

**AFTER RECORDING, RETURN TO:**  
RS21 MAYFLOWER LLC  
160 West Canyon Crest Road  
Alpine, Utah 84004

Ent 515783 Bk 1399 Pg 418 - 550  
MARCY M. MURRAY, Recorder  
WASATCH COUNTY CORPORATION  
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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
MARCELLA**

**RS21 MAYFLOWER LLC,  
a Delaware limited liability company**

**Declarant**

**February 28, 2022**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
MARCELLA**

THIS AGREEMENT AMENDS AND RESTATES IN ITS ENTIRETY THAT CERTAIN DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR MARCELLA (THE "ORIGINAL DECLARATION"), WHICH ORIGINAL DECLARATION IS DATED FEBRUARY 15, 2022 AND WAS RECORDED IN THE OFFICIAL RECORDS OF THE WASATCH COUNTY RECORDER ON FEBRUARY 15, 2022 AS ENTRY NO. 515245 IN BOOK 1397 AT PAGE 1105.

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MARCELLA** (this "**Declaration**") is made this 28<sup>th</sup> day of February, 2022, by RS21 MAYFLOWER LLC, a Delaware limited liability company ("**Declarant**").

**RECITALS**

A. Declarant owns certain real property located in Wasatch County, Utah and more particularly described on Exhibit A hereto (the "**Development Property**"). The Development Property is part of the "**Initial Mountainside Property**" and "**Resort**," as such terms are defined in that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Mountainside Village and Resort (as amended, modified, superseded or supplemented from time to time, the "**Master Declaration**"), which Master Declaration was recorded in the office of the Wasatch County Recorder on August 21, 2020 as Entry No. 483149 in Book 1308 at Page 27.

B. Declarant desires and intends to develop in phases all or portions of the Development Property as a common scheme and planned mountainside residential development to be initially known as Marcella (as further defined herein, the "**Development**").

C. The Resort, including the Development Property, possesses great natural beauty that Declarant intends to preserve through the use of a coordinated plan of development and the terms of this Declaration and the Master Declaration. It is anticipated that the plan will provide for comprehensive land planning, harmonious and appealing landscaping and improvements, and provisions addressing urban and wildlife interface. It is assumed that each purchaser of property in the Development will be motivated to preserve these qualities through community cooperation and by complying with not only the letter but also the spirit of this Declaration. This Declaration does not create a condominium within the meaning of the Utah Condominium Ownership Act.

D. The Resort is intended and designed to be, and will operate and be promoted as, a lively, energetic, four-season, destination resort community located adjacent to the Mountainside Ski Property. The Resort is presently planned to include the property comprising the Development as well as additional properties and projects on other lands owned by the Ski Terrain Owners, and

others. Nothing contained in this Recital "D," however, shall be construed or interpreted in a manner that commits the Declarant, the Master Association, the Association or any other person to develop or construct any of the facilities or to provide any services that are authorized in the Entitlements Documents (as defined herein) or currently planned for the Development by Declarant.

E. This Declaration provides a flexible and reasonable procedure for the Development's future expansion as Declarant deems appropriate and provides for its overall development, administration, maintenance and preservation. An integral part of the development plan is the creation of the Association to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

F. The "**Mountainside Ski Property**," (as defined herein) is located on land owned, leased or otherwise controlled by the "**Ski Terrain Owners**" (as defined herein) and is operated and maintained by the Mountain Operator (as defined herein). Cooperating in the operation, maintenance and continued use of the Mountainside Ski Property is important to the development, use and enjoyment by the Owners (as defined herein) of the Units (as defined herein) within the Development and their Guests (as defined herein). The Mountainside Ski Property is not a part of the Development and is not subject to this Declaration, although the Mountain Operator (as defined herein) has certain rights, privileges and obligations with respect to portions of the Development pursuant to this Declaration, the Mountain Operator Agreement (as defined herein) and the Mountain Easement Agreements (as defined herein) referred to in Sections 5.12 and 5.13 below. The Mountain Operator and its successors and assigns shall have the right but not the duty to enforce the terms and provisions of this Declaration as an owner of the lands benefited by its terms and conditions in addition to its rights to enforce the terms of the Mountain Operator Agreement and the Mountain Easement Agreements.

G. Declarant will provide leadership in organizing and administering the Development during the "**Administrative Control Period**" (as defined herein), and may collect a fee in connection therewith, but expects property Owners in the Development will accept the responsibility for community administration after the Administrative Control Period.

H. Property made subject to this Declaration is also subject to the Master Declaration (as defined herein), the provisions of which are not amended, modified, waived or superseded by this Declaration.

I. Declarant desires to subject the Development Property to the covenants, conditions, restrictions, easements and assessments set forth in this instrument for the benefit of such property and its present and subsequent Owners.

**NOW, THEREFORE**, Declarant hereby declares, covenants and agrees that each of the foregoing recitals is incorporated into and made a part of this Declaration, and further declares that the Development Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and assessments, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

As used in this Declaration, the terms set forth below shall have the following meanings, and matters relating to the interpretation of this Agreement shall be determined as set forth on Exhibit B:

1.1 “**Administrative Control Period**” means (a) the period of time during which the Class “B” Member retains authority to appoint and remove members of the Board or (b) exercise power or authority assigned to the Association under the Governing Documents. The Administrative Control Period shall terminate on the first to occur of the following:

(a) Sixty (60) days after the date when one hundred thirty-five (135) Residential Units have certificates of occupancy issued for residential structures thereon and have been conveyed to Persons other than Builders or Declarant’s Affiliates;

(b) December 31, 2070; or

(c) The day the Class “B” Member in its discretion, after giving written notice to all Unit Owners, Records an instrument voluntarily surrendering all rights to control activities of the Association.

1.2 “**Annual Assessments**” has the meaning set forth in Section 11.5.

1.3 “**Applicable Law**” means any and all laws, statutes, ordinances, rules, regulations, codes, orders, injunctions, decrees and rulings of any Governmental Authority with jurisdiction, including any amendments or modifications thereto.

1.4 “**Assessment Units**” means the assessment units allocated to Units in the Development for purposes of determining the fair and equitable allocation of Assessments in accordance with Article 11.

1.5 “**Assessments**” means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration, including, without limitation, Annual Assessments (including Cost Center Assessments), Special Assessments, Emergency Assessments, and Special Individual Assessments, all as described in Article 11.

1.6 “**Association**” means the nonprofit corporation to be formed to serve as the association of Unit Owners as provided in Article 9 below, and its Members include, and are limited to, the Owners of the Units in the Development.

1.7 “**Assumed Risks**” has the meaning set forth in Section 16.9.

1.8 “**BLXM**” means BLX Mayflower, LLC, a Delaware limited liability company.

1.9 “**Board of Directors**” or “**Board**” mean and refers to the Board of Directors of the Association.



1.10 **"Bound Parties"** has the meaning set forth in Section 18.1(a).

1.11 **"Builder"** means any Person who purchases in a single transaction one (1) or more Units for the purpose of constructing a Marcella Club Facility or a residential dwelling on a Residential Unit and with the intent of selling, in the case of Residential Unit(s), such Residential Unit(s) together with the residential dwellings located thereon, to a Consumer without any personal use thereof by such Builder and in the ordinary course of its business as determined by the Declarant.

1.12 **"Bylaws"** means the Bylaws of the Association attached as Exhibit C, as the same may be amended from time to time.

1.13 **"Claim"** has the meaning set forth in Section 18.1(b).

1.14 **"Claimant"** has the meaning set forth in Section 18.2(a).

1.15 **"Class "A" Member"** has the meaning set forth in Section 9.3(b).

1.16 **"Class "B" Member"** has the meaning set forth in Section 9.3(b).

1.17 **"Commercial Unit"** or **"Commercial Units"** means a Unit or any portion of a Unit that is designed for, or in which is operated or conducted primarily for the Marcella Club, or such other non-residential use or service that is specifically identified as a Commercial Unit in a Supplemental Declaration, or in another Recorded instrument recorded by the Declarant and affecting a portion of the Development. As of the date this Declaration is Recorded, "Parcel B" identified on the Galena Two plat of the Development Property is the only Commercial Unit in the Development.

1.18 **"Common Areas"** means any portion of the Development Property designated as Common Areas on a Recorded plat thereof, and any other real or personal property, including easements, that the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

(a) That portion of the Development which is owned, leased, controlled or maintained by the Association for the common use, enjoyment or benefit of all Owners. If Common Area acquired by the Association is subject to a prior unaccepted offer of dedication by Declarant to a public agency or is subject to an unrescinded offer of gift to a nonprofit corporation, the Association or Declarant, as the case may be, shall complete such dedication or gift at any time upon request by such agency or corporation. Some Common Areas may consist of, and be created as, easements in favor of the Association over other Units (such areas to be referred to herein or in a Supplemental Declaration as **"Easement Common Area"**). Portions of the Common Areas may include, open space areas, recreational facilities, and pedestrian plaza areas, as well as certain easements identified on a subdivision map as ski, trail or other easements which the Association shall be obligated to maintain upon conveyance of those easements from Declarant to the Association.

(b) If Property already subject to this Declaration is further subdivided or developed, additional Common Areas may be designated in a Supplemental Declaration to be

owned, leased, controlled or maintained by the Association for the use, enjoyment or benefit of the Owners.

(c) Common Areas do not mean or include: (i) the Mountainside Ski Property, (ii) Mountain Operations (other than those Mountain Operations that are permitted on Common Areas pursuant to the Mountain Operator Agreement or the Mountain Easement Agreements), (iii) Master Common Areas and Facilities (as defined in the Master Declaration), or (iv) the Commercial Units and/or the Marcella Club and Marcella Club Facilities.

1.19 **“Common Areas and Facilities”** means the Common Areas and the Common Facilities, collectively.

1.20 **“Common Expenses”** means the actual and estimated costs incurred or anticipated to be incurred by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board finds reasonable and necessary pursuant to the Governing Documents, including: (i) maintenance, management, operation, repair and replacement of the Common Areas and Facilities, including those costs not paid by an Owner who is responsible for such payment; (ii) costs of management and administration of the Association including, but not limited to, compensation paid by the Association to any managers, accountants, attorneys, and other consultants and employees; (iii) the costs of all utilities, landscape maintenance expenses, and other services benefiting the Common Areas and Facilities (including any fees, costs or expenses associated with water rights or water shares allocated by any private water company to the Property and collectively billed by such water company to the Association); (iv) the costs of security services; (v) the costs of fire, casualty and liability insurance, worker’s compensation insurance, and other insurance covering the Common Areas and Facilities; (vi) the costs of bonding the directors, officers, agents, employees and managers of the Association; (vii) taxes paid by the Association; (viii) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Areas and Facilities or any portions thereof, including, without limitation, real property taxes or assessments, if any, levied against the Common Areas and Facilities; (ix) all reserves; (x) costs and expenses incurred to comply with and perform fully the terms and provisions of the Master Declaration, the Mountain Operator Agreement and the Mountain Easement Agreements; (xi) Declarant’s annual administrative fee, (xii) all Assessments assessed by the Master Association that are passed through to Owners, (xiii) all Assessments that the Association must pay to the Master Association in accordance with the Master Declaration, and (xiv) the costs of any other item or items incurred by the Association in carrying out its obligations and authorized functions pursuant to the Master Declaration, this Declaration or any Supplemental Declaration, and the Bylaws, as determined in the reasonable exercise of discretion by the Board of Directors and its managers and agents, pursuant to this Declaration.

1.21 **“Common Facilities”** means all personal property, equipment and Improvements on real property owned, leased, controlled or maintained by the Association, and shall include personal property, equipment and Improvements financed by, or secured by the assets of the Association (which assets include the Association’s right to levy and/or collect Assessments, charges, fines and penalties pursuant to this Declaration, and all amounts so collected). Common Facilities may include personal property, equipment and Improvements on real property not owned by the Association, but which Declarant, Declarant’s Affiliates, or the Association has agreed to

operate and/or maintain on behalf of any Governmental Authority. Common Facilities shall not include the Marcella Club or Mountain Operations.

1.22 **"Community-Wide Standard"** means the standard of conduct, maintenance, or other activity generally prevailing at the Development, or the minimum standards established pursuant to the Master Declaration, Design Guidelines, Rules, and Board resolutions, whichever is the highest standard. Declarant shall initially establish such standard which may include both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Development change.

1.23 **"Cost Center"** means a particular portion of the Property that is designated as a Cost Center in a Supplemental Declaration or in another Recorded instrument affecting a portion of the Development. Cost Centers are typically established when there are particular services that will be provided by the Association to some, but less than all, Unit Owners and the cost of providing those services should, in fairness, be borne only by the Owners of Units within the designated Cost Center. So long as Declarant owns any portion of the Development the creation and designation of Cost Centers shall require the consent of Declarant and thereafter the approval of a majority of the members of the Board of Directors.

1.24 **"Cost Center Assessment"** means the Assessment imposed by the Association pursuant to Section 11.4, on Owners of Units within a Cost Center in order to recover Cost Center Expenses incurred by the Association.

1.25 **"Cost Center Assessment Component"** means those Common Expenses that have been designated as a part of a Cost Center pursuant to Section 11.5.

1.26 **"Cost Center Budget"** means an itemized written estimate of the Cost Center Assessments and the Cost Center Expenses for a particular Cost Center prepared from time to time by the Board of Directors pursuant to the provisions of the Bylaws.

1.27 **"Cost Center Expenses"** means and refers to the actual and estimated costs or expenses incurred by the Association for the exclusive benefit of Owners within a particular Cost Center and may include, without limitation, any of the kinds of expenses that are described as Common Expenses hereunder, but which pertain only to the Units or the Owners within the designated Cost Center.

1.28 **"Declarant"** means and refers to:

(a) RS21 MAYFLOWER LLC, a Delaware limited liability company, and any successor or assignee who acquires all or substantially all of its assets by merger, consolidation or purchase.

(b) Any Person to which Declarant has assigned any or all of its rights and obligations as "Declarant" hereunder by an express assignment which may be incorporated into a Recorded instrument, including, a deed, lease, option agreement, land sale contract, license or Supplemental Declaration, and/or assignment expressly transferring such rights and obligations if such assignee agrees in writing with Declarant to accept such assignment; and

(c) Subject to the foregoing, at any given time there may be more than one Declarant so long as the document or instrument conferring "Declarant" status clearly identifies the Unit(s) over which the designated Declarant has jurisdiction.

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

1.30 "**Declaration**" means this Declaration of Covenants, Conditions, Restrictions and Easements for Marcella, as it may be amended, supplemented, restated, or superseded from time to time.

1.31 "**Deposit**" has the meaning set forth in the Master Declaration.

1.32 "**Design Guidelines**" means those rules, regulations and guidelines for the Development adopted from time to time pursuant to Article 8 with respect to structures, landscaping, fences and other Improvements within the Development. Design Guidelines may impose different conditions upon various Units in light of differences in use, topography, visibility or other factors. Design Guidelines shall be effective when they are adopted by Declarant as provided in Article 8. Design Guidelines shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for design review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, landscaping, drainage, lighting, tree removal, fences and similar features which may be used in the Development; provided, however, that the Design Guidelines shall not be in derogation of the minimum standards established by this Declaration or the Master Declaration, or be administered, interpreted or applied in an arbitrary, capricious, or discriminatory manner.

1.33 "**Design Review Committee**" or "**DRC**" means the committee appointed pursuant to Article 8 of the Master Declaration.

1.34 "**Development**" means the master planned community that Declarant intends to develop on the Development Property.

1.35 "**Development Property**" has the meaning set forth in the Recital A.

1.36 "**Easement Common Area**" has the meaning set forth in Section 1.18(a).

1.37 "**Eligible Mortgage Holder**" has the meaning set forth in Section 13.6.

1.38 "**Emergency Assessment**" has the meaning set forth in Section 11.8.

1.39 "**Entitlement Documents**" is a collective term that means and refers to each of the following, as they be amended, supplemented, restated, or superseded from time to time:

(a) The Mountainside Master Plan;

- (b) The Mountainside Master Development Agreement; and
- (c) Tax Sharing and Reimbursement Agreement.

1.40 **“Exclusive Use Common Areas”** means those portions of the Common Areas the exclusive use of which, subject to the rights of the Association and Declarant, has been granted to one or more (but less than all) Owners of particular Units. Exclusive Use Common Areas shall be created pursuant to the terms of this Declaration or by being designated as such in a Supplemental Declaration or other Recorded instrument.

1.41 **“Founders Membership Owner”** means the first Owner of a Residential Unit that is not the Declarant or a Builder

1.42 **“Galena One”** means that certain plat of subdivision titled “Galena One,” recorded on February 15, 2022 as Entry No. 515243 in the official records of the Wasatch County Recorder’s Office, being an amendment of Lot 15B-1 of the MIDA Master Development Plat Lots 1 & 15B and Parcels 1&2 Amended recorded February 10, 2021 as Entry No. 493880 on file and of record in Wasatch County Recorder’s Office

1.43 **“Galena Two”** means that certain plat of subdivision titled “Galena Two,” recorded on February 15, 2022 as Entry No. 515244 in the official records of the Wasatch County Recorder’s Office, being an amendment of Lots 15B-2, 15B-3, 15B-4 & 15B-5 of the MIDA Master Development Plat Lots 1 & 15B and Parcels 1&2 Amended recorded February 10, 2021 as Entry No. 493880 on file and of record in Wasatch County Recorder’s Office, and also amending Lot 15A of the MIDA MASTER DEVELOPMENT PLAT, recorded June 30, 2020 as Entry No. 480155 on file and of record in the Wasatch County Recorder’s Office.

1.44 **“Governing Documents”** means the Articles of Incorporation and Bylaws of the Association, the Master Declaration and the Master Association rules and regulations, this Declaration, any Recorded Supplemental Declaration, the Design Guidelines, Rules, and resolutions duly adopted by the Board of Directors of the Association, and any amendments or replacements to any of the foregoing documents.

1.45 **“Governmental Authority”** means the United States of America, the State of Utah, Wasatch County, MIDA, Jordanelle Special Service District, Wasatch County Fire District, and any agency, department, special service district, commission, board, bureau, or instrumentality of any of them, having jurisdiction over the Development when acting in their governmental not proprietary capacity.

1.46 **“Guest”** means any family member, customer, agent, employee, guest or invitee of an Owner, Lessee, Declarant or the Mountain Operator, and any Person who has any right, title or interest in a Unit which is not the fee simple title to the Unit (including a Lessee), and any family member, customer, agent, employee, guest or invitee of such Person.

1.47 **“Hospitality House”** has the meaning set forth in Section 6.10.

1.48 **“Improvement”** means any change from natural grade, or the construction or exterior alteration of any structure, building, landscaping and appurtenances thereto of every type

and kind, including buildings, outbuildings, walkways, the paint on all exterior surfaces, waterways, sprinkler pipes, irrigation systems, storm drainage systems, garages, hot tubs, spas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, fire breaks, poles, signs, exterior air conditioning and water softener fixtures or equipment, solar equipment, and the creation of trails in any Common Area that are proposed for maintenance by the Association. The term "Improvement" shall not include, however: (a) any improvement or construction activity undertaken by or on behalf of Declarant or Declarant's Affiliates, including, without limitation, any improvement or construction activity to the Commercial Units and/or the Marcella Club and Marcella Club Facilities; (b) any improvement or construction activity confined exclusively to the interior of any Improvement that is constructed on a Unit, unless such activity involves the roof or bearing walls of the building containing the Unit, or (c) any Improvement undertaken by the Mountain Operator pursuant to the Mountain Operator Agreement or the Mountain Easement Agreements.

1.49 "**Indemnified Party**" has the meaning set forth in Section 10.2.

1.50 "**Interim Easement Area**" has the meaning set forth in Section 14.6.

1.51 "**Lessee**" means any Person who is a lessee under a lease of all or any part of a Unit or the lessees of any space within a building on any Unit. All such leased property is hereinafter referred to as the "**Leased Premises**." Lessees shall not be Members of the Association, but shall, through the Owner of the Leased Premises and subject to terms of such lease, be entitled to certain rights and undertake certain obligations with respect to the Development, as hereinafter provided. Such rights and obligations are appurtenant to Lessee's lease of the Leased Premises. The term "Lessee" shall include Declarant to the extent it is a Lessee as herein defined and shall include a sublessee to the extent the sublessee becomes a Lessee pursuant to Section 3.6, but it shall not include the Association or any Governmental Authority.

1.52 "**Losses**" has the meaning set forth in Section 10.2.

1.53 "**Marcella Club**" means a private recreational club located within the Commercial Units and operated in accordance with the Marcella Club Documents.

1.54 "**Marcella Club Documents**" means collectively, the Marcella Club Membership Application, the Marcella Club Membership Plan, the Marcella Club Rules and Regulations, and such other documents adopted by the Declarant from time to time governing membership in the Marcella Club, all as the same may be amended, modified, or supplemented from time to time. Marcella Club Documents pertain solely to the Marcella Club, are separate from this Declaration, and are not enforced by the Association or the Master Association in any manner.

1.55 "**Marcella Club Facilities**" means any and all facilities and amenities referenced in the Marcella Club Documents and specifically approved in writing by the Master Association, such approval not to be unreasonably withheld, conditioned, or delayed.

1.56 "**Marcella Club Member**" or "**Marcella Club Members**" means any member(s) of the Marcella Club accepted pursuant to the Marcella Club Documents, including, without limitation, Owners and other third parties that may or may not be Owners.

1.57 “**Marcella Club Membership Application**” means any club membership application(s) required to become a Marcella Club Member, as such may be amended and supplemented from time to time.

1.58 “**Marcella Club Membership Plan**” means any club membership plan(s) prepared for the operation of the Marcella Club and Marcella Club Facilities, as such may be amended and supplemented from time to time.

1.59 “**Marcella Club Rules and Regulations**” means any and all rules and regulations enacted for the administration and operation of the Marcella Club and Marcella Club Facilities approved in writing by the Master Association, such approval not to be unreasonably withheld, conditioned, or delayed, as such may be amended and supplemented from time to time with the consent of the Master Association, such consent not to be unreasonably withheld, conditioned, or delayed.

1.60 “**Master Association**” has the meaning set forth in the Master Declaration.

1.61 “**Master Declarant**” means Person identified as the “Declarant” under the Master Declaration, as such Person is identified or designated from time-to time.

1.62 “**Master Declaration**” has the meaning set forth in Recital A.

1.63 “**Master Developer**” means Person identified as the “Master Developer” under the Mountainside Master Development Agreement, as such Person is identified or designated from time-to time.

1.64 “**Member**” means and refers to a Person entitled to membership in the Association as provided for in this Declaration.

1.65 “**MIDA**” means the Utah Military Installation Development Authority.

1.66 “**Mining Uses**” shall mean the use of all or any portion of the Property for commercial extraction or production of gold, silver, sand, gravel, aggregate or any other earth product, mineral or metal for export from the parcel in which it is located.

1.67 “**Mortgage**” means a mortgage or a trust deed; “**Mortgagee**” means a beneficiary or holder of a Mortgage; and “**Mortgagor**” means a mortgagor, trustor or a grantor of a Mortgage.

1.68 “**Mountain Club**” means an entity operating a private recreational club located within the Resort and/or Mountainside Ski Property and operated in accordance with the Mountain Club Documents.

1.69 “**Mountain Club Documents**” means collectively, the Mountain Club Membership Application, the Mountain Club Membership Plan, the Mountain Club Rules and Regulations, and such other documents adopted by the Master Declarant or Mountain Operator from time to time governing membership in the Mountain Club, all as the same may be amended, modified, or supplemented from time to time. Mountain Club Documents pertain solely to the

Mountain Club, are separate from this Declaration, and are not enforced by the Association or the Master Association in any manner.

1.70 “**Mountain Club Facilities**” means any and all facilities and amenities referenced in the Mountain Club Documents.

1.71 “**Mountain Club Member**” or “**Mountain Club Members**” means any member(s) of the Mountain Club accepted pursuant to the Mountain Club Documents, including, without limitation, Owners and other third parties that may or may not be Owners.

1.72 “**Mountain Club Membership Application**” means any Mountain Club Membership application(s) required to become a Mountain Club Member, as such may be amended and supplemented from time to time.

1.73 “**Mountain Club Membership Plan**” means any Mountain Club Membership plan(s) prepared for the operation of the Mountain Club and Mountain Club Facilities, as such may be amended and supplemented from time to time.

1.74 “**Mountain Club Rules and Regulations**” means any and all rules and regulations enacted for the administration and operation of the Mountain Club and Mountain Club Facilities and approved in writing by the Master Association, as such may be amended and supplemented from time to time.

1.75 “**Mountain Easement Agreements**” means and refers to any Recorded easement in favor of the Ski Terrain Owners or Mountain Operator now in existence or hereafter Recorded relating to Mountain Operations, including, without limitation, that certain Easement Agreement Recorded in the office of the Wasatch County Recorder on November 30, 2021 as Entry No. 511414. Declarant and the Association are hereby authorized and empowered to grant or enter additional Mountain Easement Agreements or amend Existing Mountain Easement Agreements with the Ski Terrain Owners or the Mountain Operator, so long as such easements and/or amendments do not (i) impair the rights of ingress or egress to any Unit; (ii) further encumber any Unit owned by a person other than Declarant without the Owner of the Unit joining in the grant of the Mountain Easement Agreement, provided such joinder may not be withheld if the encumbrance is an increase of the footprint of the applicable easement area and such increased footprint is outside of the designated building envelope for the applicable Unit as shown on a Plat; or (iii) materially increase the scope of the applicable Mountain Easement Agreement with respect to size and use. Notwithstanding the foregoing, no Owner shall have the right to require the Declarant or Association to grant or enter into any additional Mountain Easement Agreement or to amend any existing Mountain Easement Agreement and nothing in this Declaration is intended to impair or otherwise affect the discretion of the Ski Terrain Owners or the Mountain Operator with respect to any Mountain Easement Agreement, which discretion shall be the sole and absolute judgment of the Ski Terrain Owners or the Mountain Operator, each as applicable. Upon execution and Recordation in the Official Records, the Mountain Easement Agreements shall be binding on the Association and all other Owners of any portion of the Property as successors to Declarant.

1.76 “**Mountain Operations**” means, without limitation, all of the following facilities used in conjunction with the ownership, management, maintenance, replacement or operation of



the Mountainside Ski Property as a four season resort, which may or may not be located on the Mountainside Ski Property, and which are owned, leased or operated by the Ski Terrain Owners, Mountain Operator, Declarant or any Person designated by Declarant or the Mountain Operator or to which the Mountain Operator has the right to access, use or enjoy under the Mountain Operator Agreement or the Mountain Easement Agreements: ski tows, lifts, magic carpets, people movers, tramways and gondolas (including towers, cables and structures or facilities used to maintain, operate or otherwise use or operate any and all such facilities, including communication wires and devices that are part of such tows, lifts, carpets, people movers, gondolas and tramways); snowmaking lines, machines, pumps, buildings, equipment, ponds or other facilities; ski terrain, trails and runs; roads used in connection with the operation of the Ski Terrain, including, but not limited to, skiing, maintenance or operation of facilities and terrain; areas occupied or used for tow or lift lines or skier assembly areas; areas which are occupied by open racks for skis and snowboards which are available for use by the public; snowshoe trails, Nordic trails and facilities, ski schools and summer activity meeting areas; ski patrol facilities and first aid facilities; areas or facilities occupied or used for sale of mountain operation tickets, for sale of ski school lessons, or for offices of the owner(s) or Mountain Operator of the Mountainside Ski Property; facilities and areas for the transportation drop-off of skiers and snowboarders who desire access to other Mountain Operations; mountain biking and hiking trails and services; flow courses; food service facilities; general congregation, assembly and eating facilities and other users of the Mountain Operations; sport shops; day ski lodges; areas for Special Events; and any other structures, improvements, operations and activities of the Mountain Operator that are either located on the Mountainside Ski Property or authorized pursuant to the Mountain Operator Agreement.

1.77 “**Mountain Operator**” means BLXM and/or any other Person which acquires, leases and/or is delegated by written instrument the rights, benefits, duties and obligations of the operator of the Mountainside Ski Property. The written instrument may specify the extent and particular rights, benefits, duties and obligations which are being acquired, leased or delegated, in which case the Mountain Operator shall retain all other rights, benefits, duties and obligations.

1.78 “**Mountain Operator Agreement**” means an easement(s), agreement(s) or lease(s) between Mountain Operator (or Mountain Operator’s Affiliate) and the Ski Terrain Owners pertaining to the following, as such easement(s), agreement(s) or lease(s) may be entered into, amended, modified, superseded or replaced from time to time that may provide for, among other things:

- (a) joint promotional advertising of the Resort, Development and Mountainside Ski Property by Mountain Operator as a year-round destination resort;
- (b) security services for the Resort;
- (c) parking and traffic control within the Resort and Development;
- (d) Special Events; and
- (e) other activities and rights of the Mountain Operator.

1.79 “**Mountain Operator’s Affiliate**” means any Person directly or indirectly controlling, controlled by or under common control with Mountain Operator, and shall include,

without limitation, any general or limited partnership, limited liability company, limited liability partnership, or corporation in which Mountain Operator (or another Mountain Operator's Affiliate) is a general partner, managing member or controlling shareholder.

1.80 **"Mountainside Master Development Agreement"** means that certain Mountainside Resort Master Development Agreement dated as of August 19, 2020 between BLXM and MIDA, as amended, modified, replaced or superseded from time to time.

1.81 **"Mountainside Master Plan"** means the Mountainside Master Plan Approval dated December 18, 2018, adopted by MIDA based on the Application for Master Plan Approval, Constraints Analysis and Density Determination previously submitted to and approved by Wasatch County, as amended, modified, replaced or superseded from time to time.

1.82 **"Mountainside Ski Property"** means the real property owned or leased, and the easements held, by the Mountain Operator, Mountain Operator's Affiliates, or the Ski Terrain Owners, or their respective affiliates, and successors in interest, and improved or held for use in connection with seasonal or year-round recreational amenities, currently existing or hereafter constructed on, adjacent to or in the vicinity of any portion of the Development, including, without limitation, lifts, gondolas, ski runs and trails, hiking trails, mountain biking trails, flow courses, restaurant facilities and other related equipment, improvements and property of the Ski Terrain Owners or Mountain Operator. The Mountainside Ski Property is not part of the Development.

1.83 **"Official Records"** means the official records of the Wasatch County Recorder.

1.84 **"Operations Fund"** has the meaning set forth in Section 11.13.

1.85 **"Open Space Parcel"** means a Unit or any portion of a Unit that is designated on a Plat as an "Open Space Parcel."

1.86 **"Original Sale"** means (a) the original sale of a Unit built by a Builder if the Unit was constructed by such Builder with the intent of selling the same to consumers without any personal use thereof by such Builder, and (b) in any other case, the first sale of a Unit after the original sale by Declarant or Declarant's Affiliates.

1.87 **"Owner"** means any Person, including Declarant and Declarant's Affiliates, owning of Record a fee simple title interest in and to any Unit in the Development, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in a Unit (unless such Mortgagee has acquired fee simple title interest in such Unit pursuant to foreclosure or any proceedings in lieu of foreclosure). The rights, obligations and other status of being an Owner commence upon acquisition of the ownership of a Unit and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination. If a Unit is Sold under a Recorded contract of sale, and the contract so provides, the purchaser (rather than the fee owner) will be considered to be the "Owner" for the purposes of this Declaration.

1.88 **"Owner's Related Parties"** has the meaning set forth in Section 16.9.

1.89 “**Person**” means any natural person, corporation (including any nonprofit mutual benefit or public benefit corporation), partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other person or entity recognized as being capable of owning real property under the laws of the State of Utah.

1.90 “**Phase**” means a discreet portion of the Development Property platted into Units pursuant to a Recorded plat of subdivision and identified as a Phase in this Declaration or a Supplemental Declaration. As of the date this Declaration is Recorded, two (2) Phases are finalized, comprised of the Units identified in the Galena One and Galena Two plats of the Development Property.

1.91 “**Private Amenity[ies]**” means any real property, improvements and/or facilities thereon located within the Development which Persons other than the Association own or operate for recreational and related purposes, on a club membership basis or otherwise, including, without limitation, the Marcella Club, the Mountain Club, the Mountainside Ski Property and any non-Association owned ski lifts and runs, and all related and supporting facilities and improvements.

1.92 “**Property**” means the Development Property. The Mountainside Ski Property is not subject to this Declaration but shall have the benefit of the Declaration, as applicable. At times in this Declaration, the Property or Development Property are referred to generally as the “Development.”

1.93 “**Proposed Residential Unit**” means any of the Residential Units planned for the Development.

1.94 “**Public Areas**” means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration or any Supplemental Declaration.

1.95 “**Put Option**” has the meaning set forth in Section 17.9(h).

1.96 “**Record**” “**Filed**,” “**Recorded**” or “**Recordation**” mean, with respect to any document, the recordation or filing of such document within the Official Records.

1.97 “**Released Parties**” has the meaning set forth in Section 16.9.

1.98 “**Reserve Fund**” has the meaning set forth in Section 11.14.

1.99 “**Reserve Fund Assessment**” has the meaning set forth in Section 11.14.

1.100 “**Residential Unit**” means a Unit in the Development that is intended to be improved with a single-family residence. As of the date this Declaration is Recorded, “Lot 1” through “Lot 20” identified on the Galena One Recorded plat of the Development Property and “Lot 21” through “Lot 60” identified on the Galena Two Recorded plat of the Development Property comprise all of the Residential Units in the Development.

1.101 “**Resort**” has the meaning set forth in Recital A.

1.102 “**Resort Foundation**” shall have the meaning set forth in the Master Declaration.

1.103 “**Resort Hazards**” has the meaning set forth in Section 16.1.

1.104 “**Resort Uses and Activities**” has the meaning set forth in Section 16.1.

1.105 “**Respondent**” has the meaning set forth in Section 18.2(a).

1.106 “**Reviewer**” has the meaning set forth in the Master Declaration.

1.107 “**Rules**” means the restrictions and rules adopted by the Association, as the same may be supplemented, modified and repealed from time to time by the Association in accordance with Section 3.4(b) of this Declaration and the Association Bylaws.

1.108 “**Ski Terrain Owners**” means BLX Lease LLC and BLX Lease 2 LLC, each a Delaware limited liability company, and their respective Affiliates, successors and assigns.

1.109 “**Sold**” means that legal title has been conveyed or that a contract of sale has been executed and Recorded under which the purchaser has obtained the right to possession.

1.110 “**Special Assessment**” has the meaning set forth in Section 11.7.

1.111 “**Special Individual Assessment**” has the meaning set forth in Section 11.10(a).

1.112 “**Special Events**” means special events occurring at the Resort, including concerts, performing arts, festivals, fairs, tournaments, sports federation events, Olympics, Paralympics, and qualifying events and other events planned or sponsored by the Ski Operator, Master Association and/or Association in whole or in part.

1.113 “**Supplemental Declaration**” means any declaration which may be Recorded which supplements this Declaration and which identifies the Residential Units and Commercial Units located in an existing or future Phase of the Development, which Supplemental Declaration may include provisions affecting solely Units within a particular Phase of the Development. Declarant may Record a Supplemental Declaration with respect to any Phase of the Development at any time prior to the sale of a Unit in that Phase to a third party who is not a Declarant’s Affiliate, and at any time thereafter with the consent of a majority of the Owners of Units in such Phase.

1.114 “**Tax Sharing and Reimbursement Agreement**” means that certain Tax Sharing and Reimbursement Agreement dated as of August 19, 2020 by and among MIDA, Ex Utah Development, LLC, BLX LLC, BLX Mayflower LLC, BLX Pioche LLC, BLX Land LLC, BLX MWR Hotel LLC, and the Ski Terrain Owners, as it may be amended, supplemented, restated or superseded from time to time.

1.115 “**Time Share Project**” means a project that includes “timeshare interests” as defined in the Utah Timeshare and Camp Resort Act (Utah Code Ann. §§57-19-1 et seq.) as amended or replaced from time to time.

1.116 “**Transfer Acknowledgment**” means that certain Transfer Acknowledgment, dated November 30, 2021 and Recorded in the office of the Wasatch County Recorder on

November 20, 2021 as Entry No. 511413 in Book 1387 at Page 932, as amended, modified, superseded or supplemented from time to time.

1.117 **"Unit"** means a portion of the Development, whether improved or unimproved, which may be independently owned, including, without limitation, each Residential Unit and the Commercial Units. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of Vacant Land, the applicable parcel shall be deemed to be a single Unit until such time as a Recorded plat subdivides all or a portion of the parcel into Residential or Commercial Units and a Supplemental Declaration is recorded with respect thereto. Thereafter, the portion encompassed on such plat shall contain the number of Units determined as set forth in the preceding provisions of this Section. Any portion not encompassed on such plat shall continue to be treated in accordance with this Section. Notwithstanding the foregoing, any parcel of real property owned, held or used in its entirety (i) by the Association or the Master Association, (ii) as Common Area, (iii) by any Governmental Authority, (iv) solely for or in connection with the distribution of electricity, gas, water, sewer, telephone, communications, cable television or any other utility service, or (v) solely for access to or through all or any portion of the Development, shall not be considered a Unit. In addition, the term "Unit" shall not include any portion of the Mountainside Ski Property.

1.118 **"Utility Purposes"** has the meaning set forth in Section 5.3(a).

1.119 **"Vacant Land"** means a parcel of land located within the Development Property with respect to which a plat of subdivision dividing the same into Units has not been recorded, together with a Supplement identifying such Units as either a Residential or Commercial Unit.

1.120 **"Vacation Club"** means a Person (other than a natural Person) that is owned by members, whose ownership/membership interests in such Person are evidenced by points, shares or other interests that entitle the members to occupy Residential Units owned and/or leased by such Person.

## ARTICLE 2

### **PROPERTY SUBJECT TO THIS DECLARATION**

2.1 **Development Property.** Declarant hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

All that certain real property located in Wasatch County, Utah, more specifically described on Exhibit A to this Declaration.

2.2 **Reserved.**

2.3 **Withdrawal of Property.** Subject to the approval of the Master Declarant and such other approvals as may be required by Applicable Law or any development agreement entered into between Declarant and any Governmental Authority applicable to the Development, Declarant may withdraw property from the Development at any time only by duly adopted amendment to this Declaration. Such withdrawal shall be by a Recorded declaration executed by Declarant. If a

portion of the Property is so withdrawn, all voting rights otherwise allocated to the portion of the Property being withdrawn shall be eliminated, and the Common Expenses shall be reallocated. Such right of withdrawal shall not expire except upon sale to a Person other than one of Declarant's Affiliates of the first Unit within the applicable Phase of the Property as described above.

### ARTICLE 3

#### **RIGHTS OF DECLARANT, MEMBERS, UNIT OWNERS AND LESSEES**

3.1 **Purpose of the Declaration to Establish a General Plan of Development.** This Declaration and any Supplemental Declaration later Recorded with respect to any Phase of the Development are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Units and Common Area comprising the Development and are established for the purpose of enhancing, perfecting and maintaining the value, desirability and attractiveness of the Development as part of a first-class, year-round destination recreational community. This Declaration shall run with all land now or hereafter comprising the Development for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association and all Owners and their Lessees and Guests. This Declaration shall also inure to the benefit of and be specifically enforceable by Master Developer, Master Declarant, the Mountain Operator and the Master Association as intended beneficiaries.

3.2 **Modification of Entitlement Documents; Support and Covenant Not to Oppose.** Nothing in this Declaration shall be construed in a manner that would prevent the parties to the Entitlement Documents from modifying any or all of the Entitlement Documents or any portions thereof, or from dedicating or conveying portions of the Resort described on any subdivision map, including streets or roadways, for uses other than as residential units or common areas, subject, however, to the receipt of any prior approvals as may be required from Master Developer and applicable Governmental Authorities with jurisdiction. There is no guarantee that those future development plans will be implemented in the manner currently contemplated or at all, and Declarant makes no representation that any such future development plans will be implemented or that any of the Development Property will be committed to or developed for a particular use. By accepting a deed to a Unit, each Owner acknowledges and agrees that it will reasonably cooperate with and provide support to the Master Developer and Master Declarant in the development of the Resort and shall neither directly or indirectly oppose or otherwise contest the development of the Resort or the Mountainside Ski Property in accordance with the Entitlement Documents or the Mountainside Easement Agreements, or the Mountain Operations by the Mountain Operator, it being the specific intent of this provision that such Master Developer, Master Declarant, Mountain Operator and Ski Terrain Owners are intended beneficiaries of the foregoing acknowledgment and agreement.

3.3 **Authority of Declarant to Approve Boundary Line Adjustments.** At any time within twenty (20) years from the date that the first Unit in a Phase is conveyed to an Owner other than Declarant or one of Declarant's Affiliates, the boundaries of any Common Area or Open Space Parcel in that Phase may be altered by a lot line adjustment or other change reflected on a subsequently Recorded survey, parcel map, or subdivision map, provided that the altered boundaries are approved by Declarant and all Owners of the property involved in the boundary adjustment. In the event a boundary line adjustment involves Common Area the board of directors

of the Association is authorized to grant approval on behalf of Association and its members. Any such alteration shall be effective upon Recordation of the survey, parcel map, or subdivision map. Upon such Recordation, the boundaries of the altered Common Area or Open Space Parcel shall be altered for purposes of this Declaration to conform to the boundaries as shown on such survey, parcel map, or subdivision map.

3.4 **Owners' Nonexclusive Easements of Enjoyment of Common Areas.** Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas and Facilities, including ingress and egress to and from such Owner's Unit, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) **Right of the Association to Regulate Common Area Uses.** The right of the Association to limit the number of Guests of Owners who may use any recreational Common Areas and Facilities situated upon the Common Areas, or to impose fees for use of particular recreational Common Areas and Facilities. Master Declarant, Master Developer and the Mountain Operator shall also have certain rights to use the Common Areas and Facilities as set forth in the Mountain Operator Agreement, the Mountain Easement Agreements, and Sections 3.4(g), 5.9 and 5.12.

(b) **Right of the Association to Adopt Rules.** The right of the Association to adopt Rules regulating the use and enjoyment of the Property comprising any portion of the Development for the benefit and well-being of the Owners in common, and, in the event of the breach of such Rules or any provision of any Governing Document by any Owner or Lessee, including, but not limited to, the nonpayment of any required Assessments, to initiate disciplinary action against the violating Owner or Lessee in accordance with Article 12. Such action may include the levying of fines and/or the temporary suspension of the voting rights and/or the right to use the Common Areas and Facilities, other than roads, by any Owner and such Owner's Lessees and Guests. The Rules may differentiate between categories of Owners, Lessees, or Guests as established by the Board of Directors from time to time; however, the Rules must be uniformly applied within such categories.

(c) **Right to Incur Indebtedness.** The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Areas and Facilities. The right to incur indebtedness shall include the right to assign or pledge the Association's right to collect payments or Assessments to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association.

(d) **Mandatory Dedications and Transfers.** Any duty to dedicate or transfer any part of the Common Areas and Facilities to a public agency, authority or utility which Mountain Operator, Mountain Operator's Affiliates, the Master Association, Declarant, the Association, or any party to the Entitlement Documents may have pursuant to any of the Entitlement Documents or other agreement with any Governmental Authority that is applicable to the Development. The Association shall make any such dedication that may, in the future, be required of it or of Declarant or any Declarant's Affiliate.

(e) **Voluntary Dedications and Transfers.** The right of the Association to dedicate or transfer any part of the Common Areas and Facilities to any public agency, authority or utility willing to accept the same, for such purposes and subject to such conditions as the Association may determine; provided, that any such dedication or transfer pursuant to this subparagraph (e) shall be documented by a Recorded instrument, and shall not materially impair the ingress and egress to or from any Unit or the Common Areas and Facilities.

(f) **Rights of Easement Holders.** All easements affecting the Common Area that are described in Article 5.

(g) **Use by Master Developer, Master Declarant, Declarant and the Mountain Operator.** The right of Master Developer, Master Declarant, Declarant and the Mountain Operator and its/their employees, sales agents, prospective purchasers, customers and representatives, to enter upon the Open Space Parcels, Common Areas and Facilities for the benefit of Master Developer, Master Declarant, Declarant or the Mountain Operator, to complete the development and improvement of Units, and the construction of any landscaping or other Improvement or Common Facility to be installed on the Common Areas or Open Space Parcels, as well as the right (subject to the prior right of the Mountain Operator pursuant to the Mountain Operator Agreement and the Mountain Easement Agreements and to operate the Mountainside Ski Property) of nonexclusive use of the Open Space Parcels, Common Areas and Facilities, without charge, for sales, display, access, ingress, egress, exhibition and Special Events, including the right to post signage in and on the Open Space Parcels, Common Areas and Facilities which right Master Developer, Master Declarant, Declarant and the Mountain Operator hereby reserve. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners or Lessees as provided herein, as reasonably determined by the Master Association Board of Directors.

(h) **Right to Close Facilities During Maintenance or Renovation.** The right of the Association to close or limit the use of the Common Areas and Facilities, or portions thereof, to access and use by the Owners, while maintaining, repairing or modifying the same; provided however that with the exception of an emergency situation in which action must be taken by the Association in an effort to avoid damage to or destruction of property or injury to persons within the Development, this reserved right shall not be exercised in a way that adversely affects any Mountain Operations or the Mountain Ski Property.

(i) **Right to Convey Additional Common Areas and Facilities to the Association.** The right of Declarant to later convey additional Common Areas and Facilities in the Development Property to the Association. Additional Common Areas and Facilities shall be identified as such in the Supplemental Declaration that brings the Common Areas and Facilities into the jurisdiction of the Association. With respect to public property that is designated as Common Areas and Facilities that is to be maintained by the Association, Owners, Lessees, and their respective Guests shall have such rights as the applicable Governmental Authority allows.

(j) **Permits, Licenses and Easements.** The right of the Association to grant permits, licenses and easements on, over, under or through the Common Areas and Facilities for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Development and/or the Mountainside Ski Property, so long as such future



permits, licenses and/or easements do not materially impair ingress or egress to or from any Unit in the Development.

(k) **Reconstruction of Common Areas and Facilities.** The right of the Association (by action of the Board of Directors) to reconstruct, replace or refinish any Common Areas and Facilities or any portion thereof, in accordance with the Design Guidelines and the Declaration.

(l) **Maintenance.** The right of the Association to maintain and repair the Common Areas and Facilities, including, without limitation, the right to plant trees, shrubs, flowers, ground cover and other vegetation upon any portion of the Common Areas and Facilities, and to replace any such vegetation or other landscaping Improvements which have been damaged or destroyed.

(m) **Signage.** The right of the Association, subject to the Design Guidelines, to post signage in and on the Common Areas and Facilities in connection with Association and Development activities.

(n) **Restricted Areas.** The right of the Association to reasonably restrict access to any Common Areas and Facilities, slopes and other sensitive landscaped areas and open space areas that are Common Areas and Facilities. The Association shall have exclusive control over all of the Common Areas and Facilities except for public property with respect to which the Association has maintenance responsibilities under the Governing Documents.

(o) **Rights of Mountain Operator.** The rights of the Mountain Operator, pursuant to the Mountain Operator Agreement, the Mountain Easement Agreements and this Declaration to access portions of the Mountainside Ski Property and the Mountain Operations for maintenance, repair and operational purposes.

(p) **Rights of Master Declarant and Master Developer.** The rights of the Master Declarant pursuant to the Master Declaration and the rights of the Master Developer pursuant to the Mountainside Master Development Agreement.

3.5 **Owner's Rights and Obligations Appurtenant.** All rights, easements and obligations of an Owner under this Declaration and all rights of an Owner with respect to membership in the Association are hereby declared to be and shall be appurtenant to the title to the Unit owned by such Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Unit. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Unit shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such easements, rights and obligations. Notwithstanding the foregoing, the rights of an Owner under this Declaration may be assigned to a Mortgagee as further security for a loan secured by a lien on a Unit, and such rights and obligations may be assigned to and assumed by a Lessee for the period of such Lessee's lease of a Unit so long as the term of such lease is in excess of one year and the Owner provides written notice of such assignment to the Association.

3.6 **Delegation of Use of Residential Units.**

(a) Any Owner may delegate such Owner's rights of use and enjoyment of the Owner's Residential Unit, including any appurtenant right to use Common Areas and Facilities, to the Owner's Guests, Lessees and to such other persons as may be permitted by the Governing Documents; provided, however, that if an Owner has transferred such Owner's Residential Unit to a contract purchaser or has leased or rented the Residential Unit to another Person, then that Owner shall not be entitled to use and enjoy any such rights in the Owner's Residential Unit while the Owner's Residential Unit is occupied by the contract purchaser or Lessee (other than to exercise such rights of access and contract enforcement typically reserved to lessors of real property). Instead, the contract purchaser or Lessee, while occupying such Residential Unit, shall be entitled to use and enjoy such rights, including rights to use Common Areas and Facilities, and to delegate the rights of use and enjoyment in the same manner as if such contract purchaser or Lessee were an Owner during the period of such contract purchaser's or Lessee's occupancy. Nothing in this Section 3.6 shall be construed as limiting the rights that Owner-lessors customarily have as landlords in the supervision of their property or rights to use and enjoy the Marcella Club (if applicable), and Common Areas and Facilities on the same basis as members of the general public to the extent such rights may exist.

(b) Any delegated rights of use and enjoyment are subject to suspension and enforcement by the Association to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of Assessments or performance of the covenants, conditions and restrictions contained in this Declaration.

(c) Any lease, rental agreement or contract of sale entered into between an Owner and a Lessee or contract purchaser of a Residential Unit shall require compliance by the Lessee or contract purchaser with all of the covenants, conditions and restrictions contained in this Declaration, such compliance being for the express benefit of the Association and each Owner. The Association and each Owner shall have a right of action directly against any Lessee or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.

### **3.7 Proximity to Snow Equipment, Mountainside Ski Property, the Resort Support Facilities and Roads.**

(a) Disclaimer of Liability and Release. Portions of the Development may be developed for Private Amenities, recreational use, or may be used for maintenance or servicing of the Mountainside Ski Property and the roads and Common Areas parking facilities within the Development. Such maintenance and servicing may include, without limitation, snowmaking, avalanche control, snow removal, snow storage, snow grooming, lift operations and other snow related activities. As such, the matters set forth in Section 3.7(b), may arise from the proximity of Units to the Mountainside Ski Property, the Resort Support Facilities or other recreational facilities, or in connection with snowmaking, avalanche control, snow removal, snow storage, or other snow related activities and functions. Each Owner who acquires, and each Lessee who leases, all or a portion of a Unit acknowledges, accepts and assumes the risk of the costs and burdens associated with such functions and facilities. Accordingly:

(i) Declarant, the Association, the Mountain Operator, the Master Association and the owner(s) of the Mountain Operations, Private Amenities and any other recreational Common Areas and Facilities located in the Development, and each and every employee or agent of any of them, hereby disclaims any liability for personal injury or property damage resulting in any way, all or in part, from any of the items set forth in Section 3.7(b);

(ii) The owner(s) of any Private Amenities or other Common Facility located in the Development, and each and every member, owner, Guest, skier, employee or agent of any of them, hereby disclaims any liability for personal injury or property damage resulting in any way, all or in part, from any of the items set forth in Section 3.7(b); and

(iii) Each Owner and Lessee accepts such disclaimers and agrees to release and waive any claims Owner, Lessee or any Guest of Owner or Lessee, may have as a result of any of the items set forth in Section 3.7(b).

(b) Maintenance and Service Activities; Assumption of Risk. The Mountainside Ski Property, the Mountain Operations, and the roads within the Development (most or all of which are public roads) require daily seasonal maintenance and servicing, including lift and other conveyance maintenance, snow removal, avalanche control, snowmaking, and grooming of the Mountainside Ski Property during various hours, including early morning and late evening hours. Such maintenance and servicing may include, without limitation, the use of the lifts and other conveyances, snowmaking equipment, blowers and pumps, avalanche control ordnance, snow removal equipment and vehicles, and Mountainside Ski Property grooming equipment, snowmobiles, snowcats and vehicles. Owners and Lessees of Units, particularly Owners and Lessees of Units located in proximity to the Mountainside Ski Property or Resort Support Facilities, snowmaking equipment, or roads which are serviced by snow removal equipment, may be exposed to lights, noise, activities or other effects resulting from the maintenance and servicing of such areas and the use of such facilities and equipment, and the Owners and Lessees acknowledge, accept and assume the risk of such light, noise and activities.

## ARTICLE 4

### DEVELOPMENT DESIGNATIONS AND LAND CLASSIFICATIONS

4.1 **Development Designation.** All Residential Units shall be used solely for single-family, detached, residential homes, along with ancillary uses such as public or private pedestrian, bicycle, hiking and ski trails, unless any such Residential Unit is otherwise designated for a different residential use by Declarant. No Residential Unit shall be used for any non-residential use; use of the Hospitality House pursuant to the specific limitation set forth in this Declaration shall not be deemed a violation of this restriction. The Commercial Units shall be used solely for operating the Marcella Club and Marcella Club Facilities and all ancillary uses, which operations shall not include any type of event rentals (e.g. weddings, receptions, galas, conventions; conferences, parties or other similar events) excepting only those personal non-commercial events that are hosted by the Owner of a Unit. There shall be no more than two (2) Commercial Units in the Development. No Commercial Unit shall be used for any non-commercial or residential use.

4.2 **Land Classifications within Initial Development.** All land within the Development Property is included in one or another of the following classifications:

- (a) Residential Units;
- (b) Commercial Units;
- (c) Common Area, which shall be the areas marked as Common Area or other similar designations, on the plats recorded as a part of the Development Property;
- (d) Open Space Parcels;
- (e) Vacant Land; or
- (f) Public Areas, which shall be the areas marked as public parks, trails or streets on the plats recorded as a part of the Development Property.

4.3 **Consolidation of Units.** The Owner of two adjoining Units, with the approval of Declarant or the Association, as applicable, and, to the extent required by the Master Declaration or Applicable Law, the Master Association and Governmental Authority with jurisdiction, may elect to consolidate such Units into one Unit. The consolidation shall be effected by the Owner's Recording a declaration stating that the two Units are consolidated and such other documents as are required by Applicable Law, which declaration shall include a written consent executed on behalf of Declarant or the Association, as applicable, the Master Association, and any required Governmental Authority. Thereafter, the consolidated Units shall constitute one Unit for all purposes of this Declaration, including voting rights and Assessments. Once so consolidated, the consolidated Unit may not thereafter be partitioned nor may the consolidation be revoked without the prior approval of Declarant or the Association, as applicable. The Owner shall be responsible for any fees and costs, including legal fees, reasonably incurred by Declarant or the Association in connection with such consolidation.

## ARTICLE 5

### **PROPERTY RIGHTS IN COMMON AREAS**

5.1 **Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Unit, subject to the restrictions and limitations set forth in Article 7, the easements set forth in this Article 5, and the other provisions of this Declaration.

5.2 **Easements for Encroachments.** The Common Areas, and all portions of them, are subject to easements hereby created for encroachments of any portion of a Unit or the Common Areas in favor of the Association for the existence, maintenance and repair of such encroachments. Encroachments referred to in this Section 5.2 include, but are not limited to, encroachments of improvements located on the Common Areas onto Units, encroachments of overhangs or other portions of buildings or other improvements located on the Units onto the Common Areas, and other encroachments caused by error or variance from the original plans in the construction, by error in the subdivision map, by settling, rising, or shifting of the earth, or by changes in position

caused by repair or reconstruction. Such encroachments shall not be considered to be encumbrances upon any Unit or the Common Areas.

### 5.3 Utility Easements.

(a) Declarant reserves for itself and its successors and assigns who are specifically assigned this right and easement and hereby grants to the Association and its officers, agents, employees, successors and assigns a general easement on, over, under, above and through (i) those portions of each Unit shown on any subdivision map being ten (10) feet in width and immediately adjacent and parallel to all property lines of such Unit, (ii) those portions of the Property, if any, designated on a subdivision map as a "Recreational Easement Area," "Grantee Facilities Easement Area," "Driveway Easement," "Shared Access Easement," "Private Trail Easement," "Utility Easement," "Public Utility Easement," "PUE," "Central Utility Easement," "Access Easement," "Ski Easement," "Private Ski Easement," "Snow Storage Easement," "Sewer Easement," "Water Easement" and "Common Areas" and (iii) all roadways, Units depicted on a subdivision map, excluding areas within any designated building envelope, for the purpose of the following, and without limitation: (A) using, installing, constructing, maintaining, improving, repairing and replacing drainage, water and utility facilities of any kind or nature whatsoever, including but not limited to, storm drainage facilities, fire hydrants and related fire protection devices, sanitary sewer lines, water lines, snowmaking lines, irrigation lines, systems and facilities, electric lines, gas lines, telephone lines, cable television line, fiber optic lines, and other communication facilities, (B) drainage of water flowing from other lands, (C) water storage and distribution facilities, (D) snow removal and storage, and (E) vehicular and pedestrian access for installation and maintenance of such utilities, together with a perpetual right of ingress and egress to and from such easement (collectively, hereinafter referred to as "**Utility Purposes**").

(b) Declarant reserves the right, but has no obligation, to Record a document specifying the boundaries of specific easements within the above-described easement areas at any time or from time to time after improvements related to such Utility Purposes have been constructed; provided, however, that in no event shall the creation of any such easement adversely affect the intended use of any Exclusive Use Common Area in the area of the designated easement or affect, avoid, extinguish or modify any other Recorded easement on the Property. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, Declarant or the Board of Directors shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof, provided that Declarant or the Board of Directors of the Association shall give prompt notice of any such specific easement granted to the Owners of any Unit affected thereby.

5.4 Reservation of Easements and Exclusion. Declarant reserves for itself and its successors and assigns who are specifically assigned this right, the right to establish from time to time by declaration or otherwise, utility and other easements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues and conduit installation areas, consistent with the ownership of the Property for the best interest of the Owners and the Association. Declarant further 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 the Property within the Development to the extent reasonably

necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise.

5.5 **Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or persons to enter upon all streets and upon any portion of the Property in the proper performance of their duties.

5.6 **Association Easements.** An easement is hereby granted to the Association and its officers, agents, employees and assigns upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration. Notwithstanding the foregoing, the Association shall not enter upon or within any Unit without reasonable prior notice to the Owner of the Unit, except in cases of an emergency. In addition, any Association easements shall be subject and subordinate to the terms of the Mountain Easement Agreements and the Mountain Operator Agreement.

5.7 **Drainage Easement.** An easement is hereby reserved to Declarant and its successors and assigns who are specifically assigned this right and easement, and is hereby granted to the Association and its officers, agents, employees, successors and assigns, to enter on, over, under, above, across and through those portions of the Property designated as a drainage or other storm water conveyance easement or facility on a subdivision map for the purposes of the following, without limitation: using, installing, improving, maintaining, repairing and replacing drainage facilities of any kind or nature, including, but not limited to, storm drainage, and the drainage of waters and debris flowing from other lands, together with a perpetual right of ingress and egress to and from such easements.

5.8 **Easements of Access for Repair, Maintenance and Emergencies.** Some portions of the Common Areas and Facilities are or may be located on or within certain Units, or may be conveniently accessible only through certain Units. The Association shall have the irrevocable right to have access to each Unit from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Areas and Facilities or for making emergency repairs therein necessary to prevent damage to any portion of the Common Areas and Facilities or to any Unit. Subject to the provisions of Article 11 (relating to the right of the Association to recover the cost of making certain repairs), damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any portion of the Common Areas and Facilities or as a result of emergency repairs undertaken by the Association shall be a Common Expense.

5.9 **Declarant's Rights Incident to Construction and Marketing.** Declarant, for itself and its successors and assigns who are specifically assigned this right and easement, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Property and the right to store materials on the Property and to make such other use of the Property as may be reasonably necessary or incident to the complete construction and sale of Units, including construction trailers, temporary construction offices, sales offices and directional and marketing signs. Declarant may designate a portion of the Common Areas and Facilities for the foregoing

construction and other purposes in connection with the development of a particular Unit. Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Unit(s) as sales offices, construction, sales and business management offices or as models so long as Declarant, or its successors or assigns, continues to be an Owner of a Unit within the Property. The use by Declarant of any Unit as a model, office or other use shall not affect the Unit's designation on the subdivision map as a Unit. Declarant further reserves exclusive easement rights over and across the Property comprising the Development for the purpose of marketing, sales and rental of Units, or of other projects developed or marketed by Declarant or Declarant's Affiliates from time to time, including, without limitation, the right to show the Property and to display signs, flags, banners and other promotional devices. Declarant also reserves the right to lease unsold Units.

**5.10 Governmental Requirements.** Declarant hereby reserves the right to grant such easements and rights-of-way across the Property, from time to time, as may be required by any Governmental Authority. Such easements and rights-of-way shall specifically include, but not be limited to, any public rights-of-way and any environmental easements required by federal, state or local environmental Governmental Authorities, for so long as Declarant holds an interest in any Unit subject to this Declaration.

**5.11 Remodeling Easement.** Declarant, for itself and its successors and assigns who are specifically assigned this right and easement, including Owners, retain a right and easement in and about the buildings within any Common Area for the construction and installation of any duct work, additional plumbing, or other additional services or utilities serving the Common Areas and Facilities in connection with the maintenance, repair, improvement or alteration of the Common Areas and Facilities, including the right of access to such areas of the Development as are reasonably necessary to accomplish such improvements. In the event of a dispute among Owners with respect to the scope of the easement reserved in this section, the decision of the Board of Directors shall be final.

**5.12 Mountain Easement Agreements and the Mountain Operator Agreement.** Declarant hereby reserves the right to grant to the Master Developer, Master Declarant, Mountain Operator and/or the Ski Terrain Owners, as the owner and/or operator of the Mountainside Ski Property, an easement for the benefit of employees, customers, guests and patrons of the Mountainside Ski Property, over, across, through, upon, and under certain roads, streets, sidewalks, trails, passageways, and pedestrian and vehicle access ways that are located upon or across the Property for ingress to and egress from the Mountainside Ski Property. In addition, Master Developer, Master Declarant, Declarant, the Master Association and the Mountain Operator have entered into, or will enter into, the Mountain Easement Agreements and the Mountain Operator Agreement which contain certain other benefits and burdens to and on the Association and portions of the Units, Common Areas and Facilities.

**5.13 Easements in Favor of the Mountain Operator.** There is further granted to the Mountain Operator, for the benefit of the Mountainside Ski Property, an unallocated general easement upon the Property for the following uses and activities conducted on, or resulting from the conduct of, activities of the Mountain Operator, its agents and invitees on the Mountainside Ski Property: (i) noise, light, odor, movement of air, interference with sunlight, and blowing of snow, water mist and water drops relating to ordinary ski and snowmaking or other recreation-

related activities; and (ii) dust, debris, or noise resulting from or associated with other recreational activities or Mountain Operations conducted on the Mountainside Ski Property as a four-season resort or in any easement areas created by the Mountain Easement Agreements. Each Owner and its Guests accept and assume the risk of the benefits and burdens associated with those reasonable ski and snowmaking activities conducted upon or in conjunction with the Mountainside Ski Property, and Declarant, Declarant's Affiliates, the Master Association, the Association, the Owners of each Unit, and each and every employee or agent of any of them, and guests and invitees upon the Property, hereby disclaim, waive and give up any claim to liability for personal injury or property damage suffered by them or proximately caused in any way in part or in whole by the activities and uses identified in this Section 5.13.

**5.14 Easements for Vehicular and Pedestrian Traffic.** In addition to the general easements for use of the Common Areas and Facilities reserved herein, Declarant hereby reserves to itself, to the Association, to the Mountain Operator and to all future Owners within the Development, and to every Lessee or Guest of an Owner, nonexclusive easements appurtenant to each Unit in the Development for vehicular and pedestrian traffic over any and all private streets, walkways and trails within the Common Areas and Facilities, subject to the parking and other restrictions on use reasonably imposed by the Board of Directors. Declarant reserves the right to grant similar easements to owners of property in the Development.

**5.15 Easements for the Mountain Club, Marcella Club and Commercial Units.** Declarant, for itself and its affiliates or successors and assigns who are specifically assigned this right, hereby reserves the right to grant to the Mountain Club Members and the Marcella Club Members an access easement over, across, through, upon, and under certain roads, streets, sidewalks, trails, passageways, and pedestrian and vehicle access ways that are located upon or across the Property for ingress to and egress from the Mountain Club Facilities, Marcella Club Facilities and the Commercial Units. Declarant, for itself and its affiliates or successors and assigns who are specifically assigned this right, hereby reserves an easement for the benefit of the employees and invitees of the Mountain Club and the Marcella Club, over, across, through, upon, and under certain roads, streets, sidewalks, trails, passageways, and pedestrian and vehicle access ways that are located upon or across the Property in connection with the maintenance, repair, improvement or alteration of the Mountain Club Facilities and the Marcella Club Facilities.

**5.16 Easements for the Resort Foundation.** Declarant hereby grants to the Resort Foundation, its members, employees, designees, and Guests perpetual, non-exclusive easements over the Common Area to the extent reasonably necessary for ingress, egress and access to properties and facilities owned, operated, maintained, and/or managed by the Resort Foundation. However, this easement shall not include a right to enter any enclosed structure or to unreasonably interfere with the use of any Common Area. Any damage resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement.

**5.17 Easements Deemed Created.** All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article 5 appears in the instrument for such conveyance.



5.18 **Recreation Easement.** Each Owner is hereby advised of the existence of that certain Easement Agreement recorded in the office of the Wasatch County Recorder as Entry No. 511414 (as the same may be amended or otherwise modified from time-to-time), which Easement has established easements for year-round public ski trail access on, over and across the Development those areas labeled "Recreational Easement Area" and "Grantee Facility" and shown on the Galena One, Galena Two and subsequent plats of subdivision Recorded in connection with an applicable Phase. Owners of Units are hereby advised that such Easement includes the following provision and that construction within the designated areas on any such Owner's Unit must, if allowed at all, be undertaken in strict compliance with such provision: "No building or other above ground improvements shall be constructed by Grantor or its successors or assigns within the Recreational Easement Area or within twenty feet (20') from any Grantee Facility, and no disturbance of any building site shall occur within twenty feet (20') from the edge of any ski run or the edge of any Grantee Facilities Easement, except as may be approved in writing by Grantee, which approval may be withheld in Grantee's sole and absolute discretion."

5.19 **Conveyance of Common Areas or Open Space Parcels to Association.** Declarant reserves the right to convey any Common Areas and Facilities or Open Space Parcels to the Association, at any time, with or without the Association's consent, for no consideration. Upon such conveyance, the Association shall maintain any such Common Areas and Facilities or Open Space Parcels in accordance with the provisions of this Declaration and the Master Declaration.

5.20 **Use of the Common Areas.** The Common Areas shall not be partitioned or otherwise divided into Units for residential use, and no private structure of any type shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas and Facilities. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas and Facilities identifying the Development or identifying pathways or items of interest, provided such signs comply with any applicable sign ordinance. The Board of Directors shall have authority to abate any trespass or encroachment upon the Common Areas and Facilities at any time, by any reasonable means and with or without having to bring legal proceedings.

5.21 **Alienation of the Common Areas.** The Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Areas and Facilities owned directly or indirectly by the Association for the benefit of the Units unless the holders of at least sixty-seven percent (67%) of the Class "A" Membership voting rights and the Class "B" Member, if any, have given their prior written approval. Any such abandonment, partition, subdivision, encumbrance, sale or transfer shall also be subject to the requirements of Section 14.1 and such approvals as may be required by Applicable Law or any development agreement entered into between Declarant and a Governmental Authority applicable to Development. The foregoing provision shall not apply to Easement Common Area or to the easements described in Section 5.3(a). The Association, upon approval in writing of more than fifty percent (50%) of the Class "A" Membership voting rights and the Class "B" Member, if any, and if approved by order or resolution of the applicable Governmental Authority, may dedicate or convey any portion of the Common Areas and Facilities to a park, district or other Governmental Authority.

## ARTICLE 6

### **PROPERTY RIGHTS IN UNITS**

6.1 **Use and Occupancy.** The Owner of a Residential Unit shall be entitled to the exclusive use and benefit of such Residential Unit, except as otherwise expressly provided in this Declaration, the Master Declaration or the Mountain Easement Agreements or other document of Record applicable to such Unit, but the Residential Unit shall be bound by and the Owner shall comply with the obligations and restrictions set forth in all other provisions of this Declaration, the Master Declaration, and/or any Supplemental Declaration.

6.2 **Easements Reserved.** In addition to any utility and drainage easements shown on any Recorded plat, Declarant hereby reserves for the benefit of Declarant, the Association, the Master Developer, the Mountain Operator and the Owners of the Units specifically served thereby, or one or more of their respective affiliates, a non-exclusive easement for private trail access to one or more specific Units on, over and across those areas labeled "Private Trail Easement" and shown on the Galena One, Galena Two or any subsequent plat of subdivision Recorded in connection with an applicable Phase. Said non-exclusive easements are for the use, benefit, and enjoyment of the designated Unit Owners and/or Members of the Association, together with the Declarant, the Association, the Master Developer, and the Mountain Operator; provided, the use, benefit and enjoyment of the Private Trail Easements by the Master Developer and the Mountain Operator shall be pursuant to such further agreements, if any, pertaining to their use, maintenance and operation as is executed by the Association and the Mountain Operator with respect thereto.

6.3 **Adjacent Common Areas.** The Owner of any Unit which is adjacent to or blends together visually with any Common Areas shall, if the Association or Declarant elects from time to time to so require, permit the Association or Declarant to enter upon the Unit to perform the maintenance of such Common Areas.

6.4 **Right of Entry.** Declarant and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals and upon reasonable notice to the Owner of the Unit under the circumstances, enter upon any Unit for the purpose of determining whether or not the use and/or improvements of such Unit are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Unit.

6.5 **Utility Easements.** Easements for installation and maintenance of drainage facilities and public utilities are hereby reserved over ten (10) feet of the front, rear and sides of each Unit, and as otherwise identified on any applicable plat of subdivision. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. However, the Reviewer or DRC may, in its sole discretion, approve an improvement within the easements such as landscaping, driveway or off-street parking area. It is expressly understood, however, that any such Improvement shall be constructed at the Owner's or the easement holder's sole risk, as the case may be, and as provided in the easement document(s), of having the Improvement partially or wholly removed, dismantled, taken out, or destroyed where necessary because of drainage or public utility servicing, installation, alteration or maintenance. The easement areas within each

Unit and all Improvements in such areas shall be maintained continuously by the Owner of the Unit, except for those Improvements which a public authority or utility company is responsible to maintain. Easements for installation and maintenance of utilities and drainage facilities may also be reserved over portions of certain Units, as shown on any Recorded plat.

6.6 **Landscape Maintenance.** Landscape maintenance is the principal responsibility of the Owners of Units. Notwithstanding the foregoing, the Association shall have the right to enter on the Unit in order to maintain landscaping in the event the Owner fails to adequately maintain the landscaping in accordance with the Community-Wide Standards, including watering and the maintenance, repair or replacement of the exterior sprinkling system. The Association's right of access for maintenance shall include the right of access to a garage or other part of a residence on a Unit containing the automatic sprinkling control box and the right to use the water at the expense of the Owner in any amount deemed necessary and appropriate by the Association for maintaining the landscaping on the Unit.

6.7 **Rental Restrictions.** An Owner of a Residential Unit may not lease or rent such Residential Unit or any portion thereof to any Person for a period of less than thirty (30) days, nor shall any tenant of an Owner be allowed to sublease any Residential Unit or any portion thereof. An Owner of a Residential Unit desiring to rent or lease the Unit for a period in excess of thirty (30) days shall provide the Board of Directors and the Association with written notice of such rental or leasing on an approved notification form available from the Board of Directors, said written notice to be delivered to the Board of Directors and the Association not less than ten (10) days prior to the commencement of the lease or rental term. To the fullest extent allowed by Applicable Law, the Board of Directors and Declarant may impose conditions on any approval, including without limitation a requirement that all occupants of a dwelling be members of a single housekeeping unit, limiting the total number of occupants permitted in each Residential Unit on the basis of the Residential Unit's size and facilities and fair use of the Common Areas and Facilities, and reasonable limits on the number of individuals who may use the Common Areas and Facilities as Guests of the Owner or Lessee of the Residential Unit, provided that such conditions shall not include approval of the prospective renter, payment of an additional fee, or, unless the Owner is required to provide the Board of Directors with such documents pursuant to a court order or as part of discovery under the Utah Rules of Civil Procedure, provision of a copy of the rental agreement, provision of the prospective renter's credit information, credit report or background check. Notwithstanding anything to the contrary in this Declaration, in no event shall an Owner of a Residential Unit lease or rent such Residential Unit to any Person for the purpose of such Person holding any special event, including, but not limited to, a family reunion, holiday party, or wedding or other ceremony, in such Residential Unit.

6.8 **Solar Energy Systems.** Solar energy systems are permitted subject to the requirements set forth in the Design Guidelines and compliance with Applicable Law, including, specifically, all applicable building and fire codes. Notwithstanding the foregoing, no Owner shall install on its Residential Unit a solar energy system that is or may become visible from the exterior of the structure without the prior approval of Declarant and the DRC pursuant to Article 8. If Declarant and the DRC approve such installation of the solar energy system, such approval may be subject to such limitations and restrictions as Declarant and the Association may in their discretion determine, subject to Applicable Law.

6.9 **Vacation Clubs; Shared Ownership.** The use of Residential Units in the Development is intended to be for the primary or secondary residence of an Owner. In the event multiple Owners own a Residential Unit, or a Residential Unit is owned by a Person who is not a natural Person, to the fullest extent allowed by Applicable Law, the Board of Directors and Declarant may impose conditions on the occupancy of the Residential Unit, including a requirement that all occupants of the Residential Unit be members of a single housekeeping unit, a limit on the total number of occupants permitted in each residential dwelling on the basis of the Residential Unit's size and facilities and the fair use of the Common Areas and Facilities, and a reasonable limit on the number of individuals who may use the Common Areas and Facilities as Guests of the Owner or Lessee of the Residential Unit. Vacation Clubs, Time Share Projects or any other similar fractional or segregate, joint or common ownership products or projects are not permitted within the Development.

6.10 **Hospitality House.** Declarant may designate one (1) Residential Unit in the Development as a location where prospective purchasers of Residential Units within the Development may visit on a short-term basis ("**Hospitality House**"). The Hospitality House shall not compete with hotels or other nightly rentals and shall solely be made available to potential Owners and current Owners within the Development as Guests. No fees, other than those reasonably charged for housekeeping and maintenance, shall be charged for use of the Hospitality House and it shall not be rented or leased at any time through any rental platform or other mechanism (e.g. VRBO or Air BNB), nor shall the Hospitality House be operated in any way in a manner that is inconsistent with the provisions of this Section 6.10 or that creates a nuisance or so as to unreasonably disturb the occupants of other Units. The maximum number of persons allowed to occupy any bedroom in the Hospitality House at any given time is two (2) adults and no adults shall stay outside of a bedroom. Guests can stay at the Hospitality House a maximum of three (3) nights per stay and no more than two (2) stays per year. No restaurant or food service shall be allowed within the Hospitality House. If, in the sole and exclusive judgment of the Master Declarant, the Hospitality House is operated in a manner that is inconsistent with the provisions of this Section 6.10 or in such a way that it creates a nuisance or unreasonably disturbs the occupants of other Units, the Master Declarant shall provide written notice to Declarant of such fact, whereupon Declarant shall promptly take steps as are necessary to cure such non-conforming use, nuisance or other disturbance. From and after the third (3<sup>rd</sup>) such notice from Master Declarant to the Declarant and Declarant's failure to cure such non-conforming use, nuisance or other disturbance, Master Declarant may revoke in its entirety Declarant's ability to operate a Hospitality House on thirty (30) days prior written notice, whereupon Declarant shall have no further right to operate a Hospitality House anywhere in the Development.

## ARTICLE 7

### **GENERAL USE RESTRICTIONS**

#### **7.1 Offensive or Unlawful Activities.**

(a) No noxious or offensive activities shall be carried on upon the Property, nor shall anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to residents. Except for legitimate construction and maintenance purposes, or permitted as contemplated by Section 3.7, no

excessively loud noises shall be permitted in the Development. No unlawful use shall be made of the Property nor any part thereof, and all Applicable Laws of all Governmental Authorities having jurisdiction shall be observed. No oil drilling, oil development operations, oil refining, or Mining Uses of any kind shall be permitted upon any Unit nor shall oil wells, tunnels, or shafts be permitted. No derrick or other structure designed for use in drilling for oil or natural gas or water shall be erected, maintained or permitted. No recreational use of drones shall be permitted.

(b) Notwithstanding the foregoing restrictions and prohibitions, the following shall not be considered as “noxious or offensive activities”: (i) noise, traffic, and odors resulting from proximity to the Mountainside Ski Property and related facilities, roads (public and private), ice-skating rinks, Special Events, or from snow or other sports related activities; (ii) any activities of an Owner, Declarant, or their respective designees or contractors which are reasonably necessary to the development of, and construction on, a Unit so long as such activities do not violate the Governing Documents or Applicable Law and do not unreasonably interfere with any Owner’s use of such Owner’s Unit, or with any Owners ingress and egress to and from a Unit and a roadway; or (iii) the reasonable odors, lighting and noises associated with the Marcella Club and the Common Areas and Facilities.

(c) Normal construction activities shall not be considered to violate the terms and conditions of this Section 7.1, although it is noted that many Improvement projects will require the prior review and approval of the DRC. Once such construction is commenced, it shall be diligently pursued to completion. By accepting a deed to a Unit, an Owner acknowledges that construction activities may exist on or near the Property, at any time and from time to time. The DRC shall have the power, but not the obligation, to grant variances from the terms and conditions of this Section 7.1 from time to time as it deems necessary or appropriate to permit certain construction activities to be pursued but such power shall not extend to the granting of variances under the Master Declaration, except to the extent specifically provided therein.

(d) Notwithstanding anything to the contrary contained in this Declaration or the Governing Documents, noise is likely to be experienced by the proximity of the Development to the Mountainside Ski Property and its related lifts, machinery and other facilities, roads (public and private), or from snow-related activities. By accepting a deed to a Unit, an Owner acknowledges that the Unit is a part of the Development and that noises, lights and odors common to Mountain Operations and construction activities may exist on or near portions of the Property, at any time and from time to time. Accordingly, each Owner takes such Owner’s Unit subject to such noises, lights and odors common to Mountain Operations and construction activities and such Owners expressly waive any and all claims arising from such noises, lights and odors.

(e) The DRC shall provide for and direct the timing, location, and organization of construction of, commercial activity, repair, maintenance, and all other associated or related activities in such a fashion and manner that customers and visitors to the Mountainside Ski Property shall have access to the Mountainside Ski Property in accordance with the terms of the Mountain Operator Agreement and whose use and enjoyment of the Mountainside Ski Property shall not be interfered with.

**7.2 Maintenance of Structures and Grounds.** Each Owner shall maintain its Unit, and Improvements thereon, in a clean and attractive condition in accordance with the Community-

Wide Standard, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include painting, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or re-staining and exterior remodeling shall be subject to prior review and approval by the DRC. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on its Unit neatly trimmed, property cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

7.3 **Parking.** Parking on public roads and any other roadways in the Development, any Shared Access and any Driveway Easement is prohibited at all times. Except as may otherwise be provided in the Rules, parking of boats, trailers, off-road vehicles, trucks, mobile homes, campers or other recreational vehicles or equipment, regardless of weight, and parking of any other vehicles in excess of three-quarter (3/4) ton in weight shall not be allowed to remain overnight on any part of the Property, excepting only within areas designated for such purposes by the Board of Directors or within the confines of an enclosed garage, the plans of which shall have been reviewed and approved by the DRC prior to construction. Each Owner by accepting a deed or other instrument conveying any interest in a Unit, hereby acknowledges and agrees to those provisions of this Declaration specifically addressing parking and traffic control set forth in Section 9.5(1) of this Declaration. No campers, vans, trucks over one ton, trailers, vehicles with advertising signage, recreational vehicles, motor home, travel trailer and other type of non-passenger vehicles, campers, camper shells/body, wagons, buses, aircraft, motorcycles, motor scooters, inoperative automobiles, and garden maintenance equipment, equipment, implements or accessories may be kept on any Unit unless the same are fully enclosed within the garage located on such Unit. The foregoing provisions of this Section shall not apply to: (i) non-commercial vans and pickups, (ii) service and delivery vehicles temporarily parked on the Development during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit, (iii) parking on the Commercial Units, or (iv) vehicles and equipment temporarily parked on a Unit in connection with the construction or maintenance of a Unit. No garage located on a Unit shall be used as a residence or any other purpose other than storage or parking vehicles, and garage doors shall remain closed at all times except as reasonably necessary for purposes of ingress or egress.

7.4 **Reserved.**

7.5 **Signs.**

(a) No sign of any kind shall be displayed to the public view on or from any Unit or on any portion of the Development without the approval of the DRC except as follows:

- (i) Unit number sign(s) of customary and reasonable dimensions;
- (ii) such other signs or notices as are required by law or as are otherwise necessary to perfect a right provided for in law;
- (iii) signs posting applicable speed limits and restricted parking areas;

- (iv) signs used in connection with the Marcella Club;
  - (v) such other signs as may be permitted or approved by the Board of Directors; and
  - (vi) those signs that are expressly authorized by, or reasonably incidental to performance of, the rights and privileges of the Mountain Operator under the Mountain Easement Agreements and the Mountain Operator Agreement.
- (b) Without limiting the generality of subparagraph (a), above, posting and maintenance of speed limit signs shall be the responsibility of the Master Association.

#### 7.6 **Rubbish and Trash.**

(a) No part of the Common Areas or any Unit shall be used as a dumping ground for trash or rubbish of any kind. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets or Common Areas. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any streets, the Common Areas, or Units within three (3) days following the date on which notice is mailed to such Owner by the Association, the Association is authorized to have such materials removed and charge the expense of such removal to the Owner. Without limiting the generality of the foregoing, no Owner shall allow any builder, contractor, or subcontractor to wash any cement truck or cement mixer or to dump or deposit any asphalt, concrete or other construction materials or debris which are not part of the Improvements to a Unit upon any part of the Property. An Owner shall be directly responsible for any violation of this Declaration or damage to any of the Property by or caused by the Owner's builder(s), contractor(s), or subcontractor(s). The "Deposit" referred to in Article 8 of the Master Declaration may be retained by the DRC in accordance with Section 8.2 of the Master Declaration for any such violation or damage. Nothing contained herein or in Article 8 of the Master Declaration shall limit the amount of damages for which an Owner may be liable. The foregoing notwithstanding, an Owner or the Owner's contractor may, during the period of construction as specified herein, place and maintain upon a Unit no more than one (1) dumpster and one (1) portable toilet facility.

(b) All trash, garbage and other waste materials shall be kept in sanitary covered containers of a type, size and style which are approved by the DRC and are required to be kept, except during the collection period, within a garage located on the Residential Unit or another enclosure approved by the DRC for the Development. Owners shall not, and shall ensure that their Guests do not, litter in the Development. No burning of trash, garbage or waste materials shall be permitted within the Development. Declarant shall be responsible for refuse collection service to the Commercial Units.

(c) The collection period shall commence at 5:00 pm the afternoon prior to the scheduled collection pick-up and shall terminate at 5:00 pm on the date collected, allowing a 24-hour window for all garbage and related containers to be outside of the Unit. All garbage shall be removed from Units and shall not be allowed to accumulate thereon. No outdoor incinerators shall be maintained in any Unit or on other property. Fines for Owners that do not observe the collection period standard shall be as set forth in the Rules.

7.7 **Antennas and Satellite Dishes.** Exterior antennas and satellite receiver and transmission dishes shall not be permitted to be placed upon any Unit except as approved by the DRC, except for small dishes attached to a roof not exceeding twenty-four (24) inches in diameter. Any other term or condition hereof to the contrary notwithstanding, no commercial, ham radio, citizens band or radio antenna or other similar electronic receiving or sending device shall be permitted that interferes with the peace and quiet enjoyment of any neighboring Owner's Unit or home entertainment facilities or equipment.

7.8 **Tree Removal.** No Owner or contractor or agent of any Owner or contractor shall remove any of the existing trees from any portion of the Property (other than trees which the DRC has allowed to be removed in connection with the approval of an Owner's plans and specifications). In the event that an Owner, or contractor or agent of any Owner or contractor shall remove any tree without first obtaining the written consent of the DRC, the Association shall be entitled to require the Owner to replace any and all trees removed with the same species, age, and height of tree or trees as the tree or trees removed, which remedy shall be in addition to all other rights and remedies of the Association as set forth in this Declaration.

7.9 **Governmental Regulations.** All activities on any Unit shall comply with Applicable Laws. When a particular activity is governed by both this Declaration and Applicable Law, the more restrictive requirement shall be applicable.

7.10 **Fire Protection.** To implement wildland urban interface fire safety best practices: (a) all Units shall be required to install and maintain in operating condition a fire sprinkler or other fire suppression system approved by the Wasatch County Fire Marshall; (b) all fire sprinkler or other fire suppression systems shall be installed and maintained in accordance with all applicable fire codes; (c) no wood shake or wood shingles shall be used in the construction of any exterior elements of any Improvement constructed within the Development; and (d) no commercial or consumer fireworks are allowed within the Development, however: Utah legally allowed sparklers, snake/glow worm pellets, smoke devices, trick noisemakers, and plastic or paper caps shall be excluded from this restriction. All occupants of any Unit shall strictly comply with all Applicable Laws pertaining to fire hazard control. This Section of the Document may only be amended or otherwise revised with the written approval of the Wasatch County Fire Marshall.

7.11 **Environmental Concerns.** All site plans submitted to the DRC pursuant to Section 8.1 of this Declaration shall address soils, seismic conditions, re-vegetation of natural areas (indicating areas where natural vegetation is to be removed and plans for the replanting of those areas) with a landscape plan, and grading of the Unit, including the driveway and all other cuts and fills.

7.12 **Grades, Slopes and Drainage.** Each Owner of a Unit shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over such Unit or the Common Areas without the express written permission of the DRC, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may concentrate or change the direction of flow, or obstruct or retard the flow of water through drainage



channels. All Persons erecting or constructing Improvements on any Unit shall comply with all Applicable Laws. Construction of berms, channels or other flood control facilities on any Unit is the sole responsibility of the Owner of the Unit and shall be done in accordance with the flood control plans approved by the appropriate Governmental Authority. Such construction shall commence at the time the Unit is graded or otherwise altered from its natural state.

7.13 **Prohibition on Mining Uses.** Mining Uses on the Property are strictly prohibited.

7.14 **Notice to MIDA of Tax Protests or Appeals.** Each Owner of a Unit that is part of the Development by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such deed or other instrument, acknowledges, covenants and agrees on behalf of itself and its successors and assigns, that after the filing of a formal property tax appeal contesting the assessed value of any Unit, such Owner shall deliver prompt written notice to the Military Installation Development Authority, via certified mail, of such property tax appeal. Such notice shall be mailed to: Military Installation Development Authority, Attn: Executive Director, 450 Simmons Way, Suite 400, Kaysville, Utah 84037 or such other address as MIDA may designate from time to time. Such notice obligation shall exist only during the period when the Series 2021 Bonds (as defined in Section 19.10 of the Master Declaration) (and any bonds issued to refund all or any portion thereof) are outstanding.

7.15 **Rules.** The Board of Directors from time to time may, at a meeting of the Board of Directors, adopt, modify or revoke such Rules governing the conduct of persons and the operation and use of the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Prior to any action under this Section 7.15 becoming effective, the Board shall, (i) at least fifteen (15) days before meeting to consider such action, deliver notice to all Owners that the Board is considering a change to the Rules, (ii) provide an open forum at the meeting of the Board of Directors giving the Owners an opportunity to be heard before the Board of Directors takes such action, and (iii) within fifteen (15) days following such meeting, deliver a copy of any such Rules to the Owners or, to the extent permitted by Applicable Law, an explanation thereof on the Association's website, if any, and send a copy thereof to the Class "B" Member and the Master Association. Notwithstanding the foregoing, the Board of Directors may adopt, modify, or revoke the Rules without first giving notice to the Owners as specified in the preceding sentence if there is an imminent risk of harm to Common Areas, an Owner, a Guest or the occupant of a Unit. A copy of the Rules, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association promptly to each Owner or posted on the Association's website, if any, and thereafter shall be binding upon all Owners and occupants of all Units unless, within the sixty (60) day period following the meeting of the Board of Directors where the action was taken, (i) at least fifty one percent (51%) of the total Class "A" votes in the Association vote to disapprove such modification of the Rules in a special meeting called for such purpose by the Members, or (ii) during the Administrative Control Period, the Class "B" Member delivers its written disapproval to the Board of Directors. The Board has no obligation to call a meeting of the Members to consider disapproval, unless the Members submit a petition, in the same manner as the Governing Documents provide for a special meeting, for the meeting to be held. In the event a special meeting is called to vote on a modification of the Rules as provided in the preceding sentence, the effect of the action of the Board of Directors is stayed until after such meeting is held and subject to the outcome of the meeting. No action under this Section 7.15 shall have the effect of modifying,

repealing or expanding the Design Guidelines other than the initial Rules. In the event of a conflict between the Rules and the Design Guidelines, the Design Guidelines shall control.

7.16 **Deviations.** Deviations from the standards set forth in this Section 7 may be allowed only upon written approval by the DRC for good cause shown.

7.17 **Exemption of Declarant.** During the Administrative Control Period, Declarant may exempt Declarant from the Rules and the rulemaking procedure set forth in Section 7.15.

7.18 **Applicability of Use Restrictions.** Except as otherwise provided herein, the use restrictions set forth in this Article 7 shall apply to all of the Property and the Owners thereof. To the extent that the Master Declaration imposes property use restrictions that are in addition to those set forth herein, the restrictions of the Master Declaration shall also apply to the Units within the Development, unless specifically exempted therefrom in the Master Declaration.

7.19 **Promotion of the Community.**

(a) Declarant has reserved certain rights, as set forth in this Declaration, to promote the Development and the Resort as a four-season, destination resort community. Promotion of the Development shall include, among other things, the right of Declarant and the Association to promote the Marcella Club and Special Events designed to provide certain business, professional, cultural, entertainment or recreational opportunities, among other opportunities, within the Development to create the lively, energetic community envisioned by this Declaration. Accordingly, nothing in this Declaration shall be construed as limiting the authority of Declarant or the Association to promote the Development as a four-season, destination resort community.

(b) Upon the request of the Ski Terrain Owners, the Association shall negotiate in good faith with the Mountain Operator to enter into agreements pertaining to (i) the Mountain Operator's and the Association's joint promotional advertising of Resort as a destination resort area, and (ii) security services for the Development.

7.20 **Other Sports and Recreation Activities.** The Resort is a year-round destination resort. Accordingly, Owners of Units should anticipate that the Mountainside Ski Property, the Resort Support Facilities and the roads (public and private) and plaza areas within the Resort may be operated and used on a year-round basis in order to present events and recreational opportunities that are appropriate and common at mountain resorts during particular seasons of the year, such as skiing, snowboarding, golf, hiking, mountain biking, Special Events, and concerts. Those events and activities can create or include lights, noise (associated with the event or activity, itself, or the operation of equipment), odors, and other effects that should be considered in the decision of an Owner to acquire a Unit in the Resort.

7.21 **Compliance With Laws.** Nothing shall be done or kept within the Development that is in violation of any Applicable Law.

7.22 **Compliance With Insurance Requirements.** Except as may be approved in writing by the Association, nothing shall be done or kept within the Development which may result in an increase in the rates of any insurance, or the cancellation of any insurance, maintained by the Association pursuant to this Declaration.

### 7.23 **Restriction on Subdivision and Rezoning.**

(a) Except as may be permitted under a Supplemental Declaration for a Phase that Declarant Records, no portion of the Property shall be further subdivided without the prior written consent of the Association.

(b) Except as provided in the terms of the Mountain Easement Agreements, or such amendments or alterations which may occur hereafter in the Mountain Easement Agreements, no further covenants, conditions or restrictions shall be recorded by any Owner or other Person against any Phase of the Property without the prior written consent of the Boards of Directors of both the Master Association and the Association, and any covenants, conditions or restrictions Recorded without such consent evidenced thereon shall be null and void.

(c) Except as may be permitted under a Supplemental Declaration for a Phase that the Declarant Records, no application for rezoning of any Phase of the Property, and no applications for variances or use permits, shall be filed with any Governmental Authority, unless the proposed use of that portion of the Property has been approved by the Boards of Directors of both the Master Association and the Association and the proposed use otherwise complies with the Master Plan, this Declaration and all other Governing Documents

(d) Without the prior written consent of the Master Declarant, which consent may be withheld in the sole and absolute discretion of the Master Declarant, in no event may the Development include more Residential Units or Commercial Amenities than are permitted pursuant to the Transfer Acknowledgement.

7.24 **Exterior Lighting; Holiday Lighting.** Exterior lighting shall be permitted on a Unit in accordance with the Design Guidelines and applicable dark sky lighting requirements of MIDA. An Owner may attach holiday lights or other holiday decorations to the exterior of the Improvements located on a Unit, but only in accordance with Rules adopted by the Board. Any such exterior holiday lighting shall be set to a timer to turn off such lights at appropriate times as may be set forth in the Rules. Any Owner in violation of this Section 7.24 shall be subject to monetary fine in accordance with and in the amount set forth in the Rules.

7.25 **Wells, Water and Sewage.** No water wells shall be permitted on any portion of the Property, without the prior written approval of the Association and of Declarant, which will retain all rights to water appurtenant to the Property. All buildings, structures and improvements designed for residential, commercial or lodging purposes shall be connected to such water and sewer services as the Association or the Declarant may require.

7.26 **Deliveries.** All deliveries made within the Development shall be made in accordance with the Rules. Notwithstanding the foregoing, the Rules regarding deliveries adopted by the Association shall not limit or impair the access rights described in the Mountain Easement Agreements or burden performance or enjoyment of the Mountain Easement Agreements and the Mountain Operator Agreement.

7.27 **Temporary Structures.** No tent, shed, gazebo, or other outbuilding may be installed on a Unit or elsewhere within the Development on either a temporary or permanent basis without the prior written approval of the DRC. No trailer, mobile home, camper, camper shell,

tent, shack, garage, barn, shed, outbuilding, basement of an incomplete building, or temporary building or structure of any kind will be used at any time for a residence on any Unit, either temporary or permanent.

7.28 **Disease and Pests.** No Owner will permit anything or condition to exist upon any portion of the Development which will induce, breed or harbor infectious diseases or noxious insects or vermin.

7.29 **Clotheslines.** No exterior clothesline will be erected or maintained within the Development; and there will be no exterior drying or laundering of clothes within the Development.

7.30 **Overgrown Vegetation.** No Owner will permit any tree, shrub, or vegetation of any kind on such Owner's Unit to overhang or otherwise encroach upon any sidewalk, street, trails, or other pathway located on the Common Areas from ground level at the main trunk of any tree, shrub or other vegetation to a height of twelve (12) feet above such ground level location, except as otherwise approved by the DRC.

7.31 **Utilities.** All gas, electrical, telephone, television, and any other utility lines must be underground, including lines within any Unit which service installations entirely within that Unit, unless otherwise approved by the DRC or in the event of an emergency. Overhead electrical wires originating from outside of the Development shall be directed underground immediately after crossing onto a Unit. Notwithstanding anything to the contrary in this Section, necessary above-ground utility facilities, such as transformers and phone pedestals, may be located above ground. Nothing in this Section shall prevent utility meters, panels or related equipment from being installed on the exterior walls of Improvements in compliance with Applicable Law.

7.32 **Residential Character of Development.** Each Residential Unit will be used and occupied solely for single-family primary or secondary residential purposes, and not for purposes of real estate speculation or investment. No trade, craft, business, profession, or commercial activities of any kind will be conducted within the Development, nor will any goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business be kept or stored within the Development. Notwithstanding the foregoing, nothing in this Section will be deemed to prohibit (i) commercial activities relating to the Marcella Club and Marcella Club Facilities on the Commercial Units, (ii) activities relating to the rental or sale of a Unit, provided the short-term rental of Units shall be prohibited as set forth in Section 6.7; (iii) the right of Declarant or its contractor to construct Improvements on any Unit and to store construction materials and equipment on such Units in the normal course of construction and in compliance with the terms of this Declaration; (iv) the right of the Owner of a Unit to park vehicles used for such Owner's business on the Unit, subject to the terms of Section 7.3, and (v) the right of the Owner of a Unit to maintain its professional personal library, keep his personal business or professional records or accounts, handle its personal business or professional telephone calls, or confer with business or professional associates, clients or customers in its Unit, provided, however, there is no external evidence thereof and such use complies with Applicable Laws. Notwithstanding anything to the contrary in this Declaration, Declarant shall not construct or be marketing for sale more than five (5) model homes within the Development at any time. Declarant may maintain only one (1) sales office in the Development, which may be located in a model home

or by using a portion of the Marcella Club Facilities. Except with the prior written consent of the Master Association, Declarant shall not at any time maintain more than one (1) sign in the Development in connection with the operation of any Declarant sales office and one (1) additional directional sign directing patrons to the sales office.

7.33 **Animals.** No wild or exotic animals, horses, cows, pigs, sheep, fowl, livestock or animals, other than ordinary household pets that do not constitute a nuisance, will be allowed within the Development. Dogs and cats or other household pets belonging to Owners or their Lessees or Guests within the Development must be kept within the animal owner's control at all times, and such animal's owner shall at all times prevent such animal from entering any ski areas or trails in violation of any rules and regulations imposed by the Mountain Operator with respect to such ski areas and trails. All dogs will be restrained on a leash when outside of a Unit. Animal owners are responsible for immediately picking up all animal droppings within the Development. In no case may any household pet or other animal kept within the Development be allowed to create a nuisance for neighboring Owners due to noise, odors, or otherwise. Any Owner in violation of this Section 7.33 shall be subject to monetary fine in accordance with and in the amount set forth in the Rules.

7.34 **Operation of Machinery.** No Owner shall operate, place or maintain upon any Unit machinery or equipment of any kind except such machinery or equipment as is customary in connection with the use, maintenance or construction of any Improvements or as otherwise permitted by Declarant or the Association.

7.35 **Walls and Fences.** No Owner shall construct any walls or fences on or around any Unit or along any Unit boundary lines, other than necessary retaining walls approved in advance and in writing by the DRC.

7.36 **Fuel Storage.** Except for propane tanks or other such containerized fuels that are (i) used for outdoor barbeques or (ii) screened from view of adjoining Units and kept in accordance with Applicable Law, no fuel, oil, gasoline or other fuel storage tanks may be installed or maintained on any Unit. Improvements will be heated with natural gas, solar, geothermal or electric heat.

7.37 **Play Structures.** No basketball standard, swing set, play structure, or similar device shall be placed or constructed on any Unit without the Owner of such Unit first obtaining the written approval of the DRC.

7.38 **Declarant's Exemption.** Nothing set forth in this Declaration or any other Governing Document shall be construed to prevent or limit:

(a) Declarant's exercise or enjoyment of any of Declarant rights pursuant to Article 14; or

(b) Subject to the terms of Article 8, the conduct by Declarant or its employees or agents of any activity, including, without limitation, the erection or maintenance of temporary structures, trailers, improvements or signs necessary or convenient to the Development, construction, marketing and sale of property within the Development.

7.39 **Storage of Personal Property on Balconies.** Except as permitted by the Rules, personal property shall not be placed on balconies, or other such similar locations within an Owner's Unit, in such manner as to be visible from any street or the Common Areas.

7.40 **Solid-Fuel Burning Devices.** Except for up to two (2) wood burning fireplaces that may be installed in the Marcella Club facilities only, no solid-fuel burning devices, such as fireplaces, charcoal grills or wood burning stoves may be kept or used on the Development. Stacks and chimneys solely for natural gas fireplaces or that are incorporated into an Improvement as an architectural element only are permitted. Exterior fires are prohibited, except fires contained within appropriate receptacles as provided by the Rules and Applicable Laws.

## ARTICLE 8

### **ARCHITECTURE AND LANDSCAPING**

8.1 **General.** No structure or thing shall be placed, erected, or installed upon any Property located in the Development and no Improvements or other work (excluding staking and other minor pre-construction activities but including clearing, excavation, grading and other site work, exterior alterations of existing Improvements, or planting or removal of landscaping) shall take place within the Development, except in compliance with this Article 8 and the Master Declaration and the Design Guidelines. Unless stated otherwise in the Design Guidelines with respect to pre-manufactured components of an otherwise site built structure approved by the DRC, manufactured homes or non-site built structures, such as, but not limited to, modular homes, shall not be allowed. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of such Owner's Unit without approval. However, modifications to the interior of screened porches, patios, and similar improvements visible from outside the structure shall be subject to approval. All structures constructed on any portion of the Development shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the DRC or its designee otherwise approves in its sole discretion. The DRC may establish reasonable procedural rules in connection with the review of plans and specification, including, without limitation a list of the materials to be submitted, the scope of the matters addressed in those materials, and the number of plan sets to be submitted. Installation of any and all Improvements on any Unit must follow the recommendations and meet the specifications of the soils study and geotechnical report applicable to such Unit.

8.2 **Architectural Review.** Each Owner, by accepting a deed or other instrument conveying any interest in any Unit, acknowledges that, as the developer of the Development and as an owner of portions of the Development, Declarant has a substantial interest in ensuring that the Improvements within the Development enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. In addition to any review and approval required pursuant to Article 8 of the Master Declaration, the review and approval of any activity occurring within the Development (that is otherwise governed by this Article 8) shall be by the Declarant (or if created pursuant to Section 8.2(a) of the Master

Declaration, a DRC delegated architectural review responsibility for the Development) applying the standards and Design Guidelines for the Development contemplated by the Association. In performing such review and approval, the Declarant, DRC and any Reviewer, each as applicable, shall follow the procedure for such review set forth in Article 8 of the Master Declaration, and shall be entitled to the same rights, responsibilities, protection and indemnities provided for therein. Therefore, each Owner agrees that no activity within the scope of this Article 8 or Article 8 of the Master Declaration shall be commenced on such Owner's Unit unless approved pursuant to the provisions set forth in Article 8 of the Master Declaration.

**8.3 Design Guidelines.** Subject to the prior written approval of the DRC pursuant to the Master Declaration, Declarant shall promulgate the initial Design Guidelines for the Development, which will contain general provisions applicable to all of the Development, as well as specific provisions which vary from phase to phase and by land clarification, which phase by phase provisions shall also be subject to the prior written approval of the DRC pursuant to the Master Declaration. The review of the Design Guidelines for the Development is intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Design Guidelines are not the exclusive basis for decisions of the said Reviewer and compliance with the Design Guidelines does not guarantee approval of any application. Subject to the prior written approval of the DRC pursuant to the Master Declaration, the Board shall have the authority to amend the Design Guidelines for the Development at a meeting of the Board and in accordance with the procedure set forth in this Section 8.3. At least fifteen (15) days before meeting to consider an amendment to the Design Guidelines for the Development, the Board shall deliver notice to all Owners that the Board is considering a change to the Design Guidelines. The Board shall provide an open forum at the meeting of the Board of Directors giving the Owners an opportunity to be heard before the Board of Directors enacts such change to the Design Guidelines. Within fifteen (15) days following such meeting, the Board shall deliver a copy of any amendment to the Design Guidelines to the Owners, and send a copy thereof to the Class "B" Member. A copy of the Design Guidelines, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association promptly to each Owner or posted on the Association's website, if any, and thereafter shall be binding upon all Owners and occupants of all Units unless, within the sixty (60) day period following the meeting of the Board of Directors where the action was taken, (i) at least fifty one percent (51%) of the total Class "A" votes in the Association vote to disapprove such modification of the Design Guidelines in a special meeting called for such purpose by the Members, or (ii) during the Administrative Control Period, the Class "B" Member delivers its written disapproval to the Board of Directors. The Board has no obligation to call a meeting of the Members to consider disapproval, unless the Members submit a petition, in the same manner as the Governing Documents provide for a special meeting, for the meeting to be held. In the event a special meeting is called to vote on a modification of the Design Guidelines as provided in the preceding sentence, the effect of the action of the Board of Directors is stayed until after such meeting is held and subject to the outcome of the meeting. Any amendments to the Design Guidelines for the Development shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines for the Development, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines for the Development less restrictive; provided that an Owner must still comply with all applicable requirements of the Master Declaration. The Reviewer shall make

the Design Guidelines available to Owners who seek to engage in development or construction within the Development. In Declarant's discretion, such Design Guidelines may be Recorded from time to time, 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.

8.4 **Limitation of Liability.** The standards and procedures established by this Article 8 are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Development; they do not create any duty to any Person. Review and approval of any application pursuant to this Article 8 and Article 8 of the Master Declaration are made on the basis of aesthetic considerations only, and 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, for ensuring that all structures are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property Owners. Declarant, the Master Association, the DRC of the Master Association, the Association, the Board, Reviewers, any committee, or member of any of the foregoing 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 Development; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit or Improvement. In all matters, the Board, the DRC, Reviewers, Declarant and the members of each shall be defended and indemnified by the Association as provided in Section 9.6.

## ARTICLE 9

### **ASSOCIATION**

Declarant shall organize an Association comprised of all of the Owners within the Development, each of which shall be a Member of the Association. The Association is the entity responsible for management, maintenance, operation, and control of the Common Areas and Facilities. The Association, its successors and assigns, shall be organized under the name Marcella HOA, Inc., a Utah corporation, or such other name as Declarant shall designate in an amendment to this Declaration, and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of property located therein. The Development is not a cooperative within the meaning of the Utah Community Association Act, U.C.A. Section 57-8a-212.

9.1 **Organization.** Declarant shall organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Utah. The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the



incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.

9.2 **Membership.** Every Owner of one or more Units within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Units within the Property, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

9.3 **Voting Rights.** Voting rights within the Association shall be allocated as follows:

(a) **Units.** Residential Units shall be allocated one vote per Residential Unit. Commercial Units shall be allocated one vote per Commercial Unit.

(b) **Classes of Voting Membership.** The Association shall have two classes of voting membership:

(c) **Class "A".** Class "A" Members shall be all Owners of Units with the exception of the Declarant and shall be entitled to voting rights for each Unit owned computed in accordance with Section 9.3(a). When more than one Person holds an interest in any Unit, all such Persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more voting rights be cast with respect to any Unit than as set forth in Section 9.3(a).

(d) **Class B.** The Class "B" Member shall be Declarant. The Class "B" Member shall have the right to appoint the members of the Board during the Administrative Control Period, as specified in the Bylaws. Additional rights of the Class "B" Member are specified in relevant sections of the Governing Documents. After termination of the Administrative Control Period, Declarant shall have the right to disapprove actions of the Board and committees as provided in the Bylaws. The Class "B" Member shall be entitled to five times the voting rights computed under Section 9.3(a) for each Unit owned by Declarant. Solely for purposes of calculating the voting right of the Class "B" Member, the number of Units owned by the Declarant shall be deemed to include the additional unplatted Units shown on the then-current Mountainside Master Plan for the Vacant Land portion of the Property. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of either of the following events, whichever occurs earlier:

(i) two (2) years after the expiration of the Administrative Control Period; or

(ii) At such earlier time as Declarant in its discretion may elect in writing to terminate the Class "B" membership in a Recorded instrument.

9.4 **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah.

Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Development.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with its provisions, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

9.5 **Specific Powers and Duties.** The specific powers and duties of the Association shall include the following:

(a) Acceptance and Control of Association Property.

(i) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements for all or portions of the Common Areas and Facilities, for such consideration or no consideration as the Board deems appropriate, to permit use of all or such portions of the Common Areas and Facilities by community organizations and by others, whether non-profit or for profit, for the provision of goods or services for the general benefit or convenience of Owners and Guests of the Development.

(ii) Declarant and its designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, including, without limitation, the Marcella Club, as further described in Section 17.9. Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Areas Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(iii) The Association shall be responsible for management, operation, and control of the Common Areas and Facilities, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Areas and Facilities as it deems appropriate.

(b) **Maintenance and Services.** The Association shall provide maintenance, utilities and services for the Property as provided in Article 10 and other provisions of this Declaration.

(c) Insurance. The Association shall obtain and maintain in force policies of insurance as it determines necessary or appropriate, or as otherwise provided in this Declaration, the Bylaws or Applicable Law.

(d) Rulemaking. The Association is hereby authorized to and shall have the power to adopt, amend and enforce Rules applicable within the Development with respect to any Common Areas and Facilities, and to implement the provisions of this Declaration, the Articles or the Bylaws, including, but not limited to, rules to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate pedestrian and vehicular traffic; to regulate animals; to regulate signs; to regulate use of any and all Common Areas and Facilities to assure fullest enjoyment of use by the Persons entitled to enjoy and use the same; to promote the general health, safety and welfare of Persons within the Development; and to protect and preserve property, property values and property rights. All Rules adopted by the Association shall be reasonable and shall be uniformly applied, except such Rules may differentiate between categories of Owners, Lessees or Guests. Upon expiration of the Administrative Control Period, the Design Guidelines shall be considered part of the Rules. In addition, no Rule shall affect the rights of the Mountain Operator under the Mountain Operator Agreement or the Mountain Easement Agreements.

(e) Assessments. The Association shall adopt budgets and impose and collect Assessments as provided in Article 11 of this Declaration.

(f) Charges for Use of Common Areas and Facilities. The Association may establish and modify charges for the use of any of the Common Areas and Facilities to assist the Association in offsetting the costs and expenses of the Association with respect to such Common Areas and Facilities, including depreciation, operation, maintenance, capital replacement and capital expenses. Such charges will include the cost of providing culinary and secondary water to the Common Areas and Facilities. All charges established under this Section 9.5(f) shall be reasonable and shall be uniformly applied, except such charges may differentiate between categories of Owners, Lessees, or Guests, and members of the general public to whom the Association may allow access to and use of certain Common Areas and Facilities, and shall not exceed any limit imposed by Applicable Law. Notwithstanding the foregoing rights and powers, the Association shall not manage or operate its Common Areas and Facilities in any manner that interferes, directly or indirectly, with the business operations and ski lift operations of the Mountain Operator.

(g) Charges for Services Provided by the Association. The Association may establish and modify charges for providing any service as required or permitted hereunder on a regular or irregular basis to an Owner, Lessee, or Guest to assist the Association in offsetting the costs and expenses of the Association, including depreciation, operation, maintenance, capital replacement and capital expenses. Without limiting the foregoing, the Association may also charge a fee for providing a written statement indicating the status of payments of Assessments, or Assessment payoff information needed in connection with the financing, refinancing, or closing of an Owner's sale of such Owner's Unit, provided such fee shall not (i) be required to be paid prior to closing or (ii) exceed any limit provided by Applicable Law. All charges established under this Section 9.5(g) shall be reasonable and shall be uniformly applied, except such charges may differentiate between reasonable categories of Owners, Lessees, or Guests. Each Owner, Lessee and Guest shall be obligated to and shall pay any such charges for such services.

(h) Property Taxes and Assessments. To the extent not assessed to or paid directly by the Owners, the Association shall pay all real property taxes, special improvement and other assessments (ordinary and extraordinary), personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any Governmental Authority which shall be imposed, assessed or levied upon, or arise in connection with the Common Areas and Facilities or any services provided by the Association hereunder.

(i) Replacement or Repair. In the event of damage to or destruction insured against by the Association, the Association shall repair or replace the same from the insurance proceeds payable to it or to the trustee designated by the Board of Directors. If the insurance proceeds are insufficient to cover the costs of repair or replacement thereof, the Association may make a Special Assessment as provided in Section 11.7. The Association shall not be required to complete such repair or replacement in the event that (i) such repair or replacement would be illegal under a state statute or local ordinance governing health or safety, or (ii) Members representing at least seventy five percent (75%) of the Class "A" Member votes in the Association vote not to complete such repair or replacement and each Owner of a dwelling on a Unit and the Exclusive Use Common Areas appurtenant to such Unit that will not be repaired or replaced votes not to complete such repair or replacement.

(j) Marketing. The Association may provide or participate in a suitable and continuing program to promote the Development as a desirable, year-round, destination recreational development, including, but not limited to, advertising the Mountainside Ski Property, organizing and coordinating Special Events, advertising and placing articles in news media, establishing uniform standards for promotional programs and shows, encouraging responsible groups to hold conferences and negotiating arrangements and accommodations for such groups, conducting tour operations, publishing a newsletter, providing and operating reception and information centers, and buying space for the accommodation of Guests; provided, however, that all advertising and promotion of the Mountainside Ski Property shall be subject the approval of the Mountain Operator. The Association may undertake or fulfill the functions contemplated hereunder in whole or in part in conjunction with or through any organization which may be engaged in the promotion of the state or local area year-round destination development industry or by engaging the Mountain Operator to promote the Development.

(k) Recreation. The Association may provide year-round recreational programs of suitable variety with such miscellaneous equipment as may be necessary. The recreational programs may include, informing visitors of recreation available and coordinating their participation therein; conducting, financing, operating, managing and maintaining programs for children, including, but not limited to, daycare facilities and such miscellaneous equipment as may be appropriate for use in connection therewith; constructing, caring for, operating, managing, maintaining, improving, repairing and replacing within the Development swimming pools, clubhouses, trails (foot, nordic, hiking and bicycle) and related facilities; sauna and steam baths; tennis courts, game courts, game or sports courts; game and Special Events areas; snow shoeing facilities; outdoor entertainment and other recreational amenities, and such equipment as may be appropriate for use in connection therewith; and removing snow from and cleaning such facilities as necessary to permit their use and enjoyment; *provided, however*, that such activities shall not compete with activities undertaken or offered by the Mountain Operator on the Mountainside Ski

Property or interfere with the rights of the Mountain Operator under the Mountain Operator Agreement.

(l) Parking and Traffic Control. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, hereby acknowledges and agrees that the Association may, to the extent permitted under Applicable Law, also provide control over vehicular access to the Development which it deems necessary or desirable for the health, safety or welfare of Persons residing, visiting or doing business within the Development. Such function may include constructing, operating, maintaining and staffing access road control gates (at such location(s) as the Board may from time to time determine to be appropriate); requiring identification for admission to the Development; videotaping or otherwise recording and documenting all Persons and vehicles entering the Development; screening and/or requiring registration of vehicles, Guests, and others entering the Development; denying entry to the Development to Persons other than Owners, Guests, and Marcella Club Members; restricting non-commercial vehicular traffic within the Development, except for Owners, Lessees, Guests or visitors who have overnight accommodations within the Development and who are authorized to park within the Development; restricting commercial vehicular traffic within the Development; and establishing "parking" and restricted "guest parking" and "no parking" areas within the Development, as well as enforcing these parking limitations through its officers and agents by all means lawful for such enforcement on public streets, including the removal of any violating vehicle by those so empowered. The Association's exercise of its rights hereunder shall be consistent with and shall not burden the enjoyment or exercise of the rights provided to the Mountain Operator under the Mountain Easement Agreements and the Mountain Operator Agreement which shall have priority over any Rules pertaining to parking or traffic control and signage.

(m) Other Functions. The Association may undertake and perform other functions as it deems reasonable or necessary to carry out the provisions of this Declaration, including providing the following services for some or all Members: cooperative purchasing service; telephone services; high-speed internet and fiber services; warehousing and delivery; property management services; central communications operation; central monitoring of fire safety; and property security.

(n) Enforcement. The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules adopted by the Association. The Association may, but shall not be required to, enforce any covenants, restrictions or other provisions in other instruments applicable to the Development Property to the extent such other instruments grant the Association the right to enforce such provisions. Without limiting the foregoing, every Owner and Guest of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents specific to this Development only after such notice and a hearing in accordance with the procedures set forth in the Rules and as required by Applicable Law. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines as set forth in the Rules which shall constitute a lien upon the violator's Unit. In the event that any Guest violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner

shall pay the fine upon notice from the Board. The Board may impose an additional fine each time an Owner or Guest (i) commits a violation of the same provision of the Governing Documents within one (1) year after the day on which the Board assesses a fine for a violation of the same provision or (ii) allows a violation of the Governing Documents to continue for ten (10) days or longer after the day on which the Board assesses the fine;

(ii) suspending any Person's right to use any recreational facilities within the Common Areas and Facilities; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iii) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Association;

(iv) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(v) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vi) without liability to any Person, precluding any contractor, subcontractor or Guest of an Owner who fails to comply with the terms and provisions of Article 8 and the Design Guidelines from continuing or performing any further activities in the applicable portion of the Development Property; and

(vii) levying Special Individual Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform such Owner's maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Special Individual Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action. All remedies set forth in the Governing Documents shall

be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

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 and shall comply with all required procedures under Applicable Law. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action; or
- (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with Applicable Law; or
- (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 Association's resources; or
- (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule; provided, however, all such actions of the Association shall be done in a uniform, equitable and non-discriminatory matter. The Association, by contract or other agreement, may enforce applicable governmental ordinances, if applicable, and permit Governmental Authorities to enforce ordinances within the Development for the benefit of the Association and its Members.

(o) Employment of Agents, Advisers and Contractors. The Association may employ the services of any Persons as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such Persons such as landscape architects, recreational experts, architects, planners, attorneys and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Common Areas and Facilities and the Association.

(p) Borrow Money, Hold Title and Make Conveyances. The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas and Facilities and encumber the Common Areas and Facilities as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including easements across all or any portion of the Common Areas and Facilities, and shall accept any real or personal property, leasehold or other property interests within the Development conveyed to the Association by Declarant.

(q) Transfer, Dedication and Encumbrance of Common Areas. Subject to the provisions of this Declaration requiring the consent of Declarant with respect to Common Areas and Facilities furnished by Declarant, the Association shall have full power and authority to sell, lease, grant rights in, transfer, encumber, abandon or dispose of any Common Areas and Facilities.

(r) Governmental Successor. Any Common Areas and Facilities and any service provided hereunder by the Association may be turned over to a Governmental Authority which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate, subject to the approval of Declarant.

(s) Create Classes of Service and Make Appropriate Charges. The Association may, in its sole discretion, create various classes of service and make appropriate Special Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those Owners who do not assent to such charges and to such other Rules as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain the same. Without limiting the generality of the foregoing, the Association may provide, or provide for, services and facilities for the Owners and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Annual Assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. The Association, through a concierge service, may also provide services at the request and option of any Owner. The concierge services offered may include housekeeping, home watch, airport shuttle service, landscape maintenance, car care, grocery shopping and delivery, and other personal, home and delivery services. The Association may charge use or service fees for any concierge services provided at the option of an Owner. Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

(t) Relationship with Other Properties. The Association may enter into contractual agreements or covenants to share costs with any neighboring property 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.

(u) Implied Rights and Obligations. The Association shall have and may exercise any right or privilege given to it expressly in this Declaration or except to the extent limited by the terms and provisions of this Declaration, given to it by Applicable Law and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under this Declaration, including the right to engage labor and acquire use of or purchase property, equipment or facilities; employ personnel; obtain and pay for legal,



accounting and other professional services; and to perform any function by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be necessary or desirable. Except as otherwise specifically provided in the Governing Documents, or by Applicable Law, all rights and powers of the Association may be exercised by the Board without a vote of the Members. The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Areas and Facilities, 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 Association. In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

(v) Cooperation with Mountain Operator. The Association may grant to the Mountain Operator such rights in the Common Areas and Facilities as the Board of Directors deems appropriate in order to facilitate the Mountain Operator's use and operation of the Mountainside Ski Property, including the rights of access granted to the Mountain Operator as more fully set forth on any subdivision map and related documents and in the Mountain Operator Agreement and the Mountain Easement Agreements. The rights which may be granted hereunder may be subject to whatever conditions the Board of Directors deems necessary and/or appropriate, including, without limitation, appropriate indemnifications, and the Association shall expressly be subject to the obligations with respect to such easements, if any, as described on subdivision maps and in the Mountain Easement Agreements and such other rights of the Mountain Operator referred to above.

(w) Easements and Rights of Way. The Association shall have the power but not the duty to grant and convey to any Person easements, licenses or rights of way in, on, over or under the Common Areas and Facilities and fee title to Units or strips of land, for purposes consistent with the terms of this Declaration, including, without limitation, constructing installing, erecting, operating, maintaining or conducting thereon, therein and thereunder: (i) roads, streets, skier bridges and tunnels, walks, trails, driveways, parkways, landscaping, park areas, open space areas and slope areas; (ii) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of power or signals for lighting, heating, television, telephone and other similar purposes; (iii) sewers, storm water drains or retention basis and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and (iv) any similar Improvements or uses not inconsistent with the use of such property pursuant to the Declaration; provided that: (i) in no event shall any such easements, licenses or rights of way interfere with any Mountain Operations; and (ii) in any event, the Master Declarant shall have the right to connect to any and all of the foregoing free of any payment, charge or reimbursement to the Declarant, the Association or any Owner. The Association shall have the power to grant and execute easements, agreements, licenses, covenants, rights of way and maintenance agreements with any club (including the Marcella Club), spa, recreational facility, or district that the Association determines to be appropriate so long as the same does not materially interfere with the use and enjoyment of Common Areas and Facilities by the Association or the Owners or interfere in any way with the Mountain Operations or the rights of others arising by reason of easements or other rights-of-way of record.

**9.6 Liability; Indemnification.** A member of the Board of Directors or an officer of the Association shall not be liable to any Owner, the Association or any Member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by Applicable Law. Subject to and to the fullest extent allowed by Applicable Law, the Association 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) 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 9.6. The officers, directors, and committee members 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 behalf of the Association (except to the extent that such officers or directors may also be Members of the Association, and then only to the extent of such liability in such Person's capacity as a Member). The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. 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 Association 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.

**9.7 Interim Board; Turnover Meeting.** Declarant shall have the right to appoint an interim board of three (3) directors, who shall serve as the Board of Directors of the Association until replaced by Declarant or until their successors take office at the turnover meeting described in this Section 9.7. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than one hundred twenty (120) days after the end of the Administrative Control Period. At the turnover meeting the interim directors shall resign and be replaced by their successors, who shall be designated as provided in this Declaration and the Bylaws of the Association. If Declarant fails to call the turnover meeting required by this Section 9.7, any Owner or mortgagee of a Unit may call the meeting by giving notice as provided in the Bylaws.

**9.8 Election of Directors.** Effective as of the turnover meeting described in Section 9.7, the Board of Directors of the Association will be composed of Owners of Units elected by the Members of the Association. The Board of Directors shall have an odd number of members and no less than three (3) members. Terms of office of directors shall be as set forth in the Bylaws.

**9.9 Declarant Voting Rights After Turnover.** After the turnover meeting described in Section 9.7, Declarant shall continue to have the voting rights described in Section 9.3(b).

**9.10 Contracts Entered into by Declarant or Prior to Turnover Meeting.**

Notwithstanding any other provision of this Declaration, any leases or contracts (including management contracts, service contracts and employment contracts) entered into by Declarant or the Board of Directors on behalf of the Association prior to the turnover meeting described in Section 9.7 above shall have a term of three (3) years or less. In addition, any such lease or contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than thirty (30) nor more than ninety (90) days' notice to the other party given at any time after the turnover meeting described in Section 9.7 above.

**ARTICLE 10**

**MAINTENANCE, UTILITIES AND SERVICES**

**10.1 Association Maintenance Duties and Responsibilities.**

(a) Maintenance by Association. The Association shall maintain, in accordance with the Community-Wide Standard, the Common Areas and Facilities, which shall include, but need not be limited to:

- (i) All portions of and structures situated on the Common Areas;
- (ii) Landscaping within the public rights-of-way within or abutting the Development Property;
- (iii) Such portions of the Development Property included within the Common Areas as may be dictated by this Declaration or any Supplemental Declaration, a covenant to share costs, or any contract or agreement for maintenance thereof entered into by the Association;
- (iv) All ponds, streams and/or wetlands located within the Development which serve as part of the storm water drainage system for the Development, including improvements and equipment installed therein or used in connection therewith; and
- (v) Excluding the Marcella Club, any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the area maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association's responsibility to maintain the Common Areas and Facilities shall begin upon conveyance of such Common Areas and Facilities to the Association.

(b) Other Areas. The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association 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.

(c) Continuous Operation. The Association shall maintain the facilities and equipment within the Common Areas in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing seventy five percent (75%) of the Class "A" Members vote in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

(d) Changes in Area of Common Responsibility. Except as provided above, the Common Areas shall not be reduced except with Declarant's prior written approval as long as Declarant is a Class B Member and/or owns any property described in Exhibit A of this Declaration (as it may be amended from time to time).

(e) Costs. The costs associated with maintenance, repair, and replacement of the Common Areas and Facilities shall be a Common Expense; provided, the Association may seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portions of the Common Areas and Facilities pursuant to this Declaration, other Recorded covenants, or agreements with the Owner(s) thereof. Said duties may include removal of snow from parking areas, roads (public and private), walks, bridges, drives, stairs and other similar Common Areas and Facilities as necessary for their customary use and enjoyment; maintenance and care of all open space or unimproved areas, and of plants, trees and shrubs in such open space or unimproved areas; maintenance of ski and multi-purpose trails in the open spaces and Common Areas within the Development; maintenance of lighting provided for parking areas, roads, walks, drives, stairs, and other similar common facilities. Said obligations may also include maintenance of roads, walks, bridges, drives and loading areas which are not Common Areas and Facilities but are necessary or desirable for access to the boundary of or full utilization of any Unit or any Improvements within the Development.

(f) Exclusions from Maintenance Obligations. Notwithstanding the foregoing, the Association shall have no responsibility to provide the services referred to in this Section 10.1 with respect to (i) any Common Areas and Facilities that are accepted for maintenance by any Governmental Authority (unless the Governmental Authority fails to maintain the area to a standard acceptable to the Association, or elects to not further maintain the area); (ii) the Marcella Club; or (iii) any Units or Improvements which are not Common Areas and Facilities and are not owned by the Association (but the Association shall have the right to enforce the maintenance thereof).

(g) Prohibition on Certain Activities Relating to Common Areas and Facilities. No Owner or Lessee shall place or install any sign or other Improvement or alter or remove the Common Areas and Facilities or Improvements on the Common Areas owned or maintained by the Association (including without limitation any Common Areas fence, gate or wall adjacent to a Unit) unless such placement, installation or alterations first approved in writing by the Board of Directors. No Owner or Lessee shall affix any object or device to any Common Facility or Common Areas fence, gate or wall, pierce the surface or otherwise expose the interior portion of such fence, gate or wall to the elements or install landscaping, irrigation systems or other Improvements on the Owner's or Lessee's Unit in such proximity or manner so as to undermine

or otherwise impair the structural integrity of any such fence, gate or wall, or impair the weather resistant finish thereon.

10.2 **Snow Removal.** To the extent not the obligation of Governmental Authorities with jurisdiction, the Association shall be responsible for the removal and disposition of snow from all Common Areas, private roads, and parking areas maintained by the Association. The Association has the right, but not the obligation, to remove and dispose of snow from any Unit driveway(s), Driveway Easement(s), and Shared Access area(s) within the Development, as necessary; provided, however, if the Association assumes responsibility for such snow removal on behalf of an Owner(s), the costs of such removal shall be levied as a Special Assessment against the benefitted Unit(s) and Owner(s). The Association may contract with the Mountain Operator or any other Person for all snow removal operations in the Development. The Association hereby agrees to, indemnify, defend and hold harmless the Mountain Operator and each of the Mountain Operator's Affiliates and each of their respective shareholders, officers, directors, employees, agents, attorneys and representatives (each an "**Indemnified Party**"), from and against any and all damages, awards, judgments, assessments, fines, sanctions, penalties, charges, costs, expenses, payments and other losses, however suffered or characterized, all interest thereon, all costs and expenses of investigating or defending any such claim, lawsuit or arbitration and any appeal therefrom, all actual attorneys, accountants and investment bankers and expert witness fees incurred in connection therewith, whether or not any such claim, lawsuit or arbitration is ultimately defeated (except as provided below) and amounts paid incident to any compromise or settlement of any such claim, lawsuit or arbitration (but any such compromise or settlement will be subject to the reasonable approval of the Association) (collectively "**Losses**"), which may be incurred or suffered by any such Indemnified Party and which may arise out of or result from any claim from any Governmental Authority that the removal or dumping of snow in the manner described above is not permitted by Applicable Law, or any claim by any Guest or other Person that the Mountain Operator's removal and/or dumping of snow constitutes an actionable nuisance or is otherwise illegal, but no such indemnification, defense or hold harmless obligation will apply to the extent that the actions or omissions of the Mountain Operator are found by a court of competent jurisdiction to have constituted gross negligence, or to have been in violation of the terms of any permit of any Governmental Authority.

10.3 **Storm Drainage Maintenance.** The Association shall maintain the storm drainage facilities located within the public easement areas adjacent to roads in the Development, including structural storm water quality enhancement facilities, unless such maintenance is provided by a Governmental Authority or the Master Association.

10.4 **Maintenance of Detention/Water Quality Facilities.** The Association shall maintain any detention/water quality facilities initially constructed by Declarant, unless such maintenance is provided by a Governmental Authority or the Master Association.

10.5 **Maintenance of Landscaping.** The Association shall be responsible for the maintenance of landscaping and irrigation in the Common Areas unless such maintenance is provided by a Governmental Authority or the Master Association. In no event shall landscaping, monuments, or similar installations be permitted, installed or maintained that adversely affect, impede or increase the cost of snow plowing operations, or which adversely affect any easements or other rights of the Mountain Operator.

10.6 **Trail Maintenance.** All multi-purpose trails in the Open Space or Common Areas shall be maintained by the Association unless such maintenance is provided by a Governmental Authority, the Master Association or the Mountain Operator. The Mountain Operator shall be entitled to post such signs along trails as may be appropriate to identify Mountainside Ski Property or warn of risks if the trails lead to or traverse Mountainside Ski Property.

10.7 **Reserved.**

10.8 **Common Facilities on Property Owned By Declarant.** Unless otherwise agreed in writing, and specifically excluding the Marcella Club and Marcella Club Facilities, the Association shall be obligated to and shall provide for the care, operation, management, maintenance and repair of any Common Areas and Facilities consisting of only a portion of, or defined space within, a building or other Improvement owned by Declarant and shall be obligated to and shall bear and pay to Declarant a proportionate share of Declarant's costs and expenses relating to such building or Improvement as a whole, including, without limitation, maintenance, taxes and assessments, insurance and depreciation. The proportionate share of the Association's costs and expenses relating to such building or Improvement as a whole shall be determined by Declarant based on the actual amount of such costs and expenses relating to such building or Improvement as a whole multiplied by the ratio with a numerator which is the number of square feet of floor area of such defined space within the building or Improvement and a denominator which is the number of square feet of floor area of the entire building or Improvement.

10.9 **Owner's Responsibility.**

(a) Except as otherwise provided in this Declaration or by written agreement with the Association, all maintenance of the Units and all structures, landscaping, parking areas, and other Improvements thereon, shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in accordance with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to a Supplemental Declaration.

(b) Each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Common Area or right-of-way within ten (10) feet of the Unit boundary; provided, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article 7. Each Owner of a Unit adjacent to any channel, wetland, or other body of water shall maintain such property to the water's edge. The Association shall, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board of Directors shall notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within thirty (30) days after mailing of such written notice, then the Association may proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner, together with interest as provided in Section 12.6. Such charges shall be an Special Individual Assessment and lien on such Owner's Unit as provided in Section 11.10.

10.10 **Reserved.**

10.11 **Responsibility for Repair and Replacement.**

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

(b) By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on such Owner's Unit, less a reasonable deductible, unless the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Special Assessment against the benefitted Unit and the Owner.

(c) Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising such Owner's Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 8. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

10.12 **Association Recovery of Costs of Certain Repairs and Maintenance.**

(a) Association Maintenance Caused by Failures or Negligence. If the need for maintenance or repair which would otherwise be the Association's responsibility hereunder is caused by the failure of an Owner to perform its obligations under this Declaration, or through the willful or negligent acts of an Owner, or its Guests and the resulting costs and damage is not covered or paid for by insurance policies or any liability insurance maintained by the Association or the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 11.10, or in an action at law, as applicable.

(b) Owner Defaults in Maintenance Responsibilities. If an Owner fails to perform maintenance or repair functions on the Owner's Unit for which such Owner is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 12.2, to enter the Owner's Unit and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 12.2.

10.13 **Limitation of Liability.** Declarant, the Association, and each and every employee or agent of either of them, hereby disclaims any liability for personal injury or property damage resulting in any way, all or in part, from their performance of any of the services set forth in this Article 10.

**10.14 Safety and Security.** EACH OWNER AND OCCUPANT OF A UNIT, AND THEIR RESPECTIVE GUESTS AND INVITEES, SHALL BE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND THE SECURITY OF THEIR PROPERTY IN THE DEVELOPMENT. THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE DEVELOPMENT DESIGNED TO ENHANCE THE LEVEL OF SAFETY OR SECURITY WHICH EACH PERSON PROVIDES FOR SUCH PERSON AND SUCH PERSON'S PROPERTY. NEITHER THE ASSOCIATION NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE DEVELOPMENT, NOR SHALL EITHER 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 DEVELOPMENT, 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 GUESTS AND ALL OCCUPANTS OF ITS UNIT THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, AND DECLARANT ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE DEVELOPMENT ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING UNITS AND THE CONTENTS OF UNITS, RESULTING FROM ACTS OF THIRD PARTIES.

## ARTICLE 11

### ASSESSMENTS

**11.1 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Development and for the improvement, operation and maintenance of the Common Areas and Facilities.

**11.2 Types of Assessments.** The Association may levy Annual Assessments (including Cost Center Assessments), Special Assessments, Emergency Assessments, and Special Individual Assessments, all as more particularly described below.

**11.3 Apportionment of Assessments.** Any Residential Unit owned by Declarant, Declarant's Affiliates, or MIDA shall not be subject to Assessments until such time as the Residential Unit is occupied for a residential use, or until such earlier time as Declarant in its sole discretion shall determine, subject to accrual of reserves as described in Section 11.14. The Commercial Units shall not be subject to Assessments until the expiration of the Administrative Control Period or such earlier time as Declarant in its sole discretion shall determine. All other Units shall pay their share of the Annual Assessments, Special Assessments, and Emergency Assessments as provided in this Article 11 commencing upon the date such Units are made subject



to this Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Units subject to assessment.

**11.4 Designation of Cost Centers.** Declarant shall have the power and authority, pursuant to a Supplemental Declaration, to designate Units, Common Areas and Common Facilities, as a Cost Center for purposes of expense accounting and the equitable allocation of Common Expenses in accordance with Section 11.5.

(a) A Cost Center is likely to be designated under any of the following circumstances: (i) when the Association will be responsible for maintaining, repairing or replacing a Common Area or Common Facility that disproportionately benefits some Owners (or is only available to some Owners) to the exclusion of other Owners; (ii) when the Association will be responsible for maintaining certain portions of Units that disproportionately benefit some Owners (or is only available to some Owners) to the exclusion of other Owners; or (iii) when certain Owners of Units are receiving services from the Association that are in addition to, or significantly greater than, the services provided to other Owners or residents. Under those circumstances, the disproportionately or exclusively benefited Units may be designated as a Cost Center and the Owners of those Units will be obligated to pay a Cost Center Assessment to defray the expenses incurred by the Association to provide the special benefits or services.

(b) Ordinarily, a Cost Center shall be established whenever it is reasonable to anticipate that any Owner or group of Owners will derive as much as ten percent (10%) more than the Owners in general in the value of common service(s) supplied by the Association.

**11.5 Annual Assessments.** The Board of Directors of the Association shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous overassessment and any common profits of the Association. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by Applicable Law, but not less than the reserves required by Section 11.14, and such reserve or contingency funds shall be a separate line item in the budget. Such line item for the reserve or contingency funds shall be based on the reserve analysis described in Section 11.14 hereof or shall be the amount set forth for such funds, if any, in the Governing Documents, if such amount is greater. The Board shall present its prepared budget to the Members at a meeting of the Association, and such budget shall be effective if it is not disapproved within forty-five (45) days of the date of such meeting by at least fifty one percent (51%) of the total Class "A" votes in the Association in a vote held in a special meeting called for the purpose of holding such a vote. Notwithstanding the foregoing, during the Administrative Control Period, the Members shall not have the ability to disapprove the budget. Except as set forth in this Section, the method of adoption of the budget and the manner of billing and collection of Assessments shall be as further provided in the Bylaws. Annual Assessments for such operating expenses and reserves ("**Annual Assessments**") shall specifically include the annual assessments imposed on each Unit pursuant to the Master Declaration and the Annual Assessments will be apportioned among the Owners and their respective Units for which Annual Assessments have commenced based on the number of Assessment Units allocated to each Unit, as follows:

(a) Assessment Units, and Allocation of Assessments, Generally. The Board of Directors shall conclusively determine the Assessment Unit allocation for all of the Property, based on the following guidelines:

(i) Association Common Expenses. Except as otherwise provided in subparagraph (a)(ii), below, the total estimated Common Expenses, determined in accordance with the first paragraph of this Section 11.5 (other than Common Expenses designated as a Cost Center Assessment Component), shall be allocated among, assessed against, and charged to each Owner of Unit that is subject to Assessment according to the allocation of Assessment Units set forth below. Cost Center Assessments shall be allocated among, assessed against, and charged to each Owner of Unit in the Cost Center according to the ratio of the number of Assessment Units in the Cost Center owned by the assessed Owner to the total number of Assessment Units within the Cost Center that are subject to the Cost Center Assessment so that each such Assessment Unit in the Cost Center bears an equal share of the total Cost Center Assessment Component.

(ii) Partial Exemption for Uncompleted Common Facilities. All Owners, including Declarant, shall be exempt from the payment of that portion of any Annual Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Common Facility that is not completed at the time Assessments commence. The Assessment exemption provided by this subparagraph shall be in effect only until the earliest of the following events: (A) a notice of completion of the Common Facility has been Recorded; or (B) the Common Facility has been placed in use.

(iii) Assessment Unit Allocations. Subject to Section 4.3, the aggregate Common Expenses comprising the Annual Assessment shall be allocated among and assessed against all Units that are subject to assessment such that such Units shall be allocated one (1) Assessment Unit regardless of the size of the Unit.

(b) Annual Assessment Allocation. Annual Assessments shall be allocated among, assessed against, and charged to each Owner of a Unit that has been given one or more Assessment Units according to the ratio of the number of Assessment Units within the Property on account of the Unit(s) that Owner owns chargeable to the assessed Owner (as provided in Section 11.5(a)) to the total number of Assessment Units within the Property subject to assessment.

(c) Calculating the Amount of the Annual Assessment.

(i) Determining the Annual Assessment Amount for Common Expenses Exclusive of Cost Centers. Annual Assessments shall be levied initially against the Owners of Units, (including Declarant) in the amount set forth in the Association budget. Thereafter, beginning with the fiscal year immediately following the fiscal year in which Annual Assessments commence, not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any Reserve Fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Members a budget satisfying the requirements of this Declaration and the Bylaws. Any difference between the amounts actually expended for the maintenance and services described as Common Expenses,

and the amounts set forth in the Association's budget shall be carried over to the following fiscal year and shall either increase or decrease the amounts allocated to the Units, as appropriate, for the following year. Subject to the Member approval requirements for certain Annual Assessment increases (see Section 11.5(e)) the total estimated Common Expenses shall become the Annual Assessment.

(ii) Cost Center Component of the Annual Assessment. If a Cost Center has been established in accordance with Section 11.4 and Section 11.6, Common Expenses attributable to Cost Centers shall be separately accounted for and disclosed in the Association's annual budget. Owners of Units within the Cost Center shall be levied and collected by the Association as a component of the Annual Assessment and shall be assessed against each Unit benefited by such Cost Center Common Expenses based on the number of Assessment Units allocated to each Unit so benefited divided by the total number of Assessment Units allocated to all Units that are so benefited. The Association shall distribute to Owners of the affected Units in the Cost Center a pro forma operating statement and budget for each upcoming fiscal year which shall estimate the expenses attributable to any such additional Cost Center Assessment Component of the Annual Assessment and shall set forth the amount and payment schedule therefore. Once established, the Board may not, without the vote or written assent of Members constituting a majority of a quorum of the Members who own Units in the assessed Cost Center, impose a Cost Center Assessment per Unit which is more than twenty percent (20%) greater than the Cost Center Assessment for such Cost Center for the immediately preceding fiscal year.

(iii) Effect of Board's Failure to Prepare and Distribute the Annual Budget. If the Board of Directors of the Association fails to distribute a budget satisfying the requirements of this Declaration and the Bylaws for any fiscal year within the time period specified herein, the Board shall not be permitted to increase Annual Assessments for that fiscal year unless the Board first obtains the approval of the Members in accordance with Section 11.5(e).

(d) Limitations on Annual Assessment Increases. As provided in Section 11.5(d), the total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Annual Assessment for the next succeeding fiscal year; provided, however, that, except as provided in Section 11.8, the Board of Directors may not impose an Annual Assessment that is more than twenty percent (20%) greater than the Annual Assessment for the Association's immediately preceding fiscal year without the approval of the Members in accordance with Section 11.11.

(e) Supplemental Annual Assessments. Notwithstanding the foregoing limitations on Annual Assessment increases, if the Board determines that the important and essential functions of the Association may be properly funded by an Annual Assessment that is less than the maximum Annual Assessment which the Board has authority to impose without Member approval, the Board may levy such lesser Annual Assessment. If the Board levies an Annual Assessment in an amount less than the maximum that the Board has authority to impose for any fiscal year and thereafter during such fiscal year the Board determines that the important and essential functions of the Association cannot be funded by the lesser Annual Assessment previously levied, the Board may levy one or more supplemental Annual Assessments, not to exceed one hundred and twenty percent (120%) of the Annual Assessment for the immediately preceding fiscal year.

(f) Commencement of Assessments. Subject to Section 11.3, Annual Assessments shall commence as to each Unit that is subject to assessment hereunder within a Phase upon the earlier to occur of (i) the date specified in a notice of commencement of Annual Assessments Recorded by the Declarant with respect to the Phase; or (ii) to the first day of the first month following the month in which the first deed is Recorded for the sale of a Unit in the Phase to an Owner who is not a Builder, Declarant or Declarant's Affiliate. Each Unit in the subject Phase shall thereafter be subject to its share of the then established Annual Assessment. The first Annual Assessment shall be prorated, if necessary, according to the number of months remaining in the fiscal year established in the Bylaws. If the Declarant elects to commence to pay Annual Assessments on Units, if any, within a Phase prior to the conveyance of any Unit in such Phase to an Owner who is not a Builder, Declarant or Declarant's Affiliate, the Declarant shall have the voting rights as to the Units in such Phase upon commencement of the payment of Assessments. In no event shall any sale or leaseback to the Declarant of any Unit in the Property being used as a model home, sales office, design center, construction office of similar purpose cause the commencement of Assessments in a Phase for which assessments have not otherwise commenced in accordance with the provisions of this Section 11.5(g).

(g) Payment of Annual Assessments. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board of Directors, at such frequency and on such due dates as the Board of Directors shall determine from time to time in its sole and absolute discretion. Each installment of an Annual Assessment may be paid to the Association in one check or in separate checks as the Board of Directors may require. If any payment of an Annual Assessment installment is less than the amount assessed and the payment does not specify the fund or funds into which it should be deposited, the payment received by the Association from that Owner shall be credited in order of priority first to the Operations Fund until that portion of the Annual Assessment has been satisfied, then to the Reserve Fund until that portion of the Annual Assessment has been satisfied, then to any other Association funds established by the Association.

#### 11.6 Reserved.

#### 11.7 Special Assessments.

(a) Categories of Special Assessments. The Assessments that the Association is either required or permitted to levy and collect pursuant to this Section 11.7 are referred to in this Declaration as "**Special Assessments.**" There shall be three (3) types of Special Assessments, namely: "General Special Assessments," "Mountain Operator Special Assessments," and "Association Special Assessments."

(b) General Special Assessments. If, at any time, the Board of Directors believes that Common Expenses of the Association will exceed revenues for any fiscal year for any reason other than a failure to adequately budget amounts required to be paid by the Association to the Mountain Operator under the Mountain Operator Agreement or the Mountain Easement Agreements, the Board of Directors shall cause the Association to levy and collect a Special Assessment in an amount equal to the amount of such excess. The type of Special Assessment described in this subparagraph (b) shall be a "General Special Assessment". If the Association levies a General Special Assessment, each Owner of Unit shall pay to the Association, when and

in such installments as the Board of Directors deems necessary or appropriate, an amount equal to the product obtained by multiplying:

(i) the amount of the General Special Assessment, by

(ii) a fraction, the numerator of which shall be the number of Assessment Units allocated to such Owner's Unit(s), and the denominator of which shall be the total number of Assessment Units within the Property during that calendar year.

(c) Mountain Operator Special Assessments. If, at any time, the Board of Directors believes that Common Expenses will exceed revenues for any fiscal year as a result of a failure to adequately budget amounts required to be paid by the Association to the Mountain Operator under or in connection with the Mountain Operator Agreement or the Mountain Easement Agreements, then the Board of Directors shall, following consultation with the Mountain Operator regarding the unbudgeted costs and expenses, cause the Association to levy and collect a Special Assessment in an amount equal to the amount of such excess. The Mountain Operator Special Assessment shall have priority over and shall be paid prior to the General Special Assessment. The type of Special Assessment described in this subparagraph (c) shall be a "Mountain Operator Special Assessment." If the Association levies a Mountain Operator Special Assessment, the Mountain Operator Special Assessment shall be levied in the same manner that amounts are required to be paid by the Association pursuant to the terms and conditions of the Mountain Operator Agreement or the Mountain Easement Agreements.

(d) Association Special Assessments. In addition to the other Special Assessments described in this Section 11.7, the Association may, from time to time, levy and collect from Owners of Units one or more Assessments for any lawful purpose, including, without limitation, new capital improvements in the Common Areas (each, a "**Association Special Assessment**"), which Special Assessments shall specifically include any special assessments imposed on each Unit pursuant to the Master Declaration, on the condition that each Association Special Assessment (other than those amounts attributable to special assessments imposed on each Unit pursuant to the Master Declaration) is approved by the affirmative vote of the Members in accordance with Section 11.11. If the Association levies an Association Special Assessment, each Owner of Unit shall pay to the Association, when and in such installments as the Board of Directors deems necessary or appropriate, an amount equal to the product obtained by multiplying:

(i) the amount of the Association Special Assessment, by

(ii) a fraction, the numerator of which shall be the amount of the Annual Assessment levied against such Owner's Unit(s) during that calendar year, and the denominator of which shall be the amount of all Annual Assessments levied against all Units during that calendar year.

(e) Special Assessments Requiring Member Approval. No Special Assessment(s) described in this Section 11.7, which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied, shall be made without the vote or written assent of the Members of the Association in accordance with Section 11.11. Notwithstanding the foregoing, the Board of

Directors may levy in any fiscal year a Special Assessment applicable to that fiscal year without the vote of the Members if such Special Assessment is necessary for addressing an emergency situation as provided in Section 11.8. All Special Assessments must be fixed for all Units in the same manner and in the same proportions as Annual Assessments are levied, and they shall be collected in the manner and frequency determined by the Board of Directors from time to time.

#### 11.8 Emergency Assessments.

(a) Authority of Board to Impose Emergency Assessments. The requirement of a membership vote to approve: (i) Annual Assessment increases in excess of twenty percent (20%) of the previous year's Annual Assessment; or (ii) Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments necessary to address emergency situations ("**Emergency Assessments**"). For purposes of this Section 11.8, an emergency situation is any of the following:

- (i) An extraordinary expense required by an order of a court;
- (ii) An emergency expense approved pursuant to the provisions of the Master Declaration and tendered to the Association for collection and payment by the Unit Owners;
- (iii) An extraordinary expense necessary to repair or maintain the Common Areas and Facilities where a threat to personal safety is discovered; and
- (iv) An extraordinary expense necessary to repair or maintain the Common Areas and Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 11.5; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (iv), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

(b) Payment of Emergency Assessments. When levied by the Board the Emergency Assessment shall be divided among, assessed against and charged to each Owner and such Owner's Unit in the same manner prescribed for the allocation of Annual Assessments. The Emergency Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner. An Emergency Assessment shall be due as a separate debt of the Owner and a lien against such Owner's Unit, and shall be payable in full to the Association within thirty (30) days after the mailing of the notice of the Emergency Assessment or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Emergency Assessment.

11.9 Payment of Master Association Assessments. The Association shall promptly pay to the Master Association any amounts actually collected by the Association in the form of Assessments from any Unit Owner in payment of assessments due or payable to the Master Association, which Master Association assessments shall be included in the Association's Annual Assessment. The Association shall be jointly and severally liable for all assessments due and

payable to the Master Association by any Unit Owner, but only if such assessments are actually collected by the Association. If the Association is unable to collect such assessments, the Master Association must enforce its rights directly against such defaulting Unit Owner and not the Association. The provisions of this Section 11.9 shall be specifically enforceable by the Master Association.

#### 11.10 **Special Individual Assessments.**

(a) Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by (i) the negligence or misconduct of an Owner or such Owner's Guest (and the expense is not covered by insurance maintained by the Association); or (ii) a violation of any covenant or condition of any Governing Document by an Owner or such Owner's Guest, the Association may levy an Assessment against such Owner's Unit. Any such Assessment levied by the Association and each fine, penalty, fee or other charge imposed upon an Owner for the violation of any covenant or condition of any Governing Document by an Owner or such Owner's Guest are each referred to herein as a "**Special Individual Assessment.**"

(b) With respect to any Special Individual Assessment, or portion thereof, levied other than as a late charge, the Owner of the Unit against which the Association seeks to levy the Special Individual Assessment shall be provided notice and an opportunity to be heard in accordance with Section 11.11. Owners of Units against which a Special Individual Assessment has been levied shall pay the Special Individual Assessment when required by the Association.

**11.11 Notice and Procedures for Member Approval of Certain Assessments Pursuant to Sections 11.5(e), 11.7 and 11.10.** In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 11.5(e), 11.7 and 11.10, the affirmative vote required to approve the increase shall be a majority of a quorum of the Members who are or may be liable for payment of the Assessment. The quorum required for such membership action shall be a majority of the Members, and the required affirmative vote shall be at least (i) in the case of an increase in the Annual Assessment or imposition of a Special Assessment, the affirmative vote of a majority of the Members casting votes at the meeting or by written ballot; and (ii) in the case of an increase in a Cost Center Assessment Component, the affirmative vote of a majority of the Units within the Cost Center that is subject to the increased Cost Center Assessment Component casting votes at the meeting or by written ballot. Notwithstanding anything in this Declaration to the contrary, no portion of any Assessment attributable to assessments due and payable pursuant to the Master Declaration shall be subject to the approval of the Members pursuant to this Declaration; provided, such assessments under the Master Declaration have been approved pursuant to the requirements of the Master Declaration.

#### 11.12 **Reserved.**

**11.13 Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 11.14, separate and apart from its other funds, in an account maintained in the name of the Association to be known as the "**Operations Fund.**" The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and

related to the use and enjoyment of the Common Areas and Facilities and of the Units situated upon the Property, including but not limited to:

(a) Payment of the cost of maintenance, utilities and services as described in Article 10.

(b) Payment of the cost of insurance as described in the Bylaws of the Association.

(c) Payment of taxes assessed against the Common Areas and Facilities and any Improvements thereon.

(d) Payment of the cost of other services which the Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

(e) Payment of assessments to the Master Association with respect to all assessments under the Master Declaration assessed against the Units and collected by the Association.

**11.14 Reserve Fund.** The Association shall establish a reserve fund for replacement of those Improvements to be maintained by the Association, all or a part of which will normally require functional replacement in more than three (3) and less than thirty (30) years ("**Reserve Fund**"), in compliance with the requirements of Applicable Law. The Reserve Fund shall be funded by Assessments against the Units assessed for maintenance of the items for which the Reserve Fund is being established ("**Reserve Fund Assessment**"). The Assessments under this Section begin accruing against each Unit from the date the Unit is sold by Declarant to a Person who is not a Builder or one of Declarant's Affiliates. Declarant shall not be obligated to contribute to the Reserve Fund at the time of the sale of each Unit by Declarant to a Person who is not a Builder or one of Declarant's Affiliates. The amount assessed to each Unit shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Association and shall be adjusted in accordance with the provisions of this Section 11.14 or otherwise at regular intervals to recognize changes in current replacement costs over time. Except during the Administrative Control Period, during which the following provisions shall not apply, the Association shall: (i) no less frequently than every six (6) years conduct a reserve analysis to determine the need for the Reserve Fund to accumulate reserve funds and the appropriate amount of the Reserve Fund, (ii) no less frequently than every three (3) years review and, if necessary, update a previously conducted reserve analysis, (iii) provide the Members a summary of the most recent reserve analysis or update annually and (iv) provide a complete copy of the most recent reserve analysis or update to any Member who requests the same. The Board may conduct the reserve analysis itself or engage a reliable person or organization to conduct the reserve analysis, provided the reserve analysis shall, at a minimum, include the following: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds, (ii) a statement of the probably remaining useful life, as of the date of such reserve analysis, of each component identified in the reserve analysis, (iii) an estimate of the cost to repair, replace or restore each component identified in the reserve analysis, (iv) an estimate of the total annual contribution



to the Reserve Fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life, and (v) a reserve funding plan that recommends how the Association may fund such annual contribution. The Reserve Fund shall be used only for replacement of Common Areas or Common Facilities as determined by the Board of Directors and shall be kept separate from the Operations Fund. After the turnover meeting described in Section 9.7, however, if at least fifty one percent (51%) of the total Class "A" votes in the Association approve, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments, Special Assessments or Emergency Assessments. The budget line item for future Assessments for the Reserve Fund may be disapproved within forty-five (45) days of the day on which the budget is adopted by at least fifty one percent (51%) of the total Class "A" votes in the Association in a vote held in a special meeting called for the purpose of holding such a vote. In the event such budget line item is disapproved, the Reserve Fund shall be funded pursuant to the line item for Reserve Fund Assessments from a previous budget that was not disapproved, if any. Following the second year after the turnover meeting, future Assessments for the Reserve Fund may be reduced, eliminated or decreased by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Association. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to Owners of Units. Nothing in this Section 11.14 shall prohibit prudent investment of the Reserve Fund.

**11.15 Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Unit owned by it within the Property, does hereby covenant, and each Owner of any Unit by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant, to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Bylaws. Such Assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 12.6, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such Assessment or charge is made; provided, however, that no lien shall attach to any Unit owned by Declarant or Declarant's Affiliates until such time as such Unit is subject to Assessment pursuant to the requirements of Section 11.3. Such Assessments, charges and other costs shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 12 below.

**11.16 Exempt Property.** The following Property subject to this Declaration shall be exempt from the Assessments herein: (i) those portions of the Property dedicated in fee and accepted by a Governmental Authority; (ii) all Common Areas and Facilities, Open Space Parcels, and Vacant Land; (iii) any Property owned by the Mountain Operator (or to which the Mountain Operator otherwise has rights by easement or contracts) and used primarily in connection with the operation or maintenance of the Mountainside Ski Property, Mountain Operations and related improvements, but not any Unit, even if such Unit is burdened by any such easement or contract, including any Mountain Easement Agreements; (iv) any property owned, held or used in its entirety by Declarant, Declarant's Affiliates, or the Master Association, the Association for maintenance, cat barns, or other non-revenue generating facilities; (v) any Unit or other property that the Resort Foundation owns; (vi) the Property exempt from Assessments pursuant to Section 11.3 above, and (vii) any Property owned, held or used in its entirety by the Mountain Operator,

the Master Association, the Association, or by any Governmental Authority, or for or in connection with the distribution of electricity, gas, water, sewer, telephone, television or other utility service, or for access to any property within or without the Development, or for or in connection with the Mountainside Ski Property or Mountain Operations.

11.17 **Mortgage Protection from Liens.** Notwithstanding all other provisions hereof, no lien created under this Article 11, nor any breach of this Declaration, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Mortgagee under any Recorded Mortgage upon a Unit, made in good faith and for value; provided that (i) such Mortgage is Recorded prior to any notice of lien Recorded pursuant to this Declaration, and (ii) after such Mortgagee or some other Person obtains title to such Unit by judicial foreclosure or by means of the powers set forth in such Mortgage; provided that such Unit shall in all events remain subject to the Governing Documents and the payment of all installments of Assessments, fees and other obligations, accruing subsequent to the date such Mortgagee or other Person obtains title.

11.18 **Priority of Assessment Lien.** The lien of the Assessments and fees as provided for herein, including interest thereon and costs of collection (including attorneys' fees) shall be subordinate to the lien of any first Mortgage upon any Unit which was Recorded prior to Recordation of a notice of lien on such Unit. The sale or transfer (including any "deed in lieu" of foreclosure) of any Unit shall not affect the Assessment lien; however, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage Recorded prior to a notice of lien shall extinguish the lien of such Assessments and fees as to payments which became due prior to such foreclosure sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any Assessments and fees thereafter becoming due. Where the Mortgagee of a first Mortgage of Record or other purchaser of a Unit obtains title through judicial or nonjudicial foreclosure of the first Mortgage, the Person who acquires title and such Person's successors and assigns shall not be liable for the share of the Common Expenses, Assessments or fees by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person. Such unpaid share of Common Expenses, Assessments and fees shall be deemed to become Common Expenses collectible from all of the Units, including the Unit belonging to such Person and such Person's successors and assigns.

11.19 **Declarant Subsidy.** During the Administrative Control Period, Declarant may satisfy its obligation, if any, for Assessments on Units which it owns either by paying such Assessments in the same manner as any other Owner, notwithstanding the commencement date of Assessments set forth in Section 11.5(g), or by paying the difference between the amount of Assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year, which may be either a contribution, an advance against future Assessments due from Declarant, or a loan, in Declarant's discretion. Payment of any such subsidy in any year shall not obligate Declarant to continue such subsidy in future years unless otherwise provided in a written agreement between the Association and Declarant. Regardless of Declarant's election, Declarant's obligations hereunder 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 Administrative Control Period,

Declarant shall pay any authorized Assessments on its unsold Units in the same manner as any other Owner.

11.20 **Capitalization of Association.** Upon acquisition of Record title to a Unit 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 Association in an amount equal to one-sixth of the Annual Assessments per Unit for that year. This amount shall be in addition to, not in lieu of, the Annual Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws.

11.21 **Conveyance to Trustee.** Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to High Country Title, with power of sale, the Units and all Improvements to such Units for the purpose of securing payment of Assessments under the terms of this Declaration. The foregoing trustee may be replaced by the Master Association pursuant to a Recorded written notice identifying a substitute trustee meeting the requirements of U.C.A. Sections 57-1-20 and 57-8a-302.

11.22 **Community Reinvestment Fees; Change of Control Fee.**

(a) Pursuant to Section 11.20 of the Master Declaration, each purchaser of a Unit, upon closing the acquisition of such Unit, shall pay to the Resort Foundation the Community Reinvestment Fee (as defined in the Master Declaration), in accordance with the terms of the Master Declaration. As applicable pursuant to Section 11.21 of the Master Declaration, each Owner that is not a natural Person with respect to which a Change of Control (as defined in the Master Declaration) occurs, upon the occurrence of such Change in Control, shall pay to the Resort Foundation a Change in Control Fee (as defined in the Master Declaration), in accordance with the terms of the Master Declaration. The Community Reinvestment Fee and the Change in Control Fee shall be used exclusively for the purposes set forth in the Master Declaration.

(b) In order to provide the Association with the funding necessary to carry out the purposes for which it was formed, an additional community reinvestment fee is hereby established in accordance with Utah Code § 57-1-46 applicable to any Transfer, as defined below ("**Additional Community Reinvestment Fee**"). This Additional Community Reinvestment Fee shall be payable from such transferring Owner to the Association at the closing of each transfer of title to a Unit in the Development Property to a Person who is not Declarant, Declarant's Affiliate, or a Builder and shall be secured by the Association's lien as described in Section 11.15.

(i) Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Development Property, is deemed to covenant and agree to pay the Additional Community Reinvestment Fee. Each Owner shall notify the Association of a pending title transfer to a Person who is not Declarant, Declarant's Affiliate, or a Builder at least seven (7) days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and other information as may be required by the Board of Directors. Upon the occurrence of any sale, transfer, or conveyance of any Unit after the Original Sale thereof as reflected in the office of the County Recorder,

provided such sale, transfer, or conveyance is to a Person who is not Declarant or a Declarant's Affiliate (as applicable, a "**Transfer**"), the Person receiving title to the Unit (the "**Transferee**") shall pay to the Association the Additional Community Reinvestment Fee, which is hereby automatically levied against the subject Unit. The Association may set the Additional Community Reinvestment Fee amount by rule. Unless the Board adopts a rule otherwise, the Additional Community Reinvestment Fee shall be equal to 0.25% of the gross sales price thereof, less actual customary expenses of sale. In the event the gross sale price is not a cash price, the gross sales price shall be determined by the Association calculating the equivalent thereof which would have been received by the transferor had the Transfer been an arms-length, third-party cash transaction. The Additional Community Reinvestment Fee may be adjusted by the Association from time to time provided that the Additional Community Reinvestment Fee shall never exceed the maximum amount allowable under Applicable Law. The amount of any Additional Community Reinvestment Fee, as it may be adjusted from time to time by the Association, shall be evidenced by a Recorded "Notice of Community Reinvestment Fee Covenant" that meets the requirements of UCA Section 57-1-46, as amended from time to time.

(ii) The Additional Community Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Additional Community Reinvestment Fee and shall be treated as a Special Individual Assessment for collection purposes. Additional Community Reinvestment Fees shall be used exclusively by the Association to benefit the Development Property, including, without limitation, any use allowed by the Master Association for the Community Reinvestment Fee, as further detailed in the Master Declaration.

(iii) If the Additional Community Reinvestment Fee is not paid within ten (10) days of the date of the Transfer which gave rise to the fee, the Additional Community Reinvestment Fee shall become delinquent and, together with interest (computed from its due date at a rate of ten percent (10%) per annum or such higher rate as the Board may establish, subject to the limitations of Applicable Law), costs of collection, and reasonable attorneys' fees, shall be the personal obligation of both the grantee and the grantor and a lien upon the Unit until paid in full. 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, (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, and (c) the lien of the Association to secure payment of delinquent Assessments and other charges as provided in Section 11.15. Such lien, when delinquent, may be enforced by suit, judgement, and judicial or nonjudicial foreclosure. The grantor shall be primarily liable and the grantee shall be secondarily liable as between themselves, but they shall be jointly and severally liable to the Association for the delinquent Additional Community Reinvestment Fee and other charges. If the grantee pays the delinquent amount due the Association, he or she shall be subrogated to the Association's cause of action and shall be entitled to recover the amount of the Additional Community Reinvestment Fee, together with any costs, including attorneys' fees, incurred because of the grantor's failure to pay as required hereunder. Sale or transfer of any Unit shall not affect the Association's lien or relieve such Unit from the lien for any subsequent fees. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage

shall extinguish the lien as to any Additional Community Reinvestment Fees due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit shall not be personally liable for Additional Community Reinvestment Fees on such Unit due prior to such acquisition of title.

(iv) Notwithstanding anything to the contrary set forth in this Section, the Association shall not levy or collect an Additional Community Reinvestment Fee for any of the following Transfers:

- (A) An involuntary Transfer; or
- (B) A Transfer that results from a court order;
- (C) A bona fide Transfer to a family member of the transferor within three degrees of consanguinity who, before the Transfer, provides adequate proof of consanguinity;
- (D) Any Transfer or change of interest by reason of death, whether provided for in a will, trust, or decree of distribution, except for a sale of the Unit by the estate of an Owner;
- (E) Any Transfer by a financial institution, except that such financial institution shall pay the Association's costs directly related to the Transfer of the subject Unit, not to exceed \$250;
- (F) Any Transfer in connection with (1) the foreclosure of a deed of trust or mortgage, or (2) a deed given in lieu of foreclosure;
- (G) Any Transfer to the United States or any agency or instrumentality thereof;
- (H) Any Transfer to the State of Utah, MIDA, or any county, city, municipality, district or other political subdivision of the State of Utah;
- (I) Any Transfer to the Master Association or the Association or their respective successors;
- (J) Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than ten percent (10%) of the value of the Unit transferred;
- (K) Any Transfer made solely for the purpose of confirming, correcting, modifying, supplementing a Transfer previously recorded, or removing clouds on titles;
- (L) Any lease of a Unit or portion thereof by a Governmental Authority, or any other lease of a Unit or portion thereof for a period of less than thirty (30) years; or

(M) Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.

## ARTICLE 12

### ENFORCEMENT

12.1 **Use of Common Areas.** In the event any Owner shall violate any provision of this Declaration, the Bylaws of the Association or the Rules, then the Association, acting through its Board of Directors, shall notify the Owner in writing that the violations exist and that such Owner is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend such Owner's voting rights in the Association and right to use the Common Areas and Facilities for the period that the violations remain unabated, or for any period not to exceed sixty (60) days for any minor infraction of the Rules (as reasonably determined by the Board of Directors), (b) impose reasonable fines upon the Owner in accordance with the procedures set forth in the Bylaws and required by Applicable Law, and in the amount set forth in the Rules, which fines shall be paid into the Operations Fund, or (c) bring suit or action against such Owner to enforce this Declaration. Nothing in this Section 12.1, however, shall give the Association the right to deprive any Owner of ingress and egress to such Owner's Unit.

12.2 **Nonqualifying Improvements and Violation of General Protective Covenants.** In the event any Owner constructs or permits to be constructed on such Owner's Unit an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Unit, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same in order to bring such Owner's Unit, the Improvements thereon and such Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association acting through its Board of Directors, shall have the right to do any or all of the following:

Impose reasonable fines against such Owner in accordance with the procedures set forth in the Bylaws and required by Applicable Law, and in the amount set forth in the Rules, which fines shall constitute Special Individual Assessments for purposes of this Declaration;

Enter the offending Unit and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, plus a fifteen percent (15%) administrative fee, which amount shall be payable to the Operations Fund, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings; or

Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

**12.3 Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days after its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may, in compliance with the notice and other requirements under Applicable Law, if any, suspend such Owner's voting rights and right to use the Common Areas and Facilities, including utilities and recreational amenities, until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of ingress and egress to such Owner's Unit.

(b) The Association shall have a lien against each Unit for any Assessment levied against the Unit and any fines, interest or other fees and charges imposed under this Declaration or the Bylaws against the Owner of the Unit. The lien shall be foreclosed in accordance with the provisions of Applicable Law regarding the foreclosure of Mortgages, including the right of sale under provisions of Applicable Law relating to deeds of trust. The Association, through its duly authorized agents, may bid on the Unit at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Unit.

(c) The Association may bring an action to recover a money judgment against any defaulting Owner for unpaid Assessments, fines and charges under this Declaration without foreclosing or waiving the lien described in Section 12.3(b). Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Association may require a Person, other than the Owner, who has regular, exclusive occupancy under a lease to pay the Association all future lease payments due to the Owner, to the fullest extent allowed by Applicable Law.

(e) The Association shall have any other remedy available to it by Applicable Law or in equity.

**12.4 Ownership of Unit by Association After Foreclosure.** While a Unit is owned by the Association following foreclosure, (a) no Assessment shall be levied on such foreclosed Unit, and (b) each other Unit shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that should have been charged such foreclosed Unit had it not been acquired by the Association.

**12.5 Notification of Eligible Mortgage Holder.** The Board of Directors shall notify any Eligible Mortgage Holder of any Unit of any default in performance of this Declaration by the Owner which is not cured within sixty (60) days after notice of default to the Owner.

**12.6 Interest, Expenses and Attorneys' Fees.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three (3) percentage points per annum above the prevailing New York prime rate for Bank of America at the time, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Utah. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the

Board of Directors of the Association not to exceed fifteen percent (15%) of such Assessment or any limitation imposed by Applicable Law. In the event the Association shall file a notice of lien, the lien amount shall also include the Recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

12.7 **Nonexclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

## ARTICLE 13

### **PROTECTION OF MORTGAGEES**

The provisions of this Article 13 apply to any Mortgage encumbering a Unit within the Development:

13.1 **Mortgages Permitted.** Any Owner may encumber such Owner's Unit with a Mortgage.

13.2 **Priority of Mortgages.** Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first Mortgage that encumbers all or a portion of any Unit, as the case may be, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such first Mortgage unless the first Mortgagee expressly subordinates its interest, in writing, to such lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein shall affect, impair, defeat or render invalid the lien or charge of any first Mortgage made in good faith and for value encumbering any Unit. All covenants, conditions and restrictions of this Declaration, however, shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Unit.

13.3 **Curing Defaults.** A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure, or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure. The



determination of the Board of Directors made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

13.4 **Resale.** It is intended that any loan to facilitate the resale of any Unit after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

13.5 **Relationship With Liens Created Under This Declaration.**

(a) The liens created under this Declaration shall be subordinate to the lien of any first Mortgage made in good faith and for value which was recorded prior to the date any such Assessment or fee becomes due.

(b) If any Unit subject to a monetary lien created by any provision hereof shall be subject to the lien of a first Mortgage and (i) the foreclosure of any lien allowed by this Declaration shall not operate to affect or impair the lien of such first Mortgage, and (ii) the judicial foreclosure of the lien of said first Mortgage or the sale under a power of sale included in such first Mortgage (such events being hereinafter referred to as "events of foreclosure") shall not operate to affect or impair the lien hereof, except that any Persons who obtain an interest through any of the events of foreclosure shall take title free of the lien hereof for all such charges as shall have accrued up to the time of any of the events of foreclosure, but subject to the lien hereof for all of said charges that shall accrue subsequent to the events of foreclosure.

(c) Any first Mortgagee who obtains title to a Unit by reason of any of the events of foreclosure, or any purchaser at a private or judicial foreclosure sale of a first Mortgage, shall take title to such Unit free of any lien or claim for unpaid Assessments or fees against such Unit which accrue prior to the time such first Mortgagee or purchaser comes into possession of the Unit.

(d) Nothing in this Section shall be construed to release any Owner from such Owner's obligation to pay for any Assessment or fee levied pursuant to this Declaration.

13.6 **Special Provisions for Eligible Mortgage Holders.** As used in this Section 13.6, an "**Eligible Mortgage Holder**" means a Mortgagee under a first priority Mortgage who provides a written notice of such Mortgage to the Association (such request to state the name and address of the Mortgagee and the Unit to which its Mortgage relates). The following provisions are imposed for the benefit of Eligible Mortgage Holders:

(a) Any restoration or repair of the Common Areas and Facilities, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders.

(b) Any election to terminate this Declaration after substantial destruction or a substantial taking in condemnation of the Property must be approved by Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders.

(c) No reallocation of interests in the Common Areas and Facilities resulting from a partial condemnation or partial destruction of the Common Areas and Facilities may be effected without the prior approval of Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of such remaining Units subject to Mortgages by Eligible Mortgage Holders.

(d) When professional management has been previously required, any decision to establish self-management by the Association shall require the prior consent of Members to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders.

(e) Except as otherwise provided in Sections 13.6(a) through 13.6(d):

(i) The consent of Members to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders which have at least sixty-seven percent (67%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders, shall be required to terminate this Declaration.

(ii) The consent of the Members to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders which have at least fifty-one percent (51%) of the votes of Units subject to Mortgages by Eligible Mortgage Holders, shall be required to add or amend any material provisions of this Declaration, the Articles or the Bylaws, which establish, provide for, govern or regulate any of the following:

- (A) Voting rights;
- (B) Increases in Annual Assessments (excluding any increase due to an Approved Annual Assessment Adjustment) that raise the most recent Annual Assessment amount by more than twenty percent (20%);
- (C) Reserves for maintenance, repair and replacement of the Common Areas and Facilities;
- (D) Insurance or fidelity insurance requirements;
- (E) Rights to use of the Common Areas and Facilities;
- (F) Responsibility for maintenance and repair of the Property;
- (G) The interests in the Common Areas and Facilities;
- (H) The boundaries of any Unit; or
- (I) Any provisions which are for the express benefit of Mortgage holders, Eligible Mortgage Holders of first Mortgages on Units.

Under no circumstances can any Mountain Operator Agreement be terminated or affected by any exercise of the powers set forth in this Section 13.6.

**13.7 Changes Requiring Additional Approval.** Unless otherwise prohibited by Applicable Law, except upon the prior written approval of at least two-thirds of all first Eligible Mortgage Holders (based on one vote for each first Mortgage owned), neither the Association nor the Members shall be entitled to do any of the following:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer Common Areas and Facilities either directly or indirectly, except as otherwise authorized by this Declaration; provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Areas and Facilities shall not be deemed a transfer within the meaning of this subsection.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner and such Owner's Unit.

(c) Fail to maintain fire and extended coverage insurance on insurable Master Association property including the Common Areas and Facilities on a full current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, or use casualty insurance proceeds for losses to any part of the Common Areas and Facilities for other than the repair, replacement and reconstruction of such improvements except as provided by statute in case of substantial destruction.

(d) If professional management is required, effectuate a decision to terminate professional management and assume self-management of the Development.

(e) Add or amend the material provisions of the Declaration, the Articles or Bylaws which are set forth in Section 13.6(e)(ii).

**13.8 Right to Inspect Statements, Attend Meetings.**

(a) All Owners, Lessees, and all holders, insurers or guarantors of any first Mortgage shall be entitled to inspect current copies of the Declaration, the Bylaws, the Rules and any other rules concerning the Property and the books, records and financial statements of the Association. Such inspection shall be upon request, during normal business hours or under other reasonable circumstances.

(b) All holders, insurers or guarantors of a first Mortgage shall be entitled, upon written request, to receive a copy of the annual financial statement for the immediately preceding fiscal year of the Association, subject to a reasonable charge as determined by the Board of Directors to the party so requesting. Such financial statement shall be furnished within a reasonable time following such request.

(c) Any first Mortgagee shall, upon written request to the Association, be entitled, subject to a reasonable charge as determined by the Board of Directors, to receive written notice of all annual and special meetings of the Members, and first Mortgagees shall further be entitled to designate a representative to attend all such meetings; provided, however, nothing

contained in this Section shall give a first Mortgagee the right to call a meeting of the Board of Directors or of the Members for any purpose or to vote at any such meeting.

13.9 **Conflicts.** In the event of any conflict between any of the provisions of this Article 13 and any of the other provisions of this Declaration, the provisions of this Article shall control.

13.10 **Mortgagees' Right to Cure Defaults.** First Mortgagees of Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Areas and Facilities owned by the Association and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Areas and Facilities, and first Mortgagees making such payments shall be owed prompt reimbursement for the reasonable cost thereof from the Association.

13.11 **Distribution Right.** No provision of this Declaration, or the Articles or the Bylaws, or any Rules established thereunder, shall be deemed to give an Owner, or any other party, priority over any rights of first Mortgagees of a Unit pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds of condemnation awards for losses to or a taking of Units.

## ARTICLE 14

### **DECLARANT PRIVILEGES AND EXEMPTIONS**

14.1 **Interest of Declarant; Material Actions Requiring Declarant Approval.** The Development Property subject to this Declaration, constitutes a portion of the Development, which Declarant intends to be developed. Each Owner of a Unit that is part of the Development acknowledges by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest to be protected with regard to assuring compliance with and enforcement of, the covenants, conditions, restrictions, reservations and easements provided for in this Declaration and any amendments thereto and any Supplemental Declarations recorded pursuant to this Declaration. Notwithstanding any other provisions of the Governing Documents, but subject to the Mountain Operator Agreement and the Mountain Easement Agreements, until such time as Declarant is no longer entitled to unilaterally annex Property to the Development, the following actions, before being undertaken by the Members or the Association, shall first be approved in writing by Declarant and, where specified, by the Mountain Operator:

(a) **Specified Approvals.** Any amendment or action requiring the approval of Declarant (and, as specified herein, by the Mountain Operator) pursuant to this Declaration, and any amendment or action requiring the approval of first Mortgagees pursuant to this Declaration (the Association shall provide Declarant with all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be furnished such notices and other documents without making written request);

(b) **Special Assessments.** The levy of a Special Assessment for the construction of new facilities by the Association not originally included in the Common Areas and Facilities;

(c) Service/Maintenance Reductions. Any significant reduction of Common Areas and Facilities maintenance or other services or entering into contracts for maintenance or other goods and services benefiting the Association or the Common Areas and Facilities at contract rates which are fifteen percent (15%) or more below the reasonable cost for such maintenance, goods or services; or

(d) Design Guidelines. Any supplement or amendment to the Design Guidelines, including Design Guidelines applicable to a particular Phase within the Development.

#### 14.2 Exemptions from Restrictions Otherwise Applicable.

(a) Declarant's Reserved Rights. Nothing in the Governing Documents shall limit and no Owner or the Association shall do anything to interfere with: (i) the right of Declarant, either directly or through its agents and representatives, to subdivide, re-subdivide, sell, resell, lease or rent any portion of the Development, or the right of Declarant as to any Phase that it is developing to complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Development owned by Declarant or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Development so long as any Unit or any portion of the Development is owned by Declarant; (ii) the Mountain Operator under the Mountain Operator Agreement or the Mountain Easement Agreements; or (iii) Marcella Club, the Marcella Club Facilities, and/or the Marcella Club Documents.

(b) Marketing and Sales Activities. Declarant and Builders authorized by Declarant in writing may construct and maintain upon portions of the Common Areas such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge.

(c) 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 Areas for the purpose of making, constructing, and installing such improvements to the Common Areas as it deems appropriate in its sole discretion. Every Person that acquires any interest in the Development acknowledges that the Development 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 in uses or density of property outside the Development Property, or (b) changes in the Mountainside Master Plan as it relates to property outside the Development Property.

(d) Right to Approve Additional Covenants. As long as Declarant owns property subject to this Declaration, no Person shall Record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Development without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant.

(e) Right to Approve Changes in Community Standards. No amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration.

(f) Right to Transfer or Assign Declarant Rights. Any or all of Declarant's rights and obligations set forth in this Declaration or the Bylaws 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 Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time, occasional or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise. Upon such transfer, Declarant shall be relieved of all obligations related thereto.

(g) Development Activities. The rights reserved to Declarant pursuant to this Section 14.2 shall include, but shall not be limited to, carrying on by Declarant and its agents and representatives of such grading work as may be approved by applicable Governmental Authorities having jurisdiction, and erecting, constructing and maintaining on or within the Common Areas and the Development such structures (including, without limitation, temporary sales and construction offices or trailers, sales offices or model homes pursuant to Section 14.2(b), among others), signs and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise.

(h) View Impairment. Each Owner, by accepting a deed to a Unit, hereby acknowledges that any construction or installation by Declarant, Mountain Operator or Mountain Operator's Affiliates may impair the view of such Owner, and hereby consents to such impairment.

**14.3 Rights to Use Common Areas and Facilities in Connection With Development and Sales Activities.** Declarant may enter upon the Common Areas and Facilities, for the benefit of Declarant, for the benefit of portions of the Property to complete the development, improvement and sale of Units, and the construction of any landscaping or other Improvement to be installed on the Common Areas and Facilities, as well as the right of nonexclusive use of the Common Areas and Facilities, without charge, for sales, display, access, ingress, egress, exhibition and occasional Special Events for promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the date on which Declarant no longer owns any Units within the Development and no portion of the Development contains any Vacant Land. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein, or the rights of the Mountain Operator pursuant to this Declaration, the Mountain Operator Agreement and/or the Mountain Easement Agreements, and all direct costs and expenses associated with Declarant sales and promotional activities shall be borne solely by the sponsor of the activity or event. The rights reserved to Declarant by this Section 14.3 shall extend to any employee, sales agents, prospective purchasers, customers and/or representatives of Declarant and Declarant's Affiliates.

**14.4 Amendment of Plans.** Declarant may, from time to time as it deems advisable, amend its plans for the Development, combine or split Units, and apply for changes in any or all

of the Entitlement Documents, changes in zoning, use and use permits, for any property within the Development. Notwithstanding the anticipated development of the Development Property, nothing in this Declaration shall be construed or interpreted to commit Declarant to the development of any portion of the Property.

14.5 **Right to Enforce Design Review and Approval Requirements.** Until the expiration of the Administrative Control Period, Declarant shall have the right to initiate action to correct or prevent any activity, condition or Improvement that is not in substantial compliance with approved plans and specifications to the same extent as the Association if: (a) the DRC has issued a notice of noncompliance; and (b) the Association, after having a reasonable opportunity to do so, is unable or unwilling to initiate enforcement action. In the event that such action is initiated by Declarant and it is later determined by an arbitrator or a court of competent jurisdiction that the Owner of the subject Unit was, in fact, proceeding in violation of the approved plans and specifications, any reasonable costs incurred by Declarant in initiating enforcement action, including reasonable attorney's fees, which are not the subject of an award of fees and/or costs against the offending Owner may be charged to the Association and shall be a Common Expense.

14.6 **Grants and Relocations of Easements.** Declarant shall have the right at any time prior to acquisition of title by a grantee to establish additional easements, reservations and rights-of-way to itself, its successors and assigns in any conveyance of the Property or any portion thereof. Declarant or the organization for whose benefit easements, reservations and rights-of-way have been established shall have the right at any time to cut and remove any trees or branches or any other unauthorized object from such easements, reservations or rights-of-way. Any Common Areas comprising easements over real property the fee title to which has not been made subject to this Declaration ("**Interim Easement Area**") shall be subject to relocation, modification or termination by Declarant in order to accommodate the final plan of development for the future Phase in which the Interim Easement Area is located. Such relocation, modification or termination shall be set forth in the Recorded instrument annexing fee title to the Interim Easement Area to this Declaration and may include the reservation of easements of access, ingress and egress in favor of the Association to permit access to Association facilities. Notwithstanding the foregoing, no such relocation, modification or termination shall prevent access to any Unit or within the Development or affect the rights of the Mountain Operator pursuant to the Mountain Operator Agreement or the Mountain Easement Agreements.

14.7 **Termination of Any Responsibility of Declarant.** In the event Declarant conveys all of its rights, title and interest to any Person, in and to the Property, and the acquiring Person is designated as a successor Declarant as to all the property conveyed, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such Person, shall be obligated to perform all such duties and obligations of Declarant. The provisions of this Section 14.7 shall not terminate any responsibility of Declarant for acts or omissions occurring prior to the conveyance to such Person. However, this shall not limit Declarant's right to enter into a contract or agreement dealing with such acts or omissions provided the contract or agreement is enforced by Declarant, if necessary.

14.8 **No Amendment or Repeal.** So long as Declarant owns any Unit within the Development, the provisions of this Article 14 may not be amended or repealed without the prior written consent of Declarant. Neither the Association nor any Member or Owner may take any

action or adopt any rule or regulation that interferes with or diminishes any of Declarant's rights under this Article 14 without Declarant's prior written consent, or which interferes with or diminishes any rights of the Mountain Operator under the terms of this Declaration, the Mountain Easement Agreements and the Mountain Operator Agreement without the Mountain Operator's prior written consent, which consent may be given or withheld in the sole and absolute discretion of Declarant and the Mountain Operator.

14.9 **Exclusive Rights to Use Name of Development.** No Person shall use the names "Mayflower" or "Marcella" or any derivative of such names or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, the Association shall be entitled to use the word "Marcella" in its name.

## ARTICLE 15

### **ENVIRONMENTAL AREAS AND ISSUES**

15.1 **Assignment of Responsibilities.** Within and adjacent to the Development there may be various types of property such as wetlands, drainage areas, conservation areas, open spaces, historical mining operations, and buffers upon which restrictions, monitoring requirements, or other obligations may be imposed by Governmental Authorities. Declarant may from time to time and at any time deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to the Association, which shall accept, own, maintain, and preserve the foregoing areas in accordance with the requirements of such Governmental Authorities. All such areas that are conveyed to the Association shall become a portion of the Common Areas, and the ownership, operation, and maintenance thereof shall be a Common Expense. Alternatively, Declarant may deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to another community association, a foundation, or similar type entity with which the Association shall cooperate. Any of the properties and responsibilities within, adjacent to, or benefitting the Development such as wetlands, drainage areas, conservation areas, open spaces, signage, landscaping, and buffers may be included within the jurisdiction of the Resort Foundation. The Association shall cooperate with and perform the responsibilities delegated to it by the Resort Foundation.

#### 15.2 **Surface Water Management System.**

(a) No Owner, by erection of any structure or otherwise, shall in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of the ditches, canals, channels, ponds, lakes, retention areas, or other bodies of water or waterways reserved for, or intended by Declarant to be reserved for, drainage ways or for the accumulation of runoff waters, as reflected in any permits therefore, or plat or instrument of records, without the specific written permission of the Association and Declarant.

(b) An Owner shall in no way deny or prevent ingress and egress by Declarant or the Association to and from such drainage areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefore, are hereby specifically reserved and created in favor of Declarant, the Association, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.



(c) No Unit shall be increased in size by filling in any water retention or drainage areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the established drainage ways without the prior written consent of the Association and Declarant.

(d) Water management for any Unit shall be provided in accordance with the overall drainage system for the Development. Surface water drainage and management including but not limited to, storm water treatment and storage capacity, shall conform to the overall drainage system requirements and permits, if any, for the Development and meet with the approval of Declarant and applicable Governmental Authorities.

(e) Reservoirs and spillways in any Unit are part of a functioning water management system and any use by an Owner shall be on a non-interfering basis only. Additional on-site storm water treatment areas may be required and constructed in the future.

(f) The use of any wetland or water body within the boundary of a Unit is managed by the Association. Owners shall cooperate in maintaining the same in a clean, attractive, pristine manner in order to be aesthetically pleasing.

(g) The use of pesticides in any water body or wetland is prohibited, excepting only any such use by the Association, Declarant, the Master Association, the Resort Foundation and the Mountain Operator.

(h) No wells may be drilled, dug, or installed within any Unit except by Declarant or Declarant's Affiliates, or with Declarant's written consent.

15.3 **Conservation Areas.** Except as otherwise provided in writing by Declarant, any portions of the Common Areas owned by the Association or Declarant and designated as a conservation area shall be maintained and preserved by the Association in accordance with the rules and regulations of all applicable Governmental Authorities or the grantee of any applicable conservation easement. The Association shall not, and it shall not allow any Person to, undertake or perform any activity of improvements to a conservation area, or remove any native vegetation, without the prior approval of such Governmental Authorities or the grantee of any applicable conservation easement or as otherwise allowed by the documents creating such conservation area. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a conservation area, except as allowed by the documents creating such conservation area. Notwithstanding the foregoing, Declarant shall have the right to reserve from any such conservation area such uses as Declarant in its sole discretion shall determine in Declarant's best interest, including recreational uses relating to the Mountain Operations.

15.4 **Open Space and Buffers.** Any property conveyed or dedicated to the Association, which is designated as open space, landscape buffer, preserve area, or conservation area on any plat, permit, or other Recorded document, shall be owned and maintained by the Association in a natural open condition except as may be otherwise provided in the document(s) creating such area. The Association or any subsequent owner shall not do anything that diminishes or destroys the open space, buffers, preserve area, or conservation areas, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space. Notwithstanding the foregoing, Declarant shall have the right to reserve from any

such open areas such uses as Declarant in its sole discretion shall determine in Declarant's best interest, including recreational uses relating to the Mountain Operations.

**15.5 Effluent Disposal & Water Supply.** By the act of purchasing or occupying property within the Development, all Owners understand and irrevocably consent to the possibility of irrigation of the Common Areas, other areas within the Development, and areas adjacent to the Development with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the appropriate Governmental Authority. Declarant, its designees, successors or assigns shall have the exclusive right to develop and utilize the ground and surface water resources of the Development for any legal purpose, including the distribution and use of such water beyond the Development. Such right shall include an easement over property for access, and for installation and maintenance of facilities and equipment to capture and transport ground water, surface water, and storm water runoff. The conveyance of any Unit to an Owner or to a Builder by Declarant does not include the right to develop or utilize the ground, surface, or storm water resources within such Unit. Declarant or its designee may establish programs for reclamation of storm water runoff and wastewater for appropriate uses within or outside the properties and may require Owners and occupants of any Unit to participate in such programs to the extent reasonably practical. No Owner or occupant shall have any right to compensation for water claimed or reclaimed from such Owner's Unit. Additionally, the Board may establish restrictions on or prohibit outside use of potable water within the Development.

**15.6 Recycling Program.** The Board may, but shall not be obligated to, establish or participate in a recycling program for the Development. In such event, all occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation. Any costs associated with the implementation or operation of a recycling program shall be Common Expenses and any income the Association receives as a result of such recycling efforts shall be applied to Common Expenses.

## **ARTICLE 16**

### **RESORT HAZARDS, RISKS AND LIABILITIES**

**16.1 Resort Hazards and Risks.** The Mountainside Ski Property may be used as a public ski area and related improvements, facilities and uses as well as for other seasonal recreational activities such as hiking, trail, bicycling, and other sports activities (collectively, "**Resort Uses and Activities**"). By acceptance of a deed to a Unit, each Owner acknowledges and agrees that any such Resort Uses and Activities will enhance the value of the Unit by providing pleasant surroundings and open space for the Development and the Units. Each Owner further acknowledges (a) that the use and operation of the Mountainside Ski Property for Resort Uses and Activities will involve certain risks to the Units, including, but not limited to, damage to property and improvements and personal injury and death caused by errant skiers, snowboarders, trail bicyclists or other Mountainside Ski Property users, avalanche control, snowmaking and removal equipment, water runoff, drainage, and land movement, that may enter into the Units, and (b) that while the Units have been designed to minimize these risks to the extent reasonably possible, it would be impossible to render the Units free of all Resort Uses and Activity-related risks. Certain

of the more common hazards associated with the operation of a year-round Resort are more particularly described, without limitation, in the sections below (collectively the “**Resort Hazards**”).

**16.2 Errant Skiers, Snowboarders, Trail Bicyclists, and Other Resort Users.**

Owners acknowledge the inherent risk of errant skiers, snowboarders, trail bicyclists, and other Resort users and assume and accept such risk. Owners acknowledge and accept the risk that skiers, snowboarders, trail bicyclists, and other Persons engaged in Resort Uses and Activities may errantly stray onto the Units and each Owner agrees to release and waive any claims against Declarant, Declarant’s Affiliates, the Association and the Mountain Operator that such Owner may have as a result of such errant activity.

**16.3 View Impairment/Privacy.** Owners have no guarantee that their view over and across the Mountainside Ski Property, the Resort or the Development will be forever preserved without impairment or that the view from the Mountainside Ski Property, the Resort or the Development will not be impaired. Neither the Mountain Operator nor any other Person has an obligation to the Owners to prune trees or other landscaping, and the Mountain Operator or any other Person may change, add to or reconfigure the Mountainside Ski Property, the Resort and related facilities and improvements on the Mountainside Ski Property, the Resort or the Development, including structural improvements, trees, landscaping, drainage patterns, trails, lifts, snowmaking and snow removal equipment and facilities and other improvements and facilities, without liability or obligation to any Owner.

**16.4 Pesticides and Fertilizers.** Pesticides, fertilizers and other chemicals may be utilized in connection with the operation of the Mountainside Ski Property and the maintenance of related landscaping, revegetation, and vegetation, and the Owners acknowledge, accept and assume the risks associated with the use of pesticides, fertilizers and other chemicals.

**16.5 Overspray and Water Runoff.** Owners may experience “overspray” from the snowmaking system on the Mountainside Ski Property, and such Owners acknowledge, accept and assume the risks associated with such “overspray,” drainage and water runoff.

**16.6 Noise and Light: Special Events.** Owners may be exposed to lights, noises, Special Events or other activities resulting from the use, operation, construction, improvements, repair, replacement and maintenance of the Mountainside Ski Property and its improvements, land, and facilities, including snowmaking, avalanche control, and snow removal, and each Owner by accepting title to such Owner’s Unit, acknowledges, accepts and assumes the risks associated with such uses.

**16.7 No Access.** Each Owner, by accepting a deed to such Owner’s Unit, acknowledges that the Mountain Operator may not permit access to any portion of the Mountainside Ski Property directly from any Unit. Such access will only be permitted through such entry points as the Mountain Operator may from time to time specifically designate, which points, if any, may be closed or relocated from time to time in the sole discretion of the Mountain Operator. Accordingly, each Owner agrees not to access the Mountainside Ski Property directly from such Owner’s Unit (unless otherwise expressly permitted by the Mountain Operator), and agrees not to permit any of such Owner’s Guests, Lessees or any other Person to do so.

**16.8 Maintenance and Maintenance Equipment.** The Mountainside Ski Property and its related improvements and facilities may require daily maintenance, including grooming, snowmaking, avalanche control, mowing, and irrigation during early morning, evening and late night hours, including the use of avalanche control ordnance, tractors, snow ploughs, snowmaking equipment mowers, blowers, pumps, compressors, utility vehicles and over-the-snow vehicles. Owners will be exposed to the noise and other effects of such maintenance, and such Owners acknowledge, accept and assume the risks associated with such maintenance activities.

**16.9 Waiver of Certain Assumed Risks (Resort Hazards).** IN CONSIDERATION FOR THE ABOVE ACKNOWLEDGED ENHANCEMENT IN VALUE, AND WITH FULL AWARENESS OF THESE AND OTHER RISKS, BY ACCEPTING THE DEED TO A UNIT EACH OWNER FOR SUCH OWNER AND ITS GUESTS, INVITEES, LESSEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY THE "OWNER'S RELATED PARTIES") HEREBY (A) ACKNOWLEDGES, ACCEPTS AND ASSUMES THE RISKS ASSOCIATED WITH RESORT HAZARDS AND OF ANY DAMAGE TO PROPERTY OR TO THE VALUE OF PROPERTY, DAMAGE TO IMPROVEMENTS, PERSONAL INJURY OR DEATH, OR. THE CREATION OR MAINTENANCE OF A TRESPASS OR NUISANCE, CAUSED BY OR ARISING IN CONNECTION WITH ANY OF THE RESORT HAZARDS OR OTHER RISKS, HAZARDS AND DANGERS ASSOCIATED WITH THE OPERATION OF A RESORT (COLLECTIVELY THE "ASSUMED RISKS"), AND (B) RELEASES, WAIVES, DISCHARGES, COVENANTS NOT TO SUE, INDEMNIFIES AND AGREES TO DEFEND AND HOLD HARMLESS DECLARANT, DECLARANT'S AFFILIATES, THE MASTER ASSOCIATION, THE ASSOCIATION, AND THE MOUNTAIN OPERATOR, AND EACH OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, MEMBERS, AFFILIATES, EMPLOYEES, CONTRACTORS, CONSULTANTS, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES"), AND EACH OWNER OR OWNER'S RELATED PARTIES FOR ANY DAMAGES, LOSSES, COSTS (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES), CLAIMS, DEMANDS, SUITS, JUDGMENTS, ORDINARY NEGLIGENCE, OR OTHER OBLIGATIONS ARISING OUT OF OR CONNECTED IN ANY WAY WITH ANY OF THE ASSUMED RISKS. THIS RELEASE IS INTENDED TO BE A COMPREHENSIVE RELEASE OF LIABILITY BUT IS NOT INTENDED TO ASSERT DEFENSES WHICH ARE PROHIBITED BY LAW. NOTWITHSTANDING THE FOREGOING, THIS SECTION 16.9 SHALL NOT LIMIT THE LIABILITY OF INDIVIDUAL SKIERS, SNOWBOARDERS, OR OTHER MOUNTAINSIDE SKI PROPERTY USERS USING THE MOUNTAINSIDE SKI PROPERTY, NOR SHALL IT LIMIT THE RIGHTS OF MIDA UNDER ANY ENTITLEMENT DOCUMENTS OR OTHER AGREEMENTS ENTERED INTO BY MIDA IN CONNECTION WITH THE RESORT.

The acknowledgments, assumptions of risk and agreements contained in this Section 16.9 shall be deemed to run with the title to each Unit in the Property.

## ARTICLE 17

**PRIVATE AMENITIES AND OTHER DEVELOPMENT ACTIVITIES, THE  
MARCELLA CLUB AND THE MOUNTAIN CLUB**

17.1 **General.** Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities will be granted only to such Persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities (including the Marcella Club). The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including eligibility for and duration of use rights, categories of use and 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 agreements with their respective members.

17.2 **Conveyance of Private Amenities.** All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership, operation, existence, location or configuration of any Private Amenity. 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 the Private Amenity. The ownership, operation, existence, location or configuration of any Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; (c) the conveyance of any Private Amenity to one or more of Declarant's Affiliates, members, employees, or independent contractors, and/or (d) the decision of the owner or operator to abandon, redevelop (to any extent, which may include any entirely different type of use, such as dwelling units or commercial facilities), or change the location or configuration of, all or any part of any Private Amenity, subject to all required approvals of Declarant and/or the Association. Consent of the Association or any Owner shall not be required to effectuate any change in ownership, operation of any Private Amenity, for or without consideration, and subject to or free of any mortgage, covenant, lien or other encumbrance.

17.3 **View Impairment.** Declarant, the Association, or the owner of any Private Amenity does not guarantee or represent that any view over and across the Private Amenity from Units adjacent thereto will be preserved without impairment. Owners of Private Amenities and/or ski runs and other ski-related improvements, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping thereto from time to time. In addition, the owner of any ski-related improvements may, in its sole and absolute discretion, change the location, configuration, size and elevation of the ski lifts, ski runs and other ski-related improvements from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

17.4 **Rights of Access and Parking.** There is hereby established for the benefit of the Private Amenities and their members (regardless of whether such members are Owners hereunder),

guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Development reasonably necessary to travel between the entrances to the Development and the Private Amenities and ski-related improvements and over those portions of the Development (whether Common Areas or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenities and ski-related improvements. Without limiting the generality of the foregoing, members of the Private Amenities and guests and invitees of the Private Amenities and ski-related improvements shall have the right to park their vehicles on the roadways located within the Development at reasonable times before, during, and after Special Events and other similar functions held by or at the Private Amenities and ski-related improvements to the extent that the Private Amenities and ski-related improvements, as applicable, have insufficient parking to accommodate such vehicles but at all times subject to applicable Rules.

17.5 **Reserved.**

17.6 **Limitations on Amendments.** In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenity, no amendment to this Article 17, and no amendment in derogation of any other provisions of this Declaration benefiting any Private Amenity, may be made without the written approval of the Owner[s] of the Private Amenity.

17.7 **Cooperation.** It is Declarant's intention that the Association and the Private Amenities shall cooperate to the maximum extent possible in the operation of the Development 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 Association shall have no power to promulgate use restrictions or rules other than those set forth in the Rules affecting activities on or use of the Private Amenity without the prior written consent of Declarant and the Owners of the Private Amenity affected thereby.

17.8 **Assumption of Risk and Indemnification.** Each Owner, by its purchase of a Unit in the vicinity of any Private Amenity, hereby expressly assumes the risk of noise, personal injury, or property damage caused by maintenance and operation of any such Private Amenity, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset), (b) noise caused by users of such Private Amenities, (c) use of pesticides, herbicides, and fertilizers, (d) view restrictions caused by maturation of trees and shrubbery, (e) use of effluent in the irrigation or fertilization, and (f) reduction in privacy caused by constant traffic on the Private Amenities or the removal or pruning of shrubbery or trees on the Mountainside Ski Property.

Each such Owner agrees that neither Declarant, the Association, nor any of Declarant's affiliates or agents shall be liable to an Owner or any other person claiming any loss of 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 Unit to any Private Amenity, 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 Association. Each such Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates

and agents, and the Association against any and all claims by Owner's visitors, tenants, and others upon such Owner's Unit.

17.9 **The Marcella Club, the Marcella Club Facilities, and the Commercial Units.**

(a) **Notice of Marcella Club and Membership Obligations to Prospective Owners; Assignment.** In connection with the development of the Property, Declarant has or will be facilitating the development and use of the Commercial Units for the Marcella Club, as a Private Amenity, to be known and operated as the Marcella Club. Declarant hereby provides notice to all Owners of a Unit in the Property, and Owners hereby acknowledge and agree, that ownership in the Property may require such Owners to be members of the Marcella Club. As such, prospective Owners of any Unit are encouraged to review potential Marcella Club membership obligations, as more fully discussed in this Declaration and the Marcella Club Documents. Marcella Club Members shall be Owners. Declarant may assign all or some of the rights of Declarant hereunder with respect to the Marcella Club. Such assignment need not be Recorded in order to be effective. In the event of a partial assignment, the assignee shall not be deemed to be a Declarant, but may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a non-exclusive basis. As such, the identity of the "Marcella Club Owner" may change from time to time (e.g., the current Declarant may sell all or some portion of the Marcella Club Facilities or Commercial Units to a third party). Notwithstanding that Declarant and the Marcella Club Owner may be the same party, affiliates, or related parties from time to time, each Owner acknowledges that Declarant and the Marcella Club Owner shall not be considered one and the same party, and neither of them shall be considered the agent or partner of the other. At all times, Declarant and the Marcella Club Owner shall be considered separate and viewed in their separate capacities. No act or omission by Declarant, the Association, or the Master Association shall at any time be considered an act or omission of Marcella Club Owner and shall not serve as the basis for any excuse, justification, waiver or indulgence to the Owners with regard to their prompt, full, complete and continuous performance of their obligations and covenants under this Declaration and/or the Marcella Club Documents. No act or omission by the Marcella Club Owner shall at any time be considered an act or omission of Declarant, the Association, or the Master Association and shall not serve as the basis for any excuse, justification, waiver or indulgence to the Owners with regard to their prompt, full, complete and continuous performance of their obligations and covenants hereunder.

(b) **Mandatory Marcella Club Membership Application, Marcella Club Membership, and Marcella Club Lien.** Any Owner of a Unit within the Property shall submit a Marcella Club Membership Application to the Marcella Club within fourteen (14) days from the date of mutual execution by buyer and seller of the contract for sale of such Unit, including any application fees, which may be imposed by the Marcella Club, in its sole and absolute discretion, in order to be considered for membership to the Marcella Club. As a Private Amenity, the Marcella Club may accept or reject an Owner's Marcella Club Membership Application, in its sole and absolute discretion. Declarant expressly disclaims any representation, warranty, or commitment that the Owner will be a Marcella Club Member. If Declarant accepts an Owner's Marcella Club Membership Application, then Owner is required to be a Marcella Club Member and will be subject to all rights and obligations set forth in the Marcella Club Documents, including, but not limited to, membership dues and fees and any lien upon the Owner's Unit, as applicable.

(c) **Commercial Units Ownership and Maintenance.** The Marcella Club, the Commercial Units, and the Marcella Club Facilities are considered Private Amenities under this Declaration and are subject to the terms and provisions of this Declaration. Notwithstanding the foregoing, Owners, Lessees, Guests, or Marcella Club Members shall have no rights whatsoever to use, occupy, or control any portion of the Commercial Units, or to participate in any activities conducted thereon, except through separately purchased memberships in the Marcella Club, as set forth in this Section, and in accordance with the provisions of the Marcella Club Documents, as they may be amended from time to time. The Association and the Master Association shall have no responsibility for the care, maintenance, upkeep or other operation of the Commercial Units, the Marcella Club, or the Marcella Club Facilities.

(d) **Operation of the Marcella Club Facilities.** The primary purpose of the Marcella Club Facilities is to support the Marcella Club Members, as Owners within the Development. The Marcella Club Facilities shall be sized to support the Marcella Club Members, and a limited number of guests of the Marcella Club Members. The Marcella Club Facilities shall not allow admission to general members of the public but shall accommodate guests of Marcella Club Members. No ski amenities, including but not limited to ski-lockers/storage of any type may be provided within the Development, including the Marcella Club Facilities, except for such ski amenities as are provided solely to the Marcella Club Members. Parking shall only be provided onsite for Marcella Club Members as shown on a MIDA approved site plan. No rental of the Marcella Club Facilities to non-Marcella Club Members shall be allowed. The operation of the Marcella Club Facilities shall provide an elevated private experience solely for Marcella Club Members. Each Owner acknowledges that the operation and maintenance of any Marcella Club Facilities within, near, or adjacent to the Property, may require that maintenance of such Marcella Club Facilities begin as early as 4:00 a.m. and as late as 10:00 p.m. on a daily basis, and, in certain circumstances, at any time(s) of the day or night. In connection therewith, each Owner agrees that the Declarant, the Association, the Master Association, any other committee of the Association or the Master Association, any sponsor, promoter, or organizer of any event (or any director, officer, affiliate, agent, employee, or representative of any of the foregoing) shall not be responsible or accountable for, liable for, and shall be held harmless from, any claims, causes of action, loss, or liability arising in connection with or associated with any noise or inconvenience normally associated with such operation and maintenance activities. Furthermore, the Association shall not enact any Rules that would adversely affect the operation of the Marcella Club.

(e) **Rights of Access.** Declarant, Marcella Club Members, any invitees (including, without limitation, participants in sporting events or activities and spectators, and regardless of whether such members or invitees are Owners), employees, agents, contractors, or designers shall at all times have a right and nonexclusive easement of access and use over all roadways located within the Property as reasonably necessary to travel to and from any entrance within the Property to and from the Commercial Units or any Marcella Club Facility.

(f) **Other Marcella Club Related Agreements.** No Owner, Guest, Lessee, or Marcella Club Member shall at any time enter upon any Marcella Club Facilities within, adjacent to, or near the Property, including, but not limited to, the Commercial Units, for any purpose (other than to engage in recreational activities, or as a spectator or guest of the recreational paths and trails, or to engage in other activities specifically permitted within the Commercial Units, in each and every case subject to all provisions, rules, and regulations reflected in the Marcella Club



Documents, including, without limitation, all requirements relating to membership, fees, reservations and the like), and each Owner shall keep his, her, or its pets and other animals off all portions of the Marcella Club Facilities at all times. No Owner shall (or permit his, her, or its Guests or Lessees) interfere in any way with use of any Marcella Club Facility or any activities on the Commercial Units (whether in the form of physical interference, noise, or otherwise). Each Owner, on behalf of such Owner and its Guests or Lessees, recognizes, agrees, and accepts that operation of the Marcella Club Facilities may involve parties and other gatherings at or on the Commercial Units or the Marcella Club Facilities, loud music, use of public address systems and the like, occasional supplemental lighting, and other similar or dissimilar activities throughout the day, from early morning until late at night and neither such Owner nor its Guests or Lessees shall make any claim against the Declarant, the Association, the Master Association, any other committee of the Association or the Master Association, any sponsor, promoter, or organizer of any event (or any director, officer, affiliate, agent, employee, or representative of any of the foregoing) in connection with the matters described or referenced above, whether in the nature of a claim for damages relating to personal injury or property damage, or otherwise. The foregoing restrictions and requirements do not supersede or replace existing easements or rights affecting any Commercial Units as of the date of the recording this Declaration.

(g) **Disclaimer Regarding Marcella Club Facilities.** All Persons, including without limitation all Owners and Marcella Club Members, are hereby advised that no representations, warranties, or commitments have been or are made by Declarant, the Association, the Master Association, or any other Person with regard to the present or future development, ownership, operation, or configuration of, or right to use, any Marcella Club Facilities within, near, or adjacent to the Property, whether or not depicted on the Plat, or any other land use plan, sales brochure, or other marketing display, rendering, or plan, including but not limited to the Commercial Units. Further, the ownership, operation, or configuration of, or rights to use, any such Marcella Club Facilities may change at any time and from time to time for reasons including, but not limited to: (a) the purchase or assumption of operation of any such Marcella Club Facilities by an independent Person or Persons; (b) the conversion of any such Marcella Club Facilities to an equity club or similar arrangement whereby Marcella Club Members or an entity owner or controlled thereby become the owner(s) and/or operator(s) of such Marcella Club Facilities; (c) the conveyance, pursuant to contract, option or otherwise, of such Marcella Club Facilities to one or more affiliates, shareholders, employees, or independent contractors of the Declarant; or (d) the conveyance of any such Marcella Club Facilities, or portion thereof, to the Association or the Master Association. As to any of the foregoing or any other alternative, no consent of the Association or the Master Association or any Owner shall be required to effectuate such transfer (except for the consent of the Association or the Master Association in the event of a transfer to the Association or the Master Association). No Owner, Guest, or Lessee shall have any ownership interest in, or right to use, any Marcella Club Facilities solely by virtue of: (i) his, her or its membership in the Association; or (ii) his, her or its ownership, use, or occupancy of any Unit, or portion thereof.

(h) **Put Option.** In the event that the Marcella Club has not previously been converted to an equity member-owned private club, Declarant, at any time, may in Declarant's sole discretion but without any obligation at any time to do so, provide notice to the Association of Declarant's intent to transfer title to the Commercial Units and the then existing Marcella Club Facilities to the Association (the "**Put Option**"). The purchase price for the Commercial Units and

the then existing Marcella Club Facilities shall be determined by Declarant, in its commercially reasonable discretion. The Put Option may be exercised by Declarant by the delivery of written notice of the exercise of such option by Declarant to the Association and the Marcella Club Members. Declarant's exercise of the Put Option shall not require the affirmative vote of the Marcella Club Members, unless otherwise required by the Marcella Club Documents or Applicable Laws. Declarant shall never have any obligation to exercise the Put Option and the Association shall not rely upon any oral representation to the contrary. Nothing in this Section may be construed to prevent Declarant at any time from selling, leasing, exchanging, conveying or transferring the Marcella Club and any of the Marcella Club Facilities to any person or entity of any kind and upon any terms or conditions that Declarant may elect subject only to the obligation of the purchaser, lessee or transferee to assume the obligations of Declarant under the then current Governing Documents.

(i) **Amendment.** The provisions of this Section 17.9, and any other provisions related to the Marcella Club set forth in this Declaration, shall not be amended or modified without the written consent of the current Marcella Club Owner.

#### 17.10 **The Mountain Club and Mountain Club Facilities.**

(a) **Notice of Mountain Club and Membership Obligations to Prospective Owners; Assignment.** In connection with the development of the Resort and Mountainside Ski Property, Master Declarant and/or Mountain Operator may be facilitating the development and use of the Mountain Club Facilities, as a Private Amenity. Declarant hereby provides notice to each Founders Membership Owner, and each Founders Membership Owner hereby acknowledges and agrees, that such Founders Membership Owner is required to participate in the Mountain Club pursuant to a Founders Membership program to be established by the Master Declarant and/or Mountain Operator pursuant to the Mountain Club Membership Plan. Founders Memberships will be solely for Founders Membership Owners and their immediate family members. The Founders Membership is contemplated to (i) be offered to each Founders Membership Owner at a preferred rate to be established by the Master Declarant and/or the Mountain Operator, (ii) be for an initial term of five (5) years from issuance, commencing from the last to occur of the Mountain Club's acceptance of the applicable Founders Membership Owner's membership application or the opening of the first Mountain Club Facility, (iii) require the payment of monthly dues or other assessments pertaining to the operations of the Mountain Club during the initial five (5) year term, (iv) have no dividend-like rights or distribution of income, (v) have no ability to be pledged or transferred (except in connection with conveyance of the Residential Unit to which the membership pertains), and (vi) be for personal use by the Founders Membership Owner and immediate family members, not as an investment. If a Founders Membership Owner acquires its Residential Unit after the opening of the first Mountain Club Facility, then upon acquisition of such Residential Unit (or written notice by the Master Declarant or the Mountain Operator if such Owner has already acquired its Residential Unit), the Founders Membership Owner shall pay to the Mountain Club an amount equal to the Founders Membership initiation fee, as established by the Mountain Club. If a Founders Membership Owner acquires its Residential Unit prior to the opening of the first Mountain Club Facility, then upon acquisition of such Residential Unit (or written notice by the Master Declarant or the Mountain Operator if such Owner has already acquired its Residential Unit), the Founders Membership Owner shall pay to the Master Declarant or the Mountain Operator, as designated by the Master Declarant, the Founders Membership

initiation fee, as established by the Master Declarant or the Mountain Operator, as applicable. Prospective Owners of any Residential Unit are encouraged to review potential Mountain Club Membership obligations, as more fully discussed in this Declaration and the Mountain Club Documents. Mountain Club Members may or may not be Owners, and can include, without limitation, members of other reciprocal clubs and other approved third parties. Master Declarant may assign all or some of the rights of Master Declarant hereunder with respect to the Mountain Club. Such assignment need not be Recorded to be effective. In the event of a partial assignment, the assignee shall not be deemed to be a Master Declarant, but such assignee may exercise such rights of the Master Declarant specifically assigned to such assignee. Any such assignment may be made on a non-exclusive basis. As such, the identity of the "Mountain Club Owner" may change from time to time (e.g., all or some portion of the Mountain Club Facilities may be sold from time to time to a third party). Notwithstanding that Master Declarant and/or Mountain Operator and the Mountain Club Owner may be the same party, affiliates, or related parties from time to time, each Owner acknowledges that Master Declarant and/or Mountain Operator and the Mountain Club Owner shall not be considered one and the same party, and neither of them shall be considered the agent or partner of the other. At all times, Declarant, Master Declarant and/or Mountain Operator and the Mountain Club Owner shall be considered separate and viewed in their separate capacities. No act or omission by Declarant, the Association, or the Master Association shall at any time be considered an act or omission of Mountain Club Owner and shall not serve as the basis for any excuse, justification, waiver or indulgence to the Owners with regard to their prompt, full, complete and continuous performance of their obligations and covenants under the Master Declaration, this Declaration and/or the Mountain Club Documents. No act or omission by the Mountain Club Owner shall at any time be considered an act or omission of Declarant, the Association, Master Declarant or the Master Association and shall not serve as the basis for any excuse, justification, waiver or indulgence to the Owners with regard to their prompt, full, complete and continuous performance of their obligations and covenants hereunder.

(b) **Mandatory Mountain Club Membership Application, Mountain Club Membership, and Club Lien.** Each Founders Membership Owner shall submit a Mountain Club Membership Application to the Mountain Club, together with any application fees imposed by the Mountain Club, in its sole and absolute discretion, within fourteen (14) days from the earlier of: (i) the date that thirty (30) days after such Founders Membership Owner's receives written notice from the Mountain Club Owner that the first Mountain Club Facility is anticipated to be open and operating within ninety (90) days of such notice; and (ii) if the first Mountain Club Facility is already open and operating or the Mountain Club Owner has provided written notice to all Unit Owners that the first Mountain Club Facility is anticipated to be open and operating within ninety (90) days of such notice, the date of mutual execution by buyer and seller of the contract for sale of a Residential Unit. As a Private Amenity, the Mountain Club may accept or reject an Owner's Mountain Club Membership Application, in its sole and absolute discretion. Declarant, the Association, Master Declarant and the Master Association expressly disclaim any representation, warranty, or commitment that the Owner will be a Mountain Club Member. If the Mountain Club accepts an Owner's Mountain Club Membership Application, then Owner is required to be a Mountain Club Member and will be subject to all rights and obligations set forth in the Mountain Club Documents, including, but not limited to, membership dues and fees and any lien upon the Owner's Residential Unit, as applicable.

(c) **Operation of the Mountain Club Facilities.** Each Owner acknowledges that the operation and maintenance of any Mountain Club Facilities within, near, or adjacent to the Development Property, may require that maintenance of such Mountain Club Facilities on a daily basis, and, in certain circumstances, at any time(s) of the day or night. In connection therewith, each Owner agrees that the Declarant, the Association, Master Declarant, the Master Association, the Mountain Operator or any committee of any of them, any sponsor, promoter, or organizer of any event (or any director, officer, affiliate, agent, employee, or representative of any of the foregoing) shall not be responsible or accountable for, liable for, and shall be held harmless from, any claims, causes of action, loss, or liability arising in connection with or associated with any noise or inconvenience normally associated with such operation and maintenance activities. Furthermore, the Association shall not enact any Rules that would adversely affect the operation of the Mountain Club.

(d) **Rights of Access.** Declarant, Master Declarant, Mountain Club Members, any invitees (including, without limitation, participants in sporting events or activities and spectators, and regardless of whether such members or invitees are Owners), employees, agents, contractors, or designers shall at all times have a right and nonexclusive easement of access and use over all roadways, ski trails, and recreational common area located within the Development Property as reasonably necessary to travel to and from any entrance within the Development Property to and from any Mountain Club Facility.

(e) **Other Club Related Agreements.** No Owner, Guest, Lessee, or Mountain Club Member shall at any time enter upon any Mountain Club Facilities within, adjacent to, or near the Development Property for any purpose (other than to engage in recreational activities, or as a spectator or guest of the recreational paths and trails, or to engage in other activities specifically permitted, in each and every case subject to all provisions, rules, and regulations reflected in the Mountain Club Documents, including, without limitation, all requirements relating to membership, fees, reservations and the like), and each Owner shall keep his, her, or its pets and other animals off all portions of the Mountain Club Facilities at all times. No Owner shall (or permit his, her, or its Guests or Lessees) interfere in any way with use of any Mountain Club Facility or any activities therein (whether in the form of physical interference, noise, or otherwise). Each Owner, on behalf of such Owner and its Guests or Lessees, recognizes, agrees, and accepts that operation of the Mountain Club Facilities may involve parties and other gatherings, loud music, use of public address systems and the like, occasional supplemental lighting, and other similar or dissimilar activities throughout the day, from early morning until late at night and neither such Owner nor its Guests or Lessees shall make any claim against the Declarant, the Association, Master Declarant, the Master Association, the Mountain Operator or any committee of any of them, any sponsor, promoter, or organizer of any event (or any director, officer, affiliate, agent, employee, or representative of any of the foregoing) in connection with the matters described or referenced above, whether in the nature of a claim for damages relating to personal injury or property damage, or otherwise. The foregoing restrictions and requirements do not supersede or replace existing easements or rights as of the date of the recording this Declaration.

(f) **Disclaimer Regarding Mountain Club Facilities.** All Persons, including without limitation all Owners and Mountain Club Members, are hereby advised that no representations, warranties, or commitments have been or are made by Declarant, the Association, Master Declarant, the Master Association, Mountain Operator or any other Person with regard to

the present or future development, ownership, operation, or configuration of, or right to use, any Mountain Club Facilities within, near, or adjacent to the Development Property, whether or not depicted on any plat of subdivision, or any other land use plan, sales brochure, or other marketing display, rendering, or plan. Further, the ownership, operation, or configuration of, or rights to use, any such Mountain Club Facilities may change at any time and from time to time for reasons including, but not limited to: (a) the purchase or assumption of operation of any such Mountain Club Facilities by an independent Person or Persons; (b) the conversion of any such Mountain Club Facilities to an equity club or similar arrangement whereby Mountain Club Members or an entity owner or controlled thereby become the owner(s) and/or operator(s) of such Mountain Club Facilities; (c) the conveyance, pursuant to contract, option or otherwise, of such Mountain Club Facilities to one or more affiliates, shareholders, employees, or independent contractors of the Declarant, Master Declarant and/or the Mountain Operator; or (d) the conveyance of any such Mountain Club Facilities, or portion thereof, to the Association or the Master Association. As to any of the foregoing or any other alternative, no consent of the Association or the Master Association or any Owner shall be required to effectuate such transfer (except for the consent of the Association or the Master Association in the event of a transfer to the Association or the Master Association). No Owner, Guest, or Lessee shall have any ownership interest in, or right to use, any Mountain Club Facilities solely by virtue of: (i) his, her or its membership in the Association or the Master Association; or (ii) his, her or its ownership, use, or occupancy of any Residential Unit, or portion thereof.

(g) **Amendment.** The provisions of this Section 17.10, and any other provisions related to the Mountain Club set forth in this Declaration, shall not be amended or modified without the written consent of the Master Declarant and the current Mountain Club Owner and shall be enforceable by the Master Declarant and/or the Mountain Club Owner.

## ARTICLE 18

### **DISPUTE RESOLUTION AND LIMITATIONS ON LITIGATION**

#### **18.1 Agreement to Encourage Resolution of Disputes Without Litigation.**

(a) Declarant, the Association and their respective 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 18 (collectively, “**Bound Parties**”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Development without litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in Section 18.1(b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term “**Claim**” shall refer to any 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) the design or construction of improvements within the Development, other than matters of aesthetic judgment under Article 8, 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 18.2:

(i) any suit by the Association to collect Assessments or other amounts due from any Owner;

(ii) any suit by the Association 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 Association's ability to enforce the provisions of this Declaration relating to creation and maintenance of community standards;

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would require within 180 days of giving the Notice required by Section 18.2(a), unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article 18.

## 18.2 **Dispute Resolution Procedures.**

(a) Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice to each Respondent and to the Board stating plainly and concisely;

(i) the nature of the Claim, including the Persons involved and the 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 the 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 parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 18.2(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Utah. If the Claimant does not submit the Claim to mediation within such time, or does not appear for 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 parties do not settle the Claim within thirty (30) days after submission of 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 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 parties. If any party thereafter fails to abide by the terms of such agreement, then any other 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 Article 18. In such event, the party taking action to enforce the Agreement or award shall upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

**18.3 Initiation of Litigation by Association.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Owners entitled to cast seventy-five percent (75%) of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

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

This Section 18.3 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings and Declarant during the Administrative Control Period.

18.4 **Non-Waiver.** The provisions of this Article 18 are intended to be applicable to any dispute arising out of this Declaration and shall not affect a Person's rights or remedies arising under any other agreement.

## ARTICLE 19

### **MISCELLANEOUS PROVISIONS**

19.1 **Amendment and Repeal.** Subject to Section 14.8 hereof and all such approvals as are required pursuant to the Master Declaration and any limitation under Applicable Law, this Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Development Property, may be amended or repealed (a) prior to the expiration of the Administrative Control Period by the vote or written consent of Members representing seventy-five percent (75%) of the voting power in the Association, together with the written consent of the Class "B" Member, if such Class "B" Membership has not been terminated as provided in this Declaration, or (b) after the expiration of the Administrative Control Period, by the vote or consent of Members representing sixty seven percent (67%) of the voting power of the Association, together with the written consent of the Class "B" Member, if such Class "B" Membership has not been terminated as provided in this Declaration, in each case, computed in accordance with Sections 9.3. Any such amendment or repeal shall become effective only upon recordation in the Official Records of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent. If any Member consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Member has the authority to consent, and no contrary provision in any Mortgage or contract between the Owners represented by such Member and a third party will affect the validity of such amendment. 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 (6) 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.

19.2 **Amendments by Declarant.** The planning and land use entitlements for the Development have not been fully completed and the layout of the Development, its land classifications, and governing structure and procedures for the Development are anticipated to change in the future. Notwithstanding the provisions of Section 19.1 above, until termination of the Class "B" Membership Declarant shall, subject to the prior written approval of the Master Declarant, shall have the unilateral right to amend this Declaration or the Bylaws of the Association for any purpose. Such right to amend shall include, but not be limited to, the right of Declarant to amend this Declaration in order to comply with the requirements of any Applicable Law or requirement of MIDA, Wasatch County, the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National



Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Utah, or any corporation wholly owned, directly or indirectly, by the United States or the State of Utah which insures, guarantees or provides financing for a planned community or Units in a planned community. Any such amendment shall become effective only upon Recordation in the Official Records of a certificate of Declarant setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved by Declarant. Any purported amendment of this Declaration pursuant to this Section 19.2 without the approval of the Master Declarant shall be void and of no effect.

19.3 **Duration.** This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all land included within the Property and the Owners thereof for an initial period of fifty (50) years commencing with the date on which this document is first Recorded. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all Land within the Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Members representing sixty-seven percent (67%) of the voting power in the Association computed in accordance with Section 9.3(a) and (b) (including for this purpose the unplatted Units contemplated by Section 9.3(a) and (b)). Any such termination shall become effective only if (a) a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Official Records not less than six (6) months prior to the intended termination date. Such termination shall not have the effect of denying any Owner of ingress and egress to such Owner's Unit unless such Owner and any Mortgagee of such Owner's Unit have consented in writing to such access denial.

19.4 **Joint Owners.** In any case in which two or more Persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such Persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such Persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such Persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such Person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

19.5 **Lessees and Other Invitees.** Lessees, Guests, contractors and other Persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Unit and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such Persons in the same manner and to the same extent as if the failure had been committed by such Owner.

19.6 **Nonwaiver.** Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

19.7 **Construction; Severability; Number; Captions.** This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

19.8 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant or the Association, 160 West, Canyon Crest Road, Alpine, Utah 84004. If to Master Declarant or the Master Association, 2750 W. Rasmussen Road, Suite 206, Park City, Utah 84098; if to an Owner, at the address given at the time of the Owner's purchase of a Unit, or at the Unit. The address of a party may be changed at any time by notice in writing delivered as provided herein.

[Signature page follows]

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date set forth above.

RS21 MAYFLOWER LLC,  
a Delaware limited liability company

By: RS21 Mayflower Manager LLC,  
a Utah limited liability company  
Its: Manager

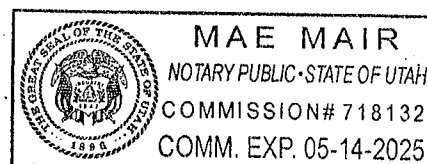
By: Stillwater Equity Partners LLC,  
a Utah limited liability company  
Its: Manager

By: J. Brett Boren  
Name: J. Brett Boren  
Its: Manager

STATE OF UTAH )  
:ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of February, 2022, by J. Brett Boren, as Manager of Stillwater Equity Partners LLC, a Utah limited liability company, which company is the Manager of RS21 Mayflower Manager LLC, a Utah limited liability company, which company is the Manager of RS21 MAYFLOWER LLC, a Delaware limited liability company.

Mae Mair  
Notary Public



**EXHIBIT A****Development Property Legal Description**

The "Property" referred to in this Declaration is located in Wasatch County, State of Utah, and is more particularly described as follows:

The surface rights in and to all of:

Lots 1 through 20 and Open Space Parcel A, Galena One, according to the official plat thereof recorded on February 15, 2022 as Entry No. 515243 in the official records of the Wasatch County Recorder's Office, being an amendment of Lot 15B-1 of the MIDA Master Development Plat Lots 1 & 15B and Parcels 1&2 Amended recorded February 10, 2021 as Entry No. 493880 on file and of record in Wasatch County Recorder's Office.

AND

Lots 21 through 60, Parcel B, and Open Space Parcels C through E, Galena Two, according to the official plat thereof recorded on February 15, 2022 as Entry No. 515244 in the official records of the Wasatch County Recorder's Office, being an amendment of Lots 15B-2, 15B-3, 15B-4 & 15B-5 of the MIDA Master Development Plat Lots 1 & 15B and Parcels 1&2 Amended recorded February 10, 2021 as Entry No. 493880 on file and of record in Wasatch County Recorder's Office, and also amending Lot 15A of the MIDA MASTER DEVELOPMENT PLAT, recorded June 30, 2020 as Entry No. 480155 on file and of record in the Wasatch County Recorder's Office.

AND

Lots 14, 16 and 17 of the MIDA MASTER DEVELOPMENT PLAT, recorded June 30, 2020 as Entry No. 480155 on file and of record in Wasatch County Recorder's Office, as such lots are depicted and described by metes and bounds on the MIDA Master Development Plat.

LESS AND EXCEPTING from Lot 14 the following real property:

A parcel of and located in the south half of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel of land being described as follows:

Beginning at a point that is South 26°11'47" East 2912.64 feet and South 63°48'13" West 735.80 feet from a brass cap at the north quarter corner of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearings for the herein described parcel being South 26°91'47" East 5917.16 feet from said North Quarter Corner of Section 25, to the Southeast Corner of said Section 25, said North Quarter Corner also being North 89°57'12" West

2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Maps 2647 & 3058 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LDP coordinate system projection parameters); and running thence South 65°00'24" East 401.07 feet thence North 82°21'32" East 311.98 feet to a point on the westerly right of way of US Highway 40 thence coincident with the right of way of said US Highway 40 more or less the following three (3) courses 1) South 55°13'48" East 141.20 feet; thence 2) North 88°11'09" East 651.65 feet; thence 3) South 18°47'08" East 376.66 feet; thence South 71°14'32" West 128.38 feet; thence South 49°45'50" West 224.76 feet; thence South 03°11'32" West 442.52 feet; thence South 43°37'48" West 416.08 feet; thence South 69°15'20" West 1151.44 feet; thence North 29°02'07" West 295.68 feet; thence North 05°16'23" West 146.79 feet; thence North 30°39'47" East 132.48 feet; thence North 01°37'02" East 76.00 feet; thence North 29°27'18" West 259.84 feet; thence North 26°54'51" West 414.46 feet; thence North 34°36'18" East 507.10 feet; thence North 40°37'35" East 360.95 feet to the point of beginning.

Description contains 55.99 acres.

LESS AND EXCEPTING from Lot 16 the following real property:

A parcel of and located in the North half of Sections 25 & 26, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel of land being described as follows:

Beginning at a point that is South 26°11'47" East 450.38 feet and South 63°48'13" West 2750.69 feet from a brass cap at the north quarter corner of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearings for the herein described parcel being South 26°91'47" East 5917.16 feet from said North Quarter Corner of Section 25, to the Southeast Corner of said Section 25, said North Quarter Corner also being North 89°57'12" West 2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Maps 2647 & 3058 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LDP coordinate system projection parameters); and running thence South 13°38'02" West 40.00 feet; thence South 40°15'39" West 320.27 feet; thence South 77°02'11" West 160.99 feet to a point on the West line of said section 25; thence South 77°02'11" West 32.89 feet; thence South 19°56'38" West 190.58 feet; thence South 12°57'49" East 171.74 feet; thence South 77°32'47" West 384.49 feet; thence North 12°27'13" West 423.27 feet; thence North 64°45'46" East 191.55 feet; thence North 86°54'11" East 352.60 feet to a point on West line of said section 25; thence North 86°54'11" East 29.17 feet; thence North 40°15'39" East 125.82 feet; thence North 34°58'31" East 131.22 feet; thence North 78°49'27" East a distance of 191.15 feet to the point of beginning.

Description contains 5.51 acres.

LESS AND EXCEPTING from Lot 17 the following real property:

A parcel of land located in the south half of Section 24, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said parcel of land being described

as follows:

Beginning at a point that is North 00°00'41" West 437.97 feet from a brass cap at the north quarter corner of Section 25, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Bass of Bearings for the heron described parcel being South 26°11'47" East 5917.16 feet from said North Quarter Corner of Section 25 to the Southeast Corner of said Section 25 said North Quarter Corner also being North 89°57'12" West 2633.77 feet from the Northeast Corner of said Section 25, See Record of Survey Mops 2647 & 3058 on file with the Wasatch County Surveyor's office for said Section 25 retracement and the Mayflower LOP coordinate system projection parameters) and running thence North 00°00'41" West 345.13 feet to a point on a non tangent curve to the right having a radius of 904.09 feet of which the radius point bears South 49°32'05" West said point being on the westerly right of way of US Highway 40 thence coincident with the right of way of said US Highway 40 the following two (2) courses 1) along the arc of said curve 221.00 feet through a central angle of 14°00'20" thence 2) South 26°31'07" East 90.19 feet; thence South 63°33'14" West 180.81 feet to the POINT OF BEGINNING.

Description contains 0.69 acres.

LESS AND EXCEPTING any mineral rights of whatever type, water rights, water shares, and any other water interests associated with the above-described real property.

<b>Lot</b>	<b>Description</b>	<b>Serial Number</b>	<b>Tax Parcel Number</b>
Lot 14	Vacant Land	0IX-L014-0-025-024	00-0021-4983
Lot 16	Vacant Land	0IX-L016-0-025-024	00-0021-4986
Lot 17	Vacant Land	0IX-L017-0-024-024	00-0021-4987
Lot 1 - Galena 1	Estate Lot	0GK-1001-025-024	00-0021-7054
Lot 2 - Galena 1	Estate Lot	0GK-1002-025-024	00-0021-7055
Lot 3 - Galena 1	Estate Lot	0GK-1003-025-024	00-0021-7056
Lot 4 - Galena 1	Estate Lot	0GK-1004-025-024	00-0021-7057
Lot 5 - Galena 1	Estate Lot	0GK-1005-025-024	00-0021-7058
Lot 6 - Galena 1	Estate Lot	0GK-1006-025-024	00-0021-7059
Lot 7 - Galena 1	Estate Lot	0GK-1007-025-024	00-0021-7060
Lot 8 - Galena 1	Estate Lot	0GK-1008-025-024	00-0021-7061
Lot 9 - Galena 1	Estate Lot	0GK-1009-025-024	00-0021-7062
Lot 10 - Galena 1	Estate Lot	0GK-1010-025-024	00-0021-7063
Lot 11 - Galena 1	Estate Lot	0GK-1011-025-024	00-0021-7064
Lot 12 - Galena 1	Estate Lot	0GK-1012-025-024	00-0021-7065
Lot 13 - Galena 1	Estate Lot	0GK-1013-025-024	00-0021-7066
Lot 14 - Galena 1	Estate Lot	0GK-1014-025-024	00-0021-7067
Lot 15 - Galena 1	Estate Lot	0GK-1015-025-024	00-0021-7068
Lot 16 - Galena 1	Estate Lot	0GK-1016-025-024	00-0021-7069
Lot 17 - Galena 1	Estate Lot	0GK-1017-025-024	00-0021-7070
Lot 18 - Galena 1	Estate Lot	0GK-1018-025-024	00-0021-7071

Lot 19 - Galena 1	Estate Lot	0GK-1019-025-024	00-0021-7072
Lot 20 - Galena 1	Estate Lot	0GK-1020-025-024	00-0021-7073
Lot 21 - Galena 2	Estate Lot	0GK-2021-025-024	00-0021-7075
Lot 22 - Galena 2	Estate Lot	0GK-2022-025-024	00-0021-7076
Lot 23 - Galena 2	Estate Lot	0GK-2023-025-024	00-0021-7077
Lot 24 - Galena 2	Estate Lot	0GK-2024-025-024	00-0021-7078
Lot 25 - Galena 2	Estate Lot	0GK-2025-025-024	00-0021-7079
Lot 26 - Galena 2	Estate Lot	0GK-2026-025-024	00-0021-7080
Lot 27 - Galena 2	Estate Lot	0GK-2027-025-024	00-0021-7081
Lot 28 - Galena 2	Estate Lot	0GK-2028-025-024	00-0021-7082
Lot 29 - Galena 2	Estate Lot	0GK-2029-025-024	00-0021-7083
Lot 30 - Galena 2	Estate Lot	0GK-2030-025-024	00-0021-7084
Lot 31 - Galena 2	Estate Lot	0GK-2031-025-024	00-0021-7085
Lot 32 - Galena 2	Estate Lot	0GK-2032-025-024	00-0021-7086
Lot 33 - Galena 2	Estate Lot	0GK-2033-025-024	00-0021-7087
Lot 34 - Galena 2	Estate Lot	0GK-2034-025-024	00-0021-7088
Lot 35 - Galena 2	Estate Lot	0GK-2035-025-024	00-0021-7089
Lot 36 - Galena 2	Estate Lot	0GK-2036-025-024	00-0021-7090
Lot 37 - Galena 2	Estate Lot	0GK-2037-025-024	00-0021-7091
Lot 38 - Galena 2	Estate Lot	0GK-2038-025-024	00-0021-7092
Lot 39 - Galena 2	Estate Lot	0GK-2039-025-024	00-0021-7093
Lot 40 - Galena 2	Estate Lot	0GK-2040-025-024	00-0021-7094
Lot 41 - Galena 2	Estate Lot	0GK-2041-025-024	00-0021-7095
Lot 42 - Galena 2	Estate Lot	0GK-2042-025-024	00-0021-7096
Lot 43 - Galena 2	Estate Lot	0GK-2043-025-024	00-0021-7097
Lot 44 - Galena 2	Estate Lot	0GK-2044-025-024	00-0021-7098
Lot 45 - Galena 2	Estate Lot	0GK-2045-025-024	00-0021-7099
Lot 46 - Galena 2	Estate Lot	0GK-2046-025-024	00-0021-7100
Lot 47 - Galena 2	Estate Lot	0GK-2047-025-024	00-0021-7101
Lot 48 - Galena 2	Estate Lot	0GK-2048-025-024	00-0021-7102
Lot 49 - Galena 2	Estate Lot	0GK-2049-025-024	00-0021-7103
Lot 50 - Galena 2	Estate Lot	0GK-2050-025-024	00-0021-7104
Lot 51 - Galena 2	Estate Lot	0GK-2051-025-024	00-0021-7105
Lot 52 - Galena 2	Estate Lot	0GK-2052-025-024	00-0021-7106
Lot 53 - Galena 2	Estate Lot	0GK-2053-025-024	00-0021-7107
Lot 54 - Galena 2	Estate Lot	0GK-2054-025-024	00-0021-7108
Lot 55 - Galena 2	Estate Lot	0GK-2055-025-024	00-0021-7109
Lot 56 - Galena 2	Estate Lot	0GK-2056-025-024	00-0021-7110
Lot 57 - Galena 2	Estate Lot	0GK-2057-025-024	00-0021-7111
Lot 58 - Galena 2	Estate Lot	0GK-2058-025-024	00-0021-7112
Lot 59 - Galena 2	Estate Lot	0GK-2059-025-024	00-0021-7113
Lot 60 - Galena 2	Estate Lot	0GK-2060-025-024	00-0021-7114
PARCEL A - Galena 1	Open Space	0GK-100A -025-024	00-0021-7074

PARCEL B - Galena 2	Commercial	0GK-200B -025-024	<b>00-0021-7115</b>
PARCEL C - Galena 2	Open Space	0GK-200C -025-024	<b>00-0021-7116</b>
PARCEL D - Galena 2	Open Space	0GK-200D-025-024	<b>00-0021-7117</b>
PARCEL E - Galena 2	Open Space	0GK-200E-025-024	<b>00-0021-7118</b>



**EXHIBIT B**

## Interpretation

As used in this Agreement, unless a clear contrary intention appears:

- (a) any reference to the singular includes the plural and vice versa, any reference to natural persons includes legal persons and vice versa, and any reference to a gender includes the other gender;
- (b) the words "hereof", "herein", and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (c) any reference to Articles, Sections and Exhibits are, unless otherwise stated, references to Articles, Sections and Exhibits of or to this Agreement and references in any Section or definition to any clause means such clause of such Section or definition. The headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation;
- (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document, or instrument as amended, modified or supplemented and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of this Agreement;
- (e) the Exhibits hereto form an integral part of this Agreement and are equally binding therewith. Any reference to "this Agreement" shall include such Exhibits;
- (f) references to a Person shall include any permitted assignee or successor to such Party in accordance with this Agreement and reference to a Person in a particular capacity excludes such Person in any other capacity;
- (g) the use of "or" is not intended to be exclusive unless explicitly indicated otherwise; and
- (h) the words "includes," "including," or any derivation thereof shall mean "including without limitation" or "including, but not limited to."

**EXHIBIT C**

Bylaws

*[See Attached]*

**BYLAWS**  
**OF**  
**MARCELLA HOA, INC.,**  
**A UTAH CORPORATION**

**ARTICLE I**  
**NAME, PRINCIPAL OFFICE AND DEFINITIONS**

1.1 **Name.** The name of the corporation is Marcella HOA, Inc., a Utah corporation (the "Association").

1.2 **Principal Office.** The principal office of the Association shall be located at 160 West Canyon Crest Road, Alpine, Utah 84004. The Association may have such other offices, either within or outside the State of Utah, as the Board may determine or as the affairs of the Association may require.

1.3 **Definitions.** The words used in these Bylaws shall be given their normal, commonly understood definitions, except that capitalized terms shall have the same meaning as set forth in the Declaration to which these Bylaws are attached unless the context indicates otherwise.

**ARTICLE II**  
**MEMBERSHIP: MEETINGS, QUORUM, VOTING, PROXIES**

2.1 **Membership.** The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration. Class "A" Members shall be known as "Members." The provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

2.3 **Annual Meetings.** The Association's first meeting, whether a regular or special meeting, shall be held within one year after the date of the Association's incorporation. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board. The Board may determine that such annual meeting shall be held in whole or in part by means of a telephonic, electronic or other communication facility including, without limitation, teleconferencing, video conferencing, computer linker, web casting or other similar means that permit all participants to communicate

adequately with each other during the meeting; and, any participant who participates in any meeting by such means shall be deemed present at such meeting for all purposes whatsoever including, without limitation, the determination of whether a quorum is present and voting on all matters that shall come before such meeting.

**2.4 Special Meetings.** The president of the Association (the "President") may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Class "A" Members representing at least 10% of the total Class "A" votes of the Association.

**2.5 Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meeting of the Association shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 30 days before the date of such meeting, by or at the direction of the President or the secretary of the Association (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 Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice shall be deemed to be delivered when deposited with a mail carrier in accordance with Section 6.5 hereof and addressed to the Member at the Member's address as it appears on the Association's records, with postage prepaid.

**2.6 Waiver of Notice.** Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Association, either before or after such meeting. Any Member who attends a meeting waives notice of the time, date, and place thereof, unless such 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 such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

**2.7 Voting.** The voting rights of the Members shall be as set forth in the Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated by this reference.

**2.8 Proxies.** Members may not vote by proxy, but only in person.

**2.9 Quorum.** For purposes of any Association meeting, a quorum shall consist of the Members actually in attendance at such Association meeting.

**2.10 Conduct of Meetings.** The President shall preside over all meetings of the Association, 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.

**2.11 Actions Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Association may be taken without a meeting, prior notice, or a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated, and delivered to the Association. Such consents, as filed with the

minutes of the Association, shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving written consent authorization for any action, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

### **ARTICLE III**

#### **BOARD OF DIRECTORS: SELECTION, MEETINGS, POWERS**

##### **A. Composition and Selection**

**3.1 Governing Body: Composition.** The Board shall govern the Association's affairs. Each director of the Board ("Director") shall have one vote. Except with respect to the Class "B" Member's appointees, Directors shall be Owners owning the majority interest in a Unit or, if the majority Owner of a Unit is not a natural person, the natural person owning a controlling interest in such majority Owner.

**3.2 Number of Directors.** The Board shall initially consist of three (3) Directors. Provided the Board shall at all times consist of an odd number of Directors, the number of Directors comprising the Board may be altered, by the vote of Members holding a majority of the votes entitled to be cast for the election of Directors, to include between three (3) and seven (7) Directors. The initial Board shall consist of three (3) Directors as identified in the Articles.

**3.3 Directors During Administrative Control Period.** Directors appointed by the Class "B" Member pursuant to Section 3.5 hereof shall be appointed by the Class "B" Member acting in its sole discretion and 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 each and every eligible person who has a bona-fide interest in serving as a Director may file as a candidate for any position that Class "A" votes shall fill. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of Directors in a fair, efficient and cost-effective manner. Except with respect to Directors selected by the Class "B" Member, nominations for election to the Board may also be made by a nominating committee (the "Nominating Committee"). The Nominating Committee, if any, shall consist of a chairperson, who shall be a member of the Board, and three or more representatives of Members. The Board shall appoint members of a nominating committee (the "Nominating Committee") not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, 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 shall in its discretion determine. The Nominating Committee shall nominate Directors to be elected at large by all Class "A" votes. 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. Nominations for Directors may also be made by petition filed with the Secretary at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by ten (10) or more Members and signed by the nominee named therein indicating such nominee's willingness to serve as a Director, if elected. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) **Election Procedures.** Each Member may cast all of its votes for each position to be filled from the candidates nominated by the Nominating Committee. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5 **Election and Term of Office.** Except as these Bylaws may otherwise specifically provide, election of Directors shall take place at the Association's annual meeting. Notwithstanding any other provision of these Bylaws:

(a) During the Administrative Control Period, the Class "B" Member shall appoint the three (3) Directors comprising the initial Board. If any such Director resigns or is removed from such position prior to the happening of the event described in subsection (b), the Class "B" Member shall appoint a successor Director.

(b) Within 120 days after termination of the Administrative Control Period, the then-sitting Board will be dissolved, the number of Directors elected to the Board shall be increased to five (5) and the President shall call for an election by which the Members shall be entitled to elect each of the five (5) Directors. Directors elected by the Members shall not be subject to removal by the Class "B" Member and shall serve until the first annual meeting following their election to the Board.

3.6 **Removal of Directors and Vacancies.** By the vote of Members holding a majority of the votes entitled to be cast for the election of Directors, the Members may remove, with or without cause, any Director elected by Members. 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 to fill the vacancy for the remainder of the term of such Director. Any Member-elected 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 Association, may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and 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 may elect a successor for the remainder of the term. Any Director whom the Board appoints shall be selected from among the Members. This Section shall not apply to Directors the Class "B" Member appoints. The Class "B" Member 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.

## B. Meetings

**3.7 Organizational Meetings.** The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

**3.8 Regular Meetings.** Regular meetings of the Board may be held at such time and place as a majority of the Directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

**3.9 Special Meetings.** The Board shall hold special meetings when the President or the vice president of the Association (the "Vice President") or any two Directors signs and communicates written notice of such.

### 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 notice shall be given to each Director by: (i) personal delivery; (ii) first class mail or air mail, postage prepaid; (iii) telephone communication, 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, computer, fiber optics, 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 number, or sent to the Director's address as shown on the records of the Association. Notices sent by first class mail or air mail shall be deposited with the mail carrier 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) 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 purpose of the meeting. 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.

**3.11 Telephonic Participation in Meetings.** Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

**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 decision of the Board, unless

otherwise specifically provided in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not 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.

**3.14 Open Meetings; Executive Session.**

(a) Except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within the Development which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which Assessments are to be established shall state that fact and the nature of the Assessment. Subject to the provisions of Section 3.15 hereof, all Board meetings shall be open to all Members and, if required by law, all Owners; but attendees other than Directors may not participate in any discussion or deliberation unless a Director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than Directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

**3.15 Action Without a Formal Meeting.** Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors. 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 the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Governing Documents or Utah law require to be done and exercised exclusively by the Members or the membership generally.

**3.17 Duties.** Duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget, which budget shall include a line item for future Assessments for the Reserve Fund,



which shall be approved in accordance with the Declaration, and establishing each Owner's share of the Common Expenses;

- (b) levying and collecting fines or Assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Common Areas consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's judgment, in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening bank accounts on behalf of the Association and designating the signatories required;
- (h) 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 Bylaws;
- (i) 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 Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;
- (j) obtaining and carrying property and liability insurance, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Association;
- (l) keeping books with detailed accounts of the Association's receipts and expenditures;
- (m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4 hereof;
- (n) permitting utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Development;

(o) indemnifying a Director, officer or committee member, or former Director, officer or committee member of the Association to the extent such indemnity is required by Utah law, the Articles, or the Declaration; and

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

**3.18 Compensation.** Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors. Nothing herein shall prohibit the Association from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Association in a capacity other than as a Director pursuant to a contract or agreement with the Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested Director.

**3.19 Right of Class "B" Member to Disapprove Actions.** So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair the rights of the Class "B" Member or Builders under the Declaration or these Bylaws, or interfere with development or construction of any portion of the Development, or diminish the level of services the Association provides.

(a) **Notice.** The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies, as to Board meetings, with Sections 3.9 and 3.10 hereof and which notice shall, except in the case of the regular meetings held pursuant to these Bylaws, set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) **Opportunity to be Heard.** The Class "B" Member shall be given the opportunity at any such 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 set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met. The Class "B" Member, its representatives 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, acting through any officer or Director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of 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 on behalf of any committee, the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

**3.20 Management.** The Board may employ for the Association 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 Class "B" Member or its affiliate may be employed 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.

**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;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association 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 15<sup>th</sup> day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (i) a balance sheet; (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 complied 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 Unit, the Association shall provide an audited financial statement. During the Administrative Control Period, the annual report shall include certified financial statements.

**3.22 Borrowing.** The Association shall have the power to borrow money for any legal purpose; provided, the Board shall fulfill the requirements provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 50% of the Association's budgeted gross expenses for that fiscal year.

**3.23 Rights to Contract.** The Association 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 Member and other owners or resident associations, within and outside the Development. Any common management agreement shall require the consent of a majority of the Board.

**3.24 Enforcement.** The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, 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, including any fine in an amount set forth in the Rules, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee (as hereinafter defined), if one has been appointed pursuant to Article V hereof; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 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, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-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 a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. 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 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 violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 10 days after the hearing date.

(d) **Additional Enforcement Rights.** Notwithstanding anything to the contrary in this Article, 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 dispute resolution procedures set forth in the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation, if such abatement is sought, shall pay all costs, including reasonable attorneys' fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed a trespass.

**3.25 Board Standards.** In the performance of their duties, Association Directors and officers shall be insulated from personal liability as provided by Utah law for directors and officers of non-profit corporations, and as otherwise provided in the Governing Documents. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule. As defined herein, a Director shall be acting in accordance with the business judgment rule so long as the director: (a) acts within the express or implied terms of the Governing Documents and his or her actions are not *ultra vires*; (b) affirmatively undertakes to make decisions which are necessary for the continued and successful operation of the Association 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 (d) acts in a non-fraudulent manner and without reckless indifference to the affairs of the Association. 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 Documents provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

## ARTICLE IV

### OFFICERS

4.1 **Officers.** Officers of the Association shall be a President, Vice President, Secretary, and treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be Board members. 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 officers may be held by the same person, except the offices of President and Secretary.

4.2 **Election and Term Office.** The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3 **Removal and Vacancies.** The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 **Power and Duties.** The Association's officers shall each have such powers and duties as generally pertain to their respective officers, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 **Resignation.** Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any time later 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 instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 **Compensation.** Compensation of officers shall be subject to the same limitations as compensation of Directors under Section 3.18 hereof.

## ARTICLE V

### COMMITTEES

5.1 **General.** The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 **Covenants Committee.** In addition to any other committees which the Board may establish pursuant to Section 5.1 hereof, the Board may appoint a covenants committee (the "Covenants Committee") consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these Bylaws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 hereof.

## ARTICLE VI

### MISCELLANEOUS

6.1 **Fiscal Year.** The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 **Parliamentary Rules.** Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association 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, the Declaration, and these Bylaws, the provisions of Utah law, the Declaration, the Articles, and the Bylaws (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 Unit, 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 Unit: 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 Association's office or at such other place within the Development as the Board shall designate

(b) **Rules for Inspection.** The Board shall establish 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.

(c) **Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

**6.5 Notices.** Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements, or other communications under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally, sent by U.S. mail. First class postage prepaid:

(a) if to a Member or Members, at the address which the Member or Members have designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Members;

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association 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 Association 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 termination of the Administrative Control Period, the Class "B" Member may unilaterally amend these Bylaws. Thereafter, the Class "B" Member may unilaterally amend these Bylaws 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 Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Units; provided, however, any such amendment shall not materially and adversely affect the title to any Unit unless the Owner shall consent thereto in writing. Additionally, so long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these Bylaws for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 2% of the Members.

(b) **By Members Generally.** Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51% of the total Class "A" votes in the Association, 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.

(c) **Validity and Effective Date of Amendments.** Amendments to these Bylaws 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 Bylaws.

The foregoing Bylaws were adopted under the laws of the State of Utah, as of the 28<sup>th</sup>

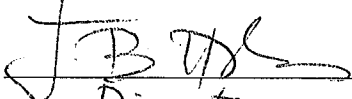


day of February, 2022.

**MARCELLA HOA, INC.,**  
A UTAH CORPORATION

Name:

Title:

  
Director