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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
VILLAGE AT MOUNTAINSIDE**

BLX MAYFLOWER LLC

Declarant

August 20, 2020

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EXHIBIT B – Annexable Property Legal Description

EXHIBIT C - Legal Description of MIDA Property

EXHIBIT D – Interpretation

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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
VILLAGE AT MOUNTAININSIDE**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR VILLAGE AT MOUNTAININSIDE (the "Village Declaration") is made this 20th day of August, 2020, by **BLX MAYFLOWER LLC**, a Delaware limited liability company ("Declarant").

RECITALS

A. Declarant owns, controls or has the option to acquire, directly or indirectly through one or more of its affiliated entities, certain real property located in Wasatch County, Utah and more particularly described on Exhibit A hereto (the "Village Property"). The Village Property is part of the "**Initial Mountainside Property**" and "**Resort**," as such terms are defined in that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Village at Mountainside and Resort (the "**Master Declaration**"), which Master Declaration was recorded in the office of the Wasatch County Recorder on August 21, 2020 as Entry No. 483149 in Book 1308 at Page 27-142. Declarant and affiliates of Declarant are also owners or hold options to acquire, Annexable Property (as defined herein) adjacent to the Village Property, which is more particularly described on Exhibit B hereto. Portions of such Annexable Property, and other property that may be or come to be owned or leased by Declarant and its affiliates, may be made subject to this Village Declaration by annexation in accordance with the provisions hereof.

B. Declarant desires and intends to develop in phases all or portions of the Village Property, together with such other Additional Property (defined as the "**Property**" herein) as may be made subject to this Village Declaration by annexation, as a common scheme and planned mixed-use mountainside recreational resort village to be initially known as the Village at Mountainside (as further defined herein, the "**Village**"). Declarant desires to organize within the Village a number of hotel, commercial, recreational, retail, residential and other development areas.

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

D. The Village is intended and designed to be, and will operate and be promoted as, a lively, energetic, four-season, destination resort community located adjacent to the Mountainside Ski Property. The Village, as it may be developed in accordance with present planning, will include several hotels, condominium projects, an ice-skating rink, pedestrian plaza areas (referred to herein as the "Village Plaza"), commercial and retail areas, and recreation facilities. The Resort is presently planned to include the property comprising the Village as well as additional properties and projects on other lands owned by the Declarant, Ski Terrain Owners, and others, and located outside of the Village that may later be annexed to the Village and subjected to this Village Declaration in accordance with the annexation provisions of this Village Declaration. Nothing contained in this Recital "D," however, shall be construed

or interpreted in a manner that commits the Declarant, the Master Association, the Village Association or any other person to develop or construct any of the facilities or to provide any services that are authorized in the Entitlements Documents (as defined herein) or currently planned for the Village development by Declarant.

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

F. One of the projects to be developed on the Village Property is a condominium hotel project (the "**MWR Hotel Condominium Project**") with certain rooms available for use on a discounted basis by active duty and retired military personnel, to be constructed on that certain real property more fully described in Part A of Exhibit C hereto (the "**MIDA Property**") in conjunction with the Utah Military Installation Development Authority ("**MIDA**") which MWR Hotel Condominium Project will be owned, in part, by MIDA and which portion owned by MIDA will be leased to a Declarant's Affiliate pursuant to the terms of a MWR Hotel Condominium Lease Agreement (the "**MIDA Hotel Lease**").

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

H. Declarant will provide leadership in organizing and administering the Village during the development period, for a fee, but expects property owners in the Village will accept the responsibility for community administration after the development period.

I. Property made subject to this Village Declaration is subject to the Master Declaration, and may also be subject to "**Project Declarations**" (defined below) which impose additional or different restrictions on the use of property within individual "**Projects**" (defined below), including establishing Project open space for the benefit of Owners within such Projects.

J. Declarant desires to subject the Village Property, including the MIDA Property, to the covenants, conditions, restrictions, easements and assessments set forth in this instrument for the benefit of such property and its present and subsequent owners.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees that each of the foregoing recitals is incorporated into and made a part of this Village Declaration, and further declares that the Village Property, including, without limitation, the MIDA Property, shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements and assessments, which

shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS AND INTERPRETATION

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

1.1 **“Additional Property”** means all or any portion of the Annexable Property annexed to the Village pursuant to a Recorded Annexation Declaration.

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

(a) Sixty (60) days after the date when ninety percent (90%) of the total number of Development ERUs and Commercial Units and Hotel Units (as defined in and permitted by the Mountainside Master Plan) for the Property (as it may be amended from time to time) have certificates of occupancy issued thereon and have been conveyed to Persons other than Builders or Declarant's Affiliates;

(b) December 31, 2070; or

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

1.3 **“Annexable Property”** means that certain real property located in Wasatch County, Utah and more specifically described on Exhibit B, together with any other land acquired by Declarant or any Declarant's Affiliate in the vicinity of such property. Inclusion of property on Exhibit B shall not, under any circumstances, obligate Declarant to subject such property to this Village Declaration, nor shall the omission of property on Exhibit B prohibit its later submission to this Village Declaration as provided in Section 2.2.

1.4 **“Annexation Declaration”** means a declaration annexing all or a portion of the Annexable Property to the Village, as contemplated in Section 2.2(a).

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

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

1.7 **“Assessment Factor”** means a factor assigned to each Unit in accordance with Section 11.3 below for purposes of determining the pro rata share of Annual Assessments, Special Assessments, Emergency Assessments, and Project Limited Common Area Assessments.

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

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

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

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

1.12 “**Bound Parties**” has the meaning set forth in Section 18.1(a).

1.13 “**Builder**” means any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more Units within the Village for further subdivision, development, and/or resale in the ordinary course of its business.

1.14 “**Bylaws**” means the Bylaws of the Village Association attached as Exhibit E, as the same may be amended from time to time.

1.15 “**Claim**” has the meaning set forth in Section 18.1(b).

1.16 “**Claimant**” has the meaning set forth in Section 18.2(a).

1.17 “**Class “A” Member**” has the meaning set forth in Section 9.3(b).

1.18 “**Class “B” Member**” has the meaning set forth in Section 9.3(b).

1.19 “**Commercial Cost Center Assessment**” has the meaning given to that term in Section 11.6(b) below.

1.20 “**Commercial Directors**” means those members of the Board of Directors elected by the Project Associations of Commercial Units and Lodges in accordance with the procedures set forth in the Bylaws of the Village Association.

1.21 “**Commercial Unit**” means a Unit or any portion of a Unit that is designed for, or in which is operated or conducted primarily for:

(a) a wholesale, retail or service business;

(b) an office or administrative function;

(c) a maintenance or service facility; or

(d) such other non-residential use or service that is specifically identified as a Commercial Unit in any Annexation Declaration or Project Declaration.

Notwithstanding the foregoing, the term "Commercial Unit" shall not include any parcel that is designated in any Annexation Declaration as a Community Facility or a Resort Support Facility unless otherwise provided in the Annexation Declaration.

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

1.23 "**Community Facility**" means any facility that is operated by a nonprofit, governmental or quasi-governmental entity and that provides athletic, cultural, recreational, entertainment or other services to Owners, Guests or the general public. In order to constitute a Community Facility, the facility must be designated as such in a Supplemental Declaration recorded by or with the consent of Declarant. Community Facilities have no membership rights in the Village Association or the Master Association.

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

1.25 "**Condominium**" means any property subject to this Village Declaration that has been submitted to the Utah Condominium Ownership Act, Utah Code Ann. §57-8-1 *et. seq.*, as amended or replaced from time to time.

1.26 "**Condominium Hotel**" means a facility that has (a) individual residential Condominium Units, (b) a front desk on site or on an adjacent property, (c) common hallways for room access, and (d) centralized hospitality management that is available to all Owners of the Condominium Units who elect to participate in a rental program.

1.27 "**Condominium Unit**" means a Unit located in a Condominium.

1.28 "**Cost Center**" means a particular portion of the Property that is designated as a Cost Center in an Annexation Declaration, a Supplemental Declaration, a Project Declaration or in another Recorded instrument affecting a portion of the Village. Cost Centers are typically established when there are particular services that will be provided by the Village Association to some, but less than all, Unit Owners and the cost of providing those services should, in fairness, be borne only by the Owners of Units within the designated Cost Center. So long as Declarant owns any portion of the Village the creation and designation of Cost Centers shall require the consent of Declarant and thereafter the approval of a majority of the members of the Board of Directors (with the vote to approve the creation of any Cost Center that includes Commercial Units being approved by at least one Commercial Director whose Unit(s) will be within the designated Cost Center and at least one Residential Director).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.42 "**Governing Documents**" means the Articles of Incorporation and Bylaws of the Village Association, the Master Declaration and the Master Association rules and regulations, this Village Declaration, any Recorded Annexation Declaration and Supplemental Declaration, the Design Guidelines, any Recorded Project Declaration (to the extent such Declaration is applicable to the particular Project), Village Rules, and resolutions duly adopted by the Board of Directors of the Village Association, and any amendments or replacements to any of the foregoing documents. If there is a conflict between or among the Governing Documents and any Project Declaration, the other Governing Documents shall control except to the extent the Project Declaration imposes a higher or stricter standard or requirement for the applicable Project.

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

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

1.45 "**Hotel**" means a building that includes Guest rooms for rental but not sale to Guests..

1.46 "**Improvement**" means any change from natural grade, or the construction or exterior alteration of any structure, building, landscaping and appurtenances thereto of every type and kind, including buildings, outbuildings, walkways, the paint on all exterior surfaces, waterways, sprinkler pipes, irrigation systems, storm drainage systems, garages, hot tubs, spas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, fire breaks, poles, signs, exterior air conditioning and water softener fixtures or equipment, solar equipment, and the creation of trails in any Project Common Area that are proposed for maintenance by the Village Association. The term "Improvement" shall not include, however: (a) any improvement or construction activity undertaken by or on behalf of Declarant or Declarant's Affiliates; (b) any improvement or construction activity confined exclusively to the interior of any Improvement that is constructed on a Unit, unless such activity involves the roof or bearing walls of the building containing the Unit, or (c) any Improvement undertaken by the Mountain Operator pursuant to the Mountain Operator Agreement or the Mountain Easement Agreements.

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

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

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

1.50 "**Lodge**" means:

(a) any Unit or portion of a Unit that is used as a Hotel, motel, inn, apartment hotel, dormitory, or lodge; or

(b) any Unit, other than a Residential Unit, in which short-term overnight accommodations are provided.

1.51 "**Lodge Room**" means a room or suite in a Lodge designed for separate overnight occupancy by one or more Guests.

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

1.53 "**Master Association**" has the meaning set forth in the Master Declaration.

1.54 "**Master Declaration**" has the meaning set forth in Recital A.

1.55 "**Member**" means and refers to a Person entitled to membership in the Village Association as provided for in this Village Declaration.

1.56 "**Merchant Association** has the meaning set forth in Section 9.5(x).

1.57 "**MIDA**" has the meaning set forth in Recital F.

1.58 "**MIDA Hotel Lease**" has the meaning set forth in Recital F.

1.59 "**MIDA Property**" has the meaning set forth in Recital F.

1.60 "**Mining Uses**" shall mean the use of all or any portion of the Property for commercial extraction or production of sand, gravel, aggregate or any other earth product for export from the parcel in which it is located. For purposes of clarity, "Mining Uses" do not include work performed by Declarant or others in connection with the remediation of pre-existing historical mining claims, activities and uses, nor do "Mining Uses" include the mining and use on the Property by Declarant or its designees, of sand, gravel and other aggregate.

1.61 "**Moderate Income Housing**" means moderate income or employee housing units provided pursuant to the Entitlement Documents or units that otherwise meet the definition of "inclusionary housing" in the MIDA West Side Project Area, Housing Program, dated June 15, 2020 prepared by Declarant, as it may be amended, supplemented, restated or superseded from time to time.

1.62 "**Mortgage** means a mortgage or a trust deed; "**Mortgagor**" means a beneficiary or holder of a Mortgage; and "**Mortgagor**" means a mortgagor, trustor or a grantor of a Mortgage.

1.63 "**Mountain Easement Agreements**" means and refers to any Recorded easement in favor of the Ski Terrain Owners or Mountain Operator now in existence or hereafter Recorded relating to Mountain Operations. Declarant and the Village Association are hereby authorized and empowered to grant and to enter into Mountain Easement Agreements with the Mountain Operator, so long as such easements do not (i) impair the rights of ingress or egress to any Unit; or (ii) encumber any Unit owned by a person other than Declarant without the Owner of the Unit joining in the grant of the Mountain Easement Agreement. Upon execution and Recordation in the Official Records, the Mountain Easement Agreement shall be binding on the Village Association and all other Owners of any portion of the Property as successors to Declarant.

1.64 "**Mountain Operations**" means, without limitation, all of the following facilities used in conjunction with the ownership, management, maintenance, replacement or operation of the Mountainside Ski Property as a four season resort, which may or may not be located on the Mountainside Ski Property, and which are owned, leased or operated by the Ski Terrain Owners, Mountain Operator, Declarant or any Person designated by Declarant or the Mountain Operator or to which the Mountain Operator has the right to access, use or enjoy under the Mountain Operator Agreement or the Mountain Easement Agreements: ski tows, lifts, tramways and gondolas (including towers, cables and structures or facilities used in direct connection with operation of such tows, lifts, gondolas and tramways); snowmaking lines, machines or facilities; ski trails or runs; roads used in connection with maintenance or operation of tows, lifts, trails or runs; areas occupied or used for tow or lift lines or skier assembly areas; areas which are occupied by open racks for skis and snowboards which are available for use by the public; ski school meeting areas (for skiers and snowboarders); ski patrol facilities and first aid facilities for skiers and snowboarders; areas or facilities occupied or used for sale of ski, gondola, or lift tickets, for sale of ski school lessons, or for offices of the owner(s) or Mountain Operator of the Mountainside Ski Property; facilities and areas for the transportation drop-off of skiers and snowboarders who desire access to other Mountain Operations; horseback riding facilities; mountain biking and hiking trails and services; flow courses; food service facilities; general congregation, assembly and eating facilities for skiers, snowboarders, mountain bikers, and other users of the Mountain Operations; sport shops; day ski lodges; areas for Special Events; and any other structures, improvements, operations and activities of the

Mountain Operator that are either located on the Mountainside Ski Property or authorized pursuant to the Mountain Operator Agreements.

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

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

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

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

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

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

1.70 “**Mountainside Ski Property**” means the real property owned or leased by Declarant, Declarant’s Affiliates, Ski Terrain Owners or by the Mountain Operator, or their respective affiliates, and successors in interest, and improved with year-round recreational amenities, currently existing or hereafter constructed on or adjacent to any portion of the Village, including, without limitation, lifts, gondolas, ski runs and trails, hiking and equestrian trails, mountain biking trails, flow courses, restaurant facilities and other related equipment, improvements and property of the Ski Terrain Owners or by Mountain Operator. The Mountainside Ski Property is not part of the Village.

1.71 “**MWR Hotel Condominium Project**” has the meaning set forth in Recital E.

1.72 “**Ongoing Monitoring**” has the meaning set forth in Section 10.7.

1.73 “**Operations Fund**” has the meaning set forth in Section 11.13.

1.74 “**Original Sale**” means (a) the original sale of a Unit built by a Builder if the Unit was constructed by such Builder with the intent of selling the same to consumers without any personal use

thereof by such Builder, and (b) in any other case, the first sale of a Unit after the original sale by Declarant or Declarant's Affiliates).

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

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

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

1.78 "**Phase**" means the Village Property, and each Annexable Property identified as a phase in an Annexation Declaration or a Supplemental Declaration.

1.79 "**Planned Development**" means a Project (other than a Condominium Project) having common area owned either by the Project Association or in common by the Owners of the Units within that Project who possess appurtenant rights with respect to the beneficial use and enjoyment of the common areas of such Project by means of an assessment.

1.80 "**Private Amenities**" means any real property, improvements and/or facilities thereon located within the Village which Persons other than the Village Association own and operate for recreational and related purposes, on a club membership basis or otherwise, including, without limitation, the Mountainside Ski Property, any non-Village Association owned ski lifts and runs, and all related and supporting facilities and improvements.

1.81 "**Project**" means any separately designated area upon a portion of the Property and comprised of one or more discrete types of development or use, including the following types of uses:

- (a) Vacant Land;
- (b) Hotel;
- (c) Lodge;
- (d) Condominium;
- (e) Condominium Hotel;
- (f) Commercial Units;
- (g) Residential Units;
- (h) Recreational Units;
- (i) Moderate Income Housing Units; or
- (j) Any other separately designated area within the Village devoted to a discrete purpose, as determined by Declarant from time to time.

Any such Project shall be designated as a Project in the Project Declaration, this Village Declaration or an Annexation Declaration annexing such portion of the Property to the Village.

1.82 "**Project Assessments**" means assessments levied pursuant to a specific Project Declaration.

1.83 "**Project Association**" means any association established for a specific Project pursuant to a Project Declaration.

1.84 "**Project Committee**" means a committee appointed or elected for a Project pursuant to Section 9.12 below.

1.85 "**Project Common Area**" means the area within a Project restricted in whole or in part to common use primarily by or for the benefit of the Owners within the Project and their Guests, and includes any Project Limited Common Area as may be designated on any plat of any Project. Unless the plat specifically indicates that a tract or parcel located on a tract or parcel of real property is "Village Association Common Area," the tract or parcel designated as common area shall be deemed to be Project Common Area.

1.86 "**Project Declaration**" means a declaration of covenants, conditions, restrictions and easements establishing a plan of Condominium ownership, Planned Development or townhouse ownership, or otherwise imposing a unified development scheme on a particular Unit or Units.

1.87 "**Project Limited Common Area**" means any Project Common Area established for the exclusive use or enjoyment of certain Units within Project(s) as designated on any plat of any portion of the Property, in this Village Declaration, or in any Annexation Declaration annexing Additional Property to Village.

1.88 "**Project Limited Common Area Assessment**" has the meaning set forth in Section 11.9.

1.89 "**Property**" means the Village Property and any of the Annexable Property that is included in a Recorded Annexation Declaration. The Mountainside Ski Property is not subject to this Village Declaration and is not part of the Property. At times in this Village Declaration, the Property is referred to by its common name, which is the "Village."

1.90 "**Proposed Commercial Unit**" means any Commercial Unit planned for the Village.

1.91 "**Proposed Residential Unit**" means any of the Residential Units planned for the Village.

1.92 "**Public Areas**" means areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Village Declaration or the Annexation Declaration annexing such property to Village.

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

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

1.95 "**Recreational Unit**" means a Unit that is developed primarily for recreational uses.

1.96 "**Released Parties**" has the meaning set forth in Section 16.9.

1.97 "**Reserve Fund**" has the meaning set forth in Section 11.14.

1.98 "**Reserve Fund Assessment**" has the meaning set forth in Section 11.14.

1.99 "**Residential Cost Center Assessment**" has the meaning given to that term in Section 11.6(a).

1.100 "**Residential Director**" means those members of the Board of Directors elected by the Project Associations of Residential Units in accordance with the procedures set forth in the Bylaws of the Village Association.

1.101 "**Residential Unit**" means a Unit in the Village that is intended to be improved with a single-family residence or dwelling unit in a Condominium Project. The term Residential Unit shall not include a Lodge or Lodge Rooms, but shall include Units used as part of a Vacation Club or Time Share Project.

1.102 "**Resort**" has the meaning set forth in Recital A.

1.103 "**Resort Foundation**" shall have the meaning set forth in the Master Declaration.

1.104 "**Resort Support Facility**" and "**Resort Support Facilities**" are terms that mean and refer to the amenities and facilities designated as such by Declarant or identified as such in the Mountain Operator Agreement that are located within the Resort or within the Mountainside Ski Property and which are operated for the benefit of, or used in connection with, the Mountain Operations. The term "Resort Support Facility(ies)" include(s), without limitation:

(a) office and administrative facilities;

(b) maintenance and repair facilities;

(c) information facilities;

(d) operational facilities;

(e) employee child care facilities;

(f) facilities that provide services to Guests of the Mountainside Ski Property, such as conference facilities, child care facilities, cultural facilities, recreational facilities, athletic facilities and other entertainment facilities, that meet the criteria described in the preceding sentence;

(g) areas and uses within the Village that are identified as such in the Mountain Operator Agreement; and

(h) ski lifts and gondolas servicing the Mountain Operations.

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

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

1.107 **"Ski Terrain Owners"** means RH Mayflower, LLC, a Delaware limited liability company, and 32 Dom Mayflower, LLC, a Delaware limited liability company, and their respective successors and assigns. To the extent Declarant or Declarant's Affiliates come to own or lease any real property within the Annexable Property that is owned, leased or held for use for Mountain Operations, the term "Ski Terrain Owners" shall include Declarant and such affiliates.

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

1.109 **"Special Assessment"** has the meaning set forth in Section 11.7.

1.110 **"Special Individual Assessment"** has the meaning set forth in Section 11.10(a).

1.111 **"Special Events"** means special events occurring at the Village, including concerts, performing arts, festivals, fairs, tournaments, sports federation events, Olympic venues, Paralympic venues, and qualifying events and other events planned or sponsored by the Ski Operator, Master Association and/or Village Association in whole or in part.

1.112 **"Supplemental Declaration"** means any declaration which may be Recorded which supplements this Village Declaration and which may affect solely: (i) a Condominium Project, (ii) a Commercial Unit, (iii) a Planned Development, or (iv) Units within a particular Phase of the Village. Declarant may Record a Supplemental Declaration with respect to any Phase of the Village at any time prior to the sale of a Unit in that Phase to a third party who is not a Declarant's Affiliate, and at any time thereafter as provided in the Project Declaration or, if not so provided, with the consent of a majority of the Owners of Units in such Phase.

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

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

1.115 **"Unit"** means a portion of the Village, whether improved or unimproved, which may be independently owned. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings but which is not a Hotel or a Lodge, each dwelling shall be deemed to be a separate Unit. In the case of Vacant Land or land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a Recorded plat subdivides all or a portion of the parcel. Thereafter, the portion encompassed on such plat shall contain the number of Units determined as set forth in the preceding sentence. Any portion not encompassed on such plat shall continue to be treated in accordance with this paragraph. Unless the Project Declaration or Condominium Plan applicable to a particular Unit otherwise provides, if walls, floors, or ceilings are designated as boundaries of a Unit, the interior surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the Unit are part of the Unit and any other portions of the walls, floors, or ceilings are part of the common areas. Notwithstanding the foregoing, any parcel of real property owned, held or used in its entirety (i) by the Village Association, (ii) as Village Common Area or as common area for a Condominium Project, (iii) by any Governmental Authority (except the MIDA Property), (iv) solely for or in connection with the distribution of electricity, gas, water, sewer, telephone, communications, cable television or any other utility service, or (v) solely for

access to or through all or any portion of the Village, shall not be considered a Unit. In addition, the term "Unit" shall not include any portion of the Mountainside Ski Property or any portion of the Village that is subject to a Mountain Easement Agreement.

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

1.117 "**Vacant Land**" means a parcel of land on which no Improvements have occurred with respect to the development of a Project.

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

1.119 "**Village**" means the master planned community that Declarant intends to develop on the Village Property and such portions of the Annexable Property as Declarant may later annex to the Village in accordance with Section 2.2.

1.120 "**Village Area Hazards**" has the meaning set forth in Section 16.1.

1.121 "**Village Area Uses and Activities**" has the meaning set forth in Section 16.1.

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

1.123 "**Village Common Areas**" means any portion of the Village Property designated as Village Common Areas on a Recorded plat thereof, or any portion of the Annexable Property identified in an Annexation Declaration as Village Common Areas which are subjected to this Village Declaration, and any other real or personal property, including easements, that the Village Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. Without limiting the foregoing the Village Common Areas shall include:

(a) That portion of the Village which is owned, leased, controlled or maintained by the Village Association for the common use, enjoyment or benefit of all Owners. If Village Common Area acquired by the Village Association is subject to a prior unaccepted offer of dedication by Declarant to a public agency or is subject to an unrescinded offer of gift to a nonprofit corporation, the Village Association or Declarant, as the case may be, shall complete such dedication or gift at any time upon request by such agency or corporation. Some Village Common Areas may consist of, and be created as, easements in favor of the Village Association over other Units (such areas to be referred to herein or in a Supplemental Declaration as "**Village Easement Common Area**"). Without limiting the generality of the foregoing, the Village Common Areas, include, without limitation, the Village Plaza areas of the Village (other than the ice-skating rink), which are or will be owned in fee simple or will be the subject of easements in favor of the Village Association for the benefit of all Owners of Units in the property that is subject to the Master Declaration, patrons, guests and invitees of the Mountain Operator, and members of the general public. Portions of the Village Common Areas may include, open space areas, recreational facilities, and pedestrian plaza areas, as well as certain easements identified on a subdivision map as "**Private Ski Easements**" which the Village Association shall be obligated to maintain upon conveyance of those easements from Declarant to the Village Association.

(b) As portions of the Annexable Property become part of the Village as a result of the Recording of an Annexation Declaration, or if Property already subject to this Village Declaration is

further subdivided or developed, additional Village Common Areas may be designated in an Annexation Declaration or Supplemental Declaration to be owned, leased, controlled or maintained by the Village Association for the use, enjoyment or benefit of the Owners pursuant to Section 2.2 below.

(c) Village Common Areas do not mean or include: (i) the Mountainside Ski Property, (ii) Mountain Operations (other than those Mountain Operations that are permitted on Village Common Areas pursuant to the Mountain Operator Agreement or the Mountain Easement Agreements), (iii) Master Common Areas and Facilities (as defined in the Master Declaration), or (iv) property that is specifically designated and described as Project Common Area in any Project Declaration or Supplemental Declaration.

1.124 **"Village Common Areas and Facilities"** means the Village Common Areas and the Village Common Facilities, collectively.

1.125 **"Village Common Facilities"** means all personal property, equipment and Improvements on real property owned, leased, controlled or maintained by the Village Association, and shall include personal property, equipment and Improvements financed by, or secured by the assets of the Village Association (which assets include the Village Association's right to levy and/or collect Assessments, charges, fines and penalties pursuant to this Village Declaration, and all amounts so collected). Village Common Facilities may include personal property, equipment and Improvements on real property not owned by the Village Association, but which Declarant, Declarant's Affiliates, or the Village Association has agreed to operate and/or maintain on behalf of any Governmental Authority. Village Common Facilities shall not include the Mountain Operations or any common areas or common facilities of any Project Association.

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

1.127 **"Village Easement Common Area"** has the meaning set forth in Section 1.122(a).

1.128 **"Village Plaza"** means and refers to the common pedestrian plaza areas that are located in and around the Projects in the Village as identified in an Annexation Declaration or Supplemental Declaration. The Village Plaza areas (other than the area intended to be improved as an ice-skating rink) are Village Common Areas.

1.129 **"Village Property"** has the meaning set forth in the Recital A.

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

1.131 **"Voluntary Cleanup Program"** means the environmental remediation of a portion of the Village contemplated by that certain Voluntary Cleanup Agreement dated as of July 28, 2017 between Declarant and the Utah Department of Environmental Quality, as amended, supplemented or replaced from time to time.

1.132 **"Voting Groups"** has the meaning set forth in Section 9.3(c).

ARTICLE 2

PROPERTY SUBJECT TO THIS VILLAGE DECLARATION

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

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

2.2 **Annexation of Additional Property.** Subject to such Governmental Authority approvals as may be required by under Applicable Law or any development agreement entered into between Declarant and any Governmental Authority applicable to Village, Declarant may from time to time and in its sole discretion add to the Village any Annexable Property, in whole or in part, now or hereafter acquired by it, and may also from time to time and in its sole discretion allow other holders of real property to add real property owned by them to the Village. The addition of such real property shall be accomplished as follows:

(a) The Owner of such real property shall Record a declaration which shall be executed by or bear the approval of Declarant and shall, among other things, describe the real property to be annexed, designate the Project of which such property is a part, establish land classifications for the Additional Property, establish any additional limitations, uses, restrictions, covenants and conditions which are intended to be applicable to such property, and declare that such property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Village Declaration (each, an “**Annexation Declaration**”).

(b) The Additional Property included in any Recorded Annexation Declaration shall thereby become a part of the Village and this Village Declaration, and Declarant and the Village Association shall have and shall accept and exercise administration of this Village Declaration with respect to such Additional Property.

(c) Notwithstanding any provision herein apparently to the contrary, an Annexation Declaration with respect to any Project or Additional Property may:

(i) establish such new land classifications and such limitations, uses, restrictions, covenants, conditions and easements with respect to the Additional Property as Declarant may deem to be appropriate for the development of the Additional Property;

(ii) with respect to existing land classifications, establish additional or different limitations, uses, restrictions, covenants, conditions and easements with respect to such Additional Property as Declarant may deem to be appropriate for the development of such Additional Property; and

(iii) incorporate provisions contained in this Village Declaration with or without modification to become applicable to the Project Common Area, the Project Association, design review, Project Assessments or other matters affecting a Project without a requirement that such provisions be repeated in a Project Declaration.

(d) There is no limitation on the number of Units that Declarant may create or annex to the Village, except as may be established by Applicable Law. Similarly, there is no limitation on the right of Declarant to annex Common Area, except as may be established by Applicable Law.

(e) Declarant does not agree to build any specific future Improvement, and does not choose to limit Declarant's right to add additional Improvements.

(f) Upon annexation, the Additional Property so annexed shall be entitled to voting rights as set forth in Section 9.3 below. (Prior to annexation, proposed Units shown in the Mountainside Master Plan as being located in the Village shall be counted as provided in Section 9.3 below for calculating the voting rights of the Class "B" Member.)

(g) The method to be used for reallocating the Common Expenses if additional Units are annexed and the manner of reapportioning the Common Expenses if additional Units are annexed during a fiscal year are set forth in Section 11.12.

2.3 Withdrawal of Property. Subject to such approvals as may be required by Applicable Law or any development agreement entered into between Declarant and any Governmental Authority applicable to Village, Declarant may withdraw property from the Village at any time only by duly adopted amendment to this Village Declaration, except that Declarant may withdraw all or a portion of any Additional Property annexed pursuant to an Annexation Declaration at any time prior to the sale to a Person other than one of Declarant's Affiliates of the first Unit in the plat of the Additional Property. Such withdrawal shall be by a Recorded declaration executed by Declarant. If a portion of the Property is so withdrawn, all voting rights otherwise allocated to a Project Association being withdrawn shall be eliminated, and the Common Expenses shall be reallocated as provided in Section 11.12. Such right of withdrawal shall not expire except upon sale to a Person other than one of Declarant's Affiliates of the first Unit within the applicable Phase of the Property as described above.

ARTICLE 3

RIGHTS OF DECLARANT, MEMBERS, UNIT OWNERS AND LESSEES

3.1 Purpose of the Village Declaration to Establish a General Plan of Development

This Village Declaration and any Supplemental Declaration or Annexation Declaration later Recorded with respect to any Phase of the Village are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Units and Common Area comprising the Village and are established for the purpose of enhancing, perfecting and maintaining the value, desirability and attractiveness of the Village as a first-class, year-round destination recreational village community. This Village Declaration shall run with all land now or hereafter comprising the Village for all purposes and shall be binding upon and inure to the benefit of Declarant, the Village Association, any Project Association, and all Owners and their Lessees and Guests.

3.2 Authority of Declarant to Modify Entitlement Documents. Nothing in this Village Declaration shall be construed in a manner that would prevent Declarant from modifying any or all of the Entitlement Documents or any portions thereof, or from resubdividing any and all of the Additional Property (whether or not such actions by Declarant increase or decrease the number of Units subject to assessments), or from dedicating or conveying portions of the Property described on any subdivision map, including streets or roadways, for uses other than as Units or Common Area, subject, however, to the receipt of any prior approvals as may be required from applicable Governmental Authorities with jurisdiction. Any statements set forth herein regarding Declarant's future plans for the development of any portion of the Property reflect Declarant's current Mountainside Master Plan for the Village. However, there is no guarantee that those future development plans will be implemented in the manner currently contemplated or at all.

3.3 Authority of Declarant to Approve Boundary Line Adjustments. At any time within twenty (20) years from the date that the first Unit in a Phase is conveyed to an Owner other than Declarant or one of Declarant's Affiliates, the boundaries of any Project Common Area or Village Common Area in that Phase may be altered by a lot line adjustment or other change reflected on a subsequently Recorded survey, parcel map, or subdivision map, provided that the altered boundaries are approved by Declarant and all Owners of the property involved in the boundary adjustment. In the event a boundary line adjustment involves Village Common Area or Project Common Area, the board of directors of the affected Project Association are authorized to grant approval on behalf of such Project Association and its members. Any such alteration shall be effective upon Recordation of the survey, parcel map, or subdivision map. Upon such Recordation, the boundaries of the altered Village Common Area or Project Common Area shall be altered for purposes of this Village Declaration to conform to the boundaries as shown on such survey, parcel map, or subdivision map. The authority conferred by this Section 3.3 shall not apply to any Condominium Project within the Village unless the applicable Project Association also consents to the boundary line adjustment. In addition, no changes shall be made to the Village Plaza areas that would compromise the visibility of any Commercial Unit when viewed from the Village Plaza areas or which might increase the cost of snow removal by impairing access to or within the Village Area or otherwise affecting access to or the operation of any businesses in the Commercial Units within the Village.

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

(a) Right of the Village Association to Regulate Village Common Area Uses.

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

(b) Right of the Village Association to Adopt Village Rules. The right of the

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

(c) Right to Incur Indebtedness. The right of the Village Association, in

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

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

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

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

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

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

(i) **Right to Convey Additional Village Common Areas and Facilities to the Village Association.** The right of Declarant to later convey additional Village Common Areas and Facilities in the Village Property or the Annexable Property to the Village Association. Village Common Areas and Facilities, if any, to be owned by the Village Association in any portion of the Annexable Property that becomes part of the Village as the result of future annexations, may be conveyed to the Village Association prior to the first transfer to an Owner of a Unit in such annexed area, or may be later conveyed to the Village Association. Additional Village Common Areas and Facilities shall be identified as such in the Annexation Declaration or Supplemental Declaration that brings the Village Common Areas and Facilities into the jurisdiction of the Village Association. With respect to public property that is designated as Village Common Areas and Facilities that is to be maintained by the Village Association, Owners, Lessees, and their respective Guests shall have such rights as the applicable Governmental Authority allows.

(j) **Permits, Licenses and Easements.** The right of the Village Association to grant permits, licenses and easements on, over, under or through the Village Common Areas and Facilities for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Village and/or the Mountainside Ski Property, so long as such future permits, licenses and/or easements do not materially impair ingress or egress to or from any Unit in the Village.

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

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

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

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

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

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

3.6 Delegation of Use of Units.

(a) Any Owner may delegate such Owner's rights of use and enjoyment of the Owner's Unit, including any appurtenant right to use Village Common Areas and Facilities, to the Owner's

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

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

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

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

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

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

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

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

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

(c) Absence of Rights in Privately Owned Club and Similar Facilities. Notwithstanding the use of any of the Property as a private club, spa or other private recreational facility, or the physical proximity of any Unit to any private club, spa or other private recreational facility and notwithstanding any statements or representations by Declarant or any other party, neither ownership of a Unit nor membership in the Village Association shall confer any right or entitlement, now or in the future, upon any Person to membership or voting rights in any private club, spa or other private recreational facility or to any ownership interest, equity interest or right to use any private club, spa or other private recreational facility. The foregoing shall not impact the rights of any Owner to use the Village Common Areas and Facilities subject to the limitations imposed herein, and the other terms and conditions of this Village Declaration and the Master Declaration.

ARTICLE 4

PROJECT DESIGNATIONS AND LAND CLASSIFICATIONS

4.1 Project Designation. The MIDA Property is hereby designated as a Condominium Hotel. The balance of the Village Property shall be classified as Vacant Land until such time as an Improvement is constructed thereon, at which time the classification shall be changed to the appropriate classification, as determined by Declarant.

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

- (a) Vacant Land;
- (b) Hotel;
- (c) Lodge;

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- (d) Condominium;
- (e) Condominium Hotel;
- (f) Residential Units;
- (g) Commercial Units;
- (h) Moderate Income Housing Units;
- (i) Recreational Units;
- (j) Project Common Area, which shall be the areas marked as landscaped open space, open space and private roads, or other similar designations, on the plats recorded as a part of the Village Property. Unless the plat specifically indicates that a tract or parcel is "Village Common Areas" the tract or parcel shall be deemed to be Project Common Area;
- (k) Village Common Area, which shall be the areas marked as Village Common Area or other similar designations, on the plats recorded as a part of the Village Property; or
- (l) Public Areas, which shall be the areas marked as public parks, trails or streets on the plats recorded as a part of the Village Property.

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

ARTICLE 5

PROPERTY RIGHTS IN VILLAGE COMMON AREAS

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

5.2 **Easements for Encroachments.** The Village Common Areas, and all portions of them, are subject to easements hereby created for encroachments of any portion of a Unit, Project or the Village Common Areas as follows:

- (a) In favor of the Village Association so that the Village Association shall have no legal liability when any part of the Village Common Areas encroach upon any Project Common Area;

(b) In favor of each Project Association so that the Project Association shall have no legal liability when any part of any Project Common Area encroaches upon any portion of the Village Common Areas; and

(c) In favor of the Project Associations and the Village Association for the existence, maintenance and repair of such encroachments.

Encroachments referred to in this Section 5.2 include, but are not limited to, encroachments of improvements located on the Village Common Areas onto Units or Project Common Area, encroachments of overhangs or other portions of buildings or other improvements located on the Units onto the Village Common Areas, and other encroachments caused by error or variance from the original plans in the construction of a Project, by error in the subdivision map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of a Project. Such encroachments shall not be considered to be encumbrances upon any Unit, any part of a Project or the Village Common Areas.

5.3 Utility Easements.

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

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

5.4 Reservation of Easements and Exclusions. Declarant reserves for itself and its successors and assigns who are specifically assigned this right, the right to establish from time to time by declaration or otherwise, utility and other easements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues and conduit installation areas, consistent with the ownership of the Property for the best interest of the Owners and the Village Association. Declarant further reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property within the Village to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise. Declarant hereby further reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Village Common Areas for the purposes of enjoyment, use, access, and development of the Annexable Property, whether or not such property is made subject to this Village Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Village Common Areas for construction of roads and for connecting and installing utilities on such property.

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

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

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

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

replacement of any portion of the Village Common Areas and Facilities or as a result of emergency repairs undertaken by the Village Association shall be a Common Expense.

5.9 **Declarant's Rights Incident to Construction and Marketing.** Declarant, for itself and its successors and assigns who are specifically assigned this right and easement, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Property and the right to store materials on the Property and to make such other use of the Property as may be reasonably necessary or incident to the complete construction and sale of Units and Projects, including construction trailers, temporary construction offices, sales offices and directional and marketing signs. Declarant may designate a portion of the Village Common Areas and Facilities for the foregoing construction and other purposes in connection with the development of a particular Unit or Project. Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Unit(s) as sales offices, construction, sales and business management offices or as models so long as Declarant, or its successors or assigns, continues to be an Owner of a Unit within the Property. The use by Declarant of any Unit as a model, office or other use shall not affect the Unit's designation on the subdivision map or in a Condominium plan as a Unit. Declarant further reserves exclusive easement rights over and across the Property comprising the Village for the purpose of marketing, sales and rental of Units, or of other projects developed or marketed by Declarant or Declarant's Affiliates from time to time, including, without limitation, the right to show the Property and to display signs, flags, banners and other promotional devices. Declarant also reserves the right to lease unsold Units.

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

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

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

5.13 **Easements in Favor of the Mountain Operator.** There is further granted to the Mountain Operator, for the benefit of the Mountainside Ski Property, an unallocated general easement upon the Property for the following uses and activities conducted on, or resulting from the conduct of, activities of the Mountain Operator, its agents and invitees on the Mountainside Ski Property: (i) noise,

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

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

5.15 Easement for Voluntary Cleanup Program. An easement is hereby reserved to Declarant and granted to Declarant's Affiliates, and their respective officers, agents, employees, contractors, successors and assigns, upon, across, over, in and under the Property in such locations as Declarant may identify from time to time in a Recorded instrument, and a right to make use of such designated portion of the Property as may be necessary or appropriate, to perform the duties and functions required pursuant to the Voluntary Cleanup Program, including any necessary or desired testing and Ongoing Monitoring.

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

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

5.18 Conversion of Streets to Project Limited Common Area. Upon approval of Declarant and the Owners of a majority of the Units within any Project, any non-public principal road providing access to the Project and not also providing access to any other Project may be converted from a Village Common Area to a Project Limited Common Area for the exclusive benefit of the Project in question. Any road so converted to Project Limited Common Area may use gated entries to the extent permitted by this Village Declaration and Applicable Law. Thereafter, the costs of maintaining such Project Limited Common Area and gates shall be a Cost Center, the responsibility for which shall be the Owners of Units within the applicable Project.

5.19 **Conveyance of Village Common Areas to Village Association.** Declarant reserves the right to later convey additional Village Common Areas and Facilities to the Village Association. Village Common Areas and Facilities, if any, to be owned by the Village Association in any portion of the Additional Property that becomes a part of the Village as the result of a future annexations, may be conveyed to the Village Association prior to the first transfer of a Unit in such annexed area, or may be later conveyed to the Village Association.

5.20 **Use of the Village Common Areas.** The Village Common Areas shall not be partitioned or otherwise divided into Units for residential use, and no private structure of any type shall be constructed on the Village Common Areas. Except as otherwise provided in this Village Declaration, the Village Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Village Common Areas and Facilities. Nothing herein shall prevent the placing of a sign or signs upon the Village Common Areas and Facilities identifying the Village or any Project or identifying pathways or items of interest, provided such signs comply with any applicable sign ordinance. The Board of Directors shall have authority to abate any trespass or encroachment upon the Village Common Areas and Facilities at any time, by any reasonable means and with or without having to bring legal proceedings. An Annexation Declaration annexing Additional Property may provide that the Owners of such Additional Property do not have the right to use particular Village Common Areas and Facilities. In such case, those Owners will not be required to share in the costs of maintaining such Village Common Areas and Facilities, as is more particularly described in Article 11.

5.21 **Alienation of the Village Common Areas.** The Village Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any portion of the Village Common Areas and Facilities owned directly or indirectly by the Village Association for the benefit of the Units unless the holders of at least eighty percent (80%) of the Class "A" Membership voting rights and the Class "B" Member, if any, have given their prior written approval. Any such abandonment, partition, subdivision, encumbrance, sale or transfer shall also be subject to the requirements of Section 14.1 and such approvals as may be required by Applicable Law or any development agreement entered into between Declarant and a Governmental Authority applicable to Village. The foregoing provision shall not apply to Village Easement Common Area or to the easements described in Section 5.3(a). The Village Association, upon approval in writing of more than 50 percent of the Class "A" Membership voting rights and the Class "B" Member, if any, and if approved by order or resolution of the applicable Governmental Authority, may dedicate or convey any portion of the Village Common Areas and Facilities to a park, district or other Governmental Authority.

5.22 **Rental Restrictions.** An Owner of a Residential Unit that is not designated as a Condominium Hotel, Hotel or Lodge by Declarant, the Mountainside Master Plan or the Village Association may not lease or rent such Residential Unit to any Person for a period of less than thirty (30) days without the prior written approval of the Board of Directors and Declarant, which approval may be withheld in the sole discretion of either of them. To the fullest extent allowed by Applicable Law, the Board of Directors and Declarant may impose conditions on any approval, including without limitation a requirement that all occupants of a dwelling be members of a single housekeeping unit, limiting the total number of occupants permitted in each Residential Unit on the basis of the Residential Unit's size and facilities and fair use of the Village Common Areas and Facilities, and reasonable limit on the number of individuals who may use the Village Common Areas and Facilities as Guests of the Owner or Lessee of the Residential Unit, provided that such conditions shall not include approval of the prospective renter, payment of an additional fee, or, unless the Owner is required to provide the Board of Directors with such documents pursuant to a court order or as part of discovery under the Utah Rules of Civil Procedure, provision of a copy of the rental agreement, provision of the prospective renter's credit information, credit report or background check. As a condition of the ongoing approval for short-term rentals provided for in this Section 5.22, the Owner of any Unit being rented for a period of less than 30 days shall timely remit

to the applicable Governmental Authority any taxes or fees (including but not limited to, any transient occupancy taxes) applicable to such Unit or the renting thereof. The failure to timely remit any such taxes and fees shall be a violation of this Village Declaration and subject such Owner to the remedies provided for in Article 12, including, but not limited to, the withdrawal of approval by Board of Director or Declarant for such Owner to conduct short term rentals from the Unit.

5.23 Solar Energy Systems. Without the prior approval of Declarant and the Design Review Committee pursuant to Article 8, no Owner shall install on its Residential Unit a solar energy system that is or may become visible from the exterior of the structure. If Declarant and the Design Review Committee approve such installation of the solar energy system, such approval may be subject to such limitations and restrictions as Declarant and the Village Association may in their discretion determine, subject to Applicable Law.

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

ARTICLE 6

PROPERTY RIGHTS IN UNITS

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

6.2 Easements Reserved. In addition to any utility and drainage easements shown on any Recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant and the Village Association:

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

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

(c) **Utility Easements**. Easements for installation and maintenance of drainage facilities and public utilities are hereby reserved over ten (10) feet of the front, rear and one side of each

Unit (other than Units that are Condominium Units located within a building or other Units constituting townhomes or other similar product specifically created to have so-called "zero lot lines"), and as otherwise identified on the plats for particular Projects. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. However, the Reviewer or Design Review Committee may, in its sole discretion, approve a structure within the easements such as a fence, wall, landscaping, driveway or off-street parking area. It is expressly understood, however, that any such Improvement shall be constructed at the Owner's or the easement holder's sole risk, as the case may be, and as provided in the easement document(s), of having the Improvement partially or wholly removed, dismantled, taken out, or destroyed where necessary because of drainage or public utility servicing, installation, alteration or maintenance. The easement areas within each Unit and all Improvements in such areas shall be maintained continuously by the Owner of the Unit, except for those Improvements which a public authority or utility company is responsible to maintain. Easements for installation and maintenance of utilities and drainage facilities may also be reserved over portions of certain Units, as shown on any Recorded plat.

(d) **Landscape Maintenance.** Where a Project Declaration or Project plat so provides, the Project Association shall undertake principal responsibility to provide for the maintenance of exterior landscaping on the Units within the Project including watering and the maintenance, repair or replacement of the exterior sprinkling system. If landscape maintenance remains the principal responsibility of the Owners of Units, the Project Association and/or the Village Association shall have the right to enter on the Unit in order to maintain landscaping in the event the Owner fails to adequately maintain the landscaping in accordance with the Community-Wide Standards, including watering and the maintenance, repair or replacement of the exterior sprinkling system. The Project Association's and the Village Association's right of access for maintenance shall include the right of access to a garage or other part of a residence on a Unit containing the automatic sprinkling control box and the right to use the water at the expense of the Owner in any amount deemed necessary and appropriate by the Project Association or the Village Association for maintaining the landscaping on the Unit.

ARTICLE 7

GENERAL USE RESTRICTIONS

7.1 **Structures Permitted on MIDA Property.** Except as may be approved in writing by Declarant, no structures shall be erected or permitted to remain on the MIDA Property except structures containing a Hotel and Condominium Hotel Project and structures normally accessory thereto.

7.2 **Offensive or Unlawful Activities.**

(a) No noxious or offensive activities shall be carried on upon the Property, nor shall anything be done or placed on the Property which interferes with or jeopardizes the enjoyment of the Property, or which is a source of annoyance to residents. Except for legitimate construction and maintenance purposes, or permitted as contemplated by Section 3.7, no excessively loud noises shall be permitted in the Village. No unlawful use shall be made of the Property nor any part thereof, and all Applicable Laws of all Governmental Authorities having jurisdiction shall be observed. No oil drilling, oil development operations, oil refining, or Mining Uses of any kind shall be permitted upon any Unit nor shall oil wells, tunnels, or shafts be permitted. No derrick or other structure designed for use in drilling for oil or natural gas or water shall be erected, maintained or permitted.

(b) Notwithstanding the foregoing restrictions and prohibitions, the following shall not be considered as "noxious or offensive activities": (i) noise, traffic, and odors resulting from proximity to the Mountainside Ski Property and related facilities, roads, ice-skating rinks, Special Events,

or from snow or other sports related activities; (ii) any activities of an Owner, Declarant, or their respective designees or contractors which are reasonably necessary to the development of, and construction on, a Unit so long as such activities do not violate the Governing Documents or Applicable Law and do not unreasonably interfere with any Owner's use of such Owner's Unit, or with any Owners ingress and egress to and from a Unit and a roadway; (iii) the reasonable odors, lighting, and noises associated with the authorized Commercial Units, including restaurant noises and odors; or (iv) the reasonable odors, lighting and noises associated with the Village Common Areas and Facilities.

(c) Normal construction activities shall not be considered to violate the terms and conditions of this Section 7.2, although it is noted that many Improvement projects will require the prior review and approval of the Design Review Committee and, in some instances, the Project Association with jurisdiction over the Owner's Unit. By accepting a deed to a Unit, an Owner acknowledges that construction activities may exist on or near the Property, at any time and from time to time. The Design Review Committee shall have the power, but not the obligation, to grant variances from the terms and conditions of this Section 7.2 from time to time as it deems necessary or appropriate to permit certain construction activities to be pursued.

(d) Notwithstanding anything to the contrary contained in this Village Declaration or the Governing Documents, retail stores, restaurants, bars, nightclubs, theaters and other recreational and entertainment facilities conducted within the Commercial Units in the Village may be open for business with the general public during the hours of 5:00 a.m. through 2:00 a.m. Mountain Time. Rental and property management activities within the Commercial Units specifically designated for such purposes may be conducted at all times, twenty-four (24) hours a day. In addition, noise is likely to be experienced by the proximity of the Village to the Mountainside Ski Property and its related lifts, machinery and other facilities, roads, or from snow-related activities. By accepting a deed to a Unit, an Owner acknowledges that the Unit is a part of the Village and that noises, lights and odors common to commercial activities (including restaurant and outdoor dining and cooking), Mountain Operations, and construction activities may exist on or near the Village Plaza and/or other portions of the Property, at any time and from time to time. Accordingly, each Owner takes such Owner's Unit subject to such noises, lights and odors common to commercial activities, concerts, promotional events of the Owners of Commercial Units, Mountain Operations and construction activities and such Owners expressly waive any and all claims arising from such noises, lights and odors. Notwithstanding the foregoing, no restaurant, bar, nightclub or theatre may be operated on the Property unless and until applicable permits, licenses and approvals have been obtained from the appropriate Governmental Authorities. No amendment or modification may be made to this subparagraph (d) without the express written consent of the Owners of any and all Commercial Units that may be affected by any such change.

(e) The Design Review Committee shall provide for and direct the timing, location, and organization of construction of, commercial activity, repair, maintenance, and all other associated or related activities in such a fashion and manner that customers and visitors to the Mountainside Ski Property shall have access to the Mountainside Ski Property in accordance with the terms of the Mountain Operator Agreement and whose use and enjoyment of the Mountainside Ski Property shall not be interfered with. In addition, the Design Review Committee shall take such actions as are necessary to minimize any interference with, or access or visibility to, the Commercial Units and any tenants in the normal and customary conduct of their business in accordance with the Governing Documents.

7.3 Maintenance of Structures and Grounds. Each Owner shall maintain its Unit, and Improvements thereon, in a clean and attractive condition in accordance with the Community-Wide Standard, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include painting, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. All repainting or re-staining and

exterior remodeling shall be subject to prior review and approval by the Design Review Committee. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on its Unit neatly trimmed, property cultivated and free of trash, weeds and other unsightly material. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

7.4 **Parking**. Except as may otherwise be provided in the Village Rules, parking of boats, trailers, off-road vehicles, trucks, mobile homes, campers or other recreational vehicles or equipment, regardless of weight, and parking of any other vehicles in excess of three-quarter (3/4) ton in weight shall not be allowed to remain overnight on any part of the Property, excepting only within areas designated for such purposes by the Board of Directors or within the confines of an enclosed garage, the plans of which shall have been reviewed and approved by the Design Review Committee prior to construction, and no portion of the same may extend beyond the screened area. Each Owner by accepting a deed or other instrument conveying any interest in a Unit, hereby acknowledges and agrees to those provisions of this Village Declaration specifically addressing parking and traffic control set forth in Section 9.5(l) of this Village Declaration.

7.5 **Vehicles in Disrepair**. No Owner shall permit any vehicle which is either inoperable or in an extreme state of disrepair or not currently licensed for use on public roadways to be abandoned or to remained parked in the Village Common Areas or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that, by reason of its poor exterior condition, its presence degrades the visual environment of the neighborhood. Should any Owner fail to remove such vehicle within three (3) days following the date on which notice is mailed to such Owner by the Village Association, the Village Association is authorized to have the vehicle removed from the Property and charge the expense of such removal to the Owner.

7.6 **Signs**.

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

(i) one sign of customary and reasonable dimensions advertising a Unit for sale, lease, rent or exchange, displayed from the subject Unit;

(ii) such signs as may be used by Declarant or its assignees in connection with the Village and sale of Units;

(iii) such other signs or notices as are required by law or as are otherwise necessary to perfect a right provided for in law;

(iv) signs posting applicable speed limits and restricted parking areas;

(v) such other signs as may be permitted or approved by the Board of Directors; and

(vi) those signs that are expressly authorized by, or reasonably incidental to performance of, the rights and privileges of the Mountain Operator under the Mountain Easement Agreements and the Mountain Operator Agreement, so long as the signage is consistent with the

Design Guidelines for the Village (but only insofar as those Guidelines pertain to graphics and other aesthetic presentations so as to maintain a uniform appearance of signs in the Village).

(b) Without limiting the generality of subparagraph (a), above, posting and maintenance of speed limit signs shall be the responsibility of the Master Association.

7.7 **Rubbish and Trash.**

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

(b) All trash, garbage and other waste materials shall be kept in sanitary containers enclosed and screened from public view and protected from disturbance in such places and manners as may be approved by the Design Review Committee for the Village. Owners shall not, and shall ensure that their Guests do not, litter in the Village. No burning of trash, garbage or waste materials shall be permitted within the Village. Each Project Association shall be responsible for refuse collection service to all non-residential facilities within the Project on the same basis and the Village Association shall be responsible for all refuse collection facilities located outside of Project Common Areas.

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

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

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

7.11 **Fire Protection.** All occupants of any Unit shall strictly comply with all Applicable Laws pertaining to fire hazard control. All stacks and chimneys from fireplaces in which combustibles, other than natural gas, are burned shall be fitted with spark arresters. Exterior fires are prohibited, except fires contained within appropriate receptacles as provided by the Village Rules and Applicable Laws.

7.12 **Environmental Concerns.** All site plans submitted to the Design Review Committee pursuant to Section 8.1 of this Village Declaration shall address soils, seismic conditions, re-vegetation of natural areas (indicating areas where natural vegetation is to be removed and plans for the replanting of those areas), and grading of the Unit, including cuts and fills.

7.13 **Grades, Slopes and Drainage.** Each Owner of a Unit shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over such Unit or the Village Common Areas without the express written permission of the Design Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow, or obstruct or retard the flow of water through drainage channels. All Persons erecting or constructing Improvements on any Unit shall comply with all Applicable Laws. Construction of berms, channels or other flood control facilities on any Unit is the sole responsibility of the Owner of the Unit and shall be done in accordance with the flood control plans approved by the appropriate Governmental Authority. Such construction shall commence at the time the Unit is graded or otherwise altered from its natural state.

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

7.15 **Project Restrictions.** Each Owner of a Unit, and such Owner's Guests, shall also comply with any additional use restrictions contained in any Project Declaration applicable to such Unit.

7.16 **Village Rules.** The Board of Directors from time to time may, at a meeting of the Board of Directors, adopt, modify or revoke such Village Rules governing the conduct of persons and the operation and use of the Village Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Prior to any action under this Section 7.16 becoming effective, the Board shall, (i) at least fifteen (15) days before meeting to consider such action, deliver notice to all Owners that the Board is considering a change to the Village Rules, (ii) provide an open forum at the meeting of the Board of Directors giving the Owners an opportunity to be heard before the Board of Directors takes such action, and (iii) within fifteen (15) days following such meeting, deliver a copy of any such Village Rules to the Owners or, to the extent permitted by Applicable Law, an explanation thereof on the Village Association's website, if any, and send a copy thereof to the Class "B" Member. Notwithstanding the foregoing, the Board of Directors may adopt, modify, or revoke the Village Rules without first giving notice to the Owners as specified in the preceding sentence if there is an imminent risk of harm to Project Common Areas, Village Common Areas, an Owner, a Guest or the occupant of a Unit. A copy of the Village Rules, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Village Association promptly to each Owner or posted on the Village Association's website, if any, and thereafter shall be binding upon all Owners and occupants of all Units unless, within the sixty (60) day period following the meeting of the Board of Directors where the action was taken, (i) at least 51% of the total Class "A" votes in the Village

Association vote to disapprove such modification of the Village Rules in a special meeting called for such purpose by the Members, or (ii) during the Administrative Control Period, the Class "B" Member delivers its written disapproval to the Board of Directors. The Board has no obligation to call a meeting of the Members to consider disapproval, unless the Members submit a petition, in the same manner as the Governing Documents provide for a special meeting, for the meeting to be held. In the event a special meeting is called to vote on a modification of the Village Rules as provided in the preceding sentence, the effect of the action of the Board of Directors is stayed until after such meeting is held and subject to the outcome of the meeting. No action under this Section 7.16 shall have the effect of modifying, repealing or expanding the Design Guidelines other than the initial Village Rules. In the event of a conflict between the Village Rules and the Design Guidelines, the Design Guidelines shall control.

7.17 **Deviations.** Deviations from the standards set forth in this Village Declaration may be allowed only upon written approval by the Design Review Committee for good cause shown.

7.18 **Exemption of Declarant; Application to Additional Property.** During the Administrative Control Period, Declarant may exempt Declarant from the Village Rules and the rulemaking procedure set forth in Section 7.16. The provisions of Sections 7.1 through 7.17 shall not apply to any Additional Property if the Annexation Declaration annexing such Additional Property so specifies. The Annexation Declaration annexing such Additional Property to this Village Declaration may establish restrictions governing the use and conduct of such Units that are more or less restrictive than the restrictions contained in this Village Declaration.

7.19 **Applicability of Use Restrictions.** Except as otherwise provided herein, the use restrictions set forth in this Article 7 shall apply to all of the Property and the Owners thereof. In the event that the Master Declaration or a Project Declaration applicable to any Project in the Village seeks or purports to regulate the same conduct, action or activity as are subject to this Article 7, the Declaration with the most restrictive rule, consistent with Applicable Law, shall prevail. To the extent that the Master Declaration imposes property use restrictions that are in addition to those set forth herein, the restrictions of the Master Declaration shall also apply to the Units within the Village, unless specifically exempted therefrom.

7.20 **Promotion of the Community.**

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

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

7.21 **Other Sports and Recreation Activities.** The Resort is a year-round destination resort. Accordingly, Owners of Units should anticipate that the Mountainside Ski Property, the Resort Support Facilities and the roads and Village Plaza areas within the Resort will be operated and used on a year-round basis in order to present events and recreational opportunities that are appropriate and common at mountain resorts during particular seasons of the year, such as skiing, snowboarding, golf, hiking,

mountain biking, Special Events, and concerts. Those events and activities can create or include lights, noise (associated with the event or activity, itself, or the operation of equipment), odors, and other effects that should be considered in the decision of an Owner to acquire a Unit in the Resort.

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

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

7.24 **Restriction on Subdivision and Rezoning.**

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

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

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

(d) The covenants, conditions and restrictions set forth in subparagraphs (a) through (c), above, shall not apply to the Declarant's development of the Property.

7.25 **Common Interest Ownership and Approval of Project Declarations.**

(a) Prior to the recording in the Wasatch County Records of an instrument subjecting any portion of the Property to a common interest development regime, all Persons, other than the Declarant or a co-Declarant, who are owners of such property shall submit to the Village Association for its review and approval, copies of the proposed Declaration of Covenants, Conditions and Restrictions for the Project, and the Articles of Incorporation and Bylaws of the Project Association. Within thirty (30) days after the submittal of such documents to the Village Association, the Village Association shall approve or disapprove the documents by written notice to such Persons. If such documents are disapproved by the Village Association, the Village Association shall set forth the reasons for such disapproval. If notice of approval or disapproval is not given by the Village Association on or before such thirty (30) day period, such documents shall be deemed to be approved.

(b) The covenants, conditions and restrictions set forth in subparagraph (a), above, shall not apply to the Declarant's or any co-Declarant's development of any Phase of the Property,

including, but not limited to, approval of the development of any Residential Units as a Vacation Club, Time Share Project, or Condominium Project.

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

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

7.28 **Declarant's Exemption.** Nothing contained in this Village Declaration or any other Governing Document shall be construed to prevent or limit:

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

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

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

ARTICLE 8

ARCHITECTURE AND LANDSCAPING

8.1 **General.** No structure or thing shall be placed, erected, or installed upon any Property located in the Village and no Improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing Improvements, or planting or removal of landscaping) shall take place within the Village, except in compliance with this Article 8 and the Master Declaration and the Design Guidelines. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of such Owner's Unit without approval. However, modifications to the interior of screened porches, patios, and similar improvements visible from outside the structure shall be subject to approval. All structures constructed on any portion of the Village shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion. This Article 8 shall not apply to the activities of Declarant, Declarant's Affiliate, or the Village Association during the Administrative Control Period.

8.2 **Architectural Review.** Each Owner, by accepting a deed or other instrument conveying any interest in any Unit, acknowledges that, as the developer of the Village and as an owner of portions of the Village, Declarant has a substantial interest in ensuring that the Improvements within the Village enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market,

sell, or lease its property. In addition to any review and approval required pursuant to Article 8 of the Master Declaration, the review and approval of any activity occurring within the Village (that is otherwise governed by this Article 8 of the Village Declaration) shall be by the Declarant (or if created pursuant to Section 8.2(a) of the Master Declaration, the Design Review Committee of the Master Association) applying the standards and Design Guidelines for the Village contemplated by the Village Association. In performing such review and approval, the Design Review Committee and any Reviewer shall follow the procedure for such review set forth in Article 8 of the Master Declaration, and shall be entitled to the same rights, responsibilities, protection and indemnities provided for therein. Therefore, each Owner agrees that no activity within the scope of this Article 8 or Article 8 of the Master Declaration shall be commenced on such Owner's Unit unless approved pursuant to the provisions set forth in Article 8 of the Master Declaration. Nothing contained herein shall prevent Declarant from completing excavation, grading and construction of Improvements to any portion of the Property, or to alter the foregoing or to construct such additional Improvements as Declarant deems advisable in the course of development of the Village so long as any Unit owned by Declarant remains unsold.

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

8.4 **Limitation of Liability.** The standards and procedures established by this Article 8 are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Village; they do not create any duty to any Person. Review and approval of any application pursuant to this Article 8 and Article 8 of the Master Declaration is made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for ensuring compliance with building codes and other governmental requirements, for ensuring that all structures are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property Owners. Declarant, the Master Association, the Design Review Committee of the Master Association, the Village Association, the Board, Reviewers, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in the Village; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit or Improvement. In all matters, the Board, the Design Review Committee, Reviewers, Declarant and the members of each shall be defended and indemnified by the Village Association as provided in Section 9.6.

8.5 **Exemption of Declarant.** Notwithstanding the foregoing statement of the scope of the Reviewer's or Design Review Committee's jurisdiction, Improvements and construction projects undertaken by Declarant, Declarant's Affiliates, its agents and contractors shall not be subject to the review or approval by the Reviewer or the Design Review Committee.

ARTICLE 9

VILLAGE ASSOCIATION

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

9.1. **Organization.** Declarant shall, before the MWR Hotel Condominium Project is opened for business, organize the Village Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Utah. The Articles of Incorporation of the Village Association shall provide for its perpetual existence, but in the event the Village Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Village Association as if they had been made to constitute the governing documents of the unincorporated association.

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

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

(a) **Units Within a Project Association.** Except as provided in the immediately following sentences, Project Associations shall be allocated one vote per Unit within the subject Project. Projects with Units that are designated as a Hotel or Lodge shall have one vote for each dwelling unit or room included within such Hotel or Lodge. Commercial Units or Recreational Units shall have one vote for each such Unit without regard to the actual number of rooms or spaces included on or within such Unit.

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

Class "A". Class "A" Members shall be all Owners of Units with the exception of the Declarant and shall be entitled to voting rights for each Unit owned computed in accordance with Section 9.3(a) above. When more than one Person holds an interest in any Unit, all such Persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more voting rights be cast with respect to any Unit than as set forth in Section 9.3(a) above. Solely for purposes of calculating the voting right of the Class "B" Member, the number of Units owned by the Declarant shall be deemed to include the additional unplatated Units shown on the then-current Mountainside Master Plan for the Property.

Class B. The Class "B" Member shall be Declarant. The Class "B" Member shall have the right to appoint the members of the Board during the Administrative Control Period, as specified in the Bylaws. Additional rights of the Class "B" Member are specified in relevant sections of the Governing Documents. After termination of the Administrative Control Period, Declarant shall have the right to disapprove actions of the Board and committees as provided in the Bylaws. The Class "B" Member shall be entitled to five times the voting rights computed under Section 9.3(a) for each Unit owned by Declarant. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of either of the following events, whichever occurs earlier:

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

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

(c) **Voting Groups.**

(i) Declarant may designate voting groups (each, a "**Voting Group**") consisting of the Owners in two or more Projects for the purpose of electing directors to the Board. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid some Projects being able to elect the entire Board due to

the number of Units or dwelling units in such Projects. Following termination of the Administrative Control Period, the number of Voting Groups within the Village shall not exceed the total number of directors to be elected by the Class "A" Members pursuant to the Bylaws.

(ii) Each Voting Group shall vote on a separate slate of candidates for election to the Board. Each Voting Group is entitled to elect the number of directors specified in the Bylaws. Each Voting Group shall be entitled to a vote that is equal to the number of Units within the Projects comprising such Voting Group computed as provided in Section 9.3(a).

(iii) Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Administrative Control Period by filing with the Master Association and Recording a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to the expiration of the Administrative Control Period. After expiration of Declarant's right to expand the Village pursuant to Article 2, the Board shall have the right to Record or amend such Supplemental Declaration upon the vote of a majority of the total number of directors and approval of Members representing a majority of the total Class "A" votes in the Master Association. Neither Recordation nor amendment of such Supplemental Declaration by Declarant shall constitute an amendment to this Village Declaration, and no consent or approval of any Person shall be required except as stated in this paragraph.

(iv) Until such time as Voting Groups are established, all of the Village shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been Recorded, any and all portions of the Village which are not assigned to a specific Voting Group shall constitute a single Voting Group.

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

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

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

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

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

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

(a) Acceptance and Control of Village Association Property.

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

(ii) Declarant and its designees may convey to the Village Association, and the Village Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved. Upon Declarant's written request, the Village Association shall reconvey to Declarant any unimproved portions of the Village Common Areas Declarant originally conveyed to the Village Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

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

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

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

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

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

(f) Charges for Use of Village Common Areas and Facilities. The Village Association may establish and modify charges for the use of any of the Village Common Areas and Facilities to assist the Village Association in offsetting the costs and expenses of the Village Association

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

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

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

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

(j) Marketing. The Village Association may provide a suitable and continuing program to promote the Village as a desirable, year-round, destination recreational village, including, but not limited to, advertising the Mountainside Ski Property, organizing and coordinating Special Events, advertising and placing articles in news media, establishing uniform standards for promotional programs and shows, encouraging responsible groups to hold conferences and negotiating arrangements and accommodations for such groups, conducting tour operations, publishing a newsletter, providing and operating reception and information centers, and buying space for the accommodation of Guests; provided, however, that all advertising and promotion of the Mountainside Ski Property shall be subject

the approval of the Mountain Operator. The Village Association may undertake or fulfill the functions contemplated hereunder in whole or in part in conjunction with or through any organization which may be engaged in the promotion of the state or local area year-round destination village industry or by engaging the Mountain Operator to promote the Village.

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

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

(m) Other Functions. The Village Association may undertake and perform other functions as it deems reasonable or necessary to carry out the provisions of this Village Declaration, including providing the following services for some or all Members: cooperative purchasing service; telephone services; high-speed internet and fiber services; warehousing and delivery, grocery store, gas stations, vehicle repair and towing services; central laundry; property management services; employee training; central communications operation which may include a central dispatch system; a data information center; central monitoring of fire safety; and property security.

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

- (i) imposing reasonable monetary fines as set forth in the Village Rules which shall constitute a lien upon the violator's Unit. In the event that any Guest violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board. The Board may impose an additional fine each time an Owner or Guest (i) commits a violation of the same provision of the Governing Documents within one (1) year after the day on which the Board assesses a fine for a violation of the same provision or (ii) allows a violation of the Governing Documents to continue for ten (10) days or longer after the day on which the Board assesses the fine;
- (ii) suspending any Person's right to use any recreational facilities within the Village Common Areas and Facilities; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;
- (iii) suspending any services provided by the Village Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Village Association;
- (iv) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;
- (v) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- (vi) without liability to any Person, precluding any contractor, subcontractor or Guest of an Owner who fails to comply with the terms and provisions of Article 8 and the Design Guidelines from continuing or performing any further activities in the applicable Project; and
- (vii) levying Special Individual Assessments to cover costs incurred by the Village Association to bring a Unit into compliance with the Governing Documents.

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

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

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

In addition to any other enforcement rights, if an Owner fails properly to perform such Owner's maintenance responsibility, the Village Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Village Association against the Unit and the Owner as an Special Individual Assessment. If a Project Association fails to perform its maintenance responsibilities, the Village Association may perform such maintenance and assess the costs as an Special Individual Assessment against all Units within such Project. Except in an emergency situation, the Village Association shall provide the Owner or Project Association reasonable notice and an opportunity to cure the problem prior to taking such enforcement action. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Village Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action and shall comply with all required procedures under Applicable Law. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Village Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with Applicable Law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Village Association's resources; or

(iv) that it is not in the Village Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Village Association to enforce such provision at a later time under other circumstances or preclude the Village Association from enforcing any other covenant, restriction, or rule. The Village Association, by contract or other agreement, may enforce applicable governmental ordinances, if applicable, and permit Governmental Authorities to enforce ordinances within the Village for the benefit of the Village Association and its Members.

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

(p) Borrow Money, Hold Title and Make Conveyances. The Village Association may borrow and repay moneys for the purpose of maintaining and improving the Village Common Areas and Facilities and encumber the Village Common Areas and Facilities as security for the repayment of

such borrowed money. The Village Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including easements across all or any portion of the Village Common Areas and Facilities, and shall accept any real or personal property, leasehold or other property interests within the Village conveyed to the Village Association by Declarant.

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

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

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

(t) Relationship with Other Properties. The Village Association may enter into contractual agreements or covenants to share costs with any neighboring property or Private Amenity to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of common area maintenance.

(u) Implied Rights and Obligations. The Village Association shall have and may exercise any right or privilege given to it expressly in this Village Declaration or except to the extent limited by the terms and provisions of this Village Declaration, given to it by Applicable Law and shall have and may exercise every other right or privilege or power and authority necessary or desirable to

fulfill its obligations under this Village Declaration, including the right to engage labor and acquire use of or purchase property, equipment or facilities; employ personnel; obtain and pay for legal, accounting and other professional services; and to perform any function by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be necessary or desirable. Except as otherwise specifically provided in the Governing Documents, or by Applicable Law, all rights and powers of the Village Association may be exercised by the Board without a vote of the Members. The Board may institute, defend, settle, or intervene on behalf of the Village Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Village Common Areas and Facilities, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Village Association. In exercising the rights and powers of the Village Association, making decisions on behalf of the Village Association, and conducting the Village Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

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

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

(x) Merchant Association. The Owner or Owners of Commercial Units within the Village shall have the right, but not the obligation, to form an association of all of the merchants and owners of Commercial Units within the Village, for the purpose of addressing their particular needs and concerns (the "**Merchant Association**"). The Board shall have the right to grant special use rights, permits and privileges to any such Merchant Association and its members, including without limitation use of Village Common Areas and Facilities and other property maintained by the Village Association and the Village Plaza area for special events, concerts, promotions, Village Plaza dining, street fairs, valet

parking and other usages. In addition, the Village Association shall have the right to enter into agreements with members of the Merchant Association or with tenants of Owners of Commercial Units for purposes relating to the joint or cooperative marketing, advertising and promotion of the Village, regulating and providing parking within the Village, including Special Event parking, and other areas of interest to both the Village Association and its Members, and the Merchant Association and its members.

9.6. **Liability; Indemnification.** A member of the Board of Directors or an officer of the Village Association shall not be liable to any Owner, the Village Association or any Member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, except for acts of gross negligence or intentional acts. In the event any member of the Board of Directors or any officer of the Village Association is made a party to any proceeding because the individual is or was a director or officer of the Village Association, the Village Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by Applicable Law. Subject to and to the fullest extent allowed by Applicable Law, the Village Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section 9.6. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Village Association (except to the extent that such officers or directors may also be Members of the Village Association, and then only to the extent of such liability in such Person's capacity as a Member). The Village Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Village Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

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

9.8. **Appointment of Directors.** Effective as of the turnover meeting described in Section 9.7, the Board of Directors of the Village Association will be composed of one director representing each of the Projects (or the Voting Groups, if any) within the Village. The Board of Directors shall have an odd number of members and no less than three (3) members. In the event that there are fewer than three (3) Projects or Voting Groups within the Village and/or an even number of Projects or Voting Groups within the Village, the members of the Board selected in accordance with the preceding sentence shall select such additional member(s) of the Board to meet the requirements of this Section 9.8, with such additional member(s) selected from among Owners residing in the Village. In the event a Project has a

Project Association that is not otherwise included in a Voting Group, the director for such Project shall be appointed by the Board of Directors of the Project Association. If the Project does not have a Project Association and is not otherwise included in a Voting Group, the director for such Project shall be designated by the Owner of the Unit within the Project if the Project has only one Unit, or elected by the Owners of Units within the Project if the Project is composed of more than one Unit. Terms of office of directors shall be as set forth in the Bylaws. If additional Voting Groups are created within the Village, directors for such Voting Groups shall be added to the Board of Directors of the Village Association in the same manner.

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

9.10. **Contracts Entered into by Declarant or Prior to Turnover Meeting.** Notwithstanding any other provision of this Village Declaration, any leases or contracts (including management contracts, service contracts and employment contracts) entered into by Declarant or the Board of Directors on behalf of the Village Association prior to the turnover meeting described in Section 9.7 above shall have a term of three (3) years or less. In addition, any such lease or contract shall provide that it may be terminated without cause or penalty by the Village Association or Board of Directors upon not less than thirty (30) nor more than ninety (90) days' notice to the other party given at any time after the turnover meeting described in Section 9.7 above. For avoidance of doubt, the MIDA Hotel Lease shall not be subject to this Section 9.10, and shall continue in full force and effect notwithstanding any turnover of the Village Association.

9.11. **Project Associations.** Nothing in this Village Declaration shall be construed as prohibiting the formation of Project Associations within the Village, including, Condominium associations and neighborhood associations. Declarant or, by a majority vote, the Owners of Units within a Project may elect to establish a Project Association for such Project. The Board of Directors of the Village Association shall cooperate with the Project Associations in the performance of their duties and obligations under their respective Project Declarations, if any, and the Village Association shall cooperate with each Project Association so that each of those entities can most efficiently and economically provide their respective services to Owners. It is contemplated that from time to time either the Village Association or a Project Association may use the services of the other in the furtherance of their respective obligations, and they may contract with each other to better provide for such cooperation. The payment for such contract services or a variance in services provided may be reflected in an increased Assessment by the Village Association for the particular Project or by an item in the Project Association's budget which shall be collected through Project Assessments and remitted to the Village Association. If a Project Association fails or is unable to perform a duty or obligation required by its Project Declaration, then the Village Association may, after reasonable notice and an opportunity to cure given to the Project Association, perform such duties or obligations until such time as the Project Association is able to resume such functions, and the Village Association may charge the Project Association a reasonable fee for the performance of such functions.

9.12. **Project Committees.** With respect to any Project within the Village that does not have a Project Association, the Board of Directors of the Village Association shall appoint a Project Committee composed of three (3) to five (5) Owners of Units within such Project, which committee shall be responsible for recommending any Village Rules pertaining to any Project Limited Common Area within such Project, for decisions pertaining to the operation, use, maintenance, repair, replacement or improvement of such Project Limited Common Area, and for such other matters pertaining to the Project as the Board of Directors may elect to delegate to the Project Committee. Following the turnover meeting described in Section 9.7, the Board of Directors of the Village Association shall provide for election of such Project Committee members by Owners of Units within such Project.

ARTICLE 10

MAINTENANCE, UTILITIES AND SERVICES

10.1. Village Association Maintenance Duties and Responsibilities.

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

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

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

(b) **Other Areas.** The Village Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Village Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

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

(d) **Changes in Area of Common Responsibility.** Except as provided above, the Village Common Areas shall not be reduced except with Declarant's prior written approval as long as

Declarant owns any property described in Exhibit A of this Village Declaration (as it may be amended from time to time).

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

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

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

10.2. Snow Removal. To the extent not the obligation of Governmental Authorities with jurisdiction, the Village Association shall be responsible for the removal and disposition of snow from all private roads and parking areas maintained by the Village Association as well as from the Village Plaza. The Village Association may contract with the Mountain Operator or any other Person for all snow removal operations in the Village, including snow removal from the Village Plaza. The Village Association hereby agrees to, indemnify, defend and hold harmless the Mountain Operator and each of the Mountain Operator's Affiliates and each of their respective shareholders, officers, directors, employees, agents, attorneys and representatives (each an "**Indemnified Party**"), from and against any and all damages, awards, judgments, assessments, fines, sanctions, penalties, charges, costs, expenses, payments and other losses, however suffered or characterized, all interest thereon, all costs and expenses

of investigating or defending any such claim, lawsuit or arbitration and any appeal therefrom, all actual attorneys, accountants and investment bankers and expert witness fees incurred in connection therewith, whether or not any such claim, lawsuit or arbitration is ultimately defeated (except as provided below) and amounts paid incident to any compromise or settlement of any such claim, lawsuit or arbitration (but any such compromise or settlement will be subject to the reasonable approval of the Village Association) (collectively "Losses"), which may be incurred or suffered by any such Indemnified Party and which may arise out of or result from any claim from any Governmental Authority that the removal or dumping of snow in the manner described above is not permitted by Applicable Law, or any claim by any Guest or other Person that the Mountain Operator's removal and/or dumping of snow constitutes an actionable nuisance or is otherwise illegal, but no such indemnification, defense or hold harmless obligation will apply to the extent that the actions or omissions of the Mountain Operator are found by a court of competent jurisdiction to have constituted gross negligence, or to have been in violation of the terms of any permit of any Governmental Authority.

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

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

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

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

10.7. **Voluntary Cleanup Program.** Upon receipt of a Certificate of Completion from the Utah Division of Environmental Response and Remediation for the completion of the Voluntary Cleanup Program on the Property, Declarant or Declarant's Affiliates shall either (1) continue on its own to perform any on-going environmental monitoring, testing, or evaluation and the submission of any reports to the applicable Governmental Authority as required as part of the Certificate of Completion ("**Ongoing Monitoring**"), or (2) delegate, in whole or in part, the responsibility for any such Ongoing Monitoring to the Village Association. If Declarant or Declarant's Affiliates delegate responsibility for any such Ongoing Monitoring to the Village Association, the Village Association shall indemnify Declarant or Declarant's Affiliates for any Losses that may be incurred by Declarant or Declarant's Affiliates for any failure by the Village Association to perform such Ongoing Monitoring. Any costs incurred by the Village Association in connection with the Ongoing Monitoring shall be Common Expenses under this Village Declaration.

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

10.9. **Owner's Responsibility.**

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

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

10.10. **Maintenance of Project Common Area.**

(a) Any Project Association shall maintain its Project Common Area and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

(b) Any Project Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Village Common Area or public right-of-way lying between the boundary of its Project Common Area and any wall, fence, or curb located on the Village Common Area or public right-of-way within ten (10) feet of its boundary; provided, there shall be no

right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article 7.

(c) Upon resolution of the Board, Owners within each Project shall be responsible for paying, through Project Assessments, the costs of operating, maintaining, and insuring certain portions of the Village Common Area within or adjacent to such Project. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and greenspace between the Project and adjacent public roads, private streets within the Project, and ponds within the Project, regardless of ownership and regardless of the fact that such maintenance may be performed by the Village Association; provided, however, all Projects which are similarly situated shall be treated the same.

10.11. Responsibility for Repair and Replacement.

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

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

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

(d) This Section shall apply to any Project Association responsible for common property within the Project in the same manner as if the Project Association were an Owner and the common property were a Unit. Additional Recorded covenants applicable to any Project may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Project and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

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

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

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

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

10.14. Safety and Security. EACH OWNER AND OCCUPANT OF A UNIT, AND THEIR RESPECTIVE GUESTS AND INVITEES, SHALL BE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND THE SECURITY OF THEIR PROPERTY IN THE VILLAGE. THE VILLAGE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE VILLAGE DESIGNED TO ENHANCE THE LEVEL OF SAFETY OR SECURITY WHICH EACH PERSON PROVIDES FOR SUCH PERSON AND SUCH PERSON'S PROPERTY. NEITHER THE VILLAGE ASSOCIATION NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE VILLAGE, NOR SHALL EITHER BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE VILLAGE, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND SHALL BE RESPONSIBLE FOR INFORMING ITS GUESTS AND ALL OCCUPANTS OF ITS UNIT THAT THE VILLAGE ASSOCIATION, ITS BOARD AND COMMITTEES, AND DECLARANT ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE VILLAGE ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING UNITS AND THE CONTENTS OF UNITS, RESULTING FROM ACTS OF THIRD PARTIES.

ARTICLE 11

ASSESSMENTS

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

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

11.3. **Apportionment of Assessments.** Any Unit owned by Declarant, Declarant's Affiliates, or MIDA shall not be subject to Assessments until such time as the Unit is occupied for a residential use or a commercial use, as applicable, subject to accrual of reserves as described in Section 11.14; provided that when the MIDA Property is developed with a Condominium Hotel Project only the Condominium Units within the Condominium Hotel Project, and not the underlying land comprising the MIDA Property, shall be subject to Assessments. All other Units shall pay their share of the Annual Assessments, Special Assessments, Emergency Assessments and Project Limited Common Area Assessments as provided in this Article 11 commencing upon the date such Units are made subject to this Village Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Units subject to assessment.

11.4. **Designation of Cost Centers.** Declarant shall have the power and authority, pursuant to a Supplemental Declaration, to designate Units, Village Common Areas and, Village Common Facilities, as a Cost Center for purposes of expense accounting and the equitable allocation of Common Expenses in accordance with Section 11.5. In addition, it is anticipated that there may be established one or more residential Cost Centers and one or more commercial Cost Centers to fairly allocate certain commonly recurring Common Expenses as between Residential Units and Commercial Units.

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

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

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

apportioned among the Owners and their respective Units for which Annual Assessments have commenced based on the number of Assessment Units allocated to each Unit, as follows:

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

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

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

(iii) Annexation. After annexation of a Phase, the allocation, and Assessment of the Common Expenses in the Village Association's budget shall be reallocated equally among all Units within the Property, including those in the annexed Phase, in accordance with the allocation formulas set forth below.

(iv) Assessment Unit Allocations. Assessment Unit allocation for Units which are subject to assessment shall be based on the designated use, and in the case of Commercial Units, the size of the Units located on the Property, as further specified in subparagraph (b), below:

(b) Assessment Unit Allocation Among Units. The aggregate Common Expenses comprising the Annual Assessment shall be allocated among and assessed against all Units that are subject to assessment in accordance with the allocation of Assessment Units set forth below:

(i) Residential Units and Apartment Units. Residential Units, and apartment dwelling units shall be allocated one (1) Assessment Unit regardless of the size of the Unit or apartment unit;

(ii) Commercial Units. Commercial Units shall be allocated one (1) Assessment Unit for each one thousand five hundred (1500) square feet of retail, commercial or office space (including commercial spaces in a Condominium Project and commercial space in a Hotel, Hotel Condominium, Lodge or other structure), with any fraction being rounded up to the next half Assessment Unit;

(iii) Lodges and Hotels. Lodges and Hotels shall be allocated one (1) Assessment Unit for every five (5) rooms in the Lodge or Hotel that are available for short-term occupancy.

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

(d) Calculating the Amount of the Annual Assessment.

(i) Determining the Annual Assessment Amount for Common Expenses Exclusive of Cost Centers. Annual Assessments shall be levied initially against the Owners of Units, (including Declarant) in the amount set forth in the Village Association budget. Thereafter, beginning with the fiscal year immediately following the fiscal year in which Annual Assessments commence, not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Village Association's fiscal year, the Board shall estimate the total amount required to fund the Village Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any Reserve Fund established to defray the costs of future repairs, replacement or additions to the Village Common Facilities) by preparing and distributing to all Members a budget satisfying the requirements of this Village Declaration and the Bylaws. Any difference between the amounts actually expended for the maintenance and services described as Common Expenses, and the amounts set forth in the Village Association's budget shall be carried over to the following fiscal year and shall either increase or decrease the amounts allocated to the Units, as appropriate, for the following year. Subject to the Member approval requirements for certain Annual Assessment increases (see Section 11.5(e)) the total estimated Common Expenses shall become the Annual Assessment.

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

(iii) Effect of Board's Failure to Prepare and Distribute the Annual Budget. If the Board of Directors of the Village Association fails to distribute a budget satisfying the requirements of this Village Declaration and the Bylaws for any fiscal year within the time

period specified herein, the Board shall not be permitted to increase Annual Assessments for that fiscal year unless the Board first obtains the approval of the Members in accordance with Section 11.5(e).

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

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

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

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

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The Project Associations are hereby empowered and authorized, and upon the request of the Village Association are hereby required, to levy and collect from Owners of Units within their respective Projects the assessments owing to the Village Association as part of such Project Association's own assessment procedures and to promptly remit such Assessments collected by the Project Association to the Village Association. Assessments shall be levied against each Unit; provided, however, that upon formation, each Project Association is hereby designated as the agent of each Owner of Unit within such Project for receipt of notices of Assessments and the collection and remittance of Assessments to the Village Association. In the event that the Assessments collected and remitted to the Village Association by any Project Association are less than the entirety of the Assessments owed by Owners of Units within the Project administered by that Project Association, the Project Association shall provide a written statement to the Village Association identifying the delinquent Owner(s) and itemizing the amount of each such Owner's delinquency concurrently with submission of the Assessments to the Village Association.

11.6. Cost Center Assessments.

(a) Residential Cost Center Assessments. After the Board of Directors' adoption of an annual budget, the Village Association shall levy a residential cost center assessment ("**Residential Cost Center Assessment**") to cover expenses incurred by the Village Association in the operation, maintenance, repair and funding of reserves for certain improvements and services exclusively benefiting the Residential Units and Lodges within the Village. The Residential Cost Center Assessments shall be levied only against Residential Units and Lodges. The Residential Cost Center Assessments shall include, but are not limited to, the following:

- (i) maintenance, management, operation, repair and replacement of the parking areas designated for use by the Residential Units and Lodges, if any;
- (ii) utilities or other services necessary to the operation of the parking areas;
- (iii) insurance coverage for the parking areas;
- (iv) reasonable reserves deemed appropriate by the Board of Directors for repair and replacement of any improvements maintained by the Village Association within the parking areas;
- (v) servicing and disposal of the trash generated by the Residential Units and Lodges within the Village; and
- (vi) assessments payable to any Project Association resulting from the Village Association's ownership of the designated parking areas, if any.

The total Residential Cost Center Assessment shall equal the total costs and expenses incurred by the Village Association in the operation, maintenance and repair and funding of reserves for all of the designated parking areas, if any, and for the residential trash services.

Unless determined otherwise by the Board of Directors, the Residential Cost Center Assessments shall be levied and collected by the Village Association as a component of the Annual Assessment and shall be assessed against the Residential Units and Lodges based on the number of Assessment Units allocated to each such Unit divided by the total number of Assessment Units allocated to all such Units. The Village Association shall distribute to the Owners of the Residential Units and Lodges a pro forma operating statement and budget for each upcoming fiscal year which shall estimate

the expenses attributable to the Residential Cost Center Assessments and shall set forth the amount and payment schedule therefore.

(b) Commercial Cost Center Assessments. After the Board's adoption of an annual budget, the Village Association shall levy a commercial cost center assessment (the "**Commercial Cost Center Assessment**") to cover expenses incurred by the Village Association in the operation, maintenance, repair and funding of reserves for certain improvements and services exclusively benefiting Commercial Units. The Commercial Cost Center Assessments shall be levied only against Commercial Units. The Commercial Cost Center Assessments may include, but are not limited to:

- (i) servicing and disposal of the trash generated by Commercial Units within the Village, including, but not limited to, any trash compactors, collection equipment and related facilities, but excluding commercial trash services and equipment that serve, and are separately paid for, by a particular Commercial Unit; and
- (ii) funding the Village employee parking plan and employee transit system, if any.

Unless determined otherwise by the Board of Directors, the Commercial Cost Center Assessments shall be levied and collected by the Village Association as a component of the Annual Assessment and shall be assessed against each Commercial Unit based on the number of Assessment Units allocated to such Commercial Units divided by the total number of Assessment Units allocated to all Commercial Units. The Village Association shall distribute to Owners of Commercial Units a pro forma operating statement and budget for each upcoming fiscal year which shall estimate the expenses attributable to the Commercial Cost Center Assessments and shall set forth the amount and payment schedule therefore.

(c) Other Cost Centers. Pursuant to the general authority conferred on the Declarant and the Board of Directors of the Village Association to establish Cost Centers pursuant to Sections 11.4 and Section 11.6, Cost Centers may also be established on the basis of identifying Units within a particular Project or Projects as a Cost Center, rather than identifying the Cost Center as being comprised solely of either Residential Units or Commercial Units.

11.7. Special Assessments.

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

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

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

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

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

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

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

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

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

(e) Special Assessments Requiring Member Approval. No Special Assessment(s) described in this Section 11.7, which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Village Association for the fiscal year in which the Special Assessment(s) is levied, shall be made without the vote or written assent of the Members of the Village Association in accordance with Section 11.11. Notwithstanding the foregoing, the Board of Directors may levy in any fiscal year a Special Assessment applicable to that fiscal year without the vote of the Members if such Special Assessment is necessary for addressing an emergency situation as provided in Section 11.8. All Special Assessments must be fixed for all Units in the same manner and in the same proportions as Annual Assessments are levied, and they shall be collected in the manner and frequency determined by the Board of Directors from time to time.

11.8. Emergency Assessments.

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

(i) An extraordinary expense required by an order of a court;

(ii) An extraordinary expense necessary to repair or maintain the Village Common Areas and Facilities where a threat to personal safety is discovered; and

(iii) An extraordinary expense necessary to repair or maintain the Village Common Areas and Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 11.5; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

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

11.9. Project Limited Common Area Assessments. Annual Assessments, Special Assessments and Emergency Assessments relating to maintenance, upkeep, repair, replacement or improvements to Project Limited Common Area ("Project Limited Common Area Assessments") shall be assessed exclusively to the Units having the right to use such Project Limited Common Area.

11.10. Special Individual Assessments.

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

(b) With respect to any Special Individual Assessment, or portion thereof, levied other than as a late charge, the Owner of the Unit against which the Village Association seeks to levy

the Special Individual Assessment shall be provided notice and an opportunity to be heard in accordance with Section 11.11. Owners of Units against which a Special Individual Assessment has been levied shall pay the Special Individual Assessment when required by the Village Association.

11.11. Notice and Procedures for Member Approval of Certain Assessments Pursuant to Sections 11.5(e), 11.7 and 11.10. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 11.5(e), 11.7 and 11.10, the affirmative vote required to approve the increase shall be a majority of a quorum of the Members who are or may be liable for payment of the Assessment. The quorum required for such membership action shall be a majority of the Members, and the required affirmative vote shall be at least (i) in the case of an increase in the Annual Assessment or imposition of a Special Assessment, the affirmative vote of a majority of the Members casting votes at the meeting or by written ballot; and (ii) in the case of an increase in a Cost Center Assessment Component, the affirmative vote of a majority of the Project Associations whose members own Units within the Cost Center that is subject to the increased Cost Center Assessment Component casting votes at the meeting or by written ballot.

11.12. Annexation of Additional Property. When Additional Property is annexed to the Village, the Units included therein shall become subject to Assessments from the date an Annexation Declaration for such Additional Property is Recorded except as otherwise expressly provided herein. Units owned by Declarant or Declarant's Affiliates shall not be subject to Assessments until occupied for residential or commercial use, as applicable. All other Units shall pay such Assessments in the amount then being paid by other Units based upon the number of Assessment Units applicable to the Unit in question. The Board of Directors of the Village Association, however, at its option may elect to recompute the budget based upon the additional Units subject to assessment and additional Village Common Areas and Facilities and recompute Annual Assessments for all Units, including the new Units, for the balance of the fiscal year. Notwithstanding any provision of this Village Declaration apparently to the contrary, an Annexation Declaration annexing Additional Property may provide that such Additional Property does not have the right to use any particular Village Common Areas and Facilities, in which case such Additional Property shall not be assessed for the costs of operating, maintaining, repairing, replacing or improving such Village Common Areas and Facilities.

11.13. Operations Fund. The Village Association shall keep all funds received by it as Assessments, other than reserves described in Section 11.14, separate and apart from its other funds, in an account maintained in the name of the Village Association to be known as the "**Operations Fund**." The Village Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Village Common Areas and Facilities and of the Units situated upon the Property, including but not limited to:

- (a) Payment of the cost of maintenance, utilities and services as described in Article 10.
- (b) Payment of the cost of insurance as described in the Bylaws of the Village Association.
- (c) Payment of taxes assessed against the Village Common Areas and Facilities and any Improvements thereon.
- (d) Payment of the cost of other services which the Village Association deems to be of general benefit to the Owners, including but not limited to accounting, legal and secretarial services.

11.14. **Reserve Fund.** The Village Association shall establish a reserve fund for replacement of those Improvements to be maintained by the Village Association, all or a part of which will normally require functional replacement in more than three (3) and less than thirty (30) years ("Reserve Fund"), in compliance with the requirements of Applicable Law. The Reserve Fund shall be funded by Assessments against the Units assessed for maintenance of the items for which the Reserve Fund is being established ("Reserve Fund Assessment"). The Assessments under this Section begin accruing against each Unit from the date the Unit is sold by Declarant to a Person who is not a Builder or one of Declarant's Affiliates. Declarant shall not be obligated to contribute to the Reserve Fund at the time of the sale of each Unit by Declarant to a Person who is not a Builder one of Declarant's Affiliates. The amount assessed to each Unit shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The Reserve Fund shall be established in the name of the Village Association and shall be adjusted in accordance with the provisions of this Section 11.14 or otherwise at regular intervals to recognize changes in current replacement costs over time. Except during the Administrative Control Period, during which the following provisions shall not apply, the Village Association shall: (i) no less frequently than every six (6) years conduct a reserve analysis to determine the need for the Reserve Fund to accumulate reserve funds and the appropriate amount of the Reserve Fund, (ii) no less frequently than every three (3) years review and, if necessary, update a previously conducted reserve analysis, (iii) provide the Members a summary of the most recent reserve analysis or update annually and (iv) provide a complete copy of the most recent reserve analysis or update to any Member who requests the same. The Board may conduct the reserve analysis itself or engage a reliable person or organization to conduct the reserve analysis, provided the reserve analysis shall, at a minimum, include the following: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds, (ii) a statement of the probably remaining useful life, as of the date of such reserve analysis, of each component identified in the reserve analysis, (iii) an estimate of the cost to repair, replace or restore each component identified in the reserve analysis, (iv) an estimate of the total annual contribution to the Reserve Fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life, and (v) a reserve funding plan that recommends how the Village Association may fund such annual contribution. The Reserve Fund shall be used only for replacement of Village Common Areas or Village Common Facilities as determined by the Board of Directors and shall be kept separate from the Operations Fund. After the turnover meeting described in Section 9.7, however, if at least 51% of the total Class "A" votes in the Village Association approve, the Board of Directors may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from Annual Assessments, Special Assessments, Emergency Assessments or Project Limited Common Area Assessments. The budget line item for future Assessments for the Reserve Fund may be disapproved within forty-five (45) days of the day on which the budget is adopted by at least 51% of the total Class "A" votes in the Village Association in a vote held in a special meeting called for the purpose of holding such a vote. In the event such budget line item is disapproved, the Reserve Fund shall be funded pursuant to the line item for Reserve Fund Assessments from a previous budget that was not disapproved, if any. Following the second year after the turnover meeting, future Assessments for the Reserve Fund may be reduced, eliminated or decreased by an affirmative vote of not less than seventy-five percent (75%) of the voting power of the Village Association. Assessments paid into the Reserve Fund are the property of the Village Association and are not refundable to Owners of Units. Nothing in this Section 11.14 shall prohibit prudent investment of the Reserve Fund.

11.15. **Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Unit owned by it within the Property, does hereby covenant, and each Owner of any Unit by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant, to pay to the Village Association all Assessments or other charges as may be fixed, established and collected

from time to time in the manner provided in this Village Declaration or the Bylaws. Such Assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 12.6, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such Assessment or charge is made; provided, however, that no lien shall attach to any Unit owned by Declarant or Declarant's Affiliates until such time as such Unit is subject to Assessment pursuant to the requirements of Section 11.3. Such Assessments, charges and other costs shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 12 below.

11.16. **Exempt Property.** The following Property subject to this Village Declaration shall be exempt from the Assessments herein: (i) those portions of the Property dedicated in fee and accepted by a Governmental Authority; (ii) all Village Common Areas and Facilities; (iii) all Project Common Areas owned in fee by such Project Association or as tenants-in-common by the Owners of Residential Units within the Project; (iv) any Property owned by the Mountain Operator (or to which the Mountain Operator otherwise has rights by easement or contracts) and used primarily in connection with the operation or maintenance of the Mountainside Ski Property, Mountain Operations and related improvements; (v) any property owned, held or used in its entirety by Declarant, Declarant's Affiliates, the Master Association, the Village Association, or any Project Association for maintenance, cat barns, or other non-revenue generating facilities; (vi) any Unit or other property that the Resort Foundation owns; and (vii) any Property owned, held or used in its entirety by the Mountain Operator, the Master Association, the Village Association, or by any Governmental Authority, or for or in connection with the distribution of electricity, gas, water, sewer, telephone, television or other utility service, or for access to any property within or without the Village, or for or in connection with the Mountainside Ski Property or Mountain Operations.

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

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

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

11.20. **Capitalization of Village Association**. Upon acquisition of Record title to a Unit by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Village Association in an amount equal to one-sixth of the Annual Assessments per Unit for that year. This amount shall be in addition to, not in lieu of, the Annual Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Village Association for use in covering operating expenses and other expenses incurred by the Village Association pursuant to this Village Declaration and the Bylaws.

11.21. **Conveyance to Trustee**. Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to High Country Title, with power of sale, the Units and all Improvements to such Units for the purpose of securing payment of Assessments under the terms of this Village Declaration.

ARTICLE 12

ENFORCEMENT

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

12.2. **Nonqualifying Improvements and Violation of General Protective Covenants**. In the event any Owner constructs or permits to be constructed on such Owner's Unit an Improvement contrary

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

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

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

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

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

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

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

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

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

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

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

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

12.6. **Interest, Expenses and Attorneys' Fees.** Any amount not paid to the Village Association when due in accordance with this Village Declaration shall bear interest from the due date until paid at a rate three (3) percentage points per annum above the prevailing New York prime rate for Bank of America at the time, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Utah. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors of the Village Association not to exceed fifteen percent (15%) of such Assessment or any limitation imposed by Applicable Law. In the event the Village Association shall file a notice of lien, the lien amount shall also include the Recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Board of Directors. In the event the Village Association shall bring any suit or action to enforce this Village Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Village Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

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

ARTICLE 13

PROTECTION OF MORTGAGEES

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

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

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

13.3. **Curing Defaults.** A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure, or trustee's sale shall not be obligated to cure any breach of the provisions of this Village Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board of Directors made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Voting rights;

(B) Increases in Annual Assessments (excluding any increase due to an Approved Annual Assessment Adjustment) that raise the most recent Annual Assessment amount by more than twenty percent (20%);

(C) Reserves for maintenance, repair and replacement of the Village Common Areas and Facilities;

(D) Insurance or fidelity insurance requirements;

(E) Rights to use of the Village Common Areas and Facilities;

(F) Responsibility for maintenance and repair of the Property;

- (G) The interests in the Village Common Areas and Facilities;
- (H) The boundaries of any Unit; or
- (I) Any provisions which are for the express benefit of Mortgage holders, Eligible Mortgage Holders of first Mortgages on Units.

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

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

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

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

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

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

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

13.8. Right to Inspect Statements, Attend Meetings.

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

(b) All holders, insurers or guarantors of a first Mortgage shall be entitled, upon written request, to receive a copy of the annual financial statement for the immediately preceding fiscal year of the Village Association, subject to a reasonable charge as determined by the Board of Directors to

the party so requesting. Such financial statement shall be furnished within a reasonable time following such request.

(c) Any first Mortgagee shall, upon written request to the Village Association, be entitled, subject to a reasonable charge as determined by the Board of Directors, to receive written notice of all annual and special meetings of the Members, and first Mortgagees shall further be entitled to designate a representative to attend all such meetings; provided, however, nothing contained in this Section shall give a first Mortgagee the right to call a meeting of the Board of Directors or of the Members for any purpose or to vote at any such meeting.

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

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

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

ARTICLE 14

DECLARANT PRIVILEGES AND EXEMPTIONS

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

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

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

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

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

14.2 Exemptions from Restrictions Otherwise Applicable.

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

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

(c) Right to Develop. Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Village Common Areas for the purpose of making, constructing, and installing such improvements to the Village Common Areas as it deems appropriate in its sole discretion. Every Person that acquires any interest in the Village acknowledges that the Village is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property outside the Project in which such Person holds an interest, or (b) changes in the Mountainside Master Plan as it relates to property outside the Project in which such Person holds an interest.

(d) Right to Approve Additional Covenants. As long as Declarant owns property subject to this Village Declaration, no Person shall Record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Village without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant. HOWEVER, no portion of the subject Project shall be developed unless there has first been Recorded against the same, unless waived in writing by Declarant, covenants, conditions and restrictions approved in advance in writing by Declarant which shall, among such other things as Declarant may reasonably require, establish architectural and development guidelines

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for such Project, and which shall not be subject to amendment or modification with Declarant's prior written consent.

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

(f) Right to Transfer or Assign Declarant Rights. Any or all of Declarant's rights and obligations set forth in this Village Declaration or the Bylaws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Village Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time, occasional or limited basis, any right reserved to Declarant in this Village Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise. Upon such transfer, Declarant shall be relieved of all obligations related thereto.

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

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

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

14.4 Amendment of Plans. Declarant may, from time to time as it deems advisable, amend its plans for the Village, combine or split Units, and apply for changes in any or all of the Entitlement Documents, changes in zoning, use and use permits, for any property within the Village. Notwithstanding the anticipated development of the Village Property, nothing in this Village Declaration shall be

construed or interpreted to commit Declarant to the development of any portion of the Property, or to the annexation of all or any part of the Annexable Property to this Village Declaration or the Property, whether or not it is so developed.

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

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

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

14.8 No Amendment or Repeal. So long as Declarant owns any Unit within the Village, the provisions of this Article 14 may not be amended or repealed without the prior written consent of Declarant. Neither the Village Association nor any Member or Owner may take any action or adopt any rule or regulation that interferes with or diminishes any of Declarant's rights under this Article 14 without Declarant's prior written consent, or which interferes with or diminishes any rights of the Mountain Operator under the terms of the Mountain Easement Agreements and the Mountain Operator Agreements without the Mountain Operator's prior written consent, which consent may be given or withheld in the sole and absolute discretion of Declarant and the Mountain Operator.

14.9 **Exclusive Rights to Use Name of Development.** No Person shall use the names "Mayflower" or "Village at Mountainside" or any derivative of such names or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Projects within the Village may use the names "Mayflower" or "Village at Mountainside" in printed or promotional matter where such term is used solely to specify that such Project is located within the Village, and the Village Association shall be entitled to use the words "Mayflower" or "Village at Mountainside" in its name.

ARTICLE 15

ENVIRONMENTAL AREAS AND ISSUES

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

15.2. **Surface Water Management System.**

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

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

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

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

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

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

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

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

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

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

15.5. Effluent Disposal & Water Supply. By the act of purchasing or occupying property within the Village, all Owners understand and irrevocably consent to the possibility of irrigation of the Village Common Areas, other areas within the Village, and areas adjacent to the Village with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the appropriate Governmental Authority. Declarant, its designees, successors or assigns shall have the exclusive right to develop and utilize the ground and surface water resources of the Village for any legal purpose, including the distribution and use of such water beyond the Village. Such right shall include an easement over property for access, and for installation and maintenance of facilities and equipment to capture and transport ground water, surface water, and storm water runoff. The conveyance of any Unit to an Owner or to a Builder by Declarant does not include the right to develop or utilize the ground, surface, or storm water resources within such Unit. Declarant or its designee may establish

programs for reclamation of storm water runoff and wastewater for appropriate uses within or outside the properties and may require Owners and occupants of any Unit to participate in such programs to the extent reasonably practical. No Owner or occupant shall have any right to compensation for water claimed or reclaimed from such Owner's Unit. Additionally, the Board may establish restrictions on or prohibit outside use of potable water within the Village.

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

ARTICLE 16

VILLAGE AT MOUNTAINSIDE PROPERTY HAZARDS, RISKS AND LIABILITIES

16.1. Village Area Hazards and Risks. The Mountainside Ski Property may be used as a public ski area and related improvements, facilities and uses as well as for other seasonal recreational activities such as hiking, trail, bicycling, and other sports activities (collectively, "**Village Area Uses and Activities**"). By acceptance of a deed to a Unit, each Owner acknowledges and agrees that any such Village Area Use and Activities will enhance the value of the Unit by providing pleasant surroundings and open space for the Projects and the Units located therein. Each Owner further acknowledges (a) that the use and operation of the Mountainside Ski Property for Village Area Uses and Activities will involve certain risks to the Units located therein, including, but not limited to, damage to property and improvements and personal injury and death caused by errant skiers, snowboarders, trail bicyclists or other Village Area users, avalanche control, snowmaking and removal equipment, water runoff, drainage, and land movement, that may enter into the Units located therein, and (b) that while the Units located therein have been designed to minimize these risks to the extent reasonably possible, it would be impossible to render the Units located therein free of all Village Area Uses and Activity-related risks. Certain of the more common hazards associated with the operation of a year-round Village area are more particularly described, without limitation, in the sections below (collectively the "**Village Area Hazards**").

16.2. Errant Skiers, Snowboarders, Trail Bicyclists, and Other Village Area Users. Owners acknowledge the inherent risk of errant skiers, snowboarders, trail bicyclists, and other Village Area users and assume and accept such risk. Owners acknowledge and accept the risk that skiers, snowboarders, trail bicyclists, and other Persons engaged in Village Area Uses and Activities may errantly stray onto the Units located therein and each Owner agrees to release and waive any claims against Declarant, Declarant's Affiliates and the Village Association such Owner may have as a result of such errant activity.

16.3. View Impairment/Privacy. Owners have no guarantee that their view over and across the Mountainside Ski Property or Village will be forever preserved without impairment or that the view from the Mountainside Ski Property or Village will not be impaired. The Mountain Operator has no obligation to the Owners to prune trees or other landscaping, and the Mountain Operator may change, add to or reconfigure the Mountainside Ski Property and related facilities and improvements on the Mountainside Ski Property or Village, including structural improvements, trees, landscaping, drainage

patterns, trails, lifts, snowmaking and snow removal equipment and facilities and other improvements and facilities, without liability or obligation to any Owner.

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

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

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

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

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

16.9. **Waiver of Certain Assumed Risks (Village Hazards).** IN CONSIDERATION FOR THE ABOVE ACKNOWLEDGED ENHANCEMENT IN VALUE, AND WITH FULL AWARENESS OF THESE AND OTHER RISKS, BY ACCEPTING THE DEED TO A UNIT EACH OWNER FOR SUCH OWNER AND ITS GUESTS, INVITEES, LESSEES, SUCCESSORS AND ASSIGNS (COLLECTIVELY THE "OWNER'S RELATED PARTIES") HEREBY (A) ACKNOWLEDGES, ACCEPTS AND ASSUMES THE RISKS ASSOCIATED WITH VILLAGE AREA HAZARDS AND OF ANY DAMAGE TO PROPERTY OR TO THE VALUE OF PROPERTY, DAMAGE TO IMPROVEMENTS, PERSONAL INJURY OR DEATH, OR, THE CREATION OR MAINTENANCE OF A TRESPASS OR NUISANCE, CAUSED BY OR ARISING IN CONNECTION WITH ANY OF THE VILLAGE AREA HAZARDS OR OTHER RISKS, HAZARDS AND DANGERS ASSOCIATED WITH THE OPERATION OF A VILLAGE AREA (COLLECTIVELY THE "ASSUMED RISKS"), AND (B) RELEASES, WAIVES, DISCHARGES, COVENANTS NOT TO SUE, INDEMNIFIES AND AGREES TO DEFEND AND HOLD HARMLESS DECLARANT, DECLARANT'S AFFILIATES, THE MASTER ASSOCIATION, THE VILLAGE ASSOCIATION, AND THE MOUNTAIN OPERATOR, AND EACH OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, PARTNERS,

SHAREHOLDERS, MEMBERS, AFFILIATES, EMPLOYEES, CONTRACTORS, CONSULTANTS, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES"), AND EACH OWNER OR OWNER'S RELATED PARTIES FOR ANY DAMAGES, LOSSES, COSTS (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES), CLAIMS, DEMANDS, SUITS, JUDGMENTS, ORDINARY NEGLIGENCE, OR OTHER OBLIGATIONS ARISING OUT OF OR CONNECTED IN ANY WAY WITH ANY OF THE ASSUMED RISKS. THIS RELEASE IS INTENDED TO BE A COMPREHENSIVE RELEASE OF LIABILITY BUT IS NOT INTENDED TO ASSERT DEFENSES WHICH ARE PROHIBITED BY LAW. NOTWITHSTANDING THE FOREGOING, THIS SECTION 16.9 SHALL NOT LIMIT THE LIABILITY OF INDIVIDUAL SKIERS, SNOWBOARDERS, OR OTHER MOUNTAININSIDE SKI PROPERTY USERS USING THE MOUNTAININSIDE SKI PROPERTY, NOR SHALL IT LIMIT THE RIGHTS OF MIDA UNDER ANY ENTITLEMENT DOCUMENTS OR OTHER AGREEMENTS ENTERED INTO BETWEEN MIDA AND DECLARANT OR ANY OF DECLARANT'S AFFILIATES.

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

ARTICLE 17

PRIVATE AMENITIES AND OTHER VILLAGE ACTIVITIES

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

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

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

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

17.5. **Architectural Control.** Declarant, the Village Association, any Project Association, or any committee shall not approve any construction, addition, alteration, change, or installation on or to any portion of the Village which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the Private Amenity at least fifteen (15) days' prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have fifteen (15) days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. In the event the Private Amenity disapproves the proposal, the same shall be deemed disapproved by Declarant, the Village Association, any Project Association, and any committee. The failure of the Private Amenity to respond to the notice within the fifteen (15)-day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section 17.5 shall also apply to any work on the Village Common Areas and Facilities or any common property or common elements of a Project Association, if any.

17.6. **Limitations on Amendments.** In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenity, no amendment to this Article 17, and no amendment in derogation of any other provisions of this Village Declaration benefiting any Private Amenity, may be made without the written approval of the Private Amenity. The foregoing shall not apply, however, to amendments made by Declarant.

17.7. **Cooperation.** It is Declarant's intention that the Village Association and the Private Amenities shall cooperate to the maximum extent possible in the operation of the Village and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Village Association shall have no power to promulgate use restrictions or rules other than those set forth in the Village Rules affecting activities on or

use of the Private Amenity without the prior written consent of Declarant and the Owners of the Private Amenity affected thereby.

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

Each such Owner agrees that neither Declarant, the Village Association, nor any of Declarant's affiliates or agents shall be liable to an Owner or any other person claiming any loss of damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of Owner's Unit to any Private Amenity, including without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents, or the Village Association. Each such Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents, and the Village Association against any and all claims by Owner's visitors, tenants, and others upon such Owner's Unit.

ARTICLE 18

DISPUTE RESOLUTION AND LIMITATIONS ON LITIGATION

18.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Village Association and their respective officers, directors, and committee members, all Persons subject to this Village Declaration, and any Person not otherwise subject to this Village Declaration who agrees to submit to this Article 18 (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Village without litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in Section 18.1(b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "**Claim**" shall refer to any claim, grievance or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Village, other than matters of aesthetic judgment under Article 8, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

- (i) any suit by the Village Association to collect Assessments or other amounts due from any Owner;
- (ii) any suit by the Village Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Village Association's ability to enforce the provisions of this Village Declaration relating to creation and maintenance of community standards;
- (iii) any suit between Owners, which does not include Declarant or the Village Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (iv) any suit in which any indispensable party is not a Bound Party; and
- (v) any suit as to which any applicable statute of limitations would require within 180 days of giving the Notice required by Section 18.2(a), unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article 18.

18.2. Dispute Resolution Procedures.

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

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and the Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 18.2(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Village Association (if the Village Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Utah. If the Claimant

does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article 18. In such event, the party taking action to enforce the Agreement or award shall upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

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

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

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

18.4. **Non-Waiver**. The provisions of this Article 18 are intended to be applicable to any dispute arising out of this Village Declaration and shall not affect a Person's rights or remedies arising under any other agreement, including, but not limited to, the MIDA Hotel Lease, the Tax Sharing and Reimbursement Agreement, the Mountainside Master Development Agreement or any other agreement not arising out of this Village Declaration.

ARTICLE 19

MISCELLANEOUS PROVISIONS

19.1. **Amendment and Repeal**. Subject to Section 14.8 hereof and any limitation under Applicable Law, this Village Declaration, or any provision thereof, as from time to time in effect with

respect to all or any part of the Village Property, may be amended or repealed (a) prior to the expiration of the Administrative Control Period by the vote or written consent of Members representing seventy-five percent (75%) of the voting power in the Village Association, together with the written consent of the Class "B" Member, if such Class "B" Membership has not been terminated as provided in this Village Declaration. or (b) after the expiration of the Administrative Control Period, by the vote or consent of Members representing sixty seven percent (67%) of the voting power of the Village Association, together with the written consent of the Class "B" Member, if such Class "B" Membership has not been terminated as provided in this Village Declaration, in each case, computed in accordance with Sections 9.3. Any such amendment or repeal shall become effective only upon recordation in the Official Records of a certificate of the president or secretary of the Village Association setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved in the manner required by this Village Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent. If any Member consents to any amendment to this Village Declaration or the Bylaws, it will be conclusively presumed that such Member has the authority to consent, and no contrary provision in any Mortgage or contract between the Owners represented by such Member and a third party will affect the validity of such amendment. Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Village Declaration.

19.2. **Amendments by Declarant.** The planning and land use entitlements for the Village have not been fully completed and the layout of the Village, its land classifications, and governing structure and procedures for the Village are anticipated to change in the future. Notwithstanding the provisions of Section 19.1 above, until termination of the Class "B" Membership Declarant shall have the unilateral right to amend this Village Declaration or the Bylaws of the Village Association for any purpose. Such right to amend shall include, but not be limited to, the right of Declarant to amend this Village Declaration in order to comply with the requirements of any Applicable Law or requirement of MIDA, Wasatch County, the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Utah, or any corporation wholly owned, directly or indirectly, by the United States or the State of Utah which insures, guarantees or provides financing for a planned community or Units in a planned community. Any such amendment shall become effective only upon Recordation in the Official Records of a certificate of Declarant setting forth in full the amendment, amendments or repeal so approved and certifying that said amendment, amendments or repeal have been approved by Declarant.

19.3. **Duration.** This Village Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all land included within the Property and the Owners thereof for an initial period of fifty (50) years commencing with the date on which this document is first Recorded. Thereafter, this Village Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all Land within the Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Village Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Members representing sixty-seven percent (67%) of the voting power in the Village Association computed in accordance with Section 9.3(a) and (b) (including for this purpose the unplatte Units contemplated by Section 9.3(a) and (b)). Any such

termination shall become effective only if (a) a certificate of the president or secretary of the Village Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Official Records not less than six (6) months prior to the intended termination date. Such termination shall not have the effect of denying any Owner of ingress and egress to such Owner's Unit unless such Owner and any Mortgagee of such Owner's Unit have consented in writing to such access denial.

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

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

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

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

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

[Signature page follows]

Ent 483151 Bk 1308 Pg 0243

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

BLX MAYFLOWER LLC,
a Delaware limited liability company

By _____

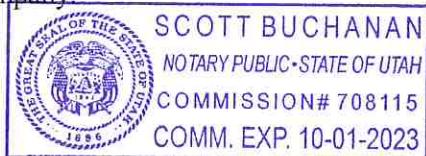
Kurt Krieg, Authorized Signatory


STATE OF UTAH)

:ss.

COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 20th day of August, 2020, by Kurt Krieg, as an Authorized Signatory of BLX Mayflower LLC, a Delaware limited liability company.




Notary Public

The undersigned, as owner of a certain portion of the Village Property, hereby acknowledges and consents to the execution and recordation of this Village Declaration.

BLX MWR HOTEL LLC

By: _____

Name: Kurt Krieg

Title: Authorized Signatory


STATE OF UTAH)

:ss.

COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 20th day of August, 2020, by Kurt Krieg, as an Authorized Signatory of BLX MWR Hotel LLC, a Delaware limited liability company.




Notary Public

CONSENT AND SUBORDINATION

Subject to the conditions set forth hereinbelow, Centennial Bank ("Centennial"), as the Beneficiary under that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement (the "Deed of Trust"), dated March 31, 2020, and recorded on March 31, 2020 as Entry No. 476275 in Book 1287 at Page 1248 of the Official Records of Wasatch County, State of Utah, and on March 31, 2020 as Entry No. 1129881 in Book 2562 at Page 1950 of the Official Records of Summit County, State of Utah, hereby consents to that certain Village Declaration of Covenants, Conditions, Restrictions and Easements for Village at Mountainside and Village dated as of August 20, 2020, and made by BLX MAYFLOWER LLC as Declarant (the "Village Declaration") and further subordinates all of its right, title, and interest in and to the real property encumbered by the Deed of Trust to the Village Declaration (collectively, the "Consent"). Centennial's execution and delivery of this Consent is expressly conditioned on the acknowledgement and agreement by any and all Persons that shall have or may acquire the right to enforce any of the terms and provisions of the Village Declaration, including without limitation, the Declarant, the Village Association, the Board of Directors, any Owner, and any Member (which acknowledgement and agreement to be bound by all conditions of this Consent shall be deemed given by each such Person's acceptance of the benefits of this Village Declaration as if such Person had executed an express acknowledgment thereof, and shall be binding on each of their respective successors and assigns), that (i) such Consent shall in no way affect, diminish, or act as a waiver by Centennial of any rights granted or benefits imparted to Centennial as a Mortgagee or Eligible Mortgage Holder under the Village Declaration, and that such rights and benefits shall also inure to any Person that is a Centennial designee or successor in interest to, or any other purchaser in a foreclosure, sale in lieu of foreclosure, or otherwise of, any portion of the Property or any estate or interest therein in which Centennial has an interest (each of the foregoing parties, a "Successor"), (ii) Centennial and any Successor is hereby recognized to be and shall continue to remain an Eligible Mortgage Holder under the Village Declaration, and (iii) the notice requirement specified in Section 13.6 of the Village Declaration for Centennial to be identified as an Eligible Mortgagee for all purposes under the Village Declaration, including without limitation, the right to receive a copy of any notice of default from the Board of Directors, is hereby deemed satisfied. Centennial hereby acknowledges and agrees that any notice to be provided to it as a Mortgagee or Eligible Mortgage Holder under or pursuant to the Village Declaration shall be deemed properly addressed if sent to Centennial Bank at 12 East 49th Street - 28th Floor New York, New York 10017 Attention: Francillia LeBlanc, with a copy to Herrick, Feinstein LLP, 2 Park Avenue, New York, New York 10016 Attention: Jonathan M. Markowitz, Esq., unless and until notice of a change of Mortgage (Deed of Trust) ownership or Eligible Mortgage Holder address has been given to the Village Association in writing in the manner specified in the Village Declaration for giving notices. All capitalized terms used and not defined in this Consent shall have the meanings ascribed to them in the Village Declaration.

DATED the ____ day of August, 2020.

Centennial Bank, an Arkansas state chartered bank

By: _____
Name: Sanjay Maridev Ramakrishna
Title: Director – Portfolio Manager

Ent 483151 Bk 1308 Pg 0245

STATE OF NEW YORK)
) ss:
COUNTY OF KINGS)

On the 14th day of August in the year 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Sanjay Maridev Ramakrishna, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.



NOTARY PUBLIC

MARCIA A. FORBES BENNETT
Notary Public, State of New York
No. 01FO6204538
Qualified in Queens County
Certificate Filed in New York County
Commission Expires May 18, 2021

Notary Public currently located in Queens County via
video teleconference in accordance with New York State
Executive Order No. 202.7

EXHIBIT A

Village Property Legal Description

All of Parcels 2 through 5, Lots 1 through 10 and Lot 21 of the MIDA MASTER DEVELOPMENT PLAT, Recorded June 30, 2020 as Entry No. 480155 on file and of record in Wasatch County Recorder's Office, as such LOTS are depicted and described by metes and bounds on the MIDA Master Development Plat.

AND

Lot 1 (MIDA Parcel) and Lot 2 (Air Force Parcel), MIDA / Air Force Parcel Plat, according to the official plat thereof, on file and of record in the office of the Wasatch County Recorder, recorded on December 19, 2019 as Entry No. 472208 in Book 1276 at Page 874-883.

WASATCH COUNTY TAX SERIAL NOS:

OIX-P002-0-025-024
OIX-P003-0-025-024
OIX-P004-0-025-024
OIX-P005-0-025-024
OIX-L001-0-025-024
OIX-L002-0-025-024
OIX-L003-0-025-024
OIX-L004-0-025-024
OIX-L005-0-025-024
OIX-L006-0-025-024

OIX-L007-0-025-024
OIX-L008-0-025-024
OIX-L009-0-025-024
OIX-L010-0-025-024
OUF-0001-0-025-024
OUF-0002-0-025-024

EXHIBIT B

Annexable Property Legal Description

[None identified at this time.]

EXHIBIT C

Legal Description of MIDA Property

Lot 1 (MIDA Parcel), MIDA / Air Force Parcel Plat, according to the official plat thereof, on file and of record in the office of the Wasatch County Recorder, recorded on December 19, 2019 as Entry No. 472208 in Book 1276 at Page 874-883.

DUF-0001-02025-024

EXHIBIT D

Interpretation

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

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

EXHIBIT E

Bylaws

**BYLAWS
OF
VILLAGE AT MOUNTAINSIDE ASSOCIATION, INC.**

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

1.1 **Name.** The name of the corporation is Village at Mountainside Association, Inc. (the "Village Association").

1.2 **Principal Office.** The principal office of the Village Association shall be located at 2750 W. Rasmussen Road, Suite 206, Park City, Utah 84098. The Village Association may have such other offices, either within or outside the State of Utah, as the Board may determine or as the affairs of the Village Association may require.

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

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

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

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

2.3 **Annual Meetings.** The Village Association's first meeting, whether a regular or special meeting, shall be held within one year after the date of the Village Association's incorporation. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Village Association's fiscal year on a date and at a time set by the Board.

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

2.5 **Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meeting of the Village Association shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 30 days before the date of such meeting, by or at the direction of the President or the secretary of the Village Association (the "Secretary") or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by

statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice shall be deemed to be delivered when deposited with a mail carrier in accordance with Section 6.5 hereof and addressed to the Member at the Member's address as it appears on the Village Association's records, with postage prepaid.

2.6 Waiver of Notice. Waiver of notice of a meeting of the Village Association shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Village Association, either before or after such meeting. Any Member who attends a meeting waives notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

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

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

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

2.10 Conduct of Meetings. The President shall preside over all meetings of the Village Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.11 Actions Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Village Association may be taken without a meeting, prior notice, or a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated, and delivered to the Village Association. Such consents, as filed with the minutes of the Village Association, shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving written consent authorization for any action, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE III **BOARD OF DIRECTORS: SELECTION, MEETINGS, POWERS**

A. Composition and Selection

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

3.2 Number of Directors. The Board shall initially consist of three (3) Directors. Provided the Board shall at all times consist of an odd number of Directors, the number of Directors comprising the Board may be altered, by the vote of Members holding a majority of the votes entitled to be cast for the

election of Directors, to include between three (3) and seven (7) Directors. The initial Board shall consist of three (3) Directors as identified in the Articles.

3.3 Directors During Administrative Control Period. Directors appointed by the Class "B" Member pursuant to Section 3.5 hereof shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

3.4 Nomination and Election Procedures.

(a) **Nominations and Declarations of Candidacy.** Prior to each election of Directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a Director may file as a candidate for any position that Class "A" votes shall fill. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of Directors in a fair, efficient and cost-effective manner. Except with respect to Directors selected by the Class "B" Member, nominations for election to the Board may also be made by a nominating committee (the "Nominating Committee"). The Nominating Committee, if any, shall consist of a chairperson, who shall be a member of the Board, and three or more representatives of Members. The Board shall appoint members of a nominating committee (the "Nominating Committee") not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced in the notice of each election. The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. The Nominating Committee shall nominate Directors to be elected at large by all Class "A" votes. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Nominations for Directors may also be made by petition filed with the Secretary at least seven (7) days prior to the annual meeting of the Village Association, which petition shall be signed by ten (10) or more Members and signed by the nominee named therein indicating such nominee's willingness to serve as a Director, if elected. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes. In the event that the Class "B" Member designates Voting Groups as set forth in the Village Declaration, a nominee for a Director position elected by the Commercial Voting Group (defined below) must be an Owner of a Commercial Unit and a nominee for a Director position elected by the Residential Voting Group (defined below) must be an Owner of a Residential Unit.

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

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

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

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

(c) Notwithstanding the foregoing Subsection 3.5(b), in the event that the Class "B" Member designates Voting Groups as set forth in the Village Declaration, the election of Directors to the Board shall be governed by this Subsection 3.5(c). Within 120 days after termination of the Administrative Control Period, the then-sitting Board will be dissolved, the number of Directors elected to the Board shall be increased to five (5) and the President shall call for an election by which the Voting Group or Voting Groups designated for Projects comprised of Commercial Units ("Commercial Voting Group") shall be entitled to elect two (2) of the five (5) Directors and the Voting Group or Voting Groups designated for Projects comprised of Residential Units ("Residential Voting Group") shall be entitled to elect two (2) of the five (5) Directors. If the number of Class "A" votes held by Owners of Units in the Commercial Voting Group is greater than the number of Class "A" votes held by Owners of Units in the Residential Voting Group, the Commercial Voting Group shall be entitled to elect the fifth (5th) Director. If the number of Class "A" votes held by Owners of Units in the Residential Voting Group is greater than the number of Class "A" votes held by Owners of Units in the Commercial Voting Group, the Residential Voting Group shall be entitled to elect the fifth (5th) Director.

3.6 Removal of Directors and Vacancies. By the vote of Members holding a majority of the votes entitled to be cast for the election of Directors, the Members may remove, with or without cause, any Director elected by Members. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such Director. Any Member-elected Director who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any Assessment or other charge due the Village Association, may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term. Any Director whom the Board appoints shall be selected from among the Members. This Section shall not apply to Directors the Class "B" Member appoints. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a Director appointed by or elected as a representative of the Class "B" Member. In the event that the Class "B" Member designates Voting Groups as set forth in the Village Declaration, Directors elected by the Commercial Voting Group may be removed only by the vote of Members holding a majority of the votes entitled to be cast in the Commercial Voting Group for the election of Directors, and Directors elected by the Residential Voting Group may be removed only by the vote of Members holding a majority of the votes entitled to be cast in the Residential Voting Group for the election of Directors.

B. Meetings

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

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

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

3.10 Notice; Waiver of Notice.

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

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

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

3.12 Quorum of Board. At all Board meetings, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Village Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the Directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13 Conduct of Meetings. The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board Meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.14 Open Meetings; Executive Session.

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

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

3.15 Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties

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

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

(a) preparing and adopting, in accordance with the Village Declaration, an annual budget, which budget shall include a line item for future Assessments for the Reserve Fund, which shall be approved in accordance with the Village Declaration, and establishing each Owner's share of the Common Expenses;

(b) levying and collecting fines or Assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Village Common Areas consistent with the Community-Wide Standard;

(d) designating, hiring, and dismissing personnel necessary to carry out the Village Association's rights and responsibilities and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

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

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- (f) making and amending use restrictions and rules in accordance with the Village Declaration;
- (g) opening bank accounts on behalf of the Village Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Village Common Area in accordance with the Village Declaration and these Bylaws;
- (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Village Association; provided, the Village Association's obligation in this regard shall be conditioned in the manner provided in the Village Declaration;
- (j) obtaining and carrying property and liability insurance, as provided in the Village Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Village Association;
- (l) keeping books with detailed accounts of the Village Association's receipts and expenditures;
- (m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Village Association as provided in Section 6.4 hereof;
- (n) permitting utility suppliers to use portions of the Village Common Areas reasonably necessary to the ongoing development or operation of the Village;
- (o) indemnifying a Director, officer or committee member, or former Director, officer or committee member of the Village Association to the extent such indemnity is required by Utah law, the Articles, or the Village Declaration; and
- (p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Village Declaration.

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

3.19 Right of Class "B" Member to Disapprove Actions. So long as the Class "B"

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

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

(b) **Opportunity to be Heard.** The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

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

3.20 Management. The Board may employ for the Village Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in Sections 3.17(a) (with respect to adoption of the budget), 3.17(b), 3.17(f), 3.17(g) and 3.17(i). The Class "B" Member or its affiliate may be employed as managing agent or manager. The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

3.21 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Village Association shall not be commingled with any other

accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Village Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Village Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Village Association shall be disclosed promptly to the Board;

(f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Village Association at least quarterly containing:

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

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

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

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

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

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or complied basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Village Association shall provide an audited financial statement. During the Administrative Control Period, the annual report shall include certified financial statements.

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

3.23 Rights to Contract. The Village Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Member and other owners or residents associations, within and outside the Village. Any common management agreement shall require the consent of a majority of the Board.

3.24 **Enforcement.** The Village Association shall have the power, as provided in the Village Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Village Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) **Notice.** The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, including any fine in an amount set forth in the Village Rules, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee (as hereinafter defined), if one has been appointed pursuant to Article V hereof; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) **Hearing.** If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

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

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

3.25 **Board Standards.** In the performance of their duties, Village Association Directors and officers shall be insulated from personal liability as provided by Utah law for directors and officers of non-profit corporations, and as otherwise provided in the Governing Documents. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule. As defined herein, a Director shall be acting in accordance with the business judgment rule so long as the director: (a) acts within the express or implied terms of the Governing Documents and his or her actions are not *ultra vires*; (b) affirmatively undertakes to make decisions which are necessary for the

continued and successful operation of the Village Association and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and (d) acts in a non-fraudulent manner and without reckless indifference to the affairs of the Village Association. A Director acting in accordance with the business judgment rule shall be protected from personal liability. Board determinations of the meaning, scope, and application of Governing Documents provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

ARTICLE IV OFFICERS

4.1 Officers. Officers of the Village Association shall be a President, Vice President, Secretary, and treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more assistant secretaries and one or more assistant treasurers, as it shall deem desirable. Such officers to have such authority and perform such duties as the Board prescribes. Any two or more officers may be held by the same person, except the offices of President and Secretary.

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

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

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

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

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Village Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

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

ARTICLE V COMMITTEES

5.1 General. The Board may appoint such committees as it deems appropriate to perform

such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

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

ARTICLE VI MISCELLANEOUS

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

6.2 Parliamentary Rules. Except as may be modified by Board resolution, *Robert’s Rules of Order* (current edition) shall govern the conduct of Village Association proceedings when not in conflict with Utah law or the Governing Documents.

6.3 Conflicts. If there are conflicts among the provisions of Utah law, the Articles, the Village Declaration, and these Bylaws, the provisions of Utah law, the Village Declaration, the Articles, and the Bylaws (in that order) shall prevail.

6.4 Books and Records.

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

(b) Rules for Inspection. The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

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

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

- (a) if to a Member or Members, at the address which the Member or Members have designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Members;
- (b) if to the Village Association, the Board, or the managing agent, at the principal office of the Village Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or
- (c) if to any committee, at the principal address of the Village Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 **Amendment.**

- (a) **By Class "B" Member.** Prior to termination of the Administrative Control Period, the Class "B" Member may unilaterally amend these Bylaws. Thereafter, the Class "B" Member may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Units; provided, however, any such amendment shall not materially and adversely affect the title to any Unit unless the Owner shall consent thereto in writing. Additionally, so long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these Bylaws for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 2% of the Members.
- (b) **By Members Generally.** Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51 % of the total Class "A" votes in the Village Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.
- (c) **Validity and Effective Date of Amendments.** Amendments to these Bylaws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.