



**DECLARATION  
OF  
COVENANTS, CONDITIONS  
AND RESTRICTIONS**

Summit County, Utah

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**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS  
FOR  
PROMONTORY**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of this Second day of January, 2002, by PIVOTAL PROMONTORY DEVELOPMENT, L.L.C., a limited liability company.

UPON RECORDING, PLEASE RETURN TO:

**MR. RICH SONNTAG  
PROMONTORY  
6531 NORTH LANDMARK DRIVE  
SUITE B  
PARK CITY, UTAH 84098**

See Exhibit F for applicable county tax identification numbers.

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EXHIBIT E - PROMONTORY DEVELOPMENT AGREEMENT

## Part One: **INTRODUCTION TO THE COMMUNITY**

*Pivotal Promontory Development, L.L.C., has created this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of Promontory as a planned community.*

### ARTICLE I: **Creation of the Community**

#### 1.1 **Purpose and Intent**

Declarant, as the owner of the real property described in Exhibit "A" (or if not the owner, with the owner's consent), is Recording this Declaration to establish a general plan of development for Promontory, a planned community. This Declaration provides for the Community's overall development, administration, maintenance, and preservation, and provides a flexible and reasonable procedure for its future expansion. An integral part of the development plan is the creation of The Promontory Conservancy, a corporation comprised of all Promontory property owners, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.

*This document does not and is not intended to create a condominium under Utah law.*

#### 1.2 **Mission Statement**

The Promontory Conservancy's mission is to preserve, promote and manage Promontory's natural resources to ensure that the community lives in harmony with its surroundings. As environmental steward, the Conservancy will manage the wildlife, open spaces and common areas and develop and maintain the community's parks and trails. It is also charged with administering Promontory's design guidelines and the design review process when delegated by Declarant. The Promontory Conservancy will also maintain Promontory's private trail system and operate the Promontory Shuttle System as required pursuant to Promontory's Development Agreement. In addition, The Promontory Conservancy may perform such other community services and undertake such other responsibilities as its Board may deem advisable from time to time.

#### 1.3 **Binding Effect**

This Declaration governs the property described in Exhibit "A," and any other property submitted to this Declaration in the future by a Recorded Supplemental Declaration. This Declaration shall run with the title to such property and shall bind anyone having any right, title, or interest in any portion of such property, their heirs, successors, successors-in-title, and assigns.



Declarant, the Conservancy, any Owner, and their respective legal representatives, heirs, successors, and assigns may enforce this Declaration. This Declaration shall be effective for a minimum of 20 years from the date it is Recorded. After 20 years, this Declaration shall continue automatically for successive 10 year periods unless a majority of the then Owners sign a document stating that the Declaration is terminated and that document is Recorded within the year before the Declaration expires. In such case, this Declaration shall expire on the date specified in the termination document.

## 1.4 Governing Documents

The Governing Documents create a general development plan for Promontory. The plan may be supplemented by additional covenants, conditions, and restrictions applicable to particular Villages. The following diagram identifies and summarizes the Governing Documents, each as they may be amended:

<p><b>Declaration</b> (Recorded)</p>	<p>creates obligations which are binding upon the Conservancy and all present and future owners of property in Promontory</p>
<p><b>Supplemental Declaration</b> (Recorded)</p>	<p>adds property to Promontory; may impose additional obligations or restrictions on such property</p>
<p><b>Articles of Incorporation</b> (filed with the Division of Corporations and Commercial Code)</p>	<p>establishes the Conservancy as a non-profit corporation under Utah law</p>
<p><b>By-Laws</b> (Board adopts)</p>	<p>governs the Conservancy's internal affairs, such as voting rights, elections, meetings, officers, etc.</p>
<p>Design Guidelines (Declarant adopts)</p>	<p>establish site planning, thematic and architectural standards and guidelines for improvements and modifications to Lots, including structures, landscaping, and other items on Lots</p>
<p><b>Use Restrictions</b> (initial set attached as Exhibit "C") Board Resolutions and Rules (Board adopts)</p>	<p>govern use of property and activities within Promontory establish rules, policies, and procedures for internal governance and Conservancy activities; regulate operation and use of Common Area</p>
<p><b>Development Agreement</b> (Adopted by Summit County)</p>	<p>establishes the terms and conditions of Declarant's right to develop Promontory and provides certain obligations of Declarant, the Conservancy and the Owners</p>

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If there is a conflict between or among the Governing Documents and any Village Organization's covenants, restrictions, or policies, the Governing Documents will control.

Additional restrictions or provisions which are more restrictive than the provisions of this Declaration may be imposed on any portion of Promontory. The more restrictive provisions will be controlling over the less restrictive provisions in this Declaration. However, no Person shall Record any additional covenants, conditions, or restrictions affecting any portion of Promontory without Declarant's written consent, so long as Declarant owns any property described in Exhibit "A" or "B." Any instrument Recorded without the required consent is void and of no force and effect.

The Governing Documents apply to all Owners and any occupants of a Lot. They also apply to tenants, guests, visitors, and invitees.

If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or other applications of the provision.

Diagrams in the Governing Documents illustrate concepts and assist the reader. The diagrams are for illustrative purposes only. If there is a conflict between any diagram and the text of the Governing Documents, the text shall control.

## ARTICLE II: **Concepts and Definitions**

*The terms used in the Governing Documents are given their natural, commonly accepted definitions unless otherwise specified.*

*Capitalized terms are defined as follows:*

**"Design Guidelines"**: The Community's architectural, construction, design, landscaping and site planning guidelines and review procedures adopted and amended pursuant to Article IV.

**"Architectural Review Committee"** or **"ARC"**: The committee established to review plans and specifications for the construction or modification of improvements and to administer and enforce the architectural and design controls described in Article IV.

**"Articles"**: The Articles of Incorporation of The Promontory Conservancy, filed with Utah's Division of Corporations and Commercial Code, as they may be amended.

**"Benefited Assessment"**: Assessments charged against a particular Lot or particular Lots for Conservancy expenses as described in Section 8.6.

**"Board of Directors"** or **"Board"**: The body responsible for the general governance and administration of the Conservancy, selected as provided in the By-Laws.

**"Builder"**: Anyone acquiring a Lot or Lots for the purpose of constructing homes for later sale to consumers, or who purchases land within the Community for further subdivision, development, and/or resale in the ordinary course of its business.

**"By-Laws"**: The By-Laws of The Promontory Conservancy, as they may be amended. A copy of the initial By-

Laws is attached to this Declaration as Exhibit "D."

**"Class "B" Control Period":** The time period during which the Class "B" Member may appoint a majority of the Board members. The Class "B" Control Period ends when any one of the following occurs:

- (a) when 90% of the Lots permitted under the Master Plan are issued certificates of occupancy and are owned by Class "A" Members other than Builders;
- (b) December 31, 2030; or
- (c) When, in its discretion, the Class "B" Member so determines.

**"Common Area":** All real and personal property, including easements, which the Conservancy owns, leases, or otherwise has a right to possess or use for the common use and enjoyment of the Owners. Common Area includes the Limited Common Area, as defined below. Common Areas exclude all Private Amenities.

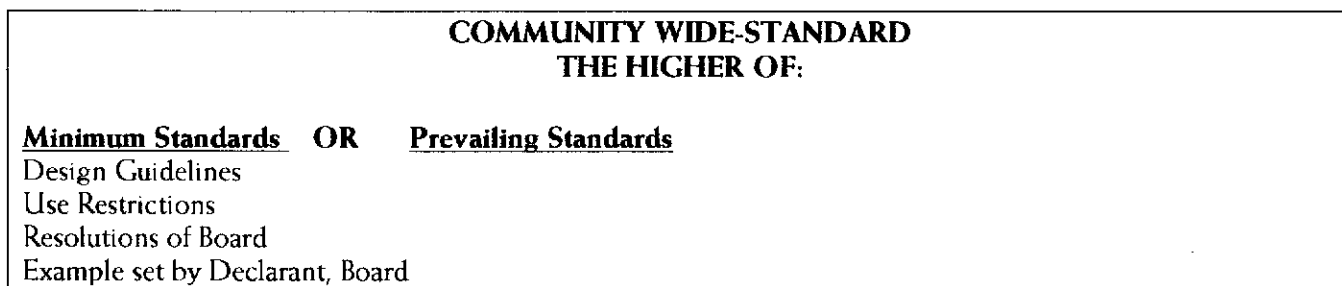
**"Common Expenses":** The actual and estimated expenses the Conservancy incurs, or expects to incur, for the general benefit of all Owners. Common Expenses include any reserves the Board finds necessary or appropriate. Common Expenses do not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless a majority of the Class "A" Members approve.

**"Common Maintenance Areas":** The Common Area, together with any other area for which the Conservancy has or assumes maintenance or other responsibility.

**"Community" or "Promontory":** The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article IX.

**"Community Enhancement Fee":** Fees levied upon certain real property transfers for the benefit of Promontory and other designated Persons.

**"Community-Wide Standard":** The standard of conduct, maintenance, or other activity generally prevailing throughout the Community, or the minimum standards established pursuant to the Design Guidelines, Use Restrictions, and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard. The Community-Wide Standard may contain objective elements, such as specific landscape or house maintenance requirements, and subjective elements, such as matters subject to the Board's or the ARC's discretion. The Community-Wide Standard may or may not be in writing. The Community-Wide Standard may evolve as development progresses and as Promontory changes.



*Diagram 1.2. Community-Wide Standard*

**"Conservancy"**: The Promontory Conservancy, a Utah not-for-profit corporation, its successors or assigns.

**"Declarant"**: Pivotal Promontory Development, L.L.C., a corporation, or any successor or assign who takes title to any portion of the property described in Exhibit "A" or "B" for development and/or sale and who is designated as Declarant in a Recorded instrument the immediately preceding Declarant executes.

**"Development Agreement"**: That certain Development Agreement dated as of January 2, 2001, between Summit County and Declarant relating to the Community.

**"Limited Common Area"**: A portion of the Common Area primarily benefitting one or more, but less than all, Villages or Owners, as more particularly described in Article XII.

**"Lot"**: A portion of the Community, whether improved or unimproved, which may be independently owned and conveyed, and upon which a Residence is intended for development, use, and occupancy. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Residence, on the Lot. The boundaries of each Lot shall be shown on a Plat; provided, in the case of a building containing multiple Residences for individual sale (e.g., attached condominium or townhouse units), each Residence shall be a separate Lot.

A parcel shall be deemed to be a single Lot until such time as a Plat subdivides all or a portion of the parcel. Thereafter, the subdivided portion shall contain the number of Lots shown on the Plat. Any portion not subdivided shall continue to be a single Lot.

**"Master Plan"**: The land use plan for Promontory prepared by Swaback Partners and approved by Summit County, as it may be amended from time to time. It includes all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B." Declarant is not obligated to submit property shown on the Master Plan to this Declaration. In addition, Declarant may submit property to this Declaration which is not shown on the Master Plan.

**"Member"**: Each Lot Owner, subject to Section 6.2.

**"Mortgage"**: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

**"Owner"**: The Record title holder to any Lot, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation (e.g., a Mortgagee). If a Lot is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

**"Person"**: An individual, a corporation, a partnership, a trustee, or, any other legal entity.

**"Plat"**: Any Recorded land survey plat for all or any portion of Promontory.

**"Private Amenities"**: Real property and facilities located adjacent to, near, or within the Community, which Persons other than the Conservancy own and operate for recreational/resort and related purposes on a membership basis or otherwise and which is designated by Declarant as being a Private Amenity. Private Amenities shall include the golf courses, club houses, other recreational amenities and related land and facilities of the Promontory Club.

**"Promontory Club"**: The owner of golf courses, club houses, other recreational amenities and related land and

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facilities located within the Community and elsewhere.

**"Record," "Recording," or "Recorded"**: To file, the filing of, or filed of record a legal instrument in the Office of the Recorder of Summit County, Utah, or such other place designated as the official Summit County location for recording documents affecting title to real estate.

**"Regular Assessment"**: Annual assessments levied to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 8.1.

**"Residence"**: Any building, or part of a building, on a Lot which is intended for use and occupancy as a separate residence.

**"Resort Area"**: Any area within the Community designated by Declarant in any Supplemental Declaration for hotels, cottages and condominiums available for overnight stay, time- share or interval ownership units, facilities of the Promontory Club and related commercial and incidental uses.

**"Special Assessment"**: Assessments charged against all Owners or all Owners in a Village in accordance with Section 8.5.

**"Supplemental Declaration"**: A Recorded instrument which subjects additional property to this Declaration, designates Villages, identifies Common Area and Limited Common Area, designates Voting Groups, and/or imposes additional restrictions and obligations on the land described.

**"Use Restrictions"**: The initial use restrictions, rules, and regulations governing the use of and activities on the Lots and the Common Areas set forth in Exhibit "C," as they may be changed in accordance with Article III or otherwise amended.

**"Village"**: A group of Lots designated by Declarant as a separate Village in accordance with Section 6.4(a). Lots within a Village may share Limited Common Areas and/or receive benefits or services from the Conservancy which are not provided to all Lots. A Village may include more than one housing type and may include parcels which do not border on each other. If the Conservancy provides benefits or services to less than all Lots within a particular Village, then the Conservancy may levy a Village Assessment against just those Lots for such benefits or services. This Declaration does not require the creation of any Villages.

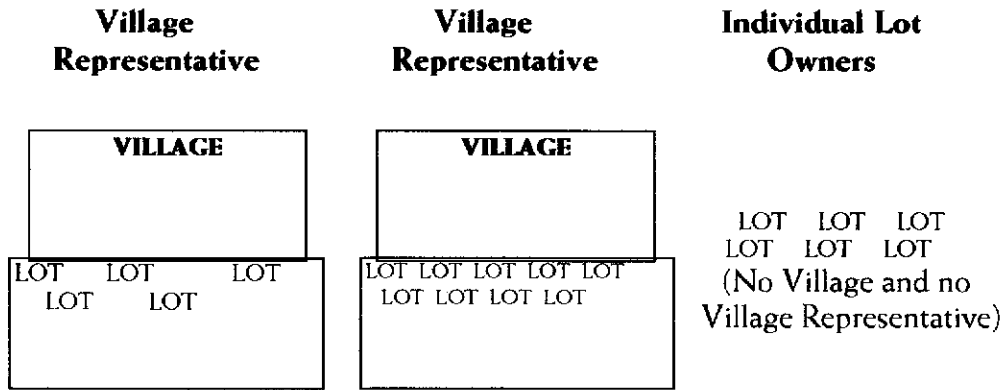
**"Village Assessments"**: Assessments levied against the Lots in a particular Village or Villages to fund Village Expenses, as described in Section 8.2.

**"Village Organization"**: Any owners organization having jurisdiction over a Village which is subordinate to the Conservancy's rights under this Declaration. This Declaration does not require the creation of any Village Organization. A Village Organization may only be formed by Declarant or by the Board of Directors with the consent of Declarant.

**"Village Expenses"**: The actual and estimated expenses which the Conservancy incurs or expects to incur for the benefit of Owners within a particular Village, including any reserve for capital repairs and replacements and administrative charges authorized by this Declaration or the Supplemental Declarations applicable to such Village.

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**"Village Representative":** The representative of the Class "A" Members within a Village selected to cast their votes on Conservancy matters (except where Members are required to cast their own votes). The term Village Representative also refers to alternate Village Representatives acting in the Village Representative's absence. No Village Representatives shall exist except as appointed by a Village Organization that has been validly established by Declarant or by the Board of Directors with the consent of Declarant.



*Diagram 1.3 – Village Representatives*

[Note: Number of Lots shown in each Village is for demonstrative purposes only. Actual numbers may vary from one Village to another and could be substantially more or less than number of Lots shown. Lots not included within a Village have no Village Representative and cast all votes directly on Conservancy matters. Refer to Section 6.4(b) and 6.5 for a more detailed explanation of representative voting.]

**"Voting Group":** One or more Village Representatives, or a group of Members, who vote on a common slate for electing directors, as described in Section 6.5.

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## Part Two: **CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*The standards for use and conduct, maintenance, and architecture at Promontory are what give the Community its identity and make it a place that people want to call "home." This Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for Community standards to evolve as the Community changes and grows.*

### ARTICLE III: **Use and Conduct**

#### 3.1 **Restrictions on Use, Occupancy, and Alienation**

The restrictions set forth in this Section may be amended only in accordance with Article XIX.

- (a) Residential and Related Uses. Subject to Section 3.1(b), the Community shall be used only for residential, recreational, resort and related purposes. Resort uses include the operation of a hotel and resort condominiums for overnight stay, the operation of golf and other recreational facilities by the Promontory Club and the operation of other commercial uses in reasonable proximity to such resort uses. Related purposes may include offices for the Conservancy or its management agent(s), Declarant's business or sales office(s) (including ongoing real estate resale brokerage operations), and any business use which meets the conditions of Section 3.1(b). In addition, the Conservancy or Declarant may permit any other commercial activity that does not detract from the Community's residential and recreational character.
- (b) Business Use. Declarant shall be entitled to designate, develop and operate a convenience commercial use and such other commercial uses as may be approved by Summit County in such locations as Declarant may determine. No business shall be conducted in or from any Lot, except that an Owner or a resident of the Lot may conduct business activities within the Residence if the business activity:
- (i) is not apparent or detectable by sight, sound, or smell from outside the Residence;
  - (ii) complies with applicable zoning requirements;
  - (iii) does not involve regular visitation of the Residence by clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and
  - (iv) is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous, offensive or illegal use, or threaten the security or safety of others within the Community, as determined in the Board's sole discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (A) such activity is engaged in full or part time, (B) such

activity is intended to or does generate a profit, or (C) a license is required.

This Section does not apply to designated Resort Areas, the activities of the Promontory Club, or to Declarant's activities, or the activities of Persons which Declarant approves, with respect to the development and sale of property or to the provision of services in the Community. Additionally, this Section shall not apply to any Conservancy activity related to operating, maintaining, or advancing the Community's residential character.

Leasing a Residence is not a "business" within the meaning of this subsection.

- (c) Leasing. For purposes of this Declaration, "leasing" is defined as regular, exclusive occupancy of a Residence by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, or gratuity. The Residence, if leased, may be leased only in its entirety (e.g., separate rooms within the same Residence may not be separately leased).

There shall be no subleasing of a Residence or assignment of leases except with the Board's prior written approval. All leases shall be in writing, must require that tenants and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents, and shall have a term of at least three months, except: (a) with the Board's prior written consent, or (b) as Declarant initially authorizes in a Supplemental Declaration for Lots located within certain Villages.

Within ten days of the lease being signed, an Owner shall notify the Board or the Conservancy's managing agent of any lease and provide any additional information the Board may require. The Owner must give the tenant copies of the Governing Documents. The Board may adopt reasonable Use Restrictions and rules regulating leasing and subleasing.

The restrictions on lease terms set forth in this paragraph shall not apply to Lots Declarant owns or Lots owned by a Builder where Declarant approves an exception to the foregoing restrictions.

- (d) Occupants Bound. Every Owner shall cause anyone occupying or visiting his or her Lot to comply with the Governing Documents and shall be responsible for all violations and losses they cause to the Common Maintenance Areas, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.
- (e) Subdivision of a Lot and Time-Sharing. Except within Resort Areas, Lots may not be subdivided or their boundary lines changed except with the Board's prior written approval, provided, Declarant may subdivide, change the boundary line of, and replat any Lot it owns. In addition, for so long as Declarant owns any portion of the Community, it may convert Lots into Common Area.

Except within Resort Areas, timesharing, fraction-sharing, or similar programs whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years is prohibited. The foregoing restriction shall not be applicable to Lots owned by Declarant or the Promontory Club.

### 3.2 Framework for Regulation

As part of the general plan of development, the Governing Documents establish a framework of covenants, easements, and restrictions which govern the Community. This includes the Use Restrictions set forth in Exhibit "C." Within that framework, the Board and the Members must have the ability to respond to



unforeseen problems and changes affecting the Community. This Article establishes procedures for modifying and expanding the initial Use Restrictions to respond to such changes.

This Article is not intended to apply to reasonable rules and regulations relating to use and operation of the Common Area, which the Board may adopt by resolution, or other administrative rules, unless the Board chooses, in its discretion, to submit to such procedures.

### **3.3 Owners' Acknowledgment and Notice to Purchasers**

All Owners are given notice that use of their Lots and the Common Area is limited by the Use Restrictions as amended, expanded, and otherwise modified from time to time. Each Owner, by accepting a deed, acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot can be affected by the Use Restrictions and Board rules, which may change from time to time. All Lot purchasers are on notice that the Conservancy may have adopted changes to the Use Restrictions and that such changes may not be set forth in a Recorded document. Copies of the current Use Restrictions and Board rules may be obtained from the Conservancy.

### **3.4 Rule Making Authority**

- (a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Conservancy and the Members, the Board may change (i.e., modify, cancel, limit, create exceptions to, or expand) the Use Restrictions. The Board shall send notice to all Owners of any proposed change at least five business days before the Board meeting to consider the change. Any Owner or Village Representatives shall have a reasonable opportunity to be heard at such Board meeting.

The proposed change shall be approved unless disapproved by Owners or Village Representatives together representing a majority of the Conservancy's Class "A" votes, and by the Class "B" Member, if any. The Board is not obligated to call a meeting of the Owners and Village Representatives to consider disapproval unless it receives a petition which meets the By-Law's requirements for special meetings. If the Board receives such a petition before the change's effective date, the change shall not become effective until after a meeting is held, and then subject to the outcome of the meeting.

- (b) Alternatively, the Owners and any Village Representatives together, representing a majority of the Class "A" votes in the Conservancy, at a Conservancy meeting duly called for such purpose, may vote to change the Use Restrictions then in effect. Any such change shall require approval of the Class "B" Member, if any.
- (c) Before any Use Restriction change becomes effective, the Board shall send a copy of the new or changed Use Restriction to each Owner. The change does not become effective until 30 days following distribution to Owners. The Conservancy shall provide to any requesting Member or Mortgagee, without cost, a copy of the Use Restrictions then in effect.
- (d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the initial Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

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### 3.5. **Protection of Owners and Others**

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth in Exhibit "C," the Conservancy's actions with respect to Use Restrictions and rules must comply with the following:

- (a) **Similar Treatment.** Similarly situated Owners must be treated similarly; however, the Use Restrictions and rules may vary by neighborhood or Village.
- (b) **Displays.** Subject to Design Guideline restrictions on construction and exterior lighting, Owners' rights to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in single-family residential neighborhoods or Villages shall not be abridged, except that the Conservancy may adopt time, place, and manner restrictions with respect to such displays.

The Conservancy shall not regulate the content of political signs; however, it may regulate the time, place, and manner of posting such signs (including design criteria). All other signs, posters, circulars, and billboards, including "for sale" and "for rent" signs, are prohibited except those required by law or those which meet the standards set forth in the Design Guidelines.

- (c) **Household Composition.** The Conservancy shall not interfere with any Owner's freedom to determine the composition of his/her household, except that it may limit the total number of Persons entitled to permanently occupy a Residence based upon the fair use of the Common Area' and impacts on all Community services.
- (d) **Activities within Dwellings.** The Conservancy shall not interfere with activities carried on within a Residence, except it may prohibit activities not normally associated with residential property, and it may restrict or prohibit activities that create monetary costs for the Conservancy or other Owners, that are illegal, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the Residence, or that are an unreasonable source of annoyance.
- (e) **Allocation of Burdens and Benefits.** The Conservancy shall not reallocate financial burdens among the various Lots or change Common Area use rights to the detriment of any Owner over that Owner's written objection. This does not prevent the Conservancy from changing the Common Area available, from adopting generally applicable rules for using the Common Area, or from denying use privileges to anyone who is late in paying assessments, who abuses the Common Area, or who violates the Governing Documents. This provision does not affect the right to levy Village Assessments or to increase the amount of assessments as provided in Article VIII.
- (f) **Alienation.** Except as provided in Section 3.1(c) above, the Conservancy shall not prohibit leasing or transfer of any Lot, or require the Conservancy's or the Board's consent prior to leasing or transferring a Lot. The Conservancy may require that Owners use Conservancy-approved lease forms (or include specific lease terms) and may impose a reasonable review or administrative fee on the lease or transfer of any Lot. Section 3.1(c) imposes a minimum lease term. Section 8.11 imposes a Community Enhancement Fee of up to 1.0% of sales price to help fund Conservancy operations.

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- (g) Abridging Existing Rights. The Conservancy may not require an Owner to dispose of personal property that was in or on a Lot in compliance with previous rules. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.
- (h) Reasonable Rights to Develop. The Conservancy may not unreasonably impede Declarant's right to develop Promontory.
- (i) Interference with Private Amenities. The Conservancy may not interfere with the use or operation of any Private Amenity, any approved commercial activity or any use within a Resort Area designated by Declarant.

The limitations in subsections (a) through (g) of this Section shall only limit rule-making authority exercised under Section 3.3; they shall not apply to amendments to this Declaration adopted in accordance with Article XIX.

## ARTICLE IV: **Architecture and Landscaping**

### 4.1 **General**

No structure or thing shall be placed, erected, or installed upon any Lot, and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations, or planting or removal of landscaping) shall take place upon any Lot within Promontory, except in compliance with this Article and the Design Guidelines.

No design review approval shall be required to repaint the exterior of a structure in accordance with its most recently approved color scheme or to rebuild in accordance with previously approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of structures (including the Residence) on his or her Lot without design review approval. However, modifications to the interior of screened porches, patios, and any other portions of a Lot visible from outside a structure are subject to design review approval. Although design review is not required under the limited circumstances set forth above, each Owner will still have the responsibility to comply with any applicable Board rules and any applicable laws.

Each Residence shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant, in its sole discretion, or its designee otherwise approves.

This Article shall apply to the fire station and school parcels. The same mountain ranch design philosophy governing the design of homes and non-residential uses within Promontory shall apply to these parcels. Designs on these parcels need to be especially sensitive to:

Building Massing – Incorporate smaller masses as much as possible and practicable.

Roof Forms – Utilize sloping roofs as much as possible and practicable.

Vehicular traffic and parking lot layout – Buffer parking and vehicular traffic with the buildings, landscaping, walls and berming.

Lighting – Exterior lighting shall be designed to minimize nuisance to homesites within Promontory consistent with Promontory's low level lighting requirements.

Streetscape along Promontory's entrance road – Should enhance Promontory's entrance and be consistent with Promontory's emphasis on native vegetation.

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Signage – The signage system shall be consistent with Promontory's signage system.  
Mechanical Equipment – Buffer from Promontory homesite view and sound.

This Article does not apply to Declarant's activities nor to the Conservancy's activities during the Class "B" Control Period.

## 4.2 Architectural Review

- (a) By Declarant. Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for architectural and other improvements within the Community. Declarant's rights under this Article IV shall continue for as long as Declarant owns any portion of the Community or has a unilateral right to annex property, unless Declarant earlier terminates its rights in a Recorded instrument. Declarant may designate one or more Persons to act on its behalf in reviewing applications. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other Person.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to the Conservancy's Architectural Review Committee. Any such delegation shall be in writing, specifying the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

- (b) Architectural Review Committee. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the ARC shall assume jurisdiction over architectural matters. When appointed, the ARC shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced at the Board's discretion. Members of the ARC need not be Members of the Conservancy or representatives of Members, and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish.

As long as Declarant owns any portion of the Community or has the unilateral right to annex property, the ARC shall notify Declarant of any action to be taken under this Article. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any action the ARC takes, provided, Declarant's right to veto must be exercised within 10 days after it receives notice of the ARC's action. The party submitting the plans for approval shall not be notified of the ARC's approval or disapproval until after Declarant's right to veto has been exercised or has expired.

The Board may create and appoint subcommittees of the ARC. Subcommittees may be established to preside over particular areas of review (e.g., landscape plans) and shall be governed by procedures the Board or the ARC may establish. Any subcommittee's actions are subject to review and approval by Declarant, for as long as Declarant may review the ARC's decisions, and the ARC. Notwithstanding the above, neither the ARC nor Declarant shall be obligated to review all actions of any subcommittee, and the failure to take action in any instance shall not be a waiver of the right to act in the future.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARC or

Declarant's rights under this Article terminate, the Conservancy shall have no jurisdiction over architectural matters.

- (c) Reviewer. For purposes of this Article, the "Reviewer" is the entity having jurisdiction in a particular case. Declarant and the Conservancy may employ architects, engineers, or other Persons to perform the review.

In reviewing applications and other materials, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed exterior design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as they are made in good faith and in accordance with the required procedures.

- (d) Fees, Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Board may include the compensation of such Persons in the Conservancy's annual operating budget.

#### 4.3 Guidelines and Procedures

- (a) Design Guidelines. Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of Promontory as well as specific provisions that may vary from one part of the Community to other parts. The Design Guidelines are intended solely to provide guidance to Owners and Builders. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Community or has a unilateral right to annex property to the Community. Declarant's right to amend the Design Guidelines shall continue even if reviewing authority is delegated to the ARC, unless Declarant also delegates the power to amend the Design Guidelines to the ARC. Upon termination or delegation of Declarant's right to amend, the ARC may amend the Design Guidelines at its sole discretion.

Amendments to the Design Guidelines shall be prospective only. They shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. Subject to the Community-Wide Standard, the scope of amendments to the Design Guidelines is unlimited, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within Promontory. In Declarant's discretion, the Design Guidelines may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

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- (b) Procedures. Any design review procedures set forth in the Design Guidelines shall govern the application and review process. Unless the Design Guidelines provide otherwise, no construction activities or other activities described in Section 4.2(a), may begin until a request is submitted to and approved by the Reviewer. The request must be in writing and accompanied by plans and specifications and other information the Reviewer or the Design Guidelines require.

The Reviewer shall make a determination on each application after receipt of a completed application and other information it requires. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

Reviewer approval is not a substitute for any approvals or reviews required by Summit County or any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

The Reviewer shall notify the applicant in writing of the final determination on any application within 45 days after its receipt of a completed application and all required information. If the Reviewer fails to respond in a timely manner, approval shall be deemed given, subject to Declarant's right to veto pursuant to Section 4.2(a). However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5.

Notice shall be deemed given at the time the envelope containing the response is deposited in U.S. mail. Personal or electronic delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

As part of any approval, the Reviewer may require that construction in accordance with approved plans commence within a specified time period. If construction does not commence within the required period, approval shall be deemed withdrawn and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All construction work shall be completed within one year of commencement unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Conservancy, Declarant, or any aggrieved Owner.

The Reviewer may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. For example, Builders may submit and receive pre-approval of landscaping or other plans for general application. Such pre-approved plans shall not require resubmission prior to use on a particular Lot.

#### **4.4 No Waiver of Future Approvals**

Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible

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to identify objectionable features until work is completed, at which time, it may be unreasonable to require that such objectionable features be changed. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval of similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### **4.5 Variances**

The Reviewer may authorize variances from compliance with the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires Declarant's written consent for so long as Declarant owns any portion of the Community or has the unilateral right to annex property.

#### **4.6 Limitation of Liability**

The standards and procedures established by this Article are a mechanism for maintaining and enhancing the overall aesthetics of Promontory; they do not create any duty to any Person. The Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for ensuring compliance with building codes and other governmental requirements, or for ensuring that every Residence is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

Declarant, the Conservancy, its officers, the Board, the ARC, any committee, or any member of any of the foregoing (the "Released Parties") shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a Builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Conservancy shall defend and indemnify any Released Party as provided in Section 7.6.

#### **4.7 Certificate of Compliance**

Any Owner may request in writing that the Reviewer or the Conservancy issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines or specifying any violations that the Reviewer or the Conservancy knows to exist. The Reviewer or The Conservancy shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall estop the Conservancy from taking enforcement action against an Owner for any condition known to the Reviewer or the Conservancy on the date of the certificate.

#### **4.8 Enforcement**

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Any construction, alteration, or other work done in violation of this Article or the Design Guidelines is subject to enforcement action. Upon written request from the Conservancy or Declarant, Owners shall, at their own cost and expense and within a reasonable time frame identified in the request, cure the violation or restore the Lot and/or Residence to substantially the same condition as existed before the violation occurred. Should an Owner fail to cure the problem or otherwise restore the property as required, the Conservancy, Declarant, or their designees shall have the right to enter the property, remove the violation, and restore the property. All costs, together with the interest at the rate the Board establishes (not to exceed the maximum rate then allowed by Utah law), may be assessed against the benefitted Lot and collected as a Benefitted Assessment.

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline imposed, Declarant or the Conservancy may enter upon the Lot and remove or complete any incomplete work and assess all costs incurred against the Lot and its Owner as a Benefitted Assessment, which shall be due 10 days after it is assessed.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Community. In such event, neither Declarant nor the Conservancy, or their officers and directors, or any other person associated with the Community shall be held liable to any Person for exercising the rights granted by this paragraph.

The Conservancy shall be primarily responsible for enforcing this Article. If, however, in Declarant's discretion, the Conservancy fails to take appropriate enforcement action within a reasonable time period, Declarant, for so long as it owns any portion of the Community or has the unilateral right to annex property thereto, may, but shall not be obligated to, exercise the enforcement rights set forth above. In addition to the foregoing, the Conservancy and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the Reviewer's decisions. If the Conservancy or Declarant prevail, they shall be entitled to recover all costs including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

## ARTICLE V: **Maintenance and Repair**

### 5.1 **Maintenance of Lots**

Each Owner shall maintain his or her Lot, including the Residence and all landscaping and other improvements comprising the Lot, in a manner consistent with the Governing Documents, the Community-Wide Standard, and any other applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Conservancy or a Village Organization under any Supplemental Declaration or additional covenants applicable to such Lot.

### 5.2 **Maintenance of Village Property**

Upon Board resolution, Owners within any Village created in accordance with this Declaration shall



be responsible for paying, through Village Assessments, the costs of operating, maintaining, and insuring certain portions of the Common Maintenance Areas within or adjacent to such Village. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and greenspace between the Village and adjacent public roads, private streets within the Village, and lakes or ponds within the Village, regardless of ownership and regardless of the fact that the Conservancy may perform such maintenance. In any event, all Villages which are similarly situated shall be treated the same.

The Conservancy may assume maintenance responsibility for property within any Village, in addition to that designated by any Supplemental Declaration, either by agreement with the Village Organization or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Village Assessment only against the Lots within the Village to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

Any Village Organization shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

### **5.3 Responsibility for Repair and Replacement**

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless either his or her Village Organization, if any, or the Conservancy carries such insurance (which they may, but are not obligated to do). If the Conservancy or any Village Organization assumes responsibility for insuring a Lot, the insurance premiums shall be levied as a Benefitted Assessment against the benefitted Lot and the Owner.

In the event of damage to or destruction of a structure on a Lot, the Owner shall promptly repair or reconstruct the structure in a manner consistent with the original construction or other plans and specifications approved in accordance with Article IV. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs insurance proceeds do not cover.

This Section applies to any Village Organization responsible for common property within the Village in the same manner as if the Village Organization were an Owner and the common property were a Lot. Additional Recorded covenants applicable to any Village may establish requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Lots within the Village and for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

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## Part Three: **COMMUNITY GOVERNANCE AND ADMINISTRATION**

*This Declaration establishes the Conservancy as a mechanism by which each Owner is able to participate in the governance and administration of Promontory. While many powers and responsibilities are vested in the Conservancy's Board of Directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Conservancy's membership -- the Lot Owners.*

### ARTICLE VI: **The Conservancy and its Members**

#### 6.1 **Function of The Conservancy**

The Conservancy is the entity responsible for management, maintenance, operation, and control of the Common Maintenance Areas. The Conservancy will also maintain Promontory's private trail system and operate the Promontory Shuttle System as required pursuant to Promontory's Development Agreement. In addition, the Conservancy may perform such other community services and undertake such other responsibilities as its Board may deem advisable from time to time. The Conservancy also has primary responsibility for enforcing the Governing Documents. The Conservancy shall perform its functions in accordance with the Governing Documents and Utah law.

#### 6.2 **Membership**

Every Owner is a Member of the Conservancy. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of the membership, subject to reasonable Board regulation and the voting restrictions described in Section 6.3(c) and in the By-Laws. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner which is not an individual may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Conservancy's Secretary.

#### 6.3 **Voting**

The Conservancy shall have two classes of membership, Class "A" and Class "B."

- (a) Class "A". Class "A" Members are all Owners except the Class "B" Member, if any. Class "A" Members have one equal vote for each Lot they own, except that there shall be only one vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Section 8.9.
- (b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member shall not vote, but may appoint a majority of the Board members during the Class "B" Control Period, as specified in the By-Laws, and may exercise the additional rights specified throughout the Governing Documents.

The Class "B" membership shall terminate upon the earlier of:

- (i) two years after expiration of the Class "B" Control Period; or
- (ii) when, in its discretion, Declarant declares in a Recorded instrument.

Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to one Class "A" vote for each Lot it owns.

- (c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, for each Village designated by Declarant in a Supplemental Declaration, the Village Representative shall exercise the vote for each Lot a Class "A" Member owns within the Village, as provided in Section 6.4(b). Village Representatives may cast their votes as they, in their discretion, deem appropriate.

For each Lot that is not located within a designated Village, the Owner shall be entitled personally to exercise the vote for his or her Lot. In any situation where a Member is entitled personally to exercise the vote for his or her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Conservancy in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

#### 6.4 Villages and Village Representatives

- (a) Villages. Declarant may designate in Exhibit "A" to the Declaration or in Supplemental Declarations one or more Villages within the Community. This Declaration does not require the establishing of any Villages. Lots within a particular Village may be subject to covenants in addition to those contained in this Declaration and, if required by law or if Declarant otherwise approves, the Owners within the Village may be members of a Village Organization, if one is established by the Declaration or a Supplemental Declaration, in addition to the Conservancy.

Exhibit "A" to this Declaration and Supplemental Declarations submitting additional property to this Declaration initially may assign property to a specific Village (by name or other identifying designation), which Village may be then existing or newly created. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to create Villages or redesignate Village boundaries. However, two or more existing Villages shall not be combined without the consent of Owners of a majority of the Lots in the affected Villages. After Declarant no longer has the right to annex additional property, Villages may be established by the Board with the consent of Declarant.

Owners within any Village or Owners within a specified portion of the Community not included within a Village may request that the Conservancy provide a higher level of service than the Conservancy generally provides to all Villages or may request that the Conservancy provide special services for the benefit of Lots in such Village or specified portion of the Community. The Board shall have complete discretion whether or not to grant any such request, provided, however, that if the Board agrees to any such request, the Board shall assess the cost of such services, which may include a

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reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at the same rate per Lot to all Lots receiving the same service), against the Lots within such Village or specified portion of the Community as a Village Assessment or a Benefitted Assessment. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Lots within the Village or all of the Lots within any other specified portion of the Community, the Conservancy may agree to provide the requested services if approved by the Board.

- (b) Village Representatives. Owners within each Village established by Declarant shall elect a Village Representative who shall, except as otherwise provided in this Declaration or the By-laws, cast the Class "A" Member votes attributable to Lots within the Village on all matters requiring a membership vote. In addition, each such Village shall elect an alternate Village Representative who shall act in the absence of the Village Representative. The Village Representative and alternate Village Representative shall each be Owners in good standing of a Lot in the Village they represent.

The first election of a Village Representative from each Village shall occur within one year after the sale of the first Lot in the Village to an Owner other than a Builder. Thereafter, the Board shall call for an election of Village Representatives every two years. Votes may be cast by written ballots through the mail, by computer (e.g., electronic mail or intranet system, if any), or at a meeting of the Class "A" Members within the Village, as the Board determines. If the Class "A" Members holding at least 10% of the votes attributable to Lots within any Village sign a written petition and present it to the Board, the Village Representative election shall be held at a meeting. Candidates for election as Village Representatives may be nominated by the Board, a nominating committee the Board appoints, or from the floor during an election meeting.

The presence, in person or by proxy, or the filing of ballots by Class "A" Members representing at least 25% of the total Class "A" votes attributable to Lots in the Village shall constitute a quorum at any Village meeting or election. In the event of a failure to obtain a quorum or if there is a vacancy in such positions for any Village, the Board may appoint a Village Representative or alternate Village Representative to represent the Village until a successor is elected.

For any Village election, each Class "A" Member shall have one equal vote for each Lot he or she owns in the Village. The candidate who receives the greatest number of votes shall be elected as the Village Representative and the candidate receiving the next greatest number of votes shall be elected as the alternate Village Representative. The Village Representative and the alternate Village Representative shall serve until their successors are elected. Village Representatives may serve no more than two consecutive terms.

Any Village Representative may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the Lots owned by Class "A" Members in the Village which the Village Representative represents.

## 6.5 Voting Groups

Prior to the expiration of the Class "B" Control Period, Declarant may combine different Villages or other specified groups of Lots into Voting Groups for the purpose of electing directors to the Board. Voting Groups shall be designated to promote representation on the Board by groups with dissimilar interests and to avoid particular groups dominating the Board due to the number of votes held by such groups. Declarant shall

establish Voting Groups, if at all, by Recording a Supplemental Declaration identifying the Voting Group by legal description or other means by which the Lots within the Voting Group can clearly be determined. Declarant may amend such designations at any time during the Class "B" Control Period. In any event, each Voting Group shall elect an equal number of directors to the Board.

After expiration of Declarant's right to expand Promontory pursuant to Article IX, the Board, with the approval of Village Representatives representing a majority of any established Villages and Owners and Village Representatives that together represent a majority of the total Class "A" votes in the Conservancy, may create one or more Voting Groups, or change existing Voting Groups, by Recording a Supplemental Declaration or amending a previous Supplemental Declaration.

Neither Recording nor amending a Supplemental Declaration to create or change Voting Groups shall be an amendment to this Declaration, and no consent or approval of any Person shall be required except as stated in this paragraph. Until such time as Voting Groups are established, the Community shall be a single Voting Group. After Voting Groups are established, any portion of Promontory not assigned to a specific Voting Group shall constitute a single Voting Group.

**CONSERVANCY ORGANIZATIONAL STRUCTURE  
(WITH VOTING GROUPS)**

DIRECTOR 1 Selected by Voting Groups A, B, and others		DIRECTOR 2 Selected by Groups C, H, and others		DIRECTOR 5 Selected by Voting Group Z
Voting Group A	Voting Group B	Voting Group G	Voting Group H	Voting Group Z
Village Reps	Village Reps and Owners	Lot Owners	Lot Owners	Lot Owners
Some Villages	Some Villages and Some Lots	Some Lots	Some Lots	All Remaining Lots

*Diagram 6.1 - Conservancy Organizational Structure (The number of directors (five).*

*Villages, Lots not in Villages and Voting Groups (five) shown in the illustration are for demonstrative purposes only the actual number may be different.*

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## ARTICLE VII: **Conservancy Powers and Responsibilities**

### 7.1 **Acceptance and Control of Conservancy Property**

- (a) The Conservancy may acquire, hold, mortgage or pledge as security, lease (as landlord or tenant), operate, and dispose of tangible and intangible personal property and real property. The Conservancy may enter into leases, licenses, or operating agreements, for payment or no payment, as the Board deems appropriate, permitting use of portions of the Common Area by Community organizations and by other third parties for the general benefit or convenience of Owners and other Promontory residents.
- (b) Declarant and its designees may transfer to the Conservancy, and the Conservancy shall accept, personal property and fee title or other property interests in any improved or unimproved real property described in Exhibits "A" or B." Upon Declarant's written request, the Conservancy shall transfer back to Declarant any unimproved real property originally conveyed to the Conservancy for no payment, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.
- (c) The Conservancy is responsible for management, operation, and control of the Common Area, subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Conservancy. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate. Further, the Board may lease, or borrow funds to acquire, operate or maintain equipment and facilities used in Common Areas or the performance of the Conservancy's other duties under this Declaration or other agreements. Such equipment and facilities may be leased, or such funds may be borrowed from any source, including Declarant, on commercially reasonable terms and conditions.

### 7.2 **Maintenance of Common Maintenance Areas**

The Conservancy shall maintain the Common Maintenance Areas in accordance with the Community-Wide Standard. The Common Maintenance Areas shall include, but are not limited to:

- (a) all portions of the Common Area, including the entrance gates and other entrance features, perimeter fences, all private roads, any and all landscaping, structures, and other improvements on the Common Areas;
- (b) all landscaping, and other flora, sidewalks, streetlights, and signage within public rights-of-way within or abutting Promontory, any landscaping and other flora within any public utility easement within Promontory, and any landscaping and other flora abutting any area adjacent to the Community;
- (c) such portions of any additional property as may be dictated by Declarant, this Declaration, any Supplemental Declaration, any Plat, or any contract, covenant, or agreement for maintenance entered into by, or for the benefit of, the Conservancy; and

- (d) all ponds, streams, and/or wetlands located within Promontory which serve as part of the Community's stormwater drainage system, including associated improvements and equipment.

All sanitary sewer facilities shall be owned by the Snyderville Basin Sewer Improvement District ("SBSID"); however, maintenance costs of certain low pressure lines and pump stations and certain back of lot sewer lines and sewer injection pumps shall be reimbursed to SBSID by the Conservancy as provided in Promontory's Annexation Agreement or service agreements with SBSID.

The Conservancy may maintain other property which it does not own, including property dedicated to the public, conservation areas and wetlands dedicated to governmental agencies, and any and all trails and paths located on such parcel if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Conservancy shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Conservancy shall maintain the facilities and equipment within the Common Maintenance Areas in continuous operation, except for any periods necessary, as determined by the Board, to perform required maintenance or repairs, unless Owners of Lots and Village Representatives representing 75% of the Class "A" votes in the Conservancy agree in writing to discontinue such operation. Notwithstanding the above, the Common Maintenance Areas may not be reduced, nor shall operation of its facilities and equipment be discontinued, without Declarant's prior written approval as long as Declarant owns any property described in Exhibits "A" or "B" to this Declaration.

The costs associated with maintenance, repair, and replacement of the Common Maintenance Areas shall be a Common Expense. However, the Conservancy may seek reimbursement from the owners of, or other Persons responsible for, certain portions of the Common Maintenance Areas pursuant to this Declaration, a Supplemental Declaration, or other Recorded covenants or agreements. The maintenance, repair, and replacement of Limited Common Areas shall be a Village Expense assessed against the Lots within the benefitted Village(s) or shall be an expense assessed against benefitted Lots as a Benefitted Assessment where identified Limited Common Areas are outside of a Village.

### 7.3 Insurance

- (a) Required Coverages. The Conservancy, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not, the most nearly equivalent coverages as are reasonably available:
  - (i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within other portions of the Common Maintenance Areas to the extent that the Conservancy has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All Conservancy property insurance policies shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;
  - (ii) Commercial general liability insurance on the Common Maintenance Areas, insuring the

Conservancy and its Members for damage or injury caused by the negligence of the Conservancy or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence and in the aggregate with respect to bodily injury, personal injury, and property damage;

- (iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;
- (iv) Directors and officers liability coverage;
- (v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Conservancy funds in an amount determined in the Board's business judgment, but not less than an amount equal to one-quarter of the annual Regular Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and
- (vi) Automobile and such other coverages as the Board may deem necessary or advisable in connection with the operation of the Promontory Shuttle Service as required by Promontory's Development Agreement.

In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits.

Premiums for Common Maintenance Area insurance shall be a Common Expense, except that (i) premiums for property insurance on Lots within a Village shall be a Village Expense; (ii) premiums for insurance on Limited Common Areas within a Village may be a Village Expense unless the Board reasonably determines that other treatment of the premiums is more appropriate; and (iii) premiums for insurance on Limited Common Areas outside of a Village may be allocated to benefitted Lots as a Benefitted Assessment unless the Board reasonably determines that other treatment of the premises is more appropriate or the allocation of the expense is not material or cannot reasonably be accomplished.

- (b) Policy Requirements. The Conservancy shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Summit County, Utah area. All Conservancy policies shall provide for a certificate of insurance to be furnished to the Conservancy and, upon request, to each Member insured.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Village Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Board may assess the full amount of such deductible against such Owners and their Lots as a Benefitted Assessment.

All insurance coverage obtained by the Board shall:

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- (i) be written with a company authorized to do business in Utah which satisfies the requirements of the Federal National Mortgage Corporation, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- (ii) be written in the name of the Conservancy as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Conservancy and its Members. Policies secured on behalf of a Village shall be for the benefit of the Owners within the Village and their Mortgagees, as their interests may appear;
- (iii) not be brought into contribution with insurance purchased by individual Owners, their Mortgagees, or any occupants of a Lot;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Conservancy (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);
- (vii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Conservancy to cure the defect or violation and allowance of a reasonable time to cure; and
- (viii) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Conservancy.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Conservancy's Board, officers, employees, and its manager, the Owners and their tenants, servant, agents, and guests;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- (iv) an endorsement requiring at least 30 days' prior written notice to the Conservancy of any cancellation, substantial modification, or non-renewal;
- (v) a cross liability provision; and
- (vi) a provision vesting in the Board exclusive authority to adjust losses; provided, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

- (c) **Restoring Damaged Improvements.** In the event of damage to or destruction of Common Area or other property which the Conservancy is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Owners and any Village Representatives together representing at least 75% of the total Class "A" votes in the Conservancy and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area, repairs shall be made unless at least 75% of the Owners to which such Limited Common Area is assigned vote not to repair or reconstruct and the Class "B" Member, if any, consents. If either the insurance proceeds or estimates of the loss, or both, are not available to the Conservancy within such 60-day period, then the period shall be extended for up to 60 additional days until such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Conservancy in a neat and attractive condition consistent with the Community-Wide Standard.

The Conservancy shall return any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed-upon settlement, for the benefit of the Members or the Owners of Lots to which a damaged Limited Common Area is assigned as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the applicable insurance coverage premiums.

## **7.4 Compliance and Enforcement**

- (a) The Board may impose sanctions for Governing Document violations, which sanctions include those listed below and any others described elsewhere in the Governing Documents. The Board may establish a range of penalties for different violations, with violations of the Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations. The following sanctions require prior notice and an opportunity for a hearing in accordance with the By-Laws:
- (i) imposing reasonable monetary fines, not to exceed \$1,000.00 per violation (or per day in the case of a continuing violation) or \$10,000.00 in the aggregate, which shall constitute a lien upon the violator's Lot (fines may be imposed within a graduated range);
  - (ii) suspending an Owner's right to vote (except that suspension may be automatic if the Owner is more than 90 days delinquent in paying any assessment or other charge owed to the

Conservancy);

- (iii) suspending any Person's right to use Common Area amenities; provided nothing shall authorize the Board to prevent access to a Lot;
- (iv) suspending any services provided by the Conservancy (except, that suspension may be automatic if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Conservancy);
- (v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Lot in a non-emergency situation (including removing personal property that violates the Governing Documents); and
- (vi) levying Benefitted Assessments to cover costs incurred by the Conservancy to bring a Lot into compliance with the Governing Documents.

In addition, the Board may take the following enforcement actions to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

- (i) exercising self-help or taking action to abate a violation on a Lot in an emergency situation (including towing vehicles that are in violation of parking rules and regulations);
- (ii) exercising self-help or taking action to abate a violation on the Common Area under any circumstances; or
- (iii) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility or otherwise fails to comply with any provision of this Declaration, the Conservancy may record a notice of violation or perform the required maintenance or other obligation or otherwise take steps to abate the violation and assess its costs against the Lot and the Owner as a Benefitted Assessment. If the Lot in violation is located within a Village, with a Village Organization, that Village Organization shall have the obligation to correct the violation and to enforce rights against the Owner in question. If a Village Organization fails to perform its maintenance responsibilities, the Conservancy may perform the maintenance and assess the costs as a Benefitted Assessment against all Lots within the Village. Except in an emergency situation, the Conservancy shall provide the Owner and any Village Organization reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All sanctions and remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. If the Conservancy prevails in any action to enforce the Governing Documents it shall be entitled to recover all costs incurred in the action, including, without limitation, court fees and reasonable attorneys fees.

- (b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentences, the Board may determine that under the

circumstances of a particular case:

- (i) the Conservancy's position is not strong enough to justify taking any further action;
- (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Conservancy's resources; or
- (iv) that it is not in the Conservancy's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Conservancy from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

By contract or other agreement, the Conservancy may enforce applicable city and county ordinances, and Summit County may enforce its ordinances within Promontory. Specifically, and as more fully set forth in Section 7.16, the Conservancy is obligated to comply and to enforce owner compliance with certain obligations contained in the Development Agreement with Summit County. The provisions of Section 7.4 shall be applicable to any violations of the Development Agreement.

## **7.5 Implied Rights; Board Authority**

The Conservancy may exercise any right or privilege given to it expressly or by reasonable implication by the Governing Documents, and may take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all of the Conservancy's rights and powers may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Conservancy's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Maintenance Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Conservancy or the Members.

In exercising the Conservancy's rights and powers, making decisions on the Conservancy's behalf, and conducting the Conservancy's affairs, Board members are subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

## **7.6 Indemnification of Officers, Directors, and Others**

The officers, directors, and committee members, acting in such capacity, shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Conservancy's behalf (except to the extent that such officers or directors may also be Members of the Conservancy).

Subject to Utah law, the Conservancy shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Conservancy shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

## **7.7 Safety and Security**

Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and the security of their property in Promontory. The Conservancy may, but is not obligated to, maintain or support certain activities within the Community which are designed to enhance the level of safety or security which each person provides for himself and his property. However, the Conservancy and Declarant shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Lot that the Conservancy, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Promontory assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

## **7.8 Powers of the Conservancy Relating to Villages**

A Village Committee is a committee of the Conservancy, and the Board shall have all of the power and control over Village Committees that it has over other Conservancy committees.

The Conservancy shall have the power to require that specific action be taken by a Village Organization in connection with its obligations and responsibilities, such as requiring that specific maintenance or repairs or aesthetic changes be made and requiring that a proposed budget include certain items and that expenditures be made therefor. A Village Organization shall take such action within the reasonable time frame set by the Conservancy. If the Village Organization fails to comply, the Conservancy may take such action on behalf of the Village Organization and levy Benefitted Assessments to cover the costs, as well as an administrative charge and sanctions.

## **7.9 Provision of Services**

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The Conservancy may provide, or provide for, services and facilities for all or any of the Members and their Lots, and may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or may include the costs in the Conservancy's budget as a Common Expense and assess it as part of the Regular Assessments if provided to all Lots. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, internet access, security, caretaker, transportation, fire protection, utilities, trash collection and recycling, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Conservancy as to what, if any, services shall be provided. In addition, the Board may modify or cancel existing contracts for services in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

#### **7.10 Relationships with Other Properties**

The Conservancy may enter into contractual agreements or covenants to share costs with any neighboring properties or Private Amenity to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

#### **7.11 View Impairment**

Neither Declarant nor the Conservancy guarantee or represent that any view over and across the Lots or any open space within the Community will be preserved without impairment by structures or landscaping and neither shall be obligated to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Conservancy (with respect to the Common Area) and Private Amenity owners (with respect to Private Amenity property or property within Resort Areas) have the right to construct improvements and add trees and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

#### **7.12 Relationship with Governmental and Tax-Exempt Organizations**

The Conservancy may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments, public utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Conservancy, and the Members. The Conservancy may contribute money, real property (including Common Area), personal property, or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Conservancy's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

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### **7.13 Right to Designate Sites for Governmental, Public Interests and Easement Rights**

For so long as Declarant owns any property described in Exhibits "A" or "B," Declarant may designate sites within the Community for government, education, or religious activities and interests, including without limitation, fire, police, health care and for utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. Declarant may also retain for use by Declarant or, as approved solely by Declarant, for use by others, non-exclusive private easement rights for underground utilities, whether or not intended to serve the Community. The sites may include Common Area, in which case the Conservancy shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

### **7.14 Use of Technology**

In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, the Conservancy may, as a Common Expense, provide for or offer services which make use of computers and other technological opportunities. For example, to the extent Utah law permits, and unless otherwise specifically prohibited in the Governing Documents, the Conservancy may send required notices by electronic means; hold Board or Conservancy meetings and permit attendance and voting by electronic means; send and collect assessment and other invoices over the computer; sponsor a Community cable television channel; create and maintain a Community intranet or Internet home page offering interactive participation opportunities for users, and maintain an "online" newsletter or bulletin board.

A computer information system (the "Promontory Net") may be established to provide Owners, residents, tenants, occupants, and invitees, (the "Promontory Net Users") with access to advanced information technology in order to encourage interaction between and among the Promontory Net Users to stimulate participation in Community life, disseminate information about activities and programs and foster a sense of community. Declarant shall have the exclusive right to establish the Promontory Net. If the Promontory Net is established, Declarant shall have the sole authority to select providers of services and components. Declarant is authorized to enter into use and cost sharing agreements with individuals outside the Community permitting access to the Promontory Net.

Notwithstanding the amendment provisions set forth in Article XIX, so long as Declarant owns any portion of the Community or has the unilateral right to annex property to this Declaration, Declarant shall have the right to amend this Declaration to implement the Promontory Net. Such amendments may include, without limitation, establishing that funding of the Promontory Net and the fees to be paid will be mandatory, establishing who may access the Promontory Net, and establishing and limiting the number of connections entitled by each Promontory Net User.

### **7.15 Recycling Programs**

The Conservancy may establish a recycling program and recycling center, and, in such event, all Owners and occupants of Lots shall support such program by recycling, to the extent reasonably practical, all materials which the recycling program or center is set up to accommodate. The Conservancy may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received as a result of such recycling efforts shall be used to defray the costs of new programs.

## ARTICLE VIII: **Conservancy Finances**

### 8.1 **Budgeting and Allocating Common Expenses**

The Conservancy is authorized to levy Regular Assessments equally against all Lots subject to assessment under Section 8.7 to fund the Common Expenses; provided, however, that the assessments on Lots owned by Declarant shall be governed by Section 8.8. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.3. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, including any prior years' surplus, any non-assessment income, and anticipated assessment income.

#### **Association Funds**

General Operating Fund

Reserve Fund for Repair and Replacement of Capital Items

#### **Primary Sources of Income**

Regular Assessments

Village Assessments

Special Assessments

Declarant Subsidy (if any)

One-time Contributions to Working Capital

#### **Secondary Sources of Income**

Facilities Rental

Monetary Penalties

Interest on Reserves and Delinquent Assessments

Late Charges

*Diagram 8.1 - Funding Sources*

In determining the Regular Assessment, the Board may consider any assessment income expected to be generated from any property reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Regular Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.7(b)) which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue paying a subsidy in future years, unless otherwise provided in a written agreement between the Conservancy and Declarant.

The Board shall send a copy of the final budget and notice of the amount of the Regular Assessment to each Owner at least 30 days before the fiscal year begins. The budget shall automatically become effective unless disapproved at a meeting of Owners and Village Representatives representing at least 75% of the total Class "A" votes in the Conservancy and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on the filing with the Board of a petition sufficient to require the calling of a special meeting as provided in the By-Laws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.



If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Regular Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

## **8.2 Budgeting and Allocating Village Expenses**

The Conservancy is authorized to levy Village Assessments equally against all Lots subject to assessment in a Village to fund Village Expenses; provided, if specified in a Supplemental Declaration or if a majority of the Owners within the Village requests in writing, any portion of the assessment intended for the exterior maintenance of structures, insurance on structures, or replacement reserves pertaining to particular structures shall be levied on each of the benefitted Lots in proportion to the benefit received.

At least 60 days before the beginning of each fiscal year, the Board shall prepare the Conservancy's annual budget, including therein any separate Village budgets covering the estimated Village Expenses, if any, for each Village during the coming year. Each such budget shall include any costs for additional services or a higher level of services approved pursuant to Section 6.4(a) and any contribution to be made to a reserve fund pursuant to Section 8.3. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, including any prior years' surplus, any anticipated non-assessment income, and assessment income anticipated from the Lots in any Village.

The Board shall send a copy of the Conservancy's annual budget and any Village budget and notice of the amount of the Conservancy assessment and any Village Assessment for the coming year to each Owner at least 30 days before the fiscal year begins. The Village budget shall become effective automatically unless disapproved at a special meeting as provided in Section 8.1.

If the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the year before shall continue for the current year.

The Board may revise the budget for the Conservancy or any Village and the amount of the Conservancy assessment or any Village Assessment from time to time during the year, subject to the notice requirements for affected Lot Owners and the right of the affected Lot Owners to disapprove the revised budget as set forth above.

All amounts the Conservancy collects as Village Assessments shall be held in trust for and expended solely for the benefit of the Village for which they were collected. Such amounts shall be accounted for separately from the Conservancy's general funds.

## **8.3 Budgeting for Reserves**

The Board shall prepare and review periodically a reserve budget for the Common Maintenance Areas and for any Village for which the Conservancy maintains capital items as a Village Expense. Reserve budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget or the Village Expense budgets, as appropriate, a capital contribution to fund reserves in an amount sufficient to meet the

projected need with respect both to amount and timing by annual contributions over the budget period. So long as the Board exercises business judgment in determining the amount of the reserve fund, the amount shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended. These policies may differ for general Conservancy purposes and for each Village. So long as Declarant owns any property described in Exhibits "A" or "B," neither the Conservancy nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

The Board may enter into agreements with Declarant, on negotiated terms, under which Declarant may obligate itself to provide reserve funds as needed on a "cash basis" in lieu of the Conservancy funding reserves on an accrual basis. Further, the Board may enter into lease or financing arrangements with Declarant to cover initial capital equipment and facilities requirements and ongoing capital requirements not met by funded reserves. The initial capital equipment to be acquired by the Conservancy and that may be financed by Declarant includes equipment for road maintenance, snow removal and Common Area maintenance, transit vehicles, and furniture, fixtures, vehicles and equipment necessary for the operation of the Conservancy and other similar items.

#### **8.4 Special Assessments**

In addition to other authorized assessments, the Conservancy may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments may be levied against the entire membership, if the Special Assessment is for Common Expenses, or against the Lots within any Village, if the Special Assessment is for Village Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members or Village Representatives (if a Common Expense) or Members (if a Village Expense) representing at least a majority of the total votes allocated to Lots which will be subject to the Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if any. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

#### **8.5 Benefitted Assessments**

The Conservancy may levy Benefitted Assessments against a particular Lot as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which the Conservancy may offer (which might include the items identified in Section 7.9). Benefitted Assessments for special services may be levied in advance of the provision of the requested service;
- (b) to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Benefitted Assessment under this subsection; and to cover costs, including overhead and administrative costs, of maintaining Limited Common Areas identified and particular benefit to a Lot

or group of Lots.

The Conservancy may also levy a Benefitted Assessment against the Lots within any Village to reimburse the Conservancy for costs incurred in bringing the Village into compliance with the provisions of the governing documents, provided the Board gives prior written notice to the Owners of Lots in the Village and an opportunity for such Owners to be heard before levying the assessment.

## 8.6 Commencement of Assessment Obligation; Time of Payment

The obligation to pay assessments commences as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Regular Assessment and Village Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Owners shall pay assessments in the manner and on the dates the Board establishes. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and may impose special requirements for Owners with a history of delinquent payment. Unless the Board otherwise provides, the Regular Assessment and any Village Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require that the outstanding balance on all assessments be paid in full immediately.

## 8.7 Obligation for Assessments

- (a) Personal Obligation. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any Lot, covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from the assessment's due date at a rate of 18% per annum or such higher rate as the Board may establish, subject to Utah law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Design Guidelines may provide a procedure and standards for joining two adjacent lots into a single homesite, upon approval of the Architectural Review Committee and the Board. Upon such approval, and provided the Owner of the two lots executes and records a covenant, acceptable to the Board, perpetually joining such lots into a single homesite, the Board may, in its sole discretion on a case-by-case basis, and in the interest of increasing open space within the community, determine that thenceforth, such combined lots shall be considered as a single lot for purposes of assessments.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or release of any Owner from the obligations to pay assessments. In such event, each Owner shall continue to pay Regular Assessments and any applicable Village Assessments on the same basis as during the last year for which an assessment is made, if any, until a new assessment is levied, at which time the Conservancy may retroactively assess any shortfalls in collections.

No Owner is exempt from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent

covenant by each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Conservancy or Board to take some action or perform some required function, or for inconvenience or discomfort arising from making repairs or improvements, or for any other reason.

Upon written request, the Conservancy shall furnish to any Owner liable for any type of assessment a certificate in writing signed by a Conservancy officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Conservancy may require the advance payment of a reasonable processing fee for the issuance of such certificate.

- (b) Declarant's Limited Assessment Obligation. During the Class "B" Control Period and so long as there is a budget deficit calculated as provided in this subparagraph, Declarant may elect either to pay assessments on fully-improved Lots which it owns at a rate established by Declarant from time to time that is not less than 33 1/3% of the rate of the assessment applicable to a fully improved Lot owned by another Owner, or by funding the budget deficit for the year in question. For purposes of this paragraph, the budget deficit is the difference between the amount of assessments levied on Class "A" Member-owned Lots and the amount of the Conservancy's actual expenditures during the fiscal year, including debt service and reserve contributions. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of a fiscal year, Declarant shall continue paying on the same basis as during the previous fiscal year if there continues to be a budget deficit during the subsequent year. During the Class "B" Control Period, Declarant shall not be required to pay assessments on fully-improved Lots which it owns or to fund the activities of the Conservancy if there is no budget deficit.

Regardless of Declarant's election, Declarant's assessment obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Lots at 33 1/3% of the rate of the assessment applicable to fully improved Lots owned by other Class "A" Members.

## 8.8 Lien for Assessments

The Conservancy shall have a lien against each Lot, including Declarant's Lots, to secure payment of delinquent assessments by the Owner of such Lot, as well as interest, late charges (subject to Utah law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Conservancy's lien, when assessments become delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

At a foreclosure sale, the Conservancy may bid for the Lot and acquire, hold, lease, mortgage, and convey the Lot. The Conservancy may sue for unpaid assessments and other charges without foreclosing or waiving its assessment lien.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee extinguishes the lien relating to any amounts due prior to the Mortgagee's foreclosure. The purchaser of a foreclosed Lot shall not be personally liable for assessments on such Lot due prior to the foreclosure sale. Such unpaid assessments shall be a Common Expense collectible from Owners of all Lots

subject to assessment under Section 8.5, including such purchaser, its successors and assigns.

Notwithstanding the above, while the Conservancy owns a Lot: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Conservancy.

## 8.9 Exempt Property

The following property shall be exempt from payment of Regular Assessments, Village Assessments, and Special Assessments:

All Common Area and other portions of the Community which are not Lots;

Any property dedicated to and accepted by any governmental authority or public utility; and property owned by any Village Organization for the common use and enjoyment of its members, or owned by the members of a Village Organization as tenants-in-common.

In addition, both Declarant and the Conservancy shall have the right, but not the obligation, to grant exemptions to schools, houses of worship, or Lots owned by and used by Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code.

## 8.10 Capitalization of Conservancy

Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Conservancy in an amount equal to one-sixth of the annual Regular Assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the Lot's annual Regular Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and then disbursed to the Conservancy for use in covering operating expenses and other expenses incurred by the Conservancy pursuant to this Declaration and the By-Laws.

## 8.11 Community Enhancement Fee

- (a) Authority. As an additional funding source, the Board may establish and collect a Community Enhancement Fee upon each transfer of title to a Lot. The fee shall be charged to the seller of the Lot, shall be payable to the Conservancy at the closing of the transfer, and shall be secured by the Conservancy's lien for assessments under Section 8.8. Each Owner shall notify the Conservancy's Secretary, or designee, at least seven days prior to the scheduled closing and provide the name of the buyer, the date of title transfer, and other information the Board may reasonably require.
- (b) Fee Limit. The Board shall have the sole discretion to determine the amount of and method of calculating the Community Enhancement Fee. The fee may be based upon a sliding scale which varies in accordance with the "gross selling price" of the property or any other factor the Board deems appropriate. However, the Community Enhancement Fee may not exceed one percent (1%) of the Lot's gross selling price. The gross selling price is the total cost to the purchaser of the Lot, excluding

transfer taxes, impact or other fees and title fees imposed by Summit County and/or the State of Utah.

- (c) Purpose. The Community Enhancement Fees shall be used to provide funding for Conservancy activities and such other purposes as the Board deems beneficial to the general good and welfare of Promontory and included in the Conservancy's Common Expense budget, including for reserves. Community Enhancement Fees might also be used to assist one or more tax-exempt entities in funding:
- (i) preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding Promontory, or as may be necessary to comply with the Development Agreement;
  - (ii) programs, services, and activities which serve to promote a sense of community within Promontory, such as educational programs, festivals and holiday celebrations and activities, a Community computer network, and recycling programs; and
  - (iii) social services, educational programs, community outreach programs, and other charitable causes.
- (d) Exempt Transfers. Notwithstanding the above, no Community Enhancement Fee shall be levied upon transfer of title to a Lot:
- (i) by or to Declarant;
  - (ii) by a Builder who held title solely for purposes of development and resale without occupying the property as a residence or rental home;
  - (iii) by a co-owner to any Person who was a co-owner immediately prior to such transfer;
  - (iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
  - (v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due; or
  - (vi) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

## 8.12 Use and Consumption Fees

The Board may charge use and consumption fees to any Person using Conservancy services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users.

## Part Four: **COMMUNITY DEVELOPMENT**

*The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Promontory and to accommodate changes in the master plan which inevitably occur as a community the size of Promontory grows and matures.*

### ARTICLE IX: **Expansion of the Community**

#### 9.1 **Annexation by Declarant**

Declarant may, from time to time, subject to this Declaration, annex all or any portion of the property described in Exhibit "B" by Recording a Supplemental Declaration describing the property being subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to annex property pursuant to this Section expires when all property described in Exhibit "B" has been subjected to this Declaration or 40 years after this Declaration is Recorded, whichever is earlier. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibits "A" or "B." Any such transfer shall be memorialized in a Recorded instrument executed by Declarant.

Nothing in this Declaration shall require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

#### 9.2 **Annexation by the Conservancy**

The Conservancy also may annex property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Annexation by the Conservancy shall require the affirmative vote or written consent of Owners and Village Representatives representing more than 50% of the Class "A" votes and the consent of the property owner. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent is required. The Supplemental Declaration shall be signed by the President and Secretary of the Conservancy, by the owner of the property, and by Declarant, if Declarant's consent is required.

#### 9.3 **Additional Covenants and Easements**

By Supplemental Declaration, Declarant may impose additional covenants and easements on portions of the Community, including covenants obligating the Conservancy to maintain and insure specific property and authorizing the Conservancy to recover its costs through Village Assessments or Benefitted Assessments. If the property is owned by someone other than Declarant, then such owner's consent and execution of the Supplemental Declaration is required. Any such Supplemental Declaration may supplement, create exceptions

to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

#### **9.4 Resort Area and Private Amenities**

Portions of the real property on Exhibit "B" may be annexed as used within Resort Areas and as Private Amenities. No uses within such areas shall be included as Lots and no uses shall have any liability to pay any Common Expenses or Conservancy Assessments unless so provided by Declarant in the Supplemental Declaration.

#### **9.5 Effect of Filing Supplemental Declaration**

A Supplemental Declaration shall be effective upon Recording unless otherwise specified. The Lots subjected to this Declaration by Supplemental Declaration shall have equal voting rights in the Conservancy and equal pro rata liability for Regular Assessments with all other Lots.

### **ARTICLE X: Additional Rights Reserved to Declarant**

#### **10.1 Withdrawal of Property**

Declarant reserves the right to amend this Declaration, so long as it has a right to annex property pursuant to Section 9.1, to remove any unimproved portion of Promontory from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Lots then subject to the Declaration by more than 10 percent. "Unimproved" means that no structure has yet been built on the property. Such amendment shall not require the consent of any Person other than the Owners of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Conservancy shall consent to such withdrawal.

#### **10.2 Marketing and Sales Activities**

Notwithstanding anything in the Governing Documents to the contrary, Declarant and Builders may construct and maintain upon portions of the Common Area and other property owned by Declarant or the Builder such facilities, activities, and things as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things include but are not limited to business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and Builders may park vehicles in areas other than garages or driveways, including on streets. Builder's rights under this Section are subject to Declarant's approval.



### **10.3 Right to Develop**

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area, and to the Exhibit "B" property, as it deems appropriate in its sole discretion.

Each Owner acknowledges that Promontory is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes proposed by Declarant in uses or density of property outside the Owner's Village or portion of a subdivision served by any local street (as distinguished from a collector or arterial street) serving Owner's Lot, or (b) changes proposed by Declarant in the Master Plan as it relates to property outside the Owner's Village or portion of Owner's subdivision served by a local street.

### **10.4 Right to Approve Changes in Promontory Standards**

No amendment to or modification of any Use Restrictions, rules, or the Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns any portion of the Community or has a unilateral right to annex property in accordance with Section 9.1.

### **10.5 Right to Transfer or Assign Declarant Rights**

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a Recorded instrument signed by Declarant. Declarant may allow other Persons to exercise, on a one time or limited basis, any Declarant right without transferring the entire right. In such case, a Recorded instrument is not required.

### **10.6 Exclusive Rights to Use Name of Development**

No Person shall use the name "Promontory" or any derivative of "Promontory" in any printed or promotional material, or in logo or depiction, without Declarant's prior written consent. However, Owners may use the name "Promontory" where such term is used solely to specify that particular property is located within Promontory.

### **10.7 Right to Use Common Area for Special Events**

As long as Declarant owns any property described in Exhibits "A" or "B," Declarant may use the Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions:

- (a) the availability of the facilities at the time a request is submitted to the Conservancy;

- (b) Declarant shall pay all costs and expenses incurred and shall indemnify the Conservancy against any loss or damage resulting from the special event; and
- (c) Declarant shall return the facilities and personal property used in conjunction with the special event to the Conservancy in the same general condition as existed prior to the special events.

Declarant shall have the right to assign its rights to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

### **10.8 Easement to Inspect and Right to Correct**

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of Promontory, including Lots, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency or in the case of an inspection relating to construction or in a case involving enforcement of a violation of this Declaration, the Design Guidelines or any condition of design review approval, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into the interior of an occupied Residence or other structure on a Lot shall be permitted without the Owner's consent. Except where entry is necessary to abate a violation of this Declaration, the Design Guidelines or any condition of design review approval, the Person exercising this easement shall promptly repair, and pay for, any resulting damage.

### **10.9 Right to Notice of Design or Construction Claims**

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Promontory in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any Builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the property Owner and conduct an inspection.

### **10.10 Termination of Rights**

Rights granted under Sections 10.1 to 10.9 of this Article shall terminate upon the earlier of (a) the period specified in the particular Section; (b) 40 years from the date this Declaration is Recorded; or (c) Declarant's Recording of a statement that all sales activity and resale activity within Declarant's control has ceased. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Conservancy which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. This Article shall not be amended without the written consent of Declarant so long as Declarant owns any property described in Exhibits "A" or "B."

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## 10.11 Special Natural Gas Arrangements

Declarant reserves the right to install or not install natural gas service as a part of the Community improvements. In the event natural gas service is not installed, each Owner of an improved Lot desiring gas service will be required to install propane gas service. Declarant has ascertained that, due to the Community's size and remote location, natural gas service will require the installation of special high pressure gas pipelines and related pressure reducing facilities in addition to gas distribution infrastructure normally installed by a developer, and that the cost of the high pressure lines and pressure reducing facilities alone, excluding typical gas mains and service laterals, is likely to equal or exceed the total cost of owner-installed propane service to all proposed Lots within the Community. Declarant will attempt to arrange for natural gas service under an agreement with the gas supplier to include the cost of the high pressure lines and related pressure reducing facilities in the rate structure for gas service. In the event Declarant is required to pay for all or any part of the high pressure lines and related facilities, and Declarant elects to proceed with natural gas service to the Lots, a gas facilities connection fee may be charged by the Conservancy at the time of application for Design Review pursuant to the Design Guidelines and the provisions of Article IV above. The fee will be calculated so as to reimburse Declarant for Declarant's cost of the high pressure gas lines and related pressure reducing facilities with accrued interest and shall be paid by the Conservancy to Declarant when received.

## 10.12 Special Water Connection Arrangements

The Water Service Agreement between Declarant and Mountain Regional Water Special Service District contemplates that Declarant will bond and pay up front for the development of certain water resources and central water system facilities of benefit to the Lot Owners in lieu of a Lot Owner paying Mountain Regional's standard water system development fee at the time of building permit for improvements on the Lot. Declarant will pay off all bond amounts and interest relating to onsite water distribution facilities serving Lots. Declarant reserves the right to permit a proportionate part of the bond representing Mountain Regional central system facilities and related charges, including interest, to remain as a lien on each Lot to be paid by an Owner in lieu of the Mountain Regional's standard water system development fee at the time of building permit. Any such lien, at the election of Declarant, will not be paid off at any closing between Declarant and a Lot Owner, and any such lien shall become the responsibility of the Lot Owner in lieu of the Lot Owner's payment to Mountain Regional of the District's standard water system development fee. If not sooner paid, the central system facilities lien will be paid by the Lot Owner at the time of building permit for improvements on the Lot. The Water Service Agreement may also require Declarant to pay certain charges relating to water resources and central water system facilities, including standby fees, and early payments of bond interest and principal relating to central system facilities, of direct benefit to Lots within the Community. Declarant reserves the right to be reimbursed by Mountain Regional for some or all of Declarant's costs under the Water Service Agreement relating to water resources and Mountain Regional's central water system facilities.

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## Part Five: **PROPERTY RIGHTS WITHIN THE COMMUNITY**

*The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Conservancy, and others within or adjacent to the Community.*

### ARTICLE XI: **Easements**

#### 11.1 **Easements in Common Area**

Declarant grants to each Owner a right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying the property to the Conservancy;
- (c) The Board's right to:
  - (i) adopt rules regulating Common Area use, including rules limiting the number of guests who may use the Common Area;
  - (ii) suspend the right of an Owner to use any Common Area amenity (A) for any period during which any assessment or other charge against the Owner's Lot remains delinquent, and (B) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration;
  - (iv) rent any portion of any Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;
  - (v) permit use by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion;
  - (vi) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred; and
- (d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII.

Any Owner may extend his or her right to use the Common Area to the members of his or her family,

tenants, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the tenants of such Lot for the lease term.

## 11.2 Easements of Encroachment

Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots. A permitted encroachment is a structure or fixture which extends unintentionally from one person's property on to another's a distance of less than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

## 11.3 Easements for Utilities, Etc.

- (a) Installation and Maintenance. Declarant reserves for itself, so long as Declarant owns any property described in Exhibit "A" or "B," and may in its sole discretion grant to the Conservancy and utility providers, perpetual non-exclusive easements throughout Promontory (but not through a structure) to the extent reasonably necessary to:
- (i) install utilities and infrastructure to serve Promontory, cable and other systems for sending and receiving data and/or other electronic signals, drainage systems, and security and similar systems;
  - (ii) install walkways, pathways and trails, street lights, and signage on property which Declarant or the Conservancy owns or within public rights-of-way or easements reserved for such purpose on a Plat;
  - (iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and
  - (iv) access and read utility meters.

Notwithstanding the above, Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

- (b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in Declarant's sole discretion, to develop the property described in Exhibits "A" and "B." The location of the easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.
- (c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the

extent reasonably possible, to the general condition existing prior to the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and, except in an emergency or otherwise as provided herein, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

#### **11.4 Technology Utility Easements**

Declarant reserves exclusive easements in or adjacent to all Conservancy-owned roads, and trails and any public trail rights-of-way throughout Promontory, on behalf of itself, and its nominees, successors, and assigns, for installing, operating, maintaining, repairing, and replacing telephone, cable television, telecommunications, security, and other systems for sending and receiving data and/or other electronic signals ("Technology Utilities"), serving Promontory. Declarant shall have ownership and exclusive control of all conduit, cable, lines or other means of distributing Technology Utilities serving Promontory. Declarant may grant or convey these easements to third parties. Declarant also reserves for itself the exclusive right and power to enter into contracts for the construction, installation, and provision of Technology Utilities and may grant exclusive rights to access or use the Technology Utilities.

Declarant may require that the Board enter into a bulk rate service agreement with Declarant or its assignee for the provision of Technology Utilities services to all Lots as a Common Expense. If particular services or benefits are provided to particular Owners or Lots at their request, the benefitted Owners) shall pay the service provider directly for such services, or the Conservancy may assess the costs as a Village Assessment or Benefitted Assessment, as appropriate.

#### **11.5 Easements to Serve Additional Property**

Declarant reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities.

If the above easement grants permanent access to any property which is not submitted to this Declaration, Declarant, or its successors or assigns, shall enter into a reasonable agreement with the Conservancy to share the cost maintenance the Conservancy provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefitted property.

#### **11.6 Easements for Maintenance, Emergency, and Enforcement**

Declarant grants to the Conservancy easements over Promontory as necessary for the Conservancy to fulfill its maintenance responsibilities under Section 7.2. The Conservancy shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right

may be exercised by any member of the Board, and its duly authorized agents and assignees, including committee members, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

Declarant grants to the Conservancy, subject to any required notice, an easement and right to enter a Lot to abate a Governing Document violation and/or to remove any structure, thing, or condition which violates the Governing Documents. Any costs incurred, including reasonable attorneys fees, shall be assessed against the Lot Owner as a Benefitted Assessment.

### **11.7 Easements for Private Amenities**

The Lots, the Common Area, and the common property of any Village Organization are burdened with an easement permitting golf balls, golf clubs, and parts thereof, unintentionally to come upon such areas, and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Village, or the exterior portions of a Lot to retrieve errant golf balls, golf clubs, and parts thereof; provided, however, if any Lot is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls, golf clubs, and parts thereof. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls, golf clubs, or parts thereof, or the exercise of this easement: Declarant, the Conservancy or its Members (in their capacities as such); the owner of any golf course, its successors, successors-in-title to the golf course, or assigns; Builders (in their capacities as such); or any officer, director, or partner of any of the foregoing, or any officer or director of any partner.

The owner of any Promontory golf course, its agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary to the operation, maintenance, repair and replacement of the golf course.

Any portion of the Community immediately adjacent to a golf course is hereby burdened with a non-exclusive easement for overspray of water (which may include "raw" water and/or treated sewage effluent) from the irrigation system serving the golf course. Under no circumstances shall the Conservancy or the owner of the golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

The owner of the golf course, its successors and assigns, shall have a perpetual, exclusive easement of access over the Community for the purpose of retrieving golf balls from bodies of water and from land within the Common Areas lying reasonably within range of golf balls hit from the golf course.

### **11.8 Easements for Lake and Pond Maintenance and Flood Water**

Declarant reserves for itself, the Conservancy, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Maintenance Areas to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Common Maintenance Areas; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Conservancy, and their successors, assigns, and designees shall have an access easement over and across any portion of the Community which abuts or contains bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Conservancy, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not inside a Residence or other structure) adjacent to or within 100 feet of bodies of water and wetlands within Promontory, in order to (a) temporarily flood and back water upon and maintain water over such portions of Promontory; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Maintenance Areas; and (c) maintain and landscape the slopes and banks pertaining, to such areas. Anyone exercising these easements shall use reasonable care in and repair any damage resulting from their intentional exercise of the easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to natural occurrences.

### **11.9 Easements for Cross-Drainage**

Every Lot and the Common Area shall be burdened with easements for natural drainage of stormwater runoff from other portions of the Community, provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of stormwater onto adjacent portions of the Community without the consent of the Owners of the affected property, the Board, and Declarant as long as it owns any property described in Exhibits "A" or "B" to the Declaration.

### **11.10 Rights to Stormwater Runoff, Effluent, and Water Reclamation**

Declarant reserves for itself and its designees all rights to ground water, surface water, stormwater runoff, and effluent located or produced within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture, transport and discharge such water, runoff, and effluent. This Section may not be amended without Declarant's consent, and the rights created in this Section shall survive termination of this Declaration.

## **ARTICLE XII: Limited Common Areas**

### **12.1 Purpose**

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Village or Villages or a group of Owners outside of a Village as designated by Declarant in a Supplemental Declaration. For example, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes, and other portions of the Common Area within a particular Village or Villages or benefitting a particular group of Lots. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Village Expense allocated among the Owners in the Villages to which the Limited Common Areas are assigned, or shall be assigned as a Benefitted Assessment to benefitted Owners.

### **12.2 Designation**

Initially, any Limited Common Area shall be designated as such in a Supplemental Declaration, the



deed conveying such area to the Conservancy, or on a Plat; provided, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots and/or Villages, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

In addition, a portion of the Common Area may be assigned as Limited Common Area, and Limited Common Area may be reassigned, upon Board approval and the vote of Owners and any Village Representatives together representing a majority of the total Class "A" votes in the Conservancy, and Members representing a majority of the Class "A" votes within the Village(s) or other areas outside Villages affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's written consent also is required.

### **12.3 Use by Others**

If a majority of Owners of Lots within the Village or other specified area to which any Limited Common Area is assigned approve, the Conservancy may permit Owners of Lots outside of the Village or other benefitted area to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Village Expenses attributable to such Limited Common Area.

## **ARTICLE XIII: Party Walls and Other Shared Structures**

### **13.1 General Rules of Law to Apply**

Each wall, fence, driveway, or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to party structures. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

### **13.2 Maintenance, Damage and Destruction**

Unless otherwise specifically provided in additional covenants relating to such Lots, the cost of necessary or appropriate party structure repairs and maintenance shall be shared equally by the Owners sharing the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner sharing the structure may restore it. If other Owners thereafter share in the use of the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## Part Six: **RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

*The growth and success of Promontory as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the Community and with our neighbors, and protection of the rights of others who have an interest in the community.*

### ARTICLE XIV: **Dispute Resolution and Limitation on Litigation**

#### 14.1 **Agreement to Encourage Resolution of Disputes without Litigation**

- (a) Declarant, the Conservancy and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree to attempt to resolve disputes involving Promontory without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file a law suit for a Claim described in subsection (b), without first submitting the Claim to the alternative dispute resolution procedures described in Section 14.2.
- (b) As used in this Article, the term "Claim" shall refer to my claim, grievance, or dispute arising out of or relating to:
- (i) the interpretation, application, or enforcement of the Governing Documents;
  - (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
  - (iii) any dispute between an Owner and an owner or user of property outside of Promontory, which dispute relates to the agricultural operations of the non-Promontory party;
  - (iv) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article IV, which shall not be subject to review, except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:
    - (1) any Conservancy action to collect assessments or other amounts due from any Owner;
    - (2) any Conservancy or Declarant action to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Conservancy's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of Community standards);
    - (3) any suit between Owners, which does not include Declarant or the Conservancy as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
    - (4) any suit in which any indispensable party is not a Bound Party; and

- (5) any suit as to which the applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article.

## 14.2 **Dispute Resolution Procedures**

- (a) **Notice.** The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent, and to the Board, stating plainly and concisely:
  - (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
  - (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
  - (iii) the Claimant's proposed resolution or remedy; and
  - (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.
- (b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.
- (c) **Mediation.** If the Bound Parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Conservancy (if the Conservancy is not a party to the Claim) or to an independent agency providing dispute resolution services in the Summit County, Utah area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within 30 days after submitting the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall share equally all fees charged by the mediator.

- (d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Bound Parties. If any Bound Party thereafter fails to abide by the terms of

such agreement, then any other Bound Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Bound Party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying Bound Party (or each one in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

- (e) Adjacent Property Disputes. The Development Agreement contemplates that disputes between Promontory Owners and the owners or user of adjacent agricultural lands will be addressed by the Conservancy, and the Conservancy and all Bound Parties will follow the foregoing dispute resolution procedures with respect to any such Claims on the condition that the non-Promontory parties also agree to be bound by such procedures. The Conservancy shall use reasonable efforts to obtain the agreement of any such non-Promontory parties to become "Bound Parties" and to follow the procedures set forth above in resolving disputes. In the event the non-Promontory parties refuse, the Conservancy shall use reasonable efforts to attempt to resolve any such dispute and to mitigate any adverse impacts caused by Promontory parties upon the agricultural operations of neighboring property owners and users.

### DISPUTE RESOLUTION TIMELINE

Claim Between Bound Parties			
Day 1	Days 1-30	Days 30-60	Days 60-90+
Written Notice of Claim	Negotiations	Request Mediation	Mediation
Factual Basis Legal Basis Propose a resolution Send copy to Board	Good faith effort Parties meet in person May request Board assistance	Claimant must submit claim Mediator assigned by Association or independent agency If Claim is not submitted, it is waived	Agency Supplies rules Fee split between parties Written summary from each side Supervised negotiation Contractual settlement or Termination of mediation

### 14.3 Initiation of Litigation by Conservancy

The Conservancy shall not initiate any judicial or administrative proceeding unless first approved by Members entitled to cast at least 75% of the total Class "A" votes in the Conservancy, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Conservancy or to assert counterclaims in proceedings instituted against it.

## ARTICLE XV: Private Amenities

### 15.1 Right to Use the Private Amenities

Neither membership in the Conservancy nor ownership or occupancy of a Lot shall automatically confer any right to use any Private Amenity. Rights to use any Private Amenity, and the terms and conditions of use, are determined only by the Private Amenity owner. Any Private Amenity owner shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions relating use of the Private Amenity, including, without limitation, eligibility for and duration of use rights, categories of use, extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written membership agreements or documents.

### 15.2 Conveyance of Private Amenities

All Persons, including all Owners, are advised that no representations or warranties have been or are made by Declarant, the Conservancy, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity or Resort area. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the Record owner of any Private Amenity or Resort area. The ownership or operation of any Private Amenity or Resort area (or any portion of a Private Amenity or Resort area) may change at any time. Consent of the Conservancy or any Owner shall not be required to effectuate any change in ownership or operation of any Private Amenity or Resort area, for or without consideration and subject to or free of any mortgage, covenant, lien, or other encumbrance.

### **15.3 Assumption of Risk and Indemnification**

By purchasing a Lot in the vicinity of a golf course or other Private Amenity or designated Resort area, each Owner expressly assumes the risk of noise, personal injury, or property damage caused by maintenance and operation of such Private Amenity or Resort area, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that maintenance typically takes place around sunrise or sunset), (b) noise caused by golfers, (c) use of pesticides, herbicides, and fertilizers, (d) use of effluent in the irrigation of the golf course, (e) reduction in privacy caused by constant golf traffic on the golf course or the removal or pruning of shrubbery or trees on the golf course, (f) errant golf balls and golf clubs, (g) design or redesign of the golf course; and (h) street traffic or noise.

Each Owner agrees that Declarant, the Conservancy, any Private Amenity or Resort owner(s), and any of Declarant's affiliates or agents shall not be liable to any 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 the proximity of Owner's Lot to the golf course or other Private Amenity or any Resort, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents, or the Conservancy. The Owner agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents, and the Conservancy against any and all such claims by Owner's visitors, tenants, and others upon such Owner's Lot.

### **15.4 View Impairment**

Neither Declarant nor the Conservancy guarantees or represents that any view over and across any golf course from adjacent Lots will be preserved without impairment. This Declaration does not create an obligation of the Conservancy, Declarant, or any Private Amenity or Resort owner to relocate, prune, or thin trees or other landscaping except as provided in Article V. In its sole and absolute discretion, any Private Amenity or Resort owner may add trees and other landscaping to such golf course from time to time. In addition, any Private Amenity owner may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways, and greens on such golf course from time to time. Any such additions or changes to such golf course may diminish or obstruct the view from the Lots. Any express or implied easements for view purposes or for the passage of light and air are expressly disclaimed.

### **15.5 Rights of Access and Parking**

There is established for the benefit of any Private Amenity and its members and any Resort area owner (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and non-exclusive easement of access and use over all roadways located within the Community reasonably necessary to travel between an entrance to the Community and the Private Amenity or Resort area and over those portions of the Community (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenity or Resort area. Without limiting the generality of the foregoing, members, guests and invitees of any Private Amenity or Resort area shall have the right to park their vehicles on the roadways located within the Community, in areas where resident/guest parking is otherwise permitted and at reasonable times before, during, and after functions

held by or at the Private Amenity or Resort area to the extent that the Private Amenity or Resort area has insufficient parking to accommodate such vehicles.

## **15.6 Architectural Control**

Declarant, the Conservancy, any Village Organization, or any committee shall not approve any construction, addition, alteration, change, or installation on, or to any portion of the Community which is adjacent to, or otherwise in the direct line of sight of any Private Amenity without giving the Private Amenity at least 15 days' prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have 15 days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. The failure of the Private Amenity to respond to the notice within the 15-day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section shall also apply to any work on the Common Area or any common property or common elements of a Village Organization, if any.

## **15.7 Limitations on Amendments**

In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities and Resort areas, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefitting any Private Amenity or Resort area, may be made without the written approval of the affected Private Amenity or Resort area owner. The foregoing shall not apply, however, to amendments made by Declarant.

## **15.8 Jurisdiction and Cooperation**

Declarant intends that the Conservancy and the Private Amenities and Resorts shall cooperate to the maximum extent possible in the operation of the Community and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Conservancy shall have no power to promulgate Use Restrictions affecting activities on or use of any Private Amenity or Resort without the prior written consent of the owners of the Private Amenity or Resort affected thereby.

## **ARTICLE XVI: Mortgage Provisions**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any

to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of Promontory or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder,
- (b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within 60 days,
- (c) Any lapse, cancellation, or material modification of any Conservancy insurance policy; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

## 16.2 **No Priority**

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of my Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

## 16.3 **Notice to Conservancy**

Upon request, each Owner shall be obligated to furnish to the Conservancy the name and address of the holder of any Mortgage encumbering the Owner's Lot.

## 16.4 **Failure of Mortgagee to Respond**

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Conservancy does not receive a written response from the Mortgagee within 30 days of the date of the Conservancy's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.



## Part Seven: **CHANGES IN THE COMMUNITY**

*Communities such as Promontory are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Promontory and its Governing Document must be able to adapt to these changes while protecting the things that make Promontory unique.*

### ARTICLE XVII: **Changes in Ownership of Lots**

Any Owner, other than Declarant, desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least 14 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

### ARTICLE XVIII: **Changes in Common Area**

#### 18.1 **Condemnation**

Whenever any part of the Common Area is taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner is entitled to notice. The Board may convey Common Area under threat of condemnation only if approved by the Declarant, as long as Declarant owns any property described in Exhibits "A" or "B."

The award made for such taking shall be payable to the Conservancy as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Conservancy shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within 60 days after such taking, Declarant, so long as Declarant owns any property described in Exhibits "A" or "B" of this Declaration, agrees. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Conservancy and used for such purposes as the Board shall determine.

## 18.2 Partition

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

## 18.3 Transfer, Dedication or Preservation of Common Area

The Conservancy may dedicate portions of the Common Area to Summit County, Utah or to any other local, state, or federal governmental or quasi-governmental entity, or grant conservation easements over any such property.

## ARTICLE XIX: Amendment of Declaration

### 19.1 By Declarant

In addition to specific amendment rights granted elsewhere in this Declaration, until a Lot is conveyed to a Person other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable my reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Corporation or the Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

So long as Declarant owns property described on Exhibits "A" or "B" for development as part of Promontory, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 5% of the Members.

### 19.2 By Members

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent of at least 75% of the votes in the Community. In addition, so long Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent is required. The approval requirements set forth in Article XVI also shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

### **19.3 Validity and Effective Date**

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

### **19.4 Exhibits**

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit "C" is incorporated by reference and may be amended as provided in Article III or pursuant to Sections 19.1 and 19.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

## Part Eight: **RESPONSIBILITIES TO THE GREATER SUMMIT COUNTY COMMUNITY**

*The Conservancy and Promontory Owners have responsibilities to the Greater Summit County Community which are more fully set forth in the Development Agreement. Promontory Owners as well as the Conservancy must comply with certain standards and participate in certain financial obligations in order to achieve the objectives of Promontory as provided in the Development Agreement.*

### ARTICLE XX: **Promontory Responsibilities to the Greater Summit County Community.**

#### **20.01 Summit County Development Agreement**

The Community and the Owners are subject to the terms and conditions of the Development Agreement. Among the key obligations of the Conservancy are the maintenance and placement of signage on public trails; the contribution of up to \$200,000 for future trail/highway crossings to serve Promontory; design and site plan review; monitoring and mitigating any undesirable effects of construction maintaining land covered by conservation easements; road maintenance; administrating and resolving any potential agricultural conflicts with neighboring properties; enforcing certain benchmark standards found in Article IV of the Development Agreement; monitoring of pollution and removal of polluting sources; the creation of an environmental education program; the establishment and monitoring of building disturbance areas to minimize construction disturbance; the development and operation of a transit system, including an appropriate fleet of transit vehicles and the enforcement of minimum design review standards; and the maintenance of association amenities. A summary of some of the provisions of the Development Agreement to be implemented by the Conservancy is attached hereto as Exhibit F for reference purposes.

#### **20.02 Specific Owner Financial Responsibilities**

Pursuant to the terms of the Development Agreement, each Owner will be subject to certain financial obligations. These obligations involving the greater Summit County Community include the following:

- (a) An Owner may be subject to the obligation to pay a one-time payment of \$10,000 (which number is subject to increase based on a price level increase formula) to Summit County in the event a residence on a Lot designated by Final Plat as "Incentive Density" is occupied or intended to be occupied by the Owner as a permanent residence or for more than 6 months during any year.
- (b) A Lot buyer is required to pay \$3,000 (which number is subject to increase based on a price level increase formula) at the time of a Lot purchase closing toward an agricultural preservation fund to be administered by Summit County.

- (c) An Owner is required to pay \$500 (which number is subject to increase based on a price level increase formula) at the time of building permit toward an affordable housing program to be implemented by Summit County.
- (d) Each Owner will contribute through the Conservancy toward the payment of \$200,000 to be applied by the Snyderville Basin Recreation District and/or the Summit County Commission toward the construction of I-80 and Highway 248 road crossings for the public trails located within the Promontory Community. In the event Summit County or the Recreation District require these funds for construction of the contemplated improvements prior to the Conservancy's accumulation of sufficient reserves for such purpose, Declarant may loan any necessary funds to the Conservancy subject to repayment on commercially reasonable terms at a market rate of interest.
- (e) Promontory has annexed or will annex to the Snyderville Basin Special Recreation District, the Park City Fire Service District, the Mountain Regional Water Special Service District, and the Snyderville Basin Water Reclamation District, and the Owners will be required to pay all charges, assessments, assessment liens, impact fees, connection fees and tax levies of such entities.
- (f) Promontory Lots will be subject to assessment liens of a water special service district to be formed to pay for water infrastructure, including Promontory's participation in a water pipeline project to serve Promontory and the greater Snyderville Basin community. Owners will be subject to a water connection fee that will include amounts to cover the Lot's share of its participation in the pipeline project and other infrastructure that will be integrated into the water service delivery system of the Mountain Regional Water Special Service District.

### 20.03 Other Owner Duties and Enforcement

Many of the provisions of the Development Agreement, including without limitation design review and architectural, thematic character and landscaping standards, the establishment of minimum house sizes for most lots in excess of 1 acre, the establishment of specific architectural controls within certain designated ridgeline and viewshed areas and environmental standards and programs, are of benefit to the County as well as to the Promontory Members and their guests. The Declarant and the Conservancy are obligated under the terms of the Development Agreement to enforce such restrictions and the County also retains enforcement rights against Owners of its rights in the Development Agreement.

[SIGNATURES SET FORTH ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

**DECLARANT:**

10/24/2001 PIVOTAL PROMONTORY DEVELOPMENT, L.L.C.

By: PIVOTAL GROUP X, LLC., an Arizona limited liability company  
Its: Administrative Member

By: J. Jahm Najafi, Trustee of the Jahm Najafi Trust dated July 30,  
1996  
Its: Administrative Member

By J. Jahm Najafi  
Name: J. Jahm Najafi  
Its: Trustee

State of ARIZONA )  
                                  ) : ss  
County of MARICOPA )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of October, 2001, by J. Jahm Najafi, Administrative Member, on behalf of Pivotal Promontory Development, L.L.C., a limited liability company.



Jackie A. Reed  
Signature of Notary Public  
[SEAL]  
6-15-03  
My Commission Expires

IN WITNESS WHEREOF, the undersigned Owner of the land described in Exhibit "B" and designated for future annexation to Promontory consents to the recordation of this Declaration against the land described in Exhibit "B."

**OWNER OF LAND SUBJECT TO ANNEXATION:**

PIVOTAL PROMONTORY, L.L.C.

By: PIVOTAL GROUP X, LLC., an Arizona limited liability company  
Its: Administrative Member

By: J. Jahm Najafi, Trustee of the Jahm Najafi Trust dated July 30,  
1996  
Its: Administrative Member

By: Jahm Najafi  
Name: J. Jahm Najafi  
Its: Trustee

State of Arizona )  
: ss  
County of Maricopa )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of October, 2001, by J. Jahm Najafi, Administrative Member, on behalf of Pivotal Promontory Development, L.L.C., a limited liability company.



Jackie A. Reed  
Signature of Notary Public

[SEAL]

6-15-03  
My Commission Expires

**EXHIBIT A - LAND INITIALLY SUBMITTED**



## LAND INITIALLY SUBMITTED

### WEST VIEW SOUTH PARCEL WEST VIEW SOUTH PARCEL

Beginning at a point which is North 00°12'10" East along the Section Line 2421.78 feet and West 593.89 feet from the Southeast Corner of Section 14, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 00°12'10" East 5344.64 feet between said Southeast Corner and the Northeast Corner of said Section 14); and running thence South 70°56'11" West 148.92 feet; thence South 84°26'43" West 191.68 feet; thence North 77°54'04" West 181.94 feet; thence North 70°29'06" West 107.68 feet; thence North 58°15'19" West 477.43 feet; thence North 64°45'04" West 194.50 feet; thence North 47°41'36" West 177.95 feet; thence North 28°35'15" West 174.84 feet; thence North 01°32'48" West 185.88 feet; thence South 87°33'44" East 129.76 feet; thence North 02°26'16" East 24.66 feet to a point of curvature of a 275.00 foot radius curve to the right, the center of which bears South 87°33'44" East; thence Northeasterly along the arc of said curve 272.41 feet through a central angle of 56°45'21"; thence North 59°11'37" East 151.52 feet to a point of curvature of a 125.00 foot radius curve to the left, the center of which bears North 30°48'23" West; thence Northerly along the arc of said curve 287.35 feet through a central angle of 131°42'35"; thence North 17°29'02" East 50.00 feet to a non-tangent point of curvature of a 175.00 foot radius curve to the right, the center of which bears South 17°29'02" West; thence Southeasterly along the arc of said curve 189.38 feet through a central angle of 62°00'08"; thence North 79°29'10" East 154.13 feet; thence South 20°35'11" East 110.61 feet; thence South 45°20'31" East 835.18 feet to a non-tangent point of curvature of a 525.00 foot radius curve to the left, the center of which bears South 67°41'09" East; thence Southerly along the arc of said curve 531.47 feet through a central angle of 58°00'05"; thence South 35°41'14" East 114.08 feet to the point of beginning.

Containing 25.29 acres more or less.

### WEST VIEW NORTH PARCEL

Beginning at a point which is North 00°12'10" East along the Section Line 3226.47 feet and West 638.91 feet from the Southeast Corner of Section 14, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 00°12'10" East 5344.64 feet between said Southeast Corner and the Northeast Corner of said Section 14); and running thence North 80°51'40" West 63.52 feet; thence North 38°21'58" West 550.68 feet; thence North 08°26'16" West 208.74 feet; thence North 12°59'39" East 214.35 feet; thence North 07°09'52" East 222.45 feet; thence North 01°01'02" East 205.15 feet; thence North 09°13'18" West 559.17 feet; thence North 29°13'31" East 40.71 feet to a non-tangent point of curvature of a 325.00 foot radius curve to the left, the center of which bears North 29°13'31" East; thence Southeasterly along the arc of said curve 239.30 feet through a central angle of 42°11'17"; thence North 77°02'14" East 55.46 feet to a point of curvature of a 25.00 foot radius curve to the right, the center of which bears South 12°57'46" East; thence Southeasterly along the arc of said curve 38.65 feet through a central angle of 88°34'38" to a point of reverse curvature of a 1225.00 foot radius curve to the left, the center of which bears North 75°36'52" East; thence Southeasterly along the arc of said curve 436.95 feet through a central angle of 20°26'14"; thence South 34°49'22" East 189.81 feet to a point of curvature of a 475.00 foot radius curve to the right, the center of which bears South 55°10'38" West; thence Southeasterly along the arc of said curve 583.38 feet through a central angle of 70°22'09"; thence South 35°32'47" West 171.83 feet to a point of curvature of a 525.00 foot radius curve to the left, the center of which bears South 54°27'13" East; thence Southwesterly along the arc of said curve 417.30 feet through a central angle of 45°32'30"; thence South 09°59'43" East 73.64 feet to a point of curvature of a 375.00 foot radius curve to the right, the center of which bears South 80°00'17" West; thence Southerly along the arc of said curve 125.23 feet through a central angle of 19°08'03" to the point of beginning.

Containing 18.52 acres more or less.

## WEST HILLS WEST PARCEL

Beginning at a point which is North 89°48'16" West along the Section Line 1817.01 feet from the Southeast Corner of Section 11, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 89°48'16" West 2659.63 feet between said Southeast Corner and the South Quarter Corner of said Section 11; and running thence North 89°48'16" West along said Section Line 229.90 feet; thence North 58°25'29" West 201.65 feet; thence North 20°27'16" West 331.98 feet; thence North 50°28'23" West 192.10 feet; thence North 27°05'24" West 135.16 feet; thence North 06°27'20" East 279.70 feet; thence North 18°32'18" East 212.82 feet; thence North 30°08'03" West 126.66 feet; thence South 68°44'54" West 471.78 feet; thence North 11°08'24" West 442.03 feet; thence North 13°26'50" East 195.50 feet; thence North 55°30'38" East 387.50 feet; thence North 00°21'13" West 214.93 feet; thence North 83°52'53" West 345.57 feet; thence North 07°02'25" West 450.99 feet; thence North 27°17'13" East 925.46 feet; thence South 57°37'23" East 796.34 feet to a non-tangent point of curvature of a 275.00 foot radius curve to the right, the center of which bears South 60°23'52" East; thence Northeasterly along the arc of said curve 44.08 feet through a central angle of 09°11'05"; thence North 57°11'35" West 802.22 feet; thence North 27°17'13" East 518.69 feet; thence North 89°55'18" East 666.33 feet; thence South 50°36'16" East 676.47 feet; thence South 59°13'10" East 424.42 feet; thence South 57°36'30" West 638.18 feet to a non-tangent point of curvature of a 395.00 foot radius curve to the right, the center of which bears South 44°53'55" West; thence Southeasterly along the arc of said curve 110.48 feet through a central angle of 16°01'30"; thence South 65°02'02" West 50.15 feet to a non-tangent point of curvature of a 345.00 foot radius curve to the left, the center of which bears South 60°19'36" West; thence Northwesterly along the arc of said curve 104.22 feet through a central angle of 17°18'30"; thence South 57°36'30" West 139.38 feet; thence South 89°29'17" West 312.04 feet; thence South 55°17'27" West 111.79 feet; thence South 18°43'50" East 263.97 feet; thence South 09°09'24" East 419.24 feet; thence South 00°14'53" East 1135.85 feet; thence South 16°59'40" East 165.96 feet; thence South 05°16'57" East 176.59 feet; thence South 06°32'26" West 207.53 feet; thence South 29°27'49" East 197.75 feet; thence South 60°17'44" East 239.13 feet; thence South 04°56'15" East 77.29 feet to a non-tangent point of curvature of a 200.00 foot radius curve to the right, the center of which bears South 04°56'15" East; thence Easterly along the arc of said curve 194.65 feet through a central angle of 55°45'45"; thence South 39°10'30" East 200.84 feet; thence South 50°49'30" West 50.00 feet; thence North 39°10'30" West 200.84 feet to a point of curvature of a 150.00 foot radius curve to the left, the center of which bears South 50°49'30" West; thence Westerly along the arc of said curve 145.99 feet through a central angle of 55°45'45" to a point of reverse curvature of a 525.00 foot radius curve to the right, the center of which bears North 04°56'15" West; thence Northwesterly along the arc of said curve 339.92 feet through a central angle of 37°05'49"; thence South 32°09'34" West 134.03 feet to the point of beginning.

Containing 98.17 acres more or less.

## WEST HILLS EAST PARCEL

Beginning at a point which is North 89°48'16" West along the Section Line 823.22 feet from the Southeast Corner of Section 11, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 89°48'16" West 2659.63 feet between said Southeast Corner and the South Quarter Corner of said Section 11); and running thence South 12°57'46" East 266.50 feet to a point of curvature of a 1225.00 foot radius curve to the left, the center of which bears North 77°02'14" East; thence Southeasterly along the arc of said curve 30.42 feet through a central angle of 01°25'22" to a non-tangent point of curvature of a 25.00 foot radius curve to the left, the center of which bears South 75°36'52" West; thence Northwesterly along the arc of said curve 38.65 feet through a central angle of 88°34'38"; thence South 77°02'14" West 55.46 feet to a point of curvature of a 325.00 foot radius curve to the right, the center of which bears North 12°57'46" West; thence Northwesterly along the arc of said curve 361.82 feet through a central angle of 63°47'16"; thence North 50°49'30" East 50.00 feet to a non-tangent point of curvature of a 275.00 foot radius curve to the left, the center of which bears North 50°49'30" East; thence Southeasterly along the arc of said curve 107.27 feet through a central angle of 22°21'01"; thence North 28°28'29" East 172.05 feet; thence North 43°41'13" West 670.62 feet; thence North 02°44'21" West 218.83 feet; thence North 34°46'31" West 284.74 feet; thence North 10°26'29" East 517.95 feet; thence North 15°29'56" East 365.69 feet; thence North 11°36'29" East 140.36 feet; thence North 27°15'52" West 190.58 feet; thence North 11°10'20" West 201.91 feet; thence North 02°08'09" East 180.89 feet; thence North 28°40'34" West 180.22 feet; thence North 14°32'12" West 147.72 feet; thence North 65°02'02" East 464.14 feet; thence South 81°38'51" East 185.46 feet; thence South 28°07'07" East 130.68 feet; thence South 17°33'34" West 300.52 feet; thence South 79°10'01" West 160.56 feet; thence South 10°49'59" East 77.53 feet to a point of curvature of a 525.00 foot radius curve to the right, the center of which bears South 79°10'01" West; thence Southerly along the arc of said curve 167.62 feet through a central angle of 18°17'35" to a

point of reverse curvature of a 150.00 foot radius curve to the left, the center of which bears South 82°32'24" East; thence Southeasterly along the arc of said curve 193.49 feet through a central angle of 73°54'32" to a point of reverse curvature of a 275.00 foot radius curve to the right, the center of which bears South 23°33'04" West; thence Southeasterly along the arc of said curve 155.89 feet through a central angle of 32°28'43"; thence South 33°58'13" East 204.95 feet to a point of curvature of a 475.00 foot radius curve to the left, the center of which bears North 56°01'47" East; thence Southeasterly along the arc of said curve 310.44 feet through a central angle of 37°26'44" to a point of reverse curvature of a 200.00 foot radius curve to the right, the center of which bears South 18°35'03" West; thence Southeasterly along the arc of said curve 218.61 feet through a central angle of 62°37'39" to a point of compound curvature of a 425.00 foot radius curve to the right, the center of which bears South 81°12'42" West; thence Southerly along the arc of said curve 212.13 feet through a central angle of 28°35'55" to a point of reverse curvature of a 25.00 foot radius curve to the left, the center of which bears South 70°11'23" East; thence Southeasterly along the arc of said curve 37.75 feet through a central angle of 86°30'25"; thence North 66°41'48" West 457.99 feet to a point of curvature of a 225.00 foot radius curve to the left, the center of which bears South 23°18'12" West; thence Southwesterly along the arc of said curve 551.00 feet through a central angle of 140°18'42"; thence South 27°00'30" East 378.05 feet to a point of curvature of a 1175.00 foot radius curve to the right, the center of which bears South 62°59'30" West; thence Southeasterly along the arc of said curve 288.04 feet through a central angle of 14°02'44"; thence South 12°57'46" East 491.14 feet to the point of beginning.

Containing 33.66 acres more or less.

#### **WEST HILLS SOUTH PARCEL**

Beginning at a point which is North 89°48'16" West along the Section Line 484.06 feet from the Southeast Corner of Section 11, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 89°48'16" West 2659.63 feet between said Southeast Corner and the South Quarter Corner of said Section 11); and running thence South 13°22'40" East 442.14 feet; thence South 71°12'17" West 251.30 feet to a non-tangent point of curvature of a 1175.00 foot radius curve to the right, the center of which bears North 63°19'58" East; thence Northwesterly along the arc of said curve 281.05 feet through a central angle of 13°42'16"; thence North 12°57'46" West 341.42 feet; thence North 77°02'14" East 279.15 feet; thence South 13°22'40" East 152.13 feet to the point of beginning.

Containing 3.86 acres more or less.

#### **DEER CROSSING WEST PARCEL**

Beginning at a point which is North 00°05'47" West along the Section Line 3012.08 feet and West 3366.00 feet from the Southeast Corner of Section 12, Township 1 South, Range 4 South, Salt Lake Base and Meridian (Basis of Bearing being North 89°11'05" West 5232.98 feet between said Southeast Corner and the Southwest Corner of said Section 12); and running thence North 52°44'47" East 367.67 feet; thence North 24°23'13" East 653.10 feet; thence North 05°37'58" West 117.66 feet; thence North 22°20'04" West 376.33 feet; thence North 37°33'15" East 198.50 feet; thence North 20°51'00" East 194.16 feet; thence North 68°41'11" East 120.73 feet; thence North 05°34'10" East 124.24 feet; thence North 25°35'05" East 178.09 feet; thence North 05°35'25" East 85.98 feet; thence North 36°17'00" West 185.70 feet; thence North 55°47'07" West 317.82 feet; thence North 21°56'06" West 60.14 feet to a non-tangent point of curvature of a 325.00 foot radius curve to the left, the center of which bears North 22°32'50" West; thence Northeasterly along the arc of said curve 244.66 feet through a central angle of 43°07'59"; thence South 65°40'49" East 234.02 feet; thence North 17°53'22" East 147.83 feet to a non-tangent point of curvature of a 525.00 foot radius curve to the right, the center of which bears South 17°53'22" West; thence Southeasterly along the arc of said curve 290.78 feet through a central angle of 31°44'02"; thence South 40°22'36" East 142.99 feet to a point of curvature of a 575.00 foot radius curve to the right, the center of which bears South 49°37'24" West; thence Southeasterly along the arc of said curve 433.44 feet through a central angle of 43°11'24"; thence South 02°48'48" West 198.69 feet to a non-tangent point of curvature of a 25.00 foot radius curve to the left, the center of which bears North 87°11'12" West; thence Westerly along the arc of said curve 39.27 feet through a central angle of 90°00'00"; thence North 87°11'12" West 147.04 feet to a point of curvature of a 125.00 foot radius curve to the left, the center of which bears South 02°48'48" West; thence Southwesterly along the arc of said curve 118.86 feet through a central angle of 54°28'51"; thence South 38°19'57" West 193.52 feet to a point of curvature of a 475.00 foot radius curve to the left, the center of which bears South 51°40'03" East; thence Southwesterly along the arc of said curve 283.32 feet through a central angle of 34°10'29"; thence South 04°09'28" West 323.53 feet; thence South 85°50'32" East 388.27 feet; thence South

08°20'25" East 429.06 feet; thence South 09°50'38" West 172.28 feet; thence S 27°59'31" West 166.34 feet; thence South 35°25'09" West 117.54 feet; thence South 36°19'02" West 85.82 feet; thence South 61°41'15" West 198.81 feet; thence South 68°42'12" West 137.96 feet; thence South 21°17'48" East 155.19 feet; thence North 48°17'46" East 379.48 feet; thence North 60°20'09" East 371.36 feet; thence South 21°17'48" East 276.06 feet; thence South 68°42'12" West 798.07 feet to a non-tangent point of curvature of a 25.00 foot radius curve to the left, the center of which bears North 21°17'48" West; thence Northeasterly along the arc of said curve 39.27 feet through a central angle of 90°00'00"; thence North 21°17'48" West 128.44 feet; thence South 68°42'12" West 179.94 feet; thence North 65°47'21" West 569.61 feet to the point of beginning.

Containing 39.54 acres more or less.

#### **DEER CROSSING EAST PARCEL**

Beginning at a point which is North 00°05'47" West along the Section Line 1833.31 feet and West 2217.51 feet from the Southeast Corner of Section 12, Township 1 South, Range 4 South, Salt Lake Base and Meridian (Basis of Bearing being North 89°11'05" West 5232.98 feet between said Southeast Corner and the Southwest Corner of said Section 12) said point also being a non-tangent point of curvature of a 225.00 foot radius curve to the left, the center of which bears South 15°25'06" West; and running thence Westerly along the arc of said curve 95.54 feet through a central angle of 24°19'45"; thence South 81°05'21" West 125.23 feet to a point of curvature of a 425.00 foot radius curve to the right, the center of which bears North 08°54'39" West; thence Westerly along the arc of said curve 113.24 feet through a central angle of 15°15'57" to a non-tangent point of curvature of a 25.00 foot radius curve to the left, the center of which bears North 06°21'18" East; thence Northeasterly along the arc of said curve 42.40 feet through a central angle of 97°10'51"; thence North 00°49'33" West 100.41 feet to a point of curvature of a 275.00 foot radius curve to the right, the center of which bears North 89°10'27" East; thence Northwesterly along the arc of said curve 101.03 feet through a central angle of 21°02'58"; thence North 20°13'26" East 111.92 feet to a point of curvature of a 475.00 foot radius curve to the left, the center of which bears North 69°46'34" West; thence Northeasterly along the arc of said curve 135.32 feet through a central angle of 16°19'23"; thence North 03°54'03" East 106.57 feet; thence North 86°05'57" West 121.93 feet; thence North 18°27'27" West 263.40 feet; thence North 68°42'12" East 835.03 feet to a point of curvature of 500.00 foot radius curve to the left, the center of which bears North 21°17'48" West; thence Northeasterly along the arc of said curve 735.23 feet through a central angle of 84°15'04"; thence North 15°32'52" West 482.23 feet to a point of curvature of a 275.00 foot radius curve to the left, the center of which bears South 74°27'08" West; thence Northwesterly along the arc of said curve 179.15 feet through a central angle of 37°19'31"; thence North 52°52'23" West 117.83 feet to a point of curvature of a 375.00 foot radius curve to the right, the center of which bears North 37°07'37" East; thence Northwesterly along the arc of said curve 364.47 feet through a central angle of 55°41'11"; thence North 02°48'48" East 426.33 feet to a point of curvature of a 625.00 foot radius curve to the left, the center of which bears North 87°11'12" West; thence Northwesterly along the arc of said curve 294.23 feet through a central angle of 26°58'22" to a non-tangent point of curvature of a 25.00 foot radius curve to the left, the center of which bears North 65°45'06" East; thence Southeasterly along the arc of said curve 37.78 feet through a central angle of 86°35'14" to a point of reverse curvature of a 125.00 foot radius curve to the right, the center of which bears South 20°44'59" East; thence Northeasterly along the arc of said curve 40.46 feet through a central angle of 18°32'51"; thence North 87°47'52" East 74.37 feet to a point of curvature of a 75.00 foot radius curve to the left, the center of which bears North 02°12'08" West; thence Northeasterly along the arc of said curve 118.06 feet through a central angle of 90°11'30"; thence North 02°23'38" West 162.85 feet; thence South 87°59'00" West 85.57 feet; thence North 35°37'13" West 840.40 feet; thence North 70°38'09" East 954.73 feet; thence North 87°04'51" East 71.78 feet; thence South 25°49'58" East 61.13 feet; thence South 41°36'09" East 89.88 feet; thence North 64°07'25" East 151.63 feet; thence North 10°34'37" East 166.22 feet; thence North 85°23'00" East 776.31 feet; thence South 12°28'16" East 326.37 feet; thence South 59°09'12" East 280.33 feet; thence South 00°12'41" East 360.21 feet; thence South 21°07'47" West 508.50 feet; thence South 32°05'52" East 351.90 feet; thence South 01°39'21" East 458.14 feet; thence South 50°57'51" West 92.45 feet; thence South 63°27'23" West 465.56 feet; thence South 47°39'41" West 185.67 feet; thence South 00°41'58" West 95.17 feet; thence South 45°16'01" East 390.69 feet; thence South 84°48'09" East 340.45 feet; thence South 11°46'54" West 388.60 feet; thence South 30°20'24" West 501.35 feet; thence South 74°35'30" West 237.13 feet; thence South 22°54'32" West 291.81 feet; thence South 63°33'02" West 406.19 feet; thence South 71°17'10" West 194.38 feet; thence South 58°09'36" West 212.13 feet; thence South 63°55'13" West 616.28 feet; thence South 82°59'07" West 98.40 feet; thence South 15°25'06" West 211.60 feet to the point of beginning.

Containing 160.89 acres more or less.

## WAPITI CANYON, PHASE I

Beginning at a point which is South 01°28'53" East along the Section Line 2403.23 feet and East 462.53 feet from the Northwest Closing Corner of Section 1, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 89°42'38" West 4821.42 feet between said Northwest Closing Corner and the Southwest Closing Corner Section 35, Township 1 North, Range 4 East, Salt Lake Base and Meridian); and running thence North 82°20'56" East 236.69 feet to a point of curvature of a 575.00 foot radius curve to the right, the center of which bears South 07°39'04" East; thence Easterly along the arc of said curve 727.54 feet through a central angle of 72°29'45"; thence South 25°09'19" East 210.56 feet to a point of curvature of 850.00 foot radius curve to the left, the center of which bears North 64°50'41" East; thence Southeasterly along the arc of said curve 582.60 feet through a central angle of 39°16'17"; thence South 64°25'36" East 226.18 feet to a point of curvature of a 425.00 foot radius curve to the right, the center of which bears South 25°34'24" West; thence Southeasterly along the arc of said curve 447.54 feet through a central angle of 60°20'02"; thence South 04°05'34" East 248.72 feet to a point of curvature of a 725.00 foot radius curve to the left, the center of which bears North 85°54'26" East; thence Southeasterly along the arc of said curve 578.35 feet through a central angle of 45°42'21"; thence South 40°12'05" West 207.19 feet; thence South 34°12'30" East 41.53 feet; thence South 39°34'01" East 166.54 feet to a non-tangent point of curvature of a 275.00 foot radius curve to the left, the center of which bears North 32°23'14" West; thence Northeasterly along the arc of said curve 159.80 feet through a central angle of 33°17'35"; thence North 24°19'11" East 92.30 feet to a point of curvature of a 25.00 foot radius curve to the left, the center of which bears North 65°40'49" West; thence Northwesterly along the arc of said curve 37.60 feet through a central angle of 86°10'39" to a non-tangent point of curvature of a 725.00 foot radius curve to the left, the center of which bears North 28°08'32" East; thence Southeasterly along the arc of said curve 96.74 feet through a central angle of 07°38'43" to a non-tangent point of curvature of a 25.00 foot radius curve to the left, the center of which bears South 20°29'49" West; thence Southwesterly along the arc of said curve 37.60 feet through a central angle of 86°10'38"; thence South 24°19'11" West 92.30 feet to a point of curvature of a 325.00 foot radius curve to the right, the center of which bears North 65°40'49" West; thence Southwesterly along the arc of said curve 244.66 feet through a central angle of 43°07'59" to a point of reverse curvature of a 275.00 foot radius curve to the left, the center of which bears South 22°32'50" East; thence Southwesterly along the arc of said curve 212.27 feet through a central angle of 44°13'35" to a point of compound curvature of a 974.90 foot radius curve to the left, the center of which bears South 66°46'25" East; thence Southwesterly along the arc of said curve 126.78 feet through a central angle of 07°27'04"; thence North 67°19'42" West 349.08 feet; thence North 29°37'07" West 296.06 feet; thence North 40°33'37" West 206.51 feet; thence North 32°22'22" West 115.99 feet; thence North 18°52'49" East 202.81 feet; thence North 02°18'37" East 158.29 feet; thence North 07°27'44" East 93.88 feet; thence North 15°06'43" East 244.08 feet; thence North 63°15'39" West 386.20 feet to a non-tangent point of curvature of a 240.00 foot radius curve to the right, the center of which bears North 65°08'23" West; thence Southwesterly along the arc of said curve 98.02 feet through a central angle of 23°23'58"; thence South 41°44'25" East 149.93 feet; thence South 11°56'33" East 130.46 feet; thence South 24°18'04" West 190.45 feet; thence North 84°25'47" West 91.46 feet; thence South 72°23'33" West 48.06 feet; thence South 03°09'24" West 120.43 feet; thence North 88°18'24" West 255.13 feet; thence North 64°06'56" West 466.00 feet; thence North 16°19'17" East 688.06 feet; thence North 18°22'28" East 211.09 feet; thence South 45°25'01" East 374.21 feet; thence South 42°25'51" East 123.14 feet; thence South 15°40'56" East 190.00 feet to a non-tangent point of curvature of a 190.00 foot radius curve to the left, the center of which bears North 15°40'56" West; thence Northeasterly along the arc of said curve 164.01 feet through a central angle of 49°27'27"; thence North 24°51'37" East 97.13 feet; thence North 65°08'23" West 59.28 feet; thence North 34°46'40" West 729.35 feet; thence North 17°56'01" East 51.95 feet; thence North 73°24'15" West 363.23 feet; thence North 78°31'24" West 160.84 feet; thence North 00°15'41" East 326.93 feet to the point of beginning.

Containing 51.29 acres more or less.

### Access Easements (Roads)

#### ACCESS EASEMENT #2 (RANCH CLUB TRAIL)

A 50.00 foot wide right of way lying 25.00 feet each side of the centerline more particularly described as follows: Beginning at a point which is North 89°45'21" West along the Section Line 388.79 feet and North 2036.84 feet from the Southeast Corner of Section 14, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being, North 89°45'21" West along the Section Line 2677.38 feet between said Southeast Corner and the South Quarter Corner of said Section 14, Township 1 South, Range 4 East); and running thence North 02°37'44" West 44.37 feet to a point of

curvature of a 400.00 foot radius curve to the left, the center of which bears South 87°22'16" West; thence Northwesterly along the arc of said curve 230.79 feet through a central angle of 33°03'30"; thence North 35°41'14" West 284.64 feet to a point of curvature of a 500.00 foot radius curve to the right, the center of which bears North 54°18'46" East; thence Northwesterly along the arc of said curve 552.55 feet through a central angle of 63°19'05"; thence North 27°37'51" East 54.09 feet to a point of curvature of a 400.00 foot radius curve to the left, the center of which bears North 62°22'09" West; thence Northeasterly along the arc of said curve 262.68 feet through a central angle of 37°37'34"; thence North 09°59'43" West 73.64 feet to a point of curvature of a 500.00 foot radius curve to the right, the center of which bears North 80°00'17" East; thence Northeasterly along the arc of said curve 397.43 feet through a central angle of 45°32'30"; thence North 35°32'47" East 171.83 feet to a point of curvature of a 500.00 foot radius curve to the left, the center of which bears North 54°27'13" West; thence Northeasterly along the arc of said curve 614.09 feet through a central angle of 70°22'09"; thence North 34°49'22" West 189.81 feet to a point of curvature of a 1200.00 foot radius curve to the right, the center of which bears North 55°10'38" East; thence Northwesterly along the arc of said curve 457.83 feet through a central angle of 21°51'36"; thence North 12°57'46" West 260.65 feet to the North Line of Section 14, Township 1 South, Range 4 East, Salt Lake Base and Meridian, said point being North 89°48'16" West along the Section Line 797.55 feet from the Northeast Corner of said Section 14; thence North 12°57'46" West 496.98 feet to a point of curvature of a 1200.00 foot radius curve to the left, the center of which bears South 77°02'14" West; thence Northwesterly along the arc of said curve 294.17 feet through a central angle of 14°02'44"; thence North 27°00'30" West 378.05 feet to a point of curvature of a 200.00 foot radius curve to the right, the center of which bears North 62°59'30" East; thence Northeasterly along the arc of said curve 489.78 feet through a central angle of 140°18'42"; thence South 66°41'48" East 577.49 feet to a point of curvature of a 400.00 radius curve to the left, the center of which bears Northeasterly along the arc of said curve 560.25 feet through a central angle of 80°15'02"; thence North 33°03'10" East 338.89 feet to a point of curvature of a 250.00 foot radius curve to the right, the center of which bears South 56°56'50" East; thence Northeasterly along the arc of said curve 386.52 feet through a central angle of 88°34'59"; thence South 58°21'51" East 51.34 feet to a point of curvature of a 400.00 foot radius curve to the left, the center of which bears North 31°38'09" East; thence Southeasterly along the arc of said curve 388.42 feet through a central angle of 55°38'15"; thence North 65°59'54" East 196.76 feet to a point of curvature of a 1000.00 foot radius curve to the right, the center of which bears South 24°00'06" East; thence Northeasterly along the arc of said curve 357.77 feet through a central angle of 20°29'55"; thence North 86°29'49" East 173.12 feet to a point of curvature of a 1000.00 foot radius curve to the left, the center of which bears North 03°30'11" West; thence Northeasterly along the arc of said curve 377.97 feet through a central angle of 21°39'21"; thence North 64°50'28" East 213.82 the point of terminus.

#### **ACCESS EASEMENT #1 (PROMONTORY RANCH ROAD)**

A 50.00 foot wide right-of-way lying 25.00 feet each side of the centerline more particularly described as follows: Beginning at a point which is North 89°42'38" West along the Section line 1098.58 feet and North 2112.33 feet from the Southwest Corner of Section 35, Township 1 North, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 89°42'38" West 4821.42 feet between said Southwest Corner and the Northeast closing Corner of Section 2, Township 1 South, Range 4 East, Salt Lake Base and Meridian), said point also being on the East Right of Way Line of I-80; and running thence South 82°38'09" East 30.57 feet to a point of curvature of a 150.00 foot radius curve to the right, the center of which bears South 07°21'51" West; thence Southeasterly along the arc of said curve 169.52 feet through a central angle of 64°45'11"; thence South 17°52'58" East 73.84 feet to a point of curvature of a 150.00 foot radius curve to the left, the center of which bears North 72°07'02" East; thence Southeasterly along the arc of said curve 445.50 feet through a central angle of 170°10'02"; thence North 08°03'00" West 71.59 feet to a point of curvature of a 150.00 foot radius curve to the right, the center of which bears North 81°57'00" East; thence Northeasterly along the arc 300.59 feet through a central angle of 114°56'12" to a point of reverse curvature of a 180.00 foot radius curve to the left, the center of which bears North 16°53'12" East; thence Northeasterly along the arc of said curve 244.28 feet through a central angle of 77°45'28"; thence North 29°07'44" East 171.75 feet to a point of curvature of a 200.00 foot radius curve to the right, the center of which bears South 60°52'16" East; thence Northeasterly along the arc of said curve 218.93 feet through a central angle of 62°43'07" to a point of reverse curvature of a 450.00 foot radius curve to the left, the center of which bears North 01°50'51" East; thence Northeasterly along the arc of said curve 434.96 feet through a central angle of 55°22'51" to a point of reverse curvature of a 400.00 foot radius curve to the right, the center of which bears to South 53°32'00" East; thence Northeasterly along the arc of said curve 591.74 feet though a central angle of 84°45'38" to a point of reverse curvature of a 180.00 foot radius curve to the left, the center of which bears North 31°13'38" East; thence Northeasterly along the arc of said curve 350.38 feet through a central angle of 111°31'44"; thence North 09°41'54" East 146.94 feet to a point of curvature of a 155.00 foot radius curve to the right, the center of which bear South 80°18'06" East; thence Northeasterly along the arc of said curve 389.47 feet through a central angle of 143°58'01"; thence South 26°20'05" East 504.24 feet to a point of curvature of a 300.00 foot radius curve to the left, the center of which bears North 63°39'55" East; thence Southeasterly along the arc of said curve 188.35 feet through a central angle of 35°58'17"; thence South 62°18'22" East 438.88 feet to a point of curvature

of a 150.00 foot radius curve to the right, the center of which bears South 27°41'38" West; thence Southeasterly along the arc of said curve 165.72 feet through a central angle of 63°18'08" to a point of reverse curvature of a 150.00 foot radius curve to the left, the center of which bears South 89°00'14" East; thence Southeasterly along the arc of said curve 209.62 feet through a central angle of 80°04'07" to a point of reverse curvature of a 150.00 foot radius curve to the right, the center of which bears South 10°55'40" West; thence Southeasterly along the arc of said curve 105.56 feet through a central angle of 40°19'20" to a point of compound curvature of a 1275.00 foot radius curve to the right, the center of which bears South 51°15'00" West; thence Southeasterly along the arc of said curve 1014.38 feet through a central angle of 45°35'03" to a point of compound curvature of a 275.00 foot radius curve to the right, the center of which bears North 83°09'57" West; thence Southwesterly along the arc of said curve 128.62 feet through a central angle of 26°47'50" to a point of reverse curvature of a 275.00 foot radius curve to the left, the center of which bears South 56°22'07" East; thence Southwesterly along the arc of said curve 149.25 feet through a central angle of 31°05'48" to a point of reverse curvature of a 400.00 foot radius curve to the right, the center of which bears North 87°27'55" West; thence Southwesterly along the arc of said curve 139.58 feet through a central angle of 19°59'34" to a point of compound curvature of a 700.00 radius curve to the right, the center of which bears North 67°28'21" West; thence Southwesterly along the arc of said curve 129.99 feet through a central angle of 10°38'24"; thence South 33°10'03" West 258.32 feet to a point of curvature of a 700.00 foot radius curve to the left, the center of which bears South 56°49'57" East; thence Southwesterly along the arc of said curve 347.82 feet through a central angle of 28°28'09"; thence South 04°41'54" West 61.80 feet to the North Line of said Section 2, Township 1 South, Range 4 East, said point being North 89°42'38" West along the Section Line 241.01 feet from said Northeast Closing Corner Section 2; thence South 04°41'54" West 514.66 feet to a point of curvature of a 500.00 foot radius curve to the left, the center of which bears South 85°18'06" East; thence Southeasterly along the arc of said curve 186.79 feet through a central angle of 21°24'15"; thence South 16°42'21" East 885.72 feet to a point of curvature of a 300.00 foot radius curve to the right, the center of which bears South 73°17'39" West; thence Southeasterly along the arc of said curve 110.16 feet through a central angle of 21°02'22"; thence South 04°20'01" West 248.60 feet to a point of curvature of a 450.00 foot radius curve to the left, the center of which bears South 85°39'59" East; thence Southeasterly along the arc of said curve 800.99 feet through a central angle of 101°59'05"; thence North 82°20'56" East 265.77 feet to a point of curvature of a 600.00 foot radius curve to the right, the center of which bears South 07°39'04" East; thence Southeasterly along the arc of said curve 759.17 feet through a central angle of 72°29'45"; thence South 25°09'19" East 210.56 feet to a point of curvature of a 825.00 foot radius curve to the left, the center of which bears North 64°50'41" East; thence Southeasterly along the arc of said curve 565.47 feet through a central angle of 39°16'17"; thence South 64°25'36" East 226.18 feet to a point of curvature of a 450.00 foot radius curve to the right, the center of which bears South 25°34'24" West; thence Southeasterly along the arc of said curve 473.86 feet through a central angle of 60°20'02"; thence South 04°05'34" East 248.72 feet to a point of curvature of a 700.00 foot radius curve to the left, the center of which bears North 85°54'26" East; thence Southeasterly along the arc of said curve 880.95 feet through a central angle of 72°06'24"; thence South 76°11'58" East 74.30 feet to a point of curvature of a 550.00 foot radius curve to the right, the center of which bears South 13°48'02" West; thence Southeasterly along the arc of said curve 343.87 feet through a central angle of 35°49'22"; thence South 40°22'36" East 142.99 feet to a point of curvature of a 600.00 foot radius curve to the right, the center of which bears South 49°37'24" West; thence Southeasterly along the arc of said curve 452.28 feet through a central angle of 43°11'24"; thence South 02°48'48" West 426.33 feet to a point of curvature of a 400.00 foot radius curve to the left, the center of which bears South 87°11'12" East; thence Southeasterly along the arc of said curve 388.76 feet through a central angle of 55°41'11"; thence South 52°52'23" East 117.83 feet to a point of curvature of a 250.00 foot radius curve to the right, the center of which bears South 37°07'37" West; thence Southeasterly along the arc of said curve 162.86 feet through a central angle of 37°19'31"; thence South 15°32'52" East 482.23 feet to a point of curvature of a 475.00 foot radius curve to the right, the center of which bears South 74°27'08" West; thence Southwesterly along the arc of said curve 698.47 feet through a central angle of 84°15'04"; thence South 68°42'12" West 856.11 feet to a point of curvature of a 450.00 foot radius curve to the left, the center of which bears South 21°17'48" East; thence Southeasterly along the arc of said curve 1316.44 feet through a central angle of 167°36'51"; thence North 81°05'21" East 125.23 feet to a point of curvature of a 200.00 foot radius curve to the right, the center of which bears South 08°54'39" East; thence Southeasterly along the arc of said curve 448.01 feet through a central angle of 128°20'40"; thence South 29°26'01" West 679.84 feet to a point of curvature of a 600.00 foot radius curve to the left, the center of which bears South 60°33'59" East; thence Southeasterly along the arc of said curve 644.76 feet through a central angle of 61°34'11"; thence South 32°08'10" East 330.66 feet to the North Line of Section 13, Township 1 South, Range 4 East, Salt Lake Base and Meridian, said point being North 89°11'05" West along the Section Line 2250.17 feet from the Northeast Corner of said Section 13; thence South 32°08'10" East 147.22 feet to a point of curvature of a 300.00 foot radius curve to the left, the center of which bears North 57°51'50" East; thence Southeasterly along the arc of said curve 273.07 feet through a central angle of 52°09'06"; thence South 84°17'16" East 148.29 feet to a point of curvature of a 200.00 foot radius curve to the right, the center of which bears South 05°42'44" West; thence Southeasterly along the arc of said curve 367.72 feet through a central angle of 105°20'41"; thence South 21°03'25" West 190.03 feet to a point of curvature of a 675.00 foot radius curve to the right, the center of which bears North 68°56'35" West; thence Southwesterly along the arc of said curve 158.27 feet through a central angle of 13°26'05" to a point of reverse curvature of a 1375.00 foot

radius curve to the left, the center of which bears South 55°30'30" East; thence Southwesterly along the arc of said curve 658.56 feet through a central angle of 27°26'31" to a point of reverse curvature of a 350.00 foot radius curve to the right, the center of which bears North 82°57'01" West; thence Southwesterly along the arc of said curve 156.63 feet through a central angle of 25°38'26"; thence South 32°41'25" West 396.06 feet to a point of curvature of a 925.00 foot radius curve to the right, the center of which bears North 57°18'35" West; thence Southwesterly along the arc of said curve 471.27 feet through a central angle of 29°11'29"; thence South 61°52'54" West 590.62 feet to a point of curvature of a 300.00 foot radius curve to the right, the center of which bears North 28°07'06" West; thence Westerly along the arc of said curve 288.79 feet through a central angle of 55°09'17"; thence North 62°57'49" West 531.88 feet to a point of curvature of a 500.00 foot radius curve to the left, the center of which bears South 27°02'11" West; thence Southwesterly along the arc of said curve 855.07 feet through a central angle of 97°59'03"; thence South 19°03'08" West 160.57 feet to a point of curvature of a 600.00 foot radius curve to the right, the center of which bears North 70°56'52" West; thence Southwesterly along the arc of said curve 576.66 feet through a central angle of 55°04'02"; thence South 74°07'10" West 208.56 feet to the West Line of said Section 13, said point being North 00°12'10" East along the Section Line 2118.93 feet from the Southwest Corner of said Section 13; thence South 74°07'10" West 23.37 feet to a point of curvature of a 600.00 foot radius curve to the left, the center of which bears South 15°52'50" East; thence Southwesterly along the arc of said curve 24.79 feet through a central angle of 02°22'01"; thence South 71°45'09" West 198.60 feet to a point of curvature of a 600.00 foot radius curve to the right, the center of which bears North 18°14'51" West; thence Southwesterly along the arc of said curve 211.52 feet through a central angle of 20°11'54"; thence North 88°02'57" West 1206.78 feet to a point of curvature of a 800.00 foot radius curve to the left, the center of which bears South 01°57'03" West; thence Southwesterly along the arc of said curve 1317.81 feet through a central angle of 94°22'51"; thence South 02°25'48" East 321.83 feet to a point of curvature of a 1200.00 foot radius curve to the right, the center of which bears South 87°34'12" West; thence Southwesterly along the arc of said curve 224.47 feet through a central angle of 10°43'04"; thence South 08°17'16" West 200.42 feet to a point of curvature of a 750.00 foot radius curve to the left, the center of which bears South 81°42'44" East; thence Southerly along the arc of said curve 203.57 feet through a central angle of 15°33'07"; thence South 07°15'51" East 185.53 feet to a point of curvature of a 500.00 foot radius curve to the right, the center of which bears South 82°44'09" West; thence Southerly along the arc of said curve 79.81 feet through a central angle of 09°08'44" to the South Line of Section 14, Township 1 South, Range 4 East, Salt Lake Base and Meridian, said point being South 89°45'21" East along the Section Line 207.87 feet from the South Quarter Corner of said Section 14; thence continuing Southerly along the arc of said last mentioned curve 178.03 feet through a central angle of 20°24'04"; thence South 22°16'56" West 178.56 feet to a point of curvature of a 700.00 foot radius curve to the right, the center of which bears North 67°43'04" West; thence Southwesterly along the arc of said curve 789.75 feet through a central angle of 64°38'30"; thence South 86°55'26" West 732.10 feet to a point of curvature of a 1000.00 foot radius curve to the left, the center of which bears South 03°04'34" East; thence Southwesterly along the arc of said curve 138.83 feet through a central angle of 07°57'15"; thence South 78°58'11" West 943.91 feet to a point of curvature of a 1000.00 foot radius curve to the right, the center of which bears North 11°01'49" West; thence Southwesterly along the arc of said curve 214.98 feet through a central angle of 12°19'03"; thence North 88°42'46" West 145.43 feet to the East Line of Section 22, Township 1 South, Range 4 East, Salt Lake Base and Meridian, said point being South 00°34'53" East along the Section Line 1042.67 feet from the Northeast Corner of said Section 22; thence North 88°42'46" West 494.23 feet to a point of curvature of a 993.00 foot radius curve to the left, the center of which bears South 01°17'14" West; thence Southwesterly along the arc of said curve 461.64 feet through a central angle of 26°38'11"; thence South 64°39'03" West 544.89 feet to a point of curvature of a 300.00 foot radius curve to the right, the center of which bears North 25°20'57" West; thence Southwesterly along the arc of said curve 187.39 feet through a central angle of 35°47'22"; thence North 79°33'35" West 197.19 feet to the point of terminus.

Together with an easement more particularly described as follows:

Beginning at a point which is South 00°24'17" West along the Section Line 2634.64 feet and West 1025.20 feet from the Northeast Corner of Section 35, Township 1 North, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°24'17" West 5268.15 feet between said Northeast Corner and the Southeast Corner of said Section 35); and running

thence South 27°41'38" West 60.00 feet; thence North 62°18'22" West 187.74 feet; thence North 28°11'37" West 92.77 feet;

thence North 09°39'06" West 175.40 feet; thence North 63°39'55" East 60.00 feet; thence South 36°13'26" East 140.25 feet;

thence South 32°52'03" East 240.83 feet to the point of beginning.



Containing 1.01 acres more or less.

Together with an easement more particularly described as follows:

Beginning at a point which is North 89°36'59" West along the Section Line 772.27 feet and South 762.23 feet from the North Quarter Corner of Section 23, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 89°36'59" West 2672.06 feet between said Quarter Corner and the Northwest Corner of said Section 23); and running thence South 03°04'34" East 60.00 feet; thence South 70°38'35" West 236.16 feet; thence North 84°50'37" West 88.49 feet; thence North 73°53'32" West 162.92 feet; thence North 03°04'34" West 60.00 feet; thence North 75°11'14" East 92.69 feet; thence North 89°47'02" East 377.86 feet to the point of beginning.

Containing 1.13 acres more or less.

#### **FIRE STATION**

Beginning at a point on the Easterly line of the State of Utah, Division of Parks and Recreation Right of Way, (formerly the Union Pacific Right of Way) said point being South 00°34'53" East along the Section Line 1419.95 feet and East 442.52 feet from the Northwest Corner of Section 23, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°34'53" East 5337.62 feet between said Northwest Corner and the Southwest Corner of said Section 23); and running thence North 19°47'10" West along said Easterly line 382.21 feet to a non-tangent point of curvature of a 1025.00 foot radius curve to the left, the center of which bears North 08°21'53" West; thence Northeasterly along the arc of said curve 47.69 feet through a central angle of 02°39'56"; thence North 78°58'11" East 154.86 feet; thence South 19°47'10" East 381.09 feet; thence South 78°58'11" West 202.36 feet to the point of beginning.

Containing 1.75 acres more or less.

#### **PARCEL 6 – (I-80 Conveyance to Summit County)**

Located in township 1 north, range 4 east, Salt Lake base and meridian containing parts of:  
all the land west of the western road right-of-way in the northeast, northwest, and southwest quarters in section 35 also located in township 1 south, range 4 east, Salt Lake base and meridian containing parts of: all the land west of the western road right-of-way line (UDOT Project I-80-4(4)) in the northwest and southwest quarters in section 2 all the land west of the western road right-of-way line (UDOT Project I-80-4(4)) in the northwest and southwest quarters in section 11.

Containing 271.60 acres more or less.

#### **SANITARY SEWER PUMP HOUSE PARCEL**

Beginning at a point which is South 1327.88 feet and West 1293.74 feet from the Northeast Corner of Section 14, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 89°48'16" West 2659.62 feet between said Northeast Corner and the North Quarter Corner of said Section 14); and running thence South 00°17'53" West 56.50 feet; thence North 89°42'07" West 20.60 feet to a non-tangent point of curvature of a 40.00 foot radius curve to the left, the center of which bears South 63°27'48" West; thence Northwesterly along the arc of said curve 27.32 feet through a central angle of 39°07'33"; thence North 00°17'53" East 38.03 feet; thence South 89°42'07" East 40.00 feet to the point of beginning.

Containing 2,039 sq. ft. or 0.05 acre more or less.

#### **SANITARY SEWER LIFT STATION DESCRIPTION**

Beginning at a point which is South 01°28'53" East along the Section Line 2089.32 feet and West 71.07 feet from the Northeast Closing Corner of Section 2, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 89°42'38" West 4821.42 feet between said Northeast Closing Corner and the Southwest Corner of Section 35, Township 1 North, Range 4 East, Salt Lake Base and Meridian); and running thence South 71°11'52" West 44.00 feet; thence North 09°38'18" West 55.00 feet; thence North 80°22'26" East 15.16 feet to a point of curvature of a 25.00 foot

radius curve to the right, the center of which bears South  $09^{\circ}37'34''$  East; thence Southeasterly along the arc of said curve 36.63 feet through a central angle of  $83^{\circ}56'32''$  to a point of reverse curvature of a 475.00 foot radius curve to the left, the center of which bears North  $74^{\circ}18'58''$  East; thence Southeasterly along the arc of said curve 25.85 feet through a central angle of  $03^{\circ}07'06''$  to the point of beginning.

Containing 1,983 Sq. Ft. more or less.

**EXHIBIT B - LAND SUBJECT TO ANNEXATION**

## PROMONTORY

Legal Description of the  
Land Subject to Annexation  
After Recordation of the Wapiti Canyon Phase I, Deer Crossing, West Hills, and  
West View Plats, Fire Station Parcel, and  
Parcel 6 (the Land located West of Interstate 80)  
of the Promontory Development

October 30, 2001

### PARCEL A:

Beginning at the Southwest Corner of Section 36, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah, (Basis of bearing being North 00°03'26" West from the said Southwest Corner to the West Quarter Corner of said Section 36, both being found Stone Monuments), and running thence along the West Section Line of said Section 36, North 00°03'26" West, 2664.42 feet to a stone found at the West Quarter Corner of said Section 36; thence North 00°38'03" West, 2697.90 feet to a stone found at the Northwest Corner of said Section 36; thence South 89°40'24" West 1316.90 feet to the Southwest Corner of the Southeast Quarter of the Southeast Quarter of Section 26; thence North 00°06'02" West 2661.08 feet to the Northwest Corner of the Northeast Quarter of the Southeast Quarter of said Section 26; thence South 89°40'42" West, 1316.04 feet to the Southwest Corner of the Northeast Quarter of said Section 26; thence North 00°04'55" West 2667.46 feet to a stone found at the North Quarter Corner of said Section 26, thence North 00°02'27" West 2642.55 feet to the Southwest Corner of the Northeast Quarter of Section 23; thence North 89°58'47" West, 1858.84 feet, more or less, to the Easterly line of the State of Utah, Division of Parks and Recreation Right of Way, (formerly the Union Pacific Railroad right-of-way), thence along said right-of-way line the following ten (10) courses; 1) North 17°11'48" West 60.67 feet; thence, 2) North 88(45'48" East, 52.25 feet; thence, 3) North 17(06'43" West, 719.18 feet; thence, 4) North 19( 47'10" West, 992.62 feet more or less to a point on a non-tangent 950.00 foot radius curve to the left, radius point bears North 07(16'05" West; thence, 5) Easterly, 153.29 feet along the arc of said curve through a central angle of 09(14'43"; thence, 6) North 19( 43'58" West, 298.63 feet; thence, 7) South 70(16'02" West, 153.37 feet; thence, 8) North 20(21'29" West, 444.80 feet; thence 9) South 75(29'27" West, 48.91 feet; and thence, 10) North 20(05'58" West, 344.63 feet; thence leaving said Right of Way line, South 89°36'59" East, 114.14 feet to a stone found at the Northwest Corner of said Section 23; thence South 89°36'59" East 2672.06 feet along the North line of said Section 23 to a stone found at the North Quarter Corner of said Section 23; thence North 00°23'35" East 1335.49 feet to the Northeast Corner of the Southeast Quarter of the Southwest Quarter of Section 14; thence North 89°42'03" West 1339.30 feet to the Northwest Corner of the Southeast Quarter of the Southwest Quarter of Section 14; thence North 00°15'11" East 1333.52 feet to the Northwest Corner of the Northeast Quarter of the Southwest Quarter of Section 14, thence North 00°14'50" East, 1334.05 feet to the Northwest Corner of the Southeast Quarter of the Northwest Quarter of said Section 14; thence South 89°51'19" East 1345.97 feet to the Northeast Corner of the Southeast Quarter of the Northwest Quarter of said Section 14; thence South 89°47'40" East 1332.03 feet to the Southwest Corner of the Northeast Quarter of the Northeast Quarter of said Section 14; thence North 00°17'53" East 1335.93 feet to the Northwest Corner of the Northeast Quarter of the Northeast Quarter of said Section 14; thence North 89°48'16" West 1329.81 feet along the North line of said Section 14 to an existing iron rod at the North Quarter Corner of said Section 14, then continuing along said North Line: North 89°55'31" West, 2698.76 feet to a found aluminum cap at the Northwest Corner of said Section 14 and the Southwest Corner of Section 11; thence North 00°13'55" West 2642.81 feet to a stone found at the West Quarter Corner of said Section 11; thence North 07°10'37" West, 2817.61 feet to a stone found at the Northwest Corner of said Section 11, and the Southwest Corner of Section 2;

thence North 00°48'17" East 4816.75 feet to a stone found at the Northwest Corner of Section 2, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence South 89°36'41" East 567.30 feet to a stone found at the Southwest Corner of Section 35, Township 1 North, Range 4 East, Salt Lake Base and Meridian; thence North 00°47'21" East 5248.25 feet to a fence corner found at the Northwest Corner of said Section 35; thence South 89°57'25" East 5053.95 feet to a stone found at the Northeast Corner of said Section 35; thence South 00°24'17" West along the East Line of said Section, 5268.15 feet to a stone found at the Southeast Corner of said Section 35; thence North 88°48'36" East 2528.81 feet to a rebar found at the North Quarter Corner of Section 1, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence South 00°07'57" East 2309.38 feet to the Southwest Corner of the Northeast Quarter of said Section 1; thence South 89°25'16" East 2682.59 feet to the East Quarter Corner of said Section 1; thence South 00°05'47" East 2676.60 feet along the East line of Section 1, to the Northeast Corner of Section 12; thence South 00°05'47" East along the East Line of said Section, 5353.21 feet to a stone found at the Southeast Corner of said Section 12; thence South 00°35'51" East 5311.76 feet to a stone found at the Southeast Corner of Section 13; thence South 00°02'26" West 5315.33 feet to a rebar found at the Southeast Corner of Section 24; thence North 89°50'58" West 1338.50 feet to the Northwest Corner of the Northeast Quarter of the Northeast Quarter of Section 25; thence South 00°01'14" East 2660.23 feet to the Southwest Corner of the Southeast Quarter of the Northeast Quarter of said Section 25; thence South 00°00'30" East 1343.62 feet to the Southwest Corner of the Northeast Quarter of the Southeast Quarter of Section 25; thence South 89°49'21" East 1336.97 feet to the Southeast Corner of the Northeast Quarter of the Southeast Quarter of said Section 25; thence South 00°01'22" West 1321.75 feet to a stone found at the Southeast Corner of said Section 25; thence South 00°52'12" East 2688.62 feet to a stone found at the East Quarter Corner of Section 36; thence South 00°30'19" West 2609.87 feet to a stone found at the Southeast Corner of said Section 36, thence North 89°59'51" West 2652.94 feet to a stone found at the South Quarter Corner of said Section 36, thence North 89°31'22" West 2666.73 feet, more or less, to the Point of Beginning.

(Containing 6559.46 Acres, more or less)

Excluding that portion lying within the bounds of I-80. (Containing 180.07 Acres, more or less)

Containing 6379.39 Acres Net, more or less.

## **AND TOGETHER WITH;**

### **PARCEL B:**

Beginning at a point on the Westerly right-of-way line of Brown's Canyon Road (formerly State Highway No. 196), said point being North 2936.44 feet and East 679.56 feet from the Southwest Corner of Section 31, Township 1 South, Range 5 East, Salt Lake Base and Meridian; and running thence South 80°53'14" West 123.66 feet; thence South 73°23'48" West 588.27 feet to a point on the Westerly line of said Section 31; thence North 00°20'14" West along said West Line 125.00 feet; thence North 73°23'48" East 561.11 feet; thence North 80°53'14" East 146.58 feet to a point on a 1465.69 foot radius curve to the left, said point also being on the Westerly right-of-way of said Brown's Canyon Road (radius point bears South 89°35'42" East 1465.69 feet, of which the central angle is 04°43'45"); thence Southerly along the arc of said curve and the Westerly right-of-way line of said Brown's Canyon Road 120.98 feet to the point of beginning.

Containing 1.88 acres more or less.

## **AND TOGETHER WITH;**

### **PARCEL C:**

Legal description for 100 foot road parcel:

00607465 Bk01426 Pg00606

Beginning at a point which is North 00°03'36" East 1321.45 feet along the Westerly line of Section 30, Township 1 South, Range 5 East, thence continuing along said Westerly line of said Section 30, 50.00 feet to the true point of beginning of a 100.00 foot road parcel, measured 50.00 feet either side at right angles to the following described centerline.

From the true point of beginning thence Easterly along a line 50.00 feet Northerly of and parallel to the Northerly line of the Southwest one-quarter of the Southwest one-quarter of said Section 30, 990 feet more or less to the Westerly right-of-way of Brown's Canyon Road (formerly State Highway No. 196) with both the Northerly and Southerly right-of-way extending as required to intersect said Westerly right-of-way of said Brown's Canyon Road, said point also being the terminus of said 100.00 foot road parcel.

Also: Beginning at a point which is North 00°03'36" East 1321.45 feet along the Easterly line of Section 25 from the Southeast Corner of Section 25, Township 1 South, Range 4 East, thence continuing along said Easterly line of said Section 25, 50.00 feet to the true point of beginning of a 100.00 foot road parcel measured 50.00 feet either side at right angles to the following described centerline.

From the said true point of beginning, thence Southwesterly along an arc of a 350.00 foot radius curve concave to the Southeast through a central angle of 90° more or less to the North line of the Southeast one-quarter of the Southeast one-quarter of said Section 25, said point being the terminus of said centerline.

Together with:

A non-exclusive right of way and easement to make incidental use of such portions of a portion of 500 feet of property adjacent to the North of the aforementioned Parcel "C" as may be reasonably necessary in connection with the construction, maintenance, repair or replacement of any roadway improvements located thereon.

As granted by a Real Property Purchase Agreement recorded December 5, 1991, as Entry No. 350974 in Book 636 at page 497 and re-recorded December 11, 1991 as Entry No. 351244 in Book 637 at page 329 of Official Records.

Containing 2.65 acres more or less.

## **AND TOGETHER WITH;**

### **PARCEL D:**

A 100 foot wide parcel of land located in Section 22, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, State of Utah, described as follows:

Beginning at the Northwest Corner of Section 22, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, State of Utah; thence South 89°43'02" East along the North Section Line of said Section 22, 2650.98 feet to the North Quarter Corner of said Section 22; thence South 89°43'02" East along said North Section Line 336.69 feet; thence SOUTH 488.51 feet to the North Corner of Lot 10, Silver Creek Commerce Center Plat 'C' Amended, as recorded in the Office of the Summit County Recorder; thence South along the Easterly Boundary of said Silver Creek Commerce Center 45.55 feet; thence South 30°00'00" East along said Boundary Line 600.00 feet; thence South 34°55'43" East along said Boundary Line 298.08 feet to the True Point of Beginning. Said point being on a 470.00 foot radius curve to the right (center bears South 00°00'15" East 470.00 feet of which the central angle is 08°00'15"); thence Southeasterly along the arc of said curve 65.66 feet; thence South 82°00'00" East 187.49 feet to a point on a 370.00 foot radius curve to the left (center bears North 08°00'00" East 370.00 feet of which the central angle is 33°00'00"); thence Northeasterly along the arc of said curve 213.10 feet; thence North 65°00'00" East 509.42 feet to a point on an 800.00 foot radius curve to the right (center bears South 25°00'00" East 800.00 feet of which the central angle is 25°00'00"); thence Northeasterly

along the arc of said curve 349.07 feet; thence EAST 594.78 feet more or less to a point on the East Section Line of Section 22, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, State of Utah; thence South 89°41'46" East 83.41 feet to the Westerly line of the State of Utah, Division of Parks and Recreation Right of Way, (formerly the Union Pacific Railroad right-of-way); thence South 19°43'58" East along said Westerly line 106.24 feet; thence North 89°47'05" West 118.26 feet to said East Section Line; thence West 595.03 feet more or less to a point on a 700.00 foot radius curve to the left (center bears SOUTH 700.00 feet to which the central angle is 25°00'00"); thence Southwesterly along the arc of said curve 305.43 feet; thence South 65°00'00" West 509.42 feet to a point on a 470.00 foot radius curve to the right (center bears North 25°00'00" West 470.00 feet of which the central angle is 33°00'00"); thence Northwesterly along the arc of said curve 270.70 feet; thence North 82°00'00" West 165.03 feet to a point on the Easterly Boundary Line of said Silver Creek Commerce Center; thence North 34°55'43" West along said Easterly Boundary Line 130.17 feet to the point of beginning. Basis of bearing for this description is South 89°43'02" East along the North Line of Section 22, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, State of Utah, as shown on the plat of Silver Creek Commerce Center Plat 'C' Amended, as recorded in the Office of the Summit County Recorder.  
Containing 4.56 acres more or less.  
Subject to and together with any and all easements, restrictions, conditions and/or instruments of record.

## **LESS AND EXCEPTING THE FOLLOWING TEN (10) PARCELS:**

### **1. Deer Crossing West Parcel:**

Beginning at a point which is North 00°05'47" West along the Section Line 3012.08 feet and West 3366.00 feet from the Southeast Corner of Section 12, Township 1 South, Range 4 South, Salt Lake Base and Meridian (Basis of Bearing being North 89°11'05" West 5232.98 feet between said Southeast Corner and the Southwest Corner of said Section 12); and running thence North 52°44'47" East 367.67 feet; thence North 24°23'13" East 653.10 feet; thence North 05°37'58" West 117.66 feet; thence North 22°20'04" West 376.33 feet; thence North 37°33'15" East 198.50 feet; thence North 20°51'00" East 194.16 feet; thence North 68°41'11" East 120.73 feet; thence North 05°34'10" East 124.24 feet; thence North 25°35'05" East 178.09 feet; thence North 05°35'25" East 85.98 feet; thence North 36°17'00" West 185.70 feet; thence North 55°47'07" West 317.82 feet; thence North 21°56'06" West 60.14 feet to a non-tangent point of curvature of a 325.00 foot radius curve to the left, the center of which bears North 22°32'50" West; thence Northeasterly along the arc of said curve 244.66 feet through a central angle of 43°07'59"; thence South 65°40'49" East 234.02 feet; thence North 17°53'22" East 147.83 feet to a non-tangent point of curvature of a 525.00 foot radius curve to the right, the center of which bears South 17°53'22" West; thence Southeasterly along the arc of said curve 290.78 feet through a central angle of 31°44'02"; thence South 40°22'36" East 142.99 feet to a point of curvature of a 575.00 foot radius curve to the right, the center of which bears South 49°37'24" West; thence Southeasterly along the arc of said curve 433.44 feet through a central angle of 43°11'24"; thence South 02°48'48" West 198.69 feet to a non-tangent point of curvature of a 25.00 foot radius curve to the left, the center of which bears North 87°11'12" West; thence Westerly along the arc of said curve 39.27 feet through a central angle of 90°00'00"; thence North 87°11'12" West 147.04 feet to a point of curvature of a 125.00 foot radius curve to the left, the center of which bears South 02°48'48" West; thence Southwesterly along the arc of said curve 118.86 feet through a central angle of 54°28'51"; thence South 38°19'57" West 193.52 feet to a point of curvature of a 475.00 foot radius curve to the left, the center of which bears South 51°40'03" East; thence Southwesterly along the arc of said curve 283.32 feet through a central angle of 34°10'29"; thence South 04°09'28" West 323.53 feet; thence South 85°50'32" East feet; thence South 08°20'25" East 429.06 feet; thence South 09°50'38" West 172.28 feet; thence S 27°59'31" West 166.34 feet; thence South 35°25'09" West 117.54 feet; thence South 36°19'02" West 85.82 feet; thence South 61°41'15" West 198.81 feet; thence South 68°42'12" West 137.96 feet; thence South 21°17'48" East feet; thence North 48°17'46" East 379.48 feet; thence North 60°20'09" East 371.36 feet; thence South 21°17'48" East 276.06 feet; thence South 68°42'12" West 798.07 feet to a non-tangent point of curvature of a 25.00 foot radius curve to the left, the center of which bears North 21°17'48" West; thence Northeasterly along the arc of said curve 39.27 feet through a central angle of 90°00'00"; thence North 21°17'48" West 128.44 feet; thence South 68°42'12" West 179.94 feet; thence North 65°47'21" West 569.61 feet to the point of beginning.

Containing 39.54 acres more or less.

## **AND;**

### **2. Deer Crossing East Parcel:**

Beginning at a point which is North 00°05'47" West along the Section Line 1833.31 feet and West 2217.51 feet from the Southeast Corner of Section 12, Township 1 South, Range 4 South, Salt Lake Base and Meridian (Basis of Bearing being North 89°11'05" West 5232.98 feet between said Southeast Corner and the Southwest Corner of said Section 12) said point also being a non-tangent point of curvature of a 225.00 foot radius curve to the left, the center of which bears South 15°25'06" West; and running thence Westerly along the arc of said curve 95.54 feet



through a central angle of 24°19'45"; thence South 81°05'21" West 125.23 feet to a point of curvature of a 425.00 foot radius curve to the right, the center of which bears North 08°54'39" West; thence Westerly along the arc of said curve 113.24 feet through a central angle of 15°15'57" to a non-tangent point of curvature of a 25.00 foot radius curve to the left, the center of which bears North 06°21'18" East; thence Northeasterly along the arc of said curve 42.40 feet through a central angle of 97°10'51"; thence North 00°49'33" West 100.41 feet to a point of curvature of a 275.00 foot radius curve to the right, the center of which bears North 89°10'27" East; thence Northwesterly along the arc of said curve 101.03 feet through a central angle of 21°02'58"; thence North 20°13'26" East 111.92 feet to a point of curvature of a 475.00 foot radius curve to the left, the center of which bears North 69°46'34" West; thence Northeasterly along the arc of said curve 135.32 feet through a central angle of 16°19'23"; thence North 03°54'03" East 106.57 feet; thence North 86°05'57" West 121.93 feet; thence North 18°27'27" West 263.40 feet; thence North 68°42'12" East 835.03 feet to a point of curvature of 500.00 foot radius curve to the left, the center of which bears North 21°17'48" West; thence Northeasterly along the arc of said curve 735.23 feet through a central angle of 84°15'04"; thence North 15°32'52" West 482.23 feet to a point of curvature of a 275.00 foot radius curve to the left, the center of which bears South 74°27'08" West; thence Northwesterly along the arc of said curve 179.15 feet through a central angle of 37°19'31"; thence North 52°52'23" West 117.83 feet to a point of curvature of a 375.00 foot radius curve to the right, the center of which bears North 37°07'37" East; thence Northwesterly along the arc of said curve 364.47 feet through a central angle of 55°41'11"; thence North 02°48'48" East 426.33 feet to a point of curvature of a 625.00 foot radius curve to the left, the center of which bears North 87°11'12" West; thence Northwesterly along the arc of said curve 294.23 feet through a central angle of 26°58'22" to a non-tangent point of curvature of a 25.00 foot radius curve to the left, the center of which bears North 65°45'06" East; thence Southeasterly along the arc of said curve 37.78 feet through a central angle of 86°35'14" to a point of reverse curvature of a 125.00 foot radius curve to the right, the center of which bears South 20°44'59" East; thence Northeasterly along the arc of said curve 40.46 feet through a central angle of 18°32'51"; thence North 87°47'52" East 74.37 feet to a point of curvature of a 75.00 foot radius curve to the left, the center of which bears North 02°12'08" West; thence Northeasterly along the arc of said curve 118.06 feet through a central angle of 90°11'30"; thence North 02°23'38" West 162.85 feet; thence South 87°59'00" West 85.57 feet; thence North 35°37'13" West 840.40 feet; thence North 70°38'09" East 954.73 feet; thence North 87°04'51" East 71.78 feet; thence South 25°49'58" East 61.13 feet; thence South 41°36'09" East 89.88 feet; thence North 64°07'25" East 151.63 feet; thence North 10°34'37" East 166.22 feet; thence North 85°23'00" East 776.31 feet; thence South 12°28'16" East 326.37 feet; thence South 59°09'12" East 280.33 feet; thence South 00°12'41" East 360.21 feet; thence South 21°07'47" West 508.50 feet; thence South 32°05'52" East 351.90 feet; thence South 01°39'21" East 458.14 feet; thence South 50°57'51" West 92.45 feet; thence South 63°27'23" West 465.56 feet; thence South 47°39'41" West 185.67 feet; thence South 00°41'58" West 95.17 feet; thence South 45°16'01" East 390.69 feet; thence South 84°48'09" East 340.45 feet; thence South 11°46'54" West 388.60 feet; thence South 30°20'24" West 501.35 feet; thence South 74°35'30" West 237.13 feet; thence South 22°54'32" West 291.81 feet; thence South 63°33'02" West 406.19 feet; thence South 71°17'10" West 194.38 feet; thence South 58°09'36" West 212.13 feet; thence South 63°55'13" West 616.28 feet; thence South 82°59'07" West 98.40 feet; thence South 15°25'06" West 211.60 feet to the point of beginning.

Containing 160.89 acres more or less.

## **AND;**

### **3. Wapiti Canyon, Phase I Parcel:**

Beginning at a point which is South 01°28'53" East along the Section Line 2403.23 feet and East 462.53 feet from the Northwest Closing Corner of Section 1, Township 1 South, Range 4 East,

Salt Lake Base and Meridian (Basis of Bearing being North 89°42'38" West 4821.42 feet between said Northwest Closing Corner and the Southwest Closing Corner Section 35, Township 1 North, Range 4 East, Salt Lake Base and Meridian); and running thence North 82°20'56" East 236.69 feet to a point of curvature of a 575.00 foot radius curve to the right, the center of which bears South 07°39'04" East; thence Easterly along the arc of said curve 727.54 feet through a central angle of 72°29'45"; thence South 25°09'19" East 210.56 feet to a point of curvature of 850.00 foot radius curve to the left, the center of which bears North 64°50'41" East; thence Southeasterly along the arc of said curve 582.60 feet through a central angle of 39°16'17"; thence South 64°25'36" East 226.18 feet to a point of curvature of a 425.00 foot radius curve to the right, the center of which bears South 25°34'24" West; thence Southeasterly along the arc of said curve 447.54 feet through a central angle of 60°20'02"; thence South 04°05'34" East 248.72 feet to a point of curvature of a 725.00 foot radius curve to the left, the center of which bears North 85°54'26" East; thence Southeasterly along the arc of said curve 578.35 feet through a central angle of 45°42'21"; thence South 40°12'05" West 207.19 feet; thence South 34°12'30" East 41.53 feet; thence South 39°34'01" East 166.54 feet to a non-tangent point of curvature of a 275.00 foot radius curve to the left, the center of which bears North 32°23'14" West; thence Northeasterly along the arc of said curve 159.80 feet through a central angle of 33°17'35"; thence North 24°19'11" East 92.30 feet to a point of curvature of a 25.00 foot radius curve to the left, the center of which bears North 65°40'49" West; thence Northwesterly along the arc of said curve 37.60 feet through a central angle of 86°10'39" to a non-tangent point of curvature of a 725.00 foot radius curve to the left, the center of which bears North 28°08'32" East; thence Southeasterly along the arc of said curve 96.74 feet through a central angle of 07°38'43" to a non-tangent point of curvature of a 25.00 foot radius curve to the left, the center of which bears South 20°29'49" West; thence Southwesterly along the arc of said curve 37.60 feet through a central angle of 86°10'38"; thence South 24°19'11" West 92.30 feet to a point of curvature of a 325.00 foot radius curve to the right, the center of which bears North 65°40'49" West; thence Southwesterly along the arc of said curve 244.66 feet through a central angle of 43°07'59" to a point of reverse curvature of a 275.00 foot radius curve to the left, the center of which bears South 22°32'50" East; thence Southwesterly along the arc of said curve 212.27 feet through a central angle of 44°13'35" to a point of compound curvature of a 974.90 foot radius curve to the left, the center of which bears South 66°46'25" East; thence Southwesterly along the arc of said curve 126.78 feet through a central angle of 07°27'04"; thence North 67°19'42" West 349.08 feet; thence North 29°37'07" West 296.06 feet; thence North 40°33'37" West 206.51 feet; thence North 32°22'22" West 115.99 feet; thence North 18°52'49" East 202.81 feet; thence North 02°18'37" East 158.29 feet; thence North 07°27'44" East 93.88 feet; thence North 15°06'43" East 244.08 feet; thence North 63°15'39" West 386.20 feet to a non-tangent point of curvature of a 240.00 foot radius curve to the right, the center of which bears North 65°08'23" West; thence Southwesterly along the arc of said curve 98.02 feet through a central angle of 23°23'58"; thence South 41°44'25" East 149.93 feet; thence South 11°56'33" East 130.46 feet; thence South 24°18'04" West 190.45 feet; thence North 84°25'47" West 91.46 feet; thence South 72°23'33" West 48.06 feet; thence South 03°09'24" West 120.43 feet; thence North 88°18'24" West 255.13 feet; thence North 64°06'56" West 466.00 feet; thence North 16°19'17" East 688.06 feet; thence North 18°22'28" East 211.09 feet; thence South 45°25'01" East 374.21 feet; thence South 42°25'51" East 123.14 feet; thence South 15°40'56" East 190.00 feet to a non-tangent point of curvature of a 190.00 foot radius curve to the left, the center of which bears North 15°40'56" West; thence Northeasterly along the arc of said curve 164.01 feet through a central angle of 49°27'27"; thence North 24°51'37" East 97.13 feet; thence North 65°08'23" West 59.28 feet; thence North 34°46'40" West 729.35 feet; thence North 17°56'01" East 51.95 feet; thence North 73°24'15" West 363.23 feet; thence North 78°31'24" West 160.84 feet; thence North 00°15'41" East 326.93 feet to the point of beginning.

Containing 51.29 acres more or less.

**AND;**

**4. West Hills West Parcel:**

Beginning at a point which is North 89°48'16" West along the Section Line 1817.01 feet from the Southeast Corner of Section 11, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 89°48'16" West 2659.63 feet between said Southeast Corner and the South Quarter Corner of said Section 11; and running thence North 89°48'16" West along said Section Line 229.90 feet; thence North 58°25'29" West 201.65 feet; thence North 20°27'16" West 331.98 feet; thence North 50°28'23" West 192.10 feet; thence North 27°05'24" West 135.16 feet; thence North 06°27'20" East 279.70 feet; thence North 18°32'18" East 212.82 feet; thence North 30°08'03" West 126.66 feet; thence South 68°44'54" West 471.78 feet; thence North 11°08'24" West 442.03 feet; thence North 13°26'50" East 195.50 feet; thence North 55°30'38" East 387.50 feet; thence North 00°21'13" West 214.93 feet; thence North 83°52'53" West 345.57 feet; thence North 07°02'25" West 450.99 feet; thence North 27°17'13" East 925.46 feet; thence South 57°37'23" East 796.34 feet to a non-tangent point of curvature of a 275.00 foot radius curve to the right, the center of which bears South 60°23'52" East; thence Northeasterly along the arc of said curve 44.08 feet through a central angle of 09°11'05"; thence North 57°11'35" West 802.22 feet; thence North 27°17'13" East 518.69 feet; thence North 89°55'18" East 666.33 feet; thence South 50°36'16" East 676.47 feet; thence South 59°13'10" East 424.42 feet; thence South 57°36'30" West 638.18 feet to a non-tangent point of curvature of a 395.00 foot radius curve to the right, the center of which bears South 44°53'55" West; thence Southeasterly along the arc of said curve 110.48 feet through a central angle of 16°01'30"; thence South 65°02'02" West 50.15 feet to a non-tangent point of curvature of a 345.00 foot radius curve to the left, the center of which bears South 60°19'36" West; thence Northwesterly along the arc of said curve 104.22 feet through a central angle of 17°18'30"; thence South 57°36'30" West 139.38 feet; thence South 89°29'17" West 312.04 feet; thence South 55°17'27" West 111.79 feet; thence South 18°43'50" East 263.97 feet; thence South 09°09'24" East 419.24 feet; thence South 00°14'53" East 1135.85 feet; thence South 16°59'40" East 165.96 feet; thence South 05°16'57" East 176.59 feet; thence South 06°32'26" West 207.53 feet; thence South 29°27'49" East 197.75 feet; thence South 60°17'44" East 239.13 feet; thence South 04°56'15" East 77.29 feet to a non-tangent point of curvature of a 200.00 foot radius curve to the right, the center of which bears South 04°56'15" East; thence Easterly along the arc of said curve 194.65 feet through a central angle of 55°45'45"; thence South 39°10'30" East 200.84 feet; thence South 50°49'30" West 50.00 feet; thence North 39°10'30" West 200.84 feet to a point of curvature of a 150.00 foot radius curve to the left, the center of which bears South 50°49'30" West; thence Westerly along the arc of said curve 145.99 feet through a central angle of 55°45'45" to a point of reverse curvature of a 525.00 foot radius curve to the right, the center of which bears North 04°56'15" West; thence Northwesterly along the arc of said curve 339.92 feet through a central angle of 37°05'49"; thence South 32°09'34" West 134.03 feet to the point of beginning.

Containing 98.17 acres more or less.

**AND;**

**5. West Hills East Parcel:**

Beginning at a point which is North 89°48'16" West along the Section Line 823.22 feet from the Southeast Corner of Section 11, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 89°48'16" West 2659.63 feet between said Southeast Corner and the South Quarter Corner of said Section 11); and running thence South 12°57'46" East 266.50 feet to a point of curvature of a 1225.00 foot radius curve to the left, the center of which bears North 77°02'14" East; thence Southeasterly along the arc of said curve 30.42 feet through a

central angle of  $01^{\circ}25'22''$  to a non-tangent point of curvature of a 25.00 foot radius curve to the left, the center of which bears South  $75^{\circ}36'52''$  West; thence Northwesterly along the arc of said curve 38.65 feet through a central angle of  $88^{\circ}34'38''$ ; thence South  $77^{\circ}02'14''$  West 55.46 feet to a point of curvature of a 325.00 foot radius curve to the right, the center of which bears North  $12^{\circ}57'46''$  West; thence Northwesterly along the arc of said curve 361.82 feet through a central angle of  $63^{\circ}47'16''$ ; thence North  $50^{\circ}49'30''$  East 50.00 feet to a non-tangent point of curvature of a 275.00 foot radius curve to the left, the center of which bears North  $50^{\circ}49'30''$  East; thence Southeasterly along the arc of said curve 107.27 feet through a central angle of  $22^{\circ}21'01''$ ; thence North  $28^{\circ}28'29''$  East 172.05 feet; thence North  $43^{\circ}41'13''$  West 670.62 feet; thence North  $02^{\circ}44'21''$  West 218.83 feet; thence North  $34^{\circ}46'31''$  West 284.74 feet; thence North  $10^{\circ}26'29''$  East 517.95 feet; thence North  $15^{\circ}29'56''$  East 365.69 feet; thence North  $11^{\circ}36'29''$  East 140.36 feet; thence North  $27^{\circ}15'52''$  West 190.58 feet; thence North  $11^{\circ}10'20''$  West 201.91 feet; thence North  $02^{\circ}08'09''$  East 180.89 feet; thence North  $28^{\circ}40'34''$  West 180.22 feet; thence North  $14^{\circ}32'12''$  West 147.72 feet; thence North  $65^{\circ}02'02''$  East 464.14 feet; thence South  $81^{\circ}38'51''$  East 185.46 feet; thence South  $28^{\circ}07'07''$  East 130.68 feet; thence South  $17^{\circ}33'34''$  West 300.52 feet; thence South  $79^{\circ}10'01''$  West 160.56 feet; thence South  $10^{\circ}49'59''$  East 77.53 feet to a point of curvature of a 525.00 foot radius curve to the right, the center of which bears South  $79^{\circ}10'01''$  West; thence Southerly along the arc of said curve 167.62 feet through a central angle of  $18^{\circ}17'35''$  to a point of reverse curvature of a 150.00 foot radius curve to the left, the center of which bears South  $82^{\circ}32'24''$  East; thence Southeasterly along the arc of said curve 193.49 feet through a central angle of  $73^{\circ}54'32''$  to a point of reverse curvature of a 275.00 foot radius curve to the right, the center of which bears South  $23^{\circ}33'04''$  West; thence Southeasterly along the arc of said curve 155.89 feet through a central angle of  $32^{\circ}28'43''$ ; thence South  $33^{\circ}58'13''$  East 204.95 feet to a point of curvature of a 475.00 foot radius curve to the left, the center of which bears North  $56^{\circ}01'47''$  East; thence Southeasterly along the arc of said curve 310.44 feet through a central angle of  $37^{\circ}26'44''$  to a point of reverse curvature of a 200.00 foot radius curve to the right, the center of which bears South  $18^{\circ}35'03''$  West; thence Southeasterly along the arc of said curve 218.61 feet through a central angle of  $62^{\circ}37'39''$  to a point of compound curvature of a 425.00 foot radius curve to the right, the center of which bears South  $81^{\circ}12'42''$  West; thence Southerly along the arc of said curve 212.13 feet through a central angle of  $28^{\circ}35'55''$  to a point of reverse curvature of a 25.00 foot radius curve to the left, the center of which bears South  $70^{\circ}11'23''$  East; thence Southeasterly along the arc of said curve 37.75 feet through a central angle of  $86^{\circ}30'25''$ ; thence North  $66^{\circ}41'48''$  West 457.99 feet to a point of curvature of a 225.00 foot radius curve to the left, the center of which bears South  $23^{\circ}18'12''$  West; thence Southwesterly along the arc of said curve 551.00 feet through a central angle of  $140^{\circ}18'42''$ ; thence South  $27^{\circ}00'30''$  East 378.05 feet to a point of curvature of a 1175.00 foot radius curve to the right, the center of which bears South  $62^{\circ}59'30''$  West; thence Southeasterly along the arc of said curve 288.04 feet through a central angle of  $14^{\circ}02'44''$ ; thence South  $12^{\circ}57'46''$  East 491.14 feet to the point of beginning.

Containing 33.66 acres more or less.

## **AND;**

### **6. West Hills South Parcel:**

Beginning at a point which is North  $89^{\circ}48'16''$  West along the Section Line 484.06 feet from the Southeast Corner of Section 11, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North  $89^{\circ}48'16''$  West 2659.63 feet between said Southeast Corner and the South Quarter Corner of said Section 11); and running thence South  $13^{\circ}22'40''$  East 442.14 feet; thence South  $71^{\circ}12'17''$  West 251.30 feet to a non-tangent point of curvature of a 1175.00 foot radius curve to the right, the center of which bears North  $63^{\circ}19'58''$  East; thence Northwesterly along the arc of said curve 281.05 feet through a central angle of  $13^{\circ}42'16''$ ;

thence North 12°57'46" West 341.42 feet; thence North 77°02'14" East 279.15 feet; thence South 13°22'40" East 152.13 feet to the point of beginning.

Containing 3.86 acres more or less.

## **AND;**

### **7. West View South Parcel:**

Beginning at a point which is North 00°12'10" East along the Section Line 2421.78 feet and West 593.89 feet from the Southeast Corner of Section 14, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 00°12'10" East 5344.64 feet between said Southeast Corner and the Northeast Corner of said Section 14); and running thence South 70°56'11" West 148.92 feet; thence South 84°26'43" West 191.68 feet; thence North 77°54'04" West 181.94 feet; thence North 70°29'06" West 107.68 feet; thence North 58°15'19" West 477.43 feet; thence North 64°45'04" West 194.50 feet; thence North 47°41'36" West 177.95 feet; thence North 28°35'15" West 174.84 feet; thence North 01°32'48" West 185.88 feet; thence South 87°33'44" East 129.76 feet; thence North 02°26'16" East 24.66 feet to a point of curvature of a 275.00 foot radius curve to the right, the center of which bears South 87°33'44" East; thence Northeasterly along the arc of said curve 272.41 feet through a central angle of 56°45'21"; thence North 59°11'37" East 151.52 feet to a point of curvature of a 125.00 foot radius curve to the left, the center of which bears North 30°48'23" West; thence Northerly along the arc of said curve 287.35 feet through a central angle of 131°42'35"; thence North 17°29'02" East 50.00 feet to a non-tangent point of curvature of a 175.00 foot radius curve to the right, the center of which bears South 17°29'02" West; thence Southeasterly along the arc of said curve 189.38 feet through a central angle of 62°00'08"; thence North 79°29'10" East 154.13 feet; thence South 20°35'11" East 110.61 feet; thence South 45°20'31" East 835.18 feet to a non-tangent point of curvature of a 525.00 foot radius curve to the left, the center of which bears South 67°41'09" East; thence Southerly along the arc of said curve 531.47 feet through a central angle of 58°00'05"; thence South 35°41'14" East 114.08 feet to the point of beginning.

Containing 25.29 acres more or less.

## **AND;**

### **8. West View North Parcel:**

Beginning at a point which is North 00°12'10" East along the Section Line 3226.47 feet and West 638.91 feet from the Southeast Corner of Section 14, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being North 00°12'10" East 5344.64 feet between said Southeast Corner and the Northeast Corner of said Section 14); and running thence North 80°51'40" West 63.52 feet; thence North 38°21'58" West 550.68 feet; thence North 08°26'16" West 208.74 feet; thence North 12°59'39" East 214.35 feet; thence North 07°09'52" East 222.45 feet; thence North 01°01'02" East 205.15 feet; thence North 09°13'18" West 559.17 feet; thence North 29°13'31" East 40.71 feet to a non-tangent point of curvature of a 325.00 foot radius curve to the left, the center of which bears North 29°13'31" East; thence Southeasterly along the arc of said curve 239.30 feet through a central angle of 42°11'17"; thence North 77°02'14" East 55.46 feet to a point of curvature of a 25.00 foot radius curve to the right, the center of which bears South 12°57'46" East; thence Southeasterly along the arc of said curve 38.65 feet through a central angle of 88°34'38" to a point of reverse curvature of a 1225.00 foot radius curve to the left, the center of which bears North 75°36'52" East; thence Southeasterly along the arc of said curve 436.95 feet through a central angle of 20°26'14"; thence South 34°49'22" East 189.81 feet to a point of curvature of a 475.00 foot radius curve to the right, the center of which bears South 55°10'38" West; thence Southeasterly along the arc of said curve 583.38 feet through a central

angle of 70°22'09"; thence South 35°32'47" West 171.83 feet to a point of curvature of a 525.00 foot radius curve to the left, the center of which bears South 54°27'13" East; thence Southwesterly along the arc of said curve 417.30 feet through a central angle of 45°32'30"; thence South 09°59'43" East 73.64 feet to a point of curvature of a 375.00 foot radius curve to the right, the center of which bears South 80°00'17" West; thence Southerly along the arc of said curve 125.23 feet through a central angle of 19°08'03" to the point of beginning.

Containing 18.52 acres more or less.

**AND;**

**9. Fire Station Parcel:**

Beginning at a point on the Easterly line of the State of Utah, Division of Parks and Recreation Right of Way, (formerly the Union Pacific Right of Way) said point being South 00°34'53" East along the Section Line 1419.95 feet and East 442.52 feet from the Northwest Corner of Section 23, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°34'53" East 5337.62 feet between said Northwest Corner and the Southwest Corner of said Section 23); and running thence North 19°47'10" West along said Easterly line 382.21 feet to a non-tangent point of curvature of a 1025.00 foot radius curve to the left, the center of which bears North 08°21'53" West; thence Northeasterly along the arc of said curve 47.69 feet through a central angle of 02°39'56"; thence North 78°58'11" East 154.86 feet; thence South 19°47'10" East 381.09 feet; thence South 78°58'11" West 202.36 feet to the point of beginning.

Containing 1.75 acres more or less.

**AND;**

**10. Parcel 6 (Land located West of Interstate 80):**

Located in Township 1 North, Range 4 East, Salt Lake Base and Meridian  
Containing Parts of:

All the land west of the Western Road Right-of-Way in the Northeast, Northwest, and Southwest Quarters in Section 35

Also Located in Township 1 South, Range 4 East, Salt Lake Base and Meridian  
Containing Parts of:

All the land West of the Western Road Right-of-Way Line (Udot Project I-80-4(4)) in the Northwest and Southwest Quarters in Section 2

All the land West of the Western Road Right-of-Way Line (Udot Project I-80-4(4)) in the Northwest and Southwest Quarters in Section 11

Containing 271.60 Acres more or less.

**THE NET OVERALL LAND CONTAINS 5,683.91 ACRES MORE OR LESS.**

## EXHIBIT C - INITIAL USE RESTRICTIONS

- (a) Animals and Pets. No animals of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of the Community, except that for each Residence there shall be permitted a reasonable number of usual and common household pets, as determined in the Board's discretion. Pets shall not be permitted by their Owners to roam free, and any which are permitted to roam free, or, in the Conservancy's sole discretion, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to other Owners or residents of any portion of the Community, shall be removed upon the Board's request at the Owner's expense. If the Owner fails to honor such request, the Board may cause the pet to be removed at the Owner's expense. No pets shall be kept, bred, or maintained on any homesite for any commercial purpose.
- (b) Wildlife. Capturing, killing, or trapping wildlife is prohibited within the Community, except in circumstances imposing an imminent threat to the safety of Persons or pets.
- (c) Firearms. The discharge of firearms within the Community is prohibited except to the extent such discharge is confined within the facilities of a Private Amenity created for such purpose. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.
- (d) Nuisances. No Owner shall engage in any activity which constitutes a nuisance (meaning offensive or detrimental activity, as determined by the Board), which materially disturbs or destroys the vegetation, wildlife, or air quality within the Community, or which results in unreasonable levels of sound or light pollution.
- (e) Garages. Garage doors shall remain closed at all times except when entering and exiting the garage.
- (f) Exterior Lighting. All exterior lighting must conform to the requirements of the Design Guidelines. Excessive exterior lighting on any Lot is prohibited. The Board in its sole discretion shall determine whether any exterior lighting is excessive.
- (g) Storage of Goods. Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment, or other goods and chattels on the Common Area (except by the Conservancy), or, if not in active use, any portion of a Lot which is visible from outside the Lot is prohibited.
- (h) Prohibited Conditions. The following conditions, structures, or activities are prohibited on any Lot:
- (i) Dogs runs and animal pens of any kind, unless properly screened and approved in accordance with Article IV;
  - (ii) Shacks or other structures of a temporary nature on any Lot except as may be authorized by Declarant during the initial construction of improvements within the Community. Temporary structures used during the construction or repair of a Residence or other improvements shall be removed immediately after the completion of construction or repair;
  - (iii) Except as expressly permitted pursuant to the Design Guidelines, permanent basketball goals, basketball standards, or backboards which are or would be visible from any street or Common Area; provided, portable basketball goals may be used on a Lot without prior approval, but must be stored so as not to be visible from any street or Common Area overnight or otherwise when not in use;
  - (iv) Except as expressly permitted pursuant to the Design Guidelines, freestanding flagpoles; provided, flags may be displayed using a bracket or other approved device mounted to the Residence so long as the size of the flag displayed does not exceed that of a standard United

- States flag (as determined in the Board's discretion and as may be set forth in a Board rule);
- (v) Compost piles or containers and statues other than specifically approved by the ARC and .
  - (vi) Outside clotheslines or other outside facilities for drying or airing clothes.

In any event, and notwithstanding the above list of prohibited conditions, as set forth in Article IV, any structure, improvement, or thing proposed for construction, erection, installation, or placement on a Lot requires prior Reviewer approval unless otherwise specifically exempt under the Design Guidelines.

- (i) Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Lots.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Community, which in the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to others.

- (j) Signs. No sign shall be erected within the Community except in accordance with the criteria set forth in the Design Guidelines. This restriction shall not apply to entry, directional, and marketing signs installed by Declarant or a Builder. The Conservancy shall have the right to erect signs on the Common Area.
- (k) Holiday Decorations. Owners may display holiday decorations located or visible from outside their Residences if the decorations are of the kinds normally displayed in single family residential Villages, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Holiday decorations may be displayed in season only from November 1 to January 31 and, during other times of the year, from one week before to one week after any nationally recognized holiday.
- (1) Antennas and Satellite Dishes. No antenna, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radios) signals is permitted outside the Residence, except those devices whose installation and use is protected under federal law or regulations. Notwithstanding such protection, an application for such an antenna or other device must be submitted to the Architectural Review Committee for approval and approval will be granted only if:
  - (i) First, the antenna or other device is designed for minimal visual intrusion (i.e., is located in a manner that minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and
  - (ii) Second, the antenna or other device complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (i.e., without precluding reception of a quality signal or unreasonably increasing the cost of the antenna or device).

The Architectural Review Committee shall consider any such application on an expedited basis.

Notwithstanding the above, Declarant and/or the Conservancy may erect an antenna, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Promontory, should any master system or systems be used by the Conservancy and require such exterior apparatus.

- (m) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are pre-approved by the ARC or specifically permitted under the Design Guidelines, or as required by the applicable governing jurisdiction. Such



containers shall be screened from view outside of the Lot except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. Rubbish, trash, and garbage must be removed from the Lots and may not accumulate on any Lot. Outdoor incinerators may not be kept or maintained on any Lot.

- (n) Pool Equipment. All pool equipment stored on any Lot shall be screened from view from outside the Lot.
- (o) Unightly or Unkempt Conditions. All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot in a manner which is unsanitary, unightly, offensive or detrimental to any other portion of the Community, as determined by the Board.

Woodpiles or other material shall be properly screened and stored in a such a manner so as not to attract rodents, snakes, and other animals and or create a fire hazard, as the Board determines. No activities shall be conducted upon or adjacent to any Lot or within any structure on a Lot which are or might be unsafe or hazardous to any Person or property. Open fires are prohibited within the Community, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes.

- (p) Vehicles and Parking. As used in this Section, the term "vehicles" includes, without limitation, automobiles, trucks, boats, trailers, motorcycles, snowmobiles, campers, vans, and recreational vehicles.

No vehicle may be left upon any portion of the Community except in a garage, driveway, designated on street parking spaces or other area designated by the Board. No person shall park any recreational vehicles, mobile homes, trailers, campers, snowmobiles, boats or other watercraft, stored vehicles, and unlicensed vehicles or inoperable vehicles within the Community other than in enclosed garages. This Section shall not apply to emergency vehicle repairs.

- (q) Wetlands, Lakes, and Other Water Bodies. Wetlands, lakes, ponds, and streams within the Community, if any, are aesthetic amenities only, and no active use of lakes, ponds, streams, or other bodies of water within the Community is permitted except for fishing in designated locations only. The Conservancy shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or other bodies of water within or adjacent to the Community.
- (r) Solar Equipment. No solar heating equipment or device is permitted outside the Residence except such devices whose installation and use is protected by federal or Utah law. Notwithstanding such protection, an application for such equipment or device must be submitted for approval under Article IV prior to installation and approval will be granted only if
  - (i) First, such equipment or device is designed for minimal visual intrusion when installed (i.e., is located in a manner which minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and
  - (ii) Second, the equipment or device complies to the maximum extent feasible with the Design Guidelines within the confines of the applicable governmental regulations.

**EXHIBIT D - BY-LAWS OF THE PROMONTORY CONSERVANCY**

# CONSERVANCY BYLAWS

Summit County, Utah



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**BY-LAWS  
OF  
THE PROMONTORY CONSERVANCY**

**Article 1: Name, Principal Office, and Definitions**

1.1. Name.

The name of the corporation is The Promontory Conservancy (the "Conservancy").

1.2. Principal Office.

The Conservancy's principal office shall be located in Summit County, Utah. The Conservancy may have other offices, either within or outside Utah, as the Board of Directors determines or as the Conservancy's affairs require.

1.3. Definitions.

The words used in these By-Laws shall have their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Promontory, as it may be amended from time to time and recorded in the office of the County Recorder for Summit County, State of Utah (the "Declaration"), unless the context indicates otherwise.

1.4. Purposes.

The Conservancy is organized pursuant to and for the purposes set forth in the Declaration. Such purposes include, but are not limited to, the desire to create a nonprofit corporation comprised of all the property owners of Promontory, a planned community located in Summit County, State of Utah, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce the Declaration and the other Governing Documents.

**Article 2: Membership: Meetings, Quorum, Voting, Proxies**

2.1. Membership.

The Conservancy shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration. Provisions of the Declaration pertaining to membership are incorporated by this reference. Any reference in these By-Laws to any "Village Representatives" shall be deemed to refer to the Members if the matter in question requires the vote or presence of the Members personally.

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2.2. Place of Meetings.

The Conservancy shall hold meetings at its principal office or at such other suitable place convenient to the Members as the Board may designate.

2.3. Annual Meetings.

The Conservancy shall hold its first meeting, whether a regular or special meeting, within one year after the date of the Conservancy's incorporation. The Board shall set the date and time of subsequent regular annual meetings so as to occur during the first or fourth quarters of the Conservancy's fiscal year. Annual meetings may be conducted electronically (*i.e.*, via the Internet, Intranet, or teleconference) if, and to the extent, permitted by law.

2.4. Special Meetings.

The President may call a special meeting of the Conservancy. It also shall be the President's duty to call a special meeting if so directed by Board resolution or upon petition of Members and any Village Representatives representing at least 10% of the Conservancy's total Class "A" votes; provided, the Members or any Village Representatives must deliver to the Conservancy's Secretary at least one written demand for the meeting, describing the meeting's purpose.

If the President does not send notice of a special meeting pursuant to Section 2.5 within 30 days after the date written demand is delivered to the Conservancy's Secretary, any Member or any Village Representative signing the demand may set the time and place of the special meeting and give the Conservancy notice pursuant to Section 2.5.

2.5. Notice of Meetings.

The Conservancy's Secretary shall cause written notice stating the place, day, and hour of any Conservancy meeting to be given in any manner permitted by Utah law. If permitted, notice may be posted in a conspicuous, prominent place within the Community, delivered by hand delivery, or sent by facsimile, electronic mail, or other electronic communication, device, or such other manner which is reasonably calculated, as determined in the Board's discretion, to provide personal notice to any Village Representatives and/or the Members entitled to notice. Notice shall be given at least 10 but less than 50 days before the date of the meeting, by or at the direction of the President or the Secretary or the officers or Persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No other business shall be transacted at a special meeting except as stated in the notice.

If posted, notice shall be deemed delivered when posted. If mailed, the notice of a meeting shall be deemed delivered when deposited in the United States mail addressed to any Village Representative or Member at his or her address as it appears on the Conservancy's records, with postage prepaid. If sent by facsimile, electronic mail, or such other electronic communication device, notice shall be deemed to be delivered when transmitted to any Village Representative or Member at his or her address or number as it appears on the Conservancy's

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records. Failure to receive actual notice of a Conservancy meeting shall not affect the validity of any action taken at such meeting.

2.6. Waiver of Notice.

Waiver of notice of a Conservancy meeting shall be the equivalent of proper notice. Any Village Representative or Member may waive, in writing, notice of any Conservancy meeting, either before or after such meeting. Any Village Representative's or Member's attendance at a meeting shall be deemed a waiver by such Village Representative or Member of notice of the meeting unless the Village Representative or Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at the meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings.

If the Conservancy cannot hold a meeting because a quorum is not present, the Class "A" Members and any Village Representatives together representing a majority of the Class "A" votes who are present may adjourn the meeting to a time at least five but not more than 30 days from the date called for the original meeting and no further notice need be given as to the time and place set for the reconvened meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Conservancy shall give any Village Representatives and/or the Members notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Any Village Representatives and the Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Village Representatives or Members to leave less than a quorum, provided that at least a majority of the votes required to constitute a quorum approve any action taken.

2.8. Voting.

Members shall have such voting rights as are set forth in the Declaration, which provisions are incorporated herein by this reference. No Class "A" vote may be divided, *pro rata* or otherwise, among co-Owners jointly holding a Conservancy membership. As provided in the Declaration, in any situation where a Member is entitled personally to exercise the vote for his or her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it in inconsistent manner, provided that in any event the Lot's vote will be counted no more than once. As further set forth in the Declaration, unless otherwise specified, any Village Representatives shall exercise the Conservancy's Class "A" votes represented by them in their discretion.

Any Village Representatives and the Members may vote at a meeting by voice vote or ballot or may vote by mail without the necessity of a meeting, as determined by the Board;

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provided, the Board shall hold meetings when required by the Declaration, these By-Laws, or Utah law. Votes for the election of directors shall be cast by secret written ballot. All Member votes cast at meetings are subject to the quorum requirements of Section 2.11. The Board may permit votes to be cast electronically (*i.e.*, via the Internet, Intranet, or electronic mail) with sufficient verification of authenticity and if permitted by law.

2.9. Proxies.

Any Village Representatives may not vote by proxy but only in person or through their designated alternates. On any matter as to which a Member is entitled personally to cast the vote for his Lot, such vote may be cast in person or by proxy, subject to Utah law.

Every proxy shall be in writing specifying the Lot for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Conservancy's Secretary prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon: (a) conveyance of any Lot for which it was given, (b) the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or (c) 90 days from the meeting date for which the proxy was originally given, unless the proxy specifies a shorter period.

2.10. Majority.

As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11. Quorum.

Except as these By-Laws or the Declaration otherwise provides, the presence of Members and any Village Representatives together representing 30% of the total Class "A" votes in the Conservancy shall constitute a quorum at all Conservancy meetings.

2.12. Conduct of Meetings.

The President shall preside over all Conservancy meetings, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings. Owners may tape record or videotape Conservancy meetings subject to reasonable rules the Board imposes.

2.13. Action Without a Meeting.

Without holding a meeting pursuant to Sections 2.3 or 2.4, Members and any Village Representatives may take any action that Utah law requires or permits the Members to take at a

meeting, if Members and any Village Representatives representing at least 80% of the Conservancy's Class "A" votes sign a written consent specifically authorizing the proposed action. The Conservancy need not give prior notice before soliciting such consent, provided, the Conservancy must send written consent forms to all Members and any Village Representatives. Members and any Village Representatives shall sign, date, and deliver such consents to the Conservancy within 60 days after the Conservancy's receipt of the earliest dated consent. The Conservancy's Secretary shall file such consents with the Conservancy's minutes and the consents shall have the same force and effect as a vote of the Members and any Village Representatives at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members and any Village Representatives entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

**Article 3: Board of Directors: Selection, Meetings, Powers**

A. Composition and Selection.

3.1. Governing Body; Composition.

The Conservancy's affairs shall be governed by a Board of Directors. Each director shall have one vote. Except with respect to directors appointed by the Class "B" Member, directors shall be Members or persons residing on a Lot with a Member if the Lot is their principal residence; provided, no Member and resident representing the same Lot may serve on the Board at the same time. A director must be at least 18 years old. In the case of a Member who is not an individual, any officer, director, partner, or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Conservancy signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors the Class "B" Member appoints.

3.2. Number of Directors.

The Board shall consist of three, five, or seven directors, as provided in Section 3.5. The initial Board shall consist of the three directors appointed by the incorporator(s) of the Conservancy at the initial organizational meeting.

3.3. Directors During Class "B" Control Period.

The Class "B" Member shall have complete discretion in appointing its directors under Section 3.5. Class "B" Member-appointed directors shall serve at the pleasure of the Class "B" Member.

3.4. Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every eligible person who has an interest in serving as a director may file as a candidate for any position to be filled by Class "A" votes.

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Nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairman, who shall be a member of the Board, and three or more Members or representatives of Members. The Board shall appoint the members of the Nominating Committee, if one is to be appointed, not less than 30 days prior to the election, and such appointment shall be announced in the notice of each election.

The Nominating Committee may make as many nominations for election to the Board as it deems appropriate in its discretion. The Nominating Committee shall nominate separate slates for the directors, if any, to be elected at large by all Class "A" votes, and for the directors to be elected from within each Voting Group. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. The Board may also permit nominations from the floor.

The Board shall give each candidate a reasonable, equal opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Members and any Village Representative may cast the votes assigned to the Lots which the Member owns or the Village Representative represents for each position to be filled from the slate of candidates on which he or she is entitled to vote. Cumulative voting is not allowed. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected.

### 3.5. Election and Term of Office.

Except as these By-Laws may otherwise specifically provide, election, of directors shall take place at the Conservancy's annual meeting. Notwithstanding any other provision of these By-Laws:

(a) Within 30 days after the time that Class "A" Members other than Builders own 25% of the Lots permitted by the Master Plan for Promontory, or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Members and any Village Representatives shall elect one of the three directors, who shall be an at-large director. (A Director elected by the Village Representatives is referred to as a Class "A" Director.) The Class "B" Member shall appoint the remaining two directors. The Class "A" Director shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Within 30 days after the time that Class "A" Members other than Builders own 50% of the Lots permitted by the Master Plan for Promontory, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The President shall call for an election by which the Members and any Village Representatives shall elect two at-large directors. The Class "B" Member shall appoint the remaining three directors. These Class "A" Directors shall be elected for a term of two years or until the happening of the event described in subsection (c), whichever is shorter. If the Class "A" Directors' terms expire prior to the happening of the event described in subsection (c), successors shall be elected for a like term.

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(c) Within 90 days after the Class "B" Control Period terminates, the President shall call for an election by which the Members and any Village Representatives shall elect three at-large directors. The Class "B" Member shall appoint the remaining two directors. These Class "A" Directors shall serve until the first annual meeting following the termination of the Class "B" Control Period. If the annual meeting is scheduled to occur within 90 days after the Class "B" Control Period terminates, this subsection shall not apply and directors shall be elected in accordance with subsection (d).

(d) Not later than the first annual meeting after the termination of the Class "B" Control Period, the Board shall be increased to seven directors and an election shall be held. Six directors shall be elected by the Members and any Village Representatives, with an equal number of directors elected from each Voting Group and any remaining directorships filled at-large by the vote of all Members and any Village Representatives. Three directors shall serve two-year terms and three directors shall serve one-year terms, as such directors determine among themselves.

Until the Class "B" membership terminates, the Class "B" Member may appoint one director. When the Class "B" membership terminates, the director elected by the Class "B" Member shall resign and the remaining directors shall appoint a director to serve until the next annual meeting, at which time the Village Representatives shall elect a director to fill such position. Such director shall be elected for a two-year term.

Thereafter, upon expiration of the term of office of each Class "A" Director, Members and any Village Representatives entitled to elect such director shall be entitled to elect a successor to serve a two-year term. Class "A" Directors shall hold office until their respective successors have been elected. Directors may not serve more than two consecutive two-year terms.

### COMPOSITION OF BOARD OF PROMONTORY CONSERVANCY

Initial	25% of Lots owned by Class "A" Members	50% of Lots owned by Class "A" Members	Termination of Class "B" Control Period	Termination of Class "B" Membership
Class "B" (Declarant) Appointee	At-Large Class "A" Director	At-Large Class "A" Director	Class "A" Director	Class "A" Director <sup>1</sup>
Class "B" (Declarant) Appointee	Class "B" (Declarant) Appointee	At-Large Class "A" Director	Class "A" Director	Class "A" Director <sup>1</sup>
Class "B" (Declarant) Appointee	Class "B" (Declarant) Appointee	Class "B" (Declarant) Appointee	Class "A" Director	Class "A" Director <sup>1</sup>
		Class "B" (Declarant) Appointee	Class "B" (Declarant) Appointee	Class "A" Director <sup>1</sup>
		Class "B" (Declarant) Appointee	Class "B" (Declarant) Appointee	Class "A" Director <sup>1</sup>
				Class "A" Director <sup>1</sup>

<sup>1</sup> If Declarant has established Voting Groups, Voting Groups shall elect an equal number of Directors and any other elected directorship position shall be elected at-large.

Diagram I - Transition of Control over the Board of Directors

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3.6. Removal of Directors and Vacancies.

Any Class "A" Director may be removed, with or without cause, by the vote of Members and any Village Representatives together holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members and any Village Representatives entitled to elect the director so removed to fill the vacancy for the remainder such director's term. Class "A" Directors may not be removed by the Class "B" Member.

Any Class "A" Director who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Conservancy, may be removed by a majority vote of the Board, excluding the director at issue. If the director is removed, the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members and any Village Representatives entitled to fill such directorship may elect a successor for the remainder of the term.

Any Board-appointed director shall be selected from within the Voting Group represented by the director who vacated the position.

This Section shall not apply to directors the Class "B" Member appoints nor to any director serving as Declarant's representative. The Class "B" Member or Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant.

B. Meetings.

3.7. Organizational Meetings.

The Board shall hold its first meeting following each annual membership meeting within 10 days thereafter at such time and place as the Board shall fix.

3.8. Regular Meetings.

The Board may hold regular meetings at such time and place as the Board shall determine, but the Board shall hold at least four such meetings during each fiscal year with at least one per quarter.

3.9. Special Meetings.

The Board shall hold special meetings when called by written notice signed by the President, Vice President, or any two directors.

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3.10. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall give notice to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone (either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director); or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Conservancy's records. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Except for emergency meetings, notice of a Board meeting shall be posted in a conspicuous place within the Community at least 48 hours in advance of the meeting or provided in any other manner reasonably anticipated to provide notice to all Members, including publication in a Conservancy newsletter with community-wide circulation, posting on a Community cable television channel, or posting on a Community Internet or Intranet page, if any.

(c) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the meeting's purpose. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

(d) Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment.

3.11. Telephonic Participation in Meetings.

Members of the Board or any committee designated by the Board may participate in a Board or committee meeting by means of telephone or other electronic means, through which all persons participating in the meeting can hear each other. Participation in this manner shall constitute presence at the meeting for all purposes.

3.12. Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless these By-Laws or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue, notwithstanding the withdrawal of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not

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present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting.

At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13. Conduct of Meetings.

The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. Owners may tape record or videotape Board meetings subject to reasonable rules the Board imposes.

3.14. Open Meetings; Executive Session.

Subject to the provisions of Section 3.15, all Board meetings shall be open to any Village Representatives and all Owners. However, attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak, and the Board concurs. In such case, the President may limit the time any such individual may speak.

Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to discuss with the Conservancy's attorney matters relating to pending or threatened litigation which are protected by the attorney-client privileges, or to discuss among the Board any other matter of a sensitive nature, if Utah law permits.

3.15. Action Without a Formal Meeting.

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if all directors sign a consent in writing, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.16. Powers.

The Board shall have all of the powers and duties necessary for administering the Conservancy's affairs and for performing all of the Conservancy's responsibilities and exercising all of the Conservancy's rights as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on the Conservancy's behalf all acts and things except those which the Governing Documents or Utah law require to be done and exercised exclusively by any Village Representatives or the membership generally.

3.17. Duties.

The Board's duties shall include, without limitation:

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(a) preparing and adopting, in accordance with the Declarations an annual budget establishing each Owner's share of the Common Expenses and any Village Expenses;

(b) providing for the operation, care, upkeep, and maintenance of the Common Maintenance Area consistent with the Community-Wide Standard;

(c) designating, hiring, and dismissing personnel necessary to carry out the Conservancy's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of necessary equipment, supplies, and materials;

(d) depositing all funds received on the Conservancy's behalf in a bank depository which it shall approve, and using such funds to operate the Conservancy; provided, any reserve funds may be deposited, in the Board's business judgment, in depositories other, than banks;

(e) making, amending, and enforcing Use Restrictions and roles in accordance with the Declaration;

(f) opening bank accounts on the Conservancy's behalf and designating the signatories required;

(g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;

(h) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Conservancy; provided, the Conservancy's obligation in this regard shall be conditioned in the manner provided in the Declaration;

(i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(j) paying the cost of all services rendered to the Conservancy;

(k) keeping books with detailed accounts of the Conservancy's receipts and expenditures;

(l) making available to any Owner, the holders, insurers, and guarantors of any Mortgage on any Lot, and any prospective purchaser of a Lot, current copies of the Governing Documents and all other Conservancy books, records, and financial statements as provided in Section 6.4;

(m) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Promontory;

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(n) indemnifying a Conservancy director, officer, or committee member, or former Conservancy director, officer, or committee member to the extent such indemnity is required by Utah law, the Articles of Incorporation, or the Declaration;

(o) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration;

(p) preserving and maintaining natural areas, wildlife preserves, or similar conservation areas, and sponsorship educational programs and activities which contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding the Community; and

(q) maintaining the official records of the Conservancy.

### 3.18. Compensation.

The Conservancy shall not compensate a director for acting as such unless the Members and any Village Representatives together representing a majority of the total Class "A" votes in the Conservancy at a regular or special meeting of the Conservancy otherwise approve. The Conservancy may reimburse any director for expenses incurred on the Conservancy's behalf if approved by a majority of the other directors. In addition, nothing herein shall prohibit the Conservancy from compensating a director for services or supplies he or she furnishes to the Conservancy in a capacity other than as a director pursuant to a contract or agreement with the Conservancy, provided that such director made his or her interest known to the Board prior to entering into such contract and a majority of the Board, excluding the interested director, approved such contract. The foregoing also applies to any entity with which a director is affiliated.

### 3.19. Right of Class "B" Member to Disapprove Actions.

The Class "B" Member shall have a right to disapprove any action, policy, or program of the Conservancy, the Board, and any committee which, in the Class "B" Member's sole judgment, would tend to impair rights of Declarant or Builders under the Declaration or these By-Laws, interfere with development or construction of any portion of the Community, or diminish the level of services the Conservancy provides.

(a) Notice. The Conservancy, the Board, and each committee shall give the Class "B" Member written notice of their meetings and proposed actions to be approved at their meetings (or by written consent in lieu of a meeting). The notice shall comply with Section 3.10 and shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) Opportunity to be Heard. The Conservancy, the Board, and each committee shall give the Class "B" Member the opportunity at any meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval described in this Section.

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(c) Exercise of Rights. The Class "B" Member, its representative or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, if the action is approved without a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction by the Conservancy, the Board, or any committee. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Conservancy is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

(d) Condition of Implementation. No action, policy, or program subject to the Class "B" Member's right of disapproval shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

### 3.20. Management.

The Board may employ a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 3.17(a) (with respect to adoption of the budget), 3.17(b), 3.17(f), 3.17(g) and 3.17(i). The Board may contract with or employ Declarant or Declarant's affiliate as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

The Conservancy shall not be bound, either directly or indirectly, by any management contract executed during the Class "B" Control Period unless such contract contains a right of termination which the Conservancy may exercise with or without cause and without penalty at any time after termination of the Class "B" Control Period upon not more than 90 days written notice. After the Class "B" Control Period terminates, the Conservancy may not terminate any management contract, or retain a new managing agent, without the Declarant's approval so long as Declarant retains the right to annex property to Promontory under the Governing Documents.

### 3.21. Accounts and Reports.

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

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(c) the Conservancy's cash accounts shall not be commingled with any other accounts;

(d) the managing agent shall accept no remuneration from vendors, independent contractors, or others providing goods or services to the Conservancy, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise the Conservancy shall benefit from anything of value received;

(e) the managing agent shall disclose promptly to the Board any financial or other interest which it may have in any firm providing goods or services to the Conservancy;

(f) commencing at the end of the quarter in which the first Lot is sold and closed, the Board shall prepare financial reports for the Conservancy at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be prepared within 60 days after the close of the fiscal year: (i) a balance sheet showing actual receipts and expenditures; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor, or insurer of any first Mortgage on a Lot, the Conservancy shall provide an audited financial statement. During the Class "B" Control Period, the annual report shall include certified financial statements.

The Conservancy shall provide each Owner or its authorized agent a copy of the annual financial report within 10 business days following receipt of a written request for access. In addition, if Utah law requires, the Conservancy shall send a copy of the annual report to each Member by mail or personal delivery within 90 days following the close of the fiscal year.

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### 3.22. Borrowing.

The Conservancy may borrow money for any legal purpose, provided, the approval of Members and any Village Representatives together representing a majority of the Class "A" voters in the Conservancy is required if the proposed borrowing is (a) for the purpose of making discretionary capital improvements, and (b) the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Conservancy's budgeted gross expenses for that fiscal year.

During the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members and any Village Representatives together representing at least 67% of the total Class "A." votes. After the Class "B" Control Period terminates, no Mortgage lien may be placed in the Common Area, nor may assessments be pledged as security for any loan, without the Declarant's approval so long as Declarant retains the right to annex property to Promontory under the Governing Documents, and such other approval as the Declaration may require.

### 3.23. Right to Contract.

The Conservancy shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Village and other owners or residents organizational structure within the Community.

### 3.24. Enforcement.

The Conservancy may impose sanctions for any violation of the Governing Documents. To the extent the Declaration specifically requires, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) Notice. The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than 15 days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless the alleged violator challenges the violation within 15 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed, provided, the Board or Covenants Committee may suspend any proposed sanction if the violation is cured, or if a diligent effort is made to cure, within the 15-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If the alleged violator requests a hearing within the allotted 15-day period, the hearing shall be held before the Covenants Committee. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice

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requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the alleged violator shall have the right to appeal the decision to the Board. To exercise this right, the alleged violator must submit a written notice of appeal to the Conservancy's manager, President, or Secretary within 10 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to they contrary in this Article, if permitted under the Declaration, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the Declaration's dispute resolution procedures, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred.

### 3.25. Board Training Seminar.

The Board shall provide or provide for seminars and continuing educational opportunities designed to educate and inform directors of their responsibilities as directors. Such programs shall include instruction on applicable Utah corporate and fiduciary law principles, other issues relating to administering the Community's affairs, and upholding and enforcing the Governing Documents. The Board shall retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected, and each re-elected director shall complete a training seminar within the first six months of assuming the director position.

### 3.26. Board Standards.

In performing their duties, directors and officers shall act as fiduciaries and are subject to insulation from liability as provided for directors of corporations by Utah law and as otherwise provided by the Governing Documents. Directors shall exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule.

A director shall act in accordance with the business judgment rule so long as the director:

(a) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(b) affirmatively undertakes to make decisions which are necessary for the Conservancy's continued and successful operation and, when decisions are made, they are made on an informed basis;

(c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and

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(d) acts in a non-fraudulent manner and without reckless indifference to the Conservancy's affairs.

A director acting in accordance with the business judgment rule shall be protected from personal liability.

Board determinations of the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

### 3.27. Conflicts of Interest, Code of Ethics.

Unless otherwise approved by a majority of the other directors, no Class "A" Director may transact business with the Conservancy or any Conservancy contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting such director relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

Notwithstanding the above, the directors appointed by the Class "B" Member may be employed by or otherwise transact business with Declarant or any affiliate of Declarant, and Declarant may transact business with the Conservancy or its contractors.

The initial Board shall create and adopt a written "Code of Ethics" applicable to all directors and officers. The Code of Ethics shall incorporate the above standards and other conduct rules it deems appropriate. At a minimum, the Code of Ethics shall require each officer and director to conduct himself or herself in manner consistent with the Board Standards described in Section 3.26. Each officer and director, as a pre-condition to service, shall acknowledge and agree, in writing, to abide by the Code of Ethics.

## **Article 4: Officers**

### 4.1. Officers.

The Conservancy's officers shall be a President, Vice President, Secretary, and Treasurer. The officers may, but need not, be Board members, Owners, or residents of the Community. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

### 4.2. Election and Term of Office.

The Board shall elect the Conservancy's officers at the first Board meeting following each Conservancy annual meeting. Officers shall serve until their successors are elected. Officers may not hold the same office for more than two consecutive terms.

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4.3. Removal and Vacancies.

Any officer may be removed by a vote of at least 2/3 of the directors. The Board shall appoint a replacement to fill any vacancy in any office for the unexpired portion of the term.

4.4. Powers and Duties.

The Conservancy's officers each shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Conservancy's chief executive officer. The Treasurer shall supervise the preparation of the Conservancy's budget, but shall delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The Secretary shall prepare or supervise the preparation of meeting minutes as required by Utah law.

4.5. Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other Conservancy instruments shall be executed by an officer, unless the Board provides otherwise, or by such other person or persons as the Board may designate by resolution.

4.7. Compensation.

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.18.

**Article 5: Committees**

5.1. General.

The Board may create such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. In an effort to encourage and incorporate a broad base of Owner and resident participation in community governance, it shall be the Conservancy's policy that the Board create and delegate its responsibilities to committees as reasonably appropriate.

Committees shall exercise such authority as granted by Board resolution, provided the Board may, in the exercise of its reasonable discretion, elect not to follow a committee's advice on any matter. Committees may not bind the Conservancy contractually or financially. Committee members may serve no more than two consecutive two-year terms on the same committee.

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5.2. Covenants Committee.

The Board shall appoint a Covenants Committee consisting of at least five members. At least three of the Covenants Committee members shall be Members of the Conservancy who are not directors, officers, or employees of the Conservancy or the spouse, parent, child, brother, or sister of a director, officer, or employee. Acting in accordance with the provisions of the Declaration, these By-Laws, and any Board resolutions, the Covenants Committee shall be the Conservancy's hearing tribunal and shall conduct all hearings held pursuant to Section 3.24. The Board may not impose a fine without a majority vote of the Covenants Committee.

5.3. Village Committees.

In addition to any other committees appointed as provided above, any Village which has no formal organizational structure may elect a Village Committee to determine the nature and extent of services, if any, the Conservancy shall provide to the Village in addition to those provided to all Members in accordance with the Declaration. A Village Committee may advise the Board on any other issue but may not bind the Conservancy on any matter. Village Committees, if elected, shall consist of at least three Members elected by the Owners of Lots within the Village.

Village Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Village shall be an *ex officio* member of the Village Committee. The Village Representative representing such Village shall be the chairperson of the Village Committee, shall preside at its meetings, and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Village Committee shall abide by the notice and quorum requirements applicable to the Board under these By-Laws. Meetings of a Village Committee shall be open to all Owners of Lots in the Village and their representatives. Members of a Village Committee may act by unanimous written consent in lieu of a meeting.

5.4. Other Committees.

In addition to the above, the Board shall create the following committees, each of which shall have at least three members:

(a) Finance Committee. The Finance Committee shall actively assist the Board, the Treasurer, and the Conservancy managing agent in preparing the Conservancy's budget.

(b) Physical Maintenance Committee. The Physical Maintenance Committee shall preside over maintenance of the Common Maintenance Areas.

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(c) Dispute Resolution Committee. The Dispute Resolution Committee shall be established to mediate disputes concerning the interpretation of Use Restrictions, rules, and other Governing Document provisions; provided, the Dispute Resolution Committee shall not preside over matters relating to the collection of assessments or other fees and charges. Each member of the Dispute Resolution Committee shall attend a Board approved course on dispute resolution.

The Board shall establish by resolution the specific scope and limitations on the authority of the above committees.

**Article 6: Miscellaneous**

6.1. Fiscal Year.

The Conservancy's fiscal year shall be the calendar year unless otherwise established by Board resolution.

6.2. Parliamentary Rules.

Except as may be modified by Board resolution, Robert's Rules of Order (the then current edition) shall govern the conduct of Conservancy proceedings when not in conflict with Utah law or the Governing Documents.

6.3. Conflicts.

If there are conflicts among the provisions of Utah law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Utah law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Conservancy's office or at such other place within the Community as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the cost of reproducing documents requested. Records shall be made available within 10 business days of the receipt of a written request by an Owner or his or her authorized agent.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all Conservancy books, records, and documents and the physical

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properties the Conservancy owns or controls. The director's right of inspection includes the right to make a copy of relevant documents at the Conservancy's expense.

#### 6.5. Notices.

Except as the Declaration or these By-Laws otherwise provide, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member or Village Representative, at the address which the Member or Village Representative has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member or Village Representative,

(b) if to the Conservancy, the Board or the managing agent, at the principal office of the Conservancy or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section, or

(c) if to any committee, at the principal address of the Conservancy or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

#### 6.6. Amendment.

(a) By Class "B" Member. Prior to the conveyance of the first Lot to a Person other than a Builder, the Class "B" Member unilaterally may amend these By-Laws. Thereafter, the Class "B" Member unilaterally may amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans; including, for example, the Federal National Mortgage Conservancy or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots. provided, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing.

So long as the Class "B" membership exists, the Class "B" Member unilaterally may amend these By-Laws for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 5% of the Members.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members and any Village Representatives together representing 51% of the total Class "A" votes in the Conservancy, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

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(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

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CERTIFICATION

I, the undersigned, do hereby certify:

That I am the sole incorporator of The Promontory Conservancy, a Utah nonprofit corporation (the "Conservancy");

That as of the date written below, no directors have been elected or appointed for the Conservancy;

That the foregoing By-Laws constitute the original By-Laws of the Conservancy, as duly adopted by the sole incorporator thereof on the 15th day of October, 2001.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Conservancy this 10<sup>th</sup> day of December, 2001.



Name:

as sole Incorporator [SEAL]



## EXHIBIT E - PROMONTORY DEVELOPMENT AGREEMENT

### Summary of Promontory Conservancy Obligations

The following provisions describing certain obligations of the Promontory Community and certain duties of the Conservancy and Owners are summarized from the Development Agreement for the Promontory Specially Planned Area dated as of January 2, 2001. The final Development Agreement should be considered in its entirety.

*( Note: The cross references contained in this Exhibit E pertain to the "Development Agreement for the Promontory Specially Planned Area" not the CC&R's)*

**4.7.3.2** The Developer has proposed a number of private Community amenities and Public benefits. These amenities shall be undertaken by the Developer and maintained on an on-going basis by the Developer, Master Homeowners Association, or other appropriate entity as described herein. If any amenity required by this Development Agreement is removed or discontinued at any time, it shall be the Developer and/or Master Homeowners Association's obligation to provide comparable amenity compensation to the residents and guests of the Community. Removal or discontinuation of any amenity that is required to be accessible to the general public under the terms and conditions of this Agreement is not allowed without specific approval of the Board of Commissioners.

**4.7.4.1** The three major trails within the Community which accommodate public access shall be controlled by the SBSRD either by conveyance or appropriate form of perpetual easement acceptable to the District. The Master Homeowners Association, at its expense, may locate low-key signage at appropriate intervals along these trails to notify the public of adjacent private lands and the need to stay on the designated trail. The wording and signs shall be approved by the SBSRD. Public use of trails shall be limited to day light hours. Monitored access by the Developer shall require only a voluntary response by the public. Limited trail closures will be allowed by the Developer subject to the approval of the SBSRD.

**4.7.4.2** Prior to the construction of any trails, the Developer, SBSRD and the Division of Wildlife Resources will meet to discuss the impact of trail locations on wildlife habitat. Trails will be located in a manner to reduce impacts on wildlife. Should either the Developer or SBSRD disagree with the position of the Division of Wildlife Resources, the matter will be resolved by the Board of Commissioners.

**4.7.4.3** The Developer shall provide public and Community trails in the general locations indicated on the Trails Master Plan. The trail surface, width, grade, alignment, and other design specifications for the public trails shall be approved by the SBSRD. If the developer believes that the alignments required by the SBSRD to comply with such specifications will adversely affect a project, then the developer may appeal that decision to the Board of County Commissioners for a determination of reasonableness. The general locations shown on the Trails Master Plan, particularly near sub-area 84, may require adjustment given the need to comply with the specific design requirements of the SBSRD.

**4.7.4.4** The Developer shall construct all public trails within two years of the effective date of this Development Agreement or as specifically approved by the SBSRD. The Developer shall enter into a specific agreement related to the provision and guarantee/warranty of these public trails with the SBSRD within 90 days of the effective date of this Agreement.

4.7.4.5 The Developer or Master Homeowners Association shall pay at the time of construction \$100,000 toward the expense of constructing an underpass under the north bound lanes of Interstate 80 or overpass or other related structure to connect the public trail within the Community to the rail trail when the State of Utah reconstructs Interstate 80 through Silver Creek Canyon. Until such time as a permanent, safe connection can be made to the rail trail near the Community entry, the Developer shall provide an easement for a temporary trail connection from the northerly trail to that portion of the rail trail located south of the point that the rail trail crosses under Interstate 80. In the alternative, should the Board of Commissioners determine that an underpass or overpass is not feasible, then the \$100,000 contribution shall be paid at the time of construction toward the improvement of the above referenced easement, which shall become a permanent trail connection.

4.7.4.6 The Developer or Master Homeowners Association shall pay at the time of construction \$100,000 toward the expense of constructing an overpass of Highway 248 if the SBSRD or other recreation entity can secure easements across property located between the Community and Highway 248 to connect to a public Jordanelle and/or Richardson Flats trail system.

4.7.4.7 Developer shall provide adequate signage at all public trailheads advising the Public at Large that these trails through Promontory are open to the public.

4.7.4.8 Any approvals to be provided by SBSRD shall not be unreasonably withheld. Any dispute between SBSRD and Developer shall be resolved by the Board of Commissioners.

4.7.5 Internal Recreational Facilities.

Developer shall construct appropriate internal neighborhood parks, trails and other recreational facilities for use by the Community's residents.

4.7.5.1 Private neighborhood park facilities will be constructed by the Developer at a rate of 5 acres of improved park for every 500 residential units and conveyed to the Promontory Conservancy for on-going maintenance.

4.7.5.2 The neighborhood park space may be located in a single or multiple facilities and shall be easily accessible to the residents of that neighborhood development area. Each will contain appropriate improvements for the neighborhood.

4.7.14 Owner Associations and Management Arrangements.

4.7.14.1 The Promontory Conservancy. There shall be one master home owner association, the Promontory Conservancy, maintained at all times within the Community with the powers and responsibilities set forth in Exhibit F to the Promontory SPA Plan Book of Exhibits and such other powers and duties set forth in the final Master Declaration. A primary function of the master association shall be to maintain internal control over all development. These controls shall, include but not be limited to: a) monitoring and review of all design and site plan elements of the Community;

**4.7.14.2 Management Agreements.** The Promontory Conservancy may contract with or otherwise transfer certain management and maintenance responsibilities to third party management companies or to individual Project associations within Promontory, so long as the Promontory Conservancy maintains ultimate responsibility for the maintenance of all infrastructure that is intended to serve Promontory.

**4.7.14.3 Individual Project Associations or Management Regimes.** An individual Project may have its separate owner or management association and/or easements and maintenance regimes reasonably required for the convenient and mutually beneficial use and operation of the Project.

**4.7.16.1** While the majority of planned open space will be privately owned by the Master Homeowners Association, a conservation easement or other acceptable restriction approved by Summit County shall be established on all major Open Space areas shown on Exhibit B within 120 days of the effective date of this Agreement. In general, these areas will include the West Slope, the major open space areas east of, but near Interstate 80, the northerly portion of the Resort Village, and those areas located on the south end of the Community near Highway 248 that are located outside of a development area. While a conservation easement or other restriction may allow future construction of low intensity recreational uses and related facilities as defined herein, environmental enhancements, easements for on or below grade utilities, roads specifically identified in this Agreement, and related signs, and other on or below grade infrastructure, the conservation easement or restriction shall otherwise be for the permanent and unconditional open space benefit of Summit County and shall assure that the land shall not be used for the construction of any dwelling or commercial or other structures.

**4.7.21 Private Roads.**

All roads, to include the backbone arterial road system denoted on the Promontory Master Plan, shall be privately owned, shall be built to appropriate county rural road standards, and shall be privately maintained by Developer or an appropriate owner's association. Arterial roads shall provide linkages to existing County roads and adjoining properties to assure an optimal flow of traffic from the Community as shown on Exhibit B.

**4.7.24 Agriculture.**

**4.7.24.1** The Developer shall be responsible for installing and/or maintaining perimeter fencing of any locations where an active agricultural operation exists on an adjacent property. Such fencing shall be installed, if required, prior to the approval of any subdivision plat in the adjacent development phase.

**4.7.24.2** The Master Homeowners Association shall monitor and immediately respond to conflicts between the Community and adjacent agricultural operations. If the Master Homeowners Association fails to respond and/or conflicts remain, then the Board of Commissioners shall determine any reasonable mitigation that shall be undertaken immediately by the Developer/Master Homeowners Association to remedy the problem.

**4.8 Community Benchmarks.**

Promontory's development concepts and commitments to its owners and to the County and the provisions of Ordinance 298-A require the Developer's achievement of certain Benchmarks relating to the implementation of certain County policies, the accomplishment of specific mitigation measures required under certain circumstances, or the completion (or bonding of completion) of certain amenities and other proposed or anticipated public benefits. This section implements these requirements through the Community Benchmarks (the "Benchmarks") specified in the following sub-sections. Each benchmark sets forth

performance standards, a system for monitoring performance, and enforcement provisions to remedy non-performance. The individual Benchmarks shall be enforced, as described below, through one or more of the following enforcement provisions: (1) conditions of approval for individual condominium or subdivision plats, site plans, building permits, or low impact development activity; (2) the Periodic Review and default provisions set forth in this Agreement; and (3) through action of the Promontory Conservancy and in certain cases, the Design Review Committee of the Promontory Conservancy, where such action is specifically authorized. In the event that these Benchmarks are violated by individual lot owners, the Developer or Association shall use its best efforts to assist the County in gaining compliance with respect to that individual lot owner.

#### **4.8.3 Occupancy of Incentive Density Units.**

**4.8.3.1 Standards.** Ordinance 298-A conditions the approval of specific Subdivision Plats containing Incentive Density Residential Units based upon compliance with the standards set forth in this Section 4.8.3.

**4.8.3.1.1** In order to obtain approval for a Final Subdivision Plat which contains Incentive Density Residential Units, Promontory must comply with any one of the following two tests, which shall be applied in the order listed:

**4.8.3.1.1.1** Permanent Occupancy of completed Residential Units is less than twenty-five percent (25%) of all constructed Residential Units within Promontory, or

**4.8.3.1.1.2** If the Permanent Occupancy percentage test is not met, then no more than twenty-five percent (25%) of all constructed Residential Units shall have fair market values, as determined by assessors records, short form appraisal or other source of market data, of less than the then-applicable "Value Threshold Amount." For purposes of this test, the "Value Threshold Amount" is equal to \$800,000, adjusted beginning on January 1, 2003 and on January 1 of each year thereafter by the Price Level Adjustment, provided, however, that no increase shall be applied in any year in which the Developer can demonstrate with reasonable evidence that resort housing prices generally declined in the market during the preceding calendar year. The intent of this provision is that during periods of declining housing prices there would be no short term Price Level Adjustment. However, when the price levels for housing begin to increase, the Price Level Adjustment shall apply and shall be cumulative as if the PLA had not been abated in any prior period of declining housing prices.

**4.8.3.1.1.2.1** Although the valuation test is generally based upon a residential lot and a constructed dwelling unit, Summit County shall permit the valuation test to also include: (1) the actual sales price for the lot if it is equal to or exceeds the required valuation, and (2) the combined valuation as determined at the time of building permit application.

**4.8.3.1.2** In order to apply the foregoing tests, the following special provisions shall apply.

**4.8.3.1.2.1** The Permanent Occupancy status of a Residential Unit shall be



determined by affidavit, in accordance with State law and County Ordinance, submitted by the owner of any completed Residential Unit or, where no affidavit requirement exists in State law, the County may look to other evidence of Permanent Occupancy, to specifically include children enrolled in the local school district. At the time of a building permit application for a residence on a lot by an owner, other than Developer (or a successor developer of a Plat or Project), the owner shall be required to provide an affidavit of residency in a form approved by the County declaring the owner's occupancy status. In the event Developer (or a successor developer) builds a home for sale without a pre-sale, the affidavit shall be obtained by Developer (or its successor) from the residence buyer at the time the purchase closes. In the case of resales, a new owner is required to file an affidavit in connection with any application for primary home status for property tax purposes.

**4.8.3.1.2.2** Incentive Density will be accounted for as follows: (a) Incentive Density not meeting the definition of Estate Lots for Base Density purposes must be identified and counted at the time of final Plat approval. (b) Estate Lots may be designated by Developer as either Base Density or Incentive Density and shall be counted at the time of lot sale.

**4.8.3.4** Cure Provisions. The parties recognize that a certain level of home construction is necessary to permit a realistic determination with respect to the number and types of Residential Units with Permanent Occupancy within the Resort Community and the respective values of all Residential Units. Therefore, the parties agree that the Permanent Occupancy and valuation tests shall not be applied to subdivision plat applications for Incentive Density made prior to the time that building permits for at least 200 Residential Units have been issued by the County. If Developer, at any time after 200 building permits have been issued by the County, fails all previous tests, Ordinance 298-A requires that Developer have an opportunity to cure. In such an event, the following provisions shall apply:

**4.8.3.4.1** Under circumstances of non-compliance, (a) Developer shall have the right, as a cure, to continue to plat and construct Incentive Density that also complies with the definition of "Estate Lot," provided, however, that the total of Incentive Density Estate Lots within the Resort Community shall not exceed 425 units and no such units shall be developed in the Mountain View neighborhood unless compliance is again achieved with respect to the Incentive Density occupancy standards; and (b) Developer, in order to obtain the right to build Incentive Density other than Estate Lots or to otherwise cure non-compliance under the Incentive Density occupancy standards in a manner other than as described in preceding subpoint (a), may also propose as a cure mechanism an arrangement so as to off set the impacts of Permanent Occupancy on the County through an adequate tax base or may also propose some other mechanism that is reasonably likely to achieve a cure of the non-compliance over time. The County's approval of any such proposal shall not unreasonably be withheld.

**4.8.4** Employee Housing.

**4.8.4.1** Standards.

**4.8.4.1.1** The Developer shall provide for thirty-seven (37) employee households consisting of 82 bedroom suites of employee housing sited within the Resort, not outside of the Community gates. The employee housing shall be clustered together in such a way as to create a high quality sense of community. This employee housing community shall be

integrated into the fabric of the Resort Community and shall be located within either the Resort Village, Resort Highlands, Middle Valley or South Pointe development areas. In all instances, employee housing should have easy access (walking, bicycling, and internal resort transit) to Resort employment generators and be sited in a manner that is generally convenient to the South Summit School District bus routes. All employee housing shall be approved pursuant to the site plan review and approval process herein.

**4.8.4.1.2** All employee housing shall be produced by the Developer within a reasonable time schedule, to be approved by the County, which correlates to the construction of employment generators.

**4.8.4.1.3** The Developer shall provide a specific plan that is acceptable to Summit County for the long-term ownership of the employee units, proposed deed restrictions on the use, rules and regulations regarding occupancy, maintenance obligations and maintenance funding practices that will be used, and affordable rent targets. The plan should also address unit size, quality of construction and general layout.

**4.8.4.1.4** Priority for occupancy of employee housing units shall be given to employees, together with spouse and children, who earn at least 80% of their salaries from employment that is located within the boundaries of the Promontory SPA.

#### **4.8.5** Environmental Enhancement, Conservation, and Preservation Management Plan.

**4.8.5.1** Standards. Developer will implement the Natural Resource Preliminary Assessment and Natural Resource Management Strategy, dated November 4, 1999, by using best management practices to protect key natural communities, maintain open space, improve riparian zones, and control noxious weeds and exotic species, as more fully set forth in Exhibit Q to the Promontory SPA Plan Book of Exhibits.

**4.8.5.1.1** At the time of each final subdivision plat, the Developer shall identify all improvements/enhancements that shall be undertaken in accordance with the implementation plan. Such improvements/enhancements shall be guaranteed under an appropriate DIA.

**4.8.5.1.2** The County may periodically review the progress of the implementation plan with Developer and the Division of Wildlife Resources to identify reasonable measures that can be undertaken to "improve" wildlife habitat. Development compliance with all reasonable recommendations that occur as a result of this review shall become a new benchmark during the annual reporting process.

**4.8.5.1.2.1** Developer shall initiate a program so as to allow wildlife on its resort golf courses, except for tees, greens, water features and landscaped areas.

**4.8.5.1.3** The reuse of waste water, if reasonably feasible and permitted, shall be maximized and used for golf course irrigation. Before commencing with reuse, the Developer shall prepare a final study of the environmental consequences of waster water reuse for review and approval by Summit County.

**4.8.5.1.4** Water quality base line measurements shall be established for drainages affected by the Community. The Developer or Master Homeowners Association shall immediately eliminate any source of pollution in violation of the Clean Water Act or Safe Drinking Water

Act.

**4.8.5.1.5** Upon request by the County, the Developer shall be responsible for providing to Summit County for review and approval specific management plans for any activity that has the potential for causing environmental quality problems, including, but not limited to equestrian operations.

**4.8.5.1.6** The Developer shall eliminate whenever possible significant cut and fill slopes for the construction of roads within the Community. The construction of roads across slopes that exceed 30% is not permitted without specific approval from the Board of Commissioners.

**4.8.5.1.7** The CC&Rs shall include a requirement that the Master Homeowners Association will provide, on an on-going basis, an environmental educational program, approved by the County, geared to potential purchasers, residents and guests of the resort, and the general public that may be crossing the property on the public trail system.

**4.8.5.1.8** The CC&Rs shall contain provisions related to the control of pets, outside fires, and other environmental concerns, including fines and the use of such revenue for environmental enhancement and education.

**4.8.5.1.9** Low intensity recreational activities, such as snowmobiles, bikes, hiking, cross country skiing, and horseback riding, shall be limited to a network of easily identifiable trails within the Community and away from possible wildlife habitats.

**4.8.5.1.10** The design of the northerly access road shall include appropriate traffic speed control devices to ensure slow traffic speeds to minimize impacts on Wildlife.

**4.8.5.1.11** There shall be no over-lot grading allowed (cutting on the uphill side and filling on the down hill side) in connection with home construction or for the purposes of creating flat development sites for non-residential uses except to the extent contemplated by the Design Guidelines in Exhibits C and G.

**4.8.5.1.12** Upon request by the County, the Developer shall submit to the Board of Commissioners an assessment from a recognized expert of the Community's impacts on air quality resulting from the development, particularly with respect to fire places. If it is determined at any time that the Community is a significant contributor to air quality problems in the immediate air sheds, then the Developer shall implement limits on the future installation of wood burning fireplaces. The Developer, at its discretion, may choose to minimize the number of wood burning fire places in the Master Declaration.

**4.8.6** Open Space and Viewshed/Ridgeline Preservation.

There are six kinds of Open Space within the Promontory Community. These are: (1) major Open Space designated on the Master Plan, (2) significant common areas within development neighborhoods which do not contain any type of structure, road, parking lots, or other similar features, (3) small common areas within development neighborhoods in which scenic view and open space value is minimal, (4) large open recreational lands, including golf, (5) small open recreational lands intended for neighborhood benefit, such as neighborhood parks, and (6) Open Space owned by individual lot/property owners in portions of lots that are restricted to prevent disturbance (including no structures) and fencing.

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#### **4.8.6.1 Standards**

**4.8.6.1.1** The Community will contain no less than 60 percent passive open space (approximately 3,900 acres) over the entire Property. Additional open space may be required to protect key viewsheds and other environmentally sensitive areas should the minimum requirement be inadequate. Parking lots and related landscaping shall not be counted as open space. Additionally, small common areas within development neighborhoods in which scenic view and open space value is minimal shall not be counted as part of the 60% open space requirement. Golf courses and areas previously covered by conservation easements shall be allowed as open space.

**4.8.6.1.2** The principal function of passive open space is to organize development in a manner that is consistent with the Eastern Summit County General Plan, the protection of viewsheds and environmentally sensitive areas as enunciated in Ordinance 298-A, and the preservation of nearby and continuing on-site agricultural uses. Thus, the location and configuration of open space must further these independent objectives. With the Open Space areas preserved around the development parcels as shown on Exhibits B and E, the objectives of these Open Space standards have been fulfilled.

**4.8.6.1.3** The passive open space provided must be "meaningful" in nature, namely, open space that is continuous and not unduly broken up by structures or other development configurations. While there may be small open spaces within a development area, the open space referred to here should not be compartmentalized into isolated pockets of green space. With the Open Space areas preserved around the development parcels as shown on Exhibits B and E, the objectives of these Open Space standards have been fulfilled.

**4.8.6.1.4** An operationally feasible portion of the Community open space area may be maintained as an operating cattle ranch, or operated as a part of a nearby ranch. Developer shall be responsible for assuring continuity of any agricultural operations.

**4.8.6.1.5** Four critical viewsheds must be preserved, namely, the west side Hillside Viewshed, the Meadow Viewshed, the South Pointe Viewshed, and the Browns Canyon Road Viewshed, as more specifically identified in Exhibit E. Consistent with Exhibit E and existing conservation easements, no development of structures, intended for occupancy or equestrian facilities, is permitted in Preservation Areas. Development is allowed in Retention Areas so long as it complies with the Development Policy in Section 1.52 of this Agreement and the Supplemental Design Guidelines in Exhibit C. With the Viewshed areas preserved as shown on Exhibit E, the objectives of this standard have been fulfilled.

**4.8.6.1.6** In no instance shall any development be permitted to encroach onto a ridgeline area designated on Exhibit E in a manner that is inconsistent with the requirements of this paragraph. For purposes of this Agreement, ridgeline protection means that on a ridgeline area designated on Exhibit E, building forms shall not break or detract from the natural lines of the hillside or ridgeline. A building that is located a minimum of 50 vertical feet below the ridge will generally be regarded as meeting the ridgeline requirements herein provided. Further, residential units which comply with the approved Supplemental Design Guidelines in Exhibit C and do not break a Ridgeline Area skyline when viewed from U.S. Highway 40, Interstate 80, Highway 248, and the Browns Canyon Road, shall be deemed to fulfill all ridgeline requirements. The County may require at subdivision plat review additional computer imaging to ensure compliance with this benchmark requirement.

**4.8.6.1.7** All common areas within development neighborhoods shall be identified and restricted so as to permanently prohibit any development not authorized by the final subdivision plat.

**4.8.6.1.8** All open recreational lands shall be identified, specific uses designated, and restrictions established at the time of final subdivision plat or site plan approval.

**4.8.6.1.9** A plat note shall be provided on each final subdivision plat that requires building disturbance areas (building envelopes) to be identified by the Master Homeowners Association at the time of design review within each lot and which prohibits any disturbance outside of that area. This information will be available to Summit County upon request to ensure compliance with the Community development policies.

#### **4.8.7 Transportation System.**

##### **4.8.7.1 Standards.**

**4.8.7.1.1** Beginning with the commencement of operations of the first Hotel or Resort Units, or within 24 months of the first subdivision plat approval, Developer will implement an internal transit system for its owners and guests and will provide directly or through outside contractors services as needed to Kimball Junction, Park City, the Salt Lake City International Airport, the Canyons Resort and Kamas. This can be done through an on-call system (passenger to driver) to provide internal and external transit service pick-up for individual residential units, at club and resort facilities and amenities, employee housing, and at locations outside of the Resort Community that are in close proximity to identified external destinations. Thereafter, the program will be phased in as Promontory develops.

**4.8.7.1.2** To the extent possible, the principal resident, guest, and construction vehicle access to all development within the Resort Community shall be maintained through Tollgate Canyon and the Resort Village. Secondary, school bus, and emergency access points shall be permitted, and in certain instances required, in other locations. However, it must be demonstrated that these alternative access points shall not be used as a principal means of access to any portion of the Resort Community.

**4.8.7.1.3** The Resort Community's construction management and transportation management plans shall, to the greatest extent possible, minimize construction traffic on Brown's Canyon Road. As development progresses, Developer shall make such improvements to Brown's Canyon Road that are required to mitigate the specific impacts of this development as are required by the County Engineer.

**4.8.7.1.4** The Promontory transit system shall be of high quality, considering the quality, type and number of transit vehicles, fares, frequencies, and other standard measures. It should be convenient to the residents of the Resort Community. To the extent possible, it should provide connections to other local and regional transit systems. The Promontory transit system shall be appropriately convenient for those employed within the Resort Community, but who live off site. For employees, the transit system shall take into account the unique needs of the Resort's employees, including, but not limited to the seasonal and shift nature of the uses within the Resort Community. The purpose of this benchmark is to ensure that the number of transit service vehicles, fixed routes, fare structures, appropriate passenger waiting facilities, service frequency and flexibility, and other elements of the service are appropriate or

expanded as necessary to accommodate and promote ridership by residents and employees. This on-going transportation assessment shall be subject to periodic review by Summit County and adjustments to the Transportation Plan may be required, where appropriate, by the Board of Commissioners.

**4.8.7.1.5** Prior to the issuance of a certificate of occupancy for the first hotel or within 24 months of the first subdivision plat or site plan approval, whichever comes first, the Master Homeowners Association shall provide and maintain an appropriately sized fleet of transit service vehicles/vans to service the Resort Community.

**4.8.7.1.6** The Developer shall not protest the creation of a Transportation Service District or Service Area which provides transportation services to the Resort Community, if one is proposed for creation in the future, nor shall the Developer protest the annexation into such an existing District or Service Area. In the event Promontory is annexed to a District or Service Area, Promontory may discontinue services that are duplicated by the District or Service Area.

**4.8.7.1.7** In the event that the Resort Community's construction causes damage to this roadway at any time during the build out of the Resort, the Developer shall immediately cause the repair to the roadway in a manner acceptable to the County Engineer.

#### **4.8.8** Design and Thematic Character Guidelines.

**4.8.8.1** Standards. Promontory will implement a comprehensive set of Design and Thematic Character Guidelines as a part of the approval process for each construction project within Promontory. The summary of Design and Thematic Character Guidelines are included as Exhibit G to the Promontory SPA Plan Book of Exhibits. Exhibit G represents certain standards that must be maintained, at a minimum, by the Master Homeowner's Association, and such standards may be amended by the Association from time to time. To the extent possible, the Design Guidelines and the Design and Thematic Character Guidelines will be utilized to guide the design of all structures in the Community, including but not limited to all single family residential dwellings (attached or detached), equestrian facility, gate houses, hotels, employee housing, club and maintenance facilities, schools and fire station. The CC&Rs pertaining to Promontory must remain at all times consistent with these Design and Thematic Character Guidelines.

**4.8.8.1.1** Not all development areas within the Community are alike. Some are more sensitive because of unique environmental features and viewshed locations, particularly those that are identified as viewshed "retention areas." The Developer has assured Summit County that buildings can blend well into the terrain so as to comply with the visual quality requirements of a viewshed "retention area." Supplemental Design Guidelines at Exhibit C are approved to satisfy this requirement and Developer shall comply with the standards contained therein.

**4.8.8.1.2** The CC&Rs shall ensure implementation of a landscape design guidelines in connection with the construction of all residential and commercial structures, and shall require a guarantee of landscape replacement and maintenance for such structures. Such compliance is required to ensure that the Community remains in compliance with the visual quality requirements of the applicable viewshed designation, as defined in this Agreement. These guidelines, attached at Exhibit L, are approved to satisfy this requirement and Developer shall implement those guidelines through design review. Additional landscaping may be required as a part of the design review process.

**4.8.8.1.3** Supplemental landscape may be required outside of building envelopes in order to comply with the Landscaping Plan, as determined by the Design Review Committee or the County. This is intended to enhance the natural plant communities that exist or which have been eliminated or seriously damaged over time.

**4.8.10** Agricultural Preservation.

**4.8.10.1** Standards. Promontory will implement the agricultural preservation program as set forth in Exhibit H of the Promontory SPA Plan Book of Exhibits.

**4.8.10.1.1** The program will include, but is not limited to the acquisition of development rights or conservation easements and/or contributions to the community for undertaking such efforts.

**4.8.10.1.2** The Developer shall provide an adequate program to help assist adjacent ranching operations protect themselves from interference and conflicts caused by or related to the residential uses proposed within the Community.

**4.8.10.1.3** The design guidelines and development standards shall address how conflicts between agricultural uses and the Community will be managed, including fencing and alternatives for dispute resolution.

**4.8.10.1.4** There shall be a mechanism of some type (plat lien or otherwise) established by Developer to ensure that the Agricultural Preservation Contribution is paid by the purchaser to the County at the time of closing on each Lot.

**6.5.1** Design Review Committee Preliminary Review.

Prior to the submission to the County of any Sketch Plans for a proposed subdivision or condominium Plat, an Applicant shall submit its Sketch Plans to the Design Review Committee of the applicable Association for the Design Review Committee's review under the Design Guidelines then in force. The Applicant shall be required to have obtained the preliminary opinion of the Design Review Committee prior to submitting a Sketch Plan to the County.

**EXHIBIT F**

Applicable Summit County Tax Identification Numbers are as follows:

NS-2-A; NS-3; NS-90; SS-26; SS-51; SS-55; SS-23; SS-25; SS-52; SS-66; SS-54-A;  
SS-80-6-A; SS-44-A; SS-79-B; SS-51-C-1; SS-23-A; SS-23-B; SS-23-C; SS-26-A;  
SS-26-C; NS-2-A-1; NS-90-A; NS-3-A; NS-3-B; NS-1-A; NS-1; NS-2; SS-51-C; SS-44-A-1

Applicable Wasatch County Tax Identification Number is OWC-0000-0-036-014