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COMMUNITY DECLARATION
FOR
ASPEN MEADOWS SOUTHEAST NEIGHBORHOOD,
A PLANNED UNIT DEVELOPMENT

This document is an unapproved draft of the proposed COMMUNITY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for ASPEN MEADOWS SOUTHEAST NEIGHBORHOOD, A PLANNED MASTER COMMUNITY. As such, this document is subject to change. Other material terms may be added to this Declaration. USE AT YOUR OWN RISK. Because this is an unapproved draft, this document cannot be utilized for any conformance/compliance purposes and cannot be relied upon by any purchaser/owner at Aspen Meadows. A final, recorded version will be available 5.1.2023

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**COMMUNITY DECLARATION
FOR
ASPEN MEADOWS SOUTHEAST NEIGHBORHOOD,
A PLANNED UNIT DEVELOPMENT**

Iron County, Utah

This COMMUNITY DECLARATION for ASPEN MEADOWS SOUTHEAST NEIGHBORHOOD, A PLANNED UNIT DEVELOPMENT is made this ____ day of March 2022, by PLUMB INVESTMENT LC, a Utah limited liability company (the “Declarant” as hereinafter defined).

RECITALS

A. Declarant holds both legal and equitable title to certain real property located in Iron County, Utah, which is described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”).

B. By this Community Declaration, Declarant desires and intends to develop a common scheme and planned private gated residential community on the Property known as ASPEN MEADOWS SOUTHEAST NEIGHBORHOOD, as shown on the Community Plat, for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project.

C. At full development, the Project will contain various Lots and Dwellings and may include without limitation, single family houses, open spaces, multi-purpose recreational trails, ski trails, walkways and various other amenities and improvements.

D. The Project possesses great natural beauty which Declarant intends to preserve through the use of a coordinated plan of development and the terms of this Community Declaration. It is anticipated that the plan will provide for comprehensive land planning, harmonious and appealing landscaping and improvements. It is assumed that each purchaser of property in the Project will be motivated to preserve these qualities through community cooperation and by complying with not only the letter but also the spirit of this Community Declaration.

E. It is desirable for the efficient management and preservation of the value and appearance of the Project to create a nonprofit corporation to which shall be assigned the powers and delegated the duties of: managing certain aspects of the Project; maintaining and administering the Community Area; administering, collecting and disbursing funds pursuant to the provisions regarding assessments and charges hereinafter created and referred to; and to perform such other acts as shall generally benefit the Project and the Owners. The Aspen Meadows Southeast Neighborhood Community Association, Inc., a Utah nonprofit corporation, has or will be incorporated under the laws of the State of Utah for the purpose of exercising the foregoing powers and functions.

F. The Project is located within the larger proposed Aspen Meadows (the "Aspen Meadows"). Pursuant thereto, all properties located within the Aspen Meadows, including the Project, are subject to various assessments and costs promulgated and levied pursuant to any existing and future development agreements that include the Project, any existing or future management agreements for the Aspen Meadows, any existing or future Design and Development Guidelines or governing documents promulgated for any Aspen Meadows community master owners association. Accordingly, the Community Association shall be a member of any Aspen Meadows master owner associations. Thus, in addition to the Project being subject to the terms and conditions of this Community Declaration, the Project is also subject to any terms and conditions contained in the documents referenced above (the "Aspen Meadows Documents"), except to the extent the Project, Declarant or Owners, if any, are specifically excepted therefrom.

G. Each Owner shall receive fee title to his or her Lot or Dwelling and one or more Memberships in the Community Association as provided in this Community Declaration, the Articles and the Bylaws.

H. The covenants, conditions and restrictions contained in this Community Declaration and in the Exhibits attached hereto shall be enforceable covenants and equitable servitudes and shall run with the land.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees that each of the Recitals A through H is incorporated into and made a part of this Community Declaration for all purposes and further declares, covenants and agrees as follows:

ARTICLE 1

DEFINITIONS

Unless the context clearly indicates otherwise, the following words, phrases or terms used in this Community Declaration (including that portion hereof headed “Recitals”) shall have the meanings set forth in this Article 1. (Certain terms not defined herein are defined elsewhere in this Community Declaration.)

1.1 “Annual Assessments” means the Assessments levied pursuant to Section 9.2.

1.2 “Articles” means the Articles of Incorporation of the Community Association, as amended from time to time.

1.3 “Assessable Property” means each Lot or Dwelling, except for Exempt Property.

1.4 “Assessment” means an Annual Assessment or Special Assessment, as applicable.

1.5 “Assessment Lien” means the lien created and imposed by Section 9.1.

1.6 “Assessment Period” means the term set forth in Section 9.5.

1.7 “Board” means the Board of Directors of the Community Association.

1.8 “Bylaws” means the bylaws of the Community Association, as amended from time to time.

1.9 “Club Membership” means a membership in the residence club and the rights granted to the Club Members, including Declarant, pursuant Section 2.9 to participate in the residence club.

1.10 “Community Area” means: (a) all land, and the Improvements situated thereon, within the Project which Declarant designates as Community Area on the Community Plat or other Recorded instrument; (b) any real property or Improvements within the Project that the Community Association has the obligation to maintain, repair or replace for the common benefit of the Owners, including without limitation, the “Mountain Ski Run Access Easement” labeled and depicted on the Community Plat; and (c) any portion of the Project which is owned by the Community Association for the benefit of the Owners. The Community Area may also include, but is not limited to, the “Homesite Ski Run Access Easement” (as labeled and depicted on the Community Plat), perimeter fencing or walls, multi-purpose recreational trails, ski trails, open space and related Improvements, private streets, landscaping, Project signage, trail signage, street signage, Project lighting and such other similar Improvements.

1.11 “Community Association” means the ASPEN MEADOWS SOUTHEAST NEIGHBORHOOD COMMUNITY ASSOCIATION, INC., a Utah nonprofit corporation, and its successors and assigns, organized for the purposes set forth in this Community Declaration, the Articles and the Bylaws.

1.12 “Community Declaration” means this Community Declaration for Aspen Meadows Southeast Neighborhood, a Planned Unit Development, as amended from time to time.

1.13 “Community Expenses” means expenditures made by or financial liabilities of the Community Association, together with any allocations to reserves as further described in Section 9.2.1.

1.14 “Community Plat” means that certain subdivision plat for the Project entitled “ASPEN MEADOWS SOUTHEAST NEIGHBORHOOD” duly Recorded, as the same may be amended from time to time, and which is incorporated herein by this reference.

1.15 “Community Rules” means the rules adopted by the Board pursuant to Section 7.5, as amended from time to time.

1.16 “Declarant” means PLUMB INVESTMENT LC, a Utah limited liability company, or its respective successors, and any Person to whom it may expressly assign any or all of its rights under this Community Declaration.

1.17 “Declarant Affiliate” means any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.18 “Declarant Control Period” means the period commencing on the date of the Recording of this Community Declaration and ending on the latter of: (i) December 31, 20____; (ii) the date Declarant’s Class B Membership in the Community Association ceases to exist; or (iii) such earlier date on which Declarant elects to terminate the Declarant Control Period by providing written notice to the Community Association.

1.19 “Design and Development Guidelines” means the written review standards, if any, promulgated by the SARC pursuant to this Community Declaration.

1.20 “Dwelling(s)” means a separate residential dwelling unit intended for independent ownership and residential use together with garages and/or other attached Improvements on the same Lot as may be developed, used, and defined as provided in the Governing Documents. The term “Dwelling” as sometimes used herein contemplates that such Dwelling is owned, conveyed or mortgaged as a separate Dwelling of real property.

1.21 “Eligible Mortgagee” means and refer to a Mortgagee which has requested notice of certain matters from the Community Association in accordance with Section 14.1 of this Community Declaration.

1.22 “Envelopes” means any defined home development envelope, driveway design envelope and/or natural open space envelope (“Design Envelopes”) located within the Lots for purposes of proper configuration and final engineering of the Community.

1.23 “Exempt Property” means:

1.23.1 All land and Improvements owned by, or dedicated to and accepted by, the United States, the State of Utah, Iron County or any other Municipal Authority having jurisdiction, or any political subdivision of any of them, for as long as such entity or political subdivision is the owner thereof or for as long as said dedication remains effective;

1.23.2 All Community Area; and

1.23.3 Each other property and Lot while owned by Declarant or a Declarant Affiliate, until the acquisition of its record title by another Person other than Declarant or a Declarant Affiliate.

1.24 “Governing Documents” means this Community Declaration, the Articles, the Bylaws, the Community Rules, and Board resolutions of the Community Association, the Design and Development Guidelines and the Aspen Meadow Documents, as each document may be amended from time to time.

1.25 “Homesites” means any individual Lots with a defined home development envelope, driveway design envelope and/or natural open space envelope.

1.26 “Improvement(s)” means any improvement now or hereafter constructed at the Project and includes anything which is a structure and appurtenances thereto of every type and kind, including but not limited to any building, transient/overnight occupancy development, out building, structure, walkway, garage, road, driveway, parking area, trails, ski trails and related fixtures and equipment.

1.27 “Lessee” means the lessee or tenant under a lease, oral or written, of any Lot, Dwelling or Improvement (or part thereof), including a sublessee or an assignee of the lessee’s or tenant’s interest under a lease.

1.28 “Lot” means each area of real property in the Project shown as a separate parcel of land on the Community Plat, or such other Lots created by Declarant pursuant to the provisions of this Community Declaration, each of which is to be improved with Dwellings.

1.29 “Member” means any Person who is a member of the Community Association as provided in Article 7.

1.30 “Membership” means a membership in the Community Association and the rights granted to the Members, including Declarant, pursuant to Article 7 to participate in the Community Association.

1.31 “Mortgage” means any mortgage, deed of trust, or other document pledging any portion of a Lot or Dwelling or interest therein as security for the payment of a debt or obligation Recorded against such Lot or Dwelling, and a “First Mortgage” means any Mortgage which is not subject or subordinate to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.32 “Mortgagee” means a beneficiary of a Mortgage as well as a named Mortgagee, and “First Mortgagee” means such a beneficiary or mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage.

1.33 “Municipal Authority” means the applicable governmental entity or municipality which has jurisdiction over all or some part of the Project including without limitation, the City of Brian Head, Utah and Iron County, Utah.

1.34 “Occupant” means any Person other than an Owner who has actual use, possession or control of a Lot, or any portion thereof or Improvement thereon, and shall include, without limitation, residents who reside in any Dwelling.

1.35 “Owner” means (i) the Person or Persons who individually or collectively own fee title to a Lot, Dwelling or Improvement, including Declarant or a Declarant Affiliate, and vendees under installment purchase contracts; and (ii) any Lessee entitled to occupy all of a Lot, Dwelling or Improvement or a portion thereof under a lease or sublease for an initial term of at least ten (10) years, in which case the Lessee, rather than the fee owner of the Lot, Dwelling or Improvement, or portion thereof shall be deemed the Owner thereof for purposes of this Community Declaration during the term of said lease or sublease. “Owner” shall not include Persons who hold an interest in a Lot, Dwelling or Improvement merely as security for the performance of an obligation.

1.36 “Person” means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.37 “Project” and/or “Property” means, refers to, and consists of the Lots and other parcels of real property situated in Iron County, Utah described in Exhibit “A” and the development, Dwellings and Improvements to be completed thereon and subjected to this Community Declaration pursuant to Section 2.3 below.

1.38 “Purchaser” means any Person, other than Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for: (a) a Person who purchases a Lot and then leases it to Declarant for use as a model in connection with the sale or lease of other Lot; or (b) a Person who, in addition to purchasing a Lot, is expressly assigned any or all of Declarant’s rights as Declarant under this Community Declaration.

1.39 “Record,” “Recording,” “Recorded” and “Recordation” means placing or having placed an instrument of public record in the official records of Iron County, Utah.

1.40 “SARC” means the site and architectural review committee created pursuant to this Community Declaration.

1.41 “Special Assessment” means an assessment levied pursuant to Section 9.4.

1.42 “Total Votes of the Community Association” means the total number of votes appertaining to all Lots, as described in Section 7.2 below.

ARTICLE 2

PROJECT OVERVIEW

2.1 Entitlements. Declarant reserves the sole and exclusive right to determine how each Lot is or is not developed.

2.2 Non-residential Development. Declarant intends that the Project will be developed to allow for both residential and non-residential uses, including, without limitation or obligation, residential uses consistent with the Governing Documents, as well as ancillary, complementary or subsidiary uses such as (without limitation), ski trails, ski easements, natural open space, Community Areas and the like.

2.3 Property Subject to this Community Declaration. This Community Declaration is being Recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the property within the Project shall be held, sold and conveyed subject to this Community Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Community Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Community Declaration. In addition, each such Person by so doing acknowledges that this Community Declaration sets forth a general scheme for the development and use of the Project and evidences his, her or its intent that all the restrictions, conditions, covenants, rules and regulations contained in this Community Declaration shall run with the land it encumbers and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Community Declaration shall be mutually beneficial and enforceable by the Community Association and all Owners.

2.4 Declarant’s Right to Modify the Development Plan. Notwithstanding Declarant’s proposed development plan for the Project as described in this Community Declaration, Declarant reserves the right to increase and decrease the number of Lots in the Project subject to approval of Municipal Authorities. Moreover, Declarant reserves the right to adjust the location and size of each Lot in order to facilitate proper planning in the sole and exclusive discretion of Declarant. Declarant shall effectuate such relocations and adjustments by Recording an amendment to the Community Plat, and Iron County and all Owners acknowledge and agree that

no amendment to this Community Declaration shall be required to effectuate any such adjustments. Declarant reserves the right to allocate the specific number of Dwellings, Community Area and Improvements to be constructed on each Lot. Declarant shall also have the right to sell, convey, transfer, assign or otherwise dispose of any Lot, without first constructing a Dwelling thereon. Any purchaser, transferee or Owner of a vacant Lot shall be entitled to construct a Dwelling thereon, subject to the approval or supervision of Declarant as set forth in this Community Declaration and the Design and Development Guidelines.

2.5 Community Association. The Community Association shall maintain the Community Area and all Improvements thereon, in a safe, sanitary and attractive condition. Such maintenance responsibility shall include, but shall not be limited to, the control of all weeds and other unsightly vegetation, rubbish, trash, garbage and landscaping. The Community Association shall assess and collect fees from its Members, in accordance with the provisions hereof.

2.6 Incidents of Ownership. Every Owner of a Lot or Dwelling shall be a member of the Community Association, and a nonexclusive easement for each Owner shall exist for use, enjoyment, ingress and egress over the Community Area subject to such restrictions and limitations as are contained in the Governing Documents and subject to other reasonable regulation by the Community Association. Such interests shall be appurtenant to and inseparable from ownership of the Lot or Dwelling. Any sale, conveyance, hypothecation, encumbrance or other transfer of a Lot or Dwelling shall automatically transfer these interests to the same extent, notwithstanding any term or provision to the contrary in the documents effecting such transfer.

2.7 Community Plat. Notwithstanding any other provision of this Community Declaration to the contrary, Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to the Community Plat with respect to any Property owned by Declarant in any way which Declarant desires including, but not limited to, changing the location and density of all or any portion of the Property owned by Declarant or changing the nature or extent of the uses to which such Property may be devoted.

2.8 Rental Community. All Owners, Lessees and Occupants agree and acknowledge that a primary purpose of the Project is to provide overnight occupancy accommodations in support of resort and recreational related activities. Accordingly, all Owners, Lessees and Occupants understand that there will be persons occupying the Dwellings within the Project as temporary, commercial overnight accommodations and nothing in this Declaration shall limit the rights of Declarant or any other Owner to operate the Dwellings owned by it for transient rental purposes. Declarant reserves the right to establish a program pursuant to which owners of Lots may elect to make their Dwellings available for occupancy by third parties (the "Rental Program"). Participation in the Rental Program is strictly voluntary.

2.9 Club. Declarant reserves the right to submit all or some of the Lots in the Project to a private club to be established as part of Aspen Meadows. Declarant reserves the right to amend this Declaration to include additional provisions with respect to the private club membership for each Owner and such language shall govern the ownership of Club Memberships appurtenant to

said Lots (defined below) and the rights, duties and obligations of Owners with respect to such membership.

ARTICLE 3

DECLARANT'S RIGHTS AND DISCLAIMERS

3.1 Reservation of Right to Construct Dwellings and Improvements. In addition to the reservations of rights set forth in this Community Declaration, Declarant reserves the sole and exclusive right to construct or to directly supervise the construction of all Dwellings and Improvements to be erected on the Lots which are a part of the Project in order to protect its integrity and control the grading and site elements relative to each particular Lot. Any Owner of a Lot, Dwelling or Improvement shall, however, have the right to submit plans for approval to Declarant or the SARC for the development of a particular Dwelling or Improvement for his, her or its Lot subject to the Design and Development Guidelines.

3.2 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that: (a) the Project will be completed in accordance with the Community Plat for the Project as it exists on the date this Community Declaration is Recorded; (b) any property subject to this Community Declaration will be committed to or developed for a particular use or for any use; or (c) the use of any property subject to this Community Declaration will not be changed in the future. Nothing contained in this Community Declaration and nothing which may be represented to a purchaser by real estate brokers or salesperson representing Declarant or any Declarant Affiliate shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Community Declaration.

3.3 Security. The Community Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than they otherwise might be. Neither the Community Association nor Declarant shall in any way be considered insurers or guarantors of security within the Project. However, neither the Community Association, nor the Declarant shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners, Occupants, Lessees, tenants, guests and invitees of any Owner or Occupant, as applicable, acknowledge that Declarant, the Community Association and its Board, and the SARC do not represent or warrant that any fire protection system or burglar alarm system designated by or installed according to the Design and Development Guidelines may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that fire protection or burglary alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner, Occupant, Lessee, tenant, guest or invitee of an Owner or Occupant, as applicable, acknowledges and understands that Declarant, the Community Association and its Board, and the SARC are not insurers and that each Owner, Occupant, Lessee, tenant, guest and invitee assumes all risks for loss or damage to Persons, to Lots, Dwellings, Improvements and to the contents of Dwellings and Improvements and further acknowledges that Declarant, the Community Association and its Board, and the SARC have made no representations or warranties nor has any Owner, Occupant, Lessee, tenant, guest or invitee relied upon any

representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

3.4 Readjustment of Lot Line and Dwelling Development Boundaries. Declarant hereby reserves for itself, Declarant Affiliate and Declarant's successors and assigns, the right to effectuate minor realignment and adjustment of Lot boundary lines and any defined home development envelope, driveway design envelope or natural open space envelopes ("Design Envelopes") located within the Lots for purposes of proper configuration and final engineering of the Community; provided that any such realignment and adjustment does not affect any existing Dwelling on the affected Lot. The authority to realign and adjust such Lot and Design Envelope boundary lines shall be exclusively reserved to the Declarant, Declarant Affiliate and Declarant's successors or assigns, in their sole and reasonable discretion, subject to the other provisions of this Section 3.4. All Owners specifically acknowledge and agree that they shall cooperate with Declarant to effectuate such minor realignment and adjustment of their respective Lot and Design Envelope boundary lines by deed and, if required by the governing Municipal Authority, the execution of an amendment to the Community Plat in form and content as requested by the Declarant for the purposes of proper configuration and final engineering of the Lots and Design Envelopes in relationship to the development of the Project.

Further, all Owners acknowledge and agree that no amendment to this Community Declaration shall be required to effectuate any Lot boundary line adjustments so long as such adjustments are made pursuant to § 17-27-808(7), *Utah Code Ann.*, as amended. More particularly, in the event the Municipal Authority does not require an amendment to the Community Plat, any boundary line adjustments between adjacent Lots may be executed upon the approval of SARC, the appropriate Municipal Authority and upon recordation of an appropriate deed if:

3.4.1 No new Dwelling or Improvement results from the Lot boundary line adjustment and exchange of title;

3.4.2 The appropriate Municipal Authority and adjoining property Owners consent to the Lot boundary line adjustment (such Owners' consent to be granted as described above);

3.4.3 The adjustment does not result in violation of applicable Municipal Authority zoning requirements; and

3.4.4 The appropriate Municipal Authority Records a notice of approval in accordance with § 17-27-808(7)(c), *Utah Code Ann.*

The foregoing Sections 3.4.1, 3.4.2, 3.4.3 and 3.4.4 are subject to automatic modification to be consistent with any amendments or changes to § 17-27-808(7), *Utah Code Ann.*

3.5 No Restriction on Location and Number of Lots and Improvements. Declarant shall not be restricted in the location of Lots, Dwellings, Community Area or other Improvements on the Property or in the number of Lots, Dwellings or Improvements that may be created on the

Property, except as may be required by the Governing Documents, applicable zoning requirements, ordinances or regulations. Declarant makes no assurances as to location, size, type or number of Lots, Dwellings, Community Area or other Improvements to be created on the Property.

3.6 Declarant's Exemption. No SARC approval shall be required for (i) any construction, installation, addition, alteration, repair, change, replacement or other work by, or on behalf of, Declarant; (ii) initial Dwellings and Improvements constructed by, at the direction of, or with the express written approval of Declarant; (iii) normal maintenance of Exempt Property or previously approved Dwellings or Improvements; (iv) rebuilding an Exempt Property or previously approved Dwelling or Improvement in accordance with its original design and dimensions; (v) changes to the interior of an Exempt Property or previously approved Dwelling or Improvement; (vi) work reasonably required to be performed in an emergency for the purpose of protecting any person or property from damage.

3.7 Transfer of Declarant's Rights. Any or all of the special rights and obligations of Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the public records of Iron County, Utah as appropriate. Nothing in this Community Declaration shall be construed to require Declarant or any successor to develop any portion of the Project in any manner whatsoever. So long as Declarant continues to have rights under this Section 3.7, no person or entity shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Project without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions or similar instrument being void and of no force and effect unless subsequently approved by Recorded consent signed by Declarant.

3.8 Transfer of Title to Community Areas. Declarant reserves the right to convey to the Community Association title to the Community Areas, free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities) before the closing of the last sale of a Lot or Dwelling within the Project. In the event Declarant exercises its right to convey the Community Areas to the Community Association, then the Community Association shall be obligated to accept such conveyance. During the Declarant Control Period, the Community Association shall not lease or sublease the Community Areas or any portion thereof to a third party without the written consent of Declarant, which consent may be withheld as Declarant may determine in its sole and exclusive discretion.

ARTICLE 4

PERMITTED USES AND RESTRICTIONS

4.1 Use Restrictions. Except as otherwise provided herein, each Lot may be used in any manner consistent with the requirements of applicable zoning and other land use ordinances and

regulations, including the construction of one or more Dwellings in accordance with the Governing Documents. The Lots, Dwellings, Community Area and Improvements, except as otherwise permitted in writing by the Community Association and/or Declarant as applicable, shall be used in accordance with the restrictions outlined in the Governing Documents and as outlined below:

4.1.1 The Lots may be used only for the construction and occupancy of residential Dwellings and typical residential activities incidental thereto, such as fulltime residential homes, vacation second homes, the rental of Dwellings as overnight accommodations, together with any common recreational facilities or any other Community Areas or amenities. All property within the Project shall be used, improved and devoted exclusively to residential and vacation use.

4.1.2 All Lots shall be used, improved and devoted exclusively to detached residential Dwellings. Unless otherwise permitted by Declarant in writing, no structure whatsoever, other than one private Dwelling, together with a private garage for cars, shall be erected, placed or permitted to remain on any Lot. The entire Dwelling on a Lot may be rented from time to time by the Owner thereof, subject to the provisions of this Community Declaration and the other Governing Documents.

4.1.3 No Dwelling shall be used for or developed as a timeshare/fractional program (“Timeshare/Fractional Program”). For purposes of this Community Declaration, Timeshare/Fractional Program specifically means:

4.1.3.1 Any and all use and occupancy arrangements falling within the definition of “timeshare interests” under the Utah Timeshare and Camp Resort Act (§§ 57-19-1, *et seq.*, *Utah Code Ann.*), but a determination that any use and occupancy arrangements do not constitute a “timeshare interest” under such Act shall not be determinative of whether such arrangements constitute a Timeshare/Fractional Program hereunder. It is intended that the definition of “Timeshare/Fractional Program” hereunder shall be broader than, and not limited by, the definition of “timeshare interest” in the Timeshare and Camp Resort Act. Timeshare/Fractional Programs may also include, without limitation, Dwellings:

4.1.3.1.1 used for the operation of a timesharing, fractional ownership, interval ownership, private residence club or similar program whereby the right to exclusive use of the Dwelling rotates among participants in the program, regardless of whether such program utilizes a fixed or floating schedule, a first come-first served reservation system or any other arrangement; or

4.1.3.1.2 used for the operation of a reservation or time-use system among co-Owners of a Dwelling, regardless of whether or not any co-Owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating, if one or more of the following conditions exist:

(a) the ownership interest in such Dwelling is marketed for sale to the public subject to such system; or

(b) the co-Owners are or were required as a condition of purchase of the ownership interest in such Dwelling to subject the interest to a pre-determined reservation or time-use system among co-Owners; or

4.1.3.1.3 in the marketing, offering or selling of any club membership interest, limited liability company interest, limited partnership interest, program interest or other interest whereby the interest-holder acquires a right to participate in a reservation or time-use system among the interest-holders, or among the interest-holders and others, involving the Dwelling, or involving the Dwelling and other alternate or substitute properties, regardless of whether such interest is equity or non-equity, regardless of whether or not any interest-holder may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating.

4.1.4 Notwithstanding the foregoing Section 4.1.3, Declarant or its assignee reserves the right to submit some or all of the Dwellings located within the Project to a Timeshare/Fractional Program, as Declarant or its assignee shall establish in its sole and exclusive discretion. Declarant is hereby authorized to unilaterally execute such additional documents and instruments, including, but not limited to, Timeshare/Fractional Program declarations or subsequent amendments to this Declaration, as may be necessary to effectuate the purposes of this Section 4.1.4 and to implement the Timeshare/Fractional Program as reasonably determined by Declarant.

4.1.5 All Owners and Occupants hereby agree and acknowledge that a primary purpose of the Project is to provide overnight occupancy accommodations in support of resort recreational related activities. All Owners and Occupants understand that there may be persons occupying the Dwellings within the Project as temporary, commercial overnight accommodations and nothing in this Declaration shall limit the rights of Declarant or any other Owner to operate the Dwellings owned by it for transient rental purposes.

4.1.6 An Owner may conduct business activities within the Dwelling so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling; (b) the activity conforms to all zoning requirements for the Project; (c) the activity does not involve regular visitation of the Dwelling by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the project; and (d) the activity is consistent with the residential and vacation character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board. This Section 4.1.6 shall not apply to any activity conducted by Declarant or a Declarant Affiliate with respect to its development

and sale of the Lots or Dwellings or its use of any Dwellings which it owns within the Project. Nothing herein shall prohibit the nightly or other short-term or long-term rental of any Dwelling within the Project. Lots and Dwellings may not be used for any garage sale, moving sale, rummage sale, or similar activity.

4.1.7 Additional restrictions to the use of the land shall include but are not limited to:

(a) Snowmobiles: The operation of snowmobiles within Aspen Meadows is strictly prohibited except when approved by the Declarant and or Board, for: (i) wintertime land and trail management and maintenance purposes, or (ii) organized operations in designated open space areas, and only when any associated impacts can be adequately mitigated;

(b) Trails: No public or private trail access allowed for all motorized vehicles. pedal bicycles, mountain bikes, motorcycles, all terrain vehicles (ATV's), other off-road vehicles, and all means of transport whatsoever, (excepting snowmobiles which are prohibited), shall be allowed and only on Aspen Meadows roads, or specified trails designated for such use, and Homesite driveway access;

(c) Firearms: The discharge or shooting of firearms and all types of hunting on property included within the entire Aspen Meadows community is prohibited. The Developer and its official agents and/or other employees or agents of the Association shall be permitted to use firearms, anywhere within Aspen Meadows, including on any Homesite, only in connection with wildlife management or predator control; provided, however that any Owner shall be given reasonable notice of entry, except in the case of emergency;

(d) Signage: Owners may not post, maintain, or permit on any Homesite lot, building, structure, rock, trees, post or in the natural ground, any signage such as "for sale" or "for rent" or "garage sale" signage or signs advertising names of contractors, landscapers, real estate brokers or brokerages, lenders, or the like;

(e) Fires: No open fires or burning, including, but not necessarily limited to, bonfires, camp fires, the burning of yard trimmings, construction waste, or other materials, will be permitted anywhere on Aspen Meadows lands without the prior written approval of the Declarant and/or Board together with notifications and coordinations directly with the Brian Head Town Department of Public Safety responsible for all preventative Fire Services and prescribed burns locally only;

(f) Trespassing: Trespassing is prohibited.

The Declarant and/or the Board shall have the right to post signs on any Homesite lot, common areas, or any other adjoining lands, excepting public trails, prohibiting trespassing or hunting, to protect boundary lines or for any other purpose consistent with Aspen Meadows operations. Except as provided herein, all other signs and signage of any type, including specifically, permanent or temporary approved construction contractor / address / Homesite lot number and owner-of-record identification reference, shall be approved, in writing, by the SARC prior to being erected on site, and shall confirm to the Design and Development Guidelines for such signs. Notwithstanding, the foregoing, the Declarant shall be permitted to maintain temporary and semi-permanent project signs for general construction and its own or third party real estate brokerage for its own sales and marketing purposes solely. Subject to the foregoing, the Declarant and/or the Board shall have the authority; (a) to prohibit entirety from Aspen Meadows certain motor vehicles that may be considered to emit noise or other pollution in excess of levels or standards promulgated by the Declarant, or Board, and (b) to promulgate such other rules, regulations and restrictions as it deems appropriate with respect to the operation of motor vehicles, non-motorized vehicle, and all means of transport whatsoever nature on the Aspen Meadows lands. Other restrictions will apply to the Aspen Meadows lands and a complete list, subject to change, will be found within the Aspen Meadows Documents

4.2 Architectural Control. All Dwellings and Improvements constructed within the Project shall comply with the Design and Development Guidelines and no construction, installation, removal, addition, alteration, repair, change, devegetation, excavation, grading, planting, revegetation, or other work which in any way alters the appearance (including but without limitation, the exterior color scheme) of any property or Lot within the Project, or any Dwellings or Improvements located thereon, shall be made or done without the prior written approval of the SARC. Any Owner or other Person desiring approval of the SARC for the construction, installation, addition, alteration, repair, change or replacement of any Dwelling or Improvement which would alter the exterior appearance of his, her or its Lot, Dwelling or other portion of the Project, or any Improvements located thereon, shall submit to the SARC a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change, replacement or other work which such Owner or other Person desires to perform. The SARC shall review the Owner's written request according to the procedures outlined in the Governing Documents.

4.3 Fees. Declarant or the Community Association shall have the right to charge an Owner a reasonable fee for the SARC review of requests for approval of any construction, installation, alteration, addition, repair, change, replacement or other work pursuant to the Governing Documents, which fee shall be payable at the time the application for approval is submitted to the SARC. Such fee, if established and charged by the Community Association, shall be set at such reasonable level as the Community Association may estimate will be necessary to defray the reasonable costs and expenses of the SARC in reviewing and evaluating any such request or application, and may include, if the Community Association deems it reasonably necessary under the circumstances, an amount to cover the reasonable costs of professional consultation to the SARC by an architect, engineer or attorney and or SARC

member. Declarant or the Community Association shall have the right to charge an Owner such other reasonable fees as Declarant determines, in its sole discretion.

4.4 Municipal Authority Approval. The approval required of the SARC pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation, or under the Aspen Meadows Documents or any other Recorded instrument. The SARC may condition its approval of any application, plans or other items submitted to it on delivery to the SARC of evidence satisfactory to the SARC that the Owner or other Person seeking its approval has also made appropriate applications for (and prior to commencing work shall have obtained) any and all such other approvals or permits. The SARC shall cooperate reasonably with any other approving authorities or entities, provided, however, that the SARC shall not be bound by any approvals, permits or other decisions of any other such approving authority or entity.

4.5 Required Approvals for Further Property Restrictions. All proposed site plans and subdivision plats for any Lot, Dwelling or Improvement, or any portion thereof, must be approved in writing by Declarant and the SARC prior to Recordation thereof or commencement of construction on the applicable Dwelling or Improvement. In addition, the Property is subject to the following approvals:

4.5.1 No Lot or Dwelling, or portion thereof, shall be further subdivided and no portion less than all of any such Lot or Dwelling, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of Declarant and the SARC.

4.5.2 No site plan, subdivision plat, condominium plat, condominium declaration or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits shall be Recorded, submitted to the Municipal Authority unless the same has first been approved in writing by Declarant and the SARC; further, no changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by Declarant and the SARC hereunder unless such changes or modifications have first been approved by Declarant and the SARC in writing.

4.6 Owner's Obligation to Maintain Lot, Dwelling or Improvement. Each Owner shall maintain his, her or its Lot, and all Dwellings and Improvements thereon, in a safe, sanitary and attractive condition. In the event that an Owner fails to maintain his, her or its Lot, Dwelling or Improvement as provided herein in a manner which the Board reasonably deems necessary to preserve the appearance and/or value of the Project, the Board may notify the Owner of the work required and demand that it be done within a reasonable and specified period. In the event that the Owner fails to carry out such maintenance within said period, the Board shall have the right to enter upon the Lot, Dwelling or Improvement to cause such work to be done and individually charge the cost thereof to such Owner. Notwithstanding the foregoing, in the event of an emergency arising out of the failure of an Owner to maintain his, her or its Lot, Dwelling or Improvement, the Board shall have the right to immediately enter upon the Lot, Dwelling or Improvement to abate the emergency and individually charge the cost thereof to such Owner.

4.7 Responsibility for Community Area Damage. The cost of repair or replacement of any portion of the Community Area resulting from the willful or negligent act of an Owner, Occupant, Lessees, tenants, family, guests or invitees shall be, in addition to the party at fault, the joint responsibility of such Owner to the extent that it is not covered by insurance maintained by the Community Association. The Community Association shall cause such repairs and replacements to be made and the cost thereof may be levied as an individual charge against such Owner.

4.8 Variances. Subject to the provisions of the Design and Development Guidelines, the SARC may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Community Declaration if the SARC determines, in its discretion: (a) either: (i) that a restriction would create an unreasonable hardship or burden on an Owner, or (ii) that a change of circumstances since the date this Community Declaration is Recorded has rendered such restriction obsolete; and (b) that the activity permitted under the variance will not have any substantial adverse affect on the other Owners of Lots within the Project and is consistent with the high quality of life intended for Owners within the Project.

ARTICLE 5

NOT APPLICABLE TO THIS COMMUNITY USE

ARTICLE 6

EASEMENTS

6.1 Owners' Easements of Enjoyment.

6.1.1 Community Area Easements. Subject to the rights and easements granted to Declarant in Section 6.4, each Owner and Occupant shall have a non-exclusive right and easement of enjoyment in, to and over the Community Area, which right and easement shall be appurtenant to and shall pass with the title to each Lot, Dwelling and Improvement, subject to the provisions of the Governing Documents including, without limitation, the following:

6.1.1.1 Except as otherwise provided in this Community Declaration, no dedication, transfer, mortgage or encumbrance of all or any portion of the Community Area shall be effective unless approved by Owners representing two-thirds (2/3) of the Total Votes of the Community Association. Notwithstanding the preceding sentence or any other provision of this Community Declaration to the contrary, the Community Association shall have the right, without the consent of the Owners or any other Person (except Declarant, whose consent shall be required so long as Declarant owns any part of the Property), to dedicate portions of the Community Area to the public, or grant easements over, under or through portions of the Community Area to the public, to any municipal or other

governmental agency or entity, or to any public, quasi-public or private utility company, for use as right-of-way, for utilities, for public landscape purposes and the like, as may be required or requested by any Municipal Authority, or by a public, quasi-public or private utility company, in connection with or at the time of the development of portions of the Property.

6.1.1.2 The Community Association shall have the right to regulate the use of the Community Area through the Community Rules and to prohibit access to such portions of the Community Area, such as landscaped right-of-ways, not intended for use by the Owners, Lessees or other Occupants.

6.1.1.3 Declarant and the Community Association shall each have the right to grant easements or licenses to other Persons for the construction of Improvements on the Community Area, and Declarant and the Community Association shall each have the right to grant ingress and egress easements over the streets, roads and trails in the Project to Persons who are not Members of the Community Association.

6.1.2 Lessee Access Rights. If a Dwelling or Improvement is leased or rented by its Owner, the Lessee of such Dwelling or Improvement shall have the right to use the Community Area during the term of the lease, and the Owner of such Dwelling shall have no right to use the Community Area until the termination or expiration of such lease.

6.2 Utility Easement. There is hereby created an easement upon, across, over and under the Community Area, Lots and other property for reasonable ingress, egress, installation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television, internet fiber and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment on the Community Area, Lots, and other property but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Community Area, Lots, and other property except as initially designed, approved and/or constructed by Declarant or as approved by the Board (and, in the case of a Dwelling or Improvement, by the Owner of such Dwelling or Improvement). If any utility company requests that a more specific easement be granted in its favor in substitution for the blanket easement hereby established with respect to the Community Area, the Community Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Board deems appropriate. Notwithstanding Declarant's grant of blanket utility easements, Declarant reserves the unilateral right to record an instrument which narrows and limits such grant of utility easement to the normal easement width of the utility in those specific areas of the Lots or Community Areas which actually contain the utility facilities as described in such instrument and for the purposes described therein. Such reserved right is subject to the utility companies' rights then located under the real property depicted on the Community Plat.

6.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across paths, trails, walks and lanes that from

time to time may exist upon the Community Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such private streets, driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots, Dwellings or Improvements and their guests, families, lessees, tenants and invitees. There is also hereby created an easement upon, across and over the Community Areas and all private roadways, private driveways and private parking areas within the Project for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. The Board shall have the right to relocate and/or reconfigure any and all easements from time to time as it sees fit without the consent of any Owners (but subject to any necessary approvals of Iron County or any other municipal body or agency having jurisdiction thereover including in particular, but without limitation, the easements granted herein for police, fire, medical and other emergency vehicles and personnel).

6.4 Declarant's Use and Easements.

6.4.1 Declarant shall have the right and an easement (which, in its discretion, it may delegate to and/or share with one or more Declarant Affiliates, upon and subject to such terms and conditions as Declarant may deem appropriate) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Property with respect to the sales of Lots, Dwellings, Improvements or other property in the Project. Declarant reserves the right (which, in its discretion, it may delegate to and/or share with one or more Declarant Affiliates, upon and subject to such terms and conditions as Declarant may deem appropriate) to place models, management offices and sales and leasing offices on any Lots or other property owned by Declarant (or by such Declarant Affiliate(s), as applicable) and on any portion of the Project in such number, of such size and in such locations as Declarant deems appropriate.

6.4.2 So long as Declarant is marketing Lots, Dwellings or other portions of the Property, Declarant shall have the right to restrict the use of the parking spaces on the Community Area. Such right shall include reserving such spaces for use by prospective Purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

6.4.3 Declarant shall have the right and an easement on and over the Community Area to construct all Improvements Declarant may deem necessary and to use the Community Area and any Lots and other property owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

6.4.4 Declarant shall have the right and an easement upon, over and through the Community Area as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by Declarant in this Community Declaration.

6.5 Easement in Favor of Community Association. The Lots are hereby made subject to the following easements in favor of the Community Association and its directors, officers, agents, employees and independent contractors:

6.5.1 For inspection during reasonable hours of the Lots in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

6.5.2 For inspection, maintenance, repair and replacement of portions of the Community Area accessible only from such Lots or Dwellings;

6.5.3 For correction of emergency conditions on one or more Lots, Dwellings or Improvements on portions of the Community Area accessible only from such Lots, Dwellings or Improvements;

6.5.4 For the purpose of enabling the Community Association, the Board, the SARC or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Governing Documents; and

6.5.5 For inspection during reasonable hours of the Lots, Dwellings and Improvements in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Governing Documents.

ARTICLE 7

THE COMMUNITY ASSOCIATION; ORGANIZATION; COMMUNITY ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

7.1 Formation of Association; Membership in the Community Association. The Community Association shall be a nonprofit Utah corporation charged with the duties and vested with the powers prescribed by law and set forth in this Community Declaration and the other Governing Documents. Every Owner of a Lot or Dwelling which is Assessable Property shall be a Member of the Community Association, and Declarant shall be a Member of the Community Association so long as it owns any part of the Project (unless and until Declarant expressly relinquishes in writing its status as a Member of the Community Association).

7.2 Votes in the Community Association.

7.2.1 The Community Association shall have two (2) classes of Memberships which shall be entitled to the following voting rights:

7.2.1.1 Class A. All Owners of Lots, with the exception of Declarant, shall be Class A Members and shall be entitled to one (1) vote for each respective Lot. In the event more than one Owner owns any Lot then all such Persons shall be Class A Members of the Community Association.

7.2.1.2 Class B. Declarant shall be a Class B Member and shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of one of the following events, whichever occurs earlier:

7.2.1.2.1 When the Total Votes of the Community Association outstanding in the Class A Membership equals the Total Votes of the Community Association outstanding in the Class B Membership; or

7.2.1.2.2 Thirty (30) years from the date this Community Declaration is Recorded; or

7.2.1.2.3 Such earlier date on which Declarant elects to terminate its Class B Membership by providing written notice to the Community Association.

7.2.2 So long as Declarant has Class B Membership rights, all matters coming before the Community Association for vote shall be decided by the vote of the Declarant as the sole Class B Member. Following termination of Declarant's Class B Membership, all Class B Memberships and all Class B votes shall cease to exist, and any issue put to a vote at a duly called meeting of Members at which a quorum is present shall be decided by a simple majority of Total Votes of the Community Association represented in person or by valid proxy at such meeting. Thereafter, the Community Association shall be deemed to have a single class of Members and votes.

7.3 Voting Procedures. A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded; the Board shall thereafter be given written notice of such change and provided satisfactory evidence thereof. The votes for each Lot and Dwelling must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote or votes for a particular Lot, the vote or votes for that Lot shall be deemed void and shall not be counted.

7.4 Governing Board and Officers. The affairs of the Community Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Governing Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Community Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Community Association and the Community Area. The Board shall determine the compensation to be paid to any such manager.

7.5 Community Rules. The Board may, from time to time, and subject to the provisions of this Community Declaration, adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Community Area including, but not limited to, any recreational facilities or other Improvements situated upon the Community Area; (b) traffic and parking restrictions including speed limits on private streets within the Project; (c) minimum standards for any maintenance of the Community Area, Lots, Dwellings and Improvements within the Project; or (d) any other subject within the jurisdiction of the Community Association. In the event of any conflict or inconsistency between the provisions of this Community Declaration and the Community Rules, the provisions of this Community Declaration shall prevail.

7.6 Personal Liability. No member of the Board or any other committee of the Community Association, no officer of the Community Association and no manager or other employee of the Community Association shall be personally liable to any Member, or to any other Person including the Community Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Community Association, the Board or any member thereof, the manager, any representative or employee of the Community Association, any officer of the Community Association or any member of any other committee of the Community Association; provided, however, the limitations set forth in this Section shall not apply to any person who has engaged in intentional misconduct.

7.7 Express Rights. Except as otherwise limited herein, the Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by Utah law, this Community Declaration and the Bylaws, including but not limited to the following:

7.7.1 To make and enforce the Community Rules and all other rules and regulations covering the operation and maintenance of the Project.

7.7.2 To maintain, repair, replace, restore, operate, and manage the Community Areas and all property that may be acquired by the Community Association, to appoint a manager in regard to such activities, and to establish an adequate reserve fund for repair, replacement, and restoration thereof.

7.7.3 To determine and pay the Community Expenses.

7.7.4 To assess and collect the proportionate share of Community Expenses from the Owners.

7.7.5 To enter into contracts, deeds, leases and/or other written instruments and documents and authorize the execution and delivery thereof by the appropriate officers.

7.7.6 To open bank accounts and make other decisions regarding the investment of Community Association funds on behalf of the Community Association and to designate signatories therefor.

7.7.7 To purchase, hold, sell, convey, mortgage or lease any real property in the name of the Community Association or its designee; provided, portions of the

Community Areas may only be conveyed or subjected to a security interest by the Community Association if Members entitled to cast at least a majority of the Total Votes of the Community Association, including a majority of the Total Votes of the Community Association allocated to Lots or Dwellings not owned by Declarant, agree to such action by ratification of an agreement.

7.7.8 To bring, prosecute and settle litigation for itself, the Community Association and the Project, provided that it shall make no settlement which results in a liability against the Board, the Community Association or the Project in excess of \$500,000 without the prior approval of a majority of the Total Votes of the Community Association at a meeting or by written ballot distributed to Members by mail; provided, any settlement which would be paid from proceeds of insurance which may be settled by the Community Association's insurance carrier and which in either case results in no actual liability of funds of the Community Association in excess of \$500,000 shall not require Community Association approval.

7.7.9 To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Community Association and the Board and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

7.7.10 To keep adequate books and records and implement the policies and procedures for the inspection of books and records of the Project by Owners in accordance with the terms of the Bylaws.

7.7.11 To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

7.7.12 To obtain insurance for the Community Association with respect to the Project, as well as worker's compensation insurance.

7.7.13 To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of this Community Declaration.

7.7.14 To pledge Assessments as security for certain contractual obligations and liabilities.

7.7.15 The Board may delegate to the manager via a Management Agreement all of the foregoing powers, duties and responsibilities referred to in this Community Declaration except the final determination of estimated Community Expenses, annual budgets and Assessments based thereon; the promulgation of rules and regulations; the power to enter into any contract involving more than \$50,000 for any one unbudgeted expense in any one fiscal year; the opening of bank accounts; the power to purchase,

hold, sell, convey, mortgage or lease any portion of the Project in the name of the Community Association or the authority to bring, prosecute and settle litigation.

7.8 Implied Rights. The Community Association may exercise any expressed or implied right or privilege given to the Community Association expressly by the Governing Documents or any other right or privilege reasonably necessary to effectuate any such right or privilege.

7.9 Bulk Service Agreements.

7.9.1 The Board, acting on behalf of the Community Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Lots, Dwellings or both within the Property, or within one or more portions thereof, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, any concierge or other personal services, or similar or related products or services: (a) which might not otherwise be generally available to such Owners and Occupants; (b) at rates or charges lower than might otherwise generally be charged to Owners and Occupants for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Occupants generally; or (d) any combination of the foregoing.

7.9.2 If all Lots and Dwellings within the Property are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Community Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Community Association's costs under such Bulk Service Agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly) (provided that such "separate billing" may be made as one or more separate line items on billings or invoices from the Community Association to the affected Owner(s) for Assessments or other charges). If not all Lots and Dwellings within the Property will be served by a particular Bulk Service Agreement the Board shall have only the billing option described in clause (b) above.

7.9.3 Declarant, for each Lot and Dwelling which is not Exempt Property, hereby covenants and agrees, and each Owner other than Declarant, by becoming the Owner of a Lot or Dwelling, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot or Dwelling) by the Board pursuant to this Section and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots or Dwellings against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Community Association in collecting or attempting to collect delinquent amounts, shall

be secured by the Assessment Lien established by this Community Declaration; and (c) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot or Dwelling at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

7.9.4 No Owner of a Lot or Dwelling covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot or Dwelling under this Section, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot upon which no Dwelling or other Improvement has been completed.

7.9.5 "Bulk Provider" means a private, public or quasi-public utility or other company which provides, or proposes to provide, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services, to Owners, Occupants, Dwellings within the Property, Lots or within one or more portions thereof, pursuant to a "Bulk Service Agreement" (as defined below).

7.9.6 "Bulk Service Agreement" means an agreement between the Community Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, concierge or other personal services, or similar or related products or services to Owners, Occupants, and Dwellings with the Property, Lots or within one or more portions thereof.

7.9.7 During the Declarant Control Period, the Board shall not, without the approval of Members holding at least fifty-one percent (51%) of all Class A votes represented in person or by proxy at an annual or special meeting of the Members of the Community Association, enter into a Bulk Service Agreement which imposes on the Community Association or its Members (other than Declarant or a Declarant Affiliate which, in either case, agrees in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any cable television, community satellite television, high speed Internet, security monitoring or electronic entertainment, information, communication or security services, but nothing in this Section shall prevent the Board from entering into, or requiring approval by the Members of, any Bulk Service Agreement which imposes on the Community Association or its Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Iron County, Utah, area, or which includes as a component of the monthly fee charged by the Bulk Provider

amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

7.10 Transfer of Community Association Membership. The rights and obligations of any Member other than Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of the Lot. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser shall notify the Community Association of his, her or its purchase of a Lot. The Community Association may require the Purchaser of a Lot to pay to the Community Association a transfer fee in an amount that may be set by the Board, and the transfer fee shall be secured by the Assessment Lien.

ARTICLE 8

DESIGN AND DEVELOPMENT GUIDELINES (SARC)

8.1 Purpose. Prior to any review or approval by the Municipal Authority, the SARC shall be the first to review, study and either approve, reject or request resubmittal of proposed developments and improvements to a Lot, Dwelling or Improvement, all in compliance with this Community Declaration and as further set forth in the rules and regulations of the SARC and the Design and Development Guidelines. The SARC shall elevate, among other things: (i) the materials to be used on the outside of buildings or structures, (ii) exterior colors, (iii) harmony of architectural design with other structures within the Project, (iv) height and other design features, (v) location with respect to topography and finished grade elevations, and (vi) harmony of landscaping with the natural setting and native vegetation, and (vii) consistency with the Design and Development Guidelines.

8.2 Membership. The SARC shall be composed of individuals or entities as the Declarant may determine in its sole and exclusive discretion, who need not be Owners. So long as the Declarant owns any Lot, Dwelling or other property within the Project, the SARC shall consist of three (3) regular members and one (1) alternate member, each of whom shall be appointed, removed and replaced by, and serve at the pleasure of, Declarant in its sole and exclusive discretion. At such time as Declarant no longer owns any Lot, Dwelling or other property within the Project, the SARC shall consist of such number of regular and alternate members as the Board may deem appropriate from time to time (but in no event less than three (3) nor more than seven (7) regular members, nor less than one (1) nor more than three (3) alternate members), each of whom shall be appointed by, and serve at the pleasure of, the Board. Declarant may at any time voluntarily surrender in writing its right, as Declarant, to appoint and remove the members of the SARC pursuant to this Section, and in that event Declarant may require, for so long as Declarant owns any Lot, Dwelling or other property within the Project,

that specified actions of the SARC, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

8.3 Organization and Operation of the SARC.

8.3.1 Term. The term of office of each member of the SARC shall be three (3) years, commencing January 1 of each year, and continuing until his or her successor is appointed, which terms shall be staggered as determined by the Board. Should a SARC member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 8.2 above. The Declarant may remove any member of the SARC at any time for any cause without notice.

8.3.2 Chairperson. So long as Declarant's membership in the Community Association exists, Declarant shall appoint the chairperson of the SARC. Thereafter, the Board shall appoint the SARC and the chairperson shall be elected annually from among the members of the SARC by majority vote of said members.

8.3.3 Operations. The chairperson shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the SARC prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member. In the absence of a chairperson, the party responsible for appointing or electing the chairperson may appoint or elect a successor, or if the absence is temporary, a temporary successor.

8.3.4 Voting. The affirmative vote of a majority of the members of the SARC shall govern its actions and be the act of the SARC. A quorum shall consist of a majority of the members.

8.3.5 Expert Consultation. The SARC may avail itself of technical and professional advice and consultants as it deems appropriate.

8.4 Expenses. All expenses of the SARC shall be paid by the Community Association, subject to Declarant's or the Community Association's right to charge an Owner a reasonable design review fee to defray such expenses as provided for in Section 4.3 above.

8.5 Design and Development Guidelines and Rules. The SARC shall adopt, establish, and publish from time to time the Design and Development Guidelines. The Design and Development Guidelines shall define and describe the design standards for the Project and the various uses within the Project. The Design and Development Guidelines may be modified or amended from time to time by the SARC. The SARC, in its sole discretion, may excuse compliance with such Design and Development Guidelines as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to obtaining final approval of any Lots, Dwellings or Improvements from the SARC and prior to commencing construction. The Design and Development Guidelines shall not be subject to modification or amendment by the Members. The Design and Development Guidelines shall be established solely by the SARC and Declarant.

8.6 Procedures. As part of the Design and Development Guidelines, the SARC shall make and publish such rules and regulations as it may deem appropriate to govern its proceedings. Appeals shall be conducted as provided in the Bylaws. The SARC may promulgate, adopt, amend and/or replace rules and regulations necessary to implement these covenants by the affirmative vote of a majority of the SARC. Rules and regulations may include submission requirements concerning the type of information, reports, plans and specifications and the like which need to be submitted with any application, site specific limitations or restrictions for each Homesite, and may also include guidelines governing the development of each Homesite. These rules and regulations need not be uniform for each Homesite and shall take into account the unique character of each Homesite. By way of illustration only and without requirement to do so, the SARC rules and regulations may address, and the SARC shall have the power and authority to regulate, any or all of the following: application procedures and processing fees; charges by any outside professionals or other costs incident to evaluating any application, security deposits or other financial arrangements which are required of an Owner who is developing a Homesite to guarantee the repair of damage to roads or other subdivision infrastructure and for revegetation and restoration of lands; colors and materials, including, but not limited to, roofs, chimneys, siding, masonry and glazing; setbacks, height limitations, building profiles and driveway locations; construction staging, construction hour which may be controlled during certain times of the year, storage for construction materials, location of temporary construction facilities such as trailers, dumpsters and toilets; routing of utility extensions; drainage, grading and erosion control; landscape and vegetation, fencing, lighting, signage, and trails; concerns or objectives regarding maintenance of agricultural lands and preservation of wildlife; and privacy and visual characteristics.

8.7 Limitation of Liability. The SARC shall use reasonable judgment in approving or disapproving all plans and specifications submitted to it. Neither the SARC, nor any individual SARC member, shall be liable to any person for any official act of the SARC in connection with submitted plans and specifications, except to the extent the SARC or any individual SARC member acted with malice. Approval by the SARC does not necessarily assure approval by the appropriate Municipal Authority. Notwithstanding that the SARC has approved plans and specifications, neither the SARC nor any of its members shall be responsible or liable to any Owner or other contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of any Dwelling or Improvement. Neither the Board, the SARC, nor any agent thereof, nor Declarant, Declarant Affiliate, nor any of Declarant's members, employees, agents, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Governing Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the SARC shall be defended and indemnified by the Community Association in any such suit or proceeding which may arise by reason of the SARC's decision. The Community Association, however, shall not be obligated to indemnify any member of the SARC to the extent any such member of the SARC shall be adjudged to be liable for gross negligence or willful misconduct in the performance of his or her duty as a member of the SARC, unless and then only to the extent that an arbitrator or the court in which such action or suit may be brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and

reasonably entitled to indemnification for such expense as such arbitrator or court shall deem proper.

ARTICLE 9

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

9.1 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot and Dwelling it owns, hereby covenants and agrees, and each Owner, other than Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Community Association in accordance with this Community Declaration and the Bylaws. All Assessments shall be established and collected as provided in this Community Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Community Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys fees, incurred by the Community Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of each Person who was an Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them (unless title is transferred to one or more such successors for purposes of avoiding payment of any Assessment or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title), but the Assessment Lien created by this Community Declaration against the applicable Lot shall continue to secure payment of such delinquent Assessment (including, but not limited to, any and all interests and late charges) until the same is fully paid.

9.2 Annual Assessments. In order to provide for the operation and management of the Community Association and to provide funds for the Community Association to pay all Community Expenses and to perform its duties and obligations under the Governing Documents, including, without limitation, the establishment of reasonable reserves for replacements, maintenance and contingencies, the Board, for each fiscal year shall assess an Annual Assessment against each Lot which is Assessable Property. The Annual Assessments shall commence on the first day of the month following the closing of the sale of the Lot in the Project. Annual Assessments shall be computed and assessed as follows:

9.2.1 Community Expense. Annual Assessments shall be based upon advance estimates of the Community Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Community Areas and furnishing common utility services and other common items to the Dwellings. Such estimated expenses may include, without limitation, the following: road maintenance and repair; snow removal; management expenses; real property taxes and special assessments to the extent not separately assessed; premiums for all insurance that the Community Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Association employees, including fees for a manager; utility

charges, including charges for utility services to the Dwellings to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Community Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Community Association for the benefit of the Owners under or by reason of this Community Declaration. Such shall constitute the Community Expenses, and all funds received from assessments under this Section shall be part of the common expense fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital and reserve expenses which together shall constitute the common expense fund.

9.2.2 Annual Budget Expenses. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date of this Community Declaration. On or before December 1 of each fiscal year the Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Community Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating fiscal year. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such fiscal year.

9.2.3 Notice and Payment. Beginning with the 2023 fiscal year, the Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year, but the failure to give prior notice shall not affect the validity of the Assessment established by the Board nor relieve any Owner from its obligation to pay the Assessment. If the Board determines during any Assessment Period that the funds budgeted for that fiscal year are, or will become, inadequate to meet all Community Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that fiscal year and the revised Annual Assessment shall commence on the date designated by the Board.

9.3 Exempt Property Assessments. All Exempt Property described herein shall be exempt from the Assessments and Membership in the Community Association (provided, however, Declarant shall remain a Class B Member in the Community Association at all times so long as it owns a Lot within the Project, notwithstanding its temporary exemption status from required Assessment payments) and its associated privileges and responsibilities, but shall nevertheless be subject to all other provisions of the Design and Development Guidelines and this Community Declaration, including but not limited to, the use restrictions and architectural controls thereof (subject to the Declarant's exemption described in Section 3.6 above). Anything in this Section to the contrary notwithstanding, if, after an Assessment's record date but before the end of the fiscal year for which it is levied, an Exempt Property becomes Assessable Property, then each Assessment which would have been levied against such Assessable Property for such fiscal year if it were not Exempt Property (as hereafter reduced) shall be due on the later of (a) the date on which such Assessment would have been due, if such part of the Project had

been Assessable Property on such record date, or (b) the date on which such Assessable Property becomes subject to Assessment levy. If an Assessable Property is added to the Project as provided for above, then the Community Association shall be deemed, automatically and without the need for further action, to have levied against it each Assessment for such fiscal year which the Community Association has levied against the other Assessable Properties. Each such Assessment levied against such Assessable Property shall be in an amount determined under this Section as if it were eligible for such levy on such record date, but then reduced in proportion to the number of days (if any) in such fiscal year elapsed as of (and including) the date on which such Exempt Property becomes an Assessable Property, as the case may be. Declarant or a Declarant Affiliate may expressly waive its right to an exemption from Assessments as to some or all Exempt Properties of which it is then the Owner, by notifying the Community Association in writing and identifying such Exempt Properties. In such event, Declarant's exemption shall terminate as to each identified Exempt Property upon such written notification to the Community Association. Any such waiver shall bind all subsequent Owners of such Exempt Property, including Declarant or any Declarant Affiliate.

9.4 Special Assessments. In addition to the Annual Assessments authorized above, the Community Association may levy against each Lot and Dwelling which is Assessable Property, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Community Areas, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses. During the Declarant Control Period, Special Assessments may only be levied with the written approval of Declarant. Thereafter, any such Special Assessment must be approved by the affirmative vote of at least a majority of the Total Votes of the Community Association. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

9.5 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the recording of this Community Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by amending the Bylaws pursuant to the amendment procedures thereof.

9.6 Rate of Annual and Special Assessments. Annual and Special Assessments of the Community Association payable during a calendar year shall be calculated as follows:

9.6.1 The Annual Assessments shall be assessed at a uniform rate for each Lot in such amounts as specified by the Board.

9.6.2 Commencing upon an Owner acquiring a Lot or Dwelling, each Owner of a Lot or Dwelling shall pay one hundred percent (100%) of the Annual Assessment attributable to his, her or its Membership, regardless of whether a Dwelling has been completed on the Lot and whether such Dwelling is occupied.

9.6.3 Declarant, during the Declarant Control Period, and the Board thereafter, shall have the right to adjust the rate of Assessment levied against each Lot in connection with those certain Community Expenses which constitute costs associated with use and allocation of water resources as Declarant shall reasonably determine, based upon a formula or schedule, as exclusively determined by Declarant, under which Assessments for Community Expenses against each Owner are equitably apportioned in accordance with the water operational, use and maintenance costs attributable to each Dwelling or other type of Improvement constructed on any Lot. By way of example, but not by way of limitation, Declarant may determine that certain Improvements or Dwellings located on a specific Lot, such as a large Dwelling, may be utilizing more water resources in comparison to other Improvements and Dwellings within the Project, which use contributes to an overall increase in the Community Expenses over what the Community Association, but for such Improvements or Dwellings, would pay, and that the Owner(s) of such Lot shall be assessed for and shall pay the amount of such increased Community Expenses or inequitable appropriation and use of the Project's water resources.

9.7 Declarant's Obligation to Fund Deficits. So long as Declarant qualifies for an exemption from required Assessment payments pursuant to Section 9.3 and other provisions of this Declaration, if the Assessments for any fiscal year of the Community Association shall fail to equal or exceed the actual expenses incurred by the Community Association during any such fiscal year because of Declarant's right to be exempt from Assessments, then Declarant shall pay to the Community Association a sufficient amount, up to the amount for that fiscal year of the full Assessment for each Lot and Dwelling owned by Declarant to meet any such deficit, so long as the Community Association gives written notice of such deficit to Declarant within sixty (60) days following the termination of the fiscal year for which the Assessment is made.

9.8 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Community Declaration. The failure of the Community Association to send a bill to a Member shall not relieve any Member of his, her or its liability for any Assessment or charge under this Community Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Community Association shall be under no duty to refund any payments received by it even though the ownership of a Lot or Dwelling changes during a fiscal year; successor Owners of Dwellings shall be given credit for prepayments, on a prorated basis, made by prior Owners.

9.9 Effect of Nonpayment of Assessments; Remedies of the Community Association.

9.9.1 Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became

due shall bear interest from the due date at the rate established from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within thirty (30) days after such payment was due.

9.9.2 If any installment of an Assessment assessed by the Board is not paid within thirty (30) days after the same is due, the entire unpaid balance of the Assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

9.9.3 The Community Association shall have an Assessment Lien on each Lot and Dwelling for all Assessments levied against the Lot or Dwelling and for all other fees and charges payable to the Community Association by the Owner of the Lot or Dwelling pursuant to this Community Declaration. Recording of this Community Declaration constitutes record notice and perfection of the Assessment Lien. The Board may, at its option, Record a notice of lien setting forth the name of the delinquent Owner as shown in the records of the Community Association, the legal description of the Lot or Dwelling against which the notice of lien is Recorded and the amount claimed to be past due as of the date of the Recording of the notice, including interest, lien recording fees and reasonable attorneys' fees.

9.9.4 The Assessment Lien shall have priority over all liens or claims except for (a) tax liens for real property taxes; (b) assessments in favor of any Municipal Authority or assessment district; and (c) the lien of any First Mortgage as provided in Section 14.3 below.

9.9.5 The Board shall not be obligated to release any Recorded notice of lien until all delinquent Assessments, interest, lien fees, reasonable attorneys' fees, arbitration costs, court costs, collection costs and all other sums payable to the Community Association by the Owner of the Lot or Dwelling have been paid in full.

9.9.6 The Board shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys fees and any other sums due to the Community Association in any manner allowed by law, including but not limited to taking either or all of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Board does not prejudice or waive its right to exercise the other remedy): (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments; or (b) enforce the Assessment Lien against the applicable Lot or Dwelling by sale or foreclosure conducted in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency), the foreclosure rights and methods described in the Community Association Act, Title 57, Chapter 8a, *Utah Code Ann.*, the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Title 38, Chapter 1, *Utah Code Ann.*, as amended from time to time, or any other manner

permitted by law, and the Lot or Dwelling may be redeemed after foreclosure sale if provided by law. In order to facilitate the foreclosure of any such Assessment Lien in the manner provided at law for the foreclosure of deeds of trust, the Board hereby designates Cottonwood Title Insurance Agency, Inc., as a trustee with full power of sale, to foreclose any such Assessment Liens as directed by the Board. Such trustee, and any successors, shall not have any other right, title or interest in the Project beyond those rights and interests necessary and appropriate to foreclose any Assessment Liens against Lots or Dwellings arising pursuant hereto. In any such foreclosure, the Owner of the Lot or Dwelling being foreclosed shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the Assessment Lien being foreclosed. The Community Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots and Dwellings purchased at such sale. Declarant hereby conveys and warrants pursuant to U.C.A. Sections [57-1-20](#) and [57-8a-302](#) to Cottonwood Title Insurance Agency, Inc., with power of sale, the Lot and all Improvements to the Lot for the purpose of securing payment of assessments under the terms of this Declaration.

9.9.7 If an Owner fails or refuses to pay any Assessment when due, the Board shall have the right, after giving notice and an opportunity to be heard in accordance with the Community Association Act, Title 57, Chapter 8a, *Utah Code Ann.*, to terminate an Owner's right (a) to receive utility services paid as a Community Expense and (b) of access and use of the recreational facilities constituting a portion of the Community Areas.

9.10 Evidence of Payment of Assessments. Upon receipt of a written request by a Member, the Community Association, within a reasonable period of time thereafter, shall issue to such Member a written certificate stating: (a) that all Assessments, interest and other fees and charges have been paid with respect to any specified Lot or Dwelling as of the date of such certificate; or (b) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Community Association may impose a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot or Dwelling in question.

9.11 Purposes for Which Association's Funds May be Used. The Community Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Occupants by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all roads, land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. The following are some,

but not all, of the areas in which the Community Association may seek to aid, promote and provide for such common benefit: maintenance and repair of roads within the Project; social interaction among Members and Occupants, maintenance of Ski Areas, maintenance of landscaping on Community Area and public right-of-way and drainage areas within the Project, construction, operation and maintenance of recreational and other facilities on Community Area, recreation, insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers, directors and committee members of the Community Association, employment of professional managers, and hiring professional consultants such as architects, engineers, attorneys and accountants.

9.12 Surplus Funds. The Community Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Community Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Community Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Community Association and the accomplishment of its purposes.

9.13 Transfer Fee. Each Purchaser of a Lot shall pay to the Community Association immediately upon becoming the Owner of the Lot or Dwelling a transfer fee in such amount as is established from time to time by the Board.

ARTICLE 10

MAINTENANCE

10.1 Community Area and Public Right of Way

10.1.1 The Community Association, or its duly delegated representative, shall manage, maintain, repair and replace the Community Area and all Improvements located thereon (subject to Section 10.1.3), except the Community Association shall not be obligated to maintain areas which any Municipal Authority or any utility company is maintaining or is obligated to maintain.

10.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Community Area and other properties maintained by the Community Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

10.1.3 In the event any subdivision plat, deed restriction or this Community Declaration permits the Board to determine whether or not Owners of certain Lots or Dwellings will be responsible for maintenance of certain Community Area or public right-of-way areas, if any, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants for the Community Association or an individual Owner to be responsible for such maintenance, considering

cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Community Association to contract to provide maintenance service to Owners of Lots and Dwellings having such responsibilities in exchange for the payment of such fees as the Community Association and Owner may agree upon.

10.2 Installation and Maintenance of Landscaping on Lots. The Owner of a Lot shall install (if not already installed) grass, trees, plants and other landscaping improvements per any requirements imposed by Brian Head Town, (together with water drip and spray systems only sufficient to adequately water any grass, trees, plants and other landscaping improvements), on all portions of the Lot, not later than the last day of September next occurring after the date on which a certificate of occupancy is issued with respect to a Lot or Dwelling on that Lot. All landscaping must be installed in accordance with plans approved in writing by the SARC. If landscaping and an irrigation system are not installed on a Lot in the manner and by the applicable date provided for in this Section, the Community Association shall have the right, but not the obligation, to enter upon such Lot to install such landscaping improvements as the Community Association deems appropriate (together with an irrigation system sufficient to adequately water the same), and the cost of any such installation shall be paid to the Community Association by the Owner of the Lot, upon demand from the Community Association. Any amounts payable by an Owner to the Community Association pursuant to this Section shall be secured by the Assessment Lien, and the Community Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Community Declaration for the collection and enforcement of Assessments.

10.3 Installation and Maintenance of Landscaping on Community Areas. The Community Association shall install (if not already installed) grass, trees, plants and other landscaping improvements (together with a pressurized irrigation system sufficient to adequately water any grass, trees, plants and other landscaping improvements) as the Community Association deems appropriate, on all portions of the Community for the benefit of the Owners. The cost of any such installation and maintenance thereof shall be paid to the Community Association by the Owners as a part of the Annual Assessment upon demand and assessment from the Board. All landscaping on the Community Areas must be installed in accordance with plans approved by the SARC. Any amounts payable by an Owner to the Community Association pursuant to this Section shall be secured by the Assessment Lien, and the Community Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Community Declaration for the collection and enforcement of Assessments.

10.4 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of the Community Area or any other area maintained by the Community Association is caused through the willful or negligent act of any Member, his or her family, Lessee, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Community Association Member's Lot or Dwelling is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot or Dwelling pursuant to this Section in connection with a contract entered into by the Community Association with an Owner for the performance of an

Owner’s maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

10.5 Improper Maintenance and Use of Lots and Dwellings. In the event any portion of any Lot or Dwelling is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots and Dwellings or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Dwelling is being used in a manner which violates the Governing Documents applicable thereto, or in the event the Owner of any Lot or Dwelling is failing to perform any of its obligations under the Governing Documents applicable thereto, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is take within fourteen (14) days, the Board may cause such action to be taken at said Owner’s expense. If at the expiration of said 14-day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such corrective action as it deems appropriate to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner’s Lot or Dwelling is subject and shall be secured by the Assessment Lien.

ARTICLE 11

INSURANCE

11.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Dwelling to a Purchaser, the Community Association shall maintain, to the extent reasonably available, all insurance required under the Community Association Act, Title 57, Chapter 8a, *Utah Code Ann.* Including, but not limited to, the following insurance coverage:

11.1.1 Property insurance on the Community Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Community Area, as determined by the Board; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

11.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Community Area and other portions of the Project which the Community Association is obligated to maintain under this Community Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

11.1.3 Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;

11.1.4 Such other insurance as the Board shall determine from time to time to be appropriate to protect the Community Association or the Owners;

11.1.5 Each insurance policy purchased by the Community Association shall, to the extent reasonably available, contain the following provisions:

11.1.5.1 The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Community Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

11.1.5.2 No act or omission by any Owner will void the policy or adversely affect recovery on the policy;

11.1.5.3 The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants or Mortgagees;

11.1.5.4 A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Community Association or other Owners or Occupants;

11.1.5.5 Statement naming the Community Association as the insured;

11.1.5.6 For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

11.2 Certificates of Insurance. An insurer which has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Community Association and, upon request, to any Owner or Mortgagee. Any insurance obtained pursuant to this Article shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Community Association and to each Owner and each Mortgagee to whom certificates of insurance have been issued.

11.3 Payment of Premiums. The premiums for any insurance obtained by the Community Association pursuant to this Community Declaration shall be included in the budget of the Community Association and shall be paid by the Community Association.

11.4 Payment of Insurance Proceeds. With respect to any loss to the Community Area covered by property insurance obtained by the Community Association, the loss shall be adjusted with the Community Association, and the insurance proceeds shall be payable to the Community

Association and not to any Mortgagee. Subject to the provisions of Section 11.5, the proceeds shall be disbursed for the repair or restoration of the damage to the Community Area.

11.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Community Area which is damaged or destroyed shall be repaired or replaced promptly by the Community Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Community Association. If the entire Community Area is not repaired or replaced, insurance proceeds attributable to the damaged Community Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either: (i) be retained by the Community Association as an additional capital reserve; (ii) be used for payment of operating expenses of the Community Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of at least a majority of the Total Votes of the Community Association; or (iii) shall be distributed to the Owners of each Lot or Dwelling based upon the applicable percentage attributable to each Owner's Lot or Dwelling.

ARTICLE 12

DAMAGE OR DESTRUCTION

12.1 Community Association as Attorney in Fact. Each and every Owner hereby irrevocably constitutes and appoints the Community Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on the Community Areas upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article 13 below. Acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Community Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Community Association as attorney-in-fact. All proceeds from the insurance required hereunder shall be payable to the Community Association except as otherwise provided in this Community Declaration.

12.2 Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Improvements on the Community Areas in the Project, the Community Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Community Areas so damaged or destroyed. "Repair and reconstruction" as used in this Section 12.2 shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

12.3 Repair and Reconstruction. As soon as practical after obtaining estimates, the Community Association shall diligently pursue to completion the repair and reconstruction of the

damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Community Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Community Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

12.4 Funds for Repair and Reconstruction. The proceeds received by the Community Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Community Association may, pursuant to Section 9.4 above, levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

12.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Community Association and the amounts received from the Special Assessments provided for in Section 12.4 above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Community Association under Section 12.4 above, or, if no Special Assessments were made, based upon the applicable percentage attributable to each Lot or Dwelling, first to the Mortgagees and then to the Owners, as their interests appear.

12.6 Decision Not to Rebuild. If Members representing at least sixty-seven percent (67%) of the Total Votes of the Community Association of each class of Members in the Community Association and fifty-one percent (51%) of the Eligible Mortgagees (based upon one vote for each Mortgage owned) of the Lots and Dwellings vote not to repair and reconstruct and no alternative Improvements are authorized, then and in that event the affected portion of the Community Areas shall be restored to their natural state and maintained as an undeveloped portion of the Community Areas by the Community Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed based upon the applicable percentages attributable to each Lot or Dwelling, first to the Mortgagees and then to the Owners, as their interests appear.

12.7 Notice to First Mortgagees. The Community Association shall give timely written notice to any holder of any First Mortgage on a Lot or Dwelling who requests such notice in writing in the event of substantial damage to or destruction of a material part of the Community Areas.

ARTICLE 13

CONDEMNATION

13.1 Rights of Owners. Whenever all or any part of the Community Areas shall be taken or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to notice of the taking, but the Community Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

13.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Community Association as trustee for all Owners to be disbursed according to this Section. If the taking involves a portion of the Community Areas on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners representing at least sixty-seven percent (67%) of the Class A votes in the Community Association shall otherwise agree, the Community Association shall restore or replace such Improvements so taken on the remaining land included in the Community Areas to the extent lands are available therefor, in accordance with plans approved by the Board and the SARC. If such Improvements are to be repaired or restored, the provisions in Article 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Community Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed based upon the applicable percentages attributable to each Lot or Dwelling, first to the Mortgagees and then to the Owners, as their interests appear.

13.3 Complete Condemnation. If all of the Project is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Community Declaration shall terminate, and the portion of the condemnation award attributable to the Community Areas shall be distributed to Owners based upon the relative value of the Lots and Dwellings (as applicable) prior to the condemnation.

ARTICLE 14

MORTGAGEE REQUIREMENTS

14.1 Notice of Action. Upon written request made to the Community Association by a Mortgagee, or an insurer or governmental guarantor of a Mortgage, which written request shall identify the name and address of such Mortgagee, insurer or governmental guarantor and the Lot number or address of the Dwelling, any such Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

14.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot or Dwelling on which there is a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor;

14.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner, whose Lot or Dwelling is subject to a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days; and

14.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Community Association.

14.2 Availability of the Project Documents and Financial Statements. The Community Association shall maintain and have current copies of the Governing Documents and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of Mortgages that are secured by Lots or Dwellings. Generally, these documents shall be available during normal business hours.

14.3 Subordination of Lien. The Assessment Lien shall be subject and subordinate to any duly executed First Mortgage on a Lot or Dwelling recorded prior to the date on which such Assessment Lien is recorded and any holder of such First Mortgage which comes into possession of a Lot or Dwelling pursuant to the remedies provided in the First Mortgage, foreclosure of the First Mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the Lot or Dwelling free of any claims for unpaid installments of assessments and charges against the Lot or Dwelling which (i) are so subordinate to such First Mortgage and (ii) became due and payable prior, in the case of foreclosure, to the date of the sale, exercise of a power of sale available thereunder, or taking of a Deed or assignment in lieu of foreclosure and, in all other cases, to the date legal title vested in the successor Owner by virtue of such process. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Community Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot or Dwelling affected or previously affected by the First Mortgage concerned. The foregoing will not relieve any successor Owner from the obligation for Assessments accruing thereafter.

14.4 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Community Areas are not timely paid, or in the event the required hazard insurance described in Section 11.1 lapses, is not maintained, or the premiums therefor are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any First Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Community Association.

14.5 Priority. No provision of this Community Declaration gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots, Dwellings or the Community Areas.

ARTICLE 15

MOUNTAIN RESORT DEVELOPMENT

15.1 Assumption of Risk, Waiver of Claims and Indemnification. Each Owner, by its purchase of a Lot or Dwelling, hereby acknowledges that the Project is a mountain resort community with resort-type activities, which may include, without limitation: skiing, ski runs

and trails, hiking trails, mountain biking trails, open spaces, wildlife, rugged terrain, snow making, horses and horseback riding, games and activities, running, snow shoeing, alpine and cross country skiing and mountain bike courses and/or races and/or other competitions of various kinds, and other resort-type facilities, events, activities and programs (collectively, “Resort Activities”), and each such Owner expressly assumes the risk of noise, nuisances, hazards, personal injury, or property damage related to any and all Resort Activities, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance may take place at any time(s) of the day or night), (b) noise caused by Resort Activities and participants, (c) noise from snowmaking systems and trail grooming machinery, (d) construction and development activities, (e) view restrictions caused by installation, relocation and maturation of trees and shrubbery, (f) reduction in privacy, including that related to maintenance activities, (g) errant equipment, including skis and mountain bikes and (h) any ski resorts located near or adjacent to the property (“Ski Resort”) facilities design. Each such Owner agrees that neither Declarant, the Community Association, the manager, the SARC, any other committee created by the Community Association, any of the Declarant’s Affiliates or agents, nor any Resort Activities participant (unless acting recklessly or in a willfully wrongful manner) shall be liable to an Owner or any other person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to: (a) the proximity of an Owner’s Lot or Dwelling to any ski run, ski easement, ski trail, or other Resort Activity venue; (b) any claim arising in whole or in part from the negligence of Declarant, any of Declarant’s Affiliates or agents, the manager, the Community Association, the SARC, or any other committee created by the Community Association (or any affiliate, agent, employee or representative of any of the foregoing) (collectively referred to herein as “Indemnified Parties”); or (c) any Resort Activity (collectively referred to herein as the “Waived Claims”). Each Owner hereby agrees to indemnify, defend and hold harmless the Indemnified Parties from and against any and all Waived Claims asserted by such Owner and/or by such Owner’s visitors or tenants or Occupants, and by others upon such Owner’s Lot or Dwelling. Each Owner further covenants that the Indemnified Parties and the owners and operators of all Resort Activities shall have the right, in the nature of an easement, to subject all or any portion of the Project to nuisances incidental to the maintenance, operation or use thereof, and to the carrying out of such Resort Activities.

15.2 Disclaimer Regarding the Ski Resort. All Persons, including without limitation all Owners, are hereby advised that, except as expressly set forth in this Community Declaration, no representations, warranties or commitments have been or are made by the Declarant or any other Person with regard to the present or future development, ownership, operation or configuration of, or right to use, the Ski Resort including its ski runs, lifts or related facilities within, near or adjacent to the Project, whether or not depicted on the Community Plat, or any other land use plan, sales brochure or other marketing display, rendering or plan. No purported representation, warranty or commitment, written or oral, in such regard shall ever be effective without an amendment hereto executed by Declarant. Further, the ownership, operation or configuration of, or rights to use, any such ski resort or related facilities may change at any time and from time to time. No Owner or Occupant shall have any ownership interest in or right to use, or right to exercise any degree of control over the Ski Resort or related facilities solely by

virtue of: (i) his, her or its Membership; or (ii) his, her or its ownership, use or occupancy of any Lot or Dwelling, or portion thereof or interest therein.

15.3 Ski Run Easements. It is contemplated there will be certain nonexclusive easements for ski runs, chair lifts, transfer lifts, towers, trails, bridges and accessways which may or may not be designated as such on the Community Plat, or portions thereof, which may be used for skiing and snowboarding, grooming, maintenance and vehicle access, and unhindered access between said easements and the Ski Resort. Nothing shall be placed or maintained in any such easement which shall interfere with the utilization thereof as part of the Project. Notwithstanding the foregoing reservation of blanket easement, each Owner hereby agrees and acknowledges that Declarant hereby reserves and grants a perpetual nonexclusive easement across the Community Areas for the limited purpose of providing general skier access rights thereupon via the Mountain Ski Run Access Easement as depicted on the Community Plat. All Owners agree and acknowledge that Declarant, during the Declarant Control Period, and thereafter the Board, shall have the right to designate, and re-designate from time to time, without the consent of any Owners (but subject to any necessary approvals of the Municipal Authority having jurisdiction thereover), the actual location of the Mountain Ski Run Access Easement should Declarant or the Board determine such relocation is necessary for the proper configuration of the Mountain Ski Run Access Easement, so long as such designation or re-designation shall not materially adversely affect title to any Lot without the consent of the affected Owner. Moreover, Declarant, Declarant Affiliates, the Board or their respective designees, including without limitation the operator of the Ski Resort by specific grant via a separately recorded instrument, shall have the right to develop and construct improvements on the easement area, including, but not limited to, ski runs, ski lifts, snow making and other skiing improvement, trails and, provided such developments and improvements do not unreasonably limit or impair the Owners' ski-in / ski-out access rights.

15.4 Operation of the Ski Resort. Each Owner acknowledges that the operation and maintenance of any ski resort within, near or adjacent to the Project, including but not limited to, all facilities that are now or hereinafter part of the Ski Resort, will require that maintenance personnel and other workers perform work relating to the operation and maintenance of such ski resort and that snowmaking, snow grooming and other equipment may operate at any time(s) of the day or night. In connection therewith, each Owner and Occupant agrees that the Indemnified Parties shall not be responsible or accountable for, liable for and shall be held harmless from, any claims, causes of action, loss or liability arising in connection with or associated with any noise or inconvenience normally associated with such ski and resort operations.

15.5 Other Ski Agreement. No Owner shall (or permit his, her or its Occupants, guests, invitees, employees, agents or contractors to) interfere in any way with skiing within the Mountain Ski Run Access Easement (whether in the form of physical interference, noise, harassment of skiers or spectators, or otherwise). Each Owner (for such Owner and its Occupants, guests and invitees) recognizes, agrees and accepts that: (a) operation of a year round resort and related facilities will often involve parties, events and other gatherings (whether or not related to skiing, and including without limitation weddings and other social functions) at or on the Project and the Ski Resort property, competitions, loud music, use of public address systems and the like, supplemental lighting and other similar or dissimilar activities from early in the

morning until late at night; (b) by their very nature, ski resorts present certain potentially hazardous conditions, which may include, without limitation, man-made or naturally occurring snow, avalanches and topographical features such as washes, gullies, canyons, uneven surfaces and the like; (c) grooming and snow making or related facilities may result in snow drifting or blowing onto adjacent or nearby Lots or Dwellings; and (d) neither such Owner nor its Occupants, guests and invitees shall make any claim against the Indemnified Parties in connection with the matters described or referenced in (a), (b) and (c) above, whether in the nature of a claim for damages relating to personal injury or property damage, or otherwise.

ARTICLE 16

NOT APPLICABLE TO THIS COMMUNITY USE

ARTICLE 17

TERM, TERMINATION AND AMENDMENT

17.1 Term; Method of Termination. This Community Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Community Declaration is recorded. From and after said date, this Community Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Community Declaration by the then Members casting eighty percent (80%) of the Total Votes of the Community Association cast at an election held for such purpose or otherwise approved in writing within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. This Community Declaration may be terminated at any time by the then Members casting eighty percent (80%) of the Total Votes of the Community Association cast in favor of termination at an election held for such purpose. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a certificate of termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Community Association, with their signatures acknowledged. Thereupon these covenants shall have no further force and effect, and the Community Association shall be dissolved pursuant to the terms set forth in its Articles.

17.2 Amendments. This Community Declaration may be amended by Recording a certificate of amendment, duly signed and acknowledged by and on behalf of the Community Association ("Certificate of Amendment"). The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Sections 17.3 and 17.4 or elsewhere in this Community Declaration, shall certify that at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws or by separate written ballot without a meeting, the Members casting at least sixty seven percent (67%) of the Total Votes of the Community Association at the election voted affirmatively for the adoption of the amendment. Within twenty-five (25) years from the date of Recording this Community Declaration, and so long as

Declarant is the Owner of any Lot or Dwelling in the Project, this Community Declaration may be amended or terminated only with the written approval of Declarant.

17.3 Unilateral Amendments. Declarant alone may amend or terminate this Community Declaration prior to the closing of a sale of the first Lot or Dwelling. Notwithstanding anything contained in this Community Declaration to the contrary, this Community Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots and Dwellings subject to this Community Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing. Further, during the Declarant Control Period, Declarant may unilaterally amend this Community Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect title to any Lot without the consent of the affected Owner. Such amendments may include, but are not limited to, changing the nature or extent of the uses to which such property may be devoted or readjustment of Lot line boundaries in connection with the location and development of the Project.

17.4 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Community Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Community Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s), Dwelling(s), or any portions thereof. Any such amendment shall be effected by the Recordation by Declarant of a Certificate of Amendment duly signed by or on behalf of the shareholders, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when Recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Community Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Community Declaration to restore such control.

ARTICLE 18

BINDING ARBITRATION FOR ENFORCEMENT OF GOVERNING DOCUMENTS

18.1 **OPT-OUT RIGHT.** IF AN OWNER DOES NOT WANT THE FOLLOWING ARBITRATION PROVISION TO APPLY, SUCH OWNER MUST SEND A SIGNED LETTER TO THE COMMUNITY ASSOCIATION, ATTENTION: ARBITRATION OPT-OUT, POSTMARKED WITHIN THIRTY (30) DAYS OF THE DATE THE DEED OF CONVEYANCE TRANSFERRING THE LOT OR DWELLING IS RECORDED IN THE OFFICIAL RECORDS OF IRON COUNTY, UTAH, STATING THAT THE OWNER DOES NOT WANT ARBITRATION TO APPLY TO THE MATTERS DESCRIBED IN THIS Article 18. ANY DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL NOT RESULT IN AN OPT-OUT FROM ANY PRIOR ARBITRATION PROVISION IN ANY OTHER GOVERNING DOCUMENT AND WILL NOT BE A FACTOR IN DECLARANT'S DECISION OF WHETHER OR NOT TO CONVEY, TRANSFER OR SELL THE LOT OR DWELLING TO SUCH OWNER.

18.2 **Arbitration Terms Defined.** The following capitalized words, phrases or terms used in the arbitration provision described in this Article 18 ("Arbitration Provision") shall have the meanings set forth below:

18.2.1 "Bound Party" means the Community Association, Declarant, Declarant Affiliates and any Community Area manager; the successors and assigns of such Bound Parties; the Owners and their heirs, successors and assigns; and all other persons subject to this Community Declaration. "Bound Party" also includes any person not otherwise subject to this Community Declaration who agrees to submit to this Arbitration Provision and the agents, representatives, members, employees, officers and/or directors of the foregoing Bound Parties, if a Claim is also asserted at the same time against another Bound Party and/or another Bound Party may have a financial obligation for any recovery of the party asserting the Claim. "Institutional Party" means each Bound Party except an Owner.

18.2.2 "Claim" means any claim, dispute or controversy of one or more Bound Parties against one or more other Bound Parties arising out of or relating to the Property, the Project, Lots or Dwellings, this Community Declaration or any other Governing Documents, including any such claim, dispute or controversy regarding or arising over the design, specifications, surveying, planning, supervision, testing or observation of construction or construction of an improvement to, or survey of, the Property or the Project. This includes, without limitation, disputes concerning the validity, enforceability, arbitrability or scope of this Arbitration Provision or this Community Declaration; disputes involving alleged fraud or misrepresentation, breach of contract, negligence or violation of statute, regulation or common law; and disputes involving requests for injunctions or other equitable relief.

18.2.3 "Exempt Claim" means any of the following Claims, which will not be subject to this Arbitration Provision: (A) any individual action brought by an Owner in small claims court or such Owner's state's equivalent court, unless such action is transferred, removed, or appealed to a different court; (B) any action to effect a judicial or non-judicial foreclosure; (C) any eviction or other summary proceeding to secure possession of real property or an interest therein; (D) any action in any bankruptcy

proceeding to assert, collect, protect, realize upon or obtain possession of the collateral for any amount owed; (E) any action to quiet title; (F) any action insofar as it seeks provisional or ancillary remedies in connection with any of the foregoing; and (G) any dispute concerning the validity and effect of the ban set forth in Section 18.7 below on class actions and private attorney general proceedings. Notwithstanding the prior sentence, at an Owner's request the Institutional Parties will agree to arbitrate under this Arbitration Provision any matter covered by items (B)-(F) above if arbitration will afford the parties substantially the same rights and remedies as a court action. Any dispute regarding the question of whether arbitration will afford the parties substantially the same rights and remedies as a court action is also an Exempt Claim and shall be determined exclusively by the court and not by an arbitrator. If one or more Institutional Parties are allowed to proceed outside arbitration with respect to any of the matters covered by items (B) – (F) above, an Owner may assert in court on an individual basis any related defenses or Claims such Owner may have.

18.2.4 “Administrator” means either of the following companies selected by the party initiating the arbitration: National Arbitration Forum (“NAF”), P.O. Box 50191, Minneapolis, MN 55405, <http://www.arb-forum.com>, or the American Arbitration Association (“AAA”), 335 Madison Avenue, New York, NY 10017, <http://www.adr.org>. However, neither NAF nor AAA may serve as Administrator, without the consent of all Bound Parties asserting or defending a Claim, if it adopts or has in place any formal or informal policy that is inconsistent with and purports to override the terms of this Arbitration Provision.

18.3 Claims by Bound Parties. Subject to an Owner's right to opt out of this Arbitration Provision, each Bound Party agrees that, upon the election of any Bound Party asserting or defending a Claim (other than an Exempt Claim), such Claim shall be resolved by binding individual (and not class) arbitration. A notice of an election to arbitrate a Claim may be given after a lawsuit begins and may be given in papers filed in the lawsuit. Any arbitration will be conducted in accordance with this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the rules of the Administrator in effect at the time the Claim is filed.

18.4 Arbitration Fees. If an Owner cannot obtain a waiver of any arbitration fees, the Institutional Parties will consider in good faith any request an Owner submits for them to pay fees for such Owner. In any event, if applicable law requires an Institutional Party to pay or reimburse an Owner for any such fees, such law will control. Each Bound Party shall bear the expense of that Party's attorneys, experts, and witnesses, regardless of which Party prevails in the arbitration, unless applicable law and/or this Arbitration Provision gives a Party the right to recover any of those fees from another Party. If a participatory hearing is requested, it will take place in Iron County, Utah or, if the Administrator determines that such location would be unfair to an Owner, at a location reasonably convenient to such Owner and the other Bound Parties.

18.5 Governing Law. The Bound Parties contract, select, agree and acknowledge that this Arbitration Provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 and not state arbitration laws. The arbitrator shall be obligated to follow applicable substantive laws, statutes of limitations and privilege rules related to any dispute. The arbitrator shall award the

remedies, if any, that would be available in an individual court proceeding if arbitration had not been elected. This includes, without limitation, compensatory, statutory and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings); declaratory, injunctive and other equitable relief; and attorneys' fees and costs. In addition to the parties' rights to obtain information under the Administrator's rules, either party may ask the arbitrator for more information from any other party.

18.6 Appeal of Arbitrator's Decision. Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's decision will be final and binding, except for any appeal right under the FAA. However, for Claims involving more than \$100,000, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider from the start any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Unless applicable law provides otherwise, the appealing party will pay the appeal's costs, regardless of its outcome. However, the Institutional Parties to an arbitration will consider in good faith any reasonable written request for them to bear the cost if the Owner is the appealing party.

18.7 Binding Individual Arbitration. IF A BOUND PARTY ELECTS TO ARBITRATE A CLAIM: (i) NO PARTY WILL HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM; (ii) NO PARTY MAY PARTICIPATE IN A CLASS ACTION IN COURT OR IN CLASS-WIDE ARBITRATION, EITHER AS A REPRESENTATIVE, CLASS MEMBER OR OTHERWISE; (iii) NO PARTY MAY PARTICIPATE IN A PRIVATE ATTORNEY GENERAL PROCEEDING IN COURT OR IN THE ARBITRATION; AND (iv) THE ARBITRATOR SHALL HAVE NO AUTHORITY TO CONDUCT A CLASS-WIDE ARBITRATION OR PRIVATE ATTORNEY GENERAL ARBITRATION. Notwithstanding any language in this Arbitration Provision to the contrary, any dispute about the validity or effect of the prohibitions against class proceedings and private attorney general proceedings shall be resolved by a court and not an arbitrator or the Administrator.

18.8 Severability. If a determination is made that any part of this Arbitration Provision is unenforceable (other than the prohibition against class proceedings and private attorney general proceedings) or that this Arbitration Provision is unenforceable as to any party or parties, this provision shall nonetheless remain enforceable in all other respects and as to all other parties. If after all available appeals a determination is made that the prohibition against class proceedings or private attorney general proceedings is unenforceable in connection with any Claim brought on such basis, this Arbitration Provision (other than this sentence) shall be null and void in such proceeding.

ARTICLE 19

GENERAL PROVISIONS

19.1 Enforcement and Rights of Action. The Community Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of this Community Declaration, the other Governing Documents or the decisions of

the Community Association. Owners shall have a similar right of action against the Community Association. This Section 19.1 shall be subject to the Arbitration Provision described in Article 18 above.

19.2 Interpretation. Except for judicial construction, the Community Association shall have the exclusive right to construe and interpret the provisions of this Community Declaration. In the absence of any adjudication to the contrary by an arbitrator or court of competent jurisdiction, the Community Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Community Declaration.

19.3 Severability. Any determination by any arbitrator or court of competent jurisdiction that any provision of this Community Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

19.4 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Community Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Community Declaration is Recorded.

19.5 Change of Circumstances. Except as otherwise expressly provided in this Community Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Community Declaration.

19.6 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Community Declaration, the Community Association shall have the right to adopt, as part of the Community Rules, additional rules and regulations with respect to any other aspects of the Community Association's rights, activities and duties, provided said additional rules and regulations are not inconsistent with the provisions of the other Governing Documents.

19.7 Laws, Ordinances and Regulations.

19.7.1 The covenants, conditions and restrictions set forth in this Community Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the SARC with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Community Declaration shall not relieve an Owner or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations.

19.7.2 Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be in violation of this Community Declaration and subject to any or all of the enforcement proceedings set forth herein.

19.8 References to this Community Declaration in Deeds. Deeds to and instruments affecting any Lot or Dwelling or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Community Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Community Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

19.9 Gender and Number. Wherever the context of this Community Declaration so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

19.10 Captions and Title; Section References; Exhibits. All captions, titles or headings of the Articles and Sections in this Community Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this Community Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Community Declaration, unless the context otherwise requires. Any Exhibits referred to in this Community Declaration are hereby incorporated herein by reference and fully made a part hereof.

19.11 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, the Governing Documents or resolution of the Board to be given to any Owner, Lessee or Occupant then, unless otherwise specified in the Governing Documents or in the resolution of the Board, or unless otherwise required by law, such notice requirement shall be deemed satisfied if notice of such action, proposed action or meeting is: (a) sent by United States mail to the last known mailing address of the Owner, Lessee or Occupant (as applicable), as shown in the records of the Community Association; or (b) if no such mailing address is reflected on the records of the Community Association, then sent by United States mail to the mailing address of the Lot (as applicable) if, at the time, there is a Dwelling situated thereon; or (c) if there is no such mailing address reflected in the records of the Community Association and there is then no Dwelling situated on the applicable Lot, then sent or given in whatever reasonable manner the Board may elect, which may include, without limitation, publishing the same in any newspaper in general circulation within Iron County, Utah. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other reasonable and appropriate manner.

19.12 Indemnification. The Community Association shall indemnify each and every director and officer of the Community Association, each and every member of the SARC, and each and every member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Community Association, former members of the SARC, and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including

attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, unless the liability for such expenses arises out of his or her own intentional misconduct. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Community Association (except indirectly to the extent that such Association Official may also be a Member of the Community Association and therefore subject to Assessments hereunder to fund a liability of the Community Association), and the Community Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Community Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section or otherwise under the Articles, Bylaws or applicable law, such Association Official shall promptly upon demand repay to the Community Association the total of such funds advanced by the Community Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

19.13 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Community Area, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Community Area or any funds or other assets of the Community Association except in connection with the sale, conveyance or hypothecation of such Owner's Dwelling (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Community Area, which shall be subject to Article 6) which may or may not be subject to this Community Declaration.

19.14 Property Held in Trust. Except as otherwise expressly provided in this Community Declaration, any and all portions of the Property which are now or hereafter held in a subdivision or similar trust or trusts (or similar means of holding title to property), the beneficiary of which trust(s) is Declarant or a Declarant Affiliate, shall be deemed for all purposes under this Community Declaration to be owned by Declarant or such Declarant Affiliate, as applicable, and shall be treated for all purposes under this Community Declaration in the same manner as if such property were owned in fee by Declarant or such Declarant Affiliate, as applicable. No conveyance, assignment or other transfer of any right, title or interest in or to any of such property by Declarant or any such Declarant Affiliate to any such trust (or the trustee

thereof) or to Declarant or any such Declarant Affiliate by any such trust (or the trustee thereof) shall be deemed for purposes of this Community Declaration to be a sale of such property or any right, title or interest therein.

19.15 Number of Days. In computing the number of days for purposes of any provision of this Community Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

19.16 Notice of Violation. The Community Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of the Governing Documents. The notice shall be executed and acknowledged by an officer of the Community Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot or Dwelling against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Community Association pursuant to this Community Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot or Dwelling, that there is such a violation. If, after the Recordation of such notice, it is determined by the Community Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Community Association shall Record a notice of compliance which shall state the legal description of the Lot or Dwelling against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Community Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

19.17 Disclaimer of Representations. Notwithstanding anything to the contrary herein, neither Declarant nor any Declarant Affiliate makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out, or that any real property now owned or hereafter acquired by Declarant or by any Declarant Affiliate is or will be subjected to this Community Declaration, or that any such real property (whether or not it has been subjected to this Community Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While neither Declarant nor any Declarant Affiliate believes that any of the restrictive covenants contained in this Community Declaration is or may be invalid or unenforceable for any reason or to any extent, neither Declarant nor any Declarant Affiliate makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Dwelling in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Dwelling agrees to hold Declarant and all Declarant Affiliates harmless therefrom.

19.18 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Community Declaration to the contrary, no provision of this Community Declaration (including but not limited to, this Section 19.18 and Article 3) which grants to or confers upon Declarant or upon any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as Declarant, any Declarant Affiliate or a trustee for the benefit of Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of Declarant.

19.19 Termination of Declarant's Approval Rights and Obligations. Except as otherwise expressly provided for herein, any or all of the approval rights and obligations of the Declarant or any Declarant Affiliate under this Community Declaration shall terminate on the date set forth in Section 1.18 above. Thereafter, the Community Association shall have the power to exercise any remaining approval rights and obligations of the Declarant or any Declarant Affiliate under this Community Declaration.

19.20 List of Owners and Eligible Mortgagees. The Board shall maintain up-to-date records showing: (i) the name of each Person who is an Owner, the address of such Person, and the Lot or Dwelling which is owned by him or her; (ii) the name of each Person who is an Eligible Mortgagee, the address of such Person and the Lot or Dwelling which is encumbered by the Mortgage held by such Person; and (iii) the name of each Person who is an insurer or governmental guarantor, if known to the Board, and the address of such Person. In the event of any transfer of a fee or undivided fee interest in a Lot or Dwelling, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of Record in the office of the County Recorder of Iron County, Utah, as applicable. The Board may for all purposes act and rely on the information concerning Owners and Lot or Dwelling ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Lot or Dwelling which is obtained from the office of the County Recorder of Iron County, Utah, as applicable. The address of an Owner shall be deemed to be the address of the Lot or Dwelling owned by such Person unless the Board is otherwise advised.

19.21 General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Community Declaration. With respect to unsold Lots and Dwellings, Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Lot and Dwelling.

19.22 Successors and Assigns of Declarant. Any reference in this Community Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder in accordance with Section 3.7 above.

19.23 Use of the Project Name. No Person shall use the term the "Aspen Meadow Southeast Neighborhood," "Aspen Meadows," "Aspen Meadows Club," "Brian Head Club" or any derivative thereof or any name associated within any neighborhood in Aspen Meadows, in any printed or promotional material without the prior written consent of Declarant, which consent may be withheld for any reason in Declarant's sole and exclusive discretion.

19.24 Interpretation of the Covenants. Except for judicial construction, Declarant, during the Declarant Control Period, and thereafter the Community Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Community Declaration. In the absence of any adjudication to the contrary by an arbitrator or court of competent jurisdiction, the Declarant's or the Community Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Community Declaration and provisions hereof.

[The remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

DECLARANT:

PLUMB INVESTMENT LC, a Utah limited liability company

By : _____
Name: _____
Its: _____

STATE OF UTAH)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____ the Manager of PLUMB INVESTMENT LC, a Utah limited liability company, on behalf of such entity.

Notary Public

My Commission Expires:

EXHIBIT A
LEGAL DESCRIPTION