

**WHEN RECORDED RETURN TO:**

United Park City Mines Company  
c/o David J. Smith  
900 Main Street, Suite 6107  
P. O. Box 1450  
Park City, UT 84060

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
RED CLOUD SUBDIVISION**

January 20, 2005

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
RED CLOUD SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RED CLOUD SUBDIVISION is made this 20<sup>th</sup> day of January, 2005, by UNITED PARK CITY MINES COMPANY, a Delaware corporation, with respect to the following:

**RECITALS:**

A. Declarant owns or controls approximately 1,500 acres of real property located in Park City, Summit County, Utah ("Declarant Property"), that Declarant desires to develop, in phases, as a master planned community known as "Empire Pass" consisting of residential, commercial, recreational and other areas and uses pursuant to the Master Declaration.

B. Declarant intends to develop as a residential subdivision an approximate 50 acre portion of the Declarant Property to be known as the Red Cloud Subdivision, more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

C. The Red Cloud Subdivision shall be a part of the Empire Pass master planned community. Declarant intends to develop and convey all of the Lots (defined below) and other land within the Red Cloud Subdivision subject to a general plan of development, and subject to certain protective covenants, conditions and restrictions all as set forth in this Red Cloud Declaration, and which are deemed to be covenants running with the land mutually burdening and benefiting each of the Lots and other property within the Red Cloud Subdivision.

D. It is the intention of the Declarant in imposing the covenants, conditions and restrictions in this Red Cloud Declaration (defined below) to protect and enhance the property values and aesthetic values of the Lots all for the mutual protection and benefit of the Lots and the Owners of the Lots. The covenants, conditions and restrictions in this Red Cloud Declaration are intended to, and shall in all cases run with the title of the land, and be binding upon the successors, assigns, heirs, lien holders, and any other Person holding any interest in the Lots, and shall inure to the benefit of all other Lots in the Red Cloud Subdivision.

E. This Red Cloud Declaration and the Red Cloud Subdivision shall be subject and subordinate in all respects to the Governing Documents (as defined in the Master Declaration).

NOW, THEREFORE, DECLARANT hereby declares, covenants, and agrees as follows:

**ARTICLE 1  
DEFINITIONS**

1. The capitalized terms used in this Red Cloud Declaration, but not otherwise defined, shall have the meanings ascribed to them in the Master Declaration. Unless the context clearly requires the application of a more general meaning, the following terms, when used in this Red Cloud Declaration, shall have the following meanings:

1.1 “Additional Land” shall mean all real property currently owned or controlled by Declarant and all real property hereinafter acquired by Declarant that is located within one mile of the exterior boundary of the Red Cloud Subdivision.

1.2 “Articles of Incorporation” shall have the meaning set forth in Section 4.1.

1.3 “Assessment” shall mean an annual assessment or a special assessment imposed by the Red Cloud Association.

1.4 “Association Areas” shall mean all areas within the Red Cloud Plat for the common use, enjoyment or benefit of the Owners including, for example, the roadways and emergency access rights of way, together with all equipment, facilities, fixtures, and other personal property and real property improvements used and/or owned by the Red Cloud Association for the use and benefit of all Owners, including without limiting the generality of the foregoing, trees, bushes and other landscaping, and all equipment, fixtures, facilities, and other personal property and real property improvements hereafter purchased in accordance with this Red Cloud Declaration with monies from the Association Expense Fund. For purposes of the Assessments which are the subject of Article 6, below, and related maintenance obligations of the Association, Association Areas may also be deemed to include areas and facilities outside the Red Cloud Subdivision that benefit the Subdivision including, for example, emergency or secondary access roads, gatehouses, and ski-related facilities and improvements. Except as otherwise set forth in this Declaration, the Association Areas shall generally be owned by the Red Cloud Association. Subject to the Governing Documents, all Association Areas shall be maintained, managed and controlled by the Red Cloud Association for the use and enjoyment of the Owners as more fully described in this Red Cloud Declaration. Association Areas shall not include certain areas shown on the Red Cloud Plat as: (i) the private ski easements benefiting individual Lots; and (ii) the ski tramway commonly known as the Quincy Chair Lift.

1.5 “Association Expenses” shall have the meaning set forth in Section 6.2.1(ii).

1.6 “Association Expense Fund” shall have the meaning set forth in Section 6.2.1(iii).

1.7 “Bylaws” shall have the meaning set forth in Section 4.6.

1.8 “City” shall mean Park City Municipal Corporation, a corporate body and political subdivision of the State of Utah, and its appropriate departments, officials, and boards.

1.9 “Declarant” shall mean and refer to United Park City Mines Company, a Delaware corporation. Declarant shall also include any Person or Persons that have been assigned and have agreed to assume certain of Declarant’s rights and/or obligations in this Declaration pursuant to Section 20.11 effective upon the recording of a written instrument signed by the Declarant and such Person or Persons and duly recorded in the public records of Summit County, Utah, that evidences such assignment and assumption.

1.10 “Dwelling” shall mean the primary single family residence built or to be built on any Lot.

1.11 “Improvement” shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, Dwellings, garages, storage buildings, and additions to them; walkways, retaining walls, gazebos, fences, driveways, landscaping, pools, decks, tennis courts, hard surfaced areas, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

1.12 “Lots” shall mean the 30 single family residential building lots shown on the Red Cloud Plat. Each of the Lots shall constitute a “Lot/Unit” as defined in the Master Declaration.

1.13 “Master Association” shall mean Empire Pass Master Owners Association, Inc., a Utah non-profit corporation.

1.14 “Master Declaration” shall mean the Certificate of Amendment and Amended and Restated Master Declaration of Covenants, Conditions and Restrictions of Empire Pass, dated December 10, 2004, and recorded in the official records of the Summit County Recorder’s Office on December 14, 2004, as Entry No. 719855 in Book 1666 at Pages 1054 through 1155, as amended or supplemented from time to time, and recorded in the official records of the Summit County Recorder’s Office. To the extent that any provision of this Red Cloud Declaration conflicts with any provisions of the Master Declaration, the provisions of the Master Declaration shall control provided, however, that this Red Cloud Declaration may impose covenants, conditions and restrictions on the Lots that are more strict than the provisions set forth in Article 4 of the Master Declaration.

1.15 “Mortgage” shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.

1.16 “MPD” shall mean the Red Cloud Subdivision Master Planned Development, as approved by the City, together with any subsequent amendments, supplements or additions. The MPD is maintained by the City and available for review at the offices of the City.

1.17 “Owner” shall mean the person or persons having title to any Lot. Owner shall mean the person holding fee simple title, including the Declarant, and buyers under any contract, but shall exclude any person or entity holding title only for purposes of securing performance of an obligation, unless that entity has taken possession. “Owner” shall not include the City.

1.18 “Person” shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

1.19 “Red Cloud Easement” shall have the meaning set forth in Section 5.5.

1.20 “Red Cloud Association” shall mean the Red Cloud Subdivision Homeowners Association, Inc., and as the context requires, the officers and directors thereof. The Red Cloud Association shall constitute a “Sub-Association” as defined in the Master Declaration.

1.21 “Red Cloud Board” shall mean the duly elected and acting board of directors of the Red Cloud Association.

1.22 “Red Cloud Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions for Red Cloud Subdivision, together with any subsequent amendments, supplements or additions. This Red Cloud Declaration shall constitute a “Neighborhood Declaration” as defined in the Master Declaration and shall be subject and subordinate to the Master Declaration.

1.23 “Red Cloud Plat” shall mean the official subdivision plat or plats of the Red Cloud Subdivision as approved by the City, as it may be amended from time to time, recorded in the official records of the Summit County Recorder’s Office. The Red Cloud Plat is hereby incorporated into this Red Cloud Declaration by this reference.

1.24 “Red Cloud Subdivision” shall have the meaning set forth in Recital B above. The Red Cloud Subdivision shall constitute a “Neighborhood” as defined in the Master Declaration.

1.25 “Resort Activities” shall have the meaning set forth in Article 19.

1.26 “Limits of Disturbance” means the portion of a Lot which may be disturbed by construction activity, including the physical limits of the Dwelling and any other Improvement or structure. The Limits of Disturbance for each Lot shall be approved by the City and the Design Review Board and shall comply with the MPD.

## **ARTICLE 2 DIVISION OF PROPERTY**

2.1 Submission to Declaration. All of the Red Cloud Subdivision is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a residential subdivision to be known as Red Cloud Subdivision. All of the Red Cloud Subdivision is and shall be subject to the covenants, conditions, restrictions, easements, uses, limitations, and obligations set forth in this Red Cloud Declaration and in the Red Cloud Plat, each and all of which are declared and agreed to be for the benefit of the Red Cloud Subdivision and in furtherance of a plan for improvement of said property and the division thereof into Lots. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns, and any Person acquiring, leasing, or owning an interest in any Lot, their lessees, heirs, executors, administrators, devisees, successors and assigns.

2.2 Subdivision into Lots. Pursuant to the Red Cloud Plat, the Red Cloud Subdivision is divided into Lots as more particularly described on the Red Cloud Plat. The Owner of each Lot, regardless of the size, purchase price or location of the Lot, shall have the

right to use the Association Areas. The Declarant, upon the recordation of this Red Cloud Declaration, hereby quitclaims all of its right, title and interest in and to all of the streets located within the Red Cloud Subdivision, as more particularly shown on the Plat, without warranty, to the Master Association, to be held and administered in accordance with the provisions of the Master Declaration.

2.3 Easements. The Declarant, its successors and assigns, shall have a transferable easement over and on the Association Areas, including streets providing ingress and egress to the Red Cloud Subdivision, for the purpose of doing all things reasonably necessary and proper for the construction, completion, development and sale of the Declarant Property and the Red Cloud Subdivision.

### **ARTICLE 3 EMPIRE PASS MASTER PLANNED COMMUNITY**

3.1 Empire Pass Project. The Red Cloud Subdivision shall constitute a part of Empire Pass master planned community and shall be subject to the Governing Documents. The Land Use Classification for the Red Cloud Subdivision shall be Single-Family Lot Use. The Red Cloud Subdivision shall have a density allocation of ten thousand (10,000) square feet of livable square footage for each Lot within the Red Cloud Subdivision. Said square feet shall be calculated in the same manner as that employed by Park City Municipal Corporation at the time the Owner submits plans to the Design Review Board for approval. The Red Cloud Subdivision shall be a part of the Red Cloud Neighborhood.

3.2 Master Association. Each Owner of a Lot shall be a Member of the Master Association. The Master Association imposes certain Annual Assessments, Special Assessments, Transfer Assessments and Maintenance Charges on the Lots and its Members.

3.3 Architectural Review. The Master Declaration and the Design Guidelines impose certain covenants, conditions, restrictions, standards, and requirements on any Improvements made to any Lot including, without limitation, architectural compatibility, Lot coverage, siting, proportion, materials, colors, and general appearance. To accomplish this goal, the Design Review Board oversees and enforces the Design Guidelines referenced and set forth in the Master Declaration. The Design Review Board has the right to amend the Design Guidelines from time to time in accordance with the Master Declaration. The Design Guidelines are incorporated by this reference into this Red Cloud Declaration. It is the Owner's responsibility to acquire and review the most current version of the Design Guidelines upon commencement of the Owner's design process.

3.4 Approval by Design Review Board. No improvements of any kind, including without limitation the construction of any Improvement, Dwelling, garage, out building, or addition to any of them, or any parking area, driveway, tennis court, walkway, or other hard surfaced areas, swimming pools, outdoor hot tubs or spas, fences, walls, curbs, flag poles, trampolines, satellite dishes or antennae, solar panels, or any other permanent structure maybe constructed, erected, or installed in the Red Cloud Subdivision without the prior written approval of the Design Review Board. No excavation, grading, filing, draining, landscaping, or installation or removal of existing vegetation shall be made without the advance written approval

of the Design Review Board. Approval by the Design Review Board does not necessarily assure approval by the City. The Design Review Board has established certain fees for review and inspection of plans for proposed Improvements. Variances to the Design Guidelines shall be governed by the Master Declaration.

3.5 Declarant, Design Review Board, Red Cloud Association and Master Association Not Liable. The Declarant, the Design Review Board, the Red Cloud Association, the Master Association and their respective officers, directors, employees and members shall not be liable to the Owner of any Lot for any damage arising from or related to, their actions, inactions, or approval or disapproval of any plans submitted to the Design Review Board for review. In the absence of bad faith or malicious actions, the Owners shall have no claim against the Declarant, the Design Review Board, the Red Cloud Association, the Master Association or their respective officers, directors, employees or members as a result of the performance or failure to perform the duties created by this Red Cloud Declaration or the Master Declaration.

#### **ARTICLE 4 RED CLOUD ASSOCIATION**

4.1 Red Cloud Association. In connection with this Red Cloud Declaration, the Declarant has filed or will be filing articles of incorporation with the Utah Division of Corporations to create the Red Cloud Association ("Articles of Incorporation"). The members of the Red Cloud Association shall be Owners of Lots within the Red Cloud Subdivision, and the Red Cloud Association is established to perform the functions and exercise the rights and powers for the benefit of the Lots and the Owners and the enforcement of the covenants as set forth in this Red Cloud Declaration. Each Owner of a Lot shall be a member of the Red Cloud Association. Membership in the Red Cloud Association shall be an appurtenance to each Lot, and is transferable only in conjunction with the transfer of the title to a Lot. The Red Cloud Association shall have and exercise, as necessary, the powers set forth in this Red Cloud Declaration.

4.2 Enforcement Powers. The Red Cloud Association shall have the power to enforce the covenants set forth in this Red Cloud Declaration by actions in law or equity brought in its own name, the power to retain professional services needed for the enforcement of the covenants, and to incur expenses for that purpose. The Red Cloud Board shall have the authority to compromise claims and litigation on behalf of the Red Cloud Association resulting from the enforcement of these covenants. The Red Cloud Board shall have the exclusive right to initiate enforcement actions in the name of the Red Cloud Association, however this shall not limit the individual rights of Owners to enforce personally the covenants set forth in this Red Cloud Declaration in their own name. The Red Cloud Association may appear and represent the interests of the Red Cloud Subdivision at all public meetings concerning zoning, variances, or other matters of general application and interest to the Lots and/or Owners. Owners of the Lots may appear individually.

#### 4.3 Red Cloud Board and Officers.

4.3.1 The affairs of the Red Cloud Association shall be conducted by the Red Cloud Board consisting of three (3) directors and also by such officers as the Red Cloud Board may elect or appoint in accordance with the Articles of Incorporation and the Bylaws as the same may be amended from time to time. The initial Red Cloud Board shall be composed of three (3) directors appointed by the Declarant. The Red Cloud Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Red Cloud Board, be responsible for the day-to-day operation of the Red Cloud Association. The Red Cloud Board shall determine the compensation to be paid to the manager.

4.3.2 The Red Cloud Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by this Red Cloud Declaration, the Articles of Incorporation and the Bylaws of the Red Cloud Association, including, but not limited to, the following: (i) administration of the Red Cloud Association; (ii) preparing and administering an operational budget; (iii) establishing and administering an adequate reserve fund; (iv) scheduling and conducting the annual meeting and other meetings of the Owners; (v) collecting and enforcing the assessments and fees from the Owners; (vi) accounting functions and maintaining records; (vii) promulgation and enforcement of rules and regulations; (viii) causing the Association Areas to be maintained; (ix) entering into contracts, deeds, leases and/or other written instructions or documents and to authorize the execution and delivery thereof by the appropriate officers; (x) opening bank accounts on behalf of the Red Cloud Association and to designate the signatures therefore; (xi) bringing, prosecuting and settling litigation for itself, the Red Cloud Association and the Red Cloud Subdivision; (xii) owning, purchasing or leasing, holding and selling or otherwise disposing of, on behalf of the Owners, items of real and personal property; (xiii) doing all other acts necessary for the operation and maintenance of the Red Cloud Subdivision and the performance of its duties as agent for the Red Cloud Association including the maintenance and repair of any portion of the Red Cloud Subdivision if necessary to protect or preserve the Red Cloud Subdivision; (xiv) purchasing and maintaining insurance; and (xiv) all the other duties imposed upon the Red Cloud Board pursuant to this Red Cloud Declaration, including enforcement thereof.

4.3.3 It is intended that Declarant shall control the Red Cloud Board and may fill any vacancies therein for so long as the Declarant owns any Lots in the Red Cloud Subdivision. For so long as Declarant owns any of the Lots in the Red Cloud Subdivision, Declarant shall also have the right, at any time, at its sole discretion, to permit one or more of the directors of the Red Cloud Board to be elected by the vote of a majority of the Owners. When Declarant no longer owns any of the Lots in the Subdivision, or at such earlier time as the Declarant may, in its discretion determine, the directors of the Red Cloud Board may be removed, replaced or elected by the majority vote of Owners, at any meeting of the Owners conducted in accordance with the Bylaws. The number of directors of the Red Cloud Board may be changed by amendment of the Bylaws of the Red Cloud Association. At the first annual meeting, three (3) directors shall be elected for a term of one (1) year as provided in the Bylaws.

4.4 Maintenance of Association Areas. The Association Areas shall be maintained, cleaned, replaced, repaired and reconstructed by the Red Cloud Association and be landscaped, rebuilt, replaced, repaired or materially altered only with the review, approval and

consent of the Red Cloud Board, and in accordance with the provisions of this Red Cloud Declaration. Without limiting the generality of the foregoing, the Red Cloud Association shall (a) maintain, clean, replace, repair and keep in a sanitary condition and in a state of good repair all Association Areas; (b) re-landscape, re-construct and repair all Association Areas at such time as the same are in a state of disrepair and require replacement; and (c) maintain, clean, repair and keep in a sanitary condition and in a state of good repair all areas, easements, Improvements, landscaping and vegetation set forth in the Master Declaration, the Red Cloud Plat, or the MPD as the responsibility of the Red Cloud Association.

4.5 Rules and Regulations. By a majority vote, the Red Cloud Board may, from time to time and subject to the provisions of this Red Cloud Declaration, adopt, amend and repeal rules and regulations that restrict and govern the use of the Association Areas. The rules and regulations shall not discriminate among Owners. Each Owner, the family members of each Owner, and any invitee, licensee or tenant of each Owner shall comply with all of the rules and regulations. ALL OWNERS ARE GIVEN NOTICE THAT USE OF THE ASSOCIATION AREAS IS LIMITED BY THE RULES AND REGULATIONS AS AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME TO TIME. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF HIS OR HER LOT CAN BE AFFECTED BY THIS PROVISION AND THAT THE RULES AND REGULATIONS MAY CHANGE FROM TIME TO TIME. ALL PURCHASERS OF LOTS ARE ON NOTICE THAT THE RED CLOUD BOARD MAY HAVE ADOPTED CHANGES TO THE RULES AND REGULATIONS. COPIES OF THE CURRENT RULES AND REGULATIONS MAY BE OBTAINED FROM THE RED CLOUD ASSOCIATION.

4.6 Bylaws. The day to day administration of the Red Cloud Association's affairs, including the manner in which directors are elected and their terms of office are set forth in the bylaws of the Red Cloud Association ("Bylaws"), which may be amended from time to time by the Red Cloud Association as provided in those Bylaws. No amendment of the Bylaws shall have the effect of releasing or amending the covenants, conditions, or restrictions set forth in this Red Cloud Declaration.

4.7 Voting Rights. There shall be one vote for the membership in the Red Cloud Association that is appurtenant to each Lot, and each Owner, including the Declarant, shall be entitled to cast one vote for each Lot he or she owns. In the case of a Lot with multiple Owners, the Owners will agree among themselves how the vote applicable to that Lot will be cast, and if no agreement can be reached, no vote will be received from that Lot. Any of the multiple Owners appearing at the meeting in person or by proxy is deemed to be acting with proper authority for all of the other Owners of that Lot, unless the other Owners are also present and object or have filed written objections to that Owner's representation of the other Owners of the Lot in question.

4.8 Amplification. The provisions of this Article 4 may be amplified by the Articles of Incorporation and the Bylaws of the Red Cloud Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Red Cloud Declaration.

**ARTICLE 5  
EASEMENTS**

5.1 Easements for Maintenance. The Red Cloud Association shall have the irrevocable right to have access from time to time to all Association Areas during such reasonable hours as may be necessary for the maintenance, cleaning, repair, and replacement thereof or for making emergency repairs at any time herein necessary to prevent damage.

5.2 Right to Ingress and Egress. Each Owner shall have the right to ingress and egress over, upon, and across the streets shown on the Red Cloud Plat as necessary for access to such Owner's Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

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

5.4 Easements Reserved by Declarant and Association. The Red Cloud Association shall have power to grant and convey to any third party, and Declarant hereby reserves unto itself, transferable easements and rights of way on, over, under and through (i) the area being a ten (10) foot wide strip of land immediately inside the perimeter boundary of each Lot (or wider if necessary for purpose "(a)", below), and (ii) all other areas of the Red Cloud Subdivision, including but not limited to rights of ingress and egress for the purposes of: (a) grading to accommodate the construction of platted roadways; (b) constructing, erecting, operating and maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, internet service, telephone and other purposes, public sewers, storm drains and pipes, drainage areas, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities to provide common utility services to the Declarant's Property or to the Red Cloud Subdivision; and (c) constructing, repairing, replacing, operating and maintaining hiking and biking trails, and ski trails and lifts.

5.5 Red Cloud Easements. There are certain ski trail, ski lift, access and utility easements that cross on, over, under and through the Red Cloud Subdivision (the "Red Cloud Easements"). The Red Cloud Easements shall be maintained by the Master Association or its designee (including, for example, Deer Valley Resort Company). No Owner shall obstruct or interfere with the use of the Red Cloud Easements crossing his or her Lot. The Red Cloud Easements are for non-motorized use only, and no motorcycle, all-terrain vehicle, or other motorized vehicle (except for authorized maintenance vehicles or equipment) will be permitted on the Red Cloud Easements. Equipment including, without limitation, snowmobiles and snow grooming equipment may be used for the operation and maintenance of the Red Cloud Easements and any improvements thereto.

5.6 Easements. ALL OWNERS ARE GIVEN NOTICE THAT THEIR LOTS SHALL BE SUBJECT TO EASEMENTS AS SHOWN ON THE RED CLOUD PLAT, EASEMENTS CREATED UNDER THIS RED CLOUD DECLARATION, AND EASEMENTS CREATED UNDER THE MASTER DECLARATION.

5.7 Ownership of Streets. The streets shown on the Red Cloud Plat within the Red Cloud Subdivision shall be owned by the Master Association.

5.8 Inseparability. Every devise, encumbrance, conveyance, or other disposition of a Lot, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Lot, together with all appurtenant rights created by law or by this Red Cloud Declaration, including appurtenant membership in the Red Cloud Association, and an irrevocable license to use, occupy and enjoy the Association Areas. No Owner nor the Red Cloud Association may bring any action for partition thereof.

5.9 Separate Taxation. Each Lot and all improvements located thereon shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. The private streets shown on the Red Cloud Plat within the Red Cloud Subdivision shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Lot shall be separately levied against the Owner thereof. All such taxes, assessments, and other charges on the streets, shown on the Red Cloud Plat within the Red Cloud Subdivision shall be separately levied against the Master Association. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot or rights in and to the Association Areas.

5.10 Mechanics' Liens. No labor performed or material furnished for use in connection with any Lot with the consent or at the request of an Owner or his agent or contractor shall create any right to file a statement, claim, or notice of mechanic's lien against the Lot of any other Owner not expressly consenting to or requesting the same or against any of the Association Areas.

5.11 Restriction on Easements or Access Rights Granted or Exercized by Owners. Without the prior written consent of Declarant, the Master Association and the Red Cloud Association, and without applicable municipal and other governmental and approvals, no Owner of any Lot within the Red Cloud subdivision shall (i) grant any easement, license, permit or other rights to any other person or entity for the purpose of granting to such other person or entity any rights of ingress and egress (whether to or from any property within or outside of the Red Cloud Subdivision), any rights to construct, operate or maintain any road, trail or other right of entry or passage over and across such Lot, any rights to construct, operate, maintain, repair or replace any utility easements, or any other rights or interests not otherwise established and created pursuant to the Red Cloud Plat, this Red Cloud Declaration or the Master Declaration, or (ii) utilize any Lot within the Red Cloud Subdivision as a means to access any property outside of the Red Cloud Subdivision.

**ARTICLE 6  
ASSESSMENTS**

6.1 Agreement to Pay Assessments. Each Owner of a Lot by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Red Cloud Association, to pay to the Red Cloud Association all assessments, both regular and special, made by the Red Cloud Association for the purposes provided in this Red Cloud Declaration and also all assessments made by the Master Association or by Park City (pursuant to Section 10.4 of the Master Declaration) as provided in the Master Declaration. Assessments made by the Red Cloud Association shall be fixed, established and collected from time to time as provided in this Article 6.

6.2 Regular Assessments. Regular assessments shall be computed and assessed against all Lots in the Red Cloud Subdivision as follows:

6.2.1 Association Expenses.

(i) Annual Budget. On or before the 1st day of December of each year, the Red Cloud Association shall prepare, or cause to be prepared, an operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the coming calendar year and taking into account the general condition of the Red Cloud Subdivision. Each such budget, together with a written statement from the Red Cloud Association outlining a plan of operation for the year in question and justifying in every important particular the estimates made, shall be submitted to the Owners on or before the 15th day of December of each year. Such budget, with any changes therein, shall be adopted by the Owners at each annual meeting of the Owners. Said operating budget shall serve as the basis for the schedule of proposed monthly assessments for the annual period for which it is prepared. Said budget shall also constitute a major guideline under which the Red Cloud Association shall operate during such annual period.

(ii) Basis of Annual Budget. The annual budget shall be based upon the Red Cloud Association's estimates of the cash required to provide for payment of expenses ("Association Expenses") arising out of or connected with maintenance and operation of the Association Areas. Such actual expenses and estimated expenses may include, among other things, the following: expenses of management; governmental taxes and special assessments; premiums for all insurance that the Red Cloud Association is required or permitted to maintain; repairs and maintenance; private security and gate house operation (whether on-site or off-site); wages for Red Cloud Association employees, including fees for a manager, if any; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; sinking or reserve funds required or allowed herein; and any other expenses and liabilities which may be incurred by the Red Cloud Association for the benefit of all of the Lots and/or the Owners or by reason of this Red Cloud Declaration.

(iii) Annual Assessments. The Red Cloud Association shall establish a regular, equal monthly assessment (which shall be the same for all of the Lots) to be paid by each Owner to the Red Cloud Association for deposit into a deposit account in the name of the

Red Cloud Association ("Association Expense Fund"). The dates and manner of payment shall be determined by the Red Cloud Association. The foregoing method of assessing the Association Expenses to the Owners may be altered by the Red Cloud Association so long as the method it adopts is consistent with good accounting practice and requires that the Association Expenses be apportioned equally among and assessed equally to all Lots. Each monthly installment of the regular assessment shall bear interest at the rate of one and one-half percent (1½%) per month from the date it becomes due and payable until paid. Failure of the Red Cloud Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Lot for such assessment.

6.2.2 Inadequate Funds. In the event that the Association Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Red Cloud Association may levy additional assessments in accordance with the procedure set forth below, except that the vote therein specified shall not be necessary.

6.3 Special Assessments. In addition to the regular assessments, the Red Cloud Association may levy, at any time and from time to time, upon affirmative vote by Owners of at least fifty-one percent (51%) of the Lots, special assessments, payable over such periods of time as the Red Cloud Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Association Areas or any part thereof, or for any other expenses incurred or to be incurred as provided in this Red Cloud Declaration. This Section shall not be construed as an independent source of authority for the Red Cloud Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be apportioned equally among and assessed equally to all Lots. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been mailed. All unpaid portions of any special assessment shall bear interest at the rate of one and one-half percent (1½%) per month from the date such portions become due until paid.

6.4 Lien for Assessments. All sums assessed to the Owner of any Lot within the Red Cloud Subdivision pursuant to the provisions of this Article 6, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Red Cloud Association. To evidence a lien for sums assessed pursuant to this Article 6, the Red Cloud Association may prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Each Owner shall be deemed to have consented to the filing of a notice of lien against such Owner's Lot. Such notice shall be signed and acknowledged by a duly authorized officer of the Red Cloud Association and may be recorded in the office of the Summit County Recorder. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by nonjudicial foreclosure or judicial foreclosure by the Red Cloud Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including attorneys' fees, and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Red Cloud Association any Assessments against the Lot which shall become due during the period of foreclosure. The Red

Cloud Association shall have the right and power to bid in at any foreclosure sale, and to own, lease, mortgage or convey the subject Lot. The lien for assessments by the Master Association pursuant to the Master Declaration shall be prior and superior to the lien for Assessments by the Red Cloud Association pursuant to this Section.

6.5 Personal Obligation of Owner. The amount of any Assessment against any Lot shall be the personal obligation of the Owner of such Lot to the Red Cloud Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Red Cloud Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Association Areas or by abandonment of his Lot, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Red Cloud Association in connection therewith, including reasonable attorney's fees.

6.6 Statement of Account. Upon written request of any Owner, mortgagee, prospective mortgagee, or prospective purchaser of a Lot and payment of any reasonable fee assessed, the Red Cloud Association shall issue a written statement setting forth the following: (a) the amount of the unpaid Assessments, if any, with respect to such Lot, and (b) the amount of the current regular assessment with respect to such Lot and the date such Assessment becomes or became due. Such statement shall be conclusive upon the Red Cloud Association in favor of persons who rely thereon in good faith.

6.7 Personal Liability of a Purchaser. A purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid Assessments against such Lot up to the time of the grant of conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller of the amount of such Assessments paid by the purchaser for such Assessments.

6.8 Amendment of Article. Except as may be necessary to conform to the law, as it may be amended from time to time, this Article 6 shall not be amended unless the Owners of at least seventy-five percent (75%) of the Lots consent and agree to such amendment by a duly recorded instrument.

## **ARTICLE 7 INSURANCE**

7.1 Types of Insurance. The Red Cloud Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah:

7.1.1 Fire and Casualty Insurance. A policy or policies of insurance on the Association Areas of the Red Cloud Subdivision in such amounts as shall provide for replacement thereof in the event of damage or destruction from casualty against which such insurance is customarily maintained by other subdivisions similar in construction, design, and use. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Red Cloud Association shall deem it

appropriate to provide insurance protection as to the Association Areas. The Red Cloud Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Red Cloud Association's opinion are consistent with good business practice.

7.1.2 Public Liability and Property Damage Insurance. The Red Cloud Association shall obtain a broad form of comprehensive public liability insurance coverage for the Red Cloud Subdivision, in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death and property damage. Coverage shall include without limitation, liability for operation of automobiles on behalf of the Red Cloud Association and all activities of the Red Cloud Association pursuant to the terms of this Red Cloud Declaration and the Articles of Incorporation and the Bylaws of the Red Cloud Association.

7.1.3 Workers' Compensation Insurance. Workers' compensation and employer's liability insurance and all other similar insurance with respect to employees of the Red Cloud Association, if any, in the amounts and in the forms now or hereafter required by law.

7.1.4 Fidelity Insurance or Bond. Fidelity insurance or a bond in such amounts and in such forms as the Red Cloud Association deems appropriate to cover against dishonesty of directors, officers, employees or the manager, destruction or disappearance of money or securities, and forgery.

7.2 Form of Insurance. Insurance coverage on the Red Cloud Subdivision, insofar as possible, shall be in the following form:

7.2.1 Casualty and Flood Hazard Insurance. Casualty and hazard insurance in a form or forms naming the Red Cloud Association as the insured, as trustee for the Owners and for Declarant, whether or not Declarant is an Owner, and which policy or policies shall specify the interest of each Owner (Owner's name and Lot number), and shall contain a standard, noncontributory mortgagee clause in favor of each mortgagee which from time to time shall give notice to the Red Cloud Association of its mortgage. The Red Cloud Association shall furnish to each Owner, and to each mortgagee requesting in writing the same, a certificate of coverage, including an identification of the Owner's interest.

7.2.2 Public Liability and Property Damage Insurance. Public liability and property damage insurance which names the Red Cloud Association as the insured, as trustee for each Owner, for the manager, if any, and for Declarant, whether or not Declarant is an Owner, and which protects each Owner, the manager, if any, and Declarant against liability for acts or omissions of any of them in connection with all activities of the Red Cloud Association pursuant to the terms of this Red Cloud Declaration and the Articles of Incorporation and the Bylaws of the Red Cloud Association.

7.3 Additional Coverage. The provisions of this Red Cloud Declaration shall not be construed to limit the power or authority of the Red Cloud Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Red Cloud Declaration in such amounts and in such forms as the Red Cloud Association may from time to time deem appropriate.

7.4 Adjustment and Contribution. Exclusive authority to adjust losses under the insurance policies hereafter maintained by the Red Cloud Association shall be vested in the Red Cloud Association. In no event shall the insurance coverage obtained and maintained by the Red Cloud Association hereunder be brought into contribution with insurance purchased by individual Owners or their mortgagees.

7.5 Insurance Carried by Owners. Each Owner is responsible for and shall obtain insurance, at his own expense, providing coverage upon his Lot, and all improvements and personal property located thereon, and for general liability coverage, including without limitation, coverage for personal injury, property damage, and such other risks as each Owner may deem appropriate; provided that if the insurer under said policy is the insurer under any policy issued pursuant to Sections 7.1 and 7.2 above, then any insurance policy obtained by an Owner shall provide that it does not diminish the insurance carrier's coverage for liability arising under any of the insurance policies obtained by the Red Cloud Association pursuant to this Article. The Red Cloud Association shall have no obligation or responsibility to carry insurance on the Lots, or any improvements located on the Lots.

7.6 Review of Insurance. The Red Cloud Association shall review annually the coverage and policy limits of all insurance maintained by the Red Cloud Association.

## **ARTICLE 8 DAMAGE OR DESTRUCTION**

8.1 Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Red Cloud Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Association Areas of the Red Cloud Subdivision upon their damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from Declarant or any Owner shall constitute an appointment by said grantee of the Red Cloud Association as his attorney in fact as herein provided. As attorney in fact, the Red Cloud Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of an Owner in the Association Areas which may be necessary or appropriate to execute the powers herein granted.

8.2 Destruction of Association Areas. Upon the damage or destruction of all or any portion of the Association Areas, the Red Cloud Association shall proceed to repair and reconstruct the Association Areas. The Red Cloud Association shall use insurance proceeds from the insurance it is obligated to carry to accomplish such repair and reconstruction. In the event insurance proceeds are insufficient to accomplish the repair and reconstruction as required herein, then the Red Cloud Association shall levy a special assessment against all Owners pursuant to the provisions of Article 6 above to collect funds necessary to accomplish such repairs and reconstruction.

8.3 Repair or Reconstruction. As soon as practicable after receiving estimates on the cost of repair or reconstruction, the Red Cloud Association shall diligently pursue to completion the repair or reconstruction of that part of the Association Areas damaged or destroyed. The Red Cloud Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith.

8.4 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Red Cloud Association and any amounts received from assessments shall constitute a fund for the payment of the costs of such repair and reconstruction. It shall be deemed that the first monies disbursed in payment for the costs of such repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all of the costs of such repair or reconstruction, such balance shall be held and used by the Red Cloud Association to offset future expenses of the Red Cloud Association.

## **ARTICLE 9 CONDEMNATION**

9.1 Condemnation. If at any time or times all or any part of the Association Areas shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Association Areas in lieu of condemnation, but under threat of condemnation, shall be deemed to be taken by power of eminent domain.

9.2 Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain shall be held and used by the Red Cloud Association to offset future expenses of the Red Cloud Association.

## **ARTICLE 10 RESTRICTIONS ON ALL LOTS**

The following restrictions on use apply to all Lots within the Red Cloud Subdivision:

10.1 Zoning Regulations. The lawfully enacted zoning regulations of the City, and any building, fire, and health codes are in full force and effect in the Red Cloud Subdivision, and no Lot may be occupied in a manner that is in violation of any such statute, law, or ordinance.

10.2 No Mining Uses. The property within the Red Cloud Subdivision shall be used for residential purposes only, and no surface occupation for mining, drilling, or quarrying activity will be permitted at any time on any Lot, trail, street or other area within the Red Cloud Subdivision. No mineral rights are conveyed or included with any Lot.

10.3 No Business or Commercial Uses. No portion of the Red Cloud Subdivision may be used for any commercial business use, provided however that nothing in this provision is intended to prevent (a) the Declarant from using any Lot or area within the Red Cloud Subdivision for purposes of a construction office or sales office during the actual period of construction of the Red Cloud Subdivision Improvements, or (b) the use by any Owner of his Lot for a home occupation, or (c) the conduct of Resort Activities. No home occupation will be

permitted, however which requires or encourages the Owner's clients, customers, patients or others to come to the Lot to conduct business, or which requires any employees outside of the Owner's immediate family or household, or which creates unreasonable traffic or parking requirements not consistent with a luxury residential community. No retail sales of any kind may be made in the Red Cloud Subdivision. No materials, machinery, equipment, or inventory associated with any home occupation may be stored outside on any Lot. No signs associated with any home occupation are permitted. The operation by the Red Cloud Association of the gate house for the benefit of the Lots within the Red Cloud Subdivision shall not be deemed a prohibited commercial or business use.

10.4 Completion Required Before Occupancy. No Dwelling may be occupied prior to its completion and the issuance of at least a temporary certificate of occupancy by the City.

10.5 Primary Dwelling to be Constructed First. No garage, storage unit, guest house, or other out building, temporary facilities, or Improvement may be constructed prior to the commencement of construction of the primary Dwelling on the Lot.

10.6 No Re-Subdivision. No Lot may be subdivided.

10.7 Underground Utilities. All gas, electrical, telephone, television, and any other utility lines in the Red Cloud Subdivision are to be underground, including lines within any Lot which service installations or Improvements entirely with that Lot. No propane tanks or oil tanks may be installed on any Lot except for temporary heat during construction.

10.8 Maintenance of Property. All Lots, and the Improvements on them, shall be maintained in a clean, sanitary, attractive and marketable condition at all times. No Owner shall permit his Lot or the Improvements on it to fall into disrepair.

10.9 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots.

10.10 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, or which would cause the cancellation of conventional property casualty insurance. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than properly supervised and contained barbecues). No Owner will occupy a Lot in a manner that is in violation of any State or Federal environmental protection law or regulation concerning the storage, disposal, or use of toxic or hazardous materials.

10.11 No Open Burning. The open burning of yard trimmings, construction waste, or other materials on the Lot is prohibited.

10.12 Wood-burning Fireplaces. To reduce the risk of wildland fires and to limit increases in air pollution, no Lot shall have more than one wood-burning fireplace, furnace, or heating device. No coal-fired fireplaces, stoves, furnaces or devices will be permitted in the Subdivision.

10.13 Animals. No animals other than ordinary household pets may be kept on any Lot. Horses are not permitted to be kept on any Lot.

10.14 No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during the construction of any Improvement, Dwelling or addition); open storage or parking of farm or construction equipment, inoperable motor vehicles, boats, campers, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading); accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers in an enclosure such as a garage; lawn or garden furniture except during the season of use; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that it is visible from any other Lot or any public or private street.

10.15 No Annoying Lights. Any outdoor lighting shall be subject to approval by the Design Review Board, and no outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the immediate vicinity of the building or Improvement it is intended to serve. Lighted tennis courts, sport courts, and similar lighted recreation facilities are prohibited.

10.16 Holiday Lighting. The seasonal use of temporary lighting devices to illuminate trees, shrubs and holiday decorations is permitted for a single term of no more than forty consecutive days per year. Lighting the perimeter of all or part of a Dwelling is prohibited.

10.17 Municipal Water Connection. Each Lot is served by municipal water service. No water rights are conveyed with any Lot, and no Owner shall drill a water well on any Lot.

10.18 Protection of Springs and Streams. Springs or seeps, and seasonal run-off may be present on some Lots. Dwelling construction should not alter or impede the natural flow of groundwater. Any Owner planning to construct a Dwelling on a Lot that may impact such flows should seek the advice of a licensed architect or professional engineer, particularly if the Dwelling is to include basement space.

10.19 No Annoying Sounds. No speakers, or other noise making devices may be used or maintained on any Lot which create noise that might reasonably be expected to be unreasonably or annoyingly loud from adjoining Lots, except for properly operating and maintained security or fire alarms.

10.20 Drainage. No Owner shall alter the direction of natural drainage from his Lot, nor shall any Owner permit accelerated storm run-off to leave his Lot without first using reasonable means to dissipate the flow energy.

10.21 Vehicles Restricted to Streets. No motor vehicle will be operated on the Red Cloud Subdivision except on improved streets and driveways. No snowmobiles or motorcycles will be operated on any Lot except for ingress and egress by duly licensed, "street legal" vehicles or while loading the equipment for lawful transport on public streets. The operation of any vehicle outside of the Limits of Disturbance of any Lot is strictly prohibited, even during periods of construction, unless approved in the construction mitigation plan approved by the City and the Design Review Board.

10.22 Kennels. No kennel or dog run may be placed closer than 100 feet to any Dwelling other than that of the Owner of the kennel.

10.23 No Firearms. No firearms of any kind, including b-b guns, pellet guns, or similar air-powered firearms may be discharged within the Red Cloud Subdivision. Hunting, trapping, and harassment of wildlife, by firearms or any other means, is expressly prohibited within Red Cloud.

10.24 Clearing and Grading. No portion of any Lot maybe cleared of vegetation, graded, cut, or otherwise altered form its natural vegetative condition, except as specifically provided in this Red Cloud Declaration, and except in conjunction with the construction of the primary Dwelling or other approved Improvements.

## ARTICLE 11 RESTRICTIONS ON IMPROVEMENTS

All Improvements on any Lot shall be subject to the following restrictions and architectural design standards:

11.1 Compliance with Design Guidelines and MPD. All Dwellings and Improvements to a Lot and all construction and landscaping activities must comply with: (i) the Design Guidelines and the Master Declaration; (ii) all codes, rules, regulations and requirements of the City; and (iii) the requirements of the MPD.

11.2 Number of Dwellings. Except as provided below, only one Dwelling may be constructed on any Lot. All Dwellings shall have an attached garage large enough to enclose a minimum of two (2) cars. Upon the advance written approval of the Design Review Board, and subject to conditional use approval by the City, a Lot owner may also construct a detached guest house thereon, provided that (i) the square footage of such guest house is not more than 1,200 livable square feet, and (ii) the actual livable square footage of such guest house shall be added to that of the primary Dwelling for purposes of the 10,000 square foot limitation and other limitations described in Sections 3.1, 11.6, and elsewhere in this Declaration.

11.3 Placement of Dwellings. In order to protect existing native vegetation, minimize landscape irrigation requirements, and maintain the privacy of Dwellings and the feeling of open space within the Red Cloud Subdivision, all construction and landscaping activity shall be contained within the Limits of Disturbance. The location of the Dwelling and irrigated

landscaped area should be selected to minimize removal of trees and oak brush or other significant vegetation. The placement of the Dwelling and other Improvements should also recognize historic drainage patterns and channels, if any, and avoid construction in locations that obstruct historic drainage. The shape of the Limits of Disturbance may be dictated by the proposed Dwelling, but shall be generally compact and in all cases, the areas disturbed by construction must be contiguous (and not linked by “cherry stems” that give the appearance of two areas of disturbance).

11.4 Construction Activity Confined to Limits of Disturbance. All construction activity, Improvements, and Dwellings are to be confined to the Limits of Disturbance. The Limits of Disturbance shall be physically staked on the ground, and fenced or roped off to prevent construction activity from extending beyond the established limits, and no soil storage, excavation or backfill operations, or vehicular access is permitted outside of the Limits of Disturbance.

11.5 Building Setback. All building setbacks from property line shall conform to the applicable City ordinances, the Red Cloud Plat and the MPD.

11.6 Size of Dwellings and Gross Floor Area. The size, height and location of the Dwelling and other improvements constructed on each Lot within the Red Cloud Subdivision shall be consistent with any restrictions pertaining thereto that appear on Red Cloud Plat and shall be subject to all necessary approvals of the Design Review Board as set forth in the Design Guidelines. Building location and design should place buildings in a manner to have the building mass follow the natural, existing contour of the land and to minimize visibility from adjoining or adjacent Lots. The minimum size of the primary Dwelling shall be 4,000 square feet, and each Lot shall have a density allocation of 10,000 square feet of livable square footage, inclusive of any detached guest house and subject to the conditions and restrictions contained in this Declaration. The maximum Gross Floor Area (as defined in the Park City Land Management Code) of a house is 10,000 square feet. Gross Floor Area includes all enclosed areas designed for human occupation. Unenclosed porches, balconies, patios and decks, vent shafts, courts are not calculated in Gross Floor Area. Garages up to a maximum area of 600 square feet, are not considered Gross Floor Area. Basement Area (as defined in the Park City Land Management Code) below Final Grade (as defined in the Park City Land Management Code) is not considered Gross Floor Area. The square footage of all Accessory Structures (as defined in the Park City Land Management Code) is deducted from the house Gross Floor Area. Garage square footage in excess of 600 square feet is deducted from the house Gross Floor Area.

11.7 Fire Sprinklers. All Dwellings must be equipped with an automatic fire sprinkler system in accordance with the ordinances of the City. Owners constructing any portion of the Dwelling or other inhabitable structure more than 150 feet back from the public street may be required to install a dry standpipe from the edge of the street to the fire sprinkler system within the structure. The specifications for fire sprinkling equipment are established by City regulations, and it is the obligation of each Owner to comply with those specifications in the construction of the Dwelling.

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11.8 Driveway Access. Individual driveway accesses to each Lot must be approved by the Design Review Board as part of the site plan of the Lot. Driveways should be located in a manner to minimize cuts and fills and the need for retaining walls. No driveway may exceed 12% slope. Driveways shall be wide enough to permit two cars to be parked side by side in front of the garage entrance, but shall not exceed 20 feet in width otherwise. Except for the Limits of Disturbance, cut and fill slopes must be re-vegetated with native vegetation. Main driveways must be hard surfaced. Whenever possible, driveways should be designed so that the Dwelling's garage doors are not visible from the street providing access to the Lot

11.9 Sewer Connection Required. All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted for use with any Dwelling. All Dwellings must be connected to the sanitary sewer system. Owners of downhill Lots may encounter difficulty in providing gravity flow sewer connections to the street. The cost of private ejector systems serving a Lot will be borne by the Owner of such Lot, and not by the Declarant or the provider of sewer treatment service.

11.10 Exterior Lighting Standards. In addition to the requirements of Section 10.13, all exterior lighting must be adequately shielded and controlled to prevent glare and illumination to adjacent properties or streets. Bare light globe fixtures, such as flood and spot lights, are prohibited.

## ARTICLE 12 LANDSCAPE STANDARDS

The intent of this Red Cloud Declaration is to conserve water, preserve the natural existing vegetation, and enhance wildlife habitat to the extent possible given the construction of the Red Cloud Subdivision. The use of each Lot is subject to the following landscape standards:

12.1 Irrigated Landscape Area. Within each Lot there is a limited area available for irrigated landscaping, including lawn areas as set forth on the MPD. The irrigated landscape area and use of permanent irrigation systems on each Lot shall be confined to the Limits of Disturbance as limited by the MPD and approved by the Design Review Board.

12.2 Non-Irrigated Area. Native vegetation will be preserved, and the following standards apply:

- (a) No permanent irrigation is permitted in this area. Temporary irrigation as needed to repair damage to the natural vegetation as a result of construction activities, such as reclamation of utility trenches and areas along driveways, is permitted, but only for so long as necessary for restoration of vegetative cover. New plantings of native plants may be irrigated on a temporary basis to establish healthy growth. No permanent irrigation systems may be installed outside of the Limits of Disturbance.
- (b) It is the intention to preserve the native vegetation in the areas outside of the Limits of Disturbance on each Lot as set forth on the MPD and approved by the Design Review Board. New plantings in that area will be of native species unless approved otherwise by the Design Review Board.

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- (c) Except as required by the City or other governmental authority and the Design Review Board pursuant to an approved Defensible Space fire hazard reduction plan, no native vegetation, trees, or shrubbery may be cut or removed from the non-irrigated area of the Lot except as necessary to maintain healthy growth, removed diseased plants, or for approved utility trenches and driveways. Noxious weeds may be removed as required.

12.3 Uses of Non-Irrigated Area. No improvements of any kind are permitted in the non-irrigated area of any Lot (with the exception of approved driveways and utility trenches and private ski trails to service one or more Lots). No swimming pool, tennis court, deck, spa, swing set, trampoline, play ground equipment, dog run, or similar structures, hard surfaced area, or improvement is permitted in the non-irrigated area of the Lot. No vehicles, snowmobiles, motorcycles, or all terrain vehicles will be used, stored or operated on the non-irrigated portion of the Lot.

12.4 Defensible Space. Adjacent to each Dwelling, each Owner shall maintain the following zones of Defensible Space to reduce the threat of wildfire.

- (a) Primary Zone. The Owner shall create and maintain a Primary Zone of Defensible Space extending for a distance of twenty-five (25) feet from the foundation of each Dwelling. All improvements within this Primary Zone, including but not limited to decks, steps, fences and the like, must be constructed of non-combustible or fire retardant materials. From May 1 thru October 31 of each year, all plant materials within the Primary Zone must be regularly and automatically irrigated by a landscape sprinkler system. Within this Primary Zone, the Owner must regularly and selectively cut and remove dead, diseased or unhealthy trees, branches and other plant material. The Owner shall selectively remove or thin underbrush to promote the health of the woodlands and reduce the threat of wild fire, and as required to comply with any Design Review Board approved Defensible Space Plan. All such activities shall be consistent with good forestry management practices.
- (b) Secondary Zone. The Owner shall create and maintain a Secondary Zone of Defensible Space extending beyond the Primary Zone in each direction to the boundaries of the Lot. Within this Secondary Zone, the Owner must regularly and selectively cut and remove dead, diseased or unhealthy trees and branches and other plant material that may present a risk of fire, and as required to comply with an Design Review Board approved Defensible Space Plan. All such activities shall be consistent with good forestry management practices. The accumulation or temporary storage of lawn or tree clippings or trimmings or accumulations of unconfined construction debris or waste anywhere within the Subdivision is strictly prohibited.

All Defensible Space work must be performed in accordance with a Defensible Space Plan approved by the City and the Design Review Board.

**ARTICLE 13**  
**OWNERS' MAINTENANCE OBLIGATIONS**

13.1 It is the obligation of each Owner to maintain his Lot at all times in order to preserve and enhance the enjoyment of the Red Cloud Subdivision:

13.2 Duty to Maintain. It is the obligation of the Owner of each Lot to maintain his Lot and the Improvements to the Lot in a good state of repair and an attractive, safe and healthy condition, and in a manner consistent with a luxury residential community.

13.3 Repair by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is a dangerous, unsafe, unsanitary, or unsightly condition in violation of this Red Cloud Declaration, the Red Cloud Association may give written notice to the Owner describing the condition complained of and demanding that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Red Cloud Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement together with all expenses and fees of the Red Cloud Association shall be charged to the Owner, who agrees to pay promptly such amounts for work performed under this Section 13.3. All sums assessed to the Owner of a Lot under this Section 13.3, together with interest at the rate of one and one-half percent (1½%) per month, shall constitute an Assessment by the Red Cloud Association and shall be secured by a lien on such Lot in favor of the Red Cloud Association. The Red Cloud Association shall have all rights and remedies to enforce an Assessment under this Section 13.3 in the same manner as Assessments under Article 6.

13.4 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Design Review Board. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or siding or trim materials will be made without the advance consent of the Design Review Board.

13.5 Repair Following Damage. In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss provided, however, that alterations or deviations from the originally approved plans will require prior approval of the Design Review Board. Nothing in this Red Cloud Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Red Cloud Board, provided that any such measures must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing, and any damaged structure which does remain un-repaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Red Cloud Association at the expense of the Owner.

**ARTICLE 14**  
**CONSTRUCTION REGULATIONS**

14.1 Required Construction Regulations. In order to insure that the natural vegetation outside of the Limits of Disturbance is not damaged during any construction activities, and to minimize the inconvenience to adjoining Owners, and to promote orderly construction activity, the following construction regulations set forth in this Article 14 shall be enforced during the construction period. These regulations shall be made a part of the construction contract between the Owner and his or her contractor on any Improvements on a Lot. Each Owner shall be bound by these regulations, and violations committed by the contractor shall be deemed a violation by the Owner for which the Owner is liable.

14.2 Marking of Limits of Disturbance. Prior to the commencement of construction, the Owner shall cause the perimeter of the Limits of Disturbance to be surveyed and marked in conjunction with the staking of the foundation and other Improvements. The perimeter of such area will be fenced to prevent any intrusion beyond that area.

14.3 Portable Office or Trailer. Any owner whose contractor desires to bring a portable office or trailer onto a Lot shall first apply for and receive written approval from the Design Review Board. The Design Review Board will work with the Owner to determine the best location for the portable office. The portable office will be located only in a location approved by the Design Review Board, which shall be on the Owner's Lot and within the area that can be disturbed by construction or within driveway areas.

14.4 Removal of Temporary Office. The temporary office may not be installed prior to the commencement of construction, and must be removed upon the first to occur of (i) the issuance of a Certificate of Occupancy, (ii) the termination, expiration, or cancellation of the building permit, or (iii) the suspension of construction activities for a period of 60 days.

14.5 Construction Debris Removal. Owners and their contractors must comply with applicable City ordinances requiring the placement and maintenance of a trash container or dumpster on the Lot during construction. Owners and their contractors are responsible for collection of trash at the end of each work day and depositing construction trash, packing material, unusable scraps, and other debris in a suitable container. Lightweight material must be weighted down to prevent wind from blowing it away. Debris must be contained until removed from the Lot to an appropriate land fill. The dumpster must be regularly serviced. No trash may be burned, buried, or otherwise disposed of on the Lot. No concrete trucks may be cleaned out on any Lot or anywhere within the Red Cloud Subdivision.

14.6 Construction Area Appearance. The Lot must be maintained in a reasonably organized and neat condition at all times during the construction of the Dwelling or any other Improvements. Materials must be stored in neat stacks and covered. No more material may be delivered to the site than can reasonably be consumed in a week's time, provided that once the Dwelling is enclosed, materials may be stored inside, out of sight, indefinitely.

14.7 Sanitary Facilities. Each Owner is responsible for the installation and maintenance of an approved portable toilet facility on the site during construction. The portable

toilet must be located on the Lot at a location approved by the Design Review Board and must be removed from the site at such time as the permanent plumbing system is operational.

14.8 Removal of Mud. The Owner and each contractor are responsible for keeping mud from the construction site on such Owner's Lot from being deposited on the roadways of the Red Cloud Subdivision and of the Empire Pass master planned community. This may require cleaning of truck tires before leaving the site.

14.9 Duration of Construction. It is the obligation of the Owner to proceed with construction with all reasonable speed once construction has commenced, and in any event, all exterior surfaces of the building shall be substantially complete within a period of twelve months from commencement. All landscaping and soil stabilization work must be completed as soon as possible after completion of the exterior of the Dwelling, but in no event later than the summer following completion of the exterior of the Dwelling.

14.10 Construction Materials. No Lot shall be used as a construction materials storage or staging area without the prior written approval of the Design Review Board.

14.11 Construction Traffic and Parking. Construction vehicle traffic and parking may be restricted by the Association, and in any event shall not block any roadway or interfere with fire or safety vehicle access, or driveway access by other Owners.

14.12 Compliance. The Owner shall be responsible to insure that all construction activity associated with the Owner's Lot is performed in compliance with applicable federal, state and local laws, ordinances, rules and regulations including, by way of example, the Park City Land Management Code and any construction mitigation plan requirements imposed by the City.

## **ARTICLE 15 COMBINATION OF LOTS**

15.1 Subject to the provisions of this Red Cloud Declaration, the limitations set forth in this Article and the approval of the Design Review Board, the Red Cloud Board and the City, any Owner may combine two adjoining Lots with adjoining frontage on the same street within the Red Cloud Subdivision. The following regulations will apply in the event of a combination:

15.2 Maximum Disturbance Area Revision. As a result of the combination of Lots, the maximum allowable Limits of Disturbance within the resulting combined Lot will be determined from the MPD, but will not exceed 75% of the combined irrigated area allowed for the two Lots. Siting of the Dwelling is subject to the approval of the Design Review Board and should spread the resulting building mass more or less evenly over the combined Lots, although the siting of the Dwelling may be more concentrated where good site planning practices dictate. In no event may the entire mass be constructed on a single Lot.

15.3 Maximum Livable Square Footage. The maximum livable square footage for the Dwelling on the combined Lots will be determined by the Design Review Board.

15.4 Power to Deny Combination. Any of the Design Review Board, the Red Cloud Board or the City has the power to deny the Owner's application to combine Lots on the basis

that the resulting combination concentrates too much building mass on a single Lot, that the combination results in damage to significant natural features within the Red Cloud Subdivision such as natural drainage courses or significant wooded areas, or results in a structure that violates the provisions of this Red Cloud Declaration, the MPD or other applicable City requirements.

15.5 Combination Deemed Permanent. The combination of Lots shall be deemed to be permanent, and the Lots may not be independently sold once construction has commenced on the Improvements for the combined Lot.

15.6 Record Notice of Combination. The Owner of any Lots that have been combined will execute and deliver to the Red Cloud Board a notice in recordable form, containing the name of the Owner and the legal description of the Lots combined, which Notice will state that the two Lots have been combined and cannot subsequently be subdivided. The Owner will also submit a current title report showing any lien holders, who will also be required to sign the notice. The Red Cloud Board shall record this notice with the Summit County Recorder upon the commencement of construction. The Owner shall pay to the Red Cloud Board a fee related to the foregoing in an amount determined by the Red Cloud Board.

15.7 Plat Amendment. The combination of Lots will also require a formal amendment of the Red Cloud Plat and compliance with other applicable state or City regulations, all of which will be done at the sole expense of the Owner of the Lots to be combined.

15.8 Assessment of Combined Lots. All amounts assessed against any combined Lots, either by the Red Cloud Association or by the Master Association shall be assessed as though the combined Lots were separate Lots for purposes of all such assessments.

## ARTICLE 16 MORTGAGEE PROTECTION

16.1 Mortgage Protection. No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure or trustee's sale.

16.2 Priority of Liens. No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions of Article 6 shall constitute a lien on each respective Lot prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; (2) the lien or charge of any recorded Mortgage on such Lot made in good faith and for value and recorded prior to the date on which any such Assessment or Assessments become due; and (3) the lien of the Master Association for assessments made by the Master Association as provided in the Master Declaration.

16.3 Mortgage Holder Rights in Event of Foreclosure. Any mortgagee of a Mortgage of record which obtains title to a Lot by the foreclosure of the Mortgage on the Lot or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid Assessments by the Red Cloud Association and charges against the Lot

which accrued prior to the date of the acquisition of title to such Lot by such acquirer. Any unpaid Assessments shall be deemed to be Association Expenses collectible from all of the Lots in the Red Cloud Subdivision, including the Lot that has been acquired in accordance with the provisions of this Section.

16.4 Amendment. No provision of this Article 16 shall be amended without the prior written consent of at least two-thirds of all first Mortgagees on the Lots within the Red Cloud Subdivision as appear on the official records of Summit County, Utah, as of the date of such amendment.

## **ARTICLE 17 DECLARANT'S SALES PROGRAM**

17.1 Declarant's Sales Program. Notwithstanding anything in this Red Cloud Declaration to the contrary, until Declarant has sold all of the Lots owned by it in the Red Cloud Subdivision or the expiration of a reasonable sales period following ten (10) years after the date on which this Declaration is filed for record in the office of the Recorder of Summit County, Utah, whichever first occurs (hereinafter referred to as the "Occurrence"), neither the Owners nor the Red Cloud Association shall interfere with the completion of improvements and the sale of all remaining Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities, designed to accomplish or facilitate the sale of all Lots owned by Declarant:

17.2 Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Lots and homes at any one time. Such offices and or models may be one or more of the Lots owned by it, or one or more of any separate structures or facilities placed in the Red Cloud Subdivision for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

17.3 Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places in the Red Cloud Subdivision;

17.4 Declarant shall have the right to use the streets, trails and other areas designated for use by the Owners within the Red Cloud Subdivision to facilitate sales; and

17.5 Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices. Within a reasonable period of time after the happening of the Occurrence, Declarant shall have the right to remove any signs, banners or similar devices and any separate structure or facility which was placed in the Red Cloud Subdivision for the purpose of aiding Declarant's sales effort.

17.6 Declarant shall have the right to operate snow-cats, snowmobiles, ATV's and other such off-road vehicles as may be necessary within the Red Cloud Subdivision to facilitate sales.

**ARTICLE 18**  
**EXPANSION OF RED CLOUD SUBDIVISION**

18.1 Additional Land. Declarant shall have the unilateral right to add from time to time all or part of the Additional Land to the Red Cloud Subdivision and to this Red Cloud Declaration. Within a period of ten years after the date this Red Cloud Declaration is recorded, the Additional Land may be added to this Red Cloud Declaration and become a part of the Red Cloud Subdivision by the Declarant or its successor in interest recording a subdivision plat describing the Additional Land and the lots created on it, and a Supplemental Declaration stating that it is the intention of the Declarant to add all or part of the Additional Land to the Red Cloud Subdivision, and to have that land be subject to this Declaration.

18.2 No Obligation to Expand. The Declarant reserves the right to add some or all of the Additional Land to the Red Cloud Subdivision, but Declarant is under no obligation to do so. The Additional Land, if not added to the Red Cloud Subdivision, may be developed in a manner that is different from that described in this Red Cloud Declaration.

18.3 Expansion in Phases. The Declarant may exercise its right to expand in one or more phases or stages, and the addition of some of the Additional Land does not obligate the Declarant to add the balance of the Additional Land to the Red Cloud Subdivision.

18.4 Consent and Waiver. By acceptance of a deed to a Lot, each Owner hereby consents to any such addition or expansion, and agrees to sign, if required, any amendment to the plat for the Red Cloud Subdivision that is consistent with and conforms to this Declaration.

**ARTICLE 19**  
**MOUNTAIN RESORT DEVELOPMENT**

19.1 Assumption of Risk, Waiver of Claims and Indemnification. Each Owner, by its purchase of a Lot within the Red Cloud Subdivision, hereby acknowledges that Empire Pass is a mountain resort community with resort-type activities, which may include, without limitation: skiing, ski runs and trails, hiking trails, mountain biking trails, open spaces, wildlife, rugged terrain, Private Amenities (as defined in the Master Declaration), golf courses, tennis courts, horses and horseback riding, outdoor concerts, festivals, children's events, games and activities, outdoor theatre, golf, tennis and other tournaments, running, snow shoeing, alpine and cross country skiing and mountain bike courses and/or races and/or other competitions of various kinds, and other resort-type facilities, events, activities and programs (collectively, "Resort Activities"), and each such Owner expressly assumes the risk of noise, nuisances, hazards, personal injury, or property damage related to any and all Resort Activities, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance may take place at any time(s) of the day or night), (b) noise caused by Resort Activities and participants, (c) view restrictions caused by installation, relocation and maturation of trees and shrubbery, (d) reduction in privacy, including that related to maintenance activities, (e) errant equipment, including skis, golf balls and golf clubs, and (f) facilities design. Each such Owner agrees that neither Declarant, the Manager, the Master Association, the Red Cloud Association, any committee created by the Master Association, any committee created by the Red Cloud Association, any of the Declarant's affiliates or agents, nor any Resort Activities

participant (unless acting recklessly or in a willfully wrongful manner) shall be liable to an Owner or any other person claiming any loss of damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to: (a) the proximity of an Owner's Lot to any ski run or trail, golf course, Private Amenity or other Resort Activity venue; (b) any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents, the Manager, the Master Association, the Red Cloud Association, any committee created by the Master Association or any committee created by the Red Cloud Association; or (c) any Resort Activity or Private Amenity (collectively referred to herein as the "Waived Claims"). Each Owner hereby agrees to indemnify, defend and hold harmless Declarant, Declarant's affiliates and agents, the Manager, the Master Association, the Red Cloud Association, any committee created by the Master Association and any committee created by the Red Cloud Association, from and against any and all Waived Claims asserted by such Owner and/or by such Owner's visitors or tenants, and by others upon such Owner's Lot. Each Owner further covenants that the Master Association, the Red Cloud Association, any committee created by the Master Association, any committee created by the Red Cloud Association, the Declarant and the owners and operators of all Resort Activities shall have the right, in the nature of an easement, to subject all or any portion of the Red Cloud Subdivision to nuisances incidental to the maintenance, operation or use thereof, and to the carrying out of such Resort Activities.

19.2 Disclaimer Regarding Ski Resort. All Persons, including without limitation all Owners, are hereby advised that, expressly set forth in this Declaration, no representations, warranties or commitments have been or are made by the Declarant or any other Person with regard to the present or future development, ownership, operation or configuration of, or right to use, Deer Valley Ski Resort including its ski runs, lifts or related facilities within, near or adjacent to the Property, whether or not depicted on the Red Cloud Plat, or any other land use plan, sales brochure or other marketing display, rendering or plan. No purported representation, warranty or commitment, written or oral, in such regard shall ever be effective without an amendment hereto executed by the Declarant. Further, the ownership, operation or configuration of, or rights to use, any such ski resort or related facilities may change at any time and from time to time. No Owner or Resident (as defined in the Master Declaration) shall have any ownership interest in, or right to use, Deer Valley Ski Resort or related facilities solely by virtue of: (i) his, her or its Membership; or (ii) his, her or its ownership, use or occupancy of any Lot or portion thereof.

19.3 Rights of Access. The owner of the Deer Valley Ski Resort, its successors and assigns, and its members, invitees, spectators, employees, agents, contractors or designers shall at all times have a right and nonexclusive license of access and use over all roadways located within the Red Cloud Subdivision as reasonably necessary to travel to and from any entrance within the Red Cloud Subdivision to and from such Deer Valley Ski Resort or related facilities and, further, over those portions of the Red Cloud Subdivision (whether Association Areas or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Deer Valley Ski Resort and its facilities (including any portions thereof located within Empire Pass).

19.4 Ski Run Easements. It is contemplated there will be certain nonexclusive easements for ski runs, chair lifts, gondolas, towers, trails, bridges and accessways, which may be used for skiing and snowboarding, grooming, maintenance and vehicle access, and unhindered access between said easements and the Deer Valley Ski Resort. Nothing shall be placed or maintained in any such easement which shall interfere with the utilization thereof as part of the Deer Valley Ski Resort, and all other Improvements within said easements (except those installed or constructed by the Declarant) shall require the approval of the owner of Deer Valley Ski Resort benefited thereby.

19.5 Operation of the Ski Resort. Each Owner acknowledges that the operation and maintenance of any ski resort within, near or adjacent to the Red Cloud Subdivision, including but not limited to, all facilities that are now or hereinafter part of the Deer Valley Ski Resort, will require that maintenance personnel and other workers perform work relating to the operation and maintenance of such ski resort at any time(s) of the day or night. In connection therewith, each Owner and Resident agrees that the Declarant, and the owner or owners of all or any portion of the Deer Valley Ski Resort and the employees, agents and contractors of the Declarant and of such owners, shall not be responsible or accountable for, liable for and shall be held harmless from, any claims, causes of action, loss or liability arising in connection with or associated with any noise or inconvenience normally associated with such operation and maintenance activities.

19.6 Other Ski Resort Agreements. No Owner or Resident, and no guest, invitee, employee, agent or contractor of any Owner or Resident, shall at any time enter upon the Deer Valley Ski Resort property, for any purpose (other than to engage in skiing or as a spectator or guest of the ski resort or to engage in other activities specifically permitted within the Deer Valley Ski Resort, in each and every case subject to all rules and regulations of Deer Valley Ski Resort and any club operated in connection therewith including, without limitation, all requirements relating to membership, fees and the like), and each Owner and Resident shall keep his, her or its pets and other animals off any property (and out of any related facilities) of the Deer Valley Ski Resort at all times. No Owner shall (or permit his, her or its Residents, guests, invitees, employees, agents or contractors to) interfere in any way with skiing within Empire Pass or the Deer Valley Ski Resort (whether in the form of physical interference, noise, harassment of skiers or spectators, or otherwise). Each Owner (for such Owner and its Residents, guests and invitees) recognizes, agrees and accepts that: (a) operation of a ski resort and related facilities will often involve parties, events and other gatherings (whether or not related to skiing, and including without limitation weddings and other social functions) at or on the Deer Valley Ski Resort property, competitions, loud music, use of public address systems and the like, occasional supplemental lighting and other similar or dissimilar activities throughout the day, from early in the morning until late at night; (b) by their very nature, ski resorts present certain potentially hazardous conditions, which may include, without limitation, man-made or naturally occurring snow and topological features such as washes, gullies, canyons, uneven surfaces and the like; (c) grooming and snow making or related facilities may result in snow drifting or blowing onto adjacent or nearby Lots; and (d) neither such Owner nor its Residents, guests and invitees shall make any claim against the Declarant, the Red Cloud Association, the Master Association, the Design Review Board, the Manager, any other committee of the Master Association, any committee of the Red Cloud Association, any sponsor, promoter or organizer of any competition or other event, or the owner or operator of the Deer Valley Ski Resort (or any affiliate, agent, employee or representative of any of the foregoing) in

connection with the matters described or referenced in (a), (b) and (c) above, whether in the nature of a claim for damages relating to personal injury or property damage, or otherwise.

## **ARTICLE 20 GENERAL PROVISIONS**

20.1 Remedies. The covenants, conditions, and restrictions contained in this Red Cloud Declaration may be enforced as follows:

- (a) Any single or continuing violation of the covenants contained in this Red Cloud Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot), by any other Owner, or by the Red Cloud Association in its own name. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment all of the reasonable costs of enforcement, including attorneys' fees and costs of litigation.
- (b) Nothing in this Red Cloud Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state, or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. These covenants are to be construed as being in addition to those remedies available at law.
- (c) The remedies available under this Red Cloud Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.
- (d) The failure to take enforcement action shall not be construed as a waiver of the covenants contained in this Red Cloud Declaration nor a waiver of the right to take enforcement action with respect to a future violation of such covenants or any other violations.

20.2 Compliance. Each Owner shall comply with the provisions of the Governing Documents, this Red Cloud Declaration, the Articles of Incorporation and Bylaws of the Red Cloud Association, rules and regulations promulgated by the Red Cloud Association, and the decisions and resolutions of the Red Cloud Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Red Cloud Association or by an aggrieved Owner.

20.3 Severability. Each of the covenants contained in this Red Cloud Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

20.4 Limited Liability. Neither the Declarant, the Master Association, the directors of the Board, the Red Cloud Association, the directors of the Red Cloud Board, the Design Review Board or its individual members, nor any other Owner shall have personal liability to any other

Owner for actions or inactions taken under these covenants, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority under these covenants, and without malice.

20.5 Term of Covenants, Renewal. This Declaration shall expire fifty years from the date it is first recorded with the Recorder of Summit County, Utah, provided however that in the last year prior to expiration, this Declaration shall be automatically extended for successive periods of 20 years, unless, by a vote of at least two-thirds (2/3) of the then Owners of said Lots, it is agreed to amend or release this Red Cloud Declaration in whole or in part by an appropriate instrument in writing specifying the provisions to be amended or released, and by recording said instrument in the office of the Recorder of Summit County, Utah.

20.6 Amendment.

- (a) Amendments by Owners. Subject to the provisions of this Red Cloud Declaration, the Owners of 75% of the Lots may amend the provisions of this Red Cloud Declaration. Any amendment must be in writing and be approved by 75% of the Owners at the time of the amendment. No amendment which has the effect of substantially or materially altering the size, nature, or use of the Improvements on any Lot permitted by this Red Cloud Declaration will be binding upon the holder of any mortgage or trust deed on any Lot unless the mortgage or trust deed holder joins in the amendment. No amendment which eliminates the rights of the Declarant under this Red Cloud Declaration will be effective without the written consent of the Declarant. Any amendment authorized pursuant to this Section 20.6(b) shall be accomplished through the recordation of an instrument executed by the Red Cloud Association (and by Declarant if Declarant's consent is required).
- (b) Amendments by Declarant. The Declarant alone may amend or terminate this Red Cloud Declaration prior to the closing of a sale of the first Lot. Notwithstanding anything contained in this Red Cloud Declaration to the contrary, this Red Cloud Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith to make technical corrections to correct mistakes or remove/clarify ambiguities; or (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Red Cloud Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property, unless any such Owner shall consent thereto in writing. In addition to the foregoing, for period of eight (8) years after the date on which this Red Cloud Declaration is filed for record in the office of the Recorder of Summit County, Utah, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not

materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner. Any amendment authorized pursuant to this Section 20.6(b) shall be accomplished through the recordation of an instrument executed solely by the Declarant.

20.7 Constructive Notice. Every Person who owns, occupies, or acquires any right, title or interest in any Lot in the Red Cloud Subdivision is conclusively deemed to have notice of this Red Cloud Declaration and its contents, and to have consented to the application and enforcement of each of the covenants, conditions, easements and restrictions against his or her Lot, whether or not there is any reference to this Red Cloud Declaration in the instrument by which he acquires his interest in any Lot.

20.8 Notices. All notices under this Red Cloud Declaration are deemed effective 5 business days after the date of mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the property tax assessment rolls if no other address for an Owner is known. Notices delivered by hand are effective upon delivery.

20.9 No Waiver. No failure to enforce any provision of this Declaration shall be deemed to be or constitute a waiver of future enforcement or a waiver of any violation of this Declaration.

20.10 Liberal Interpretation. The provisions of this Red Cloud Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Red Cloud Subdivision. Section headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

20.11 Covenants Run with the Land. The covenants, conditions, and restrictions in this Red Cloud Declaration are covenants running with the land, and shall burden and benefit the successors and assigns of the Declarant and the Owners for so long as the Red Cloud Declaration is in effect.

20.12 Assignability. Declarant may transfer and assign all or any portion of its rights and obligations under this Red Cloud Declaration.



**EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
RED CLOUD SUBDIVISION**

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The real property referenced in the foregoing instrument as the Red Cloud Subdivision is located in Summit County, Utah and is more particularly described as:

**LEGAL DESCRIPTION  
RED CLOUD SUBDIVISION**

A parcel of land located in the south half of Section 28 and the north half of Section 33, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at corner No. 3 of the UNCLE CHARLES Mining Claim, Lot 448 in the Uintah Mining District and located South 88°24'56" West 8.71 feet along Section Line and South 12.40 feet from the south quarter corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence along the northerly end line of the UNCLE CHARLES mining claim North 42°53'29" West 200.06 feet; thence along the westerly side line of the UNCLE CHARLES mining claim South 47°05'06" West 151.61 feet; thence North 42°54'54" West 60.00 feet; thence South 47°05'06" West 235.59 feet to a point on a curve to the right having a radius of 190.00 feet, of which the radius point bears North 42°54'54" West; thence along the arc of said curve 163.35 feet through a central angle of 49°15'33" to a point of reverse curve to the left having a radius of 140.00 feet, of which the radius point bears South 06°20'39" West; thence westerly along the arc of said curve 140.18 feet through a central angle of 57°22'03"; thence South 38°58'36" West 145.23 feet to a point on a curve to the right having a radius of 465.00 feet, of which the radius point bears North 51°01'24" West; thence along the arc of said curve 277.03 feet through a central angle of 34°08'06"; thence South 73°06'42" West 161.91 feet to a point on a curve to the left having a radius of 175.00 feet, of which the radius point bears South 16°53'18" East; thence along the arc of said curve 173.22 feet through a central angle of 56°42'44"; thence South 16°23'58" West 201.56 feet; thence South 37°34'45" East 421.42 feet to a point on the Summit-Wasatch County line; thence along the Summit-Wasatch County line the following three (3) courses: 1) South 54°41'12" West 119.26 feet; thence 2) South 88°54'12" West 344.13 feet; thence 3) North 82°53'47" West 231.41 feet to a point on a curve to the right having a radius of 1275.00 feet, of which the radius point bears North 07°06'13" East; thence along the arc of said curve 147.29 feet through a central angle of 06°37'08"; thence North 13°43'21" East 50.00 feet to a point on a non tangent

curve to the right having a radius of 50.00 feet, of which the radius point bears North 13°43'21" East; thence northerly along the arc of said curve 107.22 feet through a central angle of 122°51'58"; thence North 46°35'19" East 192.32 feet to a point on a curve to the left having a radius of 625.00 feet, of which the radius point bears North 43°24'41" West; thence along the arc of said curve 394.15 feet through a central angle of 36°08'00"; thence North 10°27'20" East 165.38 feet to a point on a curve to the right having a radius of 215.00 feet, of which the radius point bears South 79°32'40" East; thence along the arc of said curve 150.27 feet through a central angle of 40°02'47" to a point of reverse curve to the left having a radius of 75.00 feet, of which the radius point bears North 39°29'53" West; thence northerly along the arc of said curve 80.07 feet through a central angle of 61°10'16"; thence North 10°40'09" West 211.51 feet; thence North 53°02'42" East 174.14 feet; thence South 83°22'14" East 72.43 feet; thence North 71°26'21" East 57.91 feet; thence North 58°22'25" East 126.67 feet; thence North 43°19'22" East 103.91 feet; thence North 88°33'34" East 698.29 feet; thence South 07°11'44" West 272.48 feet; thence North 47°05'06" East 62.37 feet; thence North 07°11'44" East 214.78 feet to a point on a curve to the left having a radius of 392.87 feet, of which the radius point bears North 82°48'16" West; thence along the arc of said curve 265.09 feet through a central angle of 38°39'37"; thence North 40°06'56" East 338.44 feet; thence North 33°54'42" East 222.11 feet; thence North 02°31'44" West 549.12 feet; thence North 02°39'14" West 518.83 feet; thence North 43°40'11" East 113.75 feet; thence North 61°14'42" East 124.74 feet; thence North 83°45'19" East 150.83 feet; thence South 67°09'50" East 93.65 feet; thence South 34°57'27" East 259.63 feet; thence South 53°11'52" East 301.16 feet; thence South 37°04'49" East 64.38 feet to a point on the westerly side line of the CLIPPER mining claim, Lot 570 in the Uintah Mining District; thence along the westerly side line of the CLIPPER mining claim South 25°25'00" West 583.88 feet; thence along the westerly side line of the CLIPPER mining claim South 36°57'00" West 854.05 feet; thence along the southerly end line of the CLIPPER mining claim South 83°00'00" East 221.10 feet; thence South 13°00'12" West 240.42 feet; thence South 20°54'24" West 205.52 feet to a point on the northerly side line of the HARWOOD mining claim, Lot 450 in the Uintah Mining District; thence along the northerly side line of the HARWOOD mining claim South 47°05'27" West 91.00 feet to the point of beginning.

Description contains 49.26 acres, more or less.