all testing and any resulting abatement procedures will be paid for by Owner.
 9. Supervision and Daily Cleanup. Contractor shall supervise the activities and workmanship of all subcontractors and material suppliers during the construction of the Work. Contractor must also provide daily cleanup services at the construction site and keep all hallways and entrances free from debris and the presence of construction materials and equipment. Contractor shall store construction materials and equipment in such locations and in such a manner as the Manager may specify from time to time.

10. Construction Site Access. Access to the construction site by subcontractors and material suppliers shall be strictly limited in the manner specified by the Manager. Depending upon building conditions and other prevailing circumstances, the Manager may limit construction access only to and from outside decks and patios. The Manager may also require the use of scaffolding or lift equipment. Contractor shall prohibit any persons who are not subcontractors or material suppliers from coming upon or gaining access to the construction site unless accompanied by an employee or agent of Contractor and after taking appropriate safety precautions.
11. Contractor Expertise. Contractor acknowledges the relation of trust and confidence established between Owner and the Association by the Construction Contract and this agreement. Contractor represents to Owner and the Association that Contractor will use its best skill, efforts and judgment in advancing the interests of Owner and the Association in the Project. Contractor agrees to furnish sufficient business administration and superintendence of the Work, to use best efforts to keep the Work on schedule and to have at all times an adequate supply of workmen and materials to complete the Work in the most expeditious and most economical manner consistent with the interests of the Owner and the Association.
12. Change Orders. Any additions, deletions, upgrades, extras or other changes to the Work will be made only by written change orders signed by Owner, Contractor and the Manager. The Association may decline to agree to any proposed change order in the Association's sole and absolute discretion.
13. Mechanic's Liens. Contractor and Owner warrant and represent that all charges for work and labor performed and materials furnished relative to the Project will be paid in full when due, and that no person or entity will claim or record a mechanic's lien against the Unit or any portion of the Association's property. Contractor and Owner indemnify and agree to hold the Association harmless from and against all claims, losses, liabilities, costs and expense of every nature (including without limitation reasonable attorney fees, court costs and litigation expenses) incurred by or asserted against the Association as a result of any lien recorded against the Association's property.
14. Construction Rules. Contractor and Owner agree to abide by the following rules during all phases of construction of the Project:
 - 14.1 All of Contractor's employees, subcontractors and agents shall enter and exit the Northwoods Complex and the applicable buildings only through those entranceways or other locations and methods as designated by the Manager. All common areas shall be off limits to construction personnel except to the extent the Manager may grant approval from time to time. When the Manager grants approval to use hallways, elevators or the garages, Contractor must provide complete and thorough protection of all hallway floors, walls, ceilings, elevators, and any floor on which the Contractor is performing activities. Contractor must install protective plastic coverings for the floors and hallway walls, and the Contractor must provide and install star foam protective covers for all corners, elevator walls and all finished wood work including the doors and wood trim.

- 14.2 Contractor shall provide portable bathroom facilities for its employees and shall restrict all employees from using any bathroom or other facilities upon the Common Elements or in any Residential Unit.
- 14.3 Smoking shall not be permitted in any location in the building. Any smoking activities shall be conducted outside the building, and ashtrays shall be provided by Contractor and used in all cases.
- 14.4 Parking locations and times for construction personnel and deliveries will be strictly limited to those areas designated by the Manager.
- 14.5 The placement of the dumpster and the storage of any construction materials or equipment shall be determined by the Manager in all cases.
- 14.6 No construction activities of any nature shall be permitted before 7:00 AM and after 6:00 PM on any construction day. Construction may take place seven days each week. All loud construction noise (as reasonably determined by the Manager) shall be limited to the period between 10:00 AM and 2:00 PM on any construction day.
- 14.7 Contractor shall obtain the requisite permission or authority to use or occupy any easement or right of way owned or controlled by a third party if it becomes necessary to use or occupy such easement or right of way during the course of construction.
- 14.8 Upon completion of the Work, Contractor shall cause the construction site and all affected Units and Common Elements to be thoroughly cleaned and vacuumed to the satisfaction of the Manager.
- 14.9 Contractor or Owner shall pay the following schedule of penalty charges to the Association:
 - 14.9.1 \$50 per hour for all time spent by Manager for matters relating to the Project beyond normal activities.
 - 14.9.2 After an initial verbal warning to any employee or agent of Contractor, \$100 for each violation of the construction rules or other provisions of this agreement, and \$250 for each subsequent violation.
 - 14.9.3 Although the Contractor and Owner are jointly and severally liable and responsible for payment of monies described in this Subsection, the Association may enforce and collect the same as a special assessment or as part of the routine operating assessment against the Unit(s) of the applicable Owner(s).
 - 14.9.4 Construction Delays. The construction period for commencement and completion of the Project during any calendar year is set forth in Section 1.3 of this Agreement. If construction of the Project is not completed within this time frame, the following per diem penalty charges will be imposed:

- 14.9.4.1 Although construction may continue on these dates, the per diem penalty charge will be \$500.00 per day from November 22 through and including November 26.
- 14.9.4.2 From November 27 through and including November 30, construction will not be permitted to occur. However, the per diem penalty charge will be \$500.00 during this period of time.
- 14.9.4.3 The per diem penalty charge for the period of time from December 1 through and including December 15 shall be \$1,000.00, and construction may continue on these dates.
- 14.9.4.4 After December 15, no further construction activities will be permitted.

15. Extenuating Circumstances. The Association will have discretion to waive strict compliance and not hold Contractor strictly accountable for any failure to comply with the terms of this agreement or any of the construction rules if such failure is due to circumstances that are reasonably beyond the control of Contractor. However, Contractor must still investigate reasonable alternatives and solutions if any delay is occasioned because of misdeliveries, delayed deliveries or similar failures concerning the timely arrival of equipment, supplies, materials or labor. The determination of whether such circumstances exist shall be liberally applied so as not to impose undue costs or burdens upon Contractor or Owner. Anticipated delays in meeting any agreed Completion Date must be brought to the attention of the Manager as soon as possible so that any appropriate extensions of time or other remedial measures can be considered by the Manager.

16. Construction or Design Defects.

16.1 Contractor and Owner acknowledge and agree that limited and general common elements that are modified, redesigned or otherwise affected as part of the Project will be subject to special rules and treatment. If any damage or loss occurs as a direct or indirect result of the modification or redesign of such elements within a period of ten years from the completion date of the Project, Owner will be liable for such loss or damage as well as for all costs of repair and replacement deemed necessary or appropriate by the ARC. Contractor will share in such liability to the extent that Contractor can be shown to be liable under prevailing law pertaining to construction defect claims.

16.2 Contractor and Owner will be relieved of liability under subsection 16.1 above in any circumstances where the Association has intervened during the ten-year period by repairing, modifying or replacing any of such elements, but only if it can reasonably be shown that the intervening acts of the Association caused or substantially contributed to the ultimate damage or loss in question.

16.3 Owner specifically agrees and warrants that all responsibility and risk of liability created under this Section shall be undertaken and assumed by all current owners of the Unit and all of their transferees, grantees and assignees in the manner of a covenant running

with the land. Except for mortgage and other lenders, all successor purchasers, owners and other persons and entities holding any interest in the Unit during the ten year period shall be bound by the provisions in this Section. Owner agrees to cause any such transferee to specifically assume this liability in writing in a form and substance approved by the ARC.

17. Indemnification. Contractor and Owner agree to indemnify and hold the Association harmless from and defend the Association against all liability, claims and demands on account of personal injuries, property loss, damage claims and expenses (including reasonable attorney fees and court costs) arising out of or in any manner pertaining to the actions of Contractor or Owner in connection with the construction of the Project. The duty of indemnity shall extend, without limitation, to all claims against the Association that are not defended under the terms of insurance coverage required by this agreement and to any claims to the extent of any excess of insurance coverage provided.

18. Remedies. In the event of any breach or violation of this agreement or failure on the part of Owner or Contractor to adhere to the provisions of the Regulations, the construction rules, or directions of the Manager, the Association shall be entitled to enforce any of the following remedies against either Owner or Contractor, or both, as may be appropriate:
 - 18.1 The Association, acting through the Manager, may immediately stop all Work upon the Project and forbid entrance to the construction site by any of Contractor's employees, subcontractors or agents for such period of time as determined by the Manager.
 - 18.2 The Association may file appropriate civil proceedings in the Eagle County District Court or any other court of proper jurisdiction seeking damages and injunctive relief as may be deemed necessary to carry out the intentions of this agreement. In this regard, Owner and Contractor acknowledge and agree that an action for civil damages may not be an adequate remedy for the Association in certain circumstances involving a breach of this agreement, and that the Association should be entitled to equitable relief as necessary in order to carry out and enforce the terms and provisions of this agreement. In any litigation involving claims for equitable relief, Owner and Contractor waive any requirement for other security.
 - 18.3 In any civil proceeding filed under this agreement, the prevailing party shall be entitled to an award of attorney fees and costs.

19. Notices. All notices shall be in writing and shall be deemed to have been given when presented personally, sent by facsimile transmission, sent by e-mail to a confirmed e-mail address, or when deposited in the United States mail, certified mail, return receipt requested, addressed as follows (or as contained in any amendments hereto):

If to Owners: _____

Facsimile No. _____

If to Contractor: _____

Facsimile No.: _____

If to Association: Northwoods Condominium Association
P.O. Box 1231
Vail, CO 81658
Facsimile No.: 970-479-9093

With Copy to: Patrick Pinnell, Manager
Northwoods Condominium Association
P.O. Box 1231
Vail, CO 81658
Facsimile No.: 970-479-9093

20. Miscellaneous.

- 20.1 Governing Law Venue. This agreement has been executed in the State of Colorado and shall be governed by the laws of the State of Colorado. All parties agree that any and all actions arising out of these documents shall only be brought in the courts of Eagle County, Colorado, and all parties consent to venue in such courts.
- 20.2 Assignment. Neither Owners nor Contractor may assign this agreement without the prior written consent of the Association. Any purported assignment without the Association's written consent shall be voidable at the option of the Association.
- 20.3 Binding Effect. The provisions of the construction contract or this agreement will inure to the benefit of and be binding upon all of the parties and their respective heirs, representatives, successors, and permitted assigns.
- 20.4 Joint and Several Liability. If two or more persons are named in the construction contract or this agreement as Owners, their obligation shall be joint and several.
- 20.5 Gender and Number. Any term of gender used in the construction contract or this agreement shall include all genders and legal entities, and the plural shall include the singular and the singular shall include the plural.
- 20.6 Severability. The invalidity of any provisions of this agreement shall not affect the validity or enforceability of any other provision set forth herein.
- 20.7 Section Headings. The section headings contained in this agreement are for the purpose of identification only.

20.8 Corporations, Partnerships and Associations.

20.8.1 If the Owner (or any other Owners) signing this agreement is a corporation, Owners shall deliver to the Association at or prior to execution of this agreement a certified copy of a resolution of the applicable board of directors or such other evidence of authority as may be required by the corporation's governing documents or organizational laws authorizing the execution of this agreement. Owners represent and warrant that at the time of execution of this agreement, each corporation will be in good standing and authorized, as necessary, to conduct its business in Colorado.

20.8.2 If the Owner (or any other Owners) signing this agreement is a partnership, joint venture, limited liability company or other association or entity, they shall deliver to the Association at or prior to execution of this agreement a copy of all resolutions, authorizations or other approvals as required by their governing documents, certified by the appropriate representative, together with all registrations forms, trade name affidavits, and other documents required to be filed in the Office of the Colorado Secretary of State, the Colorado Department of Revenue, the Eagle County Clerk and Recorder, or otherwise required under Colorado law or requested by the title company to demonstrate their capacity to hold title to the Unit. Owners represent and warrant that at the time of execution of this agreement, all such entities will be in good standing and authorized, as necessary, to conduct their business in Colorado.

20.9 Exhibits. All exhibits referenced in this agreement are incorporated herein by such reference.

20.10 Recitals and Introductory Provisions. All recitals and introductory provisions on page 1 of this agreement are incorporated herein by reference.

20.11 Counterparts; Facsimile Signatures. This agreement and any amendments may be executed in several counterparts, any one of which may be deemed an original. Signatures pages bearing facsimile signatures shall be received in lieu of original signatures, and such copies taken together shall be deemed to be a full and complete agreement between the parties.

20.12 Entire Agreement. This agreement embodies all written and oral negotiations between the parties and may not be amended except in writing executed by all parties.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

OWNERS:

Printed Name: _____
Date of Execution: _____
Phone Number: _____
TIN or SSN: _____

OWNERS:

Printed Name: _____
Date of Execution: _____
Phone Number: _____
TIN or SSN: _____

CONTRACTOR:

Read and agreed to only for specific provisions applicable to Contractor.

Printed Name: _____
Date of Execution: _____
Phone Number: _____
TIN or SSN: _____

THE ASSOCIATION:

NORTHWOODS CONDOMINIUM ASSOCIATION

President: _____
Printed Name: _____
Date of Execution: _____
Phone Number: _____
TIN or SSN: _____

LIST OF EXHIBITS

- Exhibit A Description of Project (Section 1.5)
- Exhibit B Construction Schedule (Section 1.6)
- Exhibit C Approval Conditions Issued by the ARC (Section 2)
- Exhibit D Final Plans and Specifications and Addenda Materials (Section 4)