

**ONE SNOWMASS**  
**FITNESS FACILITY LICENSE AGREEMENT**  
**(One Snowmass Owners Association)**

**ONE SNOWMASS FITNESS FACILITY LICENSE AGREEMENT**  
**(One Snowmass Owners Association)**

This One Snowmass Fitness Facility License Agreement (this "License Agreement") is entered as of \_\_\_\_\_, 20\_\_\_, between **SV BUILDING 8 DEVELOPMENT LLC**, a Delaware limited liability company ("Licensor"), and **ONE SNOWMASS OWNERS ASSOCIATION**, a Colorado nonprofit corporation ("Licensee"). Licensor and Licensee are hereinafter individually referred to as a "Party" and collectively as the "Parties."

**RECITALS**

A. Licensor owns and operates certain a certain fitness facility (the "Fitness Facility"), which is located within that condominium unit owned by Licensor, and its appurtenant limited common elements, as more fully described on Exhibit A, within the One Snowmass Condominium Project (defined below).

B. Licensee is comprised of certain residential and commercial members but, notwithstanding any contrary provision herein, this License Agreement is limited to and is deemed to solely benefit the "Residential Owners" as that term is defined in the Condominium Declaration for One Snowmass recorded \_\_\_\_\_, 20\_\_\_, at Reception No. \_\_\_\_\_ in the real property records of Pitkin County, Colorado (the "One Snowmass Declaration", and the condominium project established thereunder, the "One Snowmass Condominium Project"). Further, for purposes of this License Agreement and its administration, "Licensee" shall be deemed to mean the class of Residential Owners (including Club Interest Owners) of Licensee as described in the One Snowmass Declaration, the Executive Board of Licensee shall be deemed to mean the Residential Directors as that term is defined in the One Snowmass Declaration, and the term "Residential Units" as used herein shall have the meaning as defined in the One Snowmass Declaration, including "Club Units."

C. The Fitness Facility is not a Common Element of the One Snowmass Condominium Project and Licensee has no right or interest in the Fitness Facility other than pursuant to this License Agreement. Licensee desires to provide its Residential Owners with the use and enjoyment of the Fitness Facility, and therefore is entering into this License Agreement with Licensor to gain access to the Fitness Facility for the benefit of the Residential Owners on the terms and conditions set forth herein and in accordance with any rules regarding access and use of the Fitness Facility that Licensor may adopt from time to time.

D. Pursuant to the terms and conditions of this License Agreement, the Fitness Facility shall be made available for access, use and enjoyment by the Residential Owners of Licensee.

## AGREEMENT

1. Use of the Fitness Facility and Grant of Non-Exclusive License.

(a) Grant of License to Use the Fitness Facility. By executing this License Agreement, Licensor grants to Licensee for the benefit of its Residential Owners a non-exclusive license to access, use and enjoy the Fitness Facility during the term of this License Agreement and in accordance with the rules and regulations relating to the access, use and enjoyment of the Fitness Facility, its hours of operation and other matters as set forth in the rules and regulations adopted by Licensor governing use of the Fitness Facility (the “Rules and Regulations”). The Rules and Regulations may be amended by Licensor from time to time, provided that the Rules and Regulations shall be generally applicable to other parties that access and use the Fitness Facility on a non-discriminatory basis. The Rules and Regulations may also establish more specific qualifications for Eligible Users, as discussed in Section 1(f) below. Licensee agrees to be bound by the Rules and Regulations as the same may be adopted and/or amended from time to time.

(b) No Parking. Licensee acknowledges and agrees that the Fitness Facility subject to this License Agreement does not include any parking rights or privileges and that the Residential Owners have no right to park in any parking areas owned or controlled by Licensor.

(c) Association List. Licensee shall provide Licensor with a list of its Residential Owners who are eligible to access the Fitness Facility. This list shall be promptly updated and sent to Licensor each time that a Residential Unit is conveyed to a new Residential Owner. Licensee agrees to promptly provide a then-current copy the Rules and Regulations to each new Residential Owner.

(d) License Right Non-Exclusive; Licensor Reserved Rights. Licensee acknowledges and agrees that the license rights granted to the Residential Owners under this License Agreement are non-exclusive and that Licensor retains all rights of management and use in the Fitness Facility. Without limiting the generality of the foregoing, Licensor reserves the right to use the Fitness Facility in connection with or reasonably related to (i) the right to extend license and/or use privileges to other owner associations and their members, to other properties and to third parties who may or may not be residents at Snowmass Base Village, whether on a temporary or permanent basis, and (ii) the right to grant rights or privileges in connection with the marketing and/or sales of properties located within or to be developed within Snowmass Base Village.

(e) Acknowledgement. It is anticipated that actual usage of the Fitness Facility by individuals will vary significantly based on such factors as the seasons, weather, access to other Snowmass recreation facilities, holidays, and times of the day. Licensor intends to reasonably administer its membership and license programs in a manner which takes into consideration those varying levels of usage while attempting to maintain a level of quality and ambiance of experience of the Fitness Facility.

(f) Eligible Users. Persons eligible to use and enjoyment of the Fitness Facility pursuant to this License Agreement are Occupants (defined immediately below) who are in-residence in the applicable Residential Unit during the time of use. “Occupants” means any Residential Owner or a Residential Owner’s family members, personal guests, renters, lessees or exchange users who occupy a Residential Unit during the time of use of the Fitness Facility; subject, however, to Licensor’s right to adopt or amend Rules and Regulations that establish more specific qualifications for eligibility (“Eligible Users”).

2. Payment of License Fee for Use of the Fitness Facility.

(a) Amount and Time of Payment of License Fee, Generally. In consideration of the access and use rights that are being extended to the Eligible Users of the Residential Units of Licensee pursuant to this License Agreement, Licensee agrees that for the term and duration of this License Agreement Licensee shall contribute to the maintenance and operation of the Fitness Facility by remitting to Licensor an annual use fee (the "License Fee") as follows:

(i) License Fee. Licensor shall have the right to charge Licensee (to be allocated among the Residential Units) for the use and enjoyment of the Fitness Facility a License Fee in an amount, as reasonably determined by Licensor and communicated periodically to Licensee, equal to the allocation to Licensee (as set forth in this paragraph immediately below) of all operation, equipping, maintenance, repair, replacement, utility, reasonable management and other expenses of the Fitness Facility to operate and maintain the Fitness Facility in accordance with the standard set forth in Section 4 below. The foregoing costs and expenses shall be allocated among all residences having rights of use and enjoyment of the Fitness Facility at the time of such allocation based on an equal per-bedroom formula; provided, however, that timeshare, fractional and club ownership residences (including the Club Units) shall be charged 1. \_\_ times the allocation of a whole ownership residence. The foregoing License Fee charged to Licensee will be treated as a Common Expenses (as defined in the One Snowmass Declaration) by Licensee and allocated to the Residential Owners (and Club Interest Owners) in accordance with the One Snowmass Declaration (and any Club Plan).

(ii) Payment of License Fees. The aggregate sum of the License Fee applicable to all Residential Units shall be payable by Licensee to Licensor quarterly on the first day of each calendar quarter; provided, however, that the prorated portion of the License Fee applicable to the period commencing on the date hereof and continuing through the end of the same calendar quarter shall be due and payable in full at the time of mutual execution of this License Agreement. The obligation to pay the License Fee is not affected by the amount of usage of the Fitness Facility by the Eligible Users of a Residential Unit.

(b) License Fees Are to be Included in the Common Expenses of Licensee. Licensee agrees to include a line item in its annual budget for payment of the License Fee on behalf of its Residential Owners, with appropriate disclosure to its Residential Owners and ratification. The License Fee payments shall be delinquent if not paid within ten (10) days following the end of any calendar quarter.

(c) No Right to a Return of an Initiation Fee. Licensee and its Residential Owners understand and agree that neither Licensee nor any Residential Owner will be required to pay an initiation fee to Licensor and, accordingly, shall be entitled to no refund of any initiation fee, deposit or any other amount at the time of expiration or termination of this License Agreement.

3. Term of this License Agreement.

(a) Term of License. This License Agreement and the access and use privileges extended to the Residential Owners of Licensee pursuant hereto shall commence on the date hereof and shall continue until the third (3<sup>rd</sup>) anniversary of the date hereof, whereupon the term of this License Agreement shall be automatically extended for one (1) year and for successive one (1) year periods unless terminated as

provided below.

(b) Licensor Rights of Termination. Licensor shall have the right to terminate this License Agreement and the rights of Licensee and its Residential Owners hereunder in the event that Licensee defaults in the payment of the annual License Fee following a forty-five (45) day written notice to Licensee and right to cure. As to particular users pursuant to this License Agreement, Licensor shall have the right to deny access to any person (i) who intentionally damages any equipment or facilities within the Fitness Facility, (ii) who exhibits or engages in behavior that is either hostile to, or an interference with the quiet enjoyment of, other persons who are using the Fitness Facility, (iii) who otherwise violates the Rules and Regulations, or (iv) if Licensee is in default in the payment of the quarterly installment of the License Fee, beginning thirty (30) days after the payment due date until paid.

(c) Rights of Termination in the Event of Damage or Destruction. In the event that the Fitness Facility sustains an event of major damage or destruction such that the Fitness Facility is not usable for its intended purpose and the damage cannot be repaired within six (6) months, either Party shall have the right to terminate this License Agreement by written notice to the other Party, without further liability to the other Party. In the event that this License Agreement is terminated pursuant to this subparagraph (c), Licensor shall promptly refund to Licensee the portion, if any, of the License Fee paid by its Residential Owners which are applicable to use of the Fitness Facility during any period following the date of damage or destruction. In the event that this License Agreement is not terminated pursuant to this subparagraph (c), Licensor shall diligently proceed with appropriate reconstruction in a manner determined in Licensor's reasonable discretion and as limited by available insurance proceeds, and the obligation to pay the License Fee shall be suspended during the period of reconstruction. Nothing herein shall be construed as obligating Licensor to repair or reconstruct areas that are the responsibility of the One Snowmass Owners Association.

(d) Licensee Right to Not Renew Term. Licensee (but not Licensor) shall have the right to terminate this License Agreement at the expiration of any then-current term as established by Section 3(a) above by providing written notice of such termination to Owner on or before six (6) months prior to such expiration date. In the event of any termination pursuant to this Section 3(d), the entire License Agreement and all rights and privileges for all Residential Owners shall be terminated and null and void. There is no right for any individual Residential Owner to terminate this License Agreement.

(e) One Snowmass Association Right to Terminate. Following the conveyance of the Fitness Facility and assignment of this License Agreement to the One Snowmass Owners Association in the manner described in Section 7(a) below, if ever, the One Snowmass Owners Association as the assignee Licensor hereunder may at its election, at any time after the ten (10) year period following the date of opening of the Fitness Facility, terminate this License Agreement upon sixty (60) day prior written notice to Licensee if the One Snowmass Owners Association elects through a vote of a majority all votes in the One Snowmass Owners Association to permanently cease operating the Fitness Facility as a fitness facility.

(f) Effect of Termination. In the event of any termination of this License Agreement pursuant to this Section 3, this License Agreement and all rights and privileges hereunder shall be deemed null and void and the parties will have no further obligations hereunder, except that monetary obligations due through the date of termination shall survive termination; provided, however, in the event of termination under Section 3(b) or Section 3(d) above, an individual Owner of a Residential

Unit shall have the right by notice to Licensor within thirty (30) days following such termination to retain the rights and privileges provided under this License Agreement on an individual basis upon substantially equivalent terms as provided herein (in which event Licensor and such Owner will promptly and in good faith document and mutually execute such individual license).

4. Maintenance and Operation of the Fitness Facility.

(a) Standard. Licensor agrees to operate, service, maintain, repair and replace the Fitness Facility so that its operations, service levels and maintenance remain generally commensurate with the level as existed at the time of opening of the Fitness Facility.

(b) Right to Cure. If SV Building 8 Development LLC, as the original Licensor under this Agreement (the “Original Licensor”), in good faith reasonably determines that any subsequent assignee Licensor (the “Assignee Licensor”) is not operating, servicing or maintaining the Fitness Facility in accordance with the standard set forth in Section 4(a) above, the Original Licensor shall have the right to give the Assignee Licensor a written notice specifying the operations, service and/or maintenance which the Original Licensor determines is required in order to bring the Fitness Facility into compliance. If the requirements specified in such notice are not satisfactorily performed within thirty (30) days after delivery of such written notice, the Original Licensor shall thereafter have the right, but not the obligation, to implement such requirements on behalf of the Assignee Licensor, and shall further have the right to enter upon the Fitness Facility (including entry into any portion of the common elements of One Snowmass) and perform any and all acts reasonably necessary to bring the Fitness Facility into compliance. The Original Licensor shall not be liable for any losses, costs or damages to the Fitness Facility on account of the Original Licensor’s entry upon the Fitness Facility or on account of the Original Licensor’s performance of any such cure, except for any such loss, cost or damage caused by the Original Licensor’s gross negligence or willful misconduct. The Original Licensor may delegate its rights under this Section to its agents and independent contractors. All costs incurred by the Original Licensor in connection with such cure shall be reimbursed to the Original Licensor by the Assignee Licensor upon demand. All unreimbursed costs shall bear interest at twelve percent (12%) per annum until paid. This Section 4 cannot be amended unless the prior written approval of the Original Licensor is secured, who shall be deemed to remain a party to this License Agreement solely for purposes of this Section 4.

5. Adoption of Rules Pertaining to Use of the Fitness Facility and Hours of Operation.

Licensor shall be entitled to adopt rules of general application regarding use of the Fitness Facility and the equipment and amenities therein and to establish hours of operation on a seasonal basis as more fully set forth in the Rules and Regulations. Among other things, those rules may include provisions for the discipline of individual users under this License Agreement who violate the rules governing the Fitness Facility due to inappropriate conduct or hazardous behavior, including, without limitation, the right to deny access to such users on a case-by-case basis.

6. Notices. Any notices to be given hereunder by any Party to any other Party shall be in writing and shall be delivered either personally, by email or facsimile transmission, or by United States mail, registered or certified, postage paid with return receipt requested. Notices shall be delivered or addressed to the Parties, until notice is given at a different address at the following addresses:

To Licensee:

One Snowmass Owners Association

\_\_\_\_\_

Email: \_\_\_\_\_

To Licensor:

SV Building 8 Development LLC

\_\_\_\_\_

Email: \_\_\_\_\_

Notices not personally delivered shall be deemed delivered three (3) business days after deposit for mailing, postage prepaid, in any U.S. Postal Service mailing station or on the same business day as an email or facsimile transmission is received by the recipient, so long as a copy of the email or facsimile communication is deposited, postage prepaid, in any U.S. Postal Service mailing station on that same business day.

7. Miscellaneous.

(a) Assignment. This License Agreement may not be assigned by Licensee. Licensor may assign this License Agreement only upon conveyance of the entire Fitness Facility and to the grantee of such conveyance, who shall thereupon become the Licensor hereunder (except as related to Section 4(b) above, which rights shall remain with the Original Licensor) and the assignor Licensor shall be released of all further obligation hereunder. Without limiting the generality of the foregoing, it is acknowledged and agreed that the Condominium Declaration for One Snowmass granted a right and option to the Original Licensor to put and convey the Fitness Facility to the One Snowmass Owners Association established under such Declaration and to assign this License Agreement to One Snowmass Owners Association. In the event of exercise of such put and conveyance, the Original Licensor shall be released and discharged of all further obligations under this License Agreement (except that the rights set forth in Section 4(b) above shall remain with the Original Licensor).

(b) Waiver. The waiver by any Party of the breach by any other Party of any term, covenant, or condition contained in this License Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this License Agreement.

(c) Choice of Law. This License Agreement shall be governed by and construed in accordance with the laws of the State of Colorado with proper venue in the County of Pitkin, Colorado.

(d) Headings. The paragraph headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Whenever the context hereof may so require, the singular shall include the plural, and the

masculine shall include the feminine and neuter.

(e) Relationship of the Parties. It is the intent of the Parties that this License Agreement shall create a personal permissive right of use and enjoyment of the Fitness Facility by the Eligible Users of Licensee's Residential Units during the term of this Agreement, without creating any estate or interest in those facilities in favor of the Residential Owners or Eligible Users. Without limiting the foregoing, nothing in this License Agreement shall be construed to create any ownership or real property interest or easement in the Fitness Facility in favor of Licensee, any Residential Owner of Licensee or any Eligible User. It is also not the intention of the Parties to create a partnership or joint venture of any kind in the Fitness Facility.

(f) Partial Invalidity. If any provision in this License Agreement is held by court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

(g) Entire License Agreement. This License Agreement constitutes the sole agreement between the Parties and supersedes any and all other License Agreements, whether oral or written, with respect to the obligations identified herein. The Parties hereby acknowledge that no representations, inducements, promises, or agreements, whether oral or otherwise, have been made by any Party or anyone acting on behalf of any Party which is not embodied herein; and that no other agreement, statement, or promise not contained in this License Agreement regarding the provisions of this License Agreement shall be valid or binding.

(h) Exhibits. All exhibits to this License Agreement are incorporated herein by this reference.

*[signature page follows]*



IN WITNESS WHEREOF, the Parties have executed this License Agreement as of the date first above written.

**LICENSOR:**

**SV BUILDING 8 DEVELOPMENT LLC,**  
a Delaware limited liability company

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

Title: \_\_\_\_\_

**LICENSEE:**

**ONE SNOWMASS OWNERS ASSOCIATION,**  
a Colorado nonprofit corporation

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

Title: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF PITKIN )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of SV Building 8 Development LLC, a Delaware limited liability company.

WITNESS my hand and official seal.  
My commission expires:\_\_\_\_\_.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF COLORADO )  
 ) ss.  
COUNTY OF PITKIN )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of One Snowmass Owners Association, a Colorado nonprofit corporation.

WITNESS my hand and official seal.  
My commission expires:\_\_\_\_\_.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT A**

**DESCRIPTION OF REAL PROPERTY COMPRISING THE FITNESS FACILITY**