

**MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRECKENRIDGE MOUNTAIN
MASTER PLANNED COMMUNITY
SUMMIT COUNTY, COLORADO**

TABLE OF CONTENTS

ARTICLE I	DECLARATION-PURPOSES	
1.1	General Purposes:	1
1.2	Declaration:	2
ARTICLE II	CERTAIN DEFINITIONS	2
2.1	Act:	2
2.2	Additional Property:	2
2.3	Affirmative Vote of a Majority of the Classes:	2
2.4	Articles:	2
2.5	Association:	3
2.6	Association Documents	3
2.7	Breckenridge Mountain Master Planned Community:	3
2.8	Bed and Breakfast	3
2.9	Board of Directors:	3
2.10	Bylaws:	3
2.11	Change in Control Date:	4
2.12	Commercial Space:	4
2.13	Commercial Unit:	4
2.14	Common Elements:	4
2.15	Common Expenses:	4
2.16	Declarant:	4
2.17	Declarant Control Period:	5
2.18	Declaration:	5
2.19	Design Review Board:	5
2.20	Developed Unit:	5
2.21	Development Rights:	5
2.22	District:	5
2.23	Dwelling Unit:	5
2.24	Function:	6
2.25	Guest:	5
2.26	Leased Premises:	6
2.27	Lessee	6
2.28	Limited Common Element	6
2.29	Lodge; Lodging Room:	6
2.30	Lower Breckenridge Mountain Community:	6
2.31	Map	7
2.32	Master Plan:	7
2.33	Member:	7
2.34	Membership:	7
2.35	Owner:	7
2.36	Person:	7
2.37	Plat	7
2.38	Property:	7

2.39	Residential Unit:	8
2.40	Resort Services	8
2.41	Rules and Regulations:	8
2.42	Special Declarant Right:	8
2.43	Sub-owner	8
2.44	Tract A	8
2.45	Undeveloped Unit:	8
2.46	Unit	8
2.47	Upper Breckenridge Mountain Community	9
ARTICLE III CERTAIN OBLIGATIONS AND RIGHTS OF ASSOCIATION		9
3.1	Property Maintenance Function	9
3.2	Operation Function	10
3.3	Public Health and Safety Function:	10
3.4	Parking Function:	10
3.5	Transportation Function:	10
3.6	Recreation Function	10
3.7	Promotional Function:	11
3.8	Solid Waste Collection and Disposal Function	11
3.9	Animal Control Function	12
3.10	Environmental Function:	12
3.11	Exterior Maintenance Function:	12
3.12	Telecommunications Function:	13
3.13	Civic Function.	13
3.14	Other Functions:	13
3.15	Insurance:	13
3.16	Indemnification	13
3.17	Right to Make Rules and Regulations:	13
3.18	Charges for Use of Common Elements and Functions:	14
3.19	Taxes:	14
3.20	Right to Dispose of Common Elements:	14
3.21	Governmental Successor:	14
3.22	Records:	15
3.23	Implied Rights of the Association:	15
3.24	Conduct of Association Litigation:	17
3.25	Association Documents:	18
ARTICLE IV BRECKENRIDGE MOUNTAIN RESORT ASSOCIATION MEMBERSHIP AND VOTING		19
4.1	Membership:	19
4.2	Voting:	19
4.3	Entitlement to Vote:	20
4.4	Declarant:	20
ARTICLE V ASSESSMENTS, COMMON EXPENSES, OTHER AMOUNTS AND LIENS 21		

5.1	Obligations for Assessments and Other Amounts:	21
5.2	Purpose of Assessments and Other Amounts:	21
5.3	Time for Payments	21
5.4	Lien for Assessments, Common Expenses and Other Amounts:	21
5.5	Liability of Owners, Purchasers and Encumbrancers:	22
5.6	Allocation of Common Expenses:	22
ARTICLE VI CERTAIN RIGHTS OF DECLARANT, OWNERS AND ASSOCIATION		22
6.1	Declarant's Easements and Related Rights:	22
6.2	Rights and Obligations of Owners:	23
6.3	Common Access Easements:	24
6.4	Other Association Easements:	24
6.5	Other Easements:	25
6.6	Enjoyment of Functions and Common Elements:	25
6.7	Assignment of Rights or Obligations to a Lessee or Sub-owner:	26
6.8	Lessee's Rights and Obligations Appurtenant:	26
6.9	Transfer of Rights or Obligations to a Sublessee:	26
6.10	Special Declarant Rights:	26
6.11	Declarant Right to Appoint:	27
6.12	Reasonable Right to Develop:	28
ARTICLE VII RESTRICTIONS APPLICABLE TO PROPERTY		28
7.1	Land Use Restrictions:	28
7.2	Occupancy Limitations:	28
7.3	Maintenance of Property:	29
7.4	Approval of Construction Activities:	29
7.5	Blasting:	30
7.6	Water and Sanitation:	30
7.7	Use of Property During Construction:	30
7.8	No Noxious or Offensive Activity:	30
7.9	No Hazardous Activities	31
7.10	No Unsightliness:	31
7.11	Lights, Sounds and Odors:	32
7.12	Restriction on Signs	32
7.13	Restrictions on Parking:	32
7.14	Restriction on Recreational Vehicles:	32
7.15	Restriction on Wood Burning Devices:	32
7.16	Drainage Restriction:	33
7.17	No Mining and Drilling:	33
7.18	No Fences:	33
7.19	General Practices Prohibited:	33
7.20	Interval Ownership/Timeshare	33
7.21	Declarant's Exemption:	33
7.22	Health, Safety and Welfare:	33
7.23	Compliance with Law:	33

7.24	Subdivision of Units:	34
7.25	Additional Covenants, Conditions and Restrictions:	34
7.26	Violation:	34
ARTICLE VIII COMMON ELEMENTS TO BE CONSTRUCTED BY DECLARANT		35
8.1	Declarant's Obligation to Construct Common Elements:	35
8.2	Common Elements Which May Be Constructed:	35
ARTICLE IX DESIGN REVIEW		35
9.1	Purpose:	35
9.2	Objectives:	36
9.3	Design Review Board:	36
9.4	Design Review Board Approval and Control	37
9.5	Design Standards and Construction Procedures:	38
9.6	Exterior Maintenance:	38
9.7	Review Fee:	38
9.8	Enforcement of Restrictions	39
9.9	Reconsideration, Review and Appeal:	39
9.10	Lapse of Design Review Approval:	39
9.11	Assignment of Function:	39
9.12	Liability:	40
ARTICLE X ENFORCEMENT AND REMEDIES		40
10.1	Enforcement:	40
10.2	Remedies:	40
ARTICLE XI SPECIAL DISCLOSURE MATTERS		41
ARTICLE XII CASUALTY AND CONDEMNATION		42
12.1	Casualty:	42
12.2	Condemnation:	43
ARTICLE XIII CASUALTY AND CONDEMNATION		
13.1	Duration of Declaration:	43
13.2	Amendment:	44
13.3	Effect of Provisions of Declaration	44
13.4	Interpretation of the Declaration	44
13.5	Attorneys' Fees:	45
13.6	Protection of Encumbrancer:	45
13.7	Limited Liability:	45
13.8	Disclaimer of Representations:	46
13.9	Successors and Assigns	46
13.10	Severability:	46
13.11	Captions:	46
13.12	Construction:	46

13.13	No Waiver:	46
13.14	Notices; Registration by Owner of Mailing Address:	46

**MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRECKENRIDGE MOUNTAIN
MASTER PLANNED COMMUNITY
SUMMIT COUNTY, COLORADO**

This Master Declaration of Covenants, Conditions and Restrictions for Breckenridge Mountain Master Planned Community, Summit County, Colorado ("Declaration") is made this 18th day of September, 2002, by Vail Summit Resorts, Inc., a Colorado corporation (the "Declarant"). All capitalized terms used herein are defined in Article II below.

**ARTICLE I
DECLARATION-PURPOSES**

1.1 **General Purposes:** (a) Declarant owns the real property located in Summit County, Colorado, hereinafter defined and referred to as Breckenridge Mountain Master Planned Community and intends to develop said property as a resort community designed to provide services, including lodging, food and beverage services, shops and merchandising areas, and entertainment and recreation opportunities, for all persons residing, visiting or doing business within Breckenridge Mountain Master Planned Community.

(b) Breckenridge Mountain Master Association, a Colorado nonprofit corporation (the "Association"), will be formed to hold, manage and maintain certain property for the common benefit of some or all Owners, Lessees, Guests and members of the general public within Breckenridge Mountain Master Planned Community; to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby; to collect and enforce the assessments, charges and liens imposed pursuant hereto; and for all other purposes set forth in the Articles of Incorporation of the Association. This Declaration defines certain rights and obligations of Owners, Lessees, Guests and members of the general public within Breckenridge Mountain Master Planned Community with respect to the Association and with respect to Functions undertaken and Common Elements held by the Association.

(c) By this Declaration, Declarant intends to establish a means to provide for and maintain the area within Breckenridge Mountain Master Planned Community as a pleasant and desirable environment for all persons residing, visiting or doing business therein.

(d) The common interest community created hereby is intended to be a Large Planned Community as defined in Section 38-33.3-103(17.5) of the Colorado Common Interest Ownership Act (the "Act") to eligible for and to exercise certain exemptions as permitted by the Act.

(e) Breckenridge Mountain Master Planned Community will include several buildings, facilities and other improvements for which separate communities may be formed under the Act pursuant to separate declarations, and Declarant reserves the right to create a maximum of 1,500 Units within Breckenridge Mountain Master Planned Community, subject to and to the

maximum extent of, the number of Units that may be created under zoning or other governmental development approvals in effect for Breckenridge Mountain Master Planned Community at any given time and from time to time.

1.2 **Declaration:** To further the general purposes herein expressed, Declarant, with respect to the property described in Exhibit A, and with respect to the property described in Exhibit B, Mountain Thunder, Inc., for themselves, their successors and assigns, hereby declare that all real property hereinafter defined as Breckenridge Mountain Master Planned Community, including that identified on Exhibit B and any property added to Breckenridge Mountain Master Planned Community as hereinafter provided shall, at all times, be owned, held, used, occupied, sold and conveyed subject to the provisions of this Declaration and to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens herein contained, which shall run with the property defined herein as Breckenridge Mountain Master Planned Community and burden and benefit Declarant, all other parties having any right, title or interest in Breckenridge Mountain Master Planned Community, or any portion thereof, and their respective successors, assigns, heirs, devisees and personal representatives. In addition, Declarant, and with respect to that property identified on Exhibit B, Mountain Thunder, Inc., hereby submit the real property described on Exhibits A and B attached hereto to the provisions of the Act.

ARTICLE II CERTAIN DEFINITIONS

2.1 **Act:** Act means the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time.

2.2 **Additional Property:** Additional Property means any part or all of the real property, whether contiguous or not, located within five thousand (5,000) linear feet of the boundary of any of the property described on Exhibit A hereto.

2.3 **Affirmative Vote of a Majority of the Classes:** The Affirmative Vote of a Majority of the Classes shall be achieved if (and only if) (a) the Class E Member votes in favor of such matter, and (b) at least one-half of the classes of Members that have Members entitled to vote on such matters (other than Class E) vote in favor of such matter. For the purpose of determining the vote of a class, the votes of a majority of the members of such class present at such meeting in person or by proxy and entitled to vote on such matter shall be deemed the vote of the class, provided that a quorum is present as defined in the Bylaws.

The Association recognizes that Tract A will play an essential role in creating and preserving the resort character of Breckenridge Mountain Master Planned Community and in enhancing the value of the entire community by virtue of Tract A's character as a ski tract and its connection to the adjacent ski resort areas. The Association Documents, therefore, require the vote of an Affirmative Vote of a Majority of the Classes on certain specified matters, where the Class E Member, as the Owner of Tract A, has a unique and vital interest.

2.4 **Articles:** Articles means the Articles of Incorporation of Breckenridge Mountain Master Association, as the same may be amended from time to time.

2.5 **Association:** Association means Breckenridge Mountain Master Association, a Colorado nonprofit corporation, and its successors and assigns.

2.6 **Association Documents:** Association Documents means this Declaration, such Plats as may be required by the Act, the Articles, the Bylaws and the Rules and Regulations, as the same may be amended from time to time.

2.7 **Breckenridge Mountain Master Planned Community:** Breckenridge Mountain Master Planned Community means all the real property located in Summit County, Colorado, described in Exhibit A attached hereto, as well as all real property that becomes part of Breckenridge Mountain Master Planned Community as provided in this Section 2.7 and excluding all real property deleted from Breckenridge Mountain Resort as provided in this Section 2.7. All or any part of the Additional Property may become part of Breckenridge Mountain Master Planned Community and, in such event, shall be deemed to be within Breckenridge Mountain Master Planned Community and subject to all of the provisions contained in this Declaration upon the recording in the office of the County Clerk and Recorder of Summit County, Colorado, during the term of this Declaration, of a written instrument signed by Declarant and, if applicable, the owner of the affected property, containing a legal description of the additional real property and declaring that such additional real property shall become part of and shall be deemed to be within Breckenridge Mountain Master Planned Community; provided, however, that the addition of any real property to Breckenridge Mountain Master Planned Community shall not violate applicable provisions of the Act. Any real property included in the definition of Breckenridge Mountain Master Planned Community pursuant to this Section 2.7 may be excluded from and be deemed outside of Breckenridge Mountain Master Planned Community by the action of the Board of Directors and the written consent of Declarant upon the recording in the office of the Clerk and Recorder of Summit County, Colorado, of a written instrument signed by Declarant, the Association and, if applicable, the owner of the affected property, containing a legal description of the real property to be excluded and declaring that such real property shall be deemed to be outside Breckenridge Mountain Master Planned Community. The Declarant shall have no obligation to include or exclude any property from Breckenridge Mountain Master Planned Community, notwithstanding the description of such property as Additional Property.

2.8 **Bed and Breakfast:** Bed and Breakfast means an operation involving the letting of one or more rooms in a residence to an unrelated party or parties where the Owner (i) is also residing, and (ii) provides his or her guests with breakfast (but no other meals) as part of the lodging accommodations and without additional charge. Bed and Breakfast operations shall be limited as set forth in Section 7.2 below.

2.9 **Board of Directors:** Board of Directors means the board which shall act on behalf of the Association, as more particularly described and defined in the Bylaws.

2.10 **Bylaws:** Bylaws means the Bylaws of the Association, as the same may be amended from time to time.

2.11 **Change in Control Date:** Change in Control Date means the date upon which Declarant control terminates pursuant to Section 303(5) of the Act.

2.12 **Commercial Space:** Commercial Space means any area which may be used, rented or leased for the purpose of generating retail business or consumer services with the intent of producing a financial profit. Commercial Space shall include offices and storage spaces contiguous with the primary area but does not include auxiliary storage in remote areas. Commercial Space includes, but is not limited to, business and professional offices, retail specialty and gift shops, restaurants, banks, barber and beauty shops, laundromat/dry cleaning, shoe repair, automobile repair and services, taverns, cinemas, clothing stores, department stores, beverage stores, furniture stores, hardware stores, food stores, real estate sales offices, ski rental and sales stores, and skier cafeterias. The following uses will not be considered Commercial Space: residential and lodging facilities (except for areas used specifically as enumerated above), meeting rooms, banquet rooms, educational classrooms, cultural facilities, recreational facilities, athletic facilities, or Resort Services.

2.13 **Commercial Unit:** Commercial Unit means: (i) a Developed Unit that is improved with Commercial Space or a Lodge; (ii) any Undeveloped Unit that, under the applicable zoning and Master Plan, is limited to use solely as Commercial Space or as a Lodge; and (iii) any other Undeveloped Unit that, under applicable zoning and the Master Plan, may be used (but is not exclusively limited to use) as Commercial Space or a Lodge that has elected to be treated as a Commercial Unit pursuant to Article IV of this Declaration.

2.14 **Common Elements:** Common Elements means any real estate within Breckenridge Mountain Master Planned Community (i) that is owned by the Association, (ii) that is owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to a lease, license, easement or other agreement, (iii) that the Association is otherwise required to operate, manage, maintain or repair, together with any improvements located thereon, or (iv) in general, all parts of the Property designated by Declarant as Common Elements herein or on a Map or Plat, and existing for the use or benefit of one or more of the Owners. Common Elements may, from time to time, be referred to or designated as Master Common Elements.

2.15 **Common Expenses:** Common Expenses means allocations to reserves and all costs, expenses and liabilities incurred by or on behalf of the Association, including, but not limited to, costs, expenses and liabilities for (i) acquiring, leasing, renting, designing, constructing, managing, operating, maintaining, repairing and improving the Common Elements; (ii) administering and enforcing the covenants, conditions, restrictions, reservations and easements created by this Declaration; (iii) levying, collecting and enforcing the assessments, charges and liens, imposed pursuant to this Declaration; (iv) advertising, promoting, regulating and managing Breckenridge Mountain Master Planned Community, including performing any and all Functions permitted by this Declaration; (v) operating the Association; and (vi) any other cost or expense legally incurred by the Association.

2.16 **Declarant:** Declarant means, collectively, Vail Summit Resorts, Inc., a Colorado corporation and any party that is designated by a written instrument as a successor or assignee of Declarant under this Declaration, which instrument is recorded in the office of the Summit County Clerk and Recorder. Such instrument may specify the extent and portion of the rights or interests as a Declarant which are being assigned, in which case the assignor shall retain all other rights as Declarant.

2.17 **Declarant Control Period:** Declarant Control Period means the period commencing on the date on which Declarant forms the Association and ending on the Change in Control Date. After termination of the Declarant Control Period, Declarant, if still an Owner, will have all of the rights and duties given to Members under the Association Documents and will retain all of the rights belonging to Declarant under the Association Documents (including without limitation the Special Declarant Rights) other than those which expire by their terms or pursuant to the Act, upon the expiration of the Declarant Control Period.

2.18 **Declaration:** Declaration means this instrument and all amendments or supplements hereto hereafter recorded in the real property records of Summit County, Colorado, together with all Plats for Breckenridge Mountain Master Planned Community.

2.19 **Design Review Board:** Design Review Board means the Design Review Board established pursuant to Article IX hereof.

2.20 **Developed Unit:** Developed Unit means: (i) any Unit that consists of a single family lot (including lots upon which an accessory or caretaker unit is permitted in conjunction with the construction of a single family Dwelling Unit) or, under applicable zoning and the Master Plan, is designated for residential development, regardless of whether improvements have been constructed upon such Unit; (ii) any Unit that has been created by resubdivision following the original Plat for such portion of the Property, regardless of whether improvements have been constructed upon such Unit, including any Unit designated on any Map; and (iii) any Unit that has been improved and occupied, in compliance with all applicable laws, for other than single family or residential use.

2.21 **Development Rights:** Development Rights shall have the same meaning as that term is defined from time to time in the Act, and these rights may be exercised by Declarant at any time during the term of this Declaration.

2.22 **District:** District means one or more metropolitan districts now in existence or hereafter formed pursuant to state law in order to construct improvements or provide services within the Property.

2.23 **Dwelling Unit:** Dwelling Unit means one or more rooms, excluding Lodging Rooms, occupied by one family or group of people living independently from any other family or group of people and having not more than one indoor cooking facility which is limited to the use of the one family or group. A Dwelling Unit may or may not be a Residential Unit or Unit as those terms are defined in Sections 2.39 and 2.46, for example, a single family residence with an accessory apartment would comprise one Unit, but two Dwelling Units.

2.24 **Function:** Function means any activity, function or service required under this Declaration to be undertaken or performed by the Association as well as any activity, function or service otherwise undertaken or performed by the Association.

2.25 **Guest:** Guest means any family member, customer, agent, employee, independent contractor, guest or invitee of an Owner, Lessee, or Sub-owner and any person or persons, entity or entities who have any right, title or interest in a Unit which is not the fee simple title to the Unit (including a Lessee or Sub-owner other than a Lessee), and any family member, customer, agent, employee, independent contractor, guest or invitee of such person or persons, entity or entities.

2.26 **Leased Premises:** Leased Premises means any part or all of a Unit under a ground lease to a Lessee, or any space within a building on any Unit under a space lease to a Lessee.

2.27 **Lessee:** Lessee means the person or persons, entity or entities who is the lessee under a ground lease of any part or all of a Unit or the lessee under a space lease of any space within a building on any Unit. The term Lessee shall include Declarant to the extent it is a Lessee as defined above and shall include a sublessee to the extent it becomes a Lessee pursuant to Section 6.9, but it shall not include the Association or any governmental entity (which term shall include but is not limited to special districts formed pursuant to Colorado law).

2.28 **Limited Common Element.** Limited Common Element means any part of the Common Elements which is limited to and reserved for the use in connection with one or more, but fewer than all of the Units, or appurtenant to either the Upper Breckenridge Mountain Community or the Lower Breckenridge Mountain Community. Without limiting the foregoing, Limited Common Elements may include any area or improvement designated as a Limited Common Element in this Declaration or on a Map as appurtenant to any Unit, or to the Upper Breckenridge Mountain Community or Lower Breckenridge Mountain Community. Limited Common Elements shall be used in connection with the appurtenant Unit(s), or to the Upper Breckenridge Mountain Community or Lower Breckenridge Mountain Community, to the exclusion of the use thereof by the other Owners, except by invitation. No reference to Limited Common Elements need be made in any instrument of conveyance or encumbrance in order to convey or encumber the Limited Common Elements appurtenant to a Unit.

2.29 **Lodge; Lodging Room:** Lodge means a building containing lodging facilities that are intended or used for the accommodation of tourists, transients, long-term occupancy or permanent guests for compensation. Each room or suite intended for separate occupancy shall be considered to be a Lodging Room. Provision may be made for cooking in a Lodging Room, provided that all applicable building codes have been met. Ancillary facilities such as meeting rooms, restaurants, and recreation facilities shall be included in the definition of Lodge unless they are separately subdivided so as to constitute separate Units from the Lodge. The term Lodge shall include, but is not limited to, motels, hotels, apartment buildings, and similar structures, but shall not include Bed and Breakfasts.

2.30 **Lower Breckenridge Mountain Community:** Lower Breckenridge Mountain Community means the real property described in Part II of Exhibit A.

2.31 **Map.** Map means and includes any engineering survey or surveys of all or any portion of the Property locating buildings and other improvements on the Property, including any map(s) as such term is defined by the Act, for any separate community created or existing within Breckenridge Mountain Master Planned Community.

2.32 **Master Plan:** Master Plan means, collectively, the land use plans for the development of Breckenridge Mountain Master Planned Community, as they may be formulated and amended by Declarant from time to time, for all or any portion of the Property. The inclusion of property within the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property from the Master Plan bar its later submission to this Declaration in the manner provided herein for the expansion of Breckenridge Mountain Master Planned Community. The Master Plan is intended to be dynamic and, subject to land use regulations of governmental entities, the Master Plan may be changed by Declarant at any time for any reason. No Owner may rely upon any given edition of the Master Plan as being any representation, warranty or assurance that actual development of Breckenridge Mountain Master Planned Community will proceed in accordance therewith. Copies of the then-current Master Plan shall be made available to Members or prospective purchasers of Units at Breckenridge Mountain during regular business hours at Declarant's office within Breckenridge Mountain Master Planned Community.

2.33 **Member:** Member means each person or entity who holds a Membership in the Association.

2.34 **Membership:** Membership means a membership in the Association which is appurtenant to ownership of any Unit, and the rights granted to Owners pursuant to this Declaration to participate in the Association.

2.35 **Owner:** Owner means the record holder of legal title to the fee simple interest in a Unit or interest therein, including contract sellers, but excluding (i) contract purchasers, (ii) the Association and (iii) those having such interest merely as security for the performance of an obligation. Each Owner shall also be the holder or holders of a Membership in the Association, which is appurtenant to ownership of such Unit. The term Owner shall include Declarant to the extent it is the record owner of fee simple title to a Unit.

2.36 **Person:** Person means any natural person, corporation, partnership, limited liability company, association, trustee or any other entity recognized as being capable of owning real property under the laws of the state of Colorado.

2.37 **Plat:** Plat means a land survey plat as set forth in Colorado Revised Statute 38-51-105, which depicts all or any portion of Breckenridge Mountain Master Planned Community in two dimensions, is executed by the Declarant, and is recorded in the real estate records in Summit County.

2.38 **Property:** Property means any and all real property subject to this Declaration from time to time.

2.39 **Residential Unit:** A Residential Unit means: (i) any Developed Unit that includes one or more Dwelling Units, excluding Lodges; and (ii) any Undeveloped Unit that is not limited solely for development as Commercial Space or a Lodge and for which the Owner has not made an election to be treated as a voting Member of Classes B or D pursuant to Article IV below.

2.40 **Resort Services:** Resort Services means uses or spaces or areas used in connection with operation of Breckenridge Ski Resort, including, without limitation: operations staff and resort management offices; ski school; ski patrol; lift operations; lift maintenance; resort marketing; personnel; ticket operations; transportation or ground/building maintenance; and snowmaking facilities.

2.41 **Rules and Regulations:** Rules and Regulations means any instruments adopted by the Association or the Design Review Board for the regulation and management of Breckenridge Mountain Master Planned Community or any portion thereof, as the same may be amended from time to time, subject to the provisions of Section 3.18 of this Declaration.

2.42 **Special Declarant Right:** Special Declarant Right shall mean those rights of the Declarant reserved pursuant to Section 6.10 of this Declaration.

2.43 **Sub-owner:** Sub-owner means any person or persons, entity or entities who occupy or use a Unit or portion thereof pursuant to a license, concession agreement or other arrangement with an Owner or Lessee or who have any right, title or interest in a Unit pursuant to a mortgage or deed of trust encumbering a Unit, including a mortgagee or beneficiary, as the case may be.

2.44 **Tract A:** That portion of Upper Breckenridge Mountain Community which is identified by the Master Plan and/or which may be subsequently designated on a Plat as being for skiing and/or other recreational use, along with support activities and uses related thereto, including, without limitation, chairlifts, aerial tramways, and Resort Services facilities. Tract A shall be considered a single Unit for all purposes herein.

2.45 **Undeveloped Unit:** Undeveloped Unit means any Unit other than the Developed Units and Tract A.

2.46 **Unit:** Unit means a physical portion of Breckenridge Mountain Master Planned Community that is designated for separate ownership and that may be conveyed in fee in compliance with all applicable subdivision regulations, including, but not by way of limitation, any physical portion designated for separate ownership and that may be convey in fee on any Map. Notwithstanding the foregoing, a parcel of land owned, held or used in its entirety by the Association, or by any governmental entity or quasi-governmental entity (which term shall include but is not limited to special districts formed pursuant to Colorado law), or for or in connection with the distribution of electricity, gas, water, sewer, telephone, television or other utility service or for access to any property within or without Breckenridge Mountain Master Planned Community shall

not be considered a Unit. Moreover, a parcel of land containing 35 acres or more shall be considered as only one Unit.

2.47 **Upper Breckenridge Mountain Community:** Upper Breckenridge Mountain Community means the real property described in Part I of Exhibit A.

ARTICLE III CERTAIN OBLIGATIONS AND RIGHTS OF ASSOCIATION

3.1 **Property Maintenance Function:** (a) The Association shall have the exclusive right and authority to provide for the care, operation, management, maintenance, repair and replacement of all Common Elements. Moreover, the Association may provide for the care and maintenance of other areas of the Property if the Board of Directors, in its sole and exclusive discretion, deems such care and maintenance to be necessary or desirable for access to the boundary of or full utilization of any Unit or any improvements within the Breckenridge Mountain Master Planned Community. Such function may include, without limitation, removal of snow from and application of sand and salt to parking areas, roads, walks, drives, malls, stairs and other similar Common Elements as necessary for their customary use and enjoyment; maintenance and care of skiway easements designated on a Plat as being for the primary benefit of the Association and its Members (including lighting thereon, if any), open space or unimproved areas included in the Common Elements and of plants, trees and shrubs in such open space or unimproved areas; maintenance of lighting provided for parking areas, roads, walks, drives, malls, stairs, and other similar Common Elements; and maintenance of mailbox areas. The Board of Directors shall be the sole judge as to the appropriate maintenance, operation and management of the Common Elements and, to the extent that such services are provided by the Association, other areas of the Property.

(b) Unless otherwise agreed in writing, the Association shall be obligated to and shall provide for the care, operation, management, maintenance and repair of any Common Elements consisting of only a portion of, or defined space within, a building or other improvement owned by Declarant and shall be obligated to and shall bear and pay to Declarant its proportionate share of Declarant's costs and expenses relating to such building or improvement as a whole, including without limitation, maintenance, taxes and assessments, insurance and depreciation. The proportionate share of the Association's costs and expenses relating to such building or improvement as a whole shall be determined by Declarant based on the actual amounts of such costs and expenses relating to such building or improvement as a whole multiplied by the ratio with a numerator equal to the number of square feet of floor area of such defined space within the building or improvement and a denominator equal to the number of square feet of floor area of the entire building or improvement.

(c) If, with respect to any Common Elements, Declarant reserves the right to use all or part of such Common Elements for part of the time or the right to permit third parties to use all or part of such Common Elements for part of the time and Declarant actually exercises such reserved right, Declarant shall pay to the Association the fair rental value of the use of such Common Elements by Declarant or such third party, as determined by Declarant, based on the particular type of use, the portion of such Common Elements used and the time or periods of such use, or based on

the actual rental payments, income or fees received by Declarant from any third party for such use, whichever is greater; provided, however, the payment by Declarant shall not exceed the costs and expenses of the Association with respect to such Common Elements including, without limitation, maintenance, taxes and assessments, insurance and depreciation. Declarant shall have the obligation, or shall impose on any such third party the obligation to restore any such Common Elements to a clean and orderly condition after each use.

3.2 **Operation Function:** The Association may do all things that are within the power of a District and which are not being performed by such District which may be reasonably necessary or desirable to keep and maintain the Breckenridge Mountain Master Planned Community as a safe, attractive and desirable community.

3.3 **Public Health and Safety Function:** The Association may provide public health and safety services within Breckenridge Mountain Master Planned Community, including but not limited to, providing health care services and facilities, security personnel, security systems, fire protection facilities, affordable and employee housing opportunities and a fire water system which may include periodic fire prevention inspections and equipment certifications.

3.4 **Parking Function:** The Association may construct, purchase, lease, care for, operate, manage, maintain, repair or replace parking areas or structures to accommodate Owners, Lessees, Guests, Sub-owners and members of the general public, including but not limited to, lighting, signs, landscaping and other similar facilities appurtenant to such parking areas and the removal of snow from and the cleaning of any of such parking areas. To the extent practicable, the Association shall maintain such parking areas so as to meet any requirements imposed on the Association or on Declarant with respect to the Breckenridge Mountain Master Planned Community by any federal, state or local governmental agency. The Association has the further power to charge fees for the use of such parking areas or structures.

3.5 **Transportation Function:** The Association may provide for the construction, operation, maintenance and repair of one or more transportation systems within Breckenridge Mountain Master Planned Community. The Association, as it deems necessary, may extend such transportation systems to areas outside of the Breckenridge Mountain Master Planned Community to provide transportation to and from the Breckenridge Mountain Master Planned Community. Such transportation systems may include, but are not limited to, gondola, bus, automobile, funicular or rail systems and any other facilities deemed necessary or appropriate for the proper operation and maintenance of such systems. In addition to being used by Members, Lessees and Guests, such transportation systems may permit use by designated groups of non-members or by the public at large. The Association has the further power to charge fees for the use of such transportation systems.

3.6 **Recreation Function:** The Association may provide a year-round recreational program of suitable variety and such miscellaneous equipment as may be necessary therefor, including but not limited to, informing visitors of available recreation opportunities and stimulating their participation therein; conducting, operating, managing and maintaining programs for children, including but not limited to, daycare facilities and such equipment as may be appropriate for use in

connection therewith; constructing, caring for, operating, managing, maintaining, repairing and replacing within the Breckenridge Mountain Master Planned Community swimming pools, ice rinks, skating ponds, clubhouses, foot and bicycle trails and related facilities, sauna and steam baths, tennis courts, game or sports courts, game and special events areas, fishing areas and facilities, bob sledding and snow shoeing facilities, outdoor entertainment and other recreational amenities, and such equipment as may be appropriate for use in connection therewith; and maintaining, removing snow from and cleaning such facilities as necessary to permit their full use and enjoyment.

3.7 Promotional Function: The Association may provide suitable and continuing programs to promote the Breckenridge Mountain Master Planned Community as a desirable year-round destination resort, including but not limited to, stimulating and coordinating major events, advertising and placing articles in news and other media, establishing uniform standards for promotional programs of individual members, involvement in lecture tours and ski shows, encouraging responsible groups to hold conferences and negotiating arrangements and accommodations for such groups, conducting tour operations, publishing a newsletter, providing and operating reception and information centers and buying facilities for the accommodation of Guests and visitors. Such activities may be performed within or outside of the Breckenridge Mountain Master Planned Community. To the extent feasible, the Association shall endeavor to promote the Breckenridge Mountain Master Planned Community as a whole, as opposed to the promotion of a single activity or component; provided, however, that seasonal emphasis on certain aspects of the Breckenridge Mountain Master Planned Community, special promotions or similar activities as part of an overall balanced promotional program shall not be deemed to violate this limitation. The Association may undertake or fulfill its obligations hereunder in whole or in part in conjunction with or through any organization which may be engaged in the promotion of the state or local area ski industry, tourism or economy including, but not limited to, the Town of Breckenridge, the Breckenridge Resort Chamber, the Summit County Chamber of Commerce or similar entities.

To assist the Association in performing its Promotional Function, the Board of Directors may appoint a Promotion Committee composed of from three to five members, at least one of which shall be a representative of the Declarant and one of which shall be designated by the owner of Tract A. The responsibility of the Promotion Committee shall be to determine the nature and extent of any promotion of the Breckenridge Mountain Master Planned Community and to make appropriate recommendations to the Board of Directors, but the Promotion Committee shall not have authority to bind the Association to any contract or agreement with any third party; provided, however, that the Board of Directors may delegate specific responsibilities to the Promotion Committee as such Board deems appropriate. In the performance of its responsibilities, the Promotion Committee may engage in market research, public relations, advertising, joint enterprises with other Persons or groups or other activities designed to accomplish its objectives. The Promotion Committee shall be supported by funds allocated toward marketing and promotion of the Breckenridge Mountain Master Planned Community in the budget of the Association in accordance with the Bylaws.

3.8 Solid Waste Collection and Disposal Function: The Association may provide for the collection, removal and disposal of all solid waste in the Breckenridge Mountain Master Planned Community, including but not limited to, the construction, operation and maintenance of a central waste collection and/or disposal facility, and the possible production and sale of any energy generated in connection therewith. The Association shall have the power to adopt, amend and

enforce Rules and Regulations to provide for the orderly collection and disposal of such waste, for the sale of any energy generated in connection therewith and the distribution of such energy.

3.9 **Animal Control Function:** The Association may provide for rules and regulations, facilities, personnel and funds for animal control within the Breckenridge Mountain Master Planned Community.

3.10 **Environmental Function:** The Association may implement programs to educate Owners, Guests and Lessees regarding wildlife, wetlands and other environmental matters pertaining to the Breckenridge Mountain Master Planned Community and may impose Rules and Regulations governing the environment or environmental practices within the Breckenridge Mountain Master Planned Community.

3.11 **Exterior Maintenance Function:** (a) All Owners are expected to maintain their Units as required under this Declaration, and the Association does not intend to provide any exterior maintenance and repair of such property; provided, however, that a common interest community established for a particular condominium or project may assume such Owner's responsibility to maintain the exterior of its Unit. If any Owner fails to maintain its Unit or related improvements or property or fails to perform any acts of maintenance or repair required under this Declaration (or should any responsible common interest community fail to do so), the Association may provide exterior maintenance and repair upon such property pursuant to the provisions of Section 9.6. In addition, the Association may, without notice, make such emergency repairs and maintenance as may in its judgment be necessary for the safety of any person or to prevent damage to any other property. The cost of such exterior maintenance and repair shall be assessed against the Owner of such Unit and shall be a lien and obligation of the Owner pursuant to Section 5.4 herein and shall become due and payable in all respects as set forth in Section 5.3 herein. For the purpose of performing the exterior maintenance authorized by this Section 3.11, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to any Owner, to enter upon such site during reasonable hours on any day. The Association or its designee is hereby granted an irrevocable license over all property in the Breckenridge Mountain Master Planned Community to inspect (in a reasonable manner) property within the Breckenridge Mountain Master Planned Community in order to determine whether any maintenance or repair is necessary under this Section 3.11.

(b) Declarant, the Association and their respective directors, members, officers, agents or employees shall not be liable for any incidental or consequential damages for failure to inspect any Unit or improvements or portion thereof or to repair or maintain the same. Declarant, the Association, its employees and agents shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Unit, improvements or portion thereof.

3.12 **Telecommunications Function:** The Association may provide for the installation, operation, maintenance, repair and replacement of Internet service lines, fiber optic cable, satellite dishes, cable television equipment and related facilities. The Association may enter into master contracts for the provision of Internet and telecommunications services to Breckenridge Mountain

Master Planned Community and charge Owners for such services in accordance with their usage or other reasonable basis determined by the Association.

3.13 **Civic Function.** The Association, either individually or in cooperation with Declarant or other entity, may construct, operate and maintain civic amenities or structures for the benefit of the Breckenridge Mountain Master Planned Community, including but not limited to recreation centers, theaters, libraries, chapels, meeting halls or similar facilities. Additionally, Breckenridge Mountain Master Planned Community is part of the broader Breckenridge and Summit County communities and may impact, be impacted by or directly or indirectly benefit from activities outside the borders of Breckenridge Mountain Master Planned Community. The Association is consequently authorized to expend funds for improvements, facilities or amenities that are not Common Elements and/or are not located within the Breckenridge Mountain Master Planned Community, provided that the Association determines that such improvements, facilities or amenities provide a material benefit to the Members or contribute to the vitality or character of the Breckenridge Mountain Master Planned Community. Such improvements, facilities or amenities may include, but are not limited to, the acquisition of open space tracts in critical viewsheds of the Breckenridge Mountain Master Planned Community, the provision of or contribution toward affordable employee housing that may encourage a stable employee base for the Breckenridge Mountain Master Planned Community, participation in traffic mitigation measures or the provision of transportation with the Town of Breckenridge, a District, or Summit County, or similar projects.

3.14 **Other Functions:** The Association may undertake and perform other functions as it deems reasonable or necessary to carry out the provisions of this Declaration, including without limitation, providing the following services for some or all Owners, Lessees, Guests and visitors: a telephone answering service, warehousing and delivery, a central laundry facility, employee training, a central communications operation which may include a central dispatch system, a data information center and central monitoring of fire safety and property security.

3.15 **Insurance:** The Association shall obtain in its name and keep in full force and effect at all times all insurance required to be obtained and maintained by the Association under the Act and any additional insurance that the Board of Directors deems necessary. Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds for any such loss shall be paid in accordance with the terms and conditions of the Act.

3.16 **Indemnification:** The Association shall be obligated to and shall indemnify Declarant and hold it harmless from all liability, loss, cost, damage and expense, including without limitation attorneys' fees and disbursements, arising with respect to any operations of the Association or any Common Elements or Functions.

3.17 **Right to Make Rules and Regulations:** The Association shall be authorized and shall have the power to adopt, amend and enforce Rules and Regulations applicable within Breckenridge Mountain Master Planned Community with respect to any Common Element, Limited Common Element, or Function, and to implement the provisions of the Association Documents, including but not limited to, Rules and Regulations to prevent or reduce fire hazard; to prevent

disorder and disturbances of the peace; to regulate pedestrian and vehicular traffic; to regulate animals; to protect wildlife; to regulate signs; to regulate weed and pest control on undeveloped property within Breckenridge Mountain Master Planned Community; to regulate use of any and all Common Elements to assure fullest enjoyment of use; to promote the general health, safety and welfare of persons residing, visiting and doing business within Breckenridge Mountain Master Planned Community; and to protect and preserve property and property rights. All Rules and Regulations shall comply with the Association Documents, the Master Plan, applicable zoning any supplemental declarations of land use restrictions for the Breckenridge Mountain Master Planned Community, other regulations of governmental or quasi-governmental entities having jurisdiction over the Breckenridge Mountain Master Planned Community and all wildlife agreements, wildfire mitigation guidelines and conservation guidelines that affect the Breckenridge Mountain Master Planned Community, as in effect from time to time. The Rules and Regulations shall be reasonable and shall be uniformly applied, except such rules may differentiate between reasonable categories of Units, Owners, Lessees, Sub-owners, Guests or members of the general public. The Association may provide for enforcement of any such Rules and Regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from Common Elements or from enjoyment of any Functions, or otherwise; provided, however, that such enforcement measures shall only be imposed after notice and an opportunity to be heard. Each Owner, Lessee, Sub-owner, Guest and member of the general public shall be obligated to and shall comply with and abide by such Rules and Regulations and pay such fines or penalties, and such unpaid fines and penalties shall be enforceable in accordance with Section 5.4.

3.18 Charges for Use of Common Elements and Functions: Notwithstanding the provisions of Section 3.19, the Association may establish charges for use of Common Elements and/or Limited Common Elements to assist the Association in offsetting the costs and expenses of the Association, including depreciation and capital expenses. The Association may also establish charges for providing any service as required or permitted by any Function on a regular or irregular basis to an Owner, Lessee, Sub-owner, Guest or member of the general public to assist the Association in offsetting the costs and expenses of the Association, including depreciation and capital expenses. All charges established under this Section 3.18 shall be reasonable and shall be uniformly applied, except such charges may differentiate between reasonable categories of Units, Owners, Lessees, Sub-owners, Guests or members of the general public, but shall not unreasonably differentiate for members of the general public. Each Owner, Lessee, Sub-owner, Guest and member of the general public shall be obligated to and shall pay any such charges.

3.19 Taxes: The Association shall pay all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any governmental or public authority which shall be imposed, assessed or levied upon, or arise in connection with any Common Elements or Functions.

3.20 Right to Dispose of Common Elements: Subject to Section 3.23(viii) below, the Association shall have full power and authority to sell, lease, grant easements, rights-of-way, licenses, leases or concessions in or to, transfer, encumber, abandon or dispose of any Common Elements.

3.21 **Governmental Successor:** Any Common Element and any Function may be turned over to a governmental entity or quasi-governmental entity, including but not limited to a District, which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate with the consent of the Members by the Affirmative Vote of a Majority of the Classes.

3.22 **Records:** The Association shall keep financial records sufficiently detailed to enable the Association to comply with Section 38-33.3-316(8) of the Act concerning statements of unpaid assessments. All financial and other records shall be made available for examination by any Owner or such Owner's authorized agents at the offices of the Association, during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials.

3.23 **Implied Rights of the Association:** The Association shall have and may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under this Declaration, including without limitation the rights to:

(i) adopt and amend the Bylaws and Rules and Regulations of the Association;

(ii) adopt and amend budgets for revenues, expenditures and reserves and collect assessments, including without limitation assessments for Common Expenses, from Owners. Within thirty days after adoption of any proposed budget for the Breckenridge Mountain Master Planned Community, the Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners shall continue until such time as the Owners ratify a subsequent budget proposed by the Board;

(iii) hire and terminate managing agents and other employees, agents and independent contractors;

(iv) institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Breckenridge Mountain Master Planned Community;

(v) make contracts and incur liabilities;

(vi) regulate the use, maintenance, repair, replacement and modification of the Common Elements;

(vii) cause additional improvements to be made as part of the Common Elements, including the construction of any capital asset, in whole or in part, for the benefit of some or all of the Owners, Lessees, Sub-owners, Guests and members of the general public, including without limitation streets, mountain access roads and other limited access roads, paths, walkways, skiways, sidewalks, and trails; any facilities necessary or useful for transit purposes, including gondolas or other means of transportation to and from Breckenridge Mountain Master Planned Community; bus stops and related structures and signage; mailbox structures; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and flues; conduit installation areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road and skiway supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and improvements that the District may be empowered by law from time to time to construct;

(viii) acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property; provided, however, that the fee interest of a Common Element may not be conveyed or subjected to a security interest unless (a) such action receives approval by an Affirmative Vote of a Majority of the Classes or any greater level of approval required by the Act; (b) such action is evidenced by a written agreement, or a written ratification of an agreement, executed in the same manner as a deed by the required number of Members; and (c) such action does not deprive any Unit of its rights of ingress, egress and support;

(ix) grant easements, leases, licenses and concessions through or over the Common Elements. Without limiting the generality of the foregoing, the Association may grant easements, rights-of-way, leases, licenses and concessions to suppliers of utilities serving the Property or property adjacent to the Property and may grant such rights to developers or owners of property adjacent to the Property for the purpose of accommodating minor encroachments onto the Common Elements or other purposes that do not unreasonably interfere with the use and enjoyment of the Common Elements;

(x) impose and receive any payments, fees or charges for the use, rental or operation of Common Elements;

(xi) impose charges for late payments of assessments, recover reasonable attorneys' fees and disbursements and other costs of collection for assessments and other actions to enforce the rights of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines and penalties for violations of the Association Documents;

(xii) impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments;

(xiii) provide for the indemnification of the Association's officers and directors and maintain directors' and officers' liability insurance;

(xiv) assign its right to future income, including without limitation, its right to receive assessments (by way of example and not limitation, the Association may assign its right to receive real estate transfer assessments to secure financing for improvements to Common Elements or performance of Functions, including without limitation construction and/or operation of transit systems, which may include gondolas);

(xv) obtain and pay for legal, accounting and other professional services;

(xvi) perform any Function by, through or under contractual arrangements, licenses, or other arrangements with any governmental or private entity as may be necessary or desirable; and

(xvii) enjoy and exercise any other power or authority which similar associations may now or hereafter enjoy or exercise in the state of Colorado.

3.24 Conduct of Association Litigation: (a) In recognition of the expenses and disruption associated with litigation, the Association shall seek a consensus of the Members prior to commencing an adversarial judicial or administrative proceeding, and shall not commence such a proceeding without the approval of Owners representing at least 75% of the total vote of the Association. This Section 3.24 shall not apply to: (i) actions brought by the Association to enforce the Association Documents (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to *ad valorem* taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of an express contract with the Association or its manager for services or supplies. This Section 3.24 shall not be amended except upon an Affirmative Vote of a Majority of the Classes.

(b) Neither the Association nor any Owner shall institute an action against any Person which arises out of an alleged defect in the design or construction of Breckenridge Mountain Master Planned Community until: (i) Declarant and the Person(s) who physically constructed the portion of Breckenridge Mountain Master Planned Community in which the alleged defect exists have been notified and given a reasonable time and opportunity in which to inspect, assess, correct, or redesign any alleged defect (provided, however, that the terms of this Section shall not create an obligation of any Person to effect a repair of an alleged defect); (ii) the Association or Owner(s) have pursued their remedies under any express warranty covering all or any portion of the alleged defect; (iii) the Declarant and the affected Person(s) have been given the opportunity to be heard at a meeting of the Association regarding the alleged defect; and (iv) all proposed parties to the action have been given a reasonable opportunity to mediate any dispute or disagreement relating to the alleged defect, and have either participated or refused to participate in such mediation.

(c) Notwithstanding any other provision of this Declaration, prior to instituting any action affected by Section 3.24(b), the Association shall notify each proposed defendant in such action and offer to resolve all claims, controversies and disputes at issue in such proposed action by conclusive binding arbitration under the Construction Industry Arbitration Rules of the American Arbitration Association. Each such proposed defendant shall have a period of sixty days from the

receipt of such notice in which to accept the offer of arbitration by written notice to the Association. This arbitration provision is irrevocable and, as to the proposed defendants which accept the Association's offer in a timely manner (the "Accepting Persons"), provides the exclusive forum for the resolution of all such controversies, disputes and claims. No award shall be made against any Accepting Person for amounts in excess of the cost of repairing the alleged defect, nor shall any award be made for punitive or exemplary damages, nor for any special, indirect or consequential damages, including, without limitation, any damages based on a claimed diminution in the value of any Unit, even if the Accepting Person has been advised of the possibility of such damages. Any claim to an award of such damages is hereby expressly waived. The results of the arbitration shall be final and binding upon all parties to the arbitration, and judgment may be entered upon such results in accordance with applicable law in any court of competent jurisdiction, each party paying its own attorneys fees, costs and expenses.

After compliance with the terms of this Section 3.24, the Association may commence and pursue litigation against proposed defendants in the action other than the Accepting Persons. No such action arising out of or relating to any claim affected by this Section shall include, by consolidation or joinder or class certification or in any other manner (including without limitation, inclusion as an original or additional third party to any litigation), any Accepting Person, and the Association shall indemnify each Accepting Person against all damages, attorneys fees, costs and expenses suffered by such Accepting Person as a result of such inclusion.

(d) No action affected by Section 3.24(b) shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorneys fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Association in such action. No action affected by Section 3.24(b), regardless of the nature of the claim for relief, may be had or maintained against any Person unless the offer of arbitration contemplated by Section 3.24(c) has been given to such Person within one year after the cause of action relating to the dispute, claim or controversy has accrued.

3.25 Association Documents: (a) Each Owner shall comply with and may benefit from each term, provision, covenant, condition, restriction, reservation and easement contained in the Association Documents. The obligations, burdens and benefits of Membership in the Association touch and concern the property comprising Breckenridge Mountain Master Planned Community and are, and shall be, covenants running with each Unit for the benefit of all other Units and the Common Elements.

(b) In the event that there is any conflict or inconsistency between the terms and conditions of the Act and the terms and conditions of this Declaration, the terms and conditions of the Act shall control. In the event that there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration shall control. In the event that there is any conflict or inconsistency between the terms and conditions of Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. In the event of any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

ARTICLE IV

**BRECKENRIDGE MOUNTAIN MASTER ASSOCIATION
MEMBERSHIP AND VOTING**

4.1 **Membership:** (a) There shall be one Membership in the Association attributable to fee simple ownership of each Unit. Each such Membership shall be appurtenant to the fee simple title to such Unit. The Owner of a Unit shall automatically be the holder of the Membership appurtenant to that Unit and title to and ownership of the Membership for that Unit shall automatically pass with fee simple title to the Unit. Each Owner of a Unit shall automatically be entitled to the benefits and subject to the burdens relating to the Membership for its Unit as set forth in the Association Documents as from time to time in force and effect. If fee simple title to a Unit is held by more than one Person, each such Person shall be a Member and the Membership appurtenant to that Unit shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership as fee simple title to the Unit is held.

(b) Membership in the Association shall be limited to Owners.

4.2 **Voting:** (a) The Association shall have the five classes of voting Membership set forth below. A Member may belong to more than one class:

(i) Class A. Class A Members shall be all of the Owners of the Residential Units in the Lower Breckenridge Mountain Community, including the owners of Undeveloped Units other than those that have elected to be treated as Commercial Units pursuant to Section 4.2(b). A Class A Member shall be entitled to one vote for each Residential Unit, or, as the case may be, Undeveloped Unit.

(ii) Class B. Class B Members shall be all of the Owners of Commercial Units in the Lower Breckenridge Mountain Community, including the owners of Undeveloped Units that have elected to be treated as Commercial Units pursuant to Section 4.2(b). A Class B Member shall be entitled to the greater of: (1) one vote for each Commercial Unit (whether or not such Unit is a Developed Unit), or (2) if, and only if, such Unit is a Developed Unit, one vote for every 150 square feet of Commercial Space (as measured in accordance with the Rules and Regulations) in such Member's Commercial Unit and one vote for each two Lodging Rooms in such Member's Lodge. In the event that the calculation of a Class B Member's voting interest results in what would otherwise be a fractional vote, such voting interest shall be rounded down to the nearest whole number of votes. Notwithstanding the foregoing, each Class B Member shall receive a minimum of one vote.

(iii) Class C. Class C Members shall be all of the Owners of the Residential Units in the Upper Breckenridge Mountain Community, including the owners of Undeveloped Units other than those that have elected to be treated as Commercial Units pursuant to Section 4.2(b). A Class C Member shall be entitled to one vote for each Residential Unit, or, as the case may be, Undeveloped Unit.

(iv) Class D. Class D Members shall be all of the Owners of Commercial Units in the Upper Breckenridge Mountain Community, including the owners of Undeveloped Units that have elected to be treated as Commercial Units pursuant to Section 4.2(b). A Class D Member shall be entitled to the greater of: (1) one vote for each Commercial Unit (whether or not such Unit is

a Developed Unit), or (2) if such Unit is a Developed Unit, one vote for every 150 square feet of Commercial Space (as measured in accordance with the Rules and Regulations) in such Member's Commercial Unit and one vote for each two Lodging Rooms in such Member's Lodge. In the event that the calculation of a Class D Member's voting interest results in what would otherwise be a fractional vote, such voting interest shall be rounded down to the nearest whole number of votes. Notwithstanding the foregoing, each Class D Member shall receive a minimum of one vote.

(v) Class E. The Owner of Tract A shall constitute the entire Class E Membership. Any future change in the tract name or designation of such Unit shall not affect the Class E Membership, so long as such Unit remains a Unit as defined in Section 2.46 above. The Class E Member shall be entitled to one (1) vote for all purposes.

(b) The Owner of an Undeveloped Unit that, under applicable zoning and the Master Plan, may be used for a mixture of commercial and residential uses shall be deemed to be a Class A or Class C Member, as appropriate, unless such Owner elects to be treated as a Class B or Class D Member. Any election with respect to an Undeveloped Unit (1) shall be made by delivering written notice thereof to the secretary of the Association; (2) may be made no more often than once during any calendar year, unless such Undeveloped Unit is transferred or conveyed to a new Owner, in which event such new Owner may make a new election; and (3) may be made only if such Undeveloped Unit is located in an area in which it could be developed as a residential or commercial Developed Unit in accordance with the applicable zoning and the Master Plan. When any Undeveloped Unit becomes a Developed Unit, the voting Membership for such Unit shall be determined by the classification of such Developed Unit as residential or commercial.

(c) At any meeting of a single class of Members, such Members shall be entitled to vote only the vote to which they are entitled as Members of that class. At any meeting of the combined classes of Membership where a vote of combined classes of Members is to be taken, each Member shall be entitled to vote the combined total of its votes for each class within the combined classes of which it is a Member. In any election of the directors, the candidates from any class receiving the highest number of votes, up to the number of directors to be elected from such class, shall be deemed elected. Cumulative voting shall not be allowed in the election of directors or for any purpose.

4.3 **Entitlement to Vote:** No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board of Directors is given actual written notice of such change and is provided satisfactory proof thereof. If a Membership in any class is held by more than one person or entity and only one of the holders is present at the meeting, such holder is entitled to cast all of the votes allocated to that Membership. If, however, more than one of the holders are present, such holders may vote in any manner in which they all agree. If such holders cannot agree about how to cast their vote on any specific issue, no vote for that issue shall be recorded for their Membership.

4.4 **Declarant:** So long as Declarant is an Owner, Declarant will have all of the rights and duties given to Members under the Association Documents, and will have all of the rights belonging to Declarant under the Association Documents (including, without limitation, the Special Declarant Rights) for the duration of those rights as set forth in the Association Documents and in the Act.

ARTICLE V
ASSESSMENTS, COMMON EXPENSES,
OTHER AMOUNTS AND LIENS

5.1 **Obligations for Assessments and Other Amounts:** Declarant, for each Unit it owns, hereby covenants, and each Owner by acceptance of a deed for its Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association the Common, Civic, Real Estate Transfer, Default and Special Assessments and charges, fines, penalties or other amounts, to be levied, fixed, established and collected as set forth in the Association Documents as from time to time in force and effect. The amount and each Unit's allocation of such assessments shall be set forth in the Bylaws of the Association. No Owner shall be exempt from liability under this Section 5.1 by waiving the use or enjoyment of any Common Element or by abandoning a Unit against which such assessments are made.

5.2 **Purpose of Assessments and Other Amounts:** The assessments levied and any charge, fine, penalty or other amount collected by the Association shall be used exclusively to pay expenses and other obligations that the Association may incur in performing any actions permitted or required under the Association Documents as from time to time in force and effect, including but not limited to, operating expenses, the costs of constructing or purchasing Common Elements and performing Functions, repayment of debt and debt service, providing security for third party obligations as provided in the Association Documents, and allocations to reserves. The Association may invest any funds allocated to reserves in a prudent manner. Unless expressly required by an Association Document, the Association need not refund or credit to Owners any excess funds collected by the Association.

5.3 **Time for Payments:** The amount of any assessment, charge, fine, penalty or other amount payable by any member of the general public, any Owner, or with respect to such Owner's Lessees, Sub-owners, Guests or Unit shall become due and payable as specified in the Association Documents as from time to time in force and effect. The Association may charge interest on such amounts at the rate of 18 percent per annum, or such other interest rate as may from time to time be established by the Board of Directors subject to limitations imposed by the Act, from the date due and payable until paid. In addition, the Association Documents may authorize the Association, during the period of any delinquency, to suspend an Owner's voting privileges or any other privileges.

5.4 **Lien for Assessments, Common Expenses and Other Amounts:** Pursuant to Section 38-33.3-316 of the Act, the Association shall have a statutory lien against each Unit to secure payment of any assessment, charge, fine, late charge, penalty, interest and attorneys' fees, disbursements and costs of collection imposed against its Owner under any Association Document, or with respect to such Owner's Lessees, Sub-owners, Guests or Unit, plus interest at the rate of 18 percent per annum, or such other interest rate as may from time to time be established by the Board of Directors subject to limitations imposed by the Act, from the date due and payable. If an assessment is payable in installments, the lien shall secure each installment from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations. The lien is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances recorded before the recordation of the Declaration, (ii) a security interest on the Unit which has priority over all other security interests on the Unit and which was recorded before the date on which

the assessment or other charge sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit; provided, however, that the Association's lien shall have priority over the security interests described in Section 5.4(ii) to the extent provided by the Act. The recording of this Declaration constitutes record notice and perfection of a lien of the Association on each Unit. No further recordation of any claim of any lien is required. The lien may be foreclosed in the manner for foreclosures of mortgages in the state of Colorado, and the Owner shall be required to pay the costs and expenses of such proceedings, including but not limited to, reasonable attorneys' fees and disbursements. In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's assessments.

5.5 Liability of Owners, Purchasers and Encumbrancers: (a) The amount of any assessment, charge, fine or penalty payable by any Owner, or with respect to such Owner's Lessees, Sub-owners, Guests or Unit, shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, devisees, personal representatives, successors and assigns. A Person acquiring fee simple title to a Unit shall be jointly and severally liable with the former Owner of the Unit for all such amounts which had accrued and were payable at the time of the acquisition of the fee simple title to the Unit by such Person, without prejudice to such Person's right to recover any such amounts paid from the former Owner.

(b) Each assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such assessment or other amount, including reasonable attorneys' fees and disbursements, may be recovered by a suit for a money judgment by the Association without foreclosing or waiving any lien securing the same.

5.6 Allocation of Common Expenses: Until the Association levies an assessment, Declarant shall pay all Common Expenses. Except as otherwise provided in the Association Documents or Act, assessments imposed upon Units for Common Expenses shall be allocated among the Units in accordance with the Bylaws of the Association.

ARTICLE VI CERTAIN RIGHTS OF DECLARANT, OWNERS AND ASSOCIATION

6.1 Declarant's Easements and Related Rights: (a) Declarant hereby reserves for itself and its licensees, invitees, lessees, successors and assigns a perpetual easement on, over, upon, across, above, under and through the Common Elements as may be reasonably necessary to (i) discharge Declarant's obligations under this Declaration; (ii) exercise any Special Declarant Right; and (iii) make improvements within Breckenridge Mountain Master Planned Community.

(b) Declarant hereby reserves to itself and its licensees, invitees, lessees, successors and assigns, the right from time to time to establish and use nonexclusive, perpetual utility and other easements, leases, permits or licenses on, over, upon, across, above, under and through the Common Elements for uses including, but not limited to, streets, mountain access roads

and other limited access roads, paths, walkways, skiways, sidewalks, and trails; any facilities necessary or useful for transit purposes, including gondolas or other means of transportation to and from the Breckenridge Mountain Master Planned Community; ski lifts; snowmaking facilities; clubhouses; bus stops and related structures and signage; mailbox structures; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and flues; conduit installation areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road and skiway supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and improvements that the District may be empowered by law from time to time to construct; and to create other reservations, exceptions and exclusions for the best interest of the Association, in order to serve all persons residing, visiting or doing business within Breckenridge Mountain Master Planned Community; provided that any such easement, lease, permit or license does not unreasonably impair the use of the Common Elements for their intended purpose.

(c) Declarant hereby reserves to itself, and its licensees, invitees, lessees, successors and assigns, the right at any time, and from time to time, to close or restrict the use of any mountain access roads or other limited access roads that exist within or in the vicinity of Breckenridge Mountain Master Planned Community; provided, however, that access by an Owner to its Unit shall not be materially impaired for an unreasonable period of time.

6.2 Rights and Obligations of Owners: (a) Subject to the provisions of this Declaration and the power of the Association to regulate the use of, and convey or encumber the Common Elements as set forth in the Association Documents and/or in the Act, each Owner, and such Owner's Lessees, Sub-owners and Guests shall have a nonexclusive easement over, upon, across and with respect to any Common Elements as appropriate and necessary for: access, ingress and egress to the Unit of such Owner, Lessee, Sub-owner or Guest; and to use the Common Elements and all other real property that must become Common Elements (as described in Section 8.1 below) for all other purposes.

(b) All rights, easements and obligations of an Owner under this Declaration and all rights of an Owner with respect to Membership under this Declaration are hereby declared to be and shall be appurtenant to the fee simple title to the Unit owned by such Owner and may not, except as provided in this Section 6.2 and Section 6.8, be transferred, conveyed, granted, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Unit. Every transfer, conveyance, grant, devise, bequest, encumbrance, other disposition of a Unit shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance, transfer or disposition of such rights and obligations. A transfer of ownership of a Unit may be made by deed, intestate succession, testamentary disposition, foreclosure of a deed of trust or mortgage of record or such other legal process as is now effective or may hereafter become effective under the laws of the State of Colorado. Any attempt to transfer a Membership in a manner other than those permitted by this Section 6.2 or by Section 6.8 shall be null and void.

(c) Each Owner, by accepting a deed to a Unit, agrees to abide by the provisions of the Association Documents and to cooperate with the Association in its efforts to enforce such provisions.

6.3 Common Access Easements: Declarant may create easements for common driveways serving two or more adjoining lots within Breckenridge Mountain Master Planned Community (such lots shall hereinafter be referred to as "Adjoining Lots"), which easements shall be designated on a Plat as Common Access Areas. The Adjoining Lot Owners shall have the right to use their respective Common Access Areas as driveway access, provided that such use by one Owner does not unreasonably interfere with the use and enjoyment of the driveway access by the other Owner. The construction of the common driveway access on a Common Access Area and the maintenance, repair and replacement thereof, including, without limitation, snow and ice removal and management, shall be the responsibility of and shall be performed by the respective Owners of the Adjoining Lots who use such Common Access Area as driveway access at their joint and equal expense; provided, however, that in the event any improvements on a Common Access Area are damaged or destroyed through the act of one such Owner, or such Owner's Lessees or Guests, whether or not such act is negligent or otherwise culpable, so as to deprive the other Owner of the full use and enjoyment of the common driveway access, then the first of such Owners shall forthwith proceed to rebuild and repair, or contract for the rebuilding and repair of, the common driveway access on the Common Access Area to its former good condition without cost to the other Owner. If either Owner of an Adjoining Lot who uses such Common Access Area as driveway access shall neglect or refuse to pay its share of the cost of constructing the common driveway access on the Common Access Area or of maintaining, repairing or replacing the same, or to pay all of said cost, as the case may be, such liability shall, upon application to the Board of Directors and the affirmative vote of a majority of the directors, be assessed by the Association against the Owner so failing to pay as a special assessment pursuant to the Association Documents and shall be in addition to any other assessment to which such Owner's Unit is subject and the Association shall have all of the rights pertaining to a special assessment specified in the Association Documents for such amount.

6.4 Other Association Easements: (a) Declarant hereby grants to the Association, its licensees, invitees, lessees, successors and assigns, a nonexclusive, perpetual easement on, over, upon, across, above, under and through the Property and each portion thereof to (i) exercise any right held by the Association under this Declaration or any other Association Document, and (ii) perform any obligation imposed upon the Association by this Declaration or any other Association Document. Notwithstanding the foregoing, the Association shall not enter upon any Unit without reasonable prior notice to the Owner of the Unit, except in cases of emergency.

(b) Without limiting the generality of the foregoing Section 6.4(a) and in addition to the easement rights granted thereunder, but subject to the provisions of Sections 6.1(c) and 6.2(c), Declarant hereby grants to the Association, its licensees, invitees, lessees, successors and assigns, nonexclusive, perpetual easements on, over, upon, across, above and through all of the roadways constructed within rights of way designated on a Plat as access to Breckenridge Mountain Master Planned Community, whether or not such roadways are or ever become a part of Breckenridge Mountain Master Planned Community, for vehicular and pedestrian access to all Units and Common Elements, and for all other purposes related to the exercise of any right held by the Association under this Declaration or any other Association Document, or the performance of any Function or obligation imposed upon the Association by this Declaration or any other Association Document. Notwithstanding the foregoing easement rights, the Association shall have no right to approve the abandonment or any relocations of the roadways or any construction, operation or maintenance

activities on the roadways so long as reasonable access to all Units and Common Elements within Breckenridge Mountain Master Planned Community is provided.

6.5 Other Easements: (a) The Property shall be subject to all easements shown on any Plat and to any other easements of record or of use. In addition, the Property is subject to all easements created by this Declaration. Each Owner, by accepting a deed to a Unit, agrees to be subject to such easements and the rules and regulations from time to time in effect of the easement owners governing the use of such easement areas.

(b) Declarant hereby grants a nonexclusive perpetual easement across and over the Property for ingress and egress to all police, sheriff, fire protection, ambulance and similar emergency agencies or persons, now or hereafter serving the Property, to enter the Property in the performance of their duties, subject, however, to limitations generally imposed by state and federal law.

6.6 Enjoyment of Functions and Common Elements: Each Owner, Lessee, Sub-owner, Guest and member of the general public shall be entitled to use and enjoy any Common Elements (except to the extent any Common Element is designated as Limited Common Element, in which case such use and enjoyment shall be restricted to the Owner, Sub-owner or Guest designated as having the exclusive use and benefit of such Limited Common Element), suitable for general use or the services provided by any Functions, subject to the Rules and Regulations and subject to such reasonable and uniformly applied charges which the Association may impose to offset costs and expenses, depreciation and capital expenses, subject to the provisions of this Declaration and subject to the following specific limitations. Such Rules and Regulations and charges may differentiate between different categories of Owners, Lessees, Sub-owners, Guests or members of the general public (but the charges shall not unreasonably differentiate between members of the general public), as established by the Board of Directors from time to time; however, the rules, regulations and charges must be uniformly applied within such categories. There shall be no obstruction of any Common Elements, nor shall anything be stored in or on any part of any Common Elements, without the prior written consent of the Association. Nothing shall be altered on, constructed in or removed from any Common Elements, except with the prior written consent of the Association. Nothing shall be done or kept on or in any Common Elements, that would result in the cancellation of the insurance or any part thereof which the Association is required to maintain pursuant hereto or increase the rate of the insurance or any part thereof over the amount that the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept on or in such Common Elements, that would be in violation of any statute, rule, ordinance, regulation, permit or other requirement of any governmental body. No damage to, or waste of, Common Elements shall be committed, and each visitor and Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by such visitor, Owner or such Owner's Lessees, Sub-owners or Guests. No noxious, destructive or offensive activity shall be carried on with respect to any Common Elements, nor shall anything be done therein or thereon which may be or become a nuisance to any other visitor, Owner or to any Lessee, Sub-owner or Guest. All restrictions contained in Article VII below shall also be deemed to apply to the Common Elements.

The restrictions upon the use of Common Elements set forth above shall also be deemed to apply to Limited Common Elements; provided, however, that the Association shall be entitled to

adopt rules and regulations and may impose fees to offset costs and expenses, depreciation and capital expenses, in relation to and which may differentiate among the Owner's, Sub-owner's or Guests based upon the restricted use and enjoyment of Limited Common Elements.

6.7 Assignment of Rights or Obligations to a Lessee or Sub-owner: To the extent permitted by the Act, an Owner may assign or delegate to a Lessee or Sub-owner all (but not less than all) of its rights under this Declaration as an Owner or as a Member and may enter into an arrangement with such Lessee or Sub-owner under which the Lessee or Sub-owner shall agree to assume all of such Owner's obligations hereunder as an Owner or Member. The Association shall recognize any such assignment or delegation of rights or arrangements for assumption of obligations, provided that, to be effective with respect to the Association, Declarant or any other Owner, the assignment or delegation of rights or arrangement for assumption of obligations shall be in writing, shall be in terms deemed satisfactorily specific by the Association, and a copy thereof shall be filed with and approved by the Association. Notwithstanding the foregoing, no Owner shall be permitted to relieve itself of the ultimate responsibility for fulfillment of all obligations hereunder of an Owner arising during the period it is an Owner.

6.8 Lessee's Rights and Obligations Appurtenant: All rights, easements and obligations of a Lessee under this Declaration are hereby declared to be and shall be appurtenant to the lease to the Leased Premises leased by such Lessee, and may not, except as provided in Section 6.9, be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separately or apart from the lease to the Leased Premises. Each transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Leased Premises shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such rights, easements and obligations.

6.9 Transfer of Rights or Obligations to a Sublessee: To the extent permitted by the Act, a Lessee, upon subleasing its entire Leased Premises, shall automatically be deemed to have given up all of its rights and obligations as a Lessee during the term of such sublease, and the sublessee shall automatically be deemed a Lessee upon the commencement of the term of the sublease. If a Lessee subleases only a portion of its Leased Premises, the Lessee shall automatically be deemed to have given up all rights and obligations as a Lessee to such subleased portion and such sublessee shall automatically be deemed a Lessee upon the commencement of the term of the sublease. Such sublessor shall maintain its rights and obligations as a Lessee with respect to any retained portion of the Leased Premises. Notwithstanding the foregoing, no sublessor shall be permitted to relieve itself of the ultimate responsibility for fulfillment of all obligations hereunder as a Lessee arising during the period it is a Lessee. The provisions of this Section 6.9 shall not apply to a Lessee of a Dwelling Unit.

6.10 Special Declarant Rights: Declarant hereby reserves for itself and its successors and assigns the following rights ("Special Declarant Rights") as defined in Section 103(29) of the Act, which rights may be exercised at any time during the term of this Declaration, including but not limited to:

(a) the right to complete any improvements shown on any Plat, and the right to construct any improvement that Declarant deems necessary or advisable on any Common Element, or any property owned by Declarant, including, without limitation, streets, mountain access roads

and other limited access roads, paths, walkways, skiways, sidewalks, and trails; any facilities necessary or useful for transit purposes, including gondolas or other means of transportation to and from or within the Breckenridge Mountain Master Planned Community; ski lifts; snow-making facilities; clubhouses; bus stops and related structures and signage; mailbox structures; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and flues; conduit installation areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road and skiway supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and improvements that a District or municipality may be empowered by law from time to time to construct;

(b) the right to construct and maintain sales offices, booths or other structures used for sales or promotional purposes, management offices and models on any Common Element, or any property owned by Declarant. Declarant also reserves for itself and its successors and assigns the right to construct and maintain signs advertising Breckenridge Mountain Master Planned Community. The number, size and location of any such sales structures and signage, management offices or models or the relocation thereof shall be determined by the Declarant, subject to the prior approval of the Design Review Board;

(c) the right to exercise any Development Right, including without limitation, the right to add additional property to the Breckenridge Mountain Master Planned Community pursuant to Section 2.7 above and to amend this Declaration in connection therewith, the right to amend this Declaration to create additional Units and Common Elements, the right to subdivide Units, the right to convert any and all Units into Common Elements, and the right to withdraw any and all portions of the Property from Breckenridge Mountain Master Planned Community as provided in Section 2.7;

(d) the right to use easements through the Common Elements for the purpose of making improvements within Breckenridge Mountain Master Planned Community or within real property which may be added to Breckenridge Mountain Master Planned Community;

(e) the right to make any portion of Breckenridge Mountain Master Planned Community subject to a master association;

(f) the right to merge or consolidate the Association with a common interest community of the same form of ownership; and

(g) the right to appoint and remove officers of the Association and directors during the Declarant Control Period, as set forth in Section 6.11.

6.11 Declarant Right to Appoint: (a) Subject to the terms and conditions of the Act and subsection 6.11(b) below but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove the directors of the Board of Directors and all officers of the Association during the Declarant Control Period.

(b) Declarant may voluntarily surrender its right to appoint and remove officers and directors prior to the expiration of the Declarant Control Period, in whole or in part and as to any

class or office. In such event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

(c) Upon the expiration of the Declarant Control Period, each Class shall elect one Director to serve on the Board of Directors. At least a majority of the Board of Directors must be Owners other than the Declarant or a designated representative of Owners other than the Declarant, in its role as a declarant; provided, however, that nothing in this Section shall impair the right of Declarant, in its role of an Owner and Member, to cast its votes in any class in favor of its officers, employees, representatives or agents as directors of the Association. The Board of Directors shall elect the officers. The Board of Directors and officers shall take office upon election.

6.12 **Reasonable Right to Develop:** The completion of construction and the sale or other disposal of Units by the Declarant is essential to the development of Breckenridge Mountain Master Planned Community as a planned community. Accordingly, nothing in this Declaration or the other Association Documents shall be construed to prevent Declarant, its contractors or subcontractors, from exercising any Special Declarant Right, utilizing any easement, right or privilege granted by this Declaration or otherwise doing upon the Common Elements or portions of the Property owned by it whatever is reasonably necessary or advisable in connection with the development and sale of Units or amenities of Breckenridge Mountain Master Planned Community.

ARTICLE VII RESTRICTIONS APPLICABLE TO PROPERTY

7.1 **Land Use Restrictions:** In addition to the restrictions found in this Article VII, all or any portion of the Property shall be further restricted in its use, density or design according to the Master Plan; any supplemental declarations of land use restrictions for Breckenridge Mountain Master Planned Community recorded with the Clerk and Recorder of Summit County, Colorado; the Rules and Regulations; zoning and subdivision regulations, designations and agreements; wildlife agreements, wildfire mitigation guidelines and conservation guidelines entered into by Declarant or the Association in connection with the development of Breckenridge Mountain Master Planned Community; and similar matters. Each Owner shall comply with all of the terms, provisions, covenants, conditions, restrictions, easements and reservations on the Owner's part to be complied with under this Declaration, including those imposed by the land use restrictions referenced in this Section.

7.2 **Occupancy Limitations:** All Residential Units may be used only for dwelling purposes and typical residential activities incident thereto. No portion of the Property or a residence shall be used for living or sleeping purposes other than a room designed for living or sleeping in a completed structure for which a certificate of occupancy has been issued. No room in any structure shall be used for living or sleeping purposes by more persons than it was designed to accommodate comfortably. Owners may rent or lease their Units to others for these purposes. Except as otherwise provided in Section 7.23 or as expressly permitted in writing by the Design Review Board, no trailers or temporary structures shall be permitted on any Property. Notwithstanding anything to the contrary contained in this Section 7.2, a gainful home occupation, profession, trade or other nonresidential use will be a permissible use of Residential Units, so long as (i) such use is permitted by the Master Plan and by law, (ii) such use is carried on entirely within a Residential Unit and is

secondary and incidental to its use as a residence, (iii) there is no external evidence of any such activity being conducted, (iv) the home occupation does not employ any nonresident of the Residential Unit, nor does it attract any nonresident customers; (v) the Owner receives a permit therefor from the Association, which permit may be granted, denied or revoked in the Association's sole discretion, and (vi) the use is conducted in compliance with the Rules and Regulations. Notwithstanding anything to the contrary contained in this Section 7.2, Bed and Breakfast operations will be a permissible use of Commercial Units or Residential Units so long as (i) such use is permitted by the Master Plan and by law, (ii) the Owner receives a permit therefor from the Association, which permit may be granted, denied or revoked in the Association's sole discretion, and (iii) the use is conducted in compliance with the Rules and Regulations.

7.3 Maintenance of Property: All Property, except for any portion of the Property then undergoing major construction, including all improvements on such Property, shall be kept and maintained by the Owner thereof in a clean, safe, attractive and slightly condition and in good repair, and no trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Unit so that they are visible from, or are a nuisance in any way to, any neighboring Unit or any road.

7.4 Approval of Construction Activities: Subject to restrictions imposed by declarations of covenants subordinate to this Declaration, each Owner shall have the right to construct a building and other improvements on its Unit, provided that no building or other improvements, including without limitation, any fence, wall, driveway, paving, walk, deck, patio, canopy, awning, roof, signage, exterior lighting facility or landscaping, shall be constructed, erected, placed or installed upon any Unit, and no change or alteration of the materials or appearance (including color) of the exterior of a building or other structure shall be made, and no excavation or change in the final grade of any Unit shall be performed, and no other construction activity shall be initiated on or healthy trees removed from any Unit, until all approvals as may be required by the Association Documents and by any governmental or quasi-governmental entity having jurisdiction over the Property have been obtained by such Owner. In this regard, without limiting the generality of the foregoing, each Owner is hereby advised and acknowledges that, in connection with any construction on its Unit, it must comply with the applicable provisions of the Association Documents, which documents may include, among other things, the following: (i) procedures and necessary fees for making application to the Design Review Board for design review approval, including the documents to be submitted and the time limits in which the Design Review Board must act to approve or disapprove any submission; (ii) time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under such documents; (iii) directions pertaining to the siting of improvements upon Units with respect to natural topography, preservation of view corridors and similar criteria; (iv) minimum and maximum square foot areas of living space that may be developed on any Unit; (v) landscaping and irrigation regulations, with limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the use of plants indigenous to the locale and other practices benefitting the protection of the environment, aesthetics and architectural harmony of the Property; and (vi) instructions and/or Rules and Regulations for the construction, reconstruction, refinishing or alteration of any improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation of utility lines or conduits on the Property, addressing matters such as grading, transformers, meters, fire protection, loading areas, waste storage, trash and debris removal, parking areas, outside storage, sanitary facilities, and

conduct and behavior of builders, subcontractors and Owners' representatives on the Property at any time.

7.5 **Blasting:** If any blasting is to occur, both Declarant and the Design Review Board will be informed far enough in advance to allow them to make such investigation as they deem necessary to confirm that appropriate protective measures have been taken prior to the blasting. Notwithstanding the foregoing, no approval of any blasting by Declarant or the Design Review Board will in any way release the person conducting the blasting from any and all liability in connection with the blasting, nor will any such approval in any way be deemed to make Declarant and/or the Design Review Board liable for damages which may occur from blasting, and the person doing the blasting and the Owner of whose Unit such blasting occurs will defend and hold harmless and hereby indemnifies Declarant and the Design Review Board from any such expense or liability. Declarant and/or the Design Review Board may impose any reasonable conditions and restrictions, including time and date restrictions and insurance requirements, on all blasting.

7.6 **Water and Sanitation:** Each structure designed for occupancy will connect, prior to occupancy, with water and sanitation facilities as are made available from time to time by the District, the Town of Breckenridge, the Breckenridge Sanitation District or any other approved utility supplier.

7.7 **Use of Property During Construction:** It shall be expressly permissible and proper for Declarant and any Owner acting with the prior written consent of the Design Review Board, and their respective employees, agents, independent contractors, successors and assigns involved in the construction of improvements on, or the providing of utility service to, the Property, to perform such activities and to maintain upon portions of the Property as they deem necessary such facilities as may be reasonably required, convenient, necessary or incidental to such construction and development of the Property. This permission specifically includes, without limiting the generality of the foregoing, maintaining storage yards, construction yards, construction trailers, portable toilets, equipment and signs. However, no activity by an Owner will be performed and no facility will be maintained by an Owner on any portion of the Property in such a way as to unreasonably interfere with the use or access of any other Owner or its Guests to such Owner's Unit. If any Owner's use under this provision is deemed objectionable by the Design Review Board, then the Design Review Board, in its sole discretion, may withdraw this permission. Notwithstanding the foregoing, this section will not operate to prevent the exercise by Declarant of any Special Declarant Rights.

7.8 **No Noxious or Offensive Activity:** No noxious or offensive activity shall be carried on upon any Property nor shall anything be done or placed on any Property which is or may become a nuisance or cause any significant embarrassment, disturbance or annoyance to others. As used herein, the term "noxious or offensive activity" shall not include any activities of an Owner, Declarant or their respective designees which are reasonably necessary to the development of and construction on the Property so long as such activities do not violate Association Documents or the statutes, rules or regulations of any governmental authority having jurisdiction with respect thereto and do not unreasonably interfere with any Owner's use of its Unit or with any Owner's ingress and egress to or from its Unit and a roadway.

7.9 **No Hazardous Activities:** No activities shall be conducted on any Property and no improvements constructed on any Property which are or might be unsafe or hazardous to any person

or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property; and no open fires shall be lighted or permitted on any Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior wood or gas burning device (except campfires or picnic fires on Property designated for such use by Declarant or by the Association and controlled and attended fires authorized in writing by Declarant or the Association and required for clearing or maintenance of land).

7.10 No Unsightliness: No unsightliness shall be permitted on any portion of the Property. Without limiting the generality of the foregoing:

(a) All unsightly structures, facilities, equipment, objects and conditions shall be kept within an enclosed structure at all times;

(b) Motor vehicles classed by manufacturer rating as exceeding three-quarter ton, mobile homes, travel trailers, tent trailers, trailers, trucks (except pickup trucks used for personal, and not commercial transport), snowmobiles, golf carts, boats, boat trailers, tractors, detached campers, camper shells, snow removal equipment and garden or maintenance equipment shall be kept in an enclosed structure at all times, except when in actual use; provided that such equipment may be parked on parking lots or other areas specifically designated by the Design Review Board for such equipment;

(c) Refuse, garbage and trash shall be kept in a covered container at all times and any such container shall be kept within an enclosed structure and in accordance with the terms of the Wildlife Agreements;

(d) Service areas and facilities for hanging, drying or airing clothing or fabrics shall be kept within an enclosed structure;

(e) Pipes for water, gas, sewer, drainage or other purposes, wires, cables, poles, antennas and other facilities for the transmission or reception of audio or visual signals or electricity, utility meters or other utility facilities, gas, oil, water or other tanks, and sewage disposal systems or devices shall be kept and maintained within an enclosed structure or below the surface of the ground, and satellite dishes shall be in an enclosed area or shall be of a size and in a location that do not impair visual qualities of Breckenridge Mountain Master Planned Community;

(f) No lumber, grass, shrub or tree clippings or plant waste, compost, metals, bulk materials or scrap or refuse or trash or unused items of any kind shall be kept, stored or allowed to accumulate on any Property; and

(g) No tennis courts, outdoor swimming pools, or similar facilities shall be constructed on the Property except in recreation centers or parks approved by the Association.

All enclosed structures shall comply with the Rules and Regulations of the Design Review Board as in effect from time to time. The Design Review Board shall have the power to grant a variance from the provisions of this Section 7.10 from time to time as it deems necessary or desirable.

7.11 Lights, Sounds and Odors: All exterior lighting of improvements and grounds on the Property will be subject to regulation by the Design Review Board. No light shall be emitted from any Property which is unreasonably bright or causes unreasonable glare or shines directly onto an adjacent Unit; no sound shall be emitted from any Property which is unreasonably loud or annoying; and no odor shall be emitted from any Property which is noxious or offensive to others. Notwithstanding the foregoing, any lights, sounds or odors that are emitted as a result of any activities related to the operation of the neighboring ski resorts, gondolas and ski lifts, including but not limited to illumination for night skiing, snow making and trail maintenance activities, shall be exempt from the application of this Section 7.11.

7.12 Restriction on Signs: Except as otherwise provided in Section 7.21, no signs or advertising devices of any nature shall be erected or maintained on any Property in such a manner as to be visible outside any Unit except signs approved by the Design Review Board, signs required by the land use restrictions referenced in Section 7.1, applicable law or legal proceedings, identification signs for work under construction (as approved by the Design Review Board), temporary signs to caution or warn of danger or the Association signs necessary or desirable to give directions or advise of Rules or Regulations.

7.13 Restrictions on Parking: Parking of vehicles on Property is permitted with respect to a Unit only within parking spaces constructed with the prior approval of the Design Review Board and such parking shall be used only for the parking of personal vehicles. The Association shall have the right to park any type of vehicle owned or used by the Association upon the Property only within parking either built by Declarant or approved by the Design Review Board in such areas designated for such purpose by Declarant. Notwithstanding the foregoing, the Association may designate areas for off-street parking on Property for the temporary parking of maintenance and delivery vehicles, for the sole purpose of assisting in a maintenance operation or to provide for the loading or unloading of such vehicles, or to accommodate special circumstances.

7.14 Restriction on Recreational Vehicles: No motorcycle, motorbike, snowmobile, golf cart or other motorized recreational vehicle shall be operated within or on the Property, except for (i) snowmobiles operated by Declarant in connection with its resort activities, (ii) licensed motorcycles and motorbikes that are driven on the roadways, and (iii) vehicular uses that are otherwise specifically permitted by the Rules and Regulations.

7.15 Restriction on Wood Burning Devices: The use of wood burning devices may be regulated or prohibited in accordance with applicable zoning or building codes or the land use restrictions referenced in Section 7.1., or may be regulated or prohibited by the Association pursuant to its Rules and Regulations.

7.16 Drainage Restriction: The flow of any surface drainage into any sewer system on the Property, except into storm sewers constructed for that purpose, shall be prohibited.

7.17 No Mining and Drilling: No Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

7.18 **No Fences:** No fences, walls or other barriers shall be permitted for the purpose of enclosing or demarcating any property boundaries without the prior written approval of the Design Review Board. Fences may be further regulated or prohibited pursuant to land use restrictions referenced in Section 7.1.

7.19 **General Practices Prohibited:** The following practices are prohibited at the Property: (i) removing any rock, plant material, top soil or similar items from any property of others; (ii) carrying loaded firearms on the Property, except within private residences; (iii) using surface water for construction; and (iv) disposing carelessly of cigarettes and other flammable materials. Notwithstanding the foregoing, the removal of rock, plant material, top soil or similar items from the Property by Declarant or the Association pursuant to its easement rights shall be exempt from the application of this Section 7.19.

7.20 **Interval Ownership/Timeshare.** Declarant may subject all or any portion of the Property or Breckenridge Mountain Master Planned Community to an Interval Ownership (as such term is hereinafter defined) plan during the Period of Declarant Control or connection with the exercise of any Special Declarant Rights. Except with regard to the Declarant's rights as provided for herein, no Unit shall be used (i) for the operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of a Unit (or any other structure) rotates among participants in the program on a fixed or floating time schedule over a period of years, or (ii) for the operation of a reservation or time-use system among co-Owners of a Unit managed by a party other than the co-Owners themselves, or (iii) for the operation of a reservation or time-use system among co-Owners whereby co-Owners are required as a condition of purchase of a fractional interest in the Unit to subject the fractional interest to a pre-determined reservation or time-use system among co-Owners, regardless of whether or not the co-Owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating (all of the foregoing uses or programs of ownership hereinafter called "Interval Ownership"), without the specific prior written approval of the Declarant during the Period of Declarant Control, and, thereafter, of the Association.

7.21 **Declarant's Exemption:** Nothing contained in this Declaration shall be construed to prevent (i) the exercise by Declarant of any Special Declarant Rights; or (ii) the erection or maintenance by Declarant or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of property within Breckenridge Mountain Master Planned Community.

7.22 **Health, Safety and Welfare:** In the event additional uses, activities and/or facilities are deemed by the Board of Directors to be nuisances or to adversely affect the health, safety or welfare of Owners or members of the general public or the value of any Property, the Board of Directors may adopt Rules and Regulations restricting or regulating the same.

7.23 **Compliance with Law:** In addition to the compliance requirements set forth in Section 7.1 above, no Property shall be used, occupied, altered, changed, improved or repaired except in compliance with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America, state of Colorado, County of Summit, and all other municipal, governmental or lawful authority whatsoever, affecting the Property or the improvements thereon or any part thereof, and of all their departments, bureaus and officials.

Furthermore, no Owner shall release, discharge or emit from the Property or dispose of, or allow any person under such Owner's control or direction to release, discharge or emit from the Property or dispose of, any material on, above or under the Property that is designated as a pollutant, hazardous material or contaminant under any federal, state or local law, regulation or ordinance.

7.24 Subdivision of Units: Prior to the recording in the office of the County Clerk and Recorder of Summit County, Colorado, of an instrument submitting any portion of the Property to further subdivision, including without limitation, the creation of cluster home Units, lodge/studio Units, Commercial Units or condominium Units, the applicant Owner of such property shall submit to both the Declarant and the Association for their separate review and approval, copies of the proposed subdivision documents, and such other information as may be reasonably requested by the Declarant and/or the Association, which may include without limitation, an owners' association declaration, any maps or plats, and articles of incorporation and bylaws of the owners' association. Upon request, the applicant Owner shall also submit a deposit against attorneys' fees and costs that the Declarant and the Association will incur in reviewing the application, in an amount reasonably estimated by the Declarant and the Association. The Declarant and the Association shall separately approve and execute any plats, maps and owners' association declarations that are required for each such subdivision, or shall disapprove the documents. If such documents are disapproved by either Declarant or the Association, the disapproving party shall set forth the specific reasons for such disapproval, and the applicant Owner shall thereafter either modify its application to satisfy such concerns (while maintaining the approval of the other approving party) or terminate its subdivision application with Summit County. The approval of the Declarant and the Association under this Section 7.24 shall not be unreasonably withheld or delayed. All costs and attorneys' fees incurred by the Association and the Declarant as a result of an application for approval shall be the sole obligation of the applicant Owner. The subdivision of Units shall be effected only in compliance with applicable subdivision laws or other restrictions imposed by the Act or other applicable laws, rules and regulations.

7.25 Additional Covenants, Conditions and Restrictions: By specific provision in any deed from Declarant, Declarant may subject any Property to be conveyed by such deed to particular covenants, conditions or restrictions applicable to the particular Property conveyed by such deed and, if any such deed contains any such covenants, conditions or restrictions, the deed may contain a provision that Declarant shall have the right, immediately or at any time during the continuation of any violation of breach of or failure to comply with any of said covenants, conditions or restrictions, to re-enter and take possession of the Property described in such deed and that, upon exercise of this right of re-entry, title to such Property shall thereupon re-vest in Declarant. The right of re-entry and re-vesting of title provided under this Section 7.25 shall be subject to the provisions of Article X.

7.26 Violation: Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Article VII shall be made by the Board of Directors after notice and an opportunity to be heard and shall be final.

ARTICLE VIII COMMON ELEMENTS TO BE CONSTRUCTED BY DECLARANT

8.1 **Declarant's Obligation to Construct Common Elements:** Set forth below is a general description of every Common Element which Declarant is legally obligated to construct within Breckenridge Mountain Master Planned Community, together with the approximate date by which each such Common Element is to be completed:

Those roadways shown on the initial Plat recorded by Declarant for any portion of the Property following the recordation of this Declaration, which shall be completed within three years following the recordation of such Plat.

Except as set forth in this Section 8.1, Declarant is not legally obligated to construct any Common Element within Breckenridge Mountain Master Planned Community.

8.2 **Common Elements Which May Be Constructed:** Set forth below is a general description of the type of any Common Element which Declarant anticipates may be constructed by, maintained by or operated by the Association (however, Declarant shall have no obligation to construct, maintain or operate any such Common Element in the interests and to the benefit of the Association and its Members):

Parking areas, streets, roads, paths, walkways, sidewalks, trails, drives, malls, stairs, skiways, ski lifts, night skiing facilities and/or illumination equipment, snow-making facilities, security systems, lights, signage, transportation systems including but not limited to gondola, bus or van systems and any facilities necessary or appropriate for the proper operation and maintenance of such systems, and such equipment as may be appropriate for use in connection therewith, swimming pools, ice rinks, skating ponds, clubhouses, foot and bicycle trails and related facilities, saunas, steam baths, tennis courts, game or sports courts, and special events areas, fishing areas and facilities, entertainment and other recreational amenities and such equipment as may be appropriate for use in connection therewith, reception and information centers, facilities to accommodate Guests and visitors, a central waste collection and/or disposal facility, satellite dishes, telephone answering service facilities, mailbox structures, bus stops and related structures, gardens and other landscaping improvements, ponds, drainage facilities, monuments, storage facilities for supplies and equipment, management offices, environmental monitoring equipment or facilities, ground water drainage facilities, all types of structures, facilities and improvements that the District may be empowered by law from time to time to construct, and such other buildings, facilities, structures and improvements as the Association may from time to time deem necessary or advisable.

ARTICLE IX DESIGN REVIEW

9.1 **Purpose:** In order to preserve the natural beauty of the Breckenridge Mountain Master Planned Community and its setting, to maintain the Breckenridge Mountain Master Planned Community as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, and to protect and promote the value of Property, all exterior design, landscaping, location and use of all new development and additions, changes or alterations to existing uses, landscaping and exterior design and development shall be subject to design review.

9.2 **Objectives:** The design review process shall be conducted with the following objectives in mind for the Breckenridge Mountain Master Planned Community:

(1) Preventing excessive or unnecessary grading, earthmoving or clearing of Property, removal of trees and vegetation which could cause disruption of natural watercourses or scar natural landforms;

(2) Ensuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the land and with surrounding lots, structures and open space, and do not unnecessarily block or intrude into scenic views from existing buildings or public places, or tend to dominate any other development or the natural landscape;

(3) Ensuring that the architectural design of structures and their materials and colors are visually harmonious with Breckenridge Mountain Master Planned Community's overall appearance, history and cultural heritage, with surrounding development, with natural landforms and native vegetation, and adheres to or complies with development plans, zoning requirements, and other restrictions officially approved by Declarant, the Association or any government or public authority, if any, for the sites in which the structures are proposed to be located;

(4) Ensuring that plans for the landscaping of open spaces provide visually pleasing settings for structures on such Units and on adjoining and nearby Units and blend harmoniously with the natural landscape;

(5) Ensuring that any development, structure, building or landscaping complies with the provisions of this Declaration, including but not limited to, those provisions set forth in Article VII;

(6) Ensuring that building design and construction techniques respond to energy consumption and environmental quality considerations, such as heat loss, air emissions, and run-off water quality; and

(7) Ensuring that design of Dwelling Units and Lodges provides rooms of types and standards generally consistent throughout Breckenridge Mountain Master Planned Community.

9.3 Design Review Board: (a) The Association shall establish a Design Review Board which shall consist of five members, all of which shall be appointed by the Declarant. The regular term of office for each member shall be one year, coinciding with the fiscal year of the Association. Any such member may be removed with or without cause by the Declarant at any time by written notice to such appointee. A successor or successors appointed by Declarant to fill such vacancy shall serve the remainder of the term of the former member.

(b) The Declarant shall select the chairperson and vice-chairperson from among the members of the Design Review Board. The chairperson or in his or her absence, the vice-chairperson shall be the presiding officer of its meetings. In the absence of both the chairperson and the vice-chairperson from a meeting, the members present shall appoint a member to serve as acting chairperson at such meeting. All business of the Design Review Board shall be conducted at meetings which are open to Members of the Association; meetings shall be held at least twice in each calendar year or more often upon call of the chairperson; all meetings shall be held at the offices of the Association or of Declarant, unless temporarily changed to another location by the

members of the Design Review Board. Three members shall constitute a quorum for the transaction of business, but in the absence of a quorum a lesser number may adjourn any meeting to a later time or date, and in the absence of all members any staff member may adjourn any meeting to a later time or date. The affirmative vote of a majority of the members of the Design Review Board present at any meeting shall constitute the action of the Design Review Board on any matter before it. The Design Review Board shall operate in accordance with its own rules of procedure; said rules shall be filed with the Association and maintained in the records of the Association and shall be subject to inspection by Members.

(c) The Design Review Board is hereby authorized to retain the services of one or more consulting architects, landscape architects or urban designers, who may also be members of the Design Review Board and entitled to vote in such capacity, and who need not be licensed to practice in the state of Colorado, to advise and assist the Design Review Board in performing the design review functions prescribed in this Article IX and in carrying out the provisions of Article VII. Such consultants may be retained to advise the Design Review Board on a single project, on a number of projects, or on a continuing basis. Consultants who are also members of the Design Review Board shall disclose to the Design Review Board their interests in any project or matter before the board promptly after such project comes up for board consideration.

(d) By written notice to the Association, the Declarant may delegate all or any of its rights under this Section 9.3 to the Association, in which event the Board of the Association shall appoint members of the Design Review Board and exercise Declarant's other rights under this Section. In making such delegation, Declarant may exempt certain portions of the Property from design review by the Design Review Board and, instead, subject such areas to design review by the Declarant.

9.4 Design Review Board Approval and Control: (a) In addition to the requirements set forth in Section 7.4 above and except as otherwise provided in Section 7.21, no Owner, Lessee, Sub-owner or Guest or the Association shall perform the activities described in Section 7.4 above on any Property, Unit or Common Element or building or structure thereon, or change the use of any Property or building or structure thereon, unless the Design Review Board has approved the plans and specifications for the project, showing the nature, kind, shape, height, color, materials and location of same, and the construction procedures to be used to ensure compliance with Article VII, including compliance with land use restrictions made applicable to the Property by Article VII. Alterations or remodeling which are completely within a building or structure and which do not change the exterior appearance and are not visible from the outside of the structure may be undertaken without Design Review Board approval, provided such alterations or remodeling do not change the use of, or the number of Dwelling Units or amount of Commercial Space in, the building or structure. All actions taken by the Design Review Board shall be in accordance with Rules and Regulations established by the Design Review Board which shall be published as set forth in Section 9.5 and shall be in accordance with the purposes and intent of the Master Plan. Such Rules and Regulations may be amended from time to time by action of the Design Review Board that is consistent with and fulfills the purpose of this Declaration. The approval or consent of the Design Review Board on matters properly coming before it shall not be unreasonably withheld, actions taken shall not be arbitrary or capricious and decisions shall be conclusive and binding on all interested parties, subject only to the right of appeal and review by the Board of Directors as set forth below; and such approval or consent shall not prohibit enforcement of the provisions of this

Declaration under Article X. The Design Review Board or its designated representative shall monitor any approved project to the extent required to ensure that the construction or work on such project complies with any and all approved plans and construction procedures. The Design Review Board or its designated representatives may enter upon any Property at any reasonable time or times to inspect the progress, work status, or completion of any project. In addition to the remedies described in Article X, the Design Review Board may withdraw approval of any project thereby stopping all activity at such project, if deviations from the approved plan or approved construction practices are not corrected or reconciled within 24 hours after written notification to the Owner specifying such deviations.

(b) Any material to be submitted or notice to be given to the Design Review Board shall be submitted at the offices of the Declarant or at such other location as the Design Review Board may designate from time to time.

(c) All actions requiring approval of the Association pursuant to the provisions of Article IX shall be deemed approved if such approval is obtained in writing from the Design Review Board.

9.5 Design Standards and Construction Procedures: The Design Review Board shall promulgate and publish design guidelines and Rules and Regulations (collectively, the "Design Rules and Regulations") that shall state the general design theme of all projects in Breckenridge Mountain Master Planned Community, specific design requirements, and the general construction procedures that will or will not be allowed in Breckenridge Mountain Master Planned Community. To recognize or encourage a diversity of character between discrete areas within Breckenridge Mountain Master Planned Community, the Design Rules and Regulations may be different for different portions of the Property, consistent with the Master Plan. The Design Review Board shall also promulgate and publish Rules and Regulations that shall set forth the procedures to be followed and material which must be provided by any Member or his or her authorized agents in order to obtain review of proposed construction by the Design Review Board. The Association shall be obligated for the cost of such publications and the Design Review Board shall make such publications available to Members.

9.6 Exterior Maintenance: Pursuant to the provisions of Section 3.11, the Design Review Board may, by the affirmative vote of a majority of the members of the Design Review Board present at any meeting, after 30 days' notice of such failure to the Owner of such Unit, request that the Association provide exterior maintenance and repair upon any Unit.

9.7 Review Fee: The Design Review Board may set a review fee schedule sufficient to cover all or part of the cost of Design Review Board time, consultant's fees, and incidental expenses. Applicants for design review may be required to deposit with the Design Review Board a fee which the Design Review Board deems sufficient to cover the costs of design review from which the actual costs shall be deducted when determined and the balance returned to the applicant following completion of the design review procedure.

9.8 Enforcement of Restrictions: Prior to the completion of construction or action subject to review under Section 9.4, the Design Review Board shall have primary responsibility to enforce the restrictions set forth in Article VII of this Declaration, the Design Rules and Regulations,

and restrictions set forth in any supplemental declaration recorded in the records of Summit County, Colorado, pursuant to Section 7.1 hereof; provided, however, that such responsibility shall not limit the right of Declarant or the Association to act under Article X. If the Design Review Board does not take action to enforce such restrictions within 15 days after being requested to do so by the Board of Directors, the Association may assume responsibility for enforcing such restrictions in any case in which the Design Review Board declined to act. Subsequent to the completion of construction or action subject to review under Section 9.4, the Association shall have primary responsibility to enforce such restrictions.

9.9 Reconsideration, Review and Appeal: Within seven days following action of the Design Review Board, its decision to approve or disapprove the project design shall be transmitted to the applicant and to the Association, and shall be made available to other Members upon their written request. The Board of Directors may confirm, modify or reverse the decision of the Design Review Board within 20 days following the decision. The decision shall become final if no action is taken by the Board of Directors and no written request for reconsideration is made to the Design Review Board by the applicant or any aggrieved party within 20 days following the decision of the Design Review Board. If no action was taken by the Board of Directors but a request for reconsideration is timely made, the Design Review Board shall reconsider the matter at its next regularly scheduled meeting. The decision rendered upon such reconsideration shall be transmitted to the applicant, any aggrieved party and to the Board of Directors as set forth above, and shall become final if no appeal to the Board of Directors is made from such decision within seven days following the date of notice of such decision. An appeal shall be filed by giving written notice, specifying the decision being appealed and the grounds for such appeal, to the Design Review Board and the Board during such seven day period. Not more than 60 days following the filing of an appeal by the applicant or aggrieved party, the Board of Directors shall review the action of the Design Review Board and shall, in writing, confirm, modify or reverse the decision of the Design Review Board. If the Board of Directors deems that insufficient information is available to provide the basis for a sound decision, the Board of Directors may postpone final action for not more than 30 additional days. Failure of the Board of Directors to act within 95 days from the date of the filing of the appeal shall be deemed approval by the Board of Directors of the design of the project unless the applicant consents to a time extension. Any decision by the Design Review Board or Board of Directors which results in disapproval of the project design shall specifically describe the purpose, development plan, covenant or provision of the Design Rules and Regulations with which the project does not comply and the manner of noncompliance.

9.10 Lapse of Design Review Approval: Approval of the design of a project shall lapse and become void one year following the date of final approval of the project, unless prior to the expiration of one year a building permit is issued and construction is commenced and diligently pursued toward completion.

9.11 Assignment of Function: Any function to be performed by the Design Review Board pursuant to Article VII or Article IX may be assigned to the Association in whole or in part at any time or from time to time by the Design Review Board in its discretion.

9.12 Liability: Neither Declarant, the Association nor the Design Review Board nor any of their respective officers, directors, employees or agents shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved under this Article IX nor for any defects in construction pursuant to such plans and specifications. Approval of plans and

specifications under this Article IX shall not be deemed in lieu of compliance by Owners or Lessees with applicable governmental laws or regulations.

**ARTICLE X
ENFORCEMENT AND REMEDIES**

10.1 **Enforcement:** (a) Each provision of this Declaration enforceable against the Association or the Common Elements shall be enforceable by Declarant or by any Owner by a proceeding for a prohibitive or mandatory injunction.

(b) Each provision of this Declaration enforceable against an Owner or member of the general public or Unit shall be enforceable by Declarant or the Association by a proceeding for a prohibitive or mandatory injunction or by suit or action to recover damages, or in the discretion of the Association, for so long as any Owner or member of the general public fails to comply with any such provisions, by exclusion of such member of the general public, Owner and/or such Owner's Lessees, Sub-owners and Guests from the use of any Common Elements and from the participation in any Function.

10.2 **Remedies:** In addition, if an Owner or member of the general public fails to perform or observe any covenant or condition on such Owner's part to be performed or observed under this Declaration or any other Association Document, the Association shall have the following rights and remedies:

(a) The Association may, but is not obligated to, cure such failure to comply at the Owner's, or other defaulting party's, sole cost and expense. If the Association cures any such failure to comply, (i) such Owner shall pay to the Association the amount of all costs incurred by the Association in connection therewith within 30 days after the Owner receives a written invoice therefor from the Association or (ii) such member of the general public shall pay to the Association the amount of all costs incurred by the Association in connection therewith within 30 days after such party receives notice therefor;

(b) The Association may suspend the Owner's right to vote;

(c) Except as otherwise provided in any Association Document, and in addition to the fines provided for therein, the Association may fine the Owner or member of the general public an amount not to exceed \$1,000 for each violation. The Association may, in its sole and exclusive discretion, annually adjust for inflation the maximum amount of such fine. Each day any violation continues or is permitted to continue shall constitute a separate offense for purposes of levying such fine. The Owner shall pay any such fine to the Association within 30 days after the Owner receives written notice thereof or the member of the general public shall pay any such fine to the Association within 30 days after such party receives notice thereof. Any amount not so paid shall become a Default Assessment against such Owner's Unit, enforceable in accordance with Article V;

(d) The Association shall have all other rights and remedies available to it under Association Documents, at law or in equity. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

**ARTICLE XI
SPECIAL DISCLOSURE MATTERS**

Each Owner and member of the general public is hereby advised of the following matters affecting the Property and the use and enjoyment thereof:

The Property is or may be located in close proximity to one or more of the following: skiing and recreation area(s) (collectively, the "Ski Area"), a National Forest, tennis courts, equestrian stables, water reservoirs, and wildlife and conservation areas (collectively, the "Hazard Areas"). All of these areas create or contain certain hazards associated with the character or use of such area. Such areas may also generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof.

The activities associated with the Ski Area may include without limitation: (i) vehicular and pedestrian traffic, including without limitation, (A) buses which transport skiers and others around Breckenridge Mountain Master Planned Community and between the base of the Ski Area and various parking lots, (B) buses, vans, snowcats, snowmobiles and other vehicles which transport people over, around and through the Ski Area and Breckenridge Mountain Master Planned Community, and (C) construction vehicles and equipment; (ii) activities relating to the construction, operation and maintenance of ski trails, skiways and skier bridges and tunnels relating to the Ski Area, including without limitation, (A) tree cutting and clearing, grading and earth-moving, and other construction activities, (B) construction, operation and maintenance of access roads, snowmaking equipment and chair lifts, gondolas and other skier transportation systems, (C) operation of snow-grooming vehicles and equipment and safety and supervision vehicles; and (D) avalanche control activities; (iii) activities relating to the use of the Ski Area, including, without limitation, skiing, snow-boarding, hiking, horseback riding, bicycling and other recreational activities and organized events and competitions relating to such activities; and (iv) night time lighting associated with night skiing activities, if any.

Other hazards created by the Hazard Areas may include, but are not limited to, obstructed views, damage or injury caused by the general public, projectiles, attractive nuisances and death, personal injury or property damage caused by wild animals. Moreover, access to and use of the wildlife and conservation areas shall be restricted from time to time, and substantial construction-related activities relating to the development of the Property or other development within or near Breckenridge Mountain Master Planned Community may cause considerable noise, dust and other inconveniences to the persons residing, visiting or doing business in Breckenridge Mountain Master Planned Community.

Each Owner, by accepting a deed to a Unit or any interest therein, acknowledges that the impacts, disturbances, hazards and activities described above may occur in and around such Unit and the Property and each Owner, by accepting a deed to a Unit or any interest therein, for itself and its Lessees, Sub-owners, Guests, successors and assigns, hereby forever waives and releases any claims which such Owner may have against the Declarant, the District, the owner(s) and operator(s) of the Ski Area, and/or their respective successors and assigns, as a result of, arising out of or in any way relating to the impacts, disturbances, hazards and activities described above.

ARTICLE XII CASUALTY AND CONDEMNATION

12.1 **Casualty:** (a) In the event of damage or destruction to any part of the Common Elements due to fire or other adversity or disaster, any insurance proceeds shall be collected by and

paid to the Association and such insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Common Elements, as applicable, or if there are no insurance proceeds, the Board of Directors shall levy a reconstruction assessment pursuant to the Association Documents in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction. Notwithstanding the foregoing, the Association shall have no obligation to repair or reconstruct the damaged or destroyed Common Elements if such repair or reconstruction would be illegal under any state or local statute or ordinance governing health or safety or if within 60 days after such damage or destruction Owners representing 80 percent of the votes in the Association elect not to rebuild. The reconstruction assessment provided for herein shall be a debt of each Owner and a lien on its Unit, and may be enforced and collected in the same manner as any assessment lien provided for in the Association Documents. If Owners representing 80 percent of the votes in the Association elect not to rebuild any damage or destruction to the Common Elements in accordance with the terms and provisions set forth above, the Association shall demolish any destroyed or damaged improvements, remove all debris and rubble caused by such demolition and return the damaged or destroyed area to a slightly condition and shall have the right to levy against and collect from the Owners a reconstruction assessment for this limited purpose, if necessary.

(b) Subject to the terms of declarations of covenants subordinate to this Declaration, in the event of damage or destruction of the improvements located on any Unit or any part thereof (other than any Common Element which is governed by Section 12.1(a)) due to fire or other adversity or disaster, the Owner of such Unit shall, at its sole cost and expense, with due diligence, either (i) cause the damaged or destroyed improvements to be repaired and restored to a condition comparable to that prior to the damage or destruction, or (ii) demolish the destroyed or damaged improvements, in which event the damaged or destroyed improvements shall forthwith be demolished and all debris and rubble caused by such demolition shall be removed and the affected Unit regraded and landscaped. If such repair or restoration or such demolition, debris removal, regrading and landscaping is not commenced within 180 days from the date of such damage or destruction, or if the same is commenced but then abandoned for a period of more than 90 days, the Association may, after notice and an opportunity to be heard, impose a fine of \$1,000.00 per day or such other rate imposed by the Board of Directors in compliance with the Act, charged against the Owner of the Unit until such repair or restoration or such demolition, debris removal, regrading and landscaping is commenced or re-commenced, as the case may be, unless the Owner can prove to the satisfaction of the Board of Directors that such failure is due to circumstances beyond the Owner's control. Such fine shall be in addition to any assessment to which such Owner's Unit is subject and the Association shall have all of the rights pertaining to a default assessment specified in the Association Documents for such amount.

12.2 Condemnation: (a) In the event the Common Elements, or any portion thereof, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu thereof (herein, a "taking"), each Owner will be entitled to notice thereof, but the Association will act as attorney-in-fact for all Owners in the proceedings incident to the taking unless otherwise prohibited by law. The award for such taking will be payable to the Association as trustee for all of the Owners to be disbursed as follows:

(i) If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless restoration or replacement of such improvements would be illegal under any state or local statute or ordinance governing health or safety or unless within 60 days after such taking Owners representing 80 percent of the votes in the Association elect not to restore or replace such improvements, the Association will restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available therefor, in accordance with plans approved by the Board of Directors, the Design Review Board and any other governmental or quasi-governmental entity having jurisdiction over the Property. If such improvements are to be restored or replaced, and the award for the taking is insufficient to restore or replace such improvements, the Board of Directors shall levy a reconstruction assessment in the aggregate amount of such deficiency and shall proceed to restore or replace such improvements.

(ii) If the taking does not involve any improvements, or if there is a decision made not to restore or replace as set forth above, or if there are net funds remaining after any such restoration or replacement of improvements is completed, then the Association may retain such excess proceeds or distribute such excess in proportionate shares on the basis of all assessments levied against such Units (other than default assessments) for the prior 12-month period.

(b) In the event any Unit, or any portion thereof (other than any Common Element which is governed by Section 12.2(a)), shall be taken, the condemnation award for such taking shall be paid solely to the Owner of such Unit. The repair or restoration of any improvements located on such Unit which are affected by the taking shall be governed by the terms of Section 12.1(b). If an entire Unit shall be condemned, the Owner thereof shall automatically cease to be a Member of the Association.

(c) Section 107 of the Act shall govern the re-allocation of interests to Units following such condemnation.

ARTICLE XIII MISCELLANEOUS

13.1 Duration of Declaration: The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind Breckenridge Mountain Master Planned Community in perpetuity unless terminated in accordance with the terms of this Declaration and the Act. In the event that this Declaration or any provision hereof is found to be subject to the Rule Against Perpetuities or similar legal doctrine, this Declaration or provision shall be deemed to run for a period of 20 years from the date of recordation of this Declaration, after which it shall be automatically extended for successive ten-year periods, unless at least one year prior to the expiration of the initial term or any such ten-year period of extended duration, this Declaration is terminated by a recorded termination agreement that has been authorized and executed pursuant to Section 38-33.3-218 of the Act.

13.2 Amendment: Except in cases of amendments that may be executed by Declarant or the Association pursuant to this Declaration or the Act, and except with respect to amendments that require a greater vote pursuant to the Act or true Association Documents, any provision contained in this Declaration may be amended or repealed only by the affirmative vote or agreement of Owners to

which at least fifty percent of the votes in the Association are allocated; provided, however, that provisions regarding easement rights, Special Declarant Rights or other protections, rights or privileges of Declarant shall not be amended without the written concurrence of Declarant. Any such amendment or repeal shall be evidenced by a written instrument or instruments specifying the amendment or the repeal, executed by the Declarant and the Association, as appropriate, and recorded in the Office of the County Clerk and Recorder of Summit County, Colorado. The foregoing notwithstanding, Declarant, during the Period of Declarant Control, may amend or modify this Declaration, so long as such amendment or modification is approved by not less than four (4) members of the Board of Directors.

13.3 Effect of Provisions of Declaration: Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within Breckenridge Mountain Master Planned Community is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within Breckenridge Mountain Master Planned Community by an Owner or the Association, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner or the Association, as the case may be and, as a personal covenant, shall be binding on such Owner or the Association and such Owner's or the Association's respective heirs, personal representatives, successors and assigns and, as a personal covenant of an Owner, shall be deemed a personal covenant to, with and for the benefit of Declarant and to, with and for the benefit of the Association but not to, with or for the benefit of any other Owner and, if a personal covenant of the Association, shall be deemed a personal covenant to, with and for the benefit of Declarant and to, with and for the benefit of each Owner; (c) shall be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to each parcel of real property within Breckenridge Mountain Master Planned Community and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of any real property now or hereafter owned by Declarant within Breckenridge Mountain Master Planned Community and for the benefit of any and all other real property within Breckenridge Mountain Master Planned Community; and (d) shall be deemed a covenant, obligation and restriction secured by a lien, binding, burdening and encumbering the title to each parcel of real property within Breckenridge Mountain Master Planned Community which lien with respect to any Unit shall be deemed a lien in favor of Declarant and the Association, jointly and severally and, with respect to any real property owned by the Association, shall be deemed a lien in favor of Declarant.

13.4 Interpretation of the Declaration: The Association, by and through its Board of Directors, 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 benefitted or bound by the covenants and the provisions hereof.

13.5 Attorneys' Fees: In the event of any dispute under or with respect to this Declaration or any other Association Document, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including but not limited to reasonable attorneys' fees and disbursements.

13.6 Protection of Encumbrancer: (a) The Association shall furnish to an Owner or such Owner's designee or mortgagee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit. The statement shall be furnished within 14 calendar days after receipt of the request and is binding on the Association, the Board of Directors and every Owner. If no statement is furnished to the Owner, the mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert the priority of its assessment lien upon the Unit for unpaid assessments which were due as of the date of the request.

(b) The Association shall report to any Owner's mortgagee any unpaid assessments remaining unpaid for more than 60 days after the same shall have become due, if such mortgagee first shall have delivered to the Association a written request for notice of unpaid assessments. Any mortgagee holding a lien on a Unit may pay any unpaid assessment with respect to such Unit, together with any and all costs and expenses incurred with respect to the assessment lien securing such unpaid assessment, and upon such payment, such mortgagee shall have a lien on the Unit for the amounts paid with the same priority as a lien of the mortgage held by such mortgagee.

13.7 Limited Liability: (a) No officer or director of the Association, who was appointed by the Declarant, shall be personally liable to the Association or any Member for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such officer or director, unless a court of competent jurisdiction finds that such officer or director breached a fiduciary duty that such officer or director owed to the Association or a Member.

(b) No officer or director of the Association, who was not appointed by the Declarant and no employee, agent or committee member of the Association shall be personally liable to the Association or any Member for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such officer, director, employee, agent or committee member, unless a court of competent jurisdiction finds that the act or omission of such officer, director, employee, agent or committee member was wanton and willful.

(c) The Association shall indemnify and hold harmless each present or former officer, director, employee, agent or committee member against any and all claims, suits, proceedings, injuries, damages, losses, costs and expenses, including, but not limited to, attorneys' fees and disbursements, asserted against or incurred by any such present or former officer, director, employee, agent or committee member to the fullest extent permitted by law; provided, however, that in no event shall the Association indemnify or hold harmless any such officer, director, employee, agent or committee member to the extent that he or she is personally liable for an act or omission under Section 13.7(a) or Section 13.7(b) above.

13.8 Disclaimer of Representations: Anything to the contrary in this Declaration notwithstanding, and except as otherwise may expressly be set forth on a Plat or other instrument recorded in the office of the Clerk and Recorder for Summit County, Colorado, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete

development of Breckenridge Mountain Master Planned Community can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that if such land is once used for a particular use, that such use will continue in effect. No assurances are made regarding the preservation of views from any Unit or the configuration, location, unit type or other aspect of development in the vicinity of any Unit.

13.9 **Successors and Assigns:** Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

13.10 **Severability:** Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

13.11 **Captions:** The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

13.12 **Construction:** When necessary for proper construction, the masculine of any word used in this Declaration shall include the feminine or neuter gender, and the singular the plural, and vice versa.

13.13 **No Waiver:** Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

13.14 **Notices; Registration by Owner of Mailing Address:** Each Owner shall register its mailing address with the Association, and except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by first class mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. An Owner may change its mailing address from time to time by delivering written notice of such change of address to the secretary of the Association. However, if any Owner fails to so notify the Association of a registered address, then any notice or demand may be delivered to such Owner at the address of such Owner's Unit or posted at such Owner's Unit. All notices or demands intended to be served upon the Board of Directors, the Declarant or the Association shall be sent by certified mail, postage prepaid, to 1599C, Summit County Road 3, P.O. Box 1058, Breckenridge, CO 80424, until such address is changed by any such party.

IN WITNESS WHEREOF, Declarant and, with respect to that real property described on Exhibit B hereto, Mountain Thunder, Inc., have executed this Declaration on the day and year first above written.

DECLARANT:

VAIL SUMMIT RESORTS, INC.,
a Colorado corporation

By: _____
Roger McCarthy, Sr. Vice President

MOUNTAIN THUNDER, INC.
a Colorado corporation

By: _____
Roger McCarthy, Sr. Vice President

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this ____ day of September, 2002, by Roger McCarthy as Sr. Vice President of Vail Summit Resorts, Inc., a Colorado corporation, on behalf of such corporation.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____

The foregoing instrument was acknowledged before me this ____ day of September, 2002, by Roger McCarthy as Sr. Vice President of Mountain Thunder, Inc., a Colorado corporation, on behalf of such corporation.

WITNESS my hand and official seal.

Notary Public

My Commission Expires: _____