

ALAN SPRIGGS, SUMMIT CO RECORDER  
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REQUEST: BEAR HOLLOW LODGE CONDOMINIUMS

**FIRST AMENDMENT TO THE  
DECLARATION OF CONDOMINIUM  
FOR  
THE LODGES AT BEAR HOLLOW  
INCLUDING  
THE LODGES AT BEAR HOLLOW VILLAGE I  
(a Utah Expandable Condominium Project)**

THIS DECLARATION OF CONDOMINIUM for THE LODGES AT BEAR HOLLOW (the "Declaration") is made and executed by Bear Hollow Restoration, LLC, a Utah limited liability company (the "Declarant") pursuant to the provisions of Title 57, Chapter 8, Utah Code Annotated, dated this 11<sup>th</sup> day of September 2006, as amended.

**RECITALS**

A. Declarant is the owner of certain real property located in Summit County, Utah, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Land"). Declarant is also the owner of certain additional real property in Summit County, incorporated herein be referenced (the "Additional Land").

B. Declarant intends to construct one (1) building on the Land (the "Project") and, as the Project is expanded, three (3) additional buildings on adjoining real property, that will include, when fully expanded, 123 condominium Units, and certain Common Areas and Facilities and Limited Common Areas.

C. The Project is to be known as The Lodges at Bear Hollow.

D. The Land and the Additional Land are subject to the provisions of the Amended and Restated Development Agreement for the Bear Hollow Village specially Planned Area (SPA) Plan, Snyderville Basin, Summit County, Utah as well as the First Amendment to the Amended and Restated Development Agreement for the Bear Hollow Village specially Planned Area (SPA) Plan, Snyderville Basin, Summit County, Utah (collectively, the "Bear Hollow SPA Development Agreement").

E. The Land and the Additional Land are adjacent to real property known as Bear Hollow Village that is subject to the Second Amended Restated and Confirmatory Declaration of Protective Covenants, Conditions and Restrictions for Bear Hollow Village (the "Bear Hollow Village CC&Rs").

F. The Owners of Units in the The Lodges at Bear Hollow will share the use of certain common amenities with the owners of lots and units in Bear Hollow Village.

G. This Declaration is made and recorded against the Land, to subject the Land and the Additional Land to this Declaration and the provisions of the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated, as amended (the "Act").

**RECORDER'S NOTE**

BK1817 PG1738

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H. Recorded simultaneously herewith is a record of survey map, shown as Exhibit "A", of the portion of the Project to be built on the Land as required by the Act.

## ARTICLE I DEFINITIONS

Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meaning set forth in this Article I.

"Act" shall mean the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated, as amended.

"Additional Land" shall mean the additional real property described on Exhibit "B" attached hereto that may be added to the Project in accordance with Article IX below.

"Association" shall mean The Lodges at Bear Hollow Condominium Homeowners Association, Inc., a Utah non-profit corporation, organized for the purposes set forth in this Declaration.

"Bear Hollow SPA Development Agreement" shall mean the Amended and Restated Development Agreement for the Bear Hollow Village Specially Planned Area (SPA) Plan, Snyderville Basin, Summit County, Utah, with an effective date of October 2, 2003, and the First Amendment to the Amended and Restated Development Agreement for the Bear Hollow Village Specially Planned Area (SPA) Plan, Snyderville Basin, Summit County, Utah, with an effective date of January 19, 2005, recorded in the office of the Summit County Recorder, as the same has been or may be amended from time to time.

"Bear Hollow Village CC&Rs" shall mean the Second Amended Restated and Confirmatory Declaration of Protective Covenants, Conditions and Restrictions for Bear Hollow Village, recorded against real property adjoining the Land and the Additional Land, recorded March 31, 2004, in the office of the Summit County Recorder as the same has been or may be amended from time to time.

"Board of Directors" or "Board" shall mean the persons appointed to manage the affairs of the Association under the provisions of Article XI below. In addition, the Board shall be deemed to be the "Management Committee" as described in the Condominium Ownership Act of Utah.

"Bylaws" shall mean the Bylaws of the Association, incorporated herein by reference, as the same may be amended from time to time.

"Common Areas and Facilities" shall mean all parts of the Land, the Buildings and all other improvements included in the Project other than the Units, as set forth in Article V below.

“Condominium(s)” shall mean a Unit and the undivided interest (expressed as a percentage of the entire ownership interest) in the Common Areas and Facilities appurtenant to such Unit, as set forth in Exhibit “C” attached hereto.

“Declarant” shall mean Bear Hollow Restoration, LLC, a Utah limited liability company, or any successor in interest as defined by the Act.

“Declaration” shall mean this Declaration of Condominium, and all amendments, modifications and supplements hereto.

“Land” shall mean the real property described in Exhibit “A” attached hereto.

“Limited Common Areas” shall mean portions of the Common Areas reserved for the use of certain Owners to the exclusion of other Owners, as provided in Article VI below.

“Map” shall mean the record of survey map for the Project recorded in the office of the Summit County Recorder.

“Member” shall mean an Owner obligated, by virtue of his Ownership, to be a shareholder in the Association and, where the context permits, a representative of the Unit Owners serving on the Board of Directors.

“Owner(s)” shall mean the person or persons, including the Declarant, owning in fee simple, a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Summit County, Utah, and shall be deemed to be a Unit Owner. The term Owner shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or persons purchasing a Condominium under contract (until such contract is fully performed and legal title conveyed of record).

“Project” shall mean the Land, the planned thirty-seven (37) Units and) three (3) additional Condominium Buildings to be constructed on the Land and all other improvements to the Land that are submitted to the Act by this Declaration, which shall when completed total one hundred twenty-three (123) units

“Transition Events” shall mean the events described in Section 11.14.2 below that will cause the Class B Membership to change to Class A Memberships.

“Unit” shall mean a physical portion of the Project designed for separate ownership and occupancy as described in Article IV below.

**ARTICLE II  
SUBMISSION OF THE PROJECT TO THE ACT**

2.1 The Declarant, as the owner of the Land, hereby submits the Land, the Buildings and all other improvements now or hereafter made in or upon the Land to the provisions of the Act and the terms, covenants and conditions of this Declaration as an expandable condominium project. Each and all of the provisions of this Declaration are declared and agreed to for the benefit of the Project and in furtherance of a plan for improvement of the Project and division thereof into Condominium Units. Each and all of the provisions of this Declaration shall be deemed to run with the Land and shall be burden and a benefit to the Declarant, and to any person acquiring, leasing or owning an interest in the real property and improvements comprising the Project and to its respective personal representatives, heirs, successors and assigns.

2.2 The Project is hereby divided into a Condominium, each such Condominium consisting of Units and an appurtenant undivided interest in the Common Areas and Facilities.

**ARTICLE III  
IMPROVEMENTS**

3.1 Initially, the Project shall contain a single Building with four (4) levels, containing an underground parking garage and thirty-seven (37) Condominium Units, subject to Article XV of this Declaration, under which the Declarant has reserved the option to expand the Project with additional Buildings and Units. One (1) of the Units contained in the initial Building, known as Unit Number 1101, will be used by the professional manager of the Project as well as by Declarant as a sales center during construction, sales, development and marketing of all Units to be sold in the Project. At such time as Declarant no longer desires to use Unit Number 1101 as a sales center, it shall be used exclusively by the professional manager of the Project and at any time in the future if Unit Number 1101 is not utilized by the professional manager of the Project, such Unit can be changed for general office use. The principal materials from which the Buildings will be constructed are concrete footings and foundation; wood framing; steel and concrete; Hardie Plank and cultured stone exteriors; sheetrock interiors and asphalt shingle roof; and such other materials as allowed by current building codes and by the Bear Hollow SPA Development Agreement. Each Building will be supplied with telephone, television, electricity, internet access, natural gas, water and sewer service. The Project also consists of Common Areas and Facilities, including, but not limited to, roadways, parking, walkways, landscaping and Limited Common Areas.



**ARTICLE IV  
DESCRIPTION OF UNITS**

4.1 General Description of Units. The Buildings will contain thirty-seven (37) Condominium Units of six (6) types, with one, two or three bedrooms, and with an exterior deck. The Units will vary in approximate size between eight hundred thirty one (831) square feet and one thousand three hundred forty two (1,345) square feet, and the decks will all have area of approximately seventy-seven (77) square feet. In addition, as described in Article 3.1, Unit 1101 will initially be used by a professional management company for the Project and Declarant, which will be approximately eight hundred thirty one (831) square feet. The Map and Exhibit "C" attached hereto and incorporated herein by reference contain the Unit Number of each Unit and other descriptive information about each Unit.

4.2 Boundaries of Units. Each Unit shall be bounded by the interior surfaces of its perimeter and bearing walls, floors, ceilings, windows and window frames, exterior doors and door frames, and trim. The Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of its finished surfaces and the exterior surfaces so described. All other portions of the walls, floors or ceilings shall be a part of the Common Areas and Facilities. In addition, each Unit shall include the following: (i) all spaces, nonbearing interior partitions, interior doors and door frames, and all other fixtures and improvements within the boundaries of the Unit; (ii) all outlets of utility and communications service lines, including, but not limited to power, light, gas, hot and cold water, heating, refrigeration, security, cable television and telephone, within the boundaries of the Unit, but shall not include any part of such lines or ducts themselves; and (iii) all fixtures and appliances found within the boundary lines of the Unit and servicing only that Unit.

**ARTICLE V  
COMMON AREAS AND FACILITIES**

5.1 Except as otherwise provided in this Declaration, the Common Areas and Facilities shall constitute in general all of the parts of the Land, the Buildings and all other improvements included in the Project except the Units. All Common Areas and Facilities (excluding any Limited Common Areas) shall be for the exclusive use of Owners, their guests and tenants. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following and all repairs and replacements of any of them:

5.1.1 The Land

5.1.2 All structural parts of the Buildings, including the foundation, columns, girders, beams, supports, exterior and bearing walls, roofs, halls, corridors, elevators, stairwells, lobbies, fire escapes, entrances and exists of each Building.

5.1.3 The roadways, pathways, driveways, fences, grounds, landscaping, lawns, shrubs, trees, gardens, parking areas, storage areas, and recreational facilities, if any.

5.1.4 Installation of all central services such as power, light, gas, hot and cold water, heating, air conditioning and ventilation, and all ducts, wires, conduits and other accessories used therewith.

5.1.5 All other parts of the Project necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities on the Map or any Supplemental Map, excepting only things expressly designated in this Declaration as part of Unit or a Limited Common Area.

5.1.6 Meeting room(s).

## **ARTICLE VI LIMITED COMMON AREAS**

6.1 Limited Common Areas are portions of the Common Areas and Facilities reserved for the use of certain Owners to the exclusion of other Owners. Unit Owners shall be entitled to the exclusive use and occupancy of the Limited Common Areas directly associated with their specific Units. The Limited Common Areas include those areas designated as such on the Map, and, whether or not so designated on the Map, the decks and patios for each Unit, assigned individual storage areas and assigned underground parking spaces associated with each Unit. The right to use the Limited Common Areas shall be appurtenant to and contingent upon ownership of the Unit or Units associated therewith, and even though not specifically mentioned in an instrument of transfer, shall automatically pass to the grantee or transferee of such Unit or Units. Such right of use shall not be revocable, nor may it be voluntarily or involuntarily relinquished, waived or abandoned.

## **ARTICLE VII OWNERSHIP OF COMMON AREAS AND FACILITIES, ALLOCATION OF VOTING RIGHTS AND COMMON EXPENSES/COMMON PROFITS**

7.1 Each Unit will be entitled to an undivided ownership interest in the Common Areas and Facilities. Each Unit's interest in the Common Areas and Facilities shall be inseparable from the Unit and any conveyance, encumbrance, judicial sale, or other transfer, voluntary or involuntary, of an undivided interest in the Common Areas and Facilities and Limited Common Areas shall be void unless the Unit to which that interest is allocated is also transferred.

7.2 The undivided interest in the Common Areas and Facilities appurtenant to each Unit in the Project shall be as set forth in Exhibit "C" attached hereto and incorporated herein by reference. The proportionate share of the Common Areas and Facilities appurtenant to each Unit

has been calculated by dividing the square foot area of each Unit as set forth in Exhibit "C" divided by the total square foot area of all Units in the Project, also as set forth in Exhibit "C".

7.3 Except as otherwise provided in this Declaration, the undivided interest appurtenant to each Unit shall have a permanent character, and shall not be altered.

7.4 Except as otherwise provided in this Declaration, any Owner shall have the exclusive right to use and enjoy any Limited Common Areas that may be specifically designated for exclusive use by such Owner.

7.5 The Board of Directors, on behalf of the Association, may enter into leases, management agreements or operating agreements with other parties with respect to the Common Areas and Facilities on such terms as it may elect that are not otherwise inconsistent with the provisions of this Declaration.

7.6 Allocation of Voting Rights. Each Unit Owner shall be entitled to vote in the affairs of the Association and for the purposes of this Declaration and the Bylaws described in Section 11.14 herein.

7.7 Allocation of Common Expenses/Common Profits. The Common Expenses and any common profits of the Project shall be allocated to the Owner of each constructed and completed Unit according to the allocation of undivided interest of such Unit in the Common Areas and Facilities.

## **ARTICLE VIII TITLE TO CONDOMINIUM UNITS**

8.1 Manner of Holding Title to Units. Title to a Unit within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Utah.

8.2 Inseparability. Title to a part of a Unit within the Project may not be separated from any other part thereof during the period of ownership, and each Unit, and the undivided interest in the Common Areas and Facilities appurtenant to each, shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit, together with all appurtenant rights created by law or by this Declaration, including the appurtenant membership in the Association.

8.3 Units May Not Be Divided. Title to any part of a Unit may not be divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership. Under no circumstances shall interested in a Unit be divided into, leased, sold, conveyed or used as time period of intervals or sold or conveyed to owners or holders for use on a time share basis. No Unit shall be owned by a partnership or corporation or unincorporated association for the purposes of creating a fraction or divided ownership arrangement or facilitating a time share arrangement among three or more unrelated individuals.

8.4 No Partition. The Common Areas and Facilities shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

8.5 Separate Mortgages by Owners. Each Owner shall have the right to encumber his interest in a Unit with a Mortgage. However, no Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas and Facilities or any part thereof, except the undivided interest therein appurtenant to his Unit. Any Mortgage of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and, in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure, by private power of sale, judicial foreclosure, or otherwise.

8.6 Separate Taxation. Each Condominium Unit within the Project, including each Unit and appurtenant undivided interest in the Common Areas and Facilities, shall be deemed to be a parcel for tax purposes, and shall be assessed separately for all taxes, assessments and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas and Facilities shall be apportioned among the Units in proportion to the undivided interests in the Common Areas and Facilities appurtenant to such Units. All such taxes, assessments and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium.

8.7 Mechanics Liens. No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of the such labor or furnishing of such services or materials. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if authorized by the Association, and provided for in this Declaration, shall be deemed to be performed or furnished with the express consent of each owner. The Owner may remove his Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his Unit.

8.8 Description of Condominium Units. Every contract for the sale of Condominium Unit and every other instrument affecting title to Condominium Unit within the Project may describe a Unit by the name of the Project, the recording date for this Declaration, the county wherein the Project is located and its Unit Number as indicated in this Declaration or as shown on the Map. Such description shall be construed to describe the Condominium Unit, together with the appurtenant undivided interest in Common Areas and Facilities and to incorporate all the rights incident to ownership of a Condominium Unit within the Project and all of the limitations on such ownership as described in this Declaration.

**ARTICLE IX  
EASEMENTS**

9.1 Easements for Maintenance, Cleaning, and Repair. Some of the Common Areas and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair, or replacement of any Common Areas and Facilities or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas and Facilities or to any Unit. In addition, the Association or its agents may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction, or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

9.2 Right to Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas and Facilities as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit, and shall have the right to horizontal, vertical, and lateral support of such Unit, and such rights shall be appurtenant to and pass with title to each Condominium.

9.3 Association's Right to Use Common Areas and Facilities. The Association shall have an easement to make such use of the Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Common Areas and Facilities (other than Limited Common Areas) facilities for use by Owners generally or by the Association and its agents exclusively.

9.4 Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Areas and Facilities for the purpose of completing construction of the Project and making improvements therein as shown on the Map, and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. The duration of this easement shall be eight (8) years from the date of the recording of this Declaration. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage.

9.5 Sales and Management by Declarant. Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising the Project, and models in any of the Units that it owns or is under contract to purchase or on the Common Areas and Facilities and Facilities of the Project for a period of ten (10) years from the recording of this Declaration. Declarant shall be entitled to utilize, at any one time, up to 5 Units which it owns or is under contract to purchase and some or all of the Common Areas and Facilities and Facilities as sales offices, management offices, and models anywhere in the Project. Declarant may relocate sales

offices, management offices, and models to other Units or Common Areas and Facilities and Facilities at any time.

9.6 Easements for Encroachments. If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Common Areas and Facilities or any part of a Unit shall hereafter encroach on real property now owned by the Declarant outside the boundaries of the Property, an easement for such encroachment shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Buildings or any improvements constructed or to be constructed within the Project, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration.

9.7 Easements Deemed Created. All conveyances of Condominiums within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

9.8 Declarant's Reservation of Easement. Declarant hereby reserves an easement and right of way across, over, under and through the Common Areas and Facilities for purposes of vehicular and pedestrian access to the Additional Land or other real property Declarant may own adjacent to the Project.

## **ARTICLE X RESTRICTIONS ON USE AND ARCHITECTURAL REVIEW**

10.1 No Commercial Use. The Units within the Project shall be used exclusively for residential purposes. No Unit shall be used for business or commercial activity, excluding Unit Number 1101 (as described in Section 3.1 herein), provided, however, that nothing herein shall be deemed to prevent (a) Declarant or its duly authorized agents from using any Unit, for so long as such Unit is owned by Declarant, as sales models or property management offices, whether or not relating to the Project, or (b) any Owner or his duly authorized agent from freely renting or leasing his Unit from time to time, including nightly rentals.

10.2 No Noxious, Offensive or Illegal Activity. No noxious, offensive or illegal activity shall be carried on in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance, or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

10.3 Restrictions on Signs, Satellite Equipment and Window Coverings. No signs, neon lighting, flags, or advertising devices of any nature, including without limitation commercial, political, informational, or directional signs or devices, shall be erected or maintained on any part of the Project without the prior inspection and written approval of the Declarant until the expiration of the Transition Events and thereafter, by the Board of Directors (or architectural committee), except as may be temporarily necessary to caution or warn of danger or as used by the Declarant in connection with the sales, construction or marketing of any Unit. If the Declarant (or Board of Directors) consents to the erection of any such signs or devices, the same shall be promptly removed at the request of the Declarant or Board of Directors, as applicable. No satellite dishes or other satellite equipment shall be erected or maintained on any part of the Project by individual Unit Owners, or their agents; however, Declarant has the right to place satellite dishes on roofs of each Building serving all Units for satellite television and internet access to each Unit. Until the expiration of the Transition Events, Declarant can require standard window treatments that must be used by all Owners and after the Transition Events, such power to require standard window treatments may be made by the Board (or architectural committee if one is established).

10.4 Animals. No animals shall be brought or allowed to remain in or upon any part of the Project by Owners of Units, unless and until written authorization is obtained from the Association. In no event may any tenant be permitted to bring animals into the Project. The Association, in the sole discretion of its Board of Directors, shall have the right to revoke such authorization at any time. Without limiting the general application of the foregoing, the Association may establish reasonable rules and regulations under which two dogs or cats (or one dog and one cat) may be maintained in each Unit as pet(s) of the Owners of the Unit. Any Owner not complying fully with such rules and regulations shall lose the privilege of having such pets.

10.5 No Alterations. No Owner shall, without the prior written consent of the Association, make or permit to be made any structural alteration, improvement, or addition in or to his Unit or modification, alteration or improvement of any type to the Common Areas and Facilities or Limited Common Areas. No Owner of a Unit shall install in any windows in the main living area of such Unit any window covering other than the window coverings approved by the Association. No Owner shall install a hot tub on the deck or patio of his Unit. No Owner shall, without the prior written consent of the Association, do any act that would impair the structural soundness or integrity of, or alter the exterior appearance of, the Buildings or the safety of property or impair any easement or hereditament appurtenant to the Project. In any event, no alteration shall be made prior to obtaining approval of the appropriate government jurisdiction.

10.6 No Obstructions. There shall be no obstruction of the Common Areas and Facilities by any Owner. Owners shall neither store nor leave any of their property in the Common Areas and Facilities, except with the prior written consent of the Association.

10.7 Prohibition of Damage and Certain Activities. Except with the prior written

consent of the Association, nothing shall be done or kept in any Unit, in the Common Areas and Facilities, or in any other part of the Project which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit which would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas and Facilities or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or his guests, lessees, licensees, or invitees.

10.8 Parking. Each Unit will be assigned one (1) underground parking space and there will be parking outside each Building for overflow parking and parking for guests. Owners shall have the right to use and occupy the parking space and outside parking areas only in connection with the actual occupancy of a Unit. No such areas shall be used for storage of a vehicle while the Unit is not being occupied. The Association shall have the right from time to time to require that vehicles be temporarily removed from any and all outside parking areas for maintenance or snow removal purposes.

10.9 Rules and Regulations. No Owner shall violate the rules and regulations for the use of Units and Common Areas and Facilities as adopted from time to time by the Association. The Association shall adopt, amend, and repeal such rules and regulations as it deems reasonable. The rules and regulations shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas and Facilities, provided, however, that the rules and regulations shall not be inconsistent with this Declaration. A copy of the rules and regulations, as they may from time to time be adopted, amended or repealed, shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon such delivery, said rules and regulations shall have the same force and effect as if they were set forth in, and were part of, this Declaration. The rules and regulations as adopted, amended or repealed, shall be made available upon request to each Owner at the principal office of the Association, or at such other place as may be designated by the Board. In the event of any conflict between any such rules and regulations and any other provision of this Declaration the provisions of the rules and regulations shall be deemed to be superseded by the provisions of this Declaration, the Articles of Incorporation or the Bylaws to the extent of any such inconsistency.

10.10. Additions, Alterations, Improvements and Decorations.

Except as otherwise provided in the Condominium Declaration, no Unit Owner, except the Declarant, shall make (i) any structural addition, alteration or improvement to his Unit or any Limited Common Area which he has the right to use, or (ii) any non-structural addition, alteration, improvement or decoration to or upon the windows and doors enclosing his Unit, or to or upon any Limited Common Area which he has the right to use unless and until plans and specifications, in duplicate, showing the nature, kind, shape, height, color, materials, location and



approximate cost of such addition, alteration, improvement or decoration shall have been submitted to and approved in writing by the Board or architectural committee (if one is established by the Board), which shall have the right for good cause to refuse to approve any such plans or specifications which it deems unsuitable or undesirable, whether based on aesthetic or other reasons. If the Board (or architectural committee) fails to deny any requested addition, alteration, improvement or decoration within sixty (60) days after receipt of two (2) complete sets of plans and specifications therefor, such request shall be deemed approved. The plans and specifications for any addition, alteration, improvement or decoration approved by the Condominium Board or architectural committee, as the case may be, and actually constructed or installed shall be filed and maintained at the principal office of the Condominium, and, if appropriate, the Condominium Plat shall be amended to reflect any such addition, alteration or improvement.

The Board or architectural committee, as applicable, may adopt reasonable rules and regulations as provided herein establishing general standards for the making of one or more types of additions, alterations, improvements or decorations to or upon the Units or to or upon the Limited Common Areas. Such rules and regulations may provide that to the extent any particular addition, alteration, improvement or decoration is made in compliance with such general standards, such addition, alteration, improvement or decoration may be made without the submission of plans and specifications therefor to the Board or architectural committee, as the case may be, and without written approval by the Board or architectural committee, as applicable, of said plans and specifications.

For the purposes of the Condominium Declaration, a structural addition, alteration or improvement to a Unit shall include, without limitation, any addition, alteration or improvement involving any portion of the Unit (such as a utility line or duct serving that Unit) located above the top surface of any sheetrock ceiling within the Unit, whether such ceiling is a drop ceiling or is located at the upper boundary of the Unit.

In no event shall the provisions of this Section 10.10 apply to Declarant or any Unit Declarant may own, from time to time.

## **ARTICLE XI THE ASSOCIATION**

11.1 Board of Directors. The Association shall be managed by a Board of Directors which shall initially be comprised of three (3) persons and may be increased to five (5) persons, as provided in the Articles of Incorporation; provided, however, until the expiration of the Transition Events, the Declarant shall have the exclusive and irrevocable right to appoint all of the members of the Board of Directors and their successors or replacements, who need not be Owners. At the first annual Association meeting after the occurrence of the Transition Events, the Members of the Board of Directors shall be elected by the Owners. To provide continuity of management, if the Board is comprised of five (5) persons, three (3) of the Members shall be elected for two (2) year terms and the other two (2) Members shall be elected for a one (1) year term. Thereafter, all Members shall be elected for two (2) year terms. In the event the Board is

comprised of three (3) persons, one (1) shall be elected for a three (3) year term; one (1) for a two (2) year term and one (1) for a one (1) year term The Members of the Board of Directors shall also constitute the Board of Directors of the Association.

11.2 Qualification of Board of Directors Members. To qualify, a member of the Board of Directors must be an individual Owner or the representative of Declarant, as provided in Section 11.1 above.

11.3 Vacancies. To qualify, a member of the Board of Directors must be an individual Owner or the representative of Declarant.

11.4 Dismissal of Board of Director Members. Any Board of Director member who fails on three (3) successive occasions to attend Board of Directors meetings (whether regular or special) or who has failed to attend at least twenty-five (25%) of all Board of Director meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining members of the Board shall elect a replacement to sit on the Board of Directors until the next meeting of the Association.

11.5 Removal of Board of Directors Members/Declarant's Rights. Except for Board of Directors members appointed by the Declarant before the expiration of the Transition Events, Board of Directors members may be removed at any time by the affirmative vote of a majority of the Members of the Association. A replacement to serve the remainder of the removed member's unexpired term shall be elected at the same meeting.

11.6 Term. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the Board of Directors until his successor qualifies and is properly elected by the Association.

11.7 No Compensation. Board of Directors members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Board of Directors business and approved by the Board of Directors.

11.8 Board of Directors Officers and Agents. The Board of Directors shall perform its functions through those three (3) members who are elected as officers by the Board of Directors and through such agents or employees as the Board of Directors may appoint. There shall be a President, Vice President and Secretary-Treasurer. Any Board of Directors officer, agent, or employee may at any time be removed, with or without cause, by the vote of a majority of the Board of Directors members, provided, however, if a member of the Board of Directors is removed as an officer, he shall continue to be a member of the Board of Directors.

11.9 Board of Directors Meetings. A regular meeting of the Board of Directors shall be held immediately after the adjournment of each annual Owners meeting or at such other time as the members of the Board of Directors may decide. Other regular meetings shall be held at periodic intervals (no longer than monthly) at such time and place as the Board of Directors may determine. No notice need be given of regular Board of Directors meetings. Special

Board of Directors meetings shall be held whenever called by the President or by any three (3) members of the Board of Directors. Reasonable effort shall be made to give either oral or written notice of a special meeting to each Board of Directors member at least twenty-four (24) hours before the time fixed for the meeting. The propriety of holding any meeting which is attended by all Board of Directors members may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any Board of Directors meeting shall consist of a majority of all the members then in office.

**11.10 Status and General Authority of Board of Directors.** Any instrument executed by the Board of Directors that recites facts which, if true, would establish the Board of Directors' power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its Board of Directors name. The Board of Directors shall have, and is hereby granted, the following authority and powers:

**11.10.1 To Enter.** The power and authority to enter into or upon any Unit to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the residents.

**11.10.2 Grant Easements.** The authority, without the vote of consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Buildings, Units and the Common Areas and Facilities for utilities, reads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

**11.10.3 Execute Documents.** The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Map which has been approved by the vote or consent necessary to authorize such amendment.

**11.10.4 Standing.** The power to sue and be sued.

**11.10.5 Enter Into Contracts.** The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

**11.10.6 Transfer Interests in Real Property.** The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Members in the Association.

**11.10.7 to Purchase.** The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Members in the Association.

11.10.8 Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph 11.10.7 above to the Project, so long as it has been approved by at least seventy-five (75%) of the Members in the Association.

11.10.9 Promulgate Rules and Establish An Architectural Committee. The authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures as may be necessary or desirable to aid the Board of Directors in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration. The Board may also appoint three (3) persons to serve as an architectural committee for the Association to perform the approval of plans described in Section 10.10 herein. Until the expiration of the Transition Events, Declarant shall appoint the members of the architectural committee, who need not be Members of the Association and after the Transition Events, all members of the architectural committee shall be Members of the Association.

11.10.10 Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Members of the Association or residents not on the Board of Directors, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic, video or audio reproduction of Board of Directors meetings.

11.10.11 Assignment or Leasing of Common Areas and Facilities. The authority to charge reasonable user fees for Common Areas and Facilities, and to assign or lease available Common Areas and Facilities to Owners as well as to others on an annual basis.

11.10.12 All Other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its functions on behalf of the Owners.

11.11 Delegation of Management Responsibilities. The Board of Directors may delegate some of its management responsibilities to a professional management company, an experienced on-site manager, independent contractors, through service contracts, or any combination thereof. The termination provision of any such contract must not require a termination penalty or any advance notice of more than thirty (30) days and no such contract shall be for a term beyond the expiration of the Transition Events, unless approved by the Owners, as provided in Section 57-8-16.5 of the Utah Condominium Ownership Act, as amended from time to time.

11.12 Owners Meetings. The Association Members shall meet as follows:

11.12.1 Annual Meeting. The annual meeting of the Owners shall be held in December of each year. The place of the meeting shall be at the location specified in the notice of meeting. At least ten (10) but not more than forty-five (45) days before the date of the annual meeting, a written notice thereof shall be personally delivered or mailed postage prepaid to each person who appears as an Owner, at his last known address; provided, however, that notice may also be delivered by electronic delivery if the party providing notice has taken all steps to ensure that the delivery of such notice is fair, reasonable and will be effective. The notice shall state the location, date, time, place, and general purpose of the meeting.

11.13.2 Special Meetings. Special meetings of the Owners may be called by the President, by the Board of Directors, or by any three (3) members of the Board of Directors, or by Unit Owners holding at least twenty five percent (25%) of the undivided ownership interest in the Common Area. At least ten (10) but not more than thirty (30) days before the date set for a special meeting, written notice thereof shall be given in the manner described in the immediately preceding Paragraph.

11.13.3 Waiver of Notice. No notice of any Owners meeting shall be required if a waiver of such notice is signed by all of the Owners. Whenever all of the Owners meet in person or by proxy such meeting may not be challenged on grounds of inadequate notice.

11.13.4 Quorum The presence of at least fifteen percent (15%) of all votes entitled to be cast shall constitute a quorum for the transaction of business at any Owners meeting.

11.13.4.1 Quorum Not Present. If a quorum is not present at any Owners meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than forty-eight (48) hours and no later than thirty (30) days, after the time set for the original meeting.

11.13.5.1 Quorum at Rescheduled Meeting. Those Members present at the rescheduled meeting and entitled to vote shall constitute a quorum at the rescheduled meeting.

11.13.5.2 Percentage Approval Requirement. In any situation in which this Declaration requires the affirmative vote of a certain percentage of the total ownership interest in the Project for authorization or approval of a matter, the affirmative approval of that percentage of all of the Unit Owners, who must either be present at the meeting in person or by proxy, or, in the alternative, who have signed a separate written consent, is required for authorization or approval of the item, regardless of the quorum requirements.

11.14 Classes of Membership and Voting Allocations. The Association shall have two (2) classes of membership-Class A and Class B, described more particularly as follows:

11.14.1 Class A. The Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to vote on all issues before the Association to, subject to the following:

11.14.1.1 One Vote. Each Unit shall have one (1) vote.

11.14.1.2 Subject to Assessment. No vote shall be cast or counted for any Unit not subject to assessment.

11.14.1.3 Multiple Owners. When more than one (1) person or entity holds such interest in a Unit, the vote for such Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting.

In the absence of such advice, the vote of the Unit shall be suspended in the event more than one (1) person or entity seeks to exercise it.

11.14.1.4 Leased Unit. Any Owner of a Unit which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

11.14.2 Class B. The Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Units, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Unit owned or to be developed. The Class B membership shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (which are hereinafter referred to as the "Transition Events"):

11.14.2.1 Units Sold. Four (4) months after the sale (meaning the execution and delivery of a deed to a Unit by Declarant) of Units to which seventy five percent (75%) of the Common Areas and Facilities pertain in all Phases in the Project; or

11.14.2.2 Six Years. Six (6) years from the date following the first conveyance of a Unit in the Building to a Unit purchaser after effective date of this Declaration; or

11.14.2.3 Election. When, in its sole discretion, Declarant so determines.

11.14.2.4 Change to Class A Member. From and after the happening of the Transition Events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Unit owned. At such time, the Declarant shall call a meeting, in the manner described in the Bylaws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

11.15 Lists of Unit Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors. The Board of Directors shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him or her; (b) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Unit which is encumbered by the Mortgage held by such person or entity; and (c) the name of each person or entity who is an Eligible Insurer or Guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board of Directors with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Summit County, Utah. The Board of Directors may for all purposes act and rely on the information concerning Unit ownership in its records or, at its option, the records of the County Recorder. The address of any Owner shall be deemed to be the address of the Unit owned by such person unless the Board of Directors is otherwise advised in writing.

11.16 Capital Improvements and Table. The Board of Directors shall prepare a Table of Capital Improvements, which shall contain a list of foreseeable expenditures for Capital Improvements within the Area of Common Responsibility. The Table shall be included in every annual budget, and it shall be reviewed and updated at least annually, and reasonable reserve accounts shall be established by the Board of Directors for the replacement of capital assets as they age. Expenditures by the Association for Capital Improvements to the Project shall be subject to and governed by the following:

11.16.1 Board of Directors Discretion/Expenditure Limit. Capital Improvements to the Project which cost ten percent (10%) or less of the Total Annual Operations Budget and do not materially alter the nature of the Project, may be authorized by the Board of Directors alone.

11.16.2 Owner Approval/Expenditure Limit. Any Capital Improvement, the cost of which will exceed such amount, must prior to the commencement of construction, be authorized by at least a majority of the Owners.

11.16.3 Homeowner approval/Changing the Nature of the Project. Any Capital Improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) of the undivided ownership interest in the Project.

11.17. Operation, Maintenance and Alterations. The Units and Common Areas and Facilities shall be maintained by the Unit Owners and the Association as follows:

11.17.1 Area of Common Responsibility. The Association shall maintain, repair and replace, as needed from time to time, the Common Areas and Facilities, including but not limited to the exterior of all Buildings, all roofs, foundations, footings, columns, girders, beams, supports and main walls of any Unit and garages (including garage doors, garage door systems and all underground parking areas), outside parking areas, all common utility services such as power, light, gas, hot and cold water, sewer, heating, refrigeration and air conditioning systems, fences, fixtures, patios and decks appurtenant to outside hot tubs for each Building, and all landscaping as set forth with more particularity below.

11.17.2 Area of Personal Responsibility. Each Unit Owner shall maintain, repair and replace, as needed in his Unit, individual utilities, including but not limited to all power, gas, telephone, and television lines servicing only his Unit, patios and decks appurtenant to his Unit, assigned storage areas, windows, doors and patios, balconies and decks appurtenant to each Unit. If a specific item is not mentioned expressly in the Area of Common Responsibility and it is located in, on, under or above a Unit, then it shall be the responsibility of the Unit Owner, unless otherwise determined in writing by the Board of Directors.

11.17.3 Landscaping. The Association and The Bear Hollow Village Homeowners Association jointly shall maintain, repair and replace all landscaping throughout the entire Project, including but not limited to all green space, grass, sod, ground cover, flower beds, plant beds, trees, bushes, shrubs, and sprinkling systems, which Owners or residents shall not modify, change, or alter without the express prior written consent of the Board of Directors. All landscaping in the Project shall be maintained and cared for in a manner consistent



with Community Standards and the quality of design and construction originally established by Declarant. Specific guidelines and restrictions on landscaping may be established by the Board of Directors from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be properly pruned and trimmed.

11.17.4 Snow & Ice Accumulations. The Association shall remove all ice and snow accumulations from the Common Areas and Facilities, except patios and decks appurtenant to each Unit.

11.17.5 Garbage Storage and Removal. Each Owner shall deposit the garbage, debris and refuse from his Unit into the centrally located trash receptacles or dumpsters throughout the Project, which the Association shall empty, manage and maintain.

11.17.6 Limited Common Area. While each Unit Owner shall maintain his Limited Common Area in a clean, safe, tidy, attractive and sanitary condition, the Association shall be responsible to replace and repair the Limited Common Area and all improvements constructed or installed thereon, except as provided in Section 11.17.2.

11.17.7 Utilities. The Association shall provide those utility services not separately metered and billed to the individual Owners by the provider.

11.17.8 Standard of Care/General. The Project shall be maintained in a usable, clean, functional, attractive and good condition, consistent with community standards.

11.17.9 Right of Entry. The Board of Directors, its agents, representatives or employees shall have a right to enter upon or into any Unit or Common Area as necessary in order to maintain and operate the Project, and shall not be liable for trespass for such entry or work.

11.17.10 Changes to Areas of Personal or Common Responsibility. The Board of Directors may, in its sole discretion, add items to or subtract items from the areas of personal or common responsibility described above, upon at least thirty (30) days prior written notice to the Unit Owners.

11.3.11 Alterations to the Common Area. Anything to the contrary notwithstanding and until the occurrence of the Transition Events, the Declarant may make changes to the Common Areas and Facilities without the consent of either the Association, Board of Directors or Owners; provided, however, no Owner or resident may make any structural alterations, modifications, changes or improvements to the Common Areas and Facilities, including but not limited to any additions, extensions, enclosures, fencing, decks, patios, walkways, structures or sheds not shown on the approved plans and specifications, without the prior express written consent of the Board of Directors.



## ARTICLE XII

### COMMON EXPENSES AND ASSESSMENTS

12.1 Common Expenses. Each Owner, upon receipt of a deed to a Unit or other document of conveyance, shall pay his assessments to the Association subject to and in accordance with the restrictions set forth below; provided, however, anything to the contrary notwithstanding, the Declarant shall not be obligated to pay assessments until such time as any residential structure, building or Unit is substantially completed and a permanent certificate of occupancy has been issued or, in the alternative, the Declarant elects in writing to commence payment, whichever first occurs. Notwithstanding the foregoing, Declarant's obligation to pay assessments shall be determined as follows: In no event during the first six (6) months that Declarant owns any Unit subject to this Declaration, no assessments shall be due from Declarant. Thereafter, Declarant may, at its sole option, pay assessments equal to twenty-five percent (25%) of the regular assessments or other charge made or levied against any other Unit for each Unit owned by Declarant which is subject to this Declaration or Declarant may pay any operating deficit of the Association up to the date of the Transition Events. If Declarant elects to pay the deficit, it shall be entitled to meet the deficit funding obligation by making, or (if such person so agrees in writing) causing any other person to make on its behalf, one or more cash payments or in-kind contributions of goods or services, or any combination thereof to the Association, and the Association shall have the right to enter into written or oral contracts with the Declarant for the contribution of such goods or services for such purpose. Further, no assessment of any type shall be due for Unit #1101 during the time that this Unit is used, in whole or in part, by the Declarant or a professional management company for the Association.

12.1.1 Purpose of Common Area Expenses. The assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Board of Directors.

The Units are wholly located within the Bear Hollow Village Master Planned Community but are not subject to the declaration of covenants, conditions and restrictions for Bear Hollow Village Association. Subject to the Bear Hollow Village CC&Rs, The Lodges at Bear Hollow, and the Bear Hollow Village Association agree jointly that in exchange for a payment of five (\$.05) cents per habitable square foot of space per unit, per month, the Owners in the Project shall be permitted to use the Club House and other amenities of the Bear Hollow Village Homeowners Association built on real property adjoining the Project. The five-cent (\$.05) amount was the negotiated amount for this expense on July 21, 2004. The Homeowners' Association dues for the Bear Hollow Village have since been reduced by 11.60%. Consequently, the starting assessment shall be \$.0442 per square foot of habitable space per unit. Further, this amount will be adjusted up and down over time in the exact proportion as future upward and downward modifications are made in the regular monthly assessments of the Bear Hollow Village Homeowners Association. In exchange for this payment (as adjusted by the owners in the Projects) Owners and tenants agree to abide by all the rules and regulations

promulgated from time to time by the Bear Hollow Homeowners Association for the use of its facilities. Further, in exchange for this payment, the Bear Hollow Village Homeowners Association has agreed to do the maintenance of the common areas for The Lodges at Bear Hollow subject to the following: a) the cutting of grass and fertilization of grass and sod areas. Damaged sod areas from snow plowing or snow removal will be replaced at the expense of Bear Hollow Village or if the sod areas are damaged from other causes, then it will be the responsibility of the Lodge Parcel to repair the same; b) Bear Hollow Village Association will maintain shrubs/trees and mulch areas and fertilization by a normal maintenance schedule. If shrubs or trees die or need replacement, the Lodge Parcel will be responsible for the purchase and installation of the new shrubs and trees; c) the Association will provide snow removal of all roads to and from the Lodge Parcel and clear the sidewalks and walkways on the exterior of the buildings located on the Lodge Parcel. No snow removal will be provided by the Association within the building or the underground parking area located on the Lodge Parcel, which will remain the sole responsibility of the Lodge Parcel; d) the street lighting on the public and private roads.

12.1.1.1 In addition to the foregoing, the Association and each Owner and occupant on the Property shall be subject to that certain Agreement to provide internet services to each Unit between Elsinore Communications, LLC ("Elsinore") and the Association dated December 5, 2005, ("Elsinore Agreement"), which refers to that certain Service Agreement ("Service Agreement"), by and between Elsinore Communications, LLC ("Elsinore") and the necessary Service Provider. Assessments levied by the Association shall include all amounts required under the Elsinore Agreement. The Association is obligated to insure that the budget of the Association each year includes the amounts to be paid under the Elsinore Agreement. The sums due under the Elsinore Agreement will be billed by Elsinore and the Association is required to pay the amounts due under the bills on a monthly basis, or other periodic installment as determined by Elsinore in its sole and absolute discretion from time to time. The Association and each Owner shall also indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses arising under the Service Agreement due to any act or omission by any Owner and/or the Association. The Association and each Owner as well as any future Owners recognize the rights Elsinore has under the Service Agreement and shall not take any action or fail to take any action which may impair Elsinore's rights under the Service Agreement or otherwise affect Elsinore in connection with the Service Agreement or the services provided thereunder, and in the event the Association and/or any Owner takes any such action or fails to take any action, then the violating party or parties shall be liable to indemnify Elsinore for any and all damages, losses, costs, legal fees or other expense Elsinore may incur in connection therewith. Further, the Association and each Owner agree and acknowledge that in the event the Service Provider fails to comply with any term of the Service Agreements, then in no event may Elsinore be liable to the Association or any Owner or occupant of the Property for any claim, loss or any other type of expense. This Article 12.1.1.1 may not be amended by any party without the prior written consent of Declarant and Elsinore, which consent may be withheld in the sole and absolute discretion of Declarant and/or Elsinore.

12.1.2 Creation of Assessments. The assessments shall pay for the common expenses of the Association as may be from time to time specifically authorized by the Board of Directors. Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed

in such deed, covenants and agrees to pay to the Association in a timely manner all assessments assessed.

12.1.3 Budget. At least thirty (30) days prior to the annual meeting of the Association, the Board of Directors shall prepare and deliver to the Owners a proposed budget which:

12.1.3.1 Itemization. Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

12.1.3.2 Basis. Shall be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and Facilities and Facilities, which estimates shall include but are not limited to expenses of premiums for all insurance which the Board of Directors is required or permitted to maintain, common lighting and heating, water charges, carpeting, painting, repairs and maintenance of the Common Areas and Facilities and Facilities and replacement of the elements and components thereof that must be replaced on a periodic basis, wages for Board of Directors employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.

12.1.4 Approval of Budget and Assessments. The proposed budget and the assessments shall become effective unless disapproved at the annual meeting by a vote of at least a majority of the Owners; provided, however, that to the extent the budget increases the assessment by not more than fifteen (15%) from the prior year's assessment, then the Board shall have the right to approve such budget without a vote of the Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and assessment schedule, or if the Board of Directors fails for any reason to establish the budget and assessment schedule for the succeeding year, then and until such time as a new budget and new assessment schedule shall have been established, the budget and the assessment schedule in affect for the then current year shall continue for the succeeding year.

12.1.5 Payment of Assessments. The Board of Directors has the sole authority and discretion to determine how and when the annual Assessments are paid, and to amend, modify, change or supplement that schedule from time to time. Initially, the assessments shall be paid quarterly.

12.1.6 Personal Obligation of Owners. Each Unit Owner shall pay his assessments and additional charges; provided, however, no first mortgages or beneficiary under a first deed of trust (but not the Seller under an executory contract of sale, uniform real estate contract, land sales contract, or other similar instrument), who obtains title of a Unit pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: the Owner of both the legal and equitable interest in any Unit; the owner of record in the offices of the County Recorder of Summit County, Utah; and

both the Buyer and Seller under any executory sales contract, uniform real estate contract, land sales contract, or other similar instrument

12.1.7 Equitable Changes. If the aggregate of all of the monthly assessment payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Board of Directors may from time to time effect an equitable change in the amount of said payments provided the Owners are given at least thirty (30) days written notice of any changes.

12.1.8 Dates and Manner of Payments. The dates, method, form, and manner of payment shall be determined by the Board of Directors.

12.1.9 Reserve Accounts. The Board of Directors shall establish and maintain at least one (1) reserve account for Capital Improvements.

12.1.10 Acceleration. Assessments shall be paid in the manner and on dates fixed by the Board of Directors who may, at its option and in its sole discretion, elect to accelerate the entire annual assessment for Owners who have failed to pay their monthly assessment in a timely manner. If, however, the assessment is accelerated and an Owner subsequently files bankruptcy or the Board of Directors otherwise decides acceleration is not in its best interest, the Board of Directors, at its option and in its sole discretion, may elect to decelerate the obligation.

12.1.11 Statement of Assessments Due. Upon written request, the Board of Directors shall furnish to any Owner a statement of assessments due, if any, on his Unit. Failure to provide the certificate within thirty (30) days after a written request shall be deemed conclusive evidence that all assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

12.1.12 Superiority of Assessments. All Assessments and liens created to secure the obligation to pay assessments are superior to any homestead exemptions to which an Owner may be entitled and each Owner, by accepting a deed to a Unit or other document of conveyance, hereby waives such homestead exemption as to the Association.

12.1.13 Termination of Utility Service. At the discretion of the Board of Directors, the utility service to any Owner paid for by assessments may be terminated if the Owner is in arrears on his obligation to pay assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

12.1.14 Suspension of Right to Vote for Non-Payment. At the discretion of the Board of Directors, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least (10) days.

12.2 Special Assessments. In addition, the Association may levy Special Assessments in any year, subject to the following:

12.2.1 Special Assessment Approval. So long as the Special Assessment does not exceed the sum of Five Hundred and 00/100ths Dollars (\$500.00) per Unit in any one fiscal year (the "Special Assessment Limit"), the Board of Directors may impose the special assessment without any additional approval.

12.2.2 Association Approval. Any Special Assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of votes of the Owners of the Association. The Board of Directors in its discretion may allow any Special Assessment to be paid in installments.

12.3 Specific Assessments. If a Unit Owner may accept or reject the benefit, then the Board of Directors shall also have the power to specifically assess the Owners in a particular area as follows:

12.3.1 Benefit only to specific Unit. If the expense benefits less than all of the Units, then those Units benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Units according to the benefit received.

12.3.2 Unequal or Disproportionate Benefit. If the expense benefits all Units, but does not provide an equal benefit to all Units, then all Units shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Units according to the benefit received.

12.3.3 No Waiver. The failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Director's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section.

12.4 Individual Assessments. Individual Assessments may be levied by the Board of Directors against a Unit and its Owner to reimburse the Association for:

12.4.1 Costs and expenses incurred in enforcing the Project Documents.

12.4.2 Costs and expenses associated with the maintenance, repair or replacement of Common Area for which the Unit Owner is responsible.

12.4.3 Any other charge, fee, due, expense, or cost designated as an Individual Assessment in the Declaration.

12.4.4 Attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

12.5 Collection of Assessments. Assessments must be paid in a timely manner and shall be collected as follows:

12.5.1 Time is of the Essence. Time is of the essence and all assessments shall be paid promptly when due.

12.5.2 Delinquent Assessments. Any assessments which are not paid when due are deemed to be delinquent.

12.5.3 Lien. If any Unit Owner fails or refuses to make any payment of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property. A notice of lien may be recorded in the Office of the County Recorder of County, but shall only be necessary in order to establish the priority of the lien.

12.5.4 Late Fees and Default Interest Rate. Any assessments delinquent for a period of more than ten (10) days shall incur a late charge of twenty five Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of one and one-half percent (1.5%) per monthly shall accrue on all delinquent accounts. The Board of Directors may, in its sole discretion, change the amount of the late fee or default interest rate or waive late assessments and accruing interest, but is not required to do so.

12.5.5 Foreclosure of Lien and/or Collection Action. If any assessments remain unpaid, the Association may, as determined by the Board of Directors, institute suit to collect the amounts due, to foreclose the lien, or both.

12.5.6 Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to obtain a personal judgment against him for unpaid assessments and additional charges, to foreclose the lien securing the debt in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed, or both,

12.5.7 No Waiver. No Owner may waive or otherwise exempt himself from liability for the payment of Assessments, including but not limited to the non-use of Common Areas and Facilities or the abandonment of his Unit.

12.5.8 Duty to Pay Independent. No reduction or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board of Directors to take some action or perform some function required to be taken or performed by the Association or Board of Directors under the Project Documents, or for inconvenience or discomfort arising from them making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

12.5.9 Application of Payments. All payments shall be applied as follows: Additional Charges, delinquent assessments and current assessments.

12.5.10 Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board of Directors. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's assessments, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without

regard to the value of the mortgage security. The Board of Directors may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

12.5.11 Appointment of Trustee. If the Board of Directors elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

12.5.12 Attorney in Fact. Each Owner, by accepting a deed to a Unit or other document of conveyance, hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Unit, if the Unit is rented and Owner is delinquent in his assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's assessments are current; and the Owner shall credit the tenant or lessee, against rent due, for the amount of money paid to the Association.

12.6 Liability of Board of Directors. The Association shall indemnify every officer and member of the Board of Directors against any and all expenses, including but not limited to attorney's assessments reasonably incurred by or imposed upon any officer or Member of the Board of Directors in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he may be a party by reason of being or having been an officer or Member of the Board of Directors. The officers and Members of the Board of Directors 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 Members of the Board of Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Members of the Board of Directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and Member of the Board of Directors free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or Member of the Board of Directors, or former officer or Member of the Board of Directors, may be entitled.

12.7 Insurance. The Board of Directors shall at all times purchase, maintain in force, and pay the premiums for insurance on the Common Areas and Facilities satisfying at least the following requirements:

12.7.1 Property Insurance. Blanket property insurance using the standard "Special" or "All-Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard Utah Condominium project casualty policy. This additional coverage may be added by the Board of Directors as it deems necessary in its best judgment and in its sole discretion.

12.7.2 Liability Insurance. Liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated first



class subdivisions in the county. If possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile liability protection.

12.7.3 Director's and Officer's Insurance. Adequate director's and officer's liability insurance (a.k.a. errors and omissions insurance).

12.7.4 Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Board of Directors to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:

12.7.4.1 Agents. Furthermore, where the Board of Directors or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Board of Directors or the Association.

12.7.4.2 Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Board of Director's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Board of Directors, the Association, or the management agent, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units, plus reserve funds.

12.7.4.3 Quality of Coverage. The bonds required shall meet the following additional requirements:

(a) they shall name the Board of Directors, the Association, and the Property Manager as obligee;

(b) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense;

(c) the premiums on all bonds required herein for the Board of Directors and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Board of Directors or the Association as part of the Common Expenses; and

(d) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Board of Directors and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee.

12.7.5. Earthquake Insurance shall not be required unless requested by at least Seventy five percent (75%) of the Members of the Association.



12.7.6 Miscellaneous Items. The following provisions shall apply to all insurance coverage:

12.7.6.1 Quality of Carrier. A "B +" or better general policyholder's rating or a Class XII or better financial performance index rating in Best's Insurance Reports.

12.7.6.2 The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "The Lodges at Bear Hollow Condominium Owners Association, for the use and benefit of the individual Owners."

12.7.6.3 Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

12.7.6.4 Beneficiary. In any policy covering the entire Project, each Owner and his Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.

12.7.6.5 Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

12.7.6.6 Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

12.7.6.7 Waiver of Subrogation. A waiver of the right of a subrogation against Owners individually.

12.7.6.8 Individual Neglect. A provision that the insurance is not prejudiced by any act or neglect of any individual Owner.

12.7.6.9 Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the Association.

12.7.6.10 Individual Insurance. Each Owner and resident shall purchase and maintain adequate liability and property insurance on his Unit, personal property and contents; provided, however, no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Owners and their mortgagees, may realize under any insurance policy which the Association may have in force on the Property at any particular time.

12.7.6.11 Primary Coverage. The insurance coverage of an Owner shall, in the event the Association also has insurance covering the loss, be primary and the insurance of the Association shall be secondary.

12.7.6.12 Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Unit, the Owner shall proceed promptly repair or to reconstruct the damaged structure in a manner consistent with the original construction.

12.7.6.13 Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonable the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Unit, and may be enforced by them.

12.7.6.14 Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other associations in similarly situated first class subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and; or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction; Steam Boiler and Machinery Coverage Endorsement if the Project has any central heating or cooling.

12.7.6.15 Restrictions on Policies. No insurance policy shall be maintained where:

(a) Individual Assessments Prohibited. Under the term of the carrier's charter, Bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Board of Directors, the Association, V.A., FHA, FNMA, or their designees.

(b) Payments Contingent. By the terms of the Declaration, Bylaws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or Member; or

(c) Mortgage Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board of Directors, the Association, an Owner, or the borrowers) from collecting insurance proceeds.

12.7.6.16 Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Board of Directors or Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board of Directors or Association may deem appropriate from time to time.

## ARTICLE XIII

## DESTRUCTION, CONDEMNATION, OBSOLESCENCE

13.1 Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

13.2 Definitions. Each of the following terms shall have the meaning indicated:

13.2.1 "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

13.2.2 "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

13.2.3 "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

13.2.4 "Partial Condemnation" shall mean any other such taken by eminent domain or grant or conveyance in lieu thereof.

13.2.5 "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

13.2.6 "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

13.2.7 "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

13.2.8 "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.

13.2.9 "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Board of Directors or insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Unit in which they are interested.

13.3 Determination by Board of Directors. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the

Project under eminent domain or by grant or conveyance in lieu thereof, fee Board of Directors shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five (25%) percent or more of the estimated Restored Value of the Project. In addition, the Board of Directors shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Board of Directors may retain and rely upon one or more qualified appraisers or other professionals.

13.4 Restoration of the Project. Restoration of the Project shall be undertaken by the Board of Directors promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven (67%), percent of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas and Facilities and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

13.5 Notices of Destruction or Obsolescence. Within thirty (30) days after the Board of Directors has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

13.6 Excess Insurance. If the insurance proceeds condemnation awards, or payments in lieu of condemnation- actually received by the Board of Directors or Association exceed the cost of Restoration when Restoration is undertaken, then the excess funds shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This covenant is also for the benefit of the Association and any Mortgagee, and therefore, may also be enforced by them. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

13.7 Inadequate Insurance. In the event the cost of Restoration exceeds Available Fund, all of the Units shall be assessed for the deficiency on the basis of their respective percentages of undivided Ownership interest in the Common Areas and Facilities.

13.8 Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a planned unit development) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Units.

13.9 Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under the Declaration and the Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by

the Board of Directors to the Owners in proportion to their respective undivided interest in the Common Areas and Facilities. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

13.10 Authority of Board of Directors to Represent Owners in Condemnation or to Restore or Sell. The Board of Directors, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.

13.11 Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

13.12 Restoration Power. The Board of Directors, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as herein above provided.

13.13 Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

#### **ARTICLE VIV MORTGAGEE PROTECTION**

14.1 Mortgagee Protection. The lien or claim against a Unit for unpaid assessments levied by the Board of Directors or by the Association pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such assessments become due, subject to the following:

14.2 Effects of Voluntary and Involuntary Sale. The lien or claim against a Unit for such unpaid assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit the lien of any assessments becoming due thereafter.

14.3 Books and Records Available for Inspection. The Board of Directors or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Project Documents, as well as the books, records, and financial statements of the Board of Directors and the Association. The term "Available", as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

14.4 Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

14.5 Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board of Directors or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause, penalty or severance charge, upon at least thirty (30) days prior written notice to the other party thereto.

14.6 Eligible Mortgagee Designation. Upon written request to the Board of Directors or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Unit Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder or insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

14.6.1 Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

14.6.2 Delinquency. Any delinquency in the payment of assessments owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.

14.6.3 Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board of Directors or the Association.

14.6.4 Consent Required. Any proposed action which would require the consent of specified percentage of Eligible Mortgagees.

## ARTICLE XV

### EXPANSION OF THE PROJECT

15.1 Reservation of Option to Expand. Declarant hereby reserves the option to expand the Project to include additional Buildings with Units and Common Areas and Facilities in the Project. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire seven (7) years from the date following the first conveyance of a Unit in the Project to a Unit purchaser after the effective date of this Declaration, unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said seven (7) years. Such right may be exercised without first obtaining the consent or vote of Unit Owners and shall be limited only as herein specifically provided. Such Units shall be located on any or all portions of the Additional Property.

15.2 Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Summit County, Utah, no later than seven (7) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Units, together with supplemental Map or Maps containing the same information with respect to the new Units as was required on the Map with respect to the Phase I Units. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

15.3 Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so initially submitted under the Declaration, plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and Supplemental Map. The recording in the office of the Summit County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to the Owners of Units in the Project as it existed before such expansion the respective undivided interest in the new Common Areas and Facilities added to the Project as a result of such expansion. Such recording shall also operate to vest any then mortgagee of any Unit in the Project as it existed, interest so acquired by the Owner of the Unit encumbering the new Common Areas and Facilities added to the Project as a result of such expansion.

15.4 Declaration Operative on New Units. The new Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Units therein shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said Office of the Summit County Recorder.

15.5 Right of Declarant to Adjust Ownership Interest in Common Areas and Facilities. Each deed of a Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentages in the Common Areas and Facilities set forth in supplemental or Amended Declaration. The proportionate interest of each Unit Owner in the Common Areas and Facilities after any expansion of the Project shall be an undivided interest of the Project as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Areas and Facilities in accordance with Supplemental or Amended Declarations recorded pursuant hereto and each deed of a Unit in the Project shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Units may contain clauses designed to accomplish a shifting of the Common Areas and Facilities. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas and Facilities can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas and Facilities may be effected more than seven (7) years following the first conveyance of a Unit in Phase I after the effective date of the Declaration. Accordingly, upon the recording of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interests in the Common Areas and Facilities contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to



the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

15.6 Other Provisions Concerning Expansion. If the Project is expanded as hereinbefore contained, then it is further provided that:

15.6.1 All or any part of the Additional Land may be added to the Project without any limitations whatsoever save and except that all additional Units created must be restricted to multi family residential housing limited to one single family per Unit.

15.6.2 Portions of the Additional Land may be added to the Project at different times without any limitations.

15.6.3 Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Land through the easement areas as shown on the Map. The Association of Unit Owners shall not allow anything to be built upon or interfere with said easement areas.

15.6.4 No assurances are made concerning:

15.6.4.1 The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Project.

15.6.4.2 Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings and Units will be comparable to the Phase A facilities on a per Unit basis and will be of a similar quality of materials and construction to Phase A and will be substantially completed prior to annexation.

15.6.4.3 Whether any Units created on any portion of the Additional Land will be substantially identical to those within the initial Project except that Units will be constructed of an equal or better quality of materials and construction than the Units in Phase A.

15.6.4.4 Type, size, or maximum number of Limited Common Areas which may be created within any portion of the Additional Land added to the Project.

15.5 Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to:

15.5.1 The submission of any portion of the Additional Land to the provisions of the Act as Land under this Declaration;

15.5.2 The creation, construction, or addition to the Project of any additional property;

15.5.3 The carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or



15.5.4 The taking of any particular action with respect to the Additional Land, the Project, or any Land.

## ARTICLE XVI

### MISCELLANEOUS PROVISIONS

16.1 Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by the Board of Directors obtaining from Owners who collectively hold the required percentages, with or without a meeting, consents in writing to such transaction, subject to the following conditions:

16.1.1 Ninety-Day Limit All necessary consents must be obtained prior to the expiration of ninety (90) days from the time the first written consent is obtained; and

16.1.2 Change in Ownership. Any change in Ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

16.2 Amendment. Subject to the condition set forth herein this Declaration may be amended subject to the following:

16.2.1 Consent of the Owners. The affirmative vote of at least sixty seven (67%) percent of the votes cast of the Owners shall be required and shall be sufficient to amend the Declaration or the Map. Any amendment so authorized shall be accomplished through the recording of an instrument executed by the Board of Directors. In such instrument the Board of Directors shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained; and

16.2.2 Consent of Eligible Mortgagee. The consent of at least sixty-seven (67%) percent of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one percent (51%) of the undivided Ownership interest in the Common Areas and Facilities shall be required to add to or amend any material provision of this Declaration or the Map which establishes, provides for, governs, or regulates any of the following:

16.2.2.1 voting rights;

16.2.2.2 increases in assessments that raise the previously assessed amount by more than twenty-five (25%) percent assessment liens, or the priority of assessment liens;

16.2.2.3 reduction in reserves for maintenance, repair, and replacement of the Common Areas and Facilities;

- 16.2.2.4 insurance or fidelity bonds;
- 16.2.2.5 limitations and restrictions on the right to use of the

Common Areas and Facilities;

- 16.2.2.6 responsibility for maintenance and repairs;
- 16.2.2.7 expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- 16.2.2.8 the boundaries of any Unit;
- 16.2.2.9 the percentages of Ownership interest in the Common

Areas and Facilities;

- 16.2.2.10 convertibility of a Unit into Common Areas and Facilities or Common Area into a Unit;
- 16.2.2.11 the imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Unit;
- 16.2.2.12 express benefits or rights of Mortgages, Eligible Mortgagees, or Eligible Insurers or Guarantors; and
- 16.2.2.13 the requirement that the Project be professionally managed rather than self-managed; and further provided, that at least seventy-five percent (75%) of all votes in the Project shall be required to change management of the Project from professional management to self-management.

Any addition or amendment shall not be considered material for purposes of this Section 16.2) if it is for the clarification only or to correct a clerical error.

16.2.2.14 Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association.

16.2.2.15 Except for the Secretary of Veterans Affairs, any Eligible Mortgagee who does not deliver to the Board of Directors or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal.

16.2.2.16 The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Map or the termination of the legal status of the Project as a Utah Condominium Project if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

16.3 Notice and Hearing. In the event the Board of Directors or a Unit Owner claims another Unit Owner or resident has violated the Project Documents, before any sanction, citation, penalty, or Individual Assessment becomes final, the Owner or resident about whom the complaint has been made shall be entitled to the following rights of due process:

16.3.1 Notice. Written notice specifying the nature of the violation (and providing any other appropriate information) and stating the time, date and place that the Member will have an opportunity to be heard by the Board of Directors. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the Member at the address given by the Member to the Board of Directors for the purpose of service of notice or to be address of the member's Unit if no other address has been provided. Any address may be changed from time to time by giving written notice to the Board of Directors.

16.3.2 Costs and Assessments. If the violation, or the failure to correct or remedy a violation, results or may result in the expenditure of funds, the notice shall also state that the Board of Directors may vote to assess the adverse party, levy a fine, or impose other sanctions if the Board of Directors finds that a violation has occurred.

16.3.3 Final Determination. After the hearing has taken place, the Board of Directors shall (1) determine whether a violation has occurred and, if so, may impose a fine or issue sanctions which shall become effective not less than five (5) days after the date of the hearing; or (2) take such other action as may be appropriate. The determination of the Board of Directors shall be final. However, nothing herein shall be construed to prevent the Board of Directors from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing Notice and Hearing.

16.4 Limitation on Improvements by Association. Until the occurrence of the Transition Events, neither the Association, Board of Directors nor Unit Owners shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas and Facilities as originally created or constructed by Declarant.

16.5 Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Units or Buildings in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Declarant) herein.

16.6 Working Capital Fund. Working capital fund shall be established by the Declarant to meet unforeseen expenditures or to purchase any additional equipment or services. The initial working capital fund shall be in an amount equal to two (2) months of estimated common assessments for each Unit. Each Unit's share of the working capital fund shall be collected either at the time the sale of any Unit is closed or when control of the Project is transferred to the Unit

Owners, whichever first occurs. Any amounts paid into the working capital fund shall not be considered as advance payments of regular monthly assessments. The working capital fund shall be transferred to the Association for deposition to a segregated fund when control of the Association is transferred to the Unit Owners. The Declarant is prohibited from using the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. When a Unit is sold, however, the Declarant may reimburse itself for monies it has paid the Association for an unsold Unit's share of the working capital fund by using funds collected at closing when the Unit is sold.

16.7 Transfer of Management. Anything to the contrary notwithstanding at any time before the Transition Events, Declarant may at any time relinquish its reserved right to select members of the Board of Directors, and to transfer management of the Project to the Association. If an when Declarant elects to do so, Declarant shall send written notification to each Owner of the effective date of the transfer (the "Transfer or Transition Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the members of their own Board of Directors to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Area expenses of the Board of Directors incurred prior to the Transfer Date to be paid in full on or before such date.

16.8 Certain Provisions Applicable to Declarant. Anything to the contrary notwithstanding, for so long as Declarant continues to own any of the Units in the Project, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay assessments, except as herein otherwise provided.

16.8.1 Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Unit, and no person shall rely upon any warranty or representation not so specifically made therein.

16.8.2 No amendment may be made to the Declaration without the written consent of Declarant until the occurrence of the Transition Events.

16.9 Completion Obligation. Declarant hereby covenants in favor of each Owner that within two (2) years from the date of any contract of sale:

16.9.1 Units. Each Unit which an Owner has contracted to purchase, the Building within which a Unit is contained or is to be contained, and the appurtenant Limited Common Area shall be substantially constructed, and ready for use or occupancy (as the case may be); and

16.9.2 Common Area. On the land submitted to the Declaration hereby or by any Supplemental Declaration, all planned amenities, landscaping, green space, sidewalks, parking facilities, roads, streets, fences, outdoor lighting, and utility lines and conduits adjacent to the Unit or Building in which a Unit is located, and necessary for its use shall be substantially completed.

16.10 Interpretation. To the extent Utah law is consistent with this Declaration, such provision shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both the genders. The invalidity or unenforceability of any portion of the Declaration shall not affect the validity or enforceability of the remainder hereof.

16.11 Enforcement and Right to Recover Attorney's Assessments. The Association, Board of Directors, or any Unit Owner may take action, at law or in equity, to enforce the terms, covenants or conditions of the Project Documents. Should the Association, Board of Directors or a Unit Owner be required to take action to enforce the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorney's fee, which may arise or accrue.

16.12 Elsinore Contract. Each Owner is obligated to inform the Association in writing no later than ten (10) business days following the Owner signing any contract of sale of the Lot and such notice shall contain the buyer's or buyers' name as well as the date of settlement. Further, each Owner shall include in any contract of sale the acknowledgement and attachments contained in Exhibit "D", attached hereto, executed by all buyers under the contract of sale. The signed notice shall be forwarded to Elsinore Communications LLC at 308 East 4500 South, Suite 200, Murray, Utah 84107 or such other address as Elsinore may provide to the Association from time to time, within the ten (10) days provided herein. The Association shall be responsible for enforcing the Owner's obligations under this Article 16.12. In the event any Owner fails to comply with this Article 16.12 and/or the Association fails to enforce the obligations of the Owner described in this Article 11.10, then the Owner and the Association shall be liable to Elsinore for any costs, damages, legal fees and the like which Elsinore may incur as a result thereof. No amendment to this Article 16.12 may be made without the prior written consent of Elsinore, which consent may be withheld in its sole and absolute discretion.

16.13 Agent for Service of Process. After the occurrence of the Transition Events, the President of the Association shall be the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent shall be Stephen G. Stoker and the initial office of the Registered Agent shall be 308 East 4500 South, Suite 200, Murray, Utah 84107.

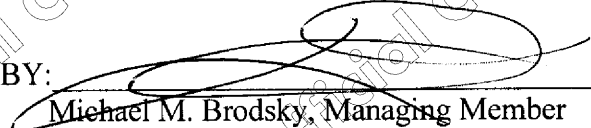
16.14 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Map shall take effect upon its being filed for record in the office of the County Recorder of Summit County, Utah.

EXECUTED the day and year first above written.

DECLARANT:

BEAR HOLLOW RESTORATION, LLC,  
a Utah limited liability company

BY:

  
Michael M. Brodsky, Managing Member

STATE OF UTAH )

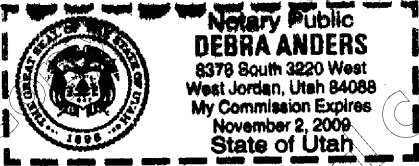
ss:

COUNTY OF Salt Lake )

On the 11<sup>th</sup> day of September, 2006, the foregoing instrument was acknowledged before me by Michael M. Brodsky, a Managing Member of Bear Hollow Restoration, LLC, a Utah limited liability company.

SEAL:

Notary Public: 



**EXHIBIT "A"**

**(Legal Description of the Land)**

**Amended Lot 403 according to the Bear Hollow Village 2<sup>nd</sup> Amendment Record Plat  
(attached)**

**TAX ID: BHVS-403-2AM**





**EXHIBIT "B"**

**(Legal Description of the Land)**

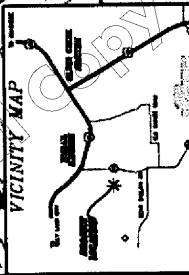
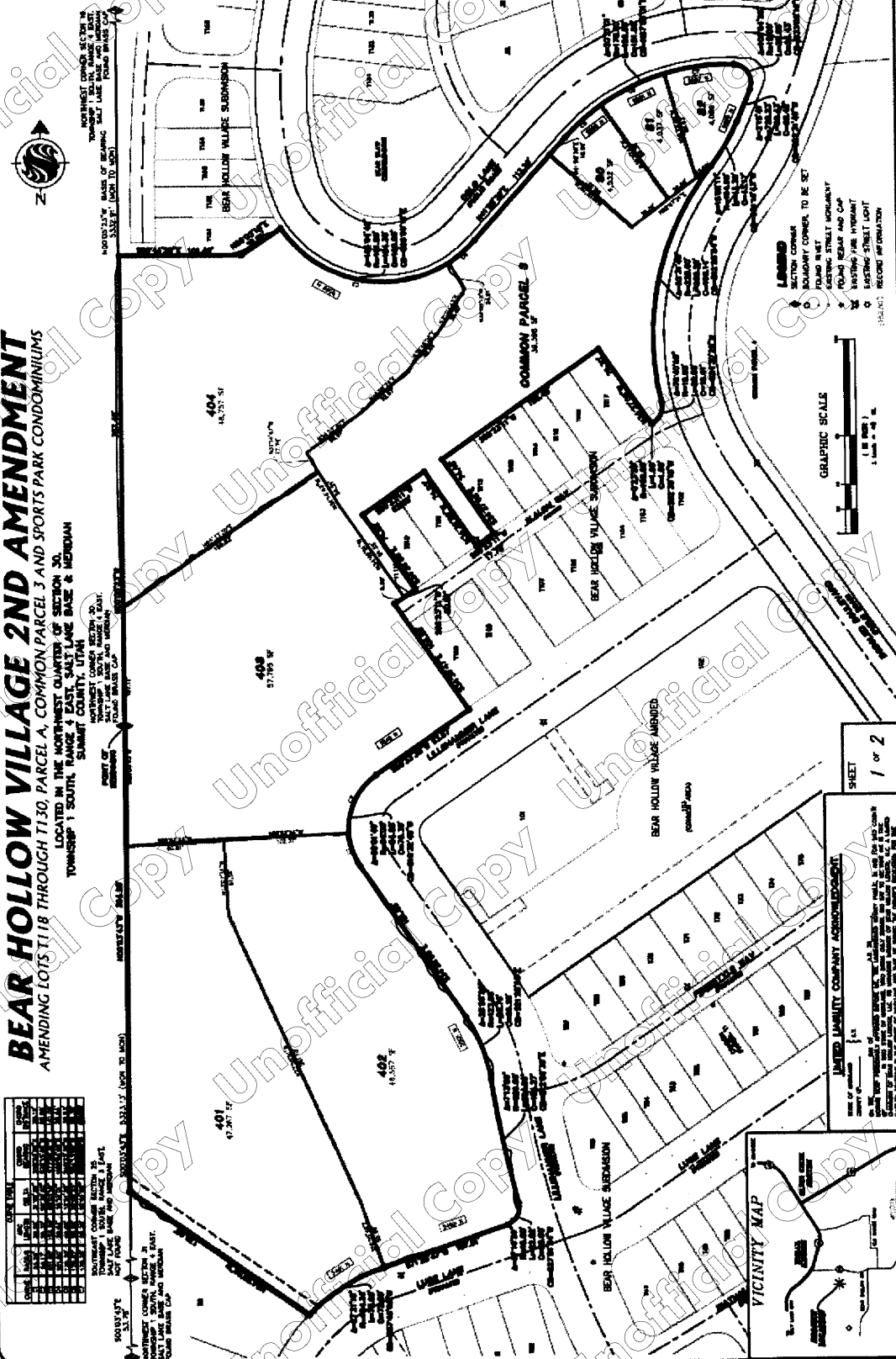
**Lots 401, 402, and 404 according to the Bear Hollow Village 2<sup>nd</sup> Amendment Record Plat  
(attached)**

**TAX ID: BHVS-401-2AM, BHVS-402-2AM, and BHVS-404-2AM**

# BEAR HOLLOW VILLAGE 2ND AMENDMENT

AMENDING LOTS 118 THROUGH 130, PARCEL A, COMMON PARCEL 3 AND SPORTS PARK CONDOMINIUMS  
 LOCATED IN THE NORTHWEST QUARTER OF SECTION 30,  
 TOWNSHIP 1 SOUTH, RANGE 4 EAST, S&T-LANE BASE & MENDHAM  
 SUMMIT COUNTY, OHIO

LOT	AREA (SQ. FT.)	AREA (AC.)
401	41,267.17	0.94
402	44,557.9	1.02
403	57,795.9	1.32
404	44,737.51	1.02



**LIMITED LIABILITY COMPANY ACKNOWLEDGMENT**  
 I, the undersigned, being duly qualified to act as a limited liability company officer, do hereby certify that the above described project is a limited liability company project and that the project is being undertaken for the purpose of the development and sale of real estate.

**PLANNED HOMES**  
 HAYLETT HOMES  
 310 EAST 4500 SOUTH  
 RICHMOND, OHIO 45424

**LOCAL GOVERNMENT APPROVALS**  
 APPROVED AND ACCEPTED THE  
 DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_  
 BY \_\_\_\_\_

**LOCAL GOVERNMENT APPROVALS**  
 APPROVED AND ACCEPTED THE  
 DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_  
 BY \_\_\_\_\_

**CORPORATE ACKNOWLEDGMENT**  
 I, the undersigned, being duly qualified to act as a corporate officer, do hereby certify that the above described project is a corporate project and that the project is being undertaken for the purpose of the development and sale of real estate.

**NAME COUNTY APPROVALS**  
 APPROVED AS TO FORM THIS  
 DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_  
 BY \_\_\_\_\_

**CORPORATE ACKNOWLEDGMENT**  
 I, the undersigned, being duly qualified to act as a corporate officer, do hereby certify that the above described project is a corporate project and that the project is being undertaken for the purpose of the development and sale of real estate.

**COUNTY APPROVALS**  
 APPROVED AS TO FORM THIS  
 DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_  
 BY \_\_\_\_\_

**CORPORATE ACKNOWLEDGMENT**  
 I, the undersigned, being duly qualified to act as a corporate officer, do hereby certify that the above described project is a corporate project and that the project is being undertaken for the purpose of the development and sale of real estate.

**COUNTY APPROVALS**  
 APPROVED AS TO FORM THIS  
 DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_  
 BY \_\_\_\_\_

**SURVEYOR'S CERTIFICATE**  
 I, the undersigned, being duly qualified to act as a surveyor, do hereby certify that the above described project is a survey project and that the project is being undertaken for the purpose of the development and sale of real estate.

**COMMON PARCEL 3 AND SPORTS PARK CONDOMINIUMS**  
 AMENDING LOTS 118 THROUGH 130, PARCEL A,  
 TOWNSHIP 1 SOUTH, RANGE 4 EAST, S&T-LANE BASE & MENDHAM  
 SUMMIT COUNTY, OHIO

**LIMITED LIABILITY COMPANY ACKNOWLEDGMENT**  
 I, the undersigned, being duly qualified to act as a limited liability company officer, do hereby certify that the above described project is a limited liability company project and that the project is being undertaken for the purpose of the development and sale of real estate.

**BEAR HOLLOW VILLAGE 2ND AMENDMENT**  
 AMENDING LOTS 118 THROUGH 130, PARCEL A,  
 COMMON PARCEL 3 AND SPORTS PARK CONDOMINIUMS  
 TOWNSHIP 1 SOUTH, RANGE 4 EAST, S&T-LANE BASE & MENDHAM  
 SUMMIT COUNTY, OHIO

**EXHIBIT "C"**  
 (Percentage Ownership of Common Areas and Facilities  
 and Map of the Project)

<u>Unit No.</u>	<u>Square Feet Interest</u>	<u>Percentage of Ownership</u>
1101	831	1.81%
1102	1321	2.87%
1103	952	2.07%
1104	1321	2.87%
1105	1155	2.51%
1201	1282	2.78%
1213	1321	2.87%
1212	952	2.07%
1211	1321	2.87%
1210	1320	2.87%
1202	1345	2.92%
1203	1325	2.88%
1204	1325	2.88%
1205	951	2.07%
1206	1342	2.92%
1207	1321	2.87%
1208	1319	2.87%
1209	1316	2.86%
1301	1282	2.78%
1313	1321	2.87%
1312	952	2.07%
1311	1321	2.87%
1310	1320	2.87%
1302	1345	2.92%
1303	1325	2.88%
1304	1325	2.88%
1305	951	2.07%
1306	1342	2.92%
1307	1321	2.87%
1308	1319	2.87%
1309	1316	2.86%
1401	1325	2.88%
1402	951	2.07%
1403	1342	2.92%
1404	1321	2.87%
1405	1319	2.87%
1406	1316	2.86%
<b>Totals</b>	<b><u>46034</u></b>	<b>100.00%</b>

EXHIBIT "D"

(Acknowledgement Forms for Internet & Television Services)

(attached)

**TELEVISION SERVICE AGREEMENT**  
**ACKNOWLEDGEMENT BY CUSTOMER/BUYER:**

1. This Television Service Agreement provides terms specifically related to Customer's Television Service. By signing up for Television Service, Customer agrees to be bound by the terms of this Television Service Agreement as evidenced by Customer's signature below. All obligations in this Television Service Agreement that refer to "Customer" also jointly and severally apply to Users. Customer shall make all Users at each Service Location reasonably aware of the restrictions and limitations associated with the Television Services, and Customer shall be responsible for any breach of any portion of this Television Service Agreement by any User.

2. **Description of Service.** Customer will be provided with television Programming. A complete list of the current Programming channels, services and equipment provided under this Television Service Agreement can be found at the applicable DISH Network website, "Attachment 3" contains a listing of the Programming channels as of January 13, 2006. DISH Network may update this list, add and delete programs from time to time. DISH Network does not warrant the provision of any particular Programming in conjunction with this agreement. Residents of the Property may, at their sole discretion, elect to subscribe to the additional digital programming as described in "Attachment 1" DISH Network Programming and "Attachment 2" DISH Network Programming and Additional Equipment Qualifications and Requirements. Subscribers will be charged individually for the Digital Upgrade Programming, which shall be priced at the prevailing residential rate that is offered to residential subscribers nationwide. The Digital Upgrade Programming shall require the use of a proprietary set top box to access such programming, which will be leased to Subscribers by EchoStar. EchoStar may, from time to time, in its sole discretion: (i) provide new or additional services, which shall be deemed to be Digital Upgrade Programming for purposes of this Agreement, and (ii) offer Subscribers a selection of alternate programming packages and/or services containing all or part of the Digital Upgrade Programming at varying prices. Each Subscriber to Digital Upgrade Programming or Equipment shall be subject to certain qualifications and requirements which are detailed in the "Attachment 2", which qualifications and requirements may change from time to time in EchoStar's sole discretion. Nationwide availability, pricing, and content of Digital Upgrade Programming packages and Equipment rental fees are subject to change at EchoStar's sole discretion during the Term of this Agreement.

3. **Private Viewing.** CUSTOMER AGREES TO USE (AND REQUIRE THAT ITS USERS USE) THE TELEVISION SERVICE FOR PRIVATE VIEWING ONLY. Customer will not provide public transmissions or retransmissions of any Programming

without the written consent of the party holding a license to the transmitted or retransmitted content. Customer will not transmit or retransmit Programming in a commercial establishment without the written consent of the party holding a license to the transmitted or retransmitted content.

**4. Unauthorized Devices.** Customer agrees not to attach any unauthorized devices to the Service that are designed to unlock, descramble, unencrypt, find, or otherwise manipulate the Programming that DISH Network offers.

**5. Audit Rights.** DISH Network reserves the right to audit Customer's use of the Television Service to determine whether Customer has engaged in any unauthorized uses. Customer consents to DISH Network's access to and manipulation of Customer's equipment or software for the purpose of such audit.

**6. Compliance.** Customer agrees to comply with all relevant laws, rules and regulations related to the Television Services, and will not engage in any practice nor use any tools or techniques (including television piracy tools) in violation of any law, rule or regulation. Should Customer engage in any illegal activity associated with the Television Services, then at DISH Network's option it may cancel this Television Service Agreement immediately and without notice. Further, Customer shall indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses arising due to any act or omission by the Customer hereunder.

Agreed and Accepted as of the Date shown below.

**"CUSTOMER/BUYER (S) "**

Name: \_\_\_\_\_

\_\_\_\_\_

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

Customer/Buyer

\_\_\_\_\_

Customer/Buyer

Date: \_\_\_\_\_

**UPON COMPLETION RETURN TO:**  
**Elsinore Communication**  
**308 East 4500 South, Suite 200**  
**Murray, UT 84107**



## Internet Service Agreement

### ACKNOWLEDGEMENT BY CUSTOMER/BUYER:

1. This Internet Service Agreement provides terms specifically related to Customer's Internet Service. By signing up for Internet Service, Customer agrees to be bound by the terms of this Internet Service Agreement, as evidenced by Customer's signature below. All obligations in this Internet Service Agreement that refer to "Customer" also jointly and severally apply to Users. Customer shall make all Users at each Service Location reasonably aware of the restrictions and limitations associated with the Internet Services, and Customer shall be responsible for any breach of any portion of this Internet Service Agreement by any User.

2. **Description of Service.** Customer will be provided with access to the Internet via CAT 5e cable under that separate contract by and between The Lodges at Bear Hollow Condominium Homeowners Association, Inc. ("Association") and Elsinore Communications, LLC ("Elsinore"). Until further notice, Uinta Business Systems, will provide technical support and as needed on-site support. Every effort will be made to ensure consistently high upload and download speeds, but no warranty is made regarding the Internet Service.

Each Unit will be provided with:

An Internet connection speed of up to 10 megabits/sec

There is, presently, no bandwidth usage limit, however bandwidth usage may be monitored and/or limited if necessary to ensure all units receive satisfactory bandwidth utilization.

### 3. Acceptable Use Policies

a. **CUSTOMER AGREES TO USE THE SERVICE ONLY FOR LAWFUL PURPOSES.**

b. Unacceptable uses include, but are not limited to:

i. **Spam.** Customer may not utilize the Internet Service for the purpose of sending direct mailings, solicitations, bulk mail, spam, or any other high volume e-mailing function. Customer will not send e-mail to persons who are not personally known to Customer, or who did not personally request e-mail from Customer. Customers whose activities result in the domain name being banned from an e-mail server due to spamming may be assessed fees associated with the cost of lifting the ban. Any violation of this policy may result in the immediate termination of Customer's account, at the sole discretion of Elsinore. If Customer violates this spamming policy, it will

be assessed the following fines and fees, which Customer hereby agree to pay:

- (1) First offense: \$100
- (2) Second offense: \$500
- (3) Third offense: \$500 and automatic termination of Customer's account.

- ii. **Newsgroup posting.** The posting of any advertisement or other commercial solicitation to any newsgroup is prohibited. Elsinore reserves the right to determine whether a post constitutes an advertisement or commercial solicitation. The posting of a single article or substantially similar articles to an excessive number of newsgroups or mailing lists, or continued posting of articles that are off-topic is strictly prohibited. A posting will be considered off-topic when it provokes complaints from the regular readers of the newsgroup or is deemed so by Elsinore. A violation of this policy will result in the immediate termination of Customer's account.
- iii. **Obscenity.** Customers may not utilize the Internet Service to send or receive obscene materials.
- iv. **Impersonation.** Customers may not utilize the Internet Service to impersonate another person.
- v. **Defamation.** Customers may not utilize the Internet Service to defame, harm, harass, or libel another person.
- vi. **Trade secrets.** Customers may not utilize the Internet Service to send or receive trade secrets in violation of applicable state or federal law.
- vii. **Malicious software or code.** Customers may not utilize the Internet Service to send or intentionally receive any viruses, spyware, worms, Trojan horses or any other malicious computer software or code designed to damage or make use of any third party's property.
- viii. **Intellectual property.** Customers may not utilize the Internet Service infringe on any party's intellectual property rights. Customers may not engage in the illegal or unauthorized transfer of intellectual property, including but not limited to music, written works, movies, software, videogames, instructions, data, and code.
- ix. **Unauthorized access to computers.** Customers may not utilize the Internet Service for the purpose of hacking or other conduct related to unauthorized access of computers, servers or systems.

c. **Bandwidth limits and fluctuations.** Elsinore may, when necessary to control network congestion, impose reasonable bandwidth limits on Customer's use of the Service in order to ensure equitable access for other Customers. Elsinore will use commercially reasonable efforts to provide the bandwidth speed described in this Attachment, but Customer acknowledges that bandwidth speeds may fluctuate from time to time throughout the day and that Customer may not receive the designated speeds at all times during the day. At Elsinore's discretion, Elsinore may restrict or limit upload speeds.

d. **Minors.** Customer will be fully responsible for monitoring minors' access to the Service, and will take appropriate steps to ensure that minors do not have access to harmful content. Customer acknowledges that Elsinore does not monitor minors' access to the Service and is not responsible for minors' access to inappropriate or harmful content.

e. **Personal Accounts.** Customers that have paid for a personal account (as opposed to a business account) are not permitted to use Elsinore's Internet connection to sell or advertise goods or services. This is only permitted to those who have purchased a business account or a virtual server.

f. **Enforcement.** Elsinore reserves the right to take whatever actions it deems appropriate to enforce these policies. Elsinore also reserves the right to change these policies without prior notice at any time. The actions Elsinore takes may include account suspension or termination. Elsinore does not issue any credits for accounts cancelled due to policy violations. Any Internet activity, which references back to Elsinore or its services in a damaging manner, will result in suspension or termination of account(s). Illegal Internet activity using or referencing to Elsinore or an account or services provided by Elsinore will result in immediate termination, possible prosecution, and assessment of legal fees accrued. In addition to any other fees and penalties that may be assessed by the Elsinore, as provided herein, Customer shall be held liable for any and all costs incurred by the Elsinore as a result of Customer's violation of any terms and conditions of this Agreement. This includes, but is not limited to, attorneys' fees and costs resulting from Elsinore responses to complaints from and the cleanup of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations. Elsinore's current hourly rate for responses to complaints and cleanup of unsolicited commercial mailings and/or unauthorized bulk mailings and/or news server violations is listed at are listed at the applicable Elsinore website. Further, Customer shall indemnify Elsinore for any and all claims, losses, damages, legal fees and any other type of costs or expenses due to any act or omission by the Customer hereunder

#### 4. Responsibility for Security and Filtering

a. **Security and viruses.** Customer acknowledges that by connecting to the Internet, Customer's and its User's computer system and files are vulnerable to access by unauthorized third parties (including hackers). Customer is solely responsible for installing, implementing and using computer security precautions such as closing unnecessary ports and using firewall technology. CUSTOMER AND ITS USERS ARE STRONGLY ENCOURAGED TO INSTALL AND ROUTINELY UPDATE FIREWALL AND ANTIVIRUS SOFTWARE. In the event that Customer is found to be spreading a virus, whether intentionally or unintentionally, Elsinore may suspend Customer's account until such time as Elsinore believes that Customer has effectively remedied the situation.

b. **Passwords.** Customer may be provided with initial passwords to access the Internet Service. Customer agrees to change the password upon initializing the account, and will protect any passwords associated with the account. Customer agrees that its username and password, and changes to both of these items, are Customer's responsibility.

c. **Web and E-mail Filtering.** From time to time MSTAR may make available to Customer certain Web, E-mail and other Internet filtering tools and features. Customer acknowledges that, because the Internet is constantly changing and evolving, these tools and features are not guaranteed to restrict all obscene, immoral or other unwanted content, email or websites. Further, these tools and features may not be able to monitor all data, email or materials accessed or downloaded by Customer (e.g., file sharing utilities). The Web, E-mail and other Internet filtering tools and features are provided AS-IS, WHERE-IS and Elsinore makes no warranty as to their effectiveness or usefulness.

d. **Wireless connections.** Customer acknowledges that using wireless networking connectivity may present certain security risks. Customer is solely responsible for implementing and using wireless security measures, including but not limited to enabling encryption technology (e.g., Wired Equivalent Privacy (WEP) or Wi-Fi Protected Access (WPA)) on the relevant equipment, including the access point.

e. **Disclaimer of liability.** Customer acknowledges and agrees that MSTAR has no liability for any unauthorized access of any Customer computer or system by any third party, and that Customer is solely liable for any damages arising from such unauthorized access. Elsinore is not providing any security advice or consulting services to Customer and is not responsible for installing or maintaining any security systems on behalf of Customer.

5. **IP Addressing.** Elsinore uses static and dynamic IP Addresses for Customers. Assignment of an IP address to Customer creates no ownership rights in Customer of the IP address. Elsinore retains all rights to any IP addresses it assigns to Customer.

**6. Ownership of Content.** Except for content on the Elsinore website, Elsinore does not own, license, or have any rights in content that Customer may upload or download, nor in e-mails that Customer may send or receive, nor in any content that Customer may upload to the server space provided by Elsinore under this Agreement. The content of all uploads, downloads, and e-mails associated with Customer's use of the Internet Service is solely the property and responsibility of Customer.

**7. Forwarding Upon Termination.** Elsinore will not forward Customer's email or URL after termination, and Elsinore does not offer a discounted forwarding option. For this reason, it is recommended that Customer's continue their account with Elsinore for as long as necessary for forwarding purposes. As long as Elsinore forwards Customer's email or website, Customer must continue its account with Elsinore.

Agreed and Accepted as of the Date shown below.

**"CUSTOMER/BUYER(S) "**

Name: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Customer/Buyer  
\_\_\_\_\_  
Customer/Buyer

Date: \_\_\_\_\_

**UPON COMPLETION RETURN TO:  
Elsinore Communication  
308 East 4500 South, Suite 200  
Murray, UT 84107**

