



BRIAN HEAD

The Regular Meeting of the
Brian Head Planning Commission
Town Hall - 56 North Highway 143 - Brian Head, UT 84719

Zoom Meetings ([Click Here](#))

Zoom Meeting ID# 227 198 1271

TUESDAY, May 20, 2025 @ 1:00 PM

AGENDA

A. CALL TO ORDER **1:00PM**

B. PLEDGE OF ALLEGIANCE

C. DISCLOSURES

D. APPROVAL OF THE MINUTES

May 6, 2025 Planning Commission Meeting

E. PUBLIC INPUT/ REPORTS (Limited to three (3) minutes) Non-Agenda Items

F. AGENDA ITEMS:

1. MINOR PLAT AMENDMENT at Elevate Town Homes – Greg Sant, Planning Administrator.

The Commission will consider a Minor Plat Amendment regarding Buildings 4, 6, and 11.

2. RETAINING WALL at 365 E Trail Road – Greg Sant, Planning Administrator. The Commission will review the design for a Retaining Wall that is currently built.

G. ADJOURNMENT

Date: May 20, 2025

Available to Board Members as per Ordinance No. 11-003 authorizes public bodies, including the Town, to establish written procedures governing the calling and holding of electronic meetings at which one or more members of the Council may participate by means of a telephonic or telecommunications conference. In compliance with the Americans with Disabilities Act, persons needing auxiliary communications aids and services for this meeting should call Brian Head Town Hall @ (435) 677-2029 at least three days in advance of the meeting.

CERTIFICATE OF POSTING

I hereby certify that I have posted copies of this agenda in two public and conspicuous places within the Town Limits of Brian Head; to wit, Town Hall and Post Office, and have posted such copy on the Utah Meeting Notice Website and have caused a copy of this notice to be delivered to the Daily Spectrum, a newspaper of general circulation.

Ciera Clariage, Deputy Clerk



BRIAN HEAD

STAFF REPORT TO THE PLANNING COMMISSION

ITEM: ELEVATE TOWN HOMES MINOR PLAT AMENDMENT

AUTHOR: Greg Sant
DEPARTMENT: Planning and Building Department
DATE: May 20, 2025
TYPE OF ITEM: Legislative Action

SUMMARY:

The Planning Commission will review the proposed Minor Plat Amendment for Elevate Town Homes at 160 W. Ridge View St. in Brian Head. Amended Plat affects the Common Area as well as Units 4A-C and 6A-C.

BACKGROUND:

Elevate Town Homes was approved and recorded in December of 2021 and started construction in 2022. Buildings 7, 8, 9, and 10 are completed and have closed with their buyers. Buildings 1, 2, 3, and 5 are under construction currently. Buildings 4, 6, and 11 have submitted plans for building permits. The reason for the proposed Plat Amendment is because the applicant would like to add some area to Building 4 and slight orientation shifts of Buildings 11 and 6. On May 14, 2025 the Amended Plat was revised so that it only has changes to Building 4 and 6. Building 11 is now left in the same location as shown on the December 2021 Plat.

On May 6, 2025 the Planning Commission held a Public Hearing and reviewed this application where it was tabled. There were numerous issues that needed to be addressed:

1. **Building 11 will remain in its original location as shown on the December 2021 Plat.**
2. Some of the easements were not shown as previously shown on the original plat from 2021. - **All easement are now shown on revised Amended Plat.**
3. **Notes on the Proposed Amended Plat are now identical to the 2021 Plat.**
4. Since the movement of the 2 buildings affects the Common Area, there needs to be an acknowledgement from the HOA that they approve. – **However, per the CC&R's that are attached, Section 4.4 gives authority to the Declarant to revise the layout of the buildings and to reconfigure the common area without approval from the HOA.**
5. The Title Report that was submitted only covers the 3 buildings, not the entire legal description of the amended plat. - **We have received a new title report that addresses the entire parcel and all owners of sold units.**
6. An issue was raised about the ski-in/ski-out trail easement that is recorded with the existing plat. During the conversation it was brought to the Town's attention by residents of neighboring Copper Chase Condominiums that they were being denied access to that easement by residents of Elevate. There were differing opinions raised during the public hearing whether that easement was considered public or not. Staff committed to follow-up on the legal status of that easement. – **Since that public hearing, staff has conferred with the Town Attorney as well as the County Recorder and has been advised by both that the easement as currently recorded on the existing plat should be considered a public easement. In the proposed amended plat, the ski-in/ski-out trail**

easement is designated exactly the same as it was in the previously approved/recorded plat. Therefore, as far as Brian Head Town is concerned, there is a public trail easement recorded that is available for access to residents of Copper Chase and others and access should not be denied. As far as staff is concerned, this matter should be resolved, and the proposed plat is in compliance with our Land Management Code as it pertains to the required trail easements.

ANALYSIS:

The following are the Standards for Review for a Minor Plat Amendment:

1. The proposed subdivision and use conform to the Town General Plan, Zoning Regulations, Public Works Standards, Design Standards chapter 12 of this title, and other relevant sections of this title.
2. The proposed method for fire protection complies with this title, and other regulations as applicable.
3. The layout/design is responsive to the constraints of topography, soil types, geologic hazards, watercourses and floodplains, and visual impacts. (amd. ord. 24-014, 10-8-24)
4. Adequate public services are available to meet the needs of the proposed subdivision, including roads, water, sewer, storm water, gas, electric, telecommunications, trails, transit, snow storage areas, police and fire protection, and recreation.
5. Provide evidence to show that there is no encumbrance, lien or conveyance restricting the intended use of the lot.
6. Provide evidence from the County Treasurer that all ad valorem taxes applicable to the property have been paid.
7. Provide signature blocks on the plat signed by a representative of public utilities which identify their approval.

FINDINGS AND ANALYSIS:

1. The proposed amendment to the subdivisions conforms to the Town General Plan and Zoning regulations as outlined in the LMC.
2. Fire Protection will not change and once the project is completed it will comply with all Town regulations.
3. The layout and design are responsive to the constraints of topography and geologic hazards.
4. Adequate public services are available to meet the needs of the proposed change.
5. There is no incumbrance restricting the intended use of this change.
6. Per the current Title Report, all property taxes have been paid for 2024.
7. Applicants have submitted a draft Final Plat Amendment that is being reviewed by the Town Surveyor, and staff should have his findings by meeting time.
8. Finally, proposed changes do not affect the open space requirements, nor the parking requirements originally approved by the Town.

STAFF RECOMMENDATION:

Staff Recommends this plat amendment be approved based on the Findings and Analysis above.

PROPOSED MOTION:

I move that the Proposed Plat Amendment at 160 W. Ridge View St, Units 4A-C and 6A-C be approved per the Findings and Analysis outlined above.

ATTACHMENTS:

A – Current Amended Plat #1

B – Revised Proposed Amended Plat #2

C – Recorded CC&R's

160 WEST RIDGE VIEW STREET BRIAN HEAD, UTAH
LOCATED IN THE SW ¼ OF THE NW ¼ AND A PART OF THE NW
¼ OF THE SW ¼ OF SECTION 2, TOWNSHIP 36 SOUTH, RANGE 9
WEST, SALT LAKE BASE AND MERIDIAN

I, Thomas W. Avant, a Professional Land Surveyor, License No. 5561917, hold this license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act and have completed this survey of the Property described herein in accordance with Section 17-23-17 and have verified all measurements

I, Thomas W. Avant, a Provisional Land Surveyor, License No. 5561917, hold this license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act and have completed this survey of the Property described hereon in accordance with Section 17-23-17 and have verified all measurements and have placed monuments as represented on this plat. I certify that by authority of the heroen owners, I have made a survey of the tract of land as shown on this Plat and have announced the subdivision as well as Public Utility and Ingress & Egress Easements, as shown, which are herein after known as

and that the same has been correctly surveyed and staked on the ground as sown on this plat.

Date: 11/10/2021

The purpose of this survey was to retrace and mark on the ground the lines as shown on this Amended Plat and to re-divide the parcel of land into 33 Lots/Units, Common Areas, Limited Common Areas, Roadways and Easements at the request of the client. The purpose of the survey is to delineate the boundaries. All corners are set and found as shown. The basis of bearing for this survey is the Utah State Plane coordinate system South Zone, as measured between the West $\frac{1}{4}$ and East $\frac{3}{4}$ Corners of Section 2, T36S, R9W, S18&M, with a bearing of S89°11'17"E and a distance of 5294.97', as shown on this plat.

[illegible]

Commencing at the West Corner of Section 2, Township 35 North, Range 9 West, Salt Lake Base and Meridian; thence, along the East-Side Line, South 89° 13' 17" East 136.99 feet, to the POINT OF BEGINNING, containing 4.2333 acres (more or less); thence, along the East-Side Line, South 89° 13' 17" East 136.92 feet; thence South 11° 39' 51" East 128.92 feet; thence South 70° 34' 34" West 154.87 feet; thence South 15° 50' 20" West 150.00 feet; thence South 82° 09' 51" East 27.00 feet, to the beginning of a curve, thence, along the curve, South 33° 15' 00" East 111.54 feet, to the intersection of the East-Side Line of the above-mentioned land with the East-Side Line of the land of the State of Utah, thence, along the west line of the above-mentioned land, South 88° 44' 51" East 52.16 feet, to the westerly corner of the Copperhead Condominiums Phase 3 as recorded in the Office of the Iron County Recorder's, Utah (Entry # 252942); thence, along the East-Side Line of the above-mentioned land, South 88° 44' 51" East 52.16 feet, to the right of way of Ridge View Street and the beginning of a non tangential curve; thence, along the right-of-way and the curve to the north, 114.68 feet, having a radius of 117.12 feet, a central angle of 114.68 degrees, to the intersection of the right-of-way of Ridge View Street with the East-Side Line of the above-mentioned land, thence, along the East-Side Line, South 01° 98' 00" East, to the beginning of a curve, thence, along the curve to the left, 224.38 feet, having a radius of 116.54 feet, a central angle of 116.54 degrees, to the intersection of the East-Side Line of the above-mentioned land with the East-Side Line of Lot 3 of Aspen View Subdivision as recorded in said entry (Entry # 361643); thence, depecting said right-of-way and along the northerly line of the 2.5233 of said subdivision, North 44° 39' 00" East 102.16 feet; thence, along the East-Side Line, South 89° 13' 17" East 136.92 feet, to the POINT OF BEGINNING, containing 4.2333 acres (more or less).

Parcel Line Table		
Line #	Length	Direction
11	22.00	S71°52' 52.24"E
12	20.00	S73°32' 07.76"W
13	22.00	S15°27' 52.24"E
14	6.94	S11°44' 13.18"E
15	0.94	N11°40' 05.43"E
16	14.34	N73°32' 07.76"W
17	6.20	N73°32' 07.76"W
18	11.14	N63°08' 22.20"E
19	10.14	N73°32' 07.76"W
20	10.14	N73°32' 07.76"W
21	11.14	N63°08' 22.20"E
22	11.14	N73°32' 07.76"W
23	11.14	N63°08' 22.20"E
24	23.28	N73°32' 07.76"W
25	10.14	N63°08' 22.20"E
26	10.14	N73°32' 07.76"W
27	10.14	N63°08' 22.20"E
28	10.14	N73°32' 07.76"W
29	10.14	N63°08' 22.20"E
30	10.14	N73°32' 07.76"W
31	10.14	N63°08' 22.20"E
32	10.14	N73°32' 07.76"W
33	10.14	N63°08' 22.20"E
34	10.14	N73°32' 07.76"W
35	10.14	N63°08' 22.20"E
36	10.14	N73°32' 07.76"W
37	10.14	N63°08' 22.20"E
38	10.14	N73°32' 07.76"W
39	10.14	N63°08' 22.20"E
40	10.14	N73°32' 07.76"W
41	10.14	N63°08' 22.20"E
42	10.14	N73°32' 07.76"W
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97	10.14	N63°08' 22.20"E
98	10.14	N73°32' 07.76"W
99	10.14	N63°08' 22.20"E
100	10.14	N73°32' 07.76"W

1. THIS PLAT IS SUBJECT TO THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR SOJOURN TOWN HOMES, A PLANNED UNIT DEVELOPMENT ("DECLARATION") THAT HAS BEEN OR WILL BE RECORDED IN THE OFFICE OF THE IRON COUNTY RECORDER WHICH SHALL SET FORTH THE RESTRICTIONS AND GENERAL PLAN OF IMPROVEMENT FOR THE PROPERTY DESCRIBED IN THIS PLAT. CAPITALIZED TERMS NOT OTHERWISE DEFINED IN THIS PLAT SHALL HAVE THE MEANINGS ASCRIBED TO SUCH TERMS IN THE DECLARATION.

2. PURSUANT TO THE DECLARATION, THE ASSOCIATION IS RESPONSIBLE FOR MAINTAINING:
 - 2.1. ALL COMMUNITY AREAS, INCLUDING, WITHOUT LIMITATION, ALL PRIVATE ROADWAYS, LANDSCAPED AREAS, COMMUNITY SIGNAGE, LIGHTING, SIDEWALKS, AND SIMILAR IMPROVEMENTS.
 - 2.2. ALL LIMITED COMMUNITY AREAS, INCLUDING, WITHOUT LIMIT, DRIVEWAYS, DECKS AND PATIOS;
 - 2.3. ALL EXTERIOR STRUCTURAL ELEMENTS OF THE RESIDENCES TO BE CONSTRUCTED ON THE LOTS, AND
 - 2.4. ALL LANDSCAPED AREAS, CONCRETE IMPROVEMENTS, PATIOS AND DRIVEWAYS LOCATED ON A LOT. IF, ANY, AS SUCH MAINTENANCE OBLIGATIONS ARE FURTHER DESCRIBED IN THE DECLARATION, THE AREAS DESIGNATED AS LOT/PRIVATE OWNERSHIP ON THIS PLAT ARE TO BE PRIVATE OWNERSHIP AND WILL BE SUBJECT TO THE MAINTENANCE OBLIGATIONS ENJOINED BY THE ASSOCIATION PURSUANT TO THE DECLARATION. UNLESS DECLARANT OTHERWISE DETERMINES IN ITS SOLE AND EXCLUSIVE DISCRETION, ALL OTHER AREAS OF THE COMMUNITY EXCEPT FOR THE LOTS DESIGNATED AS PRIVATE OWNERSHIP AND THE AREAS DESIGNATED AS COMMUNITY AREAS OR LIMITED COMMUNITY AREAS AS DEPICTED HEREON.
3. THE ROADWAYS DEPICTED ON THIS PLAT ARE UTILITIES FOR PRIVATE USE AND ARE NOT INTENDED FOR THE USE OF THE GENERAL PUBLIC. ALL UTILITIES WITHIN THE COMMUNITY SHALL BE UNDERGROUND. THE NON-EXCLUSIVE EASEMENT FOR THE PUBLIC UTILITIES SHALL BE LOCATED OVER, ACROSS AND UNDER SUCH PRIVATE ROADWAYS.
4. DECLARANT HEREBY RESERVES FOR THE BENEFIT OF ITSELF, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO REALIGN AND ADJUST LOT, LIMITED COMMON AREA AND COMMON AREA BOUNDARY LINES ("BOUNDARY LINES") IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION FOR PURPOSES OF CORRECTING, CONFIRMING OR CHANGING THE BOUNDARY LINES TO THE RESIDENCES AND IMPROVEMENTS OR AS OTHERWISE PERMITTED BY THE DECLARATION. THE TOWN OF BRIAN HEAD AND ALL OWNERS OF LOTS IN THE COMMUNITY AGREE THAT ANY SUCH BOUNDARY LINE ADJUSTMENTS SHALL BE ACCOMPLISHED BY RECOGNITION OF A DEED BY THE RESPECTIVE OWNERS ADJUSTING THE BOUNDARY LINES. ALL SUCH OWNERS SHALL EXECUTE A DEED UPON REQUEST OF DECLARANT AS PROVIDED BY THE DECLARATION.
5. IN INTERPRETING THIS PLAT OR ANY DEED OR OTHER INSTRUMENT AFFECTING A LOT, THE SHARED BOUNDARY LINES, OR LINES OR CORNERS CONNECTED BY A PARTY WALL SHALL BE CONCLUSIVELY PRESUMED TO BE THE ACTUAL BOUNDARIES OF THE LOT RATHER THAN THE DESCRIPTION AND DEPICTION OF THE LOTS SET FORTH ON THIS PLAT, REGARDLESS OF THE SETTLING OR LATERAL MOVEMENT OF THE RESIDENCES AND PARTY WALL AND REGARDLESS OF MINOR VARIANCE BETWEEN BOUNDARIES SHOWN ON THIS PLAT AND THOSE OF THE CONSTRUCTED RESIDENCES.
6. NO CONSTRUCTION, INSTALLATION, OR OTHER WORK WHICH IN ANY WAY ALTERS THE APPEARANCE OF ANY LOT OR PROPERTY OR WHICH OTHERWISE VIOLATES THE DECLARATION OR THE COVENANTS SET FORTH THEREON, SHALL BE MADE OR DONE WITHOUT THE PRIOR WRITTEN APPROVAL OF THE BOARD OF DIRECTORS OF THE ASSOCIATION.
7. PURSUANT TO SECTION 4.5 OF THE DECLARATION, DECLARANT HAS RESERVED A PERPETUAL, ACCESS3 EASEMENT OVER AND ACROSS THE COMMUNITY AREA TO RIDGE VIEW STREET FOR THE BENEFIT OF THE OWNERS OF THAT CERTAIN PROPERTY ADJACENT TO THE COMMUNITY ON THE NORTHEAST BOUNDARY WHERE SAID PROPERTY IS CURRENTLY OWNED BY WILLIAM ROBERT AND CINDY STEPHENSON, AS DEPICTED ON THIS PLAT.

OWNER'S DEDICATION

I know all men by these provisions that ELVATV AT BRIAN HEAT, a Utah Limited Liability
company cause the same to be ASSIGNED INTO ONE, Common Area, Limited Common Area
ELVATV TOWN HOMES, A PLANNED UNIT DEVELOPMENT, the undersigned owners a
non-exclusive easement over the public utility easements shown on this plan and along
and operation of utility lines and facilities.

IN WITNESS WHEREOF, I have set my hand this 14th day of November 2000

ELVATV AT BRIAN HEAT, L.P., a Utah Limited Liability Company
By: James Managing Member

STATE OF UTAH, }
COUNTY OF }
On this 11th day of November,
before me, Ryan Green, who being
he if the ELVATE AT BROWN HEAD, L.L.C., a Utah
that said instrument was signed by them in behalf
company by authority of statute, its articles of or
agreement, for the uses and purposes herein me
Ryan Green, acknowledged to
personally executed the same.
Knowledge Company
[Signature]
NOTARY PUBLIC

CERTIFICATE OF RECORDING
I, Carol R. Johnson, Recorder of Iron County, do hereby certify that above Amended Plat was filed for recording in my office this 17 day of March, 2021.

Carol R. Johnson
IRON COUNTY RECORDER

783000
ENTRY NO.

DATE	TIME	BOOK	PAGE	FEE
16/18/21	2:23	1587	360	166.00

<u>TOWN ENGINEER'S APPROVAL</u> <i>I, <u>Terry GARDNER</u>, BRIAN HEAD TOWN ENGINEER, do hereby certify that this offer has examined the above Plan and have determined that it is correct and in accordance with information on file in this office and recommend it for approval this <u>14th</u> day of <u>DECEMBER</u>, 20 <u>21</u></i> <i>[Signature]</i> TOWN ENGINEER	<u>UTILITY COMPANIES APPROVALS</u> <i>[Signature]</i> SC BROADBAND TELEPHONE COMPANY <i>[Signature]</i> POWER <i>[Signature]</i> NATURAL GAS/SEWER
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APPROVAL AND ACCEPTANCE
by the Planning Commission Approval

We the IRON BRUSH ROAD TOWN PLANNING Commission have reviewed the Petition Amended plat and by participation of said Commission presented at the 10th meeting of the 19 day of August, 2021, hereby accept the said plat with all commitments and all obligations pertaining thereto and is hereby ordered filed for record in the Office of the Iron County Recorder.

Attest: _____ Chairman

IRON ROCK
ENGINEERING
SURVEYING & DESIGN

Building on Solid Foundations

460 E. 300 SOUTH
KANAB, UTAH 84741
435-644-2031
www.ironrockeng.com

AMENDED PLAT OF ELEVATE TOWN HOMES
A PLANNED UNIT DEVELOPMENT
160 WEST RIDGE VIEW STREET
BRIAN HEAD, UTAH

INITIAL COORDINATE	DATE

DRAWN BY: TA
SCALE: 1" = 40'
SHEET:

1 OF 2

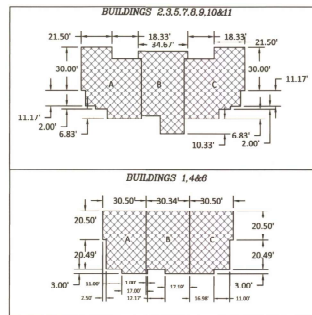
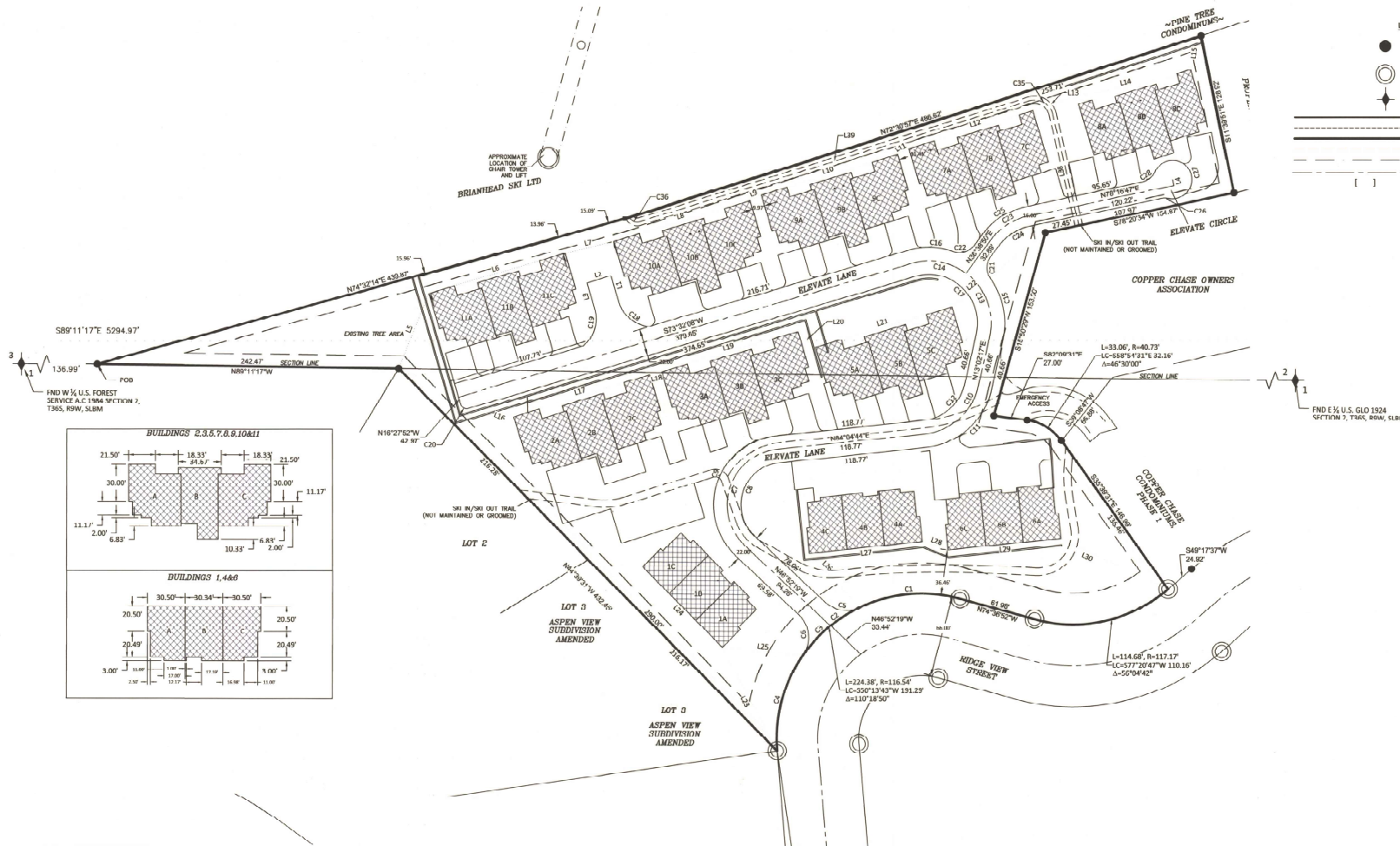
AMENDED PLAT OF ELEVATE TOWN HOMES, A PLANNED UNIT DEVELOPMENT

160 WEST RIDGE VIEW STREET BRIAN HEAD, UTAH
LOCATED IN THE SW ¼ OF THE NW ¼ AND A PART OF THE NW ¼ OF THE SW ¼ OF SECTION 2, TOWNSHIP 36 SOUTH, RANGE 9 WEST, SALT LAKE BASE AND MERIDIAN

SCALE IN FEET
SCALE 1" = 40'

LEGEND

- SET 6/8" X 36" REBAR WITH PLASTIC CAP MARKED IR ENG. PLS 5561917
- FOUND BBE REBAR
- ◆ FOUND SECTION CORNER AS NOTED
- PROPERTY LINE
- - - ADJACENT PROPERTY LINE
- - - SURVEY BOUNDARY
- - - EASEMENT
- - - SECTION LINE
- - - ROAD CENTER LINE
- - - RECORD BEARING AND DISTANCE

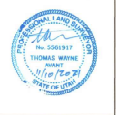


Building on Solid Foundations

460 E. 300 SOUTH
KANAB, UTAH 84741
435-644-2031
www.ironrockeng.com

AMENDED PLAT OF ELEVATE TOWN HOMES
A PLANNED UNIT DEVELOPMENT
160 WEST RIDGE VIEW STREET
BRIAN HEAD, UTAH

DATE:	6/17/2021
DESCRIPTION:	Aug 14, 2021 ALPHA Review
DATE:	8/12/2021
REVIEW:	1ST



DRAWN BY: TA
SCALE: 1" = 40'

2 OF 2

00783591 B: 1588 P: 1503

B: 1588 P: 1503 Fee \$86.00

Carri R. Jeffries, Iron County Recorder - Page 1 of 59

12/29/2021 03:00:55 PM By: CEDAR LAND TITLE, INC.

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
FOR
ELEVATE VILLAS, A PLANNED UNIT DEVELOPMENT
(Formerly known as Sojourn Town Homes)**

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
FOR
ELEVATE VILLAS, A PLANNED UNIT DEVELOPMENT
(formerly known as Sojourn Town Homes)**

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS for ELEVATE VILLAS, A PLANNED UNIT DEVELOPMENT (the "Declaration") is made as of this 13th day of December, 2021, by Elevate at Brian Head, LLC, a Utah limited liability company, in its capacity as successor Declarant of the "Community" as defined in Recital B below ("Declarant").

RECITALS

A. Declarant holds both the current legal and equitable title to certain real property (the "Property") located in the Town of Brian Head, Iron County, Utah, which is described in Exhibit "A" attached hereto and incorporated herein by this reference. Declarant is the duly authorized successor "Declarant" under that certain "Declaration of Covenants, Conditions, Easements and Restrictions for Elevate Villas, a planned unit development" which is now known as "Elevate Villas", which "Original Declaration" was recorded as Entry No. 553700 in Book 1090 at Page(s) 641 et seq. of the Official Records of the Iron County, Utah Recorder's Office. This Declaration amends, restates and supersedes in its entirety the "Original Declaration" for the Community.

B. Declarant desires and intends to develop a residential planned community on the Property known as "Elevate Villas, a Planned Unit Development", as shown on the Plat, as it may be supplemented or amended from time to time (the "Community"). At full development, the Community will consist of various Lots and Residences and may include, without limitation, the interval ownership interests pursuant to Co-Ownership Program described in Article XI below, open spaces, walkways and various other amenities and improvements.

C. Declarant intends to protect and enhance the value and desirability of the Community through the use of a coordinated plan of development and the terms of this Declaration. It is assumed that each purchaser of a Lot or a Co-Ownership Interest in the Community will be motivated to preserve the Community through community cooperation and by complying with not only the letter but also the spirit of this Declaration. This Declaration is designed to complement local governmental regulations, and where conflicts occur, the more restrictive requirements shall prevail.

D. It is desirable for the efficient management and preservation of the value and appearance of the Community to create a nonprofit corporation to which shall be assigned the powers and delegated the duties of managing certain aspects of the Community; maintaining and administering the Community Area; maintaining, repairing or replacing for the common benefit of the Owners all exterior elements of a Residence such as exterior doorways, windows, rain gutters, shingles, address signs and all other similar exterior structural improvements of the Residences; maintaining, repairing or replacing for the common benefit of Owners all landscaped areas, concrete improvements, fences, patios and driveways located on a Lot, if any; administering, collecting and disbursing funds pursuant to the provisions regarding assessments and charges hereinafter created and referred to; and to perform such other acts as shall generally benefit the Community and the Owners. In addition, the nonprofit corporation shall be responsible for the administration and management of The Residence Co-Ownership at Elevate Villas, as set forth in Article XI below. Elevate Villas Owners Association, Inc., a Utah nonprofit corporation,

has been or will be incorporated under the laws of the State of Utah for the purpose of exercising the aforesaid powers and functions.

E. Each Owner shall receive fee title to his or her Lot or Co-Ownership Interest and an appurtenant undivided interest in the Community Areas and one Membership in the Association as provided herein.

F. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Community and the interests therein conveyed and to establish thereon a planned community and establish the Co-Ownership Program described in Article XI below.

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

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

ARTICLE 1 DEFINITIONS

Unless the context clearly indicates otherwise, the following capitalized words, phrases or terms used in this Declaration (including the Recitals above) shall have the meanings set forth in this Article I. (Certain terms not defined herein are defined elsewhere in this Declaration.)

1.1. "Adjoining Owner" means the immediately adjoining Owner that owns a Residence with a common Party Wall touching the contiguous, neighboring Residence of a different Owner.

1.2. "Annual Assessments" means the Assessments levied pursuant to Section 6.2.

1.3. "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

1.4. "Assessment" means any Annual Assessment, Special Assessment or Co-Ownership Assessment, as applicable.

1.5. "Assessment Lien" means the lien created and imposed by Section 6.6.

1.6. "Association" means the Elevate Villas Owners Association, Inc., a Utah nonprofit corporation, and its successors and assigns.

1.7. "Board" means the Board of Directors of the Association.

1.8. "Bylaws" means the Bylaws of the Association, as amended from time to time.

1.9. "Community" means such term as described and set forth in Recital B.

1.10. "Community Area" means all land, and the Improvements situated thereon, within the Community that Declarant designates as Community Area on the Plat or other Recorded instrument and other real property which the Association has the obligation to maintain, repair or replace for the common

benefit of the Owners, as the Board shall determine in its sole and exclusive discretion, which may include without obligation or limitation walkways, trails and open space, landscaped areas, Community and street signage, lighting, sidewalks and other similar Improvements, all utility and service lines, systems and similar Improvements, whether public or private-company owned, located on a Lot or lying outside of the exterior boundaries of the Residences as further described in Section 1.34 below; provided, however, the Community Areas shall not include any portion of a Lot that the Association must maintain, repair or replace for the benefit of the Owners or the Residences. The undivided interest in the Community Area appurtenant to each Lot shall be equal.

1.11. "Community Documents" means this Declaration, the Articles, the Bylaws, the Community Rules, or any other governing instrument for the Community, as each document may be amended from time to time.

1.12. "Community Expenses" means expenditures made by or financial liabilities of the Association (excluding the Co-Ownership Expenses), together with any allocations to reserves as further described in Section 6.2.1 below.

1.13. "Community Rules" means the rules and regulations adopted by the Board pursuant to Section 5.3, as amended from time to time.

1.14. "Declarant" has the same meaning as set forth in the introductory paragraph of this Declaration and means Elevate at Brian Head, LLC, a Utah limited liability company, its successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration.

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

1.16. "Declaration" means this Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for Elevate Villas, a Planned Unit Development, as amended from time to time.

1.17. "Eligible Mortgagee" means and refers to a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.

1.18. "Improvement(s)" means any improvement now or hereafter constructed at the Community and includes anything which is a structure and appurtenances thereto of every type and kind, including but not limited to any (a) Residence, building, screening wall, other accessory building, fence or wall; (b) walkway, garage, road, driveway or parking area; (c) mailbox, sign, shed, covered patio, stairs, deck, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Lot); (d) patio, barbeque, benches, radio or television antenna or receiving dish; (e) paving, exterior lights, curbing, trees, shrubs, hedges, grass, windbreak or other landscaping improvements of every type and kind; (f) excavation, fill, retaining wall or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel, and related fixtures and equipment; and (g) other structure of any kind or nature.

1.19. "Limited Community Area" shall mean a portion of the Community Area allocated by this Declaration, or as may be shown on the Plat, for the exclusive use of one or more, but fewer than all, of the Lots.

1.20. "Short Term Rental Agency" means a third-party entity engaged in the business of short term rental of properties, and which is neither the Declarant or a Declarant Affiliate, including but not limited to entities such as "VRBO", "RVMA", etc.

1.21. "Lot(s)" means a portion of the Community intended for independent ownership and designated as a lot on the Plat and, where the context indicates or requires, shall include any Residence, building, structure or other Improvements situated on the Lot.

1.22. "Member" means any Person who is a member of the Association as provided in Article V.

1.23. "Membership" means a membership in the Association and the rights granted to the Members, including Declarant, pursuant to Article V to participate in the Association.

1.24. "Mortgage" means a deed of trust or a mortgage Recorded against a Lot, or any part thereof or interest therein. A "First Mortgage" means a Mortgage having priority as to all other Mortgages encumbering a Lot, or any part thereof or interest therein.

1.25. "Mortgagee" means a beneficiary under a deed of trust, or a mortgagee under a mortgage, recorded against a Lot. A "First Mortgagee" means any Person holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in this Declaration shall also protect the Declarant as the holder of a First Mortgage Recorded against a Lot, Residence or Co-Ownership Interest, or any part thereof or interest therein.

1.26. "Municipal Authority" means any applicable governmental entity or municipality which has jurisdiction over all or some part of the Community including without limitation the Town of Brian Head, or Iron County, Utah.

1.27. "Occupant" means any member of an Owner's family or an Owner's guests, invitees, servants, tenants, employees, or licensees who occupy a Lot or are on the Community Area for any period of time, or any other person who occupies a Lot or is on the Community Area for any period of time as part of an exchange program available in connection with the Co-Ownership.

1.28. "Owner" means the Person or Persons who individually or collectively own fee title to a Lot or Co-Ownership Interest, including Declarant. "Owner" shall not include Persons who hold an interest in a Lot merely as security for the performance of an obligation.

1.29. "Party Wall" means a wall that forms part of a Residence and is located on or adjacent to a boundary line between two adjoining Lots (or residences) owned by more than one Owner and is used or is intended to be used by the Owners of both properties, which wall may be separated by a sound board between two Residences of both properties, which wall may be separated by a sound board between two Residences.

1.30. "Person" means a natural person, corporation, estate, trust, partnership, association, limited liability company, limited liability partnership or other legal or commercial entity.

1.31. "Plat" means that certain community plat entitled "SOJOURN TOWN HOMES, A PLANNED UNIT DEVELOPMENT" duly Recorded, as the same may be amended from time to time,

and which is incorporated herein by this reference. "Sojourn Town Homes" is now known as "Elevate Villas" notwithstanding the use of the former name on the Plat.

1.32. "Property" means such term as described and set forth in Recital A.

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

1.34. "Residence(s)" means any dwelling unit situated upon a Lot and attached to one or more other dwelling units in which each unit has its own principal access to the outside, no unit is located over another unit, and each dwelling unit is separated from any other unit by one or more common Party Walls, designed and intended for separate, independent residential use and occupancy.

1.34.1. For purposes of this Declaration, the "interior elements" of the Residences shall include all pipes, wires, conduits, lines or systems (which for brevity are herein and hereafter referred to as utilities), whether public or private-company owned, located from the connecting point to the exterior of the Residence where such utilities enter the Residence (stubbed location) and continuing into the interior portion of such Residence, interior spaces, flooring, partitions, Party Walls, plaster, gypsum drywall, wallpaper, paint, ceilings, all other materials constituting part of the interior surfaces of the Residences and other similar interior fixtures and Improvements as such interior elements may be further determined by the Board in its sole and exclusive discretion.

1.34.2. For purposes of this Declaration, the "exterior elements" of the Residences shall include all utilities, whether public or private company owned, located on the Lots and which end at the connecting point to the exterior of the Residence where such utilities enter the Residence and are stubbed to provide utility service to the Residence but do not include any interior portion of such utilities located within a Residence which constitute interior elements as further defined in Section 1.34.1 above, rooftops, shutters, doorsteps, stoops, patios, exterior doors, exterior windows, and other similar exterior Improvements as may be further determined by the Board in its sole and exclusive discretion but shall specifically exclude all exterior screen doors which have been or may be installed by an Owner.

1.34.3. In the event of any disagreement or uncertainty as to which improvements or elements of a Residence constitute "interior elements" or "exterior elements," the Board shall have the sole and exclusive power to make such determination, including without limitation the sole power and authority to determine which portions of the utilities lie within the exterior or interior portions of a Residence, and the Board's determination shall be conclusive, final and unappealable.

1.35. "Special Assessment" means any Assessment levied pursuant to Section 6.3.

1.36. "The Elevate Villas" or the "Co-Ownership" means the shared ownership program created and established by this Declaration for Owners of Co-Ownership Interests as set forth in Article XI.

ARTICLE II DECLARANT'S RIGHTS AND OWNERS' OBLIGATIONS

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

2.2. No Condominium. Declarant, and each Owner by acceptance of a deed to a Lot or Co-Ownership Interest, hereby agree, acknowledge, and understand that the Property is not, by execution and Recording of this Declaration, being submitted to the provisions of the Utah Condominium Ownership Act, 57-8-1, et seq., Code Ann. (the "Condominium Act"). This Declaration does not constitute a declaration as provided for in the Condominium Act and the provisions of the Condominium Act shall not be applicable to the Property or any portion thereof.

2.3. Incidents of Ownership: Membership in the Association. Every Lot or Co-Ownership Interest shall have appurtenant to it one Membership in the Association and an equal undivided interest in the Community Area entitling each Owner to use and enjoy the Community Area subject to such restrictions and limitations as are contained in the Community Documents and subject to other reasonable regulation by the Association. Each Membership in the Association and the undivided interest in the Community Area shall be appurtenant to and inseparable from ownership of the Lot or Co-Ownership Interest. Any sale, conveyance, hypothecation, encumbrance or other transfer of a Lot or Co-Ownership Interest shall automatically transfer the Membership and the undivided interest in the Community Area to the same extent, notwithstanding any term or provision to the contrary in the documents effecting such transfer.

2.4. Limited Community Area. Limited Community Area means those parts of the Community Area which are limited to and reserved for the use of the Owners of one or more, but fewer than all, of the Lots as shown on the Plat. Without limiting the foregoing, the Limited Community Areas shall include any driveway, balcony, or deck adjacent to a Lot. The deck or patio, which is accessible from, associated with, and which adjoin a particular Lot or Residence, without further reference thereto, shall be used in connection with such Lot or Residence to the exclusion of the use thereof by the other Owners, except by invitation. The use and occupancy of designated Limited Community Areas shall be reserved to the Lot or Residence as shown on the Plat or as specified in this Declaration.

2.5. Lots and Residences. Declarant reserves the right to adjust the location of each Residence in order to facilitate proper planning in the sole and exclusive discretion of Declarant, subject to the terms and provisions of Section 2.11. Moreover, for twenty (20) years following the Recording of this Declaration, Declarant, to the extent permitted by law, reserves the unilateral right to reconfigure, eliminate and/or change the design and arrangement of the Community Area, including the Limited Community Area, any Residence and to alter the boundaries between Lots as it shall determine in its sole and exclusive discretion, so long as Declarant or a Declarant Affiliate owns the Lots or Residences so altered or obtains and duly records the written authorization of the Owner of any altered Lot or Residence

not owned by Declarant. Such reconfiguration right shall include the right to change or alter the exterior elements or design of the Residences, including, but not limited to, altering or changing the placement, size, number and configuration of doors, entryways, windows and similar items, and to modify the principal type of construction and building materials of such Residences. Any change of the boundaries between Residences, Lots or Community Area shall not require an amendment to this Declaration or to the Plat.

2.6. The Association. In addition to any other Association obligations and rights described in this Declaration, the Association shall have the following obligations and rights:

2.6.1. As further described in Article VII below, the Association shall maintain in a safe, sanitary, and attractive condition (i) the Community Area, Limited Community Area and all Improvements thereon; (ii) the exterior elements of the Residences; and (iii) the landscape areas, concrete improvements, fences, patios and driveways located on a Lot, if any. Such maintenance responsibility shall include, but shall not be limited to, painting, maintenance, repair and replacement of the stucco, brick, concrete and roofing materials of all Residences and the surrounding areas of the Lot including, without limitation, all driveways, including snow removal, the control of all weeds and other unsightly vegetation, rubbish, trash, garbage and landscaping and all portions of the Community Area, subject to the willful and negligent act provisions described in Sections 2.7 and 7.4. Except with respect to the Co-Ownership Residences which shall be repaired and maintained by the Association in accordance with Article XI below, each Owner shall immediately repair and replace all broken glass of a Residence at such Owner's sole and exclusive expense. However, the Association shall repair and replace all broken glass of a Residence caused by the willful or negligent act of an agent acting on behalf of the Association in carrying out the Association's duties to maintain the Community Area, certain portions of the Lots or exterior elements of the Residences, which broken glass repair and replacement shall constitute a Community Expense.

2.6.2. The Association shall assess and collect fees from the Members in accordance with the provisions hereof and the Bylaws. In particular, in order to preserve a Community maintenance standard, property values and uniform appearances of all Residences within the Community, the Association shall have the express obligation to repair, replace and maintain all exterior elements and improvements of the Residences, including without limitation, all doorways, windows, stucco, rain gutters, shingles, address signs and all other similar exterior elements of the Residences as the Board may determine in its sole and exclusive discretion.

2.6.3. As also described in Section 5.3 below, the Board shall have the right to promulgate and adopt the Community Rules, which Community Rules may further limit and/or expand upon the use restrictions applicable to the Community as described herein without requiring a Recorded amendment to this Declaration.

2.7. Responsibility for Community Area Damage. Each Owner shall be personally liable to the Association for the cost of all repairs or replacement of any portion of the Community Area, the Lot or the exterior elements of the Residence resulting from the willful or negligent act of an Owner, Occupant, family, guests or invitees to the extent that such costs are not covered by insurance maintained by the Association. The Association shall cause such repairs and replacements to be made and the cost thereof may be levied as an individual charge against such Owner enforceable in the same manner as the enforcement of the payment of Assessments. The failure of the Association to continue any insurance in effect shall not be a defense to any such Owner's personal liability.

2.8. Reservation of Right to Construct Residences and Improvements. Declarant intends, without obligation, to sell, convey any Lots or Co-Ownership Interests to Owners at the time that the Lots are

improved with Residences. In addition to the reservations of rights set forth in this Declaration, Declarant reserves the sole and exclusive right, without obligation, to construct and/or directly supervise the construction of all Residences and Improvements to be erected on the Community Area and the Lots which are a part of the Community. An Owner of a Lot or Co-Ownership Interest other than Declarant or a Declarant Affiliate shall not have the right to independently construct a Residence or any other Improvement thereon or approve or supervise the construction of any Residence or Improvement within the Community. Notwithstanding the foregoing intention to construct all of the Residences, Declarant reserves the right to sell, convey, transfer, assign or otherwise dispose of any Lot to a Declarant Affiliate or any other third party, without first constructing a Residence thereon, and to authorize such new Owner the right to independently construct a Residence or other Improvement thereon as Declarant shall determine in its sole and exclusive discretion.

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

2.10. Security. The Association may, but shall not be obligated to, maintain, or support certain activities within the Community designed to make the Community safer than it otherwise might be. NEITHER THE ASSOCIATION, THE BOARD NOR DECLARANT, (COLLECTIVELY, THE "PROJECT GOVERNING BODIES") SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY, AND THE PROJECT GOVERNING BODIES SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, OCCUPANTS, GUESTS, TENANTS AND INVITEES OF ANY OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGE THAT THE PROJECT GOVERNING BODIES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED OR INSTALLED MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE NOR THAT FIRE PROTECTION OR BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, OCCUPANT, GUEST, TENANT OR INVITEE OF AN OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE PROJECT GOVERNING BODIES ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, GUEST, TENANT AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO LOTS, TO PERSONS, TO RESIDENCES, TO IMPROVEMENTS AND TO THE CONTENTS OF RESIDENCES AND IMPROVEMENTS AND FURTHER ACKNOWLEDGES THAT THE PROJECT GOVERNING BODIES HAVE NOT MADE REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE COMMUNITY.

2.11. **Readjustment of Lot Line Boundaries.** Declarant hereby reserves for itself, Declarant Affiliate and Declarant's successors and assigns, the right to effectuate minor realignment and adjustment of Lot boundary lines for purposes of proper configuration and final engineering of the Community, provided that any such realignment and adjustment does not affect any existing Residence or Improvement (other than landscaping) on the affected Lot. The authority to realign and adjust such Lot boundary lines shall be exclusively reserved to the Declarant, Declarant Affiliate and Declarant's successors or assigns, in their sole and reasonable discretion, subject to the other provisions of this Section 2.11. All Owners specifically acknowledge and agree that they shall cooperate with Declarant to effectuate such minor realignment and adjustment of their respective Lot boundary lines by deed in form and content as requested by the Declarant for the purposes of proper configuration and final engineering of the Lots in relationship to the development of the Community. Further, all Owners acknowledge and agree that no amendment to this Declaration or the Plat shall be required to effectuate any Lot boundary line adjustments so long as such adjustments are made pursuant to 10-9a-608(7) of the Utah Land Management Act, as amended, or any equivalent or future statutory authorization.

2.12. **Development Plan.** Notwithstanding any other provision of this Declaration to the contrary, Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to its plan of development with respect to any Property owned by Declarant in any way which Declarant desires including, but not limited to, changing all or any portion of the Property owned by Declarant or changing the nature or extent of the uses to which such Property may be devoted.

2.13. **Community Area Improvements.** Declarant, so long as Declarant or a Declarant Affiliate owns a Lot within the Community, reserves the unilateral right to construct Improvements on any area of the Community Area and modify the location, type, and nature of Community Area as it shall determine in its sole and exclusive discretion, including, without limitation, the right to construct or create storage facilities, trails or other Improvements thereon. Such construction and relocation rights shall not be subject to the consent of the Owners, Board, Mortgagees, or any other Person. After the termination of Declarant's rights under Section 2.15 below, the Board shall have the right to exercise such construction and relocation powers in connection with the Community Area upon the vote or written assent of two-thirds (2/3) of the members of the Board present at any annual or special meeting of the Board pursuant to the approval procedures described in the Bylaws.

2.14. **Right to Develop.** Notwithstanding anything contained herein to the contrary, no provision of this Declaration is intended or shall be construed to prevent or limit Declarant's rights to develop the Community and to exercise the rights reserved by Declarant as hereinafter provided. Nothing in this Declaration shall be construed to require Declarant, Declarant Affiliate or Declarant's successor or assigns, to develop any Lot or other Improvements in any manner whatsoever.

2.15. **Declarant's Control.** Notwithstanding anything herein to the contrary, Declarant, or a manager or some other Person or Persons selected by Declarant, may appoint, and remove some or all of the members of the Board or some or all of the officers of the Association or may exercise the powers and responsibilities otherwise assigned by this Declaration or under Utah law to the Association, its officers, or the Board. However, subject to applicable law, the right of the Declarant contained in this Section 2.15 shall terminate upon the first of the following to occur:

2.15.1. The expiration of ten (10) years from the date that this Declaration is Recorded;

2.15.2. After eighty percent (80%) of Lots or Co-Ownership Interests have been conveyed by Declarant; or

2.15.3. The date on which Declarant voluntarily relinquishes its control rights as evidenced by a Recorded notice.

ARTICLE III

LAND USES, PERMITTED USES AND RESTRICTIONS

3.1. **Land Uses.** The purposes for which property within the Community may be used shall be established by Declarant in its sole and exclusive discretion and may include, without limitation, single-family residential use, fractional residential use and other residential uses consistent with this Declaration, as well as ancillary, complementary or subsidiary uses such as (without limitation), open space, Community Areas and the like. Nothing in this Section shall prevent Declarant or any Declarant Affiliate or a duly authorized agent from using any Lot owned or leased by Declarant for sales offices and model units or a property management office as provided below.

3.2. **Additional Restrictions on Use.** In addition to all of the covenants contained herein, the use of the Residences and Community Area is subject to the following (as such restrictions on use may be amended, supplemented and/or expanded by the Board via its promulgation of the Community Rules as further described in Section 2.6 above):

3.2.1. **Insurance.** Nothing shall be done or kept in any Residence, on any Lot or in or on the Community Area which will increase the rate of insurance maintained by the Association or that will result in the cancellation of said insurance. No Owner shall permit anything to be done or kept in a Residence or Lot or in or on the Community Area which is in violation of any law or regulation of any governmental authority.

3.2.2. **Visible Areas.** Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows of Residences or placed on the outside walls of a Residence or otherwise outside of a Residence, or any part thereof, except as otherwise authorized by the Board. No awning, canopy, shutter or television or citizens' band or other radio antenna or transmitter, or any other device or ornament, shall be affixed to or placed upon an exterior wall or roof or any part thereof of a Residence, or the exterior of any door or window of a Residence, or in, on, or over a patio, porch or balcony of a Residence, visible to the exterior, unless authorized by the Board.

3.2.3. **Offensive Activities.** No noxious or offensive activity shall be carried on in any Residence, on any Lot or in or on the Community Area, nor shall any be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Owner or lawful Occupant of other Residences.

3.2.4. **Structural Integrity.** Nothing shall be done in any Residence, on any Lot or in, on or to the Community Area which will impair the structural integrity of any Residence or structurally change the same or any part thereof except as is otherwise provided in this Declaration.

3.2.5. **Community Area.** The Community Area shall be kept free and clear of all rubbish, debris, and other unsightly materials. The Community Area shall be used in common by Owners and lawful Occupants and their agents, servants, customers, invitees, and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Residences. Unless expressly provided otherwise herein, no Community Area shall be used for any purpose other than

the health, safety, welfare, convenience, comfort, recreation or enjoyment of Owners and Occupants. There shall be no obstruction of the Community Area, nor shall anything be kept or stored on any part of the Community Area in violation of the rules adopted by the Board. Nothing shall be altered on, constructed in, or removed from, the Community Area except upon the prior written consent of the Board.

3.2.6. Limit on Timesharing. Except for the Co-Ownership Program established pursuant to Article below, no Owner, excluding Declarant, shall offer or sell any interest in such Lot under a "timesharing", "non-deeded equity or non-equity Co-Ownership", "interval ownership" plan, "membership" plan, or any similar plan without the specific written approval of Declarant, so long as Declarant owns a Lot or Co-Ownership Interest in the Community; and thereafter the Association.

3.2.7. Vehicles. The Board may establish as a part of the Community Rules certain rules and regulations restricting or prohibiting the parking of automobiles, vans, buses, inoperable vehicles, vehicles, trailers, boats and recreational vehicles on the Lots and Community Area, or parts thereof, and may enforce such regulations or restrictions by levying enforcement charges, having such vehicles towed away or taking such other lawful actions as it, in its sole discretion, deems appropriate. Each Residence can have two (2) vehicles parked onsite. Any additional car needs to be parked offsite.

3.2.8. Architectural Control. No building, fence, wall, sign or other structure or Improvement shall be commenced, erected or maintained upon the Property, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board, acting as the "Architectural Review Committee" for the Community, or its designated representative or representatives, in its or their sole and unfettered discretion. Additionally, building plans and plot plans must be approved in writing by the Board, acting as the "Architectural Review Committee" for the Community, prior to submittal to the Town of Brian Head Building Department for permitting. Nothing visible to the exterior shall be permitted to be hung, placed, displayed or maintained on the Residences, on the Lots or on or in Community Area unless approved, in writing, by the Board or its designated representative or representatives, in its or their sole and unfettered discretion, or unless the same is authorized by existing Community Rules adopted by the Board.

3.3. Required Approvals for Further Property Restrictions. The Property is subject to the following additional approvals:

3.3.1. Except as otherwise provided in Article XI with respect to the Co-Ownership Interests, no Lot, or portion thereof, shall be further subdivided, and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior approval of the Declarant, prior to its transfer of control of the Association pursuant to Section 2.15 above, and thereafter, the Board. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots any property at any time owned by Declarant.

3.3.2. No site plan, subdivision plat, declaration or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits shall be Recorded or submitted to any Municipal Authority, unless the same has first been approved in writing by Declarant, so long as it or a Declarant Affiliate owns a Lot within the Community, and thereafter, the Board; further, no changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by Declarant or the Board hereunder unless such changes or modifications have first been approved by Declarant or the Board in writing.

3.4. Leases. In order to preserve the integrity of the Unit for all Co-Owners, no Co-Owner of any Unit may lease or otherwise grant overnight occupancy of a Residence or utilize a Short Term Rental Agency. Any single Owner of a Unit, shall have the right to lease or allow occupancy of a Residence upon such terms and conditions as the Owner may deem advisable, subject to the following, and to other restrictions regarding short-term and overnight rentals, which may be contained in the Community Rules:

3.4.1. Short term occupancies and rentals (of less than 30 days) of Residences for residential purposes for resort lodging to overnight and short-term guests shall be subject to reasonable regulation of the Association.

3.4.2. All Occupants shall be subject to the right of the Association to remove and/or evict the Occupants for failure to comply with the terms of this Declaration, the Bylaws, the Articles or the Community Rules.

3.4.3. Any Owner who rents or leases or otherwise permits any other person to utilize his or her Residence shall be responsible for the conduct of his or her tenants or occupants, and upon written notice from the Association or the manager, said Owner shall be responsible for correcting violations of this Declaration, the Bylaws or the Community Rules committed by such tenants or occupants.

3.4.4. Notwithstanding anything herein to the contrary, other than Declarant and/or a Declarant Affiliate during the period of Declarant's Control (as defined in Section 2.15 above) no Owner of a Co-Ownership Interest shall lease or rent its Co-Ownership Interest through a Short Term Rental Agency as defined in Section 1.20 above. The foregoing restriction shall not apply to Co-Ownership Interests owned by Declarant or a Declarant Affiliate during the period of Declarant's Control, nor to Co-Ownership Interests which Declarant or a Declarant Affiliate has repossessed, foreclosed upon, or received a deed in lieu of foreclosure on, and continues to own subsequent to the period of Declarant's Control.

3.5. Lots and Improvements. Declarant shall not be restricted in the location or in the number of Lots, Residences, Community Area, Limited Community Area or other Improvements that may be created on the Property, except as may be required by the Community Documents, applicable zoning requirements, ordinances, or regulations. The Lots, Residences, and other Improvements to be located on the Property shall be subject to the use restrictions contained in the Community Documents. No structures other than Residences and Improvements approved by the Board shall be erected on the Property; provided, however, that Declarant reserves the right to create additional Community Area, Limited Community Area, and other Improvements on the Property without limitation as Declarant shall determine in its sole and exclusive discretion. Declarant makes no assurances as to location, size, type, or number of areas designated as Community Area or other Improvements to be created on the Property.

3.6. Declarant's Exemption. Notwithstanding the provisions of Section 3.2.8 above, no Board approval shall be required for any construction, installation, addition, alteration, repair, change, replacement, or other work by, or on behalf of, Declarant within the Community. Moreover, Declarant and all Declarant Affiliates shall be specifically exempt from the use restrictions, architectural design guidelines and other regulations applicable to the Community as further described in this Declaration. So long as Declarant or a Declarant Affiliate owns a Lot within the Community, Declarant specifically reserves the sole and exclusive right to complete the construction of all Residences and other Improvements within the Community, regardless of whether or not Declarant has transferred control of the Association pursuant to Section 2.15 above.

ARTICLE IV
USE OF COMMUNITY AREA AND EASEMENTS

4.1. Owners' Use of Community Area.

4.1.1. Subject to the rights and easements granted to Declarant in Section 4.4, each Owner and Occupant, while in residence at the Community, shall have a nonexclusive right to use and enjoy the Community Area, subject to the provisions of the Community Documents including, without limitation, the following:

4.1.1.1. Except as otherwise provided in this Declaration, no dedication, transfer, mortgage or encumbrance of all or any portion of the Community Area shall be effective unless approved by Owners representing two thirds (2/3) of the votes of the Members. Notwithstanding the preceding sentence or any other provision of this Declaration to the contrary, the Association shall have the right, without the consent of the Owners or any other Person (except Declarant, whose consent shall be required so long as Declarant or a Declarant Affiliate owns any part of the Property), to dedicate portions of the Community Area to the public, or grant easements over, under or through portions of the Community Area to the public, to any Municipal Authority or to any public, quasi-public or private utility company, for use as right-of-way, for utilities, for public landscape purposes and the like, as may be required or requested by any Municipal Authority or other entity having jurisdiction, or by a public, quasi-public or private utility company, in connection with or at the time of the development of portions of the Property.

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

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

4.2. Utility Easements. There are hereby created easements upon, across, over and under the Community Areas, certain portions of the Limited Community Areas and the Lots and other property as may be depicted on the Plat for reasonable ingress, egress, installation, relocation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television, telecommunications and electricity. By virtue of these utility easements, it shall be expressly permissible for the providing utility company or the Town of Brian Head to install and/or relocate and maintain the necessary equipment on the Community Areas, certain portions of the Limited Community Areas and the Lots and other property as may be depicted on the Plat. However, except within the public utility easements which may be depicted on the Plat, no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Community Area, Limited Community Area, Lots and other property except as initially designed, approved and/or constructed by Declarant or as approved by the Board (and, in the case of a Lot, by the Owner of such Lot). If any utility company requests that a more specific easement be granted in its favor in substitution for the easement hereby established with respect to the Community Area, the Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Board deems appropriate.

4.3. Easements for Ingress and Egress. There are hereby created easements for private ingress and egress for pedestrian traffic over, through and across trails, sidewalks, paths, walks and lanes that from time to time may exist upon the Community Area. There is also created an easement for private ingress and egress for pedestrian and vehicular traffic over, through and across such private street and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots and Residences and their guests, families and invitees. There is also hereby created an easement upon, across and over the Community Area within the Community for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles, and personnel. The Board shall have the right to relocate and/or reconfigure any and all such easements from time to time as it sees fit without the consent of any Owners.

4.4. Declarant's Use and Easements. So long as Declarant or a Declarant Affiliate owns a Lot or Co-Ownership Interest within the Community, Declarant shall have and hereby reserves the following rights and easements for the benefit of itself and all Declarant Affiliates:

4.4.1. Declarant shall have the exclusive right and an easement to maintain sales offices, construction trailers, management offices and models throughout the Community and to maintain advertising, marketing and/or for sale signs, banners, and flags on the Property of any size, type or quality, including without limitation on the Community Area, with respect to the sales of Lots, Residences, Co-Ownership Interests or other property in the Community. Declarant reserves the right to place models, management offices, construction trailers, sales offices and advertising, marketing and/or for sale signs, banners and flags on any Lots or other property owned by Declarant or a Declarant Affiliate and on any portion of the Community, including without limitation on the Community Area, in such number, of such size and in such locations as Declarant deems appropriate. Any Improvements constructed as models shall cease to be used as models as Declarant shall determine in its sole and exclusive discretion.

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

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

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

4.5. Declarant's Easement for Access to Adjacent Property. As further depicted on the Plat, Declarant reserves a perpetual access easement over and across the Community Areas for the purpose of access to and from Ridge View Street through the Community to certain adjacent property located on the northeast boundary of the Community currently owned by the Declarant. The easement reserved herein shall be for the benefit of Declarant and all future owners of such adjacent property.

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

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

4.6.2. For inspection, maintenance, repair and replacement of portions of the Community Area accessible only from such Lot or Lots;

4.6.3. For correction of emergency conditions on one or more Lots or on portions of the Community Area accessible only from such Lot or Lots;

4.6.4. For the purpose of enabling the Association, the Board or any other committees appointed by the Board to exercise and discharge during reasonable hours the respective rights, powers and duties under the Community Documents, including but not limited to their rights, powers and duties in relation to the operation of the Co-Ownership as set forth in Article XI;

4.6.5. For inspection during reasonable hours of the Lots in order to verify that the Owners and Occupants, and their guests and invitees, are complying with the provisions of the Community Documents;

4.6.6. For inspection, maintenance, repair and replacement of the landscaped areas, concrete improvements, fences, patios, and driveways located on the Limited Community Area or the Lots which the Association is obligated to repair, replace and maintain pursuant to the provisions of this Declaration and the other Community Documents; and

4.6.7. For inspection, maintenance, repair, and replacement of the exterior elements of the Residences located on the Lots which the Association is obligated to repair, replace and maintain pursuant to the provisions of this Declaration and the other Community Documents.

4.7. Easement for Party Wall. Each Owner, for each Lot or Co-Ownership Interest that he, she or it owns, hereby acknowledges and agrees that a Party Wall may presently encroach upon or overlap the Owner's Lot, or the Lot associated with the Owner's Co-Ownership Interest. To the extent the Party Wall does encroach upon or overlap a Lot, the Owner of said Lot or Co-Ownership Interest therein hereby grants to the Adjoining Owner of the other Lot or Co-Ownership Interest therein that shares a Party Wall an easement over and upon its Lot for the purpose of maintaining the Party Wall and carrying out the other obligations set forth in this Declaration. By accepting a deed to a Lot or Co-Ownership Interest, each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the Party Wall and the performance of the Association's obligations and each Owner's respective obligations under this Declaration.

4.8. Infrastructure Reimbursement. In the even that Declarant, or an Owner of any Lot or Residence installs utilities infrastructure which benefits his, her or its Lot or Residence, as well as any other Lot or Residence in the Community to which equivalent utilities infrastructure is not otherwise readily available, the benefitted Owner or Owners shall reimburse an equitable pro-rata share of the actual out of pocket costs incurred by such Owner who installed such infrastructure, based upon the total number of Lots or Residences that will actually use and benefit from such utilities infrastructure. Such reimbursement shall be made within sixty (60) days of written demand for such reimbursement accompanied by copies of invoices, checks, etc. necessary to verify the out of pocket costs incurred in installing such utilities infrastructure.

ARTICLE V
THE ASSOCIATION; ORGANIZATION; ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

5.1. Formation of Association. The Association shall be a nonprofit Utah corporation charged with the duties and vested with the powers prescribed by law and set forth in the Community Documents.

5.2. Governing Board and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Community Documents specifically require the vote or written consent of the Members, approvals, or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association, the Community Area, and the Co-Ownership Program. The Board shall determine the compensation to be paid to any such manager. The initial number of directors on the Board shall be three (3) and, until the rights of Declarant under Section 2.15 are terminated, all directors, unless Declarant otherwise agrees in writing, will be appointed by Declarant. If the Declarant relinquishes its right to appoint the directors of the Board or its right to do so is otherwise terminated in accordance with the provisions of Section 2.15, the Board at the time of such relinquishment or termination shall continue in office until the next special or annual meeting of Members who shall then have authority to elect a new Board in accordance with the Bylaws. Moreover, the terms of the directors of the Board, the filling of Board vacancies and similar operational matters of the Board shall be conducted in accordance with the Bylaws.

5.3. Community Rules. It is currently contemplated that the Board will enact and promulgate the Community Rules which shall govern the Owners and the Community. The Board may, from time to time, and subject to the provisions of this Declaration and the Bylaws, amend and repeal the Community Rules or adopt new Community Rules which generally pertain to: (a) the management, operation and use of the Community Area (including the Limited Community Area); (b) traffic and parking restrictions and speed limits on the private street within the Community; (c) minimum standards for any maintenance of Community Area, Limited Community Area, Lots, Residences and Improvements within the Community; and (d) any other subject within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration, the Bylaws and the Community Rules, the provisions of this Declaration and the Bylaws shall prevail in that order.

5.4. Personal Liability. No member of the Board, or any other committee of the Association, no officer of the Association and no manager or other employee of the Association shall be personally liable to any Member, or to any other Person including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board or any member thereof, the manager, any representative or employee of the Association, any officer of the Association or any member of any other committee of the Association; provided, however, the limitations set forth in this Section 5.4 shall not apply to any Person who has engaged in intentional misconduct.

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

5.5.1. To adopt and amend Bylaws.

5.5.2. To make and enforce Community Rules covering the operation and maintenance of the Community.

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5.5.3. To operate, maintain, repair, improve and replace the Community Area (including the Limited Community Area) or to cause additional Improvements to be made as part of the Community Area.

5.5.4. To grant easements, including permanent easements, leases, licenses, and concessions, through or over the Community Area.

5.5.5. To determine and pay the Community Expenses and the Co-Ownership Expenses.

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

5.5.7. To assess and collect the proportionate share of Co-Ownership Expenses from the Co-Ownership Owners.

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

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

5.5.10. To institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration, Bylaws or Community Rules in the Association's name on behalf of the Association or two or more Owners on matters affecting the Community.

5.5.11. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Association and the Board and to the operation of the Community, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances, and office supplies. To the extent Owners hold title to items of personal property such as furniture, furnishings, appliances or otherwise, each Owner appoints the Board as their attorney-in-fact to dispose of such personal property, to acquire additional or replacement property or to finance such property in the name of each Owner.

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

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

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

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

5.5.16. To the extent permitted by law, the Board may delegate to the manager via a Management Agreement all of the powers, duties and responsibilities referred to in this Section 5.5.

5.5.17. To hire and discharge employees and agents, other than the manager, and independent contractors.

5.5.18. To exercise any other powers conferred by this Declaration or the Bylaws.

5.5.19. To exercise any other power that may be exercised in Utah by legal entities of the same type as the Association.

5.5.20. To exercise any other power necessary and proper for the governance and operation of the Association.

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

5.7. **Membership in the Association.** Every Owner of a Lot or Co-Ownership Interest, including Declarant, shall be a member of the Association, and Declarant shall be a member of the Association so long as it or a Declarant Affiliate owns any part of the Community (unless and until Declarant expressly relinquishes in writing its status as a Member).

5.8. **Votes in the Association.** Each Lot in the Community shall be allocated eight (8) votes. Co-Ownership Owners shall be entitled to a vote, the size of which vote shall be based upon each Co-Ownership Owner's undivided interest as tenant-in-common in the Co-Ownership Lot. Class voting by Co-Ownership Owners shall be allowed on issues specified in Article XI.

5.9. **Voting Procedures.** A change in the ownership of a Lot or Co-Ownership Interest shall be effective for voting purposes from the time the deed or other instrument effecting such change is of Record. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provide satisfactory evidence thereof. Except as provided in Article XI with respect to the votes cast by Co-Ownership Owners and as set forth below, the votes for each Lot must be cast as a unit, and fractional votes shall not be allowed. Except with regard to ownership of Co-Ownership Interests, in the event that a Lot is owned by more than one Person, such individuals or entities shall appoint and authorize one person or alternate persons to represent the Owners of such Lot. Such representative shall be a natural person who is an Owner, or a designated board member or officer of a corporate Owner, or a general partner of a partnership Owner, or a comparable representative of any other entity, and such representative shall have the power to cast votes on behalf of the Owners as a member of the Association, and serve on the Board if elected, subject to the provisions of and in accordance with the procedures more fully described in the Bylaws. Notwithstanding the foregoing, if only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners are present and there is no written designation of an authorized representative, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners, which majority agreement may be assumed for all purposes if any one of the multiple Owners cast the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

5.10. **Transfer of Membership.** The voting rights and Assessment obligations of any Member other than Declarant shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of an Owner's Lot or Co-Ownership Interest, and then only to the transferee of ownership of the Lot or Co-Ownership Interest. A transfer of ownership of a Lot or Co-Ownership Interest may be affected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot or Co-Ownership Interest shall operate to transfer the Membership appurtenant to said Lot or Co-Ownership Interest to the new Owner thereof. In the event the Owner of any Lot or Co-Ownership Interest should

fail or refuse to transfer the Membership registered in his or her name to the purchaser of such Lot or Co-Ownership Interest upon transfer of fee title thereto, the Board shall have the right, but not the obligation, to record the transfer upon the books of the Association. All transfers shall be subject to the transfer fee described in Section 6.13.

ARTICLE VI COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

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

6.2. Annual Assessment. In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Community Expenses and to perform its duties and obligations under the Community Documents, including, without limitation, the establishment of reasonable reserves for replacements, maintenance and contingencies, the Board, for each fiscal year shall assess an Annual Assessment against each Lot which shall be billed monthly or quarterly to each Owner, as determined by the Board. Annual Assessments shall be computed and assessed against all Lots in the Community as follows:

6.2.1. Community Expenses. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Community Area, Limited Community Area, exterior elements of the Residences, landscaped areas, concrete improvements, fences, patios and driveways located on the Limited Community Area or a Lot and furnishing common utility services and other common items to the Residences. Such estimated expenses may include, without limitation, the following: road maintenance and repair, snow removal, landscaping and pressurized irrigation costs; exterior maintenance of Residences; management expenses; real property taxes on the Community Area; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Association employees, including fees for a manager; utility charges, including charges for utility services to the Community Area; any deficit

remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of Community Area which must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Community Expenses, and all funds received from Assessments under this Section 6.2.1 shall be part of the Community Expense fund. Two separate and distinct accounts shall be created and maintained hereunder, one for operating expenses and one for reserves and capital expenses which together shall constitute the Community Expense fund. All Assessments for capital expenditures and reserves for replacement shall be based upon a "Reserve Analysis" which shall be conducted by the Board, or by a third party who is qualified to do so and is engaged by the Board of the Association, and in full compliance with the Utah Community Association Act.

6.2.2. Apportionment. Community Expenses shall be equally apportioned among and assessed to all Members. Each Owner, for each Lot or Co-Ownership Interest that he, she or it owns, shall be liable for an equal share of the Community Expenses. Declarant and each Declarant Affiliate shall be liable for the amount of any Assessments against Lots or Co-Ownership Interests they own, subject to the subsidy provisions described in Section 6.8 below.

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

6.2.4. Notice and Payment. The Board shall give notice of the Annual Assessment to each Owner at least ten (10) days prior to the beginning of each fiscal year, but the failure to give prior notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any fiscal year that the funds budgeted for that fiscal year are, or will become, inadequate to meet all Community Expenses for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that fiscal year and the revised Annual Assessment shall commence on the date designated by the Board subject to the limitations and provisions that may be set forth in Bylaws.

6.2.5. Effective Date of Assessments. Any Assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Owner subject thereto at least ten (10) days prior to the due date thereof as described in Section 6.2.4 above, or, if it is to be paid in installments, the due date of the first installment thereof. Written notice mailed or delivered to an Owner's Residence shall constitute notice to that Owner, unless the Owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Owner.

6.3. Special Assessments. The Association may levy against each Lot, in any fiscal year, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Improvements upon the Community Area, including fixtures and personal property related thereto, exterior elements of the Residences, and landscaped areas, concrete

improvements, fences, patios and driveways located on the Limited Community Area or a Lot; provided, however, that any Special Assessment shall be subject to the limitations and provisions set forth in the Bylaws and have the assent of two-thirds (2/3) of the votes entitled to be cast by the Members who are voting in person or by proxy at a meeting duly called for such purpose, if the cost of such new improvements would exceed ten percent (10%) of that budget for the fiscal year.

6.4. Residence Co-Ownership Assessments. In addition to the Annual Assessments, the Association shall assess Co-Ownership Assessments against all Co-Ownership Owners to fund Co-Ownership Expenses pursuant to Article XI below.

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

6.6. Effect of Nonpayment of Assessments: Remedies of the Association.

6.6.1. If any Assessment, or any installment of an Assessment, not paid within ten (10) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate established from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within ten (10) days after such payment was due.

6.6.2. If any installment of an Assessment assessed by the Board is not paid within ten (10) days after the same is due, the entire unpaid balance of the Assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

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

6.6.4. The Assessment Lien shall have priority over all liens or claims except for (a) tax liens for real property taxes; (b) assessments in favor of any Municipal Authority or assessment district; and (c) the lien of any First Mortgage as provided in this Section 6.6.4. The lien of the Assessments

and charges provided for herein shall be subject and subordinate to the lien of any duly executed First Mortgage on a Lot Recorded prior to the date on which such lien of the Association is recorded and any holder of such First Mortgage which comes into possession of a Lot pursuant to the remedies provided in the First Mortgage, foreclosure of the First Mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid installments of Assessments and charges against the Lot which (i) are so subordinate to such First Mortgage and (ii) became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor Owner by virtue of such process. The foregoing will not relieve any successor Owner from the obligation for Assessments accruing thereafter.

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

6.6.6. The Board shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law, including but not limited to taking either or all of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Board does not prejudice or waive its right to exercise the other remedy): (a) bring an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments; or (b) enforce the Assessment Lien against the applicable Lot or Co-Ownership Interest by sale or foreclosure conducted in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency), the foreclosure rights and methods described in the Community Association Act, Chapter 57, Title 8a, Utah Code Ann., as amended (the "Community Association Act"), the method recognized under Utah law for the enforcement of a mechanics' lien which has been established in accordance with Chapter 1, Title 38, Utah Code Ann., as amended from time to time, or any other manner permitted by law, and the Lot or Co-Ownership Interest may be redeemed after a judicial foreclosure sale if provided by law. In order to facilitate the foreclosure of any such Assessment Lien in the manner provided at law for the foreclosure of deeds of trust, the Board may designate a trustee with full power of sale, to foreclose any such Assessment Liens as directed by the Board. Such trustee, and any successors, shall not have any other right, title or interest in the Community beyond those rights and interests necessary and appropriate to foreclose any Assessment Liens against Lots or Co-Ownership Interests arising pursuant hereto. In any such foreclosure, the Owner of the Lot or Co-Ownership Interest being foreclosed shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the Assessment Lien being foreclosed. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

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

6.7. Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other Person a written certificate stating: (a) that all Assessments, interest and other fees and charges have

been paid with respect to any specified Lot or Co-Ownership Interest as of the date of such certificate; or (b) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide purchaser of, or lender on, the Lot or Co-Ownership Interest in question.

6.8. Declarant and Declarant Affiliate Subsidy. Notwithstanding any other provision of this Declaration to the contrary, prior to its transfer of control of the Association pursuant to Section 2.15 above, Declarant reserves for itself and all Declarant Affiliates (collectively referenced as the "Subsidizing Party"), in its sole and exclusive discretion, the right to subsidize the Association (rather than paying a full Assessment share for each Lot or Co-Ownership Interest it owns) for the amount by which (i) the actual cost and expense of operating and administering the Association and maintaining reasonable reserves for maintenance, replacement and repairs and for contingencies, all as provided in this Declaration, exceeds (ii) the total amount of Assessments levied against and collected from Owners other than the Subsidizing Party. The subsidy required of the Subsidizing Party under this Section may be in the form of cash or in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, provided that "in-kind" contributions of goods or services must directly reduce the Association's costs and expenses for which an Assessment is being levied. The Subsidizing Party shall make payments or contributions in respect to its subsidy obligations under this Section at such time as the Board may reasonably request from time to time as necessary to ensure that there are sufficient funds available for payment of Association costs and expenses and accumulation of adequate reserves (but in any event not more often than monthly). At the end of each fiscal year, either: (i) the Subsidizing Party shall pay or contribute to the Association such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by the Subsidizing Party during such fiscal year, to satisfy in full the Subsidizing Party's subsidy obligations under this Section for such fiscal year; or (ii) the Association shall pay to the Subsidizing Party or credit against the Subsidizing Party's subsidy obligation for the immediately following fiscal year, as the Subsidizing Party may elect, the amount, if any, by which the total of all payments or contributions paid or made by the Subsidizing Party during such fiscal year exceeded the total subsidy obligation of the Subsidizing Party for such fiscal year under this Section. Within thirty (30) days of the end of each fiscal year, the Board shall make an accounting of the Subsidizing Party's subsidy obligations for that period, what amounts have been paid by the Subsidizing Party (in cash, goods or services) with respect to such obligations, and what amounts are due. A copy of the accounting shall be made available for review by Members upon request. Notwithstanding that the amount of any Assessment against each Lot shall be fixed at a uniform rate per Membership, subsequent to Declarant's transfer of control of the Association pursuant to Section 2.15 above, the Subsidizing Party shall pay twenty-five percent (25%) of the Annual Assessment attributable to each Lot which it owns until completion of the Residence on such Lot.

6.9. Encumbrances. Any encumbrancer holding a lien on a Lot or Co-Ownership Interest may pay any amounts secured by the Assessment Lien created by this Article VI, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

6.10. Effect of Conveyance. In any voluntary conveyance, except to a First Mortgagee in lieu of foreclosure of the first Mortgage, the grantee of a Lot or Co-Ownership Interest shall be jointly and severally liable with the grantor for all unpaid Assessments against the Lot or Co-Ownership Interest for his, her or its share of the Community Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However,

any such grantee shall be entitled to a statement from the Board setting forth the amounts of the unpaid Assessments against the grantor, and such grantee shall not be liable for, nor shall the Lot or Co-Ownership Interest conveyed be subject to a lien for, any unpaid Assessments against the grantor in excess of the amount set forth in such written statement.

6.11. **Purposes for Which Association's Funds May be Used.** The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Community and the Owners and Occupants by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all roads, land, properties, Improvements, facilities, services, projects, programs, studies and systems, within or without the Community, which may be necessary, desirable or beneficial to the general common interests of the Community, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: maintenance and repair of any private roads within the Community, maintenance and repair of the exterior portion of Residences, maintenance and repair of the landscaped areas, concrete improvements, fences, patios and driveways located on the Limited Community Area or a Lot, social interaction among Members and Occupants, maintenance of landscaping on Community Area and public right-of-way and drainage areas within the Community, construction, operation and maintenance of trails, recreational areas and other facilities on Community Area, recreation, insurance, communications, education, transportation, health, utilities, public services, safety, indemnification of officers, directors and committee members of the Association, employment of professional managers, hiring professional consultants such as architects, engineers, attorneys and accountants, and pledging future Assessments as collateral to secure Association financing. The Association shall establish and maintain such reserves for capital expenditures and replacements and reserve accounts as may be required by, and are in conformity with, the requirements of the Community Association Act.

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

6.13. **Transfer Fee.** Each subsequent purchaser of a Lot or Co-Ownership Interest from an Owner other than Declarant or a Declarant Affiliate shall notify the Board of his, her or its purchase of such Lot or Co-Ownership Interest so that the Board may maintain an accurate roster of Owners. In order to recover the expenses associated with updating its roster of Owners, the Board may require the purchaser of a Lot or Co-Ownership Interest to pay to the Association a reasonable transfer fee in an amount to be set by the Board, subject to any express statutory limitations, and the transfer fee shall be secured by the Assessment Lien.

6.14. **Notice of Meetings to Consider Special Assessments.** All written notices of any meeting called for the purpose of approving the establishment of any Special Assessment shall be sent to all Members in accordance with the time periods and provisions set forth in the Bylaws.

6.15. **Capital Contribution.** In addition to certain other amounts due to the Association at the time of closing of the sale of a Lot or Co-Ownership Interest, each Owner other than the Declarant hereby agrees and acknowledges that he, she or it shall pay to the Association a working capital contribution ("Capital Contribution") at the time he or she acquires a Lot or Co-Ownership Interest as a contribution to

the Association's working capital {Ind. The purpose of the Capital Contribution is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services respectively deemed necessary or desirable for operation of the Community by the Association. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The Owner's Capital Contribution amount shall be a sum equal to three (3) monthly installments of the Annual Assessments for his, her or its Lot or Co-Ownership Interest unless otherwise determined by the Declarant during the period of Declarant control of the Association and thereafter by the Board. Each Owner's Capital Contribution must be collected and transferred to the Association at the time of the closing of the sale of that Lot or Co-Ownership Interest. Interest on such Capital Contribution shall accrue to the benefit of the Association. Each Owner's obligation to pay the Capital Contribution shall be enforceable in the same manner as payment of Assessments and shall be secured by the Assessment lien. The Capital Contribution shall not be considered advance payment of any regular Assessment.

ARTICLE VII MAINTENANCE

7.1. Association's Duty to Maintain Community Area. Public Right of Way. Lots and Exterior Elements of Residences.

7.1.1. The Association, or its duly delegated representative, shall manage, maintain, repair, and replace the Community Area, Limited Community Area and all Improvements located thereon, except the Association may, without obligation, maintain areas which any Municipal Authority or any utility company is maintaining or is obligated to maintain.

7.1.2. The Board shall be the sole judge as to the appropriate maintenance of all Community Area and other properties maintained by the Association. In the event of any disagreement or uncertainty, the Board shall have the sole and exclusive power and authority to determine which real property and Improvements constitute Community Area to be maintained by the Association, which determination shall be conclusive, final and unappealable. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.1.3. In addition to the foregoing maintenance obligations, the Association shall have the duty of maintaining and repairing the landscaped areas, concrete improvements, fences, patios and driveways located on the Limited Community Area or a Lot and all of the exterior elements of the Residences, including without limitation, the utility and other service lines, whether public or private-company owned, constituting exterior elements as further described in Section 1.34.2 above, and the structural integrity of exterior structural walls of Residences, and the cost of said maintenance and repair shall be a Community Expense of all of the Owners. The Board shall not need the prior approval of the Members of the Association to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof.

7.1.4. The Association shall, through the Board or its representatives, provide to the Owners the following services which shall be paid for via the Assessments, to-wit:

7.1.4.1. maintain the parking areas, the landscaping and sidewalks;

- 7.1.4.2. administer and manage the Community;
- 7.1.4.3. provide common utilities unless otherwise separately metered;
- 7.1.4.4. set aside reserves for future maintenance, repairs and replacements of all areas and Improvements for which the Association is obligated as required by this Declaration or the Community Association Act;
- 7.1.4.5. provide snow removal;
- 7.1.4.6. obtain the insurance required in Article VIII below;
- 7.1.4.7. act as attorney-in-fact in the event of damage or destruction as provided for in Article VIII below; and
- 7.1.4.8. perform all other acts required by this Declaration, the Articles, the Bylaws or the other Community Documents.

7.2. Owner's Right and Obligation to Maintain Interior Elements of Residence. Each Owner, other than a Co-Ownership Owner shall maintain the interior of his, her or its Residence in a safe, sanitary, and attractive condition. Maintenance by the Owner of the interior of his, her or its Residence shall be subject to the following provisions. The Association shall maintain the interior of the Co-Ownership Residences as provided in Article XI below.

7.2.1. No Owner shall do anything that would interfere with the clean and sanitary condition of his or her Lot or Residence or that would interfere with or prevent the Association from performing its maintenance obligations on such Lot and exterior elements of the Residence as further described in this Declaration. For purposes of maintenance, repair, alteration and remodeling, an Owner, other than a Co-Ownership Owner, shall maintain and be permitted to alter or remodel all interior elements and non-structural walls of Residences, and the Association shall maintain the structural integrity of exterior elements of the Residence as further described in this Declaration.

7.2.2. No Owner shall alter, disturb, or relocate utilities which are located on his, her or its Lot and the exterior elements of the Residence. The Owners, other than Co-Ownership Owners, shall maintain and keep in repair all utilities installed within the interior and exterior boundaries of his, her or its Residence at the point such utilities enter the Residence.

7.2.3. An Owner shall do no act and shall perform no work that will or may impair the structural soundness or integrity of the Residence or any Party Wall, impair any easement or hereditament or violate any laws, ordinances, regulations and codes of the United States of America, the State of Utah, the County of Iron, the Town of Brian Head or any other agency or entity which may then have jurisdiction over said Residence. Any expense to the Association for investigation under this Section shall be borne by Owner if such investigation establishes a violation of this Section.

7.3. Installation and Maintenance of Landscaping. In order to maintain uniformity of appearance, the Association shall install (if not already installed) grass, plants, and other landscaping improvements (together with a pressurized irrigation system sufficient to adequately water any grass, trees, plants and other landscaping improvements, the cost of which water fees shall be paid by the Association) as the Association deems appropriate, on all portions of the Lots and the Community Area for the benefit of the Owners. The cost of any such installation and maintenance thereof shall be paid to the Association by the Owners as a part of the Annual Assessment upon demand and assessment from the Board. All

landscaping must be installed in accordance with plans approved by the Board. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.4. Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of the Community Area, Lots or exterior elements of a Residence or any other area maintained by the Association is caused through the willful or negligent act of any Owner, his, her or its family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot or Co-Ownership Interest is subject and shall be secured by the Assessment Lien.

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

7.6. Maintenance of Party Walls. The provisions in this Section 7.6 and Section 7.7 below shall apply the maintenance of Party Walls by the Owners except with regard to the Party Walls contained within the Co-Ownership Residences which shall be maintained by the Association as provided in Article XI. By acceptance of a deed to a Lot, each Owner hereby acknowledges, agrees, and understands that it is essential that the Party Wall be maintained in good condition and repair to preserve the integrity of the Residences as they are used and occupied by the Owners. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components which face into such Owners' respective Residence. With respect to pipes, conduits, ducts and other utility lines and connections which benefit only one of the Owners, the Owner benefited solely thereby shall be fully responsible for the cost of maintaining such items in good condition and repair, including the making of replacements as needed. In the event that the need for maintenance or repair of the Party Wall is caused through the willful or negligent act of any Owner, his, her or its family, guests or invitees, the cost of such maintenance or repairs shall be the sole and exclusive expense of such Owner. With respect to structural components of the Party Wall, except as may be otherwise provided in the immediately preceding sentences, the Owners agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary. If the Party Wall is destroyed or damaged by fire or other casualty, either Owner may restore it, and the other Adjoining Owner shall contribute one-half of the cost of restoration thereof; provided, however, that any such single maintenance or repair activity, including a replacement as necessary, which is expected to exceed \$5,000.00 shall, except in an emergency, be undertaken only with the approval of the Board and both Owners, which approval shall not be unreasonably withheld, conditioned or delayed.

7.7. Failure to Maintain Party Wall. If any Owner shall fail to comply with the provisions of this Declaration as to maintenance, repair or use of the Party Wall, or the obtaining of insurance as set forth in Section 8.9 below, or other obligations contained herein ("Defaulting Owner"), then in any such event the Adjoining Owner shall have the right, upon thirty (30) days written notice to the Defaulting Owner (unless within such 30-day period the Defaulting Owner shall cure such default, or in the case of a nonmonetary default which by its nature cannot be cured within such 30-day period, the Defaulting Owner shall take such action as is reasonably calculated to commence the curing thereof, and thereafter shall diligently prosecute the curing thereof to completion) to proceed to take such action as shall be necessary to cure such default, all in the name of and for the account of the Defaulting Owner. The Defaulting Owner shall on demand reimburse the other Adjoining Owner taking such action for the monies actually expended by such Adjoining Owner and the Adjoining Owner's reasonable out-of-pocket expenses in so doing, together with interest thereon as set forth below from the date of demand to the date of payment. Notwithstanding the foregoing, if the non-defaulting Adjoining Owner shall in good faith deem that an emergency is occurring or has occurred, so that the default requires immediate curing, then no notice shall be required and the non-defaulting Adjoining Owner may act promptly without giving notice and take such action as is necessary to cure the alleged failure. Any Adjoining Owner performing any action pursuant to the preceding sentence shall interfere to the minimum extent possible with the Defaulting Owner's use and occupancy of such Defaulting Owner's Residence, and, with reasonable promptness, shall give verbal or written notice to the Defaulting owner of such action and the claimed failure.

7.7.1. Any unresolved dispute, disagreement or controversy between a Defaulting Owner and an Adjoining Owner shall at the request of either party be submitted to an arbitration board of at least three (3) Members with one chosen by the Adjoining Owner, the other by the Defaulting Owner and a third by the other two arbitrators so chosen. The arbitrators shall act in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. At any time during the arbitration of a claim relating to the interpretation, application or enforcement of any covenants, conditions, or restrictions applicable to the maintenance of Party Walls or rules or regulations adopted by the Association, the arbitrators may issue an order prohibiting the action upon which the claim is based. An award must be made within thirty (30) days after the conclusion of arbitration unless a shorter period is agreed upon by the Adjoining Owner and the Defaulting Owner. The decision of the majority of such arbitrators shall be binding on the Adjoining Owner and the Defaulting Owner. Such decisions shall include the awarding of costs, including reasonable attorneys' fees, as the arbitrators shall determine. The decision of the arbitrators shall be judicially enforceable as a judgment.

7.7.2. All sums required to be reimbursed or otherwise paid hereunder by one Defaulting Owner to the other Adjoining Owner shall bear interest per annum at the floating rate of 1% over the then current rate" of interest announced in the Wall Street Journal. Such interest rate shall be determined monthly on the first day of each calendar month. In addition, any Defaulting Owner who fails to pay its obligations under this Declaration agrees to pay the other Adjoining Owner's reasonable collection costs, including reasonable attorney's fees.

7.7.3. All remedies hereby specifically set forth in this Section 7.7 are cumulative and shall be deemed to be in addition to any remedies available at law or in equity which shall include the right to restrain by injunction any violation or threat of violation by any Owner of any of the terms, covenants, or conditions of this Declaration governing Party Walls and by decree to compel specific performance of any such terms, covenants, or conditions governing Party Walls, it being agreed that the remedy at law for any breach of any such term, covenant, or condition governing Party Walls is not adequate. Notwithstanding the foregoing, no default by any Owner under this Agreement shall

entitle any other Adjoining Owner to terminate, cancel or otherwise rescind this Declaration or any terms, covenants, or conditions governing Party Walls.

7.7.4. The Board, without obligation and in its sole and exclusive discretion, may also notify the Defaulting Owner of the work required to the Party Wall and demand that it be done within a reasonable and specified period and individually charge the enforcement costs thereof to such Defaulting Owner, which enforcement costs shall be secured by the Assessment Lien. Moreover, in the event a medical emergency, a property damage emergency or similar type of emergency which requires immediate curing shall arise in connection with an Owner's Lot, Residence or other Improvement, the Board shall have the right, but not the obligation, to immediately enter upon the Lot or gain entrance into the Residence to abate the emergency upon reasonable advance notice to such Owner considering the nature, scope and extent of the emergency (e.g. advance telephone calls or doorbell ringing or knocking). The Board shall have the right to individually charge the cost to cure the emergency condition to such Owner if such emergency was the personal responsibility of the Owner or if it was caused by the negligent or willful acts of the Owner, his, her or its family, guests, or invitees.

ARTICLE VIII INSURANCE

8.1. **Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot to a purchaser, other than Declarant or a Declarant Affiliate, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

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

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

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

8.1.4. Fidelity bonding of the Board and employees of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time;

8.1.5. Errors and omissions insurance coverage for the Board;

8.1.6. To the extent available at commercially reasonable rates and terms, business interruption insurance, which includes the cost of temporary quarters for Co-Ownership Owners and their guests in the event a Co-Ownership Owner is relocated due to a peril insured by the Association; and

8.1.7. Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners.

8.2. Insurance Policy Requirements. Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions:

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

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

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

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

8.2.5. A statement naming the Association as the insured for the use and benefit of the individual Owners. (Said Owners shall be designated by name if required by law.) Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association, including any trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy; and

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

8.3. Hazard Insurance. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports (International Edition), an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBQ" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

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

8.5. Additional Insureds. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any Insurance Trustee, who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

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

8.7. Payment of Insurance Proceeds. With respect to any loss to the Community Area, Lots or Residences covered by property insurance obtained by the Association, the loss shall be adjusted with the Association or the Insurance Trustee, and the insurance proceeds shall be payable to the Association (or Insurance Trustee) and not to any Mortgagee. Subject to the provisions of Section 8.8, the proceeds shall be disbursed for the repair or restoration of the damage to the Community Area, Lots or Residences.

8.8. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Community Area, Lots or Residences which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Community Area, or the Lots or Residences are not repaired or replaced, insurance proceeds attributable to the damaged Community Area, Lots or Residences shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either: (i) be retained by the Association as an additional capital reserve; (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association; or (iii) shall be distributed in equal shares per Membership to the Owners of each Lot as their interests appear.

8.9. Insurance of Party Walls: Waiver. Except with regard to the Co-Ownership Owners, by acceptance of a deed to a Lot, each Owner hereby acknowledges his, her or its independent insurance obligations for the respective Party Wall which constitutes a portion of the Owner's Residence and agrees to maintain in full force and effect "all-risk" property insurance with respect to the Residence owned by such Owner. Such insurance shall be in an amount equal to at least 100% of the replacement cost of such Owner's Residence exclusive of the cost of excavation, foundations, and footings, and shall protect against loss or damage by fire, and all other hazards that are normally covered by the standard extended coverage endorsement. Each policy shall be carried with a company rated X or better in "Best's Insurance Guide", and each Owner shall provide a copy of the policy obtained by such Owner to the Board and the other Adjoining Owner and such policy shall require thirty (30) days' notice to the Board and the other Adjoining Owner before the policy can be cancelled. All policy proceeds payable with respect to damage

or destruction of the Party Wall shall be used by the Owners, to the extent necessary, to repair and restore the damage or destruction for which the proceeds are payable. Each Owner, other than the Co-Ownership Owners, agrees to make such repair and restoration whether or not the policy proceeds are adequate for such purposes or whether or not the occurrence resulting in such damage or destruction is covered by insurance. Each Owner, other than the Co-Ownership Owners, hereby waives any rights it may have against the other Adjoining Owner on account of any loss or damage to its Residence which arises from any risk covered by fire and extended coverage insurance carried hereunder, whether or not such other Adjoining Owner may have been negligent or at fault in causing such loss or damage. Each Owner shall obtain a clause or endorsement in the policies of such insurance which each Owner obtains to the effect that the insurer waives, or shall otherwise be denied, the right of subrogation against the other Adjoining Owner for loss covered by such insurance. It is understood that such subrogation waivers may be operative only as long as such waivers are available in the State of Utah and do not invalidate any such policies. If such subrogation waivers are allegedly not operative in the State of Utah, notice of such fact shall be promptly given by the Owner obtaining insurance to the Board and the other Adjoining Owner.

ARTICLE IV MORTGAGEE REQUIREMENTS

9.1. Notice of Action. The Board shall maintain a roster containing the name and address of each Eligible Mortgagee as such term is defined herein and in Section 1.17 above. To be considered an Eligible Mortgagee, a First Mortgagee shall provide the Board with a certified copy of its Recorded First Mortgage and the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage together with a written request that it receive notice of the matters and actions described below. The Board shall strike an Eligible Mortgagee from the roster upon request by such Eligible Mortgagee or upon the Board's receipt of a certified copy of a Recorded full release or satisfaction of the Eligible Mortgage. The Board shall give notice of such removal to the Eligible Mortgagee unless the removal is requested by the Eligible Mortgagee. Upon the Board's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

9.1.1. Any condemnation loss or any casualty loss which affects a material portion of the Community or any Lot or Co-Ownership Interest on which there is a Mortgage held, insured, or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor;

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

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

9.2. Availability of Community Documents and Financial Statements. The Association shall maintain and have current copies of the Community Documents, membership register, books, records, and financial statements available for inspection by Members or by Eligible Mortgagees. Generally, these documents shall be available during the Association's normal business hours and may be maintained and kept at the office of the manager for the Association. The Association may, as a condition to permitting a Member to inspect the membership register or to its furnishing information from the register, require that the Member agree in writing not to use, or allow the use of, information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the Member's interest in the Association.

9.3. Subordination of Lien. The Assessment or claim against a Lot or Co-Ownership Interest for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Lot or Co-Ownership Interest, and the First Mortgagee thereunder which comes into possession of or which obtains title to such Lot or Co-Ownership Interest shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No Assessment, charge, Assessment Lien or claim which is described in the preceding sentence as being subordinate to a First Mortgage, or as not to burden a First Mortgagee which comes into possession or which obtains title to a Lot or Co-Ownership Interest, shall be collected, or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot or Co-Ownership Interest affected or previously affected by the First Mortgage concerned. The provisions of this Section 9.3 shall be in addition to the rights of a First Mortgagee under Section 6.6.4.

9.4. Notice to Eligible Mortgagees. The Association shall give timely written notice of the events listed in Section 9.1 above to any Eligible Mortgagee who requests such notice in writing.

9.5. Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Community Area are not timely paid, or in the event the required hazard insurance described in Section 8.1 lapses, is not maintained or the premiums therefore are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly pay such taxes or premiums or secure such insurance. Prior to paying any taxes or premiums, such First Mortgagee or First Mortgagees shall provide thirty (30) days advance written notice to the Board, which notice shall specify the nature of the taxes or premiums and suggest a reasonable cure period for such payments.

9.6. Priority. No provision of this Declaration or the Articles gives or may give a Member or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Members of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots or the Community Area. All proceeds or awards shall be paid directly to any Mortgagees of Record, as their interests may appear.

ARTICLE X CONDEMNATION

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

10.2. Partial Condemnation: Distribution of Award: Reconstruction. The award made for such taking shall be payable to the Association as trustee for all Members to be disbursed as follows: If the taking involves a portion of the Community Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Members representing at least two-thirds (2/3) of the total votes of the Association shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included on the Community Area to the extent lands are available therefore, in accordance with plans approved by the Board. If such Improvements are to be repaired or restored, the provisions in Article VII above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Community Area, or if there is a decision made not to repair or restore,

or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed to Members in equal shares, first to the Mortgagees and then to the Members.

10.3. **Complete Condemnation.** If the entire Community is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Community Area shall be distributed to Members based upon the relative value of the Lots prior to the condemnation.

ARTICLE XI THE RESIDENCE CO-OWNERSHIP AT ELEVATE VILLAS

11.1. **Submission of Lots to The Residence Co-Ownership at Elevate Villas.** Declarant reserves the right to submit all or some of the Lots in the Community to the Co-Ownership as set forth in this Article XI. The provisions of this Article XI relate only to those Lots submitted to the Co-Ownership and shall govern the ownership of Co-Ownership Interests in said Co-Ownership Lots (defined below) and the rights, duties, and obligations of Co-Ownership Owners. So long as Declarant owns any Lot or Co-Ownership Interest, the right to submit a Lot to the Co-Ownership shall extend only to Declarant and shall specifically not be available to purchasers of Lots in the Community, their successors or assigns except with the prior written consent of Declarant, in its sole discretion. Thereafter, any Owner may submit a Lot to the Co-Ownership, with the prior written consent of the Association, in its sole discretion. Submission of a Lot to the Co-Ownership shall be subject to the prior written consent of any First Mortgagee of the Lot. The provisions of the Declaration shall apply to all Co-Ownership Lots and Co-Ownership Interests created hereunder; provided, however, in the event of an inconsistency between this Article and the remaining provisions of the Declaration with respect to the ownership of a Co-Ownership Lot or Co-Ownership Interest and the rights, duties and obligations of Co-Ownership Owners, then the provisions of this Article shall control.

11.2. **Definitions.** Unless the context expressly requires otherwise, words shall have the meanings designated below with respect to those Lots which are submitted to the Co-Ownership. Certain terms not defined in this Section 11.2 shall have the meanings set forth in the Reservation Procedures.

11.2.1. **"Co-Ownership Assessment"** means the assessments paid by the Co-Ownership Owners pursuant to this Article levied by the Association against all Co-Ownership Owners to pay the budgeted Co-Ownership Expenses.

11.2.2. **"Co-Ownership Expenses"** shall have the meaning set forth in Section 11.8 below.

11.2.3. **"Co-Ownership Furnishings"** means all interior decor, furniture, furnishings, fixtures, appliances, moveable equipment, utensils, carpeting, accessories, and other personal property (a) located within a particular Co-Ownership Residence for the exclusive use and benefit of the Co-Ownership Owner(s) utilizing that Co-Ownership Residence, or (b) for use by the Co-Ownership Association in the operation, management, maintenance, and repair of the Co-Ownership.

11.2.4. **"Co-Ownership Interest"** shall mean and shall include the following interests and rights, which are indivisible and inseparable, and which shall be exercised in accordance with the terms and provisions of this Declaration: (a) an undivided one-eighth (1/8), or one-thirteenth (1/13) fee simple interest in a specific Co-Ownership Lot; (b) membership in the Association; (c) a recurring and

exclusive right to the possession, use and occupancy of a Co-Ownership Residence of the same Residence Category designated in the Co-Ownership Owner's deed of conveyance and a specified number of Planned, Space Available, and Short Notice Use Periods reserved for use pursuant to the Reservation Procedures; and (d) a non-exclusive right to use the Community and the Co-Ownership while occupying a Co-Ownership Lot subject to the terms and provisions of this Declaration and the other Community Documents.

11.2.5. "Co-Ownership Interest ID" means that certain alpha, numeric and/or symbolic designation assigned to a single Co-Ownership Interest for Co-Ownership inventory control purposes that corresponds to a similar designation in the reservation system established under the Reservation Procedures. Declarant, during the period of Declarant control of the Association under this Declaration, shall have the unilateral right to assign the Co-Ownership Interest ID to each Co-Ownership Interest and to create such designation from any combination of letters, numbers and/or symbols as it shall determine in its sole and exclusive discretion.

11.2.6. "Co-Ownership Lot" shall mean a Lot which is submitted to the Co-Ownership and any Residence or Improvements thereon.

11.2.7. "Co-Ownership Owner" shall mean the Owner of a Co-Ownership Interest in a Co-Ownership Lot, including Declarant. The term "Co-Ownership Owner" shall not include any Mortgagee (unless such Mortgagee has acquired title for other than security purposes).

11.2.8. "Co-Ownership Program" shall mean the Co-Ownership Lots, Co-Ownership Residences, all Co-Ownership Furnishings located therein and all other rights of Co-Ownership Owners pursuant to the ownership program created by this Declaration.

11.2.9. "Co-Ownership Residence" shall mean any Residence constructed on a Co-Ownership Lot.

11.2.10. "Primary Use Period" shall mean that certain Use Period as designated in a Co-Ownership Owner's deed of conveyance during which Use Period the Co-Ownership Owner has the annually recurring right to occupy a Co-Ownership Residence of the same Residence Category purchased. The Primary Use Period(s), if any, associated with a particular Co-Ownership Interest shall be designated at the time such Co-Ownership Interest is conveyed to a non-Declarant purchaser. Declarant reserves the right to unilaterally amend this Declaration from time to time, without the consent of the Association or Owners, to include a schedule of the Primary Use Periods associated with specific Co-Ownership Interests.

11.2.11. "Reservation Procedures" means the Reservation Procedures established by the Association pursuant to Section 11.13.

11.2.12. "Residency Category" means the size of a Co-Ownership Residence in which the Co-Ownership Owner has purchased a Co-Ownership Interest, such as a four-bedroom, five-bedroom or four-bedroom Co-Ownership Residence. Developer currently intends that the Residence Categories shall be of the following types:

11.2.13. "Use Periods" shall mean Primary Use Periods and Planned, Space Available or Short Notice Use Periods during which Co-Ownership Owners may reserve the use of Co-Ownership Lots as more specifically set forth in the Reservation Procedures. Use Periods for each Co-Ownership Interest are established each year for the dates set forth in the Reservation Procedures. A Use Period will usually consist of up to seven (7) consecutive days beginning on the days of the week as

designated in the Reservation Procedures. All Use Periods in a Co-Ownership Lot shall be computed on the same basis and shall commence and end at the same time, on the same day of the week, according to this paragraph.

11.3. **Submission of Co-Ownership Lots to Co-Ownership Program.** Declarant may submit a Lot to Co-Ownership Ownership, with the express written consent of the Owner of such Lot, either by Recording a properly acknowledged notice executed by Declarant describing the Lot to be submitted to Co-Ownership Recordation of a deed conveying a Co-Ownership Interest to a Co-Ownership Owner. By acceptance of a deed to a Co-Ownership Interest, each Co-Ownership Owner waives his or her right to bring a suit for partition except in accordance with the provisions of this Declaration.

11.4. **Conveyance by Purchaser.** Each Co-Ownership Interest shall constitute an estate in real property separate and distinct from all other Co-Ownership Interests in the Co-Ownership Lot and other Lots, which estate may be separately conveyed and encumbered. A purchaser may acquire more than one Co-Ownership Interest and thereafter convey or encumber each Co-Ownership Interest so acquired separately. In no event, however, shall a Co-Ownership Owner convey or encumber less than a Co-Ownership Interest as defined herein, or attempt to subdivide a Co-Ownership Interest into lesser fractional interests than the Co-Ownership Interest originally conveyed to such Co-Ownership Owner. In the event all Co-Ownership Interests in a Co-Ownership Lot are acquired by one Co-Ownership Owner, such Co-Ownership Lot may, at such Co-Ownership Owner's election and with the written consent of Declarant or the Association, as applicable, by notice duly Recorded, be withdrawn from the Co-Ownership Program.

11.5. **Legal Description of a Co-Ownership Interest.** Co-Ownership Interests may be described by reference to the specific one-eighth (1/8) or one-thirteenth (1/13) undivided fee simple ownership interest, expressed as a fraction or percentage, in a specific Co-Ownership Lot during which the Co-Ownership Owner has the right to occupy a Co-Ownership Residence of the same Residence Category purchased. Further, all future references to the Co-Ownership Interest for legal description purposes shall refer to the Co-Ownership Interest ID used by Declarant in the initial conveyance of the Co-Ownership Interest. For example, individual Co-Ownership Interests in individual Co-Ownership Lots may be designated by reference to the Lot No and Co-Ownership Interest designation. Once a Co-Ownership Interest is identified by the use of a specific Co-Ownership Interest ID in connection with a specific Co-Ownership Residence, the Co-Ownership Interest ID shall become and remain part of the permanent legal description for the Co-Ownership Interest. A legal description substantially in the following form shall be sufficient for all purposes in connection with a Co-Ownership Interest:

Co-Ownership Interest ID _____ (insert Lot No. and Co-Ownership Interest designation, e.g., 1-A, 1-B, etc.) consisting of an undivided one-eighth (1/8) interest as tenant-in common in Co-Ownership Lot according to the Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for Elevate Villas, recorded (date), at (Book, Page, or Reception No.) and the Plat recorded (date), at (Book, Page, or Reception No.) in the office of the Recorder of Iron County, Utah, together with the exclusive right to possession and occupancy of a Co-Ownership Residence of the same Residence Category and Planned, Space Available and Short Notice Use Periods reserved by the Co-Ownership Owner pursuant to the Reservation Procedures.

Any legal description substantially in the form provided above or which is otherwise sufficient to identify the Co-Ownership Interest shall be good and sufficient for all purposes to sell, convey, transfer, and encumber or otherwise affect a Co-Ownership Interest and all easements appurtenant thereto.

11.6. **Administration and Management.** The administration and management of the Co-Ownership shall be performed by the Association. The Association shall have all powers necessary or desirable to effectuate any of the purposes provided for herein. A Co-Ownership Owner, upon becoming the owner of a Co-Ownership Interest, shall be an Association Member and shall remain a Member for the period of his, her or its ownership. A Co-Ownership Owner shall be entitled to a vote, the size of which vote shall be based upon each Co-Ownership Owner's undivided interest as tenant-in-common in the Co-Ownership Lot. Voting by proxy shall be permitted. The Co-Ownership Owners shall constitute a separate class of members in the Association for purposes of voting on all issues affecting the administration and management of the Co-Ownership.

11.7. **Powers and Duties of the Association with Respect to Co-Ownership Interests.** By way of enumeration and without limitation, and in addition to the powers and duties of the Association provided for in the Declaration, the Association shall also have the following specific powers and duties with respect to Co-Ownership Interests:

11.7.1. To cause each Co-Ownership Lot and Co-Ownership Residence, including the Party Walls located therein, to be repaired and maintained in a first-class manner and condition. The Association shall determine the landscaping, interior and exterior color schemes, décor and furnishings of each Co-Ownership Residence and Co-Ownership Lot as well as the proper time for refurbishment, redecorating and replacement thereof. No Co-Ownership Owner may construct, install, add, alter, repair, change or replace any Co-Ownership Lot, Co-Ownership Residence or Improvement located thereon, which would alter the exterior or interior appearance of his, her or its Co-Ownership Lot, Co-Ownership Residence or any Improvements located thereon;

11.7.2. To manage the Co-Ownership and in connection therewith implement and operate reservation, housekeeping, reception area, check out and departure services and systems for the benefit of Co-Ownership Owners;

11.7.3. To acquire and hold title to all Co-Ownership Furnishings. The Association shall, on behalf of all Co-Ownership Owners, hold title in its name to all Co-Ownership Furnishings, and no Co-Ownership Owner shall have any right, title or claim thereto, and the Association shall have the right to deal with Co-Ownership Furnishings for all purposes;

11.7.4. To maintain property insurance for covered cause of loss to the Co-Ownership Lots, Co-Ownership Residences, including the Party Walls therein, and Co-Ownership Furnishings in an amount of insurance not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date and containing the required provisions set forth in Article VIII;

11.7.5. To bill each Co-Ownership Owner for the expense of occupancy of a Co-Ownership Residence during which occupancy the Association determines the individual expenses of the particular Co-Ownership Owner, including, but not limited to long-distance and other extraordinary telephone charges, extraordinary repairs or charges for damage to the Co-Ownership Residence, its furniture, furnishings, equipment, fixtures, appliances and carpeting caused by a Co-Ownership Owner or his, her or its guest, firewood, other charges rendered by the manager on behalf of the particular Co-Ownership Owner and maid service in addition to the cost of any maid service included within the Co-Ownership Assessment provided for in this Article;

11.7.6. To collect the Co-Ownership Assessment provided for in this Article;

11.7.7. To establish, subject to modification at any time, publish and administer the Reservation Procedures as provided for in this Article and such other rules and regulations as the Association deems necessary or desirable, specifically including but not limited to fines and restrictions on use and occupancy if a Co-Ownership Owner is not current on Co-Ownership Assessments or is otherwise in violation of the provisions of this Article and rules and regulations relating to the rental of Use Periods by Co-Ownership Owners;

11.7.8. To prepare the Reservation Procedures;

11.7.9. To enforce the remedies for non-payment of the Co-Ownership Assessments set forth in this Article or elsewhere in this Declaration;

11.7.10. To do and perform any and all other acts which may be either necessary for, or proper or incidental to, the exercise of any of the foregoing powers; and

11.7.11. To perform such other functions and duties as may be required by a majority vote of the Co-Ownership Owners.

11.8. Co-Ownership Assessment. In addition to the Assessment for Community Expenses established by the Association to meet the Community Expenses of the Community, the Association shall also establish a separate Co-Ownership Assessment which will be assessed against Co-Ownership Interests to cover the assessment for Community Expenses for the Co-Ownership Lots and the additional costs of operating the Co-Ownership Interests as part of the Co-Ownership ("Co-Ownership Expenses"). The Co-Ownership Assessment for each Co-Ownership Interest may include, but is not limited to, the following.

11.8.1. The allocated share of the Community Expenses liability attributable to each Co-Ownership Interest;

11.8.2. Maintenance, and regularly scheduled cleaning and maid service and upkeep of the Co-Ownership Residences;

11.8.3. Maintenance, repair and replacement of the Co-Ownership Lot, Co-Ownership Residence and Co-Ownership Furnishings;

11.8.4. Any additional premium for property or liability insurance occasioned by the operation of the Co-Ownership;

11.8.5. Real and personal property taxes assessed against the Co-Ownership Interests;

11.8.6. Management fees assessed by the manager or the Association to cover the costs of operating the Co-Ownership that are in addition to the management fees set by the manager for management of the Community;

11.8.7. A reserve for refurbishment and/or replacement of the Co-Ownership Lot, Co-Ownership Residences and Co-Ownership Furnishings; and

11.8.8. Any other expenses incurred in the normal operation of the Community attributable to operation of the Co-Ownership Lots as part of the Co-Ownership and not otherwise within the definition of Community Expenses provided for in the Declaration.

The Co-Ownership Assessment shall be assessed and prorated among the Co-Ownership Owners on the basis of the Co-Ownership Owner's Co-Ownership Interest and shall be fixed at a uniform and

equal rate per Co-Ownership Interest of the same Residence Category. Rates of assessment will be specific to the Residence Category of the Co-Ownership Interest purchased. In determining the rate of assessment for a particular Residence Category, Declarant or the Association shall take into consideration the size difference, valuation differences (in the case of property tax assessment) and other items which make one Residence Category unique from another. The Co-Ownership Assessment shall be paid by the Co-Ownership Owner pursuant to a schedule established by the Association. These Co-Ownership Assessments shall be the personal and individual debt of the Co-Ownership Owner and all sums assessed but unpaid shall constitute a lien on the Co-Ownership Interest. The Association shall have all of the rights in connection with the collection thereof as it has in connection with the collection of unpaid Assessments for Community Expenses.

11.9. **Acceptance: Enforcement: Remedies.** By acceptance of a deed to a Co-Ownership Interest, a Co-Ownership Owner agrees to be bound by the terms and conditions of the Declaration. In addition to all remedies provided to the Association in this Declaration the Association shall also have the right, with respect to Co-Ownership Owners who are in default under any documents governing the Co-Ownership, to withhold use or possession of the Co-Ownership Owner's Co-Ownership Interest during a Use Period, prohibit the Co-Ownership Owner from making any reservation pursuant to the Reservation Procedures and, upon notice, cancel any reservation previously made by the Co-Ownership Owner and rent any Use Period to which a Co-Ownership Owner is entitled. The Association shall be entitled to retain any rental proceeds it receives from such rental of the Co-Ownership Owner's Use Period. All of the remedies granted by the Community Documents, specifically including the specific remedies provided for in this Article are cumulative, and the exercise of one right or remedy by the Association shall not impair the Association's right to exercise any other remedy. The Association shall not be limited to the remedies set forth herein and may invoke any other or additional remedies provided for or allowed at law or in equity. The Association may pursue any of the remedies provided for in whatever order is determined by the Association. The failure by the Association to insist in any one or more instances upon the strict compliance with any provision of the Community Documents, to exercise any right or option contained therein, to serve any notice or to institute any action or proceeding, shall not be construed as a waiver or relinquishment of any such provision, option or right.

11.10. **Failure to Vacate Co-Ownership Residence.** In the event any Co-Ownership Owner fails to vacate a Co-Ownership Residence after termination of a reserved Use Period or otherwise uses or occupies or prevents another Co-Ownership Owner from using or occupying a Use Period, that Co-Ownership Owner shall be in default hereunder and shall be subject to immediate removal, eviction or ejection from the Co-Ownership Residence wrongfully occupied; shall be deemed to have waived any notices required by law with respect to any legal proceedings regarding the removal, eviction or ejection; and shall pay to the Co-Ownership Owner entitled to use the Co-Ownership Residence during such wrongful occupancy, as liquidated damages for the wrongful use of the Co-Ownership Residence, a sum equal to two hundred percent (200%) of the estimated expense of providing the arriving Co-Ownership Owner with equivalent lodging and amenities, as determined by the Association in its sole discretion for each day, or portion thereof, including the day of surrender, during which the Co-Ownership Owner wrongfully occupies a Co-Ownership Residence, plus all costs of enforcement which amounts may be collected by the Association in the manner provided herein for the collection of Assessments for Community Expenses.

11.11. **Mechanics' Liens.** Any Co-Ownership Owner who suffers or allows a mechanics' lien or other lien to be placed against his, her or its Co-Ownership Interest or the entire Co-Ownership Lot shall indemnify, defend and hold each of the other Co-Ownership Owners harmless from and against all liability or loss arising from the claim or such lien. The Association may enforce such indemnity by collecting from the Co-Ownership Owner who suffers or allows such a lien the amount necessary to

discharge the lien and all costs of enforcement incidental thereto. If such amount is not promptly paid, the Association may collect the same in the manner provided herein for the collection of Assessments for Community Expenses.

11.12. **Transfers Void while in Default.** Except as to a transfer to a First Mortgagee by foreclosure or deed in lieu of foreclosure, no transfer of a Co-Ownership Interest shall be permitted unless and until the proposed transferor is current as to all Assessments due to the Association and is otherwise not in default under any other provision of the Declaration. Any purported transfer of a Co-Ownership Interest while a Co-Ownership Owner is delinquent or is in default on any other obligation shall be null and void.

11.13. **Reservation Procedures Pertaining to Co-Ownership Interests.** All Co-Ownership Interests are subject to the following reservation policies:

11.13.1. **Cross Use Easement Rights.** In order to maximize the availability of space to fulfill Co-Ownership Owners' desired use, subject to the provisions of Section 11.13.2 below relating to reservations, all Co-Ownership Residences shall be available for reservation, occupancy and use (the "Use Right Easement") by Co-Ownership Owners of comparable Co-Ownership Interests in the Community. Comparable Co-Ownership Interests shall be deemed all Co-Ownership Interests in the same Residence Category in the Co-Ownership. Each deed conveying a Co-Ownership Interest shall be deemed to include a reservation of this Use Right Easement benefiting all Co-Ownership Owners. Each Co-Ownership Owner waives his, her or its right to possess the Co-Ownership Residence owned as a tenant-in-common with the other Co-Ownership Owners, except as otherwise provided in this Declaration.

11.13.2. **Occupancy.** Each Co-Ownership Owner shall have the annually recurring right to occupy a Co-Ownership Residence of the same Residence Category purchased identified in such Co-Ownership Owner's deed of conveyance. Additionally, all Co-Ownership Owners shall be entitled to make reservations with the Association for the Planned, Space Available and Short Notice Use Period(s), or portions thereof, the Co-Ownership Owner desires to use pursuant to the Reservation Procedures from time to time established by the Association by rule and regulation (the "Reservation Procedures"). The Reservation Procedures shall specify the manner in which reservations are to be requested and confirmed. The right to reserve a Use Period, if unused in any year, is lost and does not accrue. The Reservation Procedures shall contain such schedules, conditions, restrictions, and limitations as are deemed necessary or desirable by the Association. The Association may from time to time, without the consent of the Co-Ownership Owners or Eligible First Mortgagees, amend the Reservation Procedures to include such other conditions, restrictions and limitations as the Association shall deem necessary under the circumstances to assure a manageable and fair system.

11.14. **Reserve Study.**

11.14.1. The Association shall cause to be conducted at least once every three (3) years, or such longer period if permitted by applicable law and elected by the Board, a study of the reserves required to repair, replace, and restore the Co-Ownership Lots, Co-Ownership Residences and Co-Ownership Furnishings. The Association shall review the results of that study at least annually to determine if those reserves are sufficient and shall make any adjustments it deems necessary to maintain the required reserves.

11.14.2. The study required by this Section 11.14 must be conducted by a person qualified by training and experience to conduct such a study, including a member of the Board, an Owner or the manager of the Association who is so qualified. The study must include, without limitation:

11.14.2.1. A summary of an inspection of the Co-Ownership Lots, Co-Ownership Residences and Co-Ownership Furnishings.

11.14.2.2. An identification of the major components of the Co-Ownership Lots, Co-Ownership Residences and Co-Ownership Furnishings which have a remaining useful life of less than thirty (30) years;

11.14.2.3. An estimate of the remaining useful life of each major component identified pursuant to Section 11.14.2.2.

11.14.2.4. An estimate of the cost of repair, replacement or restoration of each major component identified pursuant to Section 11.14.2.2 during and at the end of its useful life; and

11.14.2.5. An estimate of the total annual expenses that may be required to cover the cost of repairing, replacement, or restoration the major components identified pursuant to Section 11.14.2.2 after subtracting the reserves of the Association as of the date of the study.

11.15. **Declarant Subsidy.** To the extent permitted by law, Declarant may pay the Association an amount less than its proportionate share of Co-Ownership Expenses or other permitted Co-Ownership Assessments for which it owes; provided, however, Declarant has executed a subsidy agreement requiring Declarant to pay monies which are sufficient, together with the Co-Ownership Assessments paid by all other Co-Ownership Owners, to enable the Association to timely pay all of the Co-Ownership Assessments.

11.16. **Creation of Different Interests.** It is the present intention of Declarant to convey undivided one-eighth (1/8) or one-thirteenth (1/13) fee ownership interests in the Co-Ownership Lots. The statement of intent set forth herein shall not limit the rights of Declarant which are expressly reserved herein to create undivided ownership interests (i.e. Co-Ownership Interests) of differing fractions in Co-Ownership Lots, and should Declarant decide to do so, it shall file an Amendment to this Declaration setting forth the use rights of such differing ownership interests. Any Amendment for such purpose shall not require the consent of any Owner, Co-Ownership Owner, Mortgagee or any other Person or entity.

11.17. **Exchange Program.** Declarant or the Board is authorized to establish an exchange relationship for the Co-Ownership Owners with any bona fide exchange company or network.

11.18. **Destruction. Damage or Taking.**

11.18.1. **Repair. Restoration of Co-Ownership Residence.** In the event any Co-Ownership Residence is rendered unusable as a result of damage or destruction, the Board shall cause the Co-Ownership Residence to be reconstructed, repaired and restored subject to the provisions of the Declaration. Subject to the provisions of this Section 11.18, during such reconstruction period, the Co-Ownership Owners owning a fee simple interest in such damaged or destroyed Co-Ownership Residence shall continue to have the same use rights under this Declaration as existed prior to such damage and/or destruction. Until such time as the repair and/or reconstruction is complete, provided business interruption insurance is procured in accordance with Section 8. I .6 above, Co-Ownership Owners with reserved Reservation Periods in such Co-Ownership Residence may be temporarily relocated to alternate accommodations of similar kind and quality. In the event that insurance proceeds are not available to cover the cost of temporary lodging, then the Board may elect, at its option in its sole and exclusive discretion without the vote of the Co-Ownership Owners or any other third party, to either (1) levy a Special Co-Ownership Assessment in accordance with Section 6.3 above against all Co-Ownership Owners to cover the costs of temporary lodging, or (2) adopt

temporary Reservation Procedures to provide a fair and equitable pro rata distribution of the remaining Co-Ownership inventory so as to ensure the maximum benefit and use for all Co-Ownership Owners during the period of repair and/or reconstruction. The Board shall notify the Co-Ownership Owners in writing of its decision on how to accommodate displaced Co-Ownership Owners who have reserved Reservation Periods in the destroyed or damaged Co-Ownership Residences.

11.18.2. Complete Taking of Co-Ownership Residence In the event that a Co-Ownership Residence is taken by any power having the authority of eminent domain, and such taking shall render the Co-Ownership Residence unusable as part of the Co-Ownership, all compensation for and on account of the destruction shall be shared by the Co-Ownership Owners owning a fee simple interest in such Co-Ownership Residence in proportion to their respective ownership interests therein. In the event of such taking, the Co-Ownership Residence shall be removed from the Co-Ownership and the Co-Ownership Owners owning an ownership interest in such Co-Ownership Residence shall have no further use rights under the Co-Ownership and the Co-Ownership Interests associated therewith shall be terminated without any further action by the Declarant or the Board.

11.18.3. Rights of Mortgagees. Notwithstanding anything in this Section 11.18 to the contrary, no Co-Ownership Owner or any other party shall have priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Co-Ownership Owners of insurance proceeds or condemnation awards for loss to or taking of all or any.

ARTICLE XII (Intentionally omitted.)

ARTICLE XIII TERM, TERMINATION AND AMENDMENT

13.1. Term; Method of Termination. This Declaration shall be effective upon the date of Recordation hereof and as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting two-thirds (2/3) of the total votes cast at an election held for such purpose or otherwise approved in writing within six (6) months prior to the expiration of the initial effective period hereof or any ten-year extension. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a certificate of termination, duly signed by the President or Vice President, and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

13.2. Amendments. This Declaration may be amended by Recording a certificate of amendment, duly signed, and acknowledged by and on behalf of the Association ("Certificate of Amendment"). The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided elsewhere in this Declaration, shall certify that at a meeting duly called and held pursuant to

the provisions of the Articles and Bylaws or by separate written ballot without a meeting, the Members casting at least two-thirds (2/3) of the total votes of the Association at the election voted affirmatively for the adoption of the amendment. This Declaration shall remain in compliance with the Brian Head Town Municipal Code and may not be amended in any way that will result in a violation of said Code.

13.3. **Unilateral Amendments.** Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Lot or Co-Ownership Interest. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial determination which shall be in conflict therewith; or (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots and Co-Ownership Interests subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing. Further, prior to its transfer of control of the Association pursuant to Section 2.15 above, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not adversely affect title to any property without the consent of the affected Owner.

13.4. **Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions.** Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the Recordation by Declarant of a Certificate of Amendment duly signed by or on behalf of the members, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when Recorded, shall be binding upon all of the Community and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section 13.4 deletes, diminishes, or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control.

13.5. **Prior Approval Required to Terminate this Declaration or Amend Article VII.** Article VII of this Declaration describes the duties and obligations of the Association to repair, replace and maintain the Community Area, the Lots, the exterior elements of the Residences and certain other physical portions of the Property and the Community. Notwithstanding any other provision described in this Declaration to the contrary, including without limitation the amendment powers described in this Article XIII, Declarant, the Association and each Owner hereby agree and acknowledge that the Association's maintenance, repair and replacement duties set forth in Article VII shall not be amended or deleted and this Declaration shall not be terminated without the prior written approval of Declarant (prior to Declarant's loss of control of the Association pursuant to Section 2.15 above). Such approval shall be evidenced by a consent attached to or incorporated in such Recorded amendment or certificate of termination executed by Declarant (if necessary).

Article XIV
BINDING ARBITRATION FOR ENFORCEMENT OF GOVERNING DOCUMENTS

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

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

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

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

14.2.3. "Exempt Claim" means any of the following Claims, which will not be subject to this Arbitration Provision: (A) any individual action brought by an Owner in small claims court or such Owner's state's equivalent court, unless such action is transferred, removed, or appealed to a different court; (B) any action to effect a judicial or non-judicial foreclosure; (C) any eviction or other summary proceeding to secure possession of real property or an interest therein; (D) any action in any bankruptcy proceeding to assert, collect, protect, realize upon or obtain possession of the collateral for any amount owed; (E) any action to quiet title; (F) any action insofar as it seeks provisional or ancillary remedies in connection with any of the foregoing; and (G) any dispute concerning the validity and effect of the ban set forth in Section 14.7 below on class actions and private attorney

general proceedings. Notwithstanding the prior sentence, at an Owner's request the Institutional Parties will agree to arbitrate under this Arbitration Provision any matter covered by items (B)-(F) above if arbitration will afford the parties substantially the same rights and remedies as a court action. Any dispute regarding the question of whether arbitration will afford the parties substantially the same rights and remedies as a court action is also an Exempt Claim and shall be determined exclusively by the court and not by an arbitrator. If one or more Institutional Parties are allowed to proceed outside arbitration with respect to any of the matters covered by items (B)-(F) above, an Owner may assert in court on an individual basis any related defenses or Claims such Owner may have.

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

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

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

14.5. **Governing Law.** The Bound Parties contract, select, agree, and acknowledge that this Arbitration Provision shall be governed by the Federal Arbitration Act, 9 U.S.C. 1-16 (the "FAA") and not state arbitration laws. The arbitrator shall be obligated to follow applicable substantive laws, statutes of limitations and privilege rules related to any dispute. The arbitrator shall award the remedies, if any, that would be available in an individual court proceeding if arbitration had not been elected. This includes, without limitation, compensatory, statutory, and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings); declaratory, injunctive and other equitable relief; and attorneys' fees and costs. In addition to the parties' rights to obtain information under the Administrator's rules, either party may ask the arbitrator for more information from any other party.

14.6. **Appeal of Arbitrator's Decision.** Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's decision will be final and binding, except for any appeal right under the FAA. However, for Claims involving more than \$100,000, any party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider from the start any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right

under the FAA. Unless applicable law provides otherwise, the appealing party will pay the appeal's costs, regardless of its outcome. However, the Institutional Parties to an arbitration will consider in good faith any reasonable written request for them to bear the cost if the Owner is the appealing party.

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

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

ARTICLE XV GENERAL PROVISIONS

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

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

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

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

15.5. **Community Rules.** In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt, as part of the Community Rules, additional rules, and regulations with respect to any other aspects of the

Association's rights, activities and duties, provided said additional rules and regulations are not inconsistent with the provisions of the other Community Documents.

15.6. Laws, Ordinances and Regulations.

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

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

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

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

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

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

Elevate Villas Owners Association, Inc.

51 E. 400 N Bldg. 1
Cedar City, Utah 84721
Attn: President

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

15.12. **No Partition.** No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Community Area, nor shall any Owner sell, convey, transfer, assign, hypothecate, or otherwise alienate any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot or Co-Ownership Interest (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section 15.12 shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Community Area, which shall be subject to Article IV) which may or may not be subject to this Declaration.

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

15.14. **Notice of Violation.** The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of the Community Documents. The

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

15.15. **Disclaimer of Representations.** While neither Declarant nor any Declarant Affiliate believes that any of the restrictive covenants contained in this Declaration is or may be invalid or unenforceable for any reason or to any extent, neither Declarant nor any Declarant Affiliate makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Co-Ownership Interest in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Co-Ownership Interest agrees to hold Declarant and all Declarant Affiliates harmless therefrom.

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

15.17. **Conflicts.** In the event of any conflict or inconsistency between this Declaration and the other Community Documents, priority shall be given to the Community Documents in the following order: this Declaration, Articles, Bylaws and Community Rules, as each respective document may be amended from time to time.

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

15.19. **Authority to Enter into Public or Private Bulk Service Agreements and Contracts.** Subject to the disclaimers of representations set forth in Section 2.10 above and elsewhere in this Declaration, the Association may, without obligation, provide Community Services (as such term is defined below) pursuant to the terms and provisions of this Section. The Board shall have the right, power,

and authority to determine whether or not such Community Services shall be provided by private or public entities.

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

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

15.19.3. Declarant, for each Lot or Co-Ownership Interest, hereby covenants and agrees, and each Owner other than Declarant, by becoming the Owner of a Lot or Co-Ownership Interest, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot or Co-Ownership Interest) by the Board pursuant to this Section 15.19 and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots or Co-Ownership Interests (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot or Co-Ownership Interest at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

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

15.19.5. "Bulk Provider" means a private, public, or quasi-public utility or other company which provides, or proposes to provide any Community Service to Owners, Occupants, Residences, Lots or any Community Area pursuant to a "Bulk Service Agreement" (as defined below).

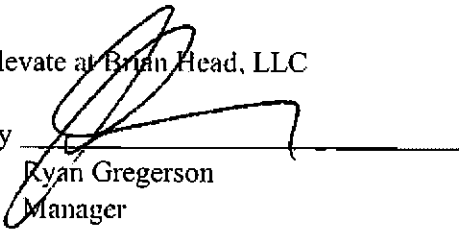
15.19.6. "Bulk Service Agreement" means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide Community Services to Owners, Occupants, Residences, Lots, or any Community Area.

15.19.7. Prior to Declarant's transfer of control of the Association pursuant to Section 2.15 above, the Board shall not, without the approval of Members holding at least a majority of all Members represented in person or by proxy at an annual or special meeting of the Association, enter into a Bulk Service Agreement which imposes on the Association or the Members any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for Community Services, but nothing in this Section shall prevent the Board from entering into, or require approval by the Members of any Bulk Service Agreement which imposes on the Association or the Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Iron County, Utah, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

"Declarant"

Elevate at Brian Head, LLC

By


Ryan Gregerson
Manager

Notary Page

STATE OF UTAH)

: ss.

COUNTY OF IRON)

On the 21st day of December, 2021, Ryan Gregerson acknowledged to me that he executed the foregoing instrument in his capacity as duly authorized Manager of Elevate at Brian Head, LLC, a Utah limited liability company, in its capacity as successor Declarant under such instrument.

Brent Schoppmann
Notary Public

SEAL

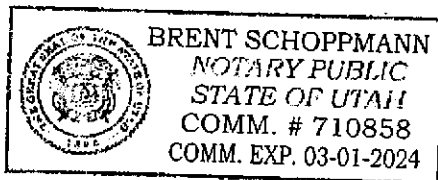


EXHIBIT A
Community Legal Description

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 2, TOWNSHIP 36 SOUTH, RANGE 9 WEST, OF THE SALT LAKE BASE MERIDIAN; THENCE S89°31'46"E, ALONG THE EAST-WEST CENTER SECTION LINE, 137.00 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID LINE AND RUNNING N74°11'45"E, 439.87 FEET; THENCE N72°10'28"E, 486.62 FEET; THENCE S12°00'21"E, 128.92 FEET; THENCE S78°00'05"W, 154.87 FEET; THENCE S15°30'00"W, 153.00 FEET; THENCE S82°30'00"E, 27.00 FEET TO A CURVE TO THE RIGHT, HAVING A RADIUS OF 40.73 FEET AND A CENTRAL ANGLE OF 46°30'00"; THENCE SOUTHEASTERLY ALONG SAID CURVE, 33.06 FEET; THENCE S36°00'00"E, 146.99 FEET TO A POINT LOCATED ON THE NORTHERLY RIGHT-OF-WAY LINE OF RIDGE VIEW STREET. SAID POINT ALSO BEING LOCATED ON A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 117.17 FEET, AND A CENTRAL ANGLE OF 56°04'42". (RADIUS POINT BEARS N41°02'03"W THENCE WESTERLY ALONG SAID CURVE AND ALONG SAID RIGHT-OF-WAY LINE, 114.68 FEET; THENCE N74°57'21"W, 61.98 FEET TO A CURVE TO THE LEFT, HAVING A RADIUS OF 116.54 FEET AND A CENTRAL ANGLE OF 110°18'50"; THENCE SOUTHWESTERLY ALONG SAID CURVE, 224.38 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE AND RUNNING N45°00'00"W, 432.45 FEET TO A POINT LOCATED ON SAID EAST-WEST CENTER SECTION LINE; THENCE N89°31'46"W, ALONG SAID LINE, 242.47 FEET TO THE POINT OF BEGINNING. CONTAINING 4.53 ACRES.

Also known as:

All of Units 1A, 1B, 1C, 2A, 2B, 2C, 3A, 3B, 3C, 4A, 4B, 4C, 5A, 5B, 5C, 6A, 6B, 6C, 7A, 7B, 7C, 8A, 8B, 8C, 9A, 9B, 9C, 10A, 10B, 10C, 11A, 11B, 11C, Amended Plat of Elevate Town Homes, a Planned Unit Development, according to the Official Plat thereof on file in the office of the Iron County Recorder.

A-1223-001A-0000
A-1223-001B-0000
A-1223-001C-0000

A-1223-005A-0000
A-1223-005B-0000
A-1223-005C-0000

A-1223-009A-0000
A-1223-009B-0000
A-1223-009C-0000

A-1223-002A-0000
A-1223-002B-0000
A-1223-002C-0000

A-1223-006A-0000
A-1223-006B-0000
A-1223-006C-0000

A-1223-010A-0000
A-1223-010B-0000
A-1223-010C-0000

A-1223-003A-0000
A-1223-003B-0000
A-1223-003C-0000

A-1223-007A-0000
A-1223-007B-0000
A-1223-007C-0000

A-1223-011A-0000
A-1223-011B-0000
A-1223-011C-0000

A-1223-004A-0000
A-1223-004B-0000
A-1223-004C-0000

A-1223-008A-0000
A-1223-008B-0000
A-1223-008C-0000



ITEM: 365 E. TRAIL ROAD WALL APPROVAL

AUTHOR: Greg Sant
DEPARTMENT: Planning and Building
DATE: May 20, 2025
TYPE OF ITEM: Administrative Action

SUMMARY:

The Planning Commission will review the retaining wall at 365 E. Trail Road. The wall has been built to a height over 12 feet and a length of over 100 feet. (See attached pictures)

BACKGROUND:

A Building Permit was given to the owner of the property at 365 E. Trail Road on 4-15-2024. The original Site Plan showed a tiered retaining wall on the west side of the property. It did not exceed the maximum allowable height. On September 30, 2024 the west neighbor sent an email to the Town complaining about the wall and about the contractor for 365 E. Trail Rd trespassing on their property to install the wall. At that time staff went to the site and immediately flagged the permit since what was built was not what was approved.

After these events, the contractor approached the Town to see what needed to happen to remove the flag on the permit. Staff indicated to them that the site plan needed to be revised, and an engineer needed to get involved to assure the Town that it had been constructed properly. Furthermore, they were informed that it now had to be approved by the Planning Commission, according to our Land Management Code. They have finally turned in the engineer's drawings that staff required and therefore can come before the Planning Commission to be reviewed.

ANALYSIS:

Standards for Review -

1. The height and length of the retaining wall is the minimum necessary for the needed functionality. The mass of the wall shall be broken up using terracing, vegetation, and/or other visual relief strategies.
2. The wall does not create an attractive nuisance or hazard to the general public.
3. The wall shall preserve the natural scenic beauty of the area by rounding off sharp angles and otherwise blending with the natural contours of the land, and by preserving trees and other native vegetation.
4. If the retaining wall is being done in preparation for development, a building permit has been obtained and work has been approved to proceed. If an applicant is in the process of obtaining a building permit, approval may be made contingent on the finalization of the building permit, but work may not begin on grading or the retaining wall until the building permit is issued. (Ord. 17-004, 7-11-2017, amd. ord. 24-014, 10-8-24)

FINDINGS:

1. The height and length of the retaining wall is the minimum necessary for the needed functionality. The mass of the wall shall be broken up using terracing, vegetation, and/or other visual relief strategies. - The original design with the Building Permit met this standard, the

current design does not. Things that could be done to the current design to meet this standard are the following: Plant Trees in front of the wall at the lower level to revegetate and to hide the wall from the neighbors, stain the wall to an approved color so that it blends into the site.

2. The wall does not create an attractive nuisance or hazard to the general public. - The original design did not, however, the current design does pose an attractive nuisance. It is recommended that a railing meeting the IRC requirements be placed on top of the concrete block wall to protect the public from falling off the wall.

3. The wall shall preserve the natural scenic beauty of the area by rounding off sharp angles and otherwise blending with the natural contours of the land, and by preserving trees and other native vegetation. - The current design does not. The wall needs to be cleaned up by cutting the excess mesh and finishing it at the corner. Also, please see the recommendations to 1 above.

4. If the retaining wall is being done in preparation for development, a building permit has been obtained and work has been approved to proceed. If an applicant is in the process of obtaining a building permit, approval may be made contingent on the finalization of the building permit, but work may not begin on grading or the retaining wall until the building permit is issued. - The permit will be reinstated once the Planning Commission reaches a decision. If approved, all conditions of approval will now be part of the existing building permit.

STAFF RECOMMENDATIONS:

It is staff's recommendation that the retaining wall at 365 E Trail Road be approved with the following conditions:

1. Owner must plant trees in front of the wall at the lower level to revegetate and to hide the wall from the neighbors
2. The owner must stain the wall to an approved color so that it blends into the site.
3. A railing meeting the building code must be placed on top of the concrete block wall to protect the public from falling off the wall.
4. If approved, these conditions will become a part of the existing building permit.

PROPOSED MOTION:

I move to approve the retaining wall at 365 E. Trail Road with the conditions recommended by Staff.

ATTACHMENTS:

A - Original Site Plan

B - New Site Plan and Engineering

C - Various Pictures



"A-1210-0015-0000"
LOT 15, CEDAR BREAKS
MOUNTAIN ESTATES, UNIT B
DAVID & JULIE RICH

"A-1210-0015-0000"
LOT 15, CEDAR BREAKS
MOUNTAIN ESTATES, UNIT B
JONES FAMILY TRUST

"A-1210-0026-0000"
LOT 26, CEDAR BREAKS
MOUNTAIN ESTATES, UNIT B
NAGY & OFSTEIN FAMILY TRUST

"A-1210-0025-0000"
LOT 25, CEDAR BREAKS
MOUNTAIN ESTATES, UNIT B
OEHLE 1992 TRUST

"A-1210-0027-0000"
LOT 27, CEDAR BREAKS
MOUNTAIN ESTATES, UNIT B
DAVID & JULIE RICH

"A-1210-0030-0000"
LOT 27, CEDAR BREAKS
MOUNTAIN ESTATES, UNIT B
CHRIS & COQUETTE JACOBSEN

SITE & GRADING PLAN FOR

NAGY & OFSTEIN FAMILY TRUST
WITHIN THE NE1/4 OF SECTION 2, T. 36 S., R. 9 W., SLB&M
LOT 26, CEDAR BREAKS MOUNTAIN ESTATES, UNIT B
BRIAN HEAD TOWN, IRON COUNTY, UTAH

EXISTING CONDITIONS

- SEE EXISTING TOPOGRAPHY SHOWN HEREON.
- THIS IS A VACANT LOT THAT HAS NOT BEEN PREVIOUSLY DISTURBED.

SURFACE DRAINAGE/ DRAINAGE PLAN:

- THE PROPOSED GRADING AND SURFACE DRAINAGE SHALL FOLLOW THE EXISTING FLOW PATTERN ON THE LOT.
- DRAINAGE WILL BE DIRECTED AWAY FROM THE NEW CABIN IN A NORTHWESTERLY DIRECTION.
- A 12" CULVERT SHALL BE PLACED UNDER THE DRIVEWAY TO DRAIN ANY RUNOFF FROM THE EAST END OF TRAIL ROAD TO THE WEST END OF TRAIL ROAD.

RETAINING WALL NOTES:

- RETAINING WALLS SHALL BE A MAXIMUM OF 4 FEET IN HEIGHT.

GRADING NOTES:

- DRIVEWAY MAXIMUM SLOPE IS 5.8%.
- GRADE MUST SLOPE A MINIMUM OF 5% DOWN WITHIN 10 FEET OF THE PROPOSED BUILDING.

GENERAL NOTES:

- BUILDING FOOTPRINT: 12.9% OF PARCEL
- UNDISTURBED LAND: 27.4% OF PARCEL

LEGEND:

- PROJECT BOUNDARY
- EXISTING CONTOURS
- PROPOSED CONTOURS
- EXISTING FLOW DIRECTION
- PROPOSED FLOW DIRECTION
- EXISTING SEWER MAIN
- EXISTING SEWER LATERAL
- PROPOSED PRESSURIZED SEWER LATERAL
- EXISTING WATER MAIN
- PROPOSED WATER LATERAL

EARTHWORK NOTES

- FINISHED CONTOURS ARE GENERATED TO THE FINISHED GRADE OF THE SITE. (1-FT CONTOURS)
- CUT AND FILL VOLUMES ARE BASED ON 3D MODELING COMPUTATIONS, AND ARE COMPACTED IN PLACE VOLUMES. EXPANSION AND SHRINKAGE CONDITIONS OFTEN ASSOCIATED WITH SOILS DURING CONSTRUCTION ARE NOT REFLECTED.
- CUT & FILL
 - CUT: 66 CYD
 - FILL: 1153 CYD
 - NET CUT: 1087 CYD

P
&
P
PLATT, INC
CONSULTING
CIVIL ENGINEERS
&
LAND SURVEYORS
195 N. 100 E.
CEDAR CITY, UT 84720
TEL: (435) 586-6151
FAX: (435) 586-8567
EMAIL:
PLATT@INFOWEST.COM



REVISION	DATE	BY	DATE

SITE & GRADING PLAN FOR
NAGY & OFSTEIN FAMILY TRUST
WITHIN THE NE1/4 OF SECTION 2, T. 36 S., R. 9 W., SLB&M
LOT 26, CEDAR BREAKS MOUNTAIN ESTATES, UNIT B
BRIAN HEAD TOWN, IRON COUNTY, UTAH



DRAWN BY:
H.K. HULET
CHECKED BY:
R.B. PLATT
DATE: Aug 11, 2023
SCALE: 1" = 10'



~A-1210-0014-0000~
LOT 14, CEDAR BREAKS
MOUNTAIN ESTATES, UNIT B
DAVID & JULIE RICH

~A-1210-0015-0000~
LOT 15, CEDAR BREAKS
MOUNTAIN ESTATES, UNIT B
JONES FAMILY TRUST

~A-1210-0026-0000~
LOT 26, CEDAR BREAKS
0.39 ACRE
MOUNTAIN ESTATES, UNIT B
NAGY & OFSTEIN FAMILY TRUST

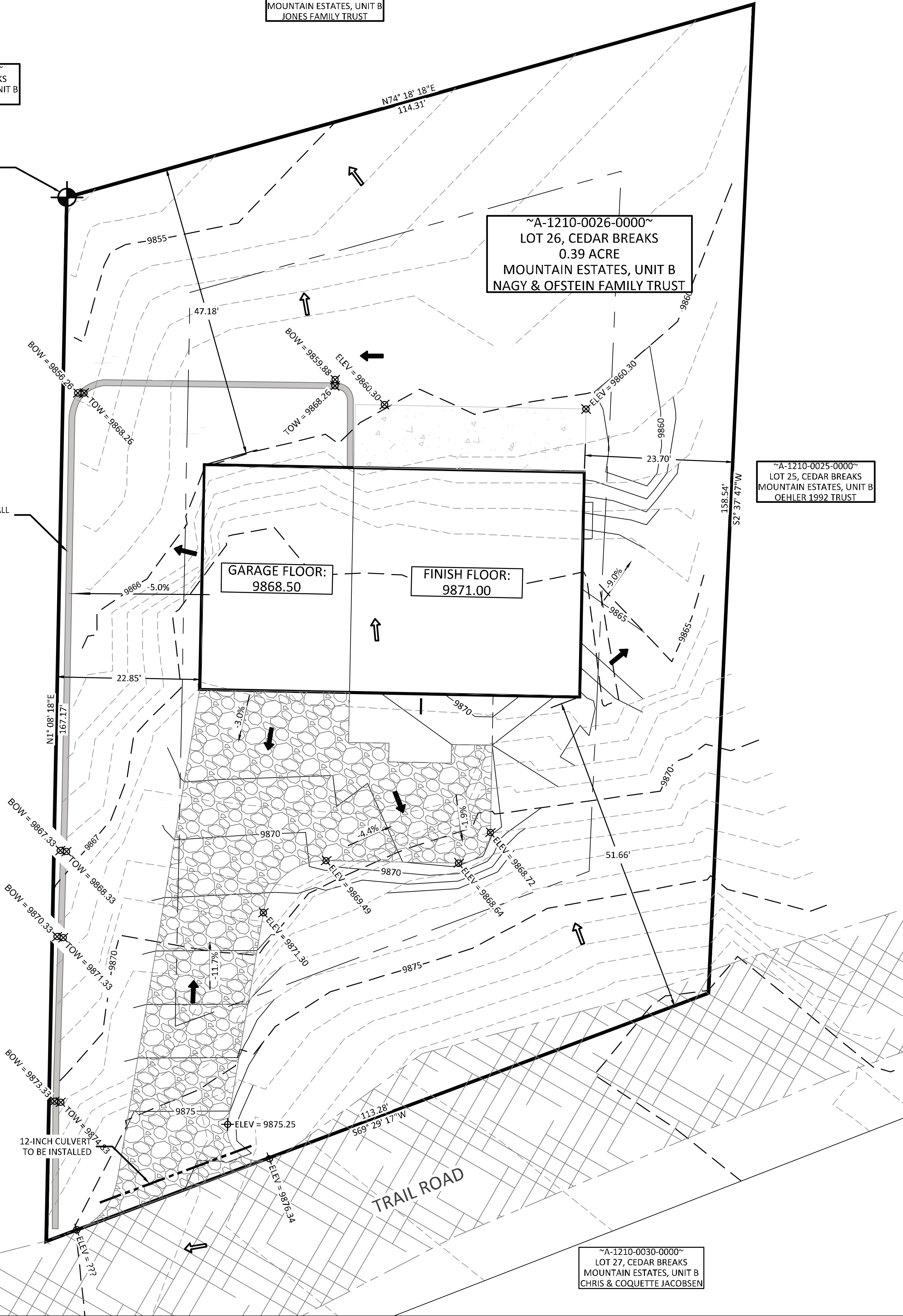
~A-1210-0025-0000~
LOT 25, CEDAR BREAKS
MOUNTAIN ESTATES, UNIT B
OEHLER 1992 TRUST

~A-1210-0027-0000~
LOT 27, CEDAR BREAKS
MOUNTAIN ESTATES, UNIT B
DAVID & JULIE RICH

~A-1210-0030-0000~
LOT 27, CEDAR BREAKS
MOUNTAIN ESTATES, UNIT B
CHRIS & COQUETTE JACOBSEN

PROJECT BENCHMARK
TOP OF REBAR
ELEV: 9852.76

RETAINING WALL



EXISTING CONDITIONS

- SEE EXISTING TOPOGRAPHY SHOWN HEREON.
- THIS IS A VACANT LOT THAT HAS NOT BEEN PREVIOUSLY DISTURBED.

SURFACE DRAINAGE/ DRAINAGE PLAN:

- THE PROPOSED GRADING AND SURFACE DRAINAGE SHALL FOLLOW THE EXISTING FLOW PATTERN ON THE LOT.
- DRAINAGE WILL BE DIRECTED AWAY FROM THE NEW CABIN IN A NORTHWESTERLY DIRECTION.
- A 12" CULVERT SHALL BE PLACED UNDER THE DRIVEWAY TO DRAIN ANY RUNOFF FROM THE EAST END OF TRAIL ROAD TO THE WEST END OF TRAIL ROAD.

RETAINING WALL NOTES:

- RETAINING WALLS TO BE DESIGNED BY OTHERS.

GRADING NOTES:

- DRIVEWAY MAXIMUM SLOPE IS 11.7%.
- GRADE MUST SLOPE A MINIMUM OF 5% DOWN WITHIN 10 FEET OF THE PROPOSED BUILDING.

GENERAL NOTES:

- BUILDING FOOTPRINT: 12.9% OF PARCEL
- UNDISTURBED LAND: 27.4% OF PARCEL

LEGEND:

- 10125 PROJECT BOUNDARY
10125 EXISTING CONTOURS
10125 PROPOSED CONTOURS
EXISTING FLOW DIRECTION
PROPOSED FLOW DIRECTION



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DRAWN BY
**SUMMIT BUILDING
CONSTRUCTION, LLC**
PO Box 1510 Cedar City, UT 84721
Office: 888.970.1414

NAGY & OFSTEIN FAMILY TRUST
365 E TRAILRD BRIAN HEAD
UTAH 84719

No.	Description	Date

NAGY & OFSTEIN
FAMILY TRUST

SITE PLAN

Project Number	2021
Date	04/22/2025
Author	TB

A-101

Scale	1" = 10'
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GENERAL NOTES - GEOGRID RETAINING WALL

1. FOUNDATION DESIGN VALUES

- 1.1.

FOOTING DESIGN CAPACITY

= 2000 PSF
- 1.2.

COEFFICIENT OF FRICTION

= 0.40
- 1.3.

HORIZONTAL SOIL DESIGN PRESSURES WITH FOUNDATION DRAINAGE

= 34 PCF
- A.

ACTIVE EQUIVALENT FLUID PRESSURE

= 51 PCF
- B.

AT REST EQUIVALENT FLUID PRESSURE

= 220 PCF
- C.

PASSIVE EQUIVALENT FLUID PRESSURE

= 14 PCF
- D.

SEISMIC LATERAL EARTH PRESSURE

= 14 PCF

2. WALL CONSTRUCTION

- 2.1.

A 8 INCH THICK GRAVEL LEVELING PAD OR 6 INCH CONCRETE LEVELING PAD SHALL BE PLACED AT THE BOTTOM OF THE WALL. REFER TO ATTACHED WALL DETAIL FOR ADDITIONAL CONSTRUCTION INFORMATION.
- 2.2.

THE DESIGN ASSUMES NO HYDROSTATIC BUILDUP IS ALLOWED. CONTRACTOR SHALL ENSURE THAT THE WALL IS CONSTRUCTED TO ALLOW FOR DRAINAGE BY THE USE OF A FRENCH DRAIN SYSTEM OR OTHER APPLICABLE METHOD.
- 2.3.

SOIL SLOPE ABOVE THE WALL SHALL NOT HAVE A SLOPE GREATER THAN 10%.
- 2.4.

THE RETAINING WALL IS NOT DESIGNED TO ACCOMMODATE THE LOADS OF STRUCTURES LOCATED WITHIN THE ZONE OF INFLUENCE OF THE WALL. THIS ZONE OF INFLUENCE EXTENDS FROM BOTTOM OF THE WALL UP AT A 1:1 ANGLE TO THE FINAL GRADE. FOOTINGS FOR STRUCTURES SHALL NOT BE LOCATED WITHIN THIS ZONE OF INFLUENCE. IF STRUCTURES ARE LOCATED NEAR THE WALL, FOUNDATIONS FOR THESE STRUCTURES MUST EXTEND BELOW THE ZONE OF INFLUENCE LINE.

3. SITE PREPARATION AND GRADING

- 3.1.

WITHIN THE AREAS TO BE GRADED, ANY EXISTING VEGETATION AND DEBRIS SHOULD BE REMOVED AND HAULED OFF THE SITE. ANY UNDOCUMENTED FILL SOILS AND SOFT, LOOSE, ORGANIC AND/OR DISTURBED NATIVE SOILS SHOULD ALSO BE EXCAVATED. EXCAVATIONS MAY BE TERMINATED ON COMPETENT MEDIUM DENSE SOILS, WHICH ARE FREE OF ORGANICS AS DETERMINED BY THE GEOTECHNICAL ENGINEER.
- 3.2.

ALL EXCAVATION, OVEREXCAVATION, BACKFILL, SITE PREPARATION, GRADING WORK AND RETAINING WALLS SHALL BE COMPLETED IN COMPLIANCE WITH REQUIREMENTS CONTAINED WITHIN THE GEOTECHNICAL INVESTIGATION REPORT 22-1083-RG3098 DATED: 11/7/2023 PREPARED BY: GEM ENGINEERING, INC.
- 3.3.

ALL FOUNDATIONS, EARTHWORK, EXCAVATION, BACKFILL AND SUB GRADE DRAINAGE SHALL BE SUBJECT TO OBSERVATION BY GEOTECHNICAL ENGINEER, WHOSE APPROVAL IS REQUIRED PRIOR TO PLACEMENT OF CONCRETE IN FOOTINGS, AND OVER SUBGRADES. COORDINATE SCHEDULES TO FACILITATE OBSERVATION.
- 3.4.

MAINTAIN SAFETY IN CONNECTION WITH EARTH SLOPES CAUSED BY TRENCHING, EXCAVATION AND/OR FILL DURING CONSTRUCTION.
- 3.5.

ANY UNUSUAL SOIL CONDITIONS (WATER, SOFT LAYERS, ODORS, ETC.) ENCOUNTERED DURING EXCAVATION FOR FOUNDATIONS SHOULD BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE GEOTECHNICAL ENGINEER.

4. STRUCTURAL FILL

- 4.1.

ALL STRUCTURAL FILL SHALL BE SELECTED AND PLACED IN COMPLIANCE WITH REQUIREMENTS WITHIN THE GEOTECHNICAL INVESTIGATION REPORT.

5. MOISTURE PROTECTION AND SURFACE DRAINAGE

- 5.1.

PRECAUTIONS SHOULD BE TAKEN DURING AND AFTER CONSTRUCTION TO ELIMINATE, OR AT LEAST MINIMIZE, SATURATION OF SOILS SURROUNDING THE WALL. OVERWETTING THE SOILS PRIOR TO OR DURING CONSTRUCTION MAY RESULT IN SOFTENING AND PUMPING, CAUSING EQUIPMENT MOBILITY PROBLEMS AND DIFFICULTY IN ACHIEVING COMPACTION. POSITIVE DRAINAGE SHOULD BE ESTABLISHED AWAY FROM THE RETAINING WALL. THE RECOMMENDED MINIMUM SLOPE IS FIVE PERCENT (5%) IN LANDSCAPE AREA AND TWO PERCENT (2%) IN PAVEMENT AREAS, FOR A MINIMUM DISTANCE OF 10 FEET FROM THE WALL.
- 5.2.

THE RETAINING WALL DESIGN ASSUMES NO HYDROSTATIC BUILDUP IS ALLOWED. THEREFORE, THE WALL SHALL BE CONSTRUCTED TO ALLOW FOR DRAINAGE.

LIMITATIONS

1.

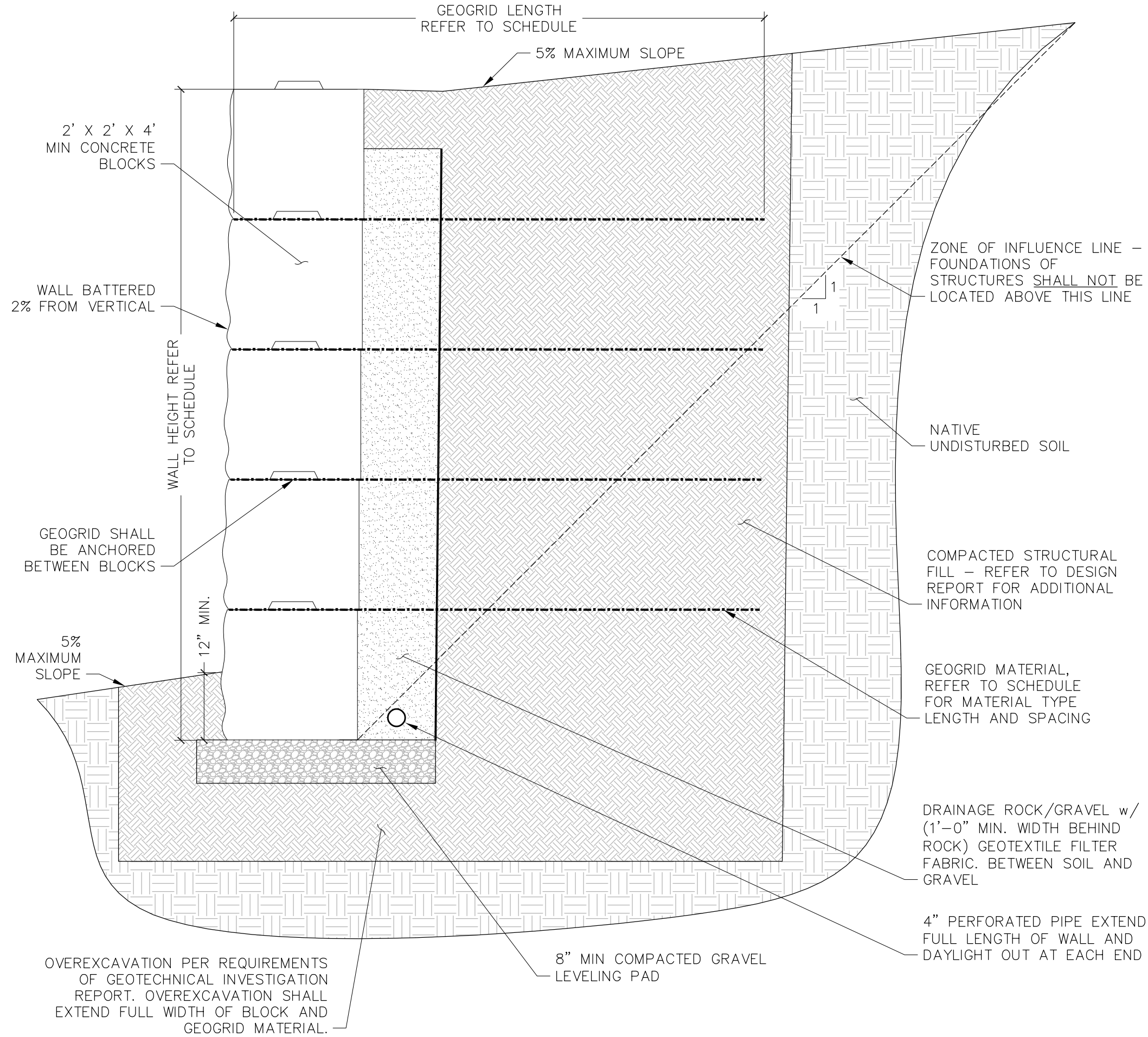
THE RECOMMENDATIONS CONTAINED IN THIS DOCUMENT ARE BASED ON THE SOIL DESIGN VALUES PROVIDED IN THE GEOTECHNICAL INVESTIGATION REPORT. FURTHERMORE THE DESIGN IS BASED ON THE ASSUMPTION THAT SOILS ARE PROPERLY COMPACTED PRIOR TO CONCRETE PLACEMENT AND DURING BACKFILL OPERATIONS. IT IS THE CONTRACTORS RESPONSIBILITY TO CONTACT A TESTING AGENCY TO VERIFY THAT SUITABLE SOILS ARE ENCOUNTERED AND THAT COMPACTION TESTING IS REQUESTED AND PERFORMED PRIOR TO WALL CONSTRUCTION AND DURING BACKFILLING OPERATIONS.
2.

THIS DOCUMENT WAS PREPARED IN ACCORDANCE WITH THE GENERALLY ACCEPTED STANDARD OF PRACTICE AT THE TIME THE REPORT WAS WRITTEN. NO WARRANTY, EXPRESS OR IMPLIED, IS MADE.
3.

IT IS THE CLIENT'S RESPONSIBILITY TO SEE THAT ALL PARTIES TO THE PROJECT, INCLUDING THE DESIGNER, CONTRACTOR, SUBCONTRACTORS, ETC., ARE MADE AWARE OF THIS DESIGN IN ITS ENTIRETY. THE USE OF INFORMATION CONTAINED IN THIS REPORT FOR BIDDING PURPOSES SHOULD BE DONE AT THE CONTRACTOR'S OPTION AND RISK.
4.

THE RECOMMENDATIONS CONTAINED WITHIN THIS DOCUMENT ARE BASED ON THE ASSUMPTION THAT AN ADEQUATE PROGRAM OF TESTS AND OBSERVATIONS WILL BE MADE DURING THE CONSTRUCTION TO VERIFY COMPLIANCE WITH THESE REQUIREMENTS AS WELL AS THE REQUIREMENTS OF THE GEOTECHNICAL INVESTIGATION REPORT. THESE TESTS AND OBSERVATIONS SHOULD INCLUDE, BUT NOT NECESSARILY BE LIMITED TO THE FOLLOWING:

- OBSERVATIONS AND TESTING DURING SITE PREPARATION, EARTHWORK, AND STRUCTURAL FILL PLACEMENT.
- CONSULTATION AS MAY BE REQUIRED DURING CONSTRUCTION.



CONCRETE BLOCK
GEOGRID RETAINING WALL

1

NO SCALE

GEOGRID WALL TABLE

WALL HT (FT)	GEOGRID MATERIAL (OR APPROVED EQUIVALENT)	GEOGRID LENGTH - HORIZ. (FT)	TOTAL # OF LAYERS OF GEOGRID.	APPROXIMATE DISTANCE FROM BOTTOM OF WALL TO GEOGRID LAYER (FT)				
				2	4	6	8	10
4	TENSAR UX1100	5	1	2	--	--	--	--
6	TENSAR UX1100	7	2	2	4	--	--	--
8	TENSAR UX1100	8	3	2	4	6	--	--
10	TENSAR UX1100	9	4	2	4	6	8	--
12	TENSAR UX1100	10	5	2	4	6	8	10

NOTE:

GEOGRID RETAINING WALLS SHOULD NEVER BE RELIED UPON TO RESIST LOADS FROM A BUILDING STRUCTURE. FOUNDATIONS FOR STRUCTURES SHALL NOT BE LOCATED ABOVE THE ZONE OF INFLUENCE LINE AS INDICATED ON THE DRAWING ABOVE.

GEM

ENGINEERING, INC.

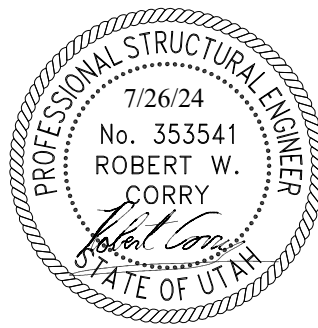
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Cedar City, UT 84721

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TITLE:
NAGY & OFSTEIN CABY
RETAINING WALLS

LOCATION:
365 E TRAIL ROAD
BRIAN HEAD, UTAH

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REV NO.	DATE:	DESCRIPTION
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PROJ. MGR: --
DESIGNER: RWC
DRAWN BY: RWC

SCALE: REFER TO PLAN
JOB NO.: 22-1083-S-0960
DRAWING TITLE:
RETAINING WALL

SHEET NO.

S-001







LOT FOR SALE
ON TRACT
1/2 ACRE
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