

**WHEN RECORDED MAIL TO:**

Solitude Development Company, Inc.  
Attention: Dave DeSeelhorst  
12000 Big Cottonwood Canyon  
Solitude, Utah 84121

10349295  
02/15/2008 01:55 PM \$77.00  
Book - 9570 Pg - 6139-6170  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
SOLITUDE DEVELOPMENT CO  
12000 BIG COTTONWOOD CANYON  
SOLITUDE UT 84121  
BY: ZJM, DEPUTY - WI 32 P.

*Parcel # 24-27-226-068*

**CONDOMINIUM DECLARATION  
FOR THE ASPENS AT SOLITUDE CONDOMINIUMS**

**THIS DECLARATION** is made on the date hereinafter set forth by **SOLITUDE DEVELOPMENT COMPANY, INC.,** a Utah corporation ("DECLARANT").

**ARTICLE I  
RECITALS**

**1.01:** Declarant is the owner of certain real property (the "Real Property") located in Salt Lake County, Utah, the legal description of which is set forth in the attached Exhibit "A", incorporated herein by reference.

**1.02:** Declarant is constructing a condominium project upon the Real Property, substantially in accordance with the plans and drawings set forth in the Survey Map filed concurrently herewith (a reduced copy of which is attached as Exhibit "B", incorporated herein by this reference). The condominium project shall be known as The Aspens at Solitude Condominiums. Declarant intends to establish said condominium project under and pursuant to the provisions of the Utah Condominium Ownership Act.

**1.03:** The condominium project shall consist of six (6) residential condominium units. The Declarant, by this Declaration, hereby establishes a plan for the ownership of real property estates whereby the owner of each such unit will receive title to his individual unit, an undivided interest in the Common Elements contained in said condominium project, as the same are defined herein. Each unit shall have appurtenant to it a membership in the association of unit owners known as the "The Aspens at Solitude Condominium Association" (the "Association"), which shall administer and control the Common Areas and Facilities located on the Real Property.

**1.04:** Declarant intends by this Declaration to impose upon the Real Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of said condominium units and the owners thereof.

**1.05:** Declarant hereby declares that said Real Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the provisions and conditions of the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which, pursuant to the provisions of the Utah Condominium Act, shall be enforceable equitable servitudes, where reasonable, and shall run with the land, and shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any portion of said real property.

**1.06:** The Project is located in the Solitude Village, and is also subject to the covenants, conditions and restrictions set forth in the Declaration of Covenants, Conditions and Restrictions for Solitude Resort Village (the "Master Declaration") recorded May 5, 1999, as Entry No. 7344959 in Book 8274 at Page(s) 8334 et seq., of the Official Records of the Salt Lake County, Utah Recorder. Declarant further reserves the right, for a period of five (5) years following the later of recording of this Declaration or first sale by Declarant of the last parcel subject to this Declaration, to unilaterally and without notice to or consent of the Owners or the Association, to include the same in any master homeowners association to jointly administer and control the Common Areas and Facilities along with similar areas and facilities on adjacent property comprising part of the Solitude Village. Declarant further reserves the right, unilaterally and without notice to or consent of the Owners or the Association, for a period of fifteen (15) years following recording of this Declaration, to bind the Real Property and the Buildings to the utilization of the services of any Service Company, Service District or Improvement District or any entity or organization acting in a similar capacity, including Declarant, its affiliates, successors and assigns (hereinafter collectively referred to as a "Service Company"), established under the Master Declaration or otherwise for the purpose of providing utility service or quasi-utility services or similar common services to the Real Property and/or other adjacent or proximate parcels of property, and to include the charges, assessments and fees under such Master Declaration or from such Service Company as a "Common Expense" as that term is defined below.

## **ARTICLE II DEFINITIONS**

**2.01: INTERPRETATIONS:** Those definitions contained in the Utah Condominium Act, to the extent they are not inconsistent with the foregoing definitions, shall be and are hereby incorporated herein by this reference and shall have the same effect as if expressly set forth herein and made a party hereof.

**2.02: DEFINITIONS:**

(a) The "Act" -- the Utah Condominium Ownership Act, Utah Code Annotated, Sections 57-8-1 through 57-8-36, as the same may be amended from time to time.

(b) "Assessment" -- that portion of the Common Expenses which are charged to each Unit Owner.

(c) "Association of Unit Owners" or "Association" -- shall mean and refer to all The Aspens at Solitude Condominium Association taken as, or acting as, a group or an entity in accordance with this Declaration, and any By-Laws or similar documents from time-to-time adopted by or governing the Association.

(d) "Board" or "Board of Directors" -- the governing body of the Association, created and governed by the provisions and conditions of this Declaration and any By-Laws of the Association from time-to-time in effect. So long as the Declarant owns three Condominium Units or more in the Project, the Board of Directors shall be appointed by Declarant.

(e) "Building" or "Buildings" -- each and any building(s) constructed on the Real Property.

(f) "Common Elements" --

(1) The Real Property;

(2) All structural parts of the Buildings contained in the Project, including, without limitation, foundations, columns, girders, joists, beams, supports, main walls, supporting walls, floors, ceilings and roofs;

(3) All common halls, corridors, utility rooms, crawl spaces and storage areas contained in said Building, if any;

(4) All driveways, outdoor parking areas, yards, gardens, lawns, shrubs, exterior or common entrance ways and stairways and service areas;

(5) Any utility pipe or line or system servicing more than a single Unit, and all ducts, wires, conduits, and other accessories used therewith;

(6) All tanks, pumps, motors, fans, compressors, ducts, mechanical areas, garbage area, and in general all apparatus and equipment existing for common use; and

(7) All other parts of the Real Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Elements on the Map and which are not part of any Condominium Unit as defined herein;

All Common Elements shall be "General Common Elements", unless they are Limited Common Elements as herein defined.

(g) "Common Expenses" -- all expenses of administration, maintenance, repair or replacement of the General Common Elements; expenses agreed upon as common expenses by the Association; and, expenses declared common expenses by the provisions of the Act, this Declaration, or any By-Laws duly adopted by the Association (including any expenses which the Association agrees to collect and pay under the Master Declaration or any Service Company agreement.

(h) "Condominium Unit" or "Unit" -- a single Unit in the Project together with an undivided interest in common with other Unit Owners in the Common Elements.

(i) "Declarant" -- Solitude Development Company, Inc., a Utah corporation.

(j) "Declaration" -- shall mean and refer to this Condominium Declaration for The Aspens at Solitude Condominiums.

(k) "Limited Common Elements" -- those Common Elements, as designated in the Map, reserved for the exclusive use of a certain Unit or Units to the exclusion of the other Units. Any doorsteps, porches, balconies or patios, permitted shutters, awnings or window boxes, or any other apparatus intended to serve a single Unit (including hot tubs, spas or associated facilities intended to serve a single Unit), but located outside the boundaries of such Unit shall nonetheless constitute Limited Common Elements and appertaining to that Unit exclusively, all notwithstanding anything in this Declaration or the Act to the contrary.

(l) "Manager" -- the person(s) or entity(s) selected by the Association to manage the affairs of the Condominium Project.

(m) "Map" -- the Survey Map of The Aspens at Solitude Condominiums recorded by Declarant.

(n) "Master Declaration" -- shall have the meaning set forth in section 1.06 above.

(o) "Mortgage" -- any mortgage, deed of trust or other security instrument by which a Condominium Unit or any part thereof is encumbered.

(p) "Mortgagee" -- any person or entity named as the mortgagee, beneficiary or obligee under any Mortgage, and any successor-in-interest to any such person or entity.

(q) "Owner" or "Unit Owner" -- any person(s) or entity(s) owning a Unit in the Project, including the Declarant. The term Unit Owner or Owner shall exclude Mortgagees and other persons or entities having any interest merely as security for the performance of an obligation.

(r) "Project" -- the entire Real Property, all buildings and other improvements on the Real Property and all articles of personal property intended for use in connection therewith, together

with all rights, obligations and organizations established by this Declaration. The Condominium Project shall be known as "The Aspens at Solitude Condominiums".

(s) "Real Property" -- the real property described in the attached Exhibit "A", together with all easements, rights and appurtenances belonging thereto and all articles of personal property intended for use in connection therewith.

(t) "Service Company" -- any public or private company or district or entity formed for the purpose of providing or engaged in providing utility services or quasi-utility services or quasi-municipal services or similar services in common to the Real Property (including such things as water, sewer, roads within or connecting to any area of master planned development, community or commercial parking facilities, community or commercial lighting, trash removal, snow removal, landscaping, maintenance, community or commercial recreation facilities, electricity, propane, telephone, security, transmission of television signals from any central antenna, satellite dish or central receiver and other such services and facilities), in conjunction with any adjacent and/or proximate parcel or parcels of property comprising part of the Solitude Village, including any entity formed for such purposes under the Master Declaration or otherwise. Declarant or its successors, assigns, designees or affiliates may act as a Service Company in providing some or all of the foregoing services.

(u) "Service Company District" -- any district established for the purpose of receiving and sharing services or sharing the cost of services provided by any Service Company.

(v) "Unit" -- each separate physical part of the Property, as shown on the Map, which is intended for independent use. Each Unit shall include the enclosed rooms occupying such Unit's share of the building in which it is located and bounded by the interior surfaces of the walls, floors, ceilings, windows, doors and built-in fireplaces, if any, along the perimeter boundaries of the air space as said boundaries are shown on the Condominium Map, together with all fixtures and improvements therein contained. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit in so far as they are necessary for the support or full use and enjoyment of another Unit: bearing walls, floors, ceilings and roofs (except the interior surfaces thereof), foundations, space heating equipment and central water heating equipment, if any, tanks, pumps, pipes, vents, ducts, shafts, flues, shoots, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door means the points at which such surfaces are located when such windows or doors are closed.

(w) "Unit Number" -- the letter, number or combination thereof designating the Unit in this Declaration and in the Map.

(x) "Utility Services" -- includes those services listed in section 2.02(t) above and any other services provided to the Units by any Service Company. Utility Services does not include repair personnel, handyman, cleaning, or other service providers of "non-utility" type services hired by individual Unit Owners in their discretion.

### **ARTICLE III APPLICABILITY OF ACT**

**3.01:** It is the intention of Declarant that the provision of the Act shall apply to the Project and that the provisions of this Declaration shall be construed in accordance therewith, unless expressly inconsistent therewith.

### **ARTICLE IV DESCRIPTION OF THE PROJECT**

**4.01 LOCATION:** The Project is located contiguous to the Solitude Village, Big Cottonwood Canyon, Salt Lake County, Utah, on the Real Property.

**4.02: DESCRIPTION OF IMPROVEMENTS:** The Building(s) shall consist of two (2) duplex structures and two (2) free-standing structures and appurtenant improvements which constitute the Project shall contain six (6) Units and are of combined (steel, concrete, frame and block) construction. Each Unit contains a living room, dining area, kitchen, and one or more bedrooms and bathrooms. Each Unit has fireplace, dishwasher, stove/microwave, refrigerator and garbage disposal. All Units are totally electric (and/or propane) as to heating and appliances. Electricity (including each Unit's own separate heating system) is separately metered to each Unit. Each Unit has its own hot water heater (electric). The Project shall consist of the real property and improvements legally described on Exhibit "A" attached hereto and incorporated herein, with Units as defined and depicted on the Record of Survey Map attached as Exhibit "B" hereto and incorporated herein. The Units and appurtenant undivided interest in common areas in Phase I shall be as set forth in Exhibit "C" attached hereto and incorporated herein.

**4.03: DESCRIPTION AND LEGAL STATUS OF UNITS:** Each Unit (in a Building containing more than one Unit), as described on the Map, shall include that part of the Building containing the Unit which lies within the boundaries of the Unit. Such boundary shall be determined in the following manner: the upper boundary shall be the plane of the lower surface of the ceiling; the lower boundary shall be the plane of the upper surface of the floor; and the vertical boundaries of the Unit shall be (a) the interior surface of the outside walls of the building bounding a Unit; (b) the center line of any non-bearing interior walls bounding a Unit; and (c) the interior surface of any interior bearing walls bounding a Unit. Each Unit includes the portions of the building so described and those things which are defined as Common Elements.

**4.04: NO SEPARATE CONVEYANCE OR UNDIVIDED INTERESTS:** Each Condominium Unit's undivided interest in the Common Elements, including Limited Common Elements, shall not be separated from the Unit to which they appertain and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

**ARTICLE V  
(INTENTIONALLY OMITTED)**

**ARTICLE VI  
STATEMENT OF PURPOSE AND RESTRICTION ON USE**

**6.01: PURPOSE:** The purpose of the Project shall be to provide residential housing space for Unit Owners, their families, guests and lessees and to provide parking for use in connection therewith, all in accordance with the provisions of the Act.

**6.02: RESTRICTIONS ON USE:** In addition to all of the covenants contained herein, the use of the Units and Common Areas and Facilities are subject to the following:

(a) Each of the Units shall be occupied only as a residence and for no other purpose. No business shall be operated in or from any Residential Unit other than the rental of the Unit itself. No Unit shall be used for conducting the business of the rental of other Units. Areas of the Project designated for parking shall be used for the parking of operable motor vehicles, only, and for no other purpose.

(b) Nothing shall be done or kept in any Unit or in the Common Elements which would increase the rate of insurance on the buildings or contents thereof beyond that customarily applicable for residential use, or will result in the cancellation of insurance on said buildings, or the contents thereof, including without limitation propane tanks and electrical or other generators without the prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which is in violation of any law or regulation of any governmental authority.

(c) No awning, canopy, deck, antenna, shutter, storm door, screen door or other item or object shall be hung, be displayed, be visible or otherwise be placed on the exterior walls or roof of any Building in the Project or any part thereof, or on the outside of windows, or doors, without the prior written consent of the Association, the Declarant, and if applicable, any association established under a Master Declaration, if any. No sign of any kind shall be displayed on Unit doors or windows or elsewhere to the public view on or from any Unit or the Common Elements except such signs as are approved by the Association. Any drapes, blinds, or other window coverings in a Unit which are visible from the exterior of a Building shall be medium beige or other neutral color in harmony with other window coverings in the Solitude Village.

(d) No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Unit Owners or occupants.

(e) Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity or structurally change the same or any part thereof except as is otherwise provided herein.

(f) The Common Elements shall be kept free and clear of all rubbish, debris and other unsightly materials by the Association, except that each Unit Owner shall be responsible for the Limited Common Elements appurtenant to the Unit such Owner owns.

(g) No animals or birds of any kind shall be raised, bred, or kept in any Unit or on any portion of the Common Elements. This restriction extends to and includes usual and ordinary household pets, but excludes legitimate "assistance animals" used for the purpose of assisting the disabled or challenged, provided that Owners utilizing assistance animals must comply with all governmental requirements or Solitude Village requirements related to such animals including without limitation Salt Lake County Watershed regulations.

(h) No admission fees, charges for use, leases or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Elements without the prior written consent of the Board of Directors.

(i) Each Unit Owner shall be liable to the Association for all damages to the Common Elements caused by such Unit Owner or any occupant of his Unit or invitee, except for that portion of said damage, if any, that is covered by insurance maintained in effect by the Association. The failure of the Association to continue any insurance in effect shall not be a defense to any such liability.

## **ARTICLE VII OWNERSHIP AND USE**

**7.01: OWNERSHIP OF A UNIT:** Each Unit Owner shall be entitled to the exclusive, fee simple ownership, and possession of their Unit, to the exclusive possession of the Limited Common Elements appurtenant to their Unit and to the fee simple ownership of an undivided interest in the Common Elements in the percentage expressed in Exhibit "C" attached hereto. Units may and shall be owned as any other property rights by persons, corporations, partnerships, limited liability companies, or trusts and in the form of common or joint tenancy. The Unit Owners may lease or rent their Condominium Units subject only to those provisions and conditions chosen solely by the Unit Owner and his lessee; provided that all Unit Owners, their tenants, subtenants and other occupants or users of the Project, shall be subject to the Act, this Declaration, all rules and regulations of the Association (including but not limited to those contained in the By-Laws), and any applicable governmental ordinances and regulations.

**7.02: SUBDIVISION OR COMBINATION OF UNITS:** No Unit Owner may subdivide or partition their Unit or their undivided share of the Common Elements. Nor may any



part of a Condominium Unit be separated from any other part thereof during the period of condominium ownership prescribed herein, and each Unit and the undivided interest in the Common Elements appurtenant to such Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Condominium Unit or any part thereof shall be construed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Condominium Unit, together with all appurtenant rights created by law or by this Declaration. With the written consent of the Association, two or more Units may be utilized by the Owner or Owners thereof as if they were one Unit. To the extent permitted in such written consent, any walls, floors or other structural separations between any two such Units, or any space which would be occupied by such structural separations but for the utilization of the two Units as one Unit, may, for so long as the two Units are utilized as one Unit, be utilized by the Owner or Owners of the adjoining Units as Limited Common Elements, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Project. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two Units which, but for joint utilization of the two Units, would have been occupied by a structural separation, shall be closed, at the equal expense of the Owners of each of the two Units and the structural separations between the two Units shall thereupon become General Common Elements.

**7.03: OWNERSHIP OF COMMON ELEMENTS:** The Common Elements shall be owned by the Unit Owners as tenants in common. The Common Elements shall remain undivided. No Unit Owner or combination thereof or any other person shall bring any action for partition or division of any part thereof.

**7.04: USE OF COMMON ELEMENTS:** There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from, the Common Elements except upon the prior written consent of the Association.

**7.05: PROHIBITION OF DAMAGE AND CERTAIN ACTIVITIES:** Nothing shall be done or kept in any Unit or in the Common Elements of any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase the rate of the insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Elements of any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

Additionally, except as provided above for assistance animals, no dog, cat or other domesticated animal or pet shall be kept or allowed for any period of time in any Unit or in the Common Elements or any part thereof. In addition, all Owners and their respective guests and invitees shall comply with all rules and regulations of the United States Government, the State of

Utah, the County of Salt Lake, Salt Lake City and the Solitude Village, dealing with or regulating or restricting the presence of animals in the Big Cottonwood Canyon watershed area.

## **ARTICLE VIII MEMBERSHIP-VOTING-MULTIPLE OWNERSHIP**

**8.01: MEMBERSHIP:** Every Owner shall be entitled and required to be a member of the Association. If title to a Condominium Unit is held by more than one person or entity, such group of Owners shall designate a single person to represent them as a Member of the Association, and all votes cast by such designated person shall be deemed and agreed by such Owners to constitute the vote of the Owners of that Unit as a whole. An Owner shall be entitled to one membership for each Condominium Unit owned by him. Each such membership shall be appurtenant to the Condominium Unit upon which it is based and shall be transferred automatically by conveyance of that Condominium Unit and the Association shall record the transfer on its books upon being presented with evidence of the transfer of the Condominium Unit. No person or entity other than an Owner or an Owner group's designee may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of a Condominium Unit; provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium Unit.

**8.02: VOTING RIGHTS:** The Association shall have one (1) class of voting membership. Each Unit shall have one (1) vote associated with such Unit.

**8.03: VOTING:** The vote of each Condominium Unit shall be cast by the Owner or Owner group's designee of such Condominium Unit or their proxy. In no event shall the Association be required to apportion such Condominium Unit's vote among the Owners thereof.

**8.04: TRANSFER:** The Association shall maintain records showing the name and address of each Owner or Owner group's designee in the case of multiple Owners of a Unit, and the Unit which is owned by him. In the event of any transfer of a fee interest in a Unit, either the transferor or the transferee shall furnish the evidence establishing that the transfer has occurred. An Owner who fails to furnish such information shall continue to be liable for assessments of common expenses even after transferring ownership of their Unit, until the Association is advised of the transfer. At its option, the Association may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such Owner unless the Association is otherwise advised. Transfer of a Unit may require the payment of a transfer fee or its equivalent to the Master Association pursuant to the Master Declaration.

## **ARTICLE IX MANAGEMENT**

**9.01: INCORPORATION:** The Association may but need not incorporate. Management of any such corporation shall substantially conform to this Article IX.

**9.02: BOARD OF DIRECTORS:** The business, property and affairs of the Association shall be managed, operated and maintained by the Board of Directors and such officers and agents as they may designate to be the agents or representatives of the Association. The Association, acting through the Board of Directors in connection with its exercise of any of the powers delineated in paragraphs (a) through (i) below, shall constitute a legal entity capable of dealing in its own name as the "The Aspens at Solitude Condominium Association." The Board of Directors shall have, and is hereby granted, the following authority and powers:

- (a) Without the vote or consent of the Owners or any other person(s), to grant or create, on such provisions as it deems advisable, utility and similar easements, over, under, across and through the Common Elements;
- (b) To execute and record, on behalf of all Owners, any amendment to the Declaration or Map which has been approved by the vote or consent necessary to authorize such amendment;
- (c) To bring suit in the name of the Association;
- (d) To enter into contracts which in any way concern the Project, so long as any vote or consent of the Owners as necessitated by the subject matter of the agreement has been obtained;
- (e) To adopt By-Laws of the Association;
- (f) To promulgate from time to time such reasonable rules, regulations, and procedures as may be necessary or desirable to aid in carrying out the Association's functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Owners;
- (g) The power to maintain, repair, replace, restore, operate and manage the Common Elements and all property that may be acquired by the Association, and to establish an adequate reserve fund for repair, replacement and restoration thereof;
- (h) The power and authority to secure fidelity bond coverage and such other policy or policies of insurance as the Board of Directors deems necessary or desirable in protecting the interests of the Association and the Owners;

(i) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its function.

Any instrument executed by the Board of Directors or officers appointed by it that recites facts which, if true, would establish the Board's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

**9.03: COMPOSITION OF BOARD OF DIRECTORS:** Notwithstanding the provisions of Section 8.02 above, so long as the Declarant (and/or any Successor Declarant) owns three (3) or more Units, the Declarant shall appoint the Board of Directors. At such time as the Declarant (and/or any Successor Declarant) owns fewer than three (3) units, but at least one (1) Unit in the Project, the Declarant shall have the right to appoint one Director to the Board of Directors. Except as expressly set forth above in Section 2.02(d), and in the prior sentence of this Section 9.03, the Board of Directors shall be composed of not less than three nor more than five Directors, as determined by the Owners. Beginning in the year 2008, there shall be an annual Owners' meeting, the date and place to be set by the Board of Directors. At each annual Owners' meeting, Directors shall be elected for one year terms, unless the Owners, by majority vote, determine to provide for staggered terms not to exceed three (3) years (all subject to the provisions of the first sentence of this paragraph). Only Unit Owners, the beneficial owners of Units held in the names of fiduciaries, the spouses of such persons, and officers or agents of any Unit Owner who is not a natural person shall be eligible for directorship. At the annual meeting, the Owner(s) of each Unit shall be entitled to one (1) vote.

The following persons, as hereby appointed by the Declarant, shall act as the initial Directors, subject to the terms and conditions of this Declaration, and shall hold office as provided for below:

Scott DeSeelhorst  
David DeSeelhorst

President-Treasurer  
Vice President-Secretary

The Board of Directors shall have the power to appoint and remove the officers of the Association, including a President, Vice President, Secretary and Treasurer, as more specifically set forth in the By-Laws of the Association.

**9.04: OPERATION OF BOARD OF DIRECTORS:** Directors shall serve until their successors have been duly elected and qualified. Any Director who fails on three successive occasions to attend Board of Directors meetings (whether regular or special) shall automatically forfeit his seat. In the event a seat becomes vacant, whether by reason of forfeiture or due to another cause, the remaining Directors shall elect a replacement to sit on the Board of Directors until the expiration of the term for which the member being replaced was elected. Directors shall be reimbursed for all expenses reasonably incurred in connection with Association business, but shall

receive no additional compensation for their services as Board members. Meetings of the Board of Directors may be held in person or telephonically, within or without the State of Utah. Regular meetings shall be fixed by the Board. Special meetings shall be convened at the request of the President of the Association or upon the request of any two Directors, upon such prior notice as is required under the Association's By-Laws, which shall not be less than one week, except in the case of an emergency. The Manager may petition the President and/or the Directors to call a special meeting.

**9.05: APPROVAL REQUIRED:** The Board of Directors shall not, without the prior favorable vote or the written consent of the Owners as provided for in this Declaration, have the authority to purchase or sell any real property or add any property to or remove any property from the Common Elements.

**9.06: MANAGER:** The Association may carry out through a project manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be responsible for managing the Project for the benefit of the Unit Owners, and shall, to the extent permitted by law and the provisions of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association or its Board of Directors. Any agreement for professional management of the Project which may be entered into by the Association shall call for a term not exceeding three (3) years and shall provide that such management agreement may be terminated by the Association for cause upon not in excess of thirty (30) days written notice.

## **ARTICLE X EASEMENTS**

**10.01: RECORDED EASEMENTS:** The Project shall be subject to all easements as shown on any recorded plat affecting the Project or the Real Property and to any other easements of record or use as the date of recordation of this Declaration, including the Master Declaration.

**10.02: REPAIR OF COMMON ELEMENTS:** Each Unit shall be subject to such easements as may be necessary for the installation, maintenance, repair or replacement of any Common Elements located within the boundaries of such Unit.

**10.03: EASEMENTS FOR CONSTRUCTION FACILITIES:** Until the conveyance by Declarant of the last Unit within the Project, or December 31, 2015, whichever first occurs, Declarant reserves for itself and any designated Successor Declarant an easement on, over and across the General Common Elements in conjunction with the development and construction of the Project.

**10.04: EASEMENTS FOR ENCROACHMENTS:** If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall

hereafter encroach upon the Common Elements, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Elements or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Building to be constructed on the Real Property, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

**10.05: OWNER'S EASEMENT OF ENJOYMENT AND RIGHT TO INGRESS AND EGRESS AND SUPPORT:** Each Owner shall have the right to ingress and egress over, upon and across the Common Elements necessary for access to his Unit, and to any Limited Common Elements designated for use in connection with his Unit, and shall have the right to the horizontal and lateral support of his Unit, and such rights shall be appurtenant to and pass with the title to each Condominium Unit..

**10.06: RETAINED EASEMENTS:** Without limiting the generality of section 10.01 above, each Owner by accepting a deed to any Unit in the Project acknowledges and agrees, on his own behalf and on behalf of his successors and assigns, that he is acquiring title to such Unit subject to all those non-exclusive easements and rights pertaining to the general Common Areas in the Project, including skier access, ingress, egress, and easements for utilities as set forth in the Master Declaration, and subject to the Declarant's reservation hereby of non-exclusive easements over the general Common Areas in the Project for ingress, egress, access, and for the construction, installation, operation, maintenance, repair and replacement of utilities, roads, trails, ski trails, ski lifts, and other Common Facilities, and for vehicular and pedestrian traffic, skiers, and service and maintenance work by governmental or private service providers, and for the benefit of the Solitude Resort, Solitude Village, and Declarant and its affiliates.

**10.07: EXTERIOR OF THE BUILDING:** The architectural appearance of the exterior of the building has been designed to conform to a master planned development of the Real Property and certain adjacent and proximate parcels of property. Except as required to conform to safety and health regulations, the exterior of the building and its appurtenances shall not be not be altered or modified in any respect, without the written authorization of the Board of Directors, the approval of Solitude Village as set forth in the Master Declaration, and the Solitude Ski Resort, its successors and assigns. This restriction shall constitute an easement/covenant running with the land and shall be binding upon the Real Property and the owners thereof, notwithstanding that Declarant ceases to be the owner of any other interest in the Real Property.

## **ARTICLE XI ASSESSMENTS.**

**11.01: ASSESSMENTS:** The Declarant, for each Unit within the Condominium Project, hereby covenants, and each Unit Owner by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual

assessments or charges; and (b) Special assessments for capital improvements as hereafter set forth. Such assessments to be established and collected as hereafter provided. Such assessments may include charges and assessments under the Master Declaration if any, and charges and assessments from any Service Company providing services to the Project and the Solitude Village in common.

**11.02: PURPOSE OF ASSESSMENTS:** The assessments levied by the Association shall be used to manage, maintain and care for the Common Elements and to perform the responsibilities of the Association as set forth in this Declaration.

**11.03: DETERMINING ANNUAL ASSESSMENTS:** Within ninety (90) days before the close of each fiscal year of the Association (which unless otherwise designated by the Board shall be a calendar year), the Board of Directors shall determine the common expenditure budget for the Association for the next succeeding fiscal year. The common expenditure budget shall include all expenses of the Association, including reasonable adequate reserve funds for contingencies and for maintenance, repairs and replacements of the Common Elements and other property administered by the Association. Such budget may include, among other things, expenses of management; taxes upon Common Elements; premiums for insurance; common lighting and heating; water charges; trash collection; sewer service charges; landscaping charges; common television and satellite charges; repairs and maintenance; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. The Board of Directors shall also have discretion to establish reserves for anticipated future capital repairs and improvements. The amount so determined (less any surplus expected to be on hand from the prior year's expenditure budget, plus amounts required to fund any reserves that had been established) shall be the Project's total annual assessment. The Board may appoint a Finance Committee to assist in the determination of the expenditure budget. A copy of the common expenditure budget shall be distributed to each Unit Owner not less than sixty (60) days before the beginning of the fiscal year, commencing with the 2009 fiscal year. Written notice of the annual assessment shall be sent to each Unit Owner subject thereto at least thirty (30) days in advance of each annual assessment period.

**11.04: APPORTIONMENT OF ANNUAL ASSESSMENTS:** Expenses attributable to the Common Elements and to the Project as a whole shall be apportioned ratably among all Owners in proportion to their respective undivided interests in the Common Elements as set forth in Exhibit "C" hereto.

**11.05: INITIAL ANNUAL ASSESSMENT: PROCEDURE FOR INCREASING ANNUAL ASSESSMENTS:** Within 120 days following substantial completion of the initial Buildings (as determined by the state, county, or local government authority issuing the building permit for the construction of the Buildings), the members of the Association shall fix the annual assessment for the Association's first full fiscal year and for any interim period between the date of such meeting and the fiscal year date. For each succeeding year of operation of the Project, the

maximum annual assessment may be increased by not more than twenty percent (20%) above the annual assessment for the previous year without the affirmative vote of the Unit Owners.

**11.06: SPECIAL ASSESSMENTS:** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment or assessments payable over such a period as the 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 Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof.

Any amounts assessed pursuant hereto shall be assessed ratably among all Owners in proportion to their respective undivided interests in the Common Elements as set forth in Exhibit "C" hereto. Notice in writing of the amount of such special assessments, and the time for payment thereof, shall be given promptly to the Owners, and no payment shall be due fewer than thirty days after such notice shall have been given. Special assessments must be approved by a majority vote of the Unit Owners.

**11.07: PAYMENT OF ASSESSMENTS:** All assessments (regular and special) shall be due and payable quarterly or otherwise as the Association may determine on notice to each Owner. Each quarterly assessment shall bear interest at such rate (which shall be not less than the rate of eight percent (8%) per annum nor more than the rate of eighteen percent (18%) per annum; but in no event more than the maximum rate permitted by law) as may be fixed by the Association, from the date it becomes due and payable if not paid by such date. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Condominium Unit for such assessment, but the date when payment shall become due in such case shall be deferred to a date thirty days after such notice should have been given.

**11.08: LIEN FOR ASSESSMENTS:** All sums assessed to any Condominium Unit pursuant to this Article, together with interest thereon as provided herein, shall be secured by a lien on such Condominium Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Condominium Unit, except only for: (a) valid tax and special assessment liens on the Condominium Unit in favor of any governmental assessing authority; and (b) a lien for all sums unpaid on a first Mortgage, or on any Mortgage to Declarant, duly recorded in the Salt Lake County, Utah real estate records prior to such assessment, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instrument. All other lien holders acquiring liens on any Condominium Unit after this Declaration shall have been recorded in said records shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.



To evidence a lien for sums assessed pursuant to this Article, the 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 Condominium Unit and a description of the Condominium Unit. Such a notice shall be signed by or on behalf of the Association and may be recorded in the real estate records of Salt Lake County, Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by non-judicial foreclosure, by the Association in substantially the same manner (e.g., notices, publication, posting, etc.) in which trust deeds on real property may be foreclosed. Additionally and alternatively, such delinquent lien may be enforced by judicial foreclosure by the Association; provided, however, that no proceeding or action shall be instituted to foreclose the lien, either judicially or under the power of sale granted herein, unless a notice stating an intention to proceed to foreclose the lien has been delivered by the Association to all designated Owners of the Unit affected by the lien at least thirty (30) days prior to the commencement of any such action or proceeding. Such sale shall be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law.

The Association shall have the power to bid at foreclosure or other sale, and to hold, lease, mortgage and convey the same.

In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owners shall also be required to pay to the Association any assessments against the Condominium Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Association and appropriately recorded, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any encumbrancer holding a lien on a Condominium Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

**11.09: PERSONAL OBLIGATION OF OWNER:** The amount of any annual or special assessment against any Condominium Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of his Condominium Unit.

**11.10: EFFECT OF CONVEYANCE:** In any conveyance, except to a mortgagee as hereinafter set forth, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

**11.11: CERTIFICATE OF INDEBTEDNESS:** The Association shall, upon written request of any Unit Owner or any encumbrancer or prospective encumbrancer of a Unit, upon payment of a reasonable fee not to exceed Twenty-Five Dollars (\$25.00), issue to the person or persons requesting, a written statement setting forth the unpaid assessments with respect to the Unit covered by the request, which statement shall be conclusive upon the remaining Unit Owners and Board of Directors in favor of all persons who rely thereon in good faith.

**11.12: TENANT RECOVERY:** If a Unit Owner shall at any time let or sublet his Unit and default for a period of two (2) quarters or more in the payment of any assessments, the Association may, at its option, so long as such default shall continue, demand and receive from such tenant or subtenant or property manager the rent due or becoming due under such tenancy. The payment of such sum shall, to the extent of such payment, discharge such tenant or subtenant's or property manager's rental obligation to the Unit Owner and shall, to the extent of such payment, discharge said Unit Owner's obligation for unpaid assessment(s) and costs to the Association.

**11.13: STATEMENT OF ACCOUNT:** Upon payment of a reasonable fee and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Condominium Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Condominium Unit; the amount of the current yearly assessment and the date that such assessment becomes or became due; credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums; and such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

**11.14: PERSONAL LIABILITY OF PURCHASER FOR ASSESSMENTS:** A purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

**11.15: ASSESSMENTS FOR MASTER DECLARATION:** The assessments proposed under this Declaration shall be in addition to and not in lieu of any assessments under the Master Declaration or any Service Company agreement.

## **ARTICLE XII TAXES**

**12.01: AD VALOREM TAXATION:** Each Condominium Unit shall be assessed separately for all taxes, assessments and other charges of the State of Utah or any political subdivision or of any special improvement district or of any other taxing or assessing authority. For the purpose of such assessment, the valuation of the Common Elements shall be apportioned among the Units in proportion to the fractional interests in Common Elements appurtenant to such Units, to the maximum extent permitted by law. The Common Elements may not be separately conveyed or encumbered and shall not be subject to separate assessment or taxation. The Association shall furnish to the assessor all necessary information with respect to such apportionment. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

## **ARTICLE XIII DESTRUCTION OR DAMAGE**

**13.01: REPAIR: REBUILD: INSURANCE:** In the event of destruction or damage of part or all of the improvements in the Project, the provisions of this Article shall apply:

(a) If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be promptly carried out.

(b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Unit Owners shall be subject to a special assessment for any deficiency.

(c) If 75% or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance are not alone sufficient to accomplish restoration, and if the Unit Owners within 100 days after the destruction or damage by a vote of a 75% majority of the affected Unit Owners elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subsection (b) above.

(d) If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by a vote of a 75% majority-in-interest of the Unit Owners, elect to repair or reconstruct the affected improvements, the Association shall promptly record with the Salt Lake County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of

subsections (1) through (4) of Section 57-8-31, of the Act shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

(e) Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the instance and direction of the Association. Any determination which is required to be made by this Article regarding the extent of damage to or destruction of the Project shall be made as follows: The Association shall select three appraisers; each appraiser shall independently estimate the percentage of Project improvements which have been destroyed or substantially damaged; the percentage which governs the application of the provisions of this subparagraph shall be the median of three estimates.

(f) The term "reconstruction," as used in this Article, shall mean restoring the damaged building to substantially the same condition in which it existed prior to the fire or other disaster, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before.

(g) The Association or its authorized agent shall notify all of the holders of first Mortgages on Condominiums whenever damage to the Common Elements exceeds \$20,000.00. The Association shall also notify the individual holder(s) of a first Mortgage on a Condominium whenever damage to that Condominium exceeds \$20,000.00.

#### **ARTICLE XIV INSURANCE**

**14.01: TYPES OF INSURANCE:** The Association shall obtain and shall maintain and keep in full force and effect at all times, to the extent reasonably available, the following insurance coverage provided by companies duly authorized to do business in Utah. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

(a) Casualty Insurance. The Association shall obtain broad form casualty insurance on the Project in such amounts as shall provide for full replacement thereof (exclusive of items normally excluded from property policies) in the event of damage or destruction from the casualty against which such insurance is obtained, all in the manner in which a corporation owning similar multiple family residential buildings in the vicinity of the Project would, in the exercise of prudent business judgment, obtain such insurance. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, war risk insurance if available and if deemed appropriate by the Association, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of a

blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

(b) Public Liability and Property Damage. The Association shall purchase broad form comprehensive general liability (including libel, slander, false arrest and invasion of privacy) coverage in such amounts and in such forms as it deems available to provide adequate protection. Coverage shall extend to the Association, each member of its Board of Directors, each of its officers and employees, and each Owner, against any liabilities to the public or to Owners or their guests, invitees, tenants, agents, and employees, arising out of or incidental to the ownership or use of any of the Common Elements.

(c) Workmen's Compensation and Employer's Liability Insurance. The Association shall purchase workmen's compensation and employer's liability insurance and all other similar insurance in respect to any employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance. The Association may purchase, in such amounts and in such forms as it shall deem appropriate, coverage against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

(e) Other. The Association may obtain insurance against such other risk, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including any personal property of the Association located thereon.

**14.02: FORM:** Casualty insurance shall be carried in a form or forms naming the Association the insured, as trustee for the Owners and for Declarant, whether or not it is an Owner, which policy or policies shall specify the interest of each Condominium Unit Owner (Owner's name, Unit number, the appurtenant undivided interest in the Common Elements), and which policy or policies shall provide a standard, noncontributory mortgagee clause in favor of each first Mortgagee which from time to time shall give notice to the Association of such first Mortgage. Each policy also shall provide that it cannot be canceled by either the insured or the insurance company until after not less than ten days' prior written notice is first given to each Owner, to Declarant and to each first Mortgagee. The Association shall furnish to each Owner a true copy of such policy together with a certificate identifying the interest of the Owner. All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence or non-compliance with any provisions of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall provide further that the insurance under any such policy, as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Public liability and property damage insurance shall name the Association the insured, as trustee for the Owners and for Declarant, whether or not it is an Owner, and shall protect each Owner and Declarant against liability for acts of the Association in connection with the ownership, operation, maintenance or other use of the Project.

**14.03: INSURANCE PROCEEDS:** The Association shall receive the proceeds of any casualty insurance payment received under policies obtained and maintained pursuant to this Article. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Project shall not be rebuilt, the proceeds shall be distributed in the same manner herein provided in the event of sale of obsolete Units.

**14.04: OWNER'S OWN INSURANCE:** Notwithstanding the provisions hereof, each Owner may obtain insurance at his own expense providing coverage upon his Condominium Unit, his personal property, including but not limited to any personal property of Owner in the Limited Common Elements for his personal liability, and covering such other risks as he may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this Article. All such insurance of the Owner's Condominium Unit shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents, guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for the waiver or rights of subrogation.

**14.05: DIRECTORS AND OFFICERS LIABILITY:** The Association may obtain and continue in effect, insurance for the protection of the Directors and Officers of the Association from personal liability in the management of the Association's affairs.

## **ARTICLE XV MORTGAGEE PROTECTION**

**15.01: OWNER DEFAULT:** From and after the time a Mortgagee makes a written request to the Association, the Association shall notify such Mortgagee in writing in the event that the Owner of the Condominium encumbered by the mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on their part in the performance of any of their obligations.

**15.02: PRIORITY OF MORTGAGE:** The lien against a Unit for unpaid assessments or charges by the Association pursuant to this Declaration or the Act shall be subordinate to the first lien Mortgage encumbering such Unit at the time such assessment is levied. A Mortgagee or other party who comes into possession of the Unit pursuant to a foreclosure under its first lien Mortgage, pursuant to an exercise of the power of sale under such Mortgage or a deed or assignment in lieu of foreclosure shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue subsequent to the recordation of such

Mortgage and prior to the acquisition of title to such Unit pursuant to such Mortgage foreclosure, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure (except for claims for a pro rata share of such prior assessments or charges resulting from a pro rata reallocation thereof to the Unit including the Unit in which the Mortgagee or other party is so interested). No assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to said Mortgage or as not a burden to a Mortgagee coming into possession pursuant to said Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced by the Association from or against a Mortgagee, a successor in title to a Mortgagee, or the Unit affected or previously affected by the Mortgage concerned (to the extent any such collection or enforcement would prejudice the interests of the Mortgagee or successor in title to the Mortgagee interested in such Unit).

**15.03: MORTGAGEE APPROVAL:** Unless all of the Mortgagees who possess first lien Mortgages on the individual Units have given their prior written approval, the Association shall not be entitled, by act, omission, or otherwise:

(a) To abandon or terminate the Project or to abandon or terminate the arrangement which is established by this Declaration and the Map (except as provided in Article XIII hereof in the event of certain destruction or damage);

(b) To abandon, partition, subdivide, encumber, sell or transfer all or any portion of the Common Elements and (except for the granting of easements for facilities and similar purposes consistent with the intended use of the Common Elements and except as elsewhere provided in Article XIII hereof in the event of certain destruction or damage);

(c) To use hazard insurance proceeds resulting from damage to any part of the Project (whether to Units or to the Common Elements) for purposes other than the repair, replacement or reconstruction of such improvements, except as provided in Article XIII in the event of certain destruction or damage; or

(d) To fail to maintain the insurance coverage described therein.

**15.04: LIMITED MORTGAGEE APPROVAL:** Unless those Mortgagees who possess first lien Mortgages on the specific, affected Units have given their prior written approval, the Association shall not be entitled, by act, omission, or otherwise:

(a) To partition or subdivide any Unit; or

(b) To change the pro rata interests or obligations of any Unit which apply for (1) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (2) determining the pro rata share of ownership of each Unit in the Common Elements.

**15.05: BOOKS AND RECORDS:** Any Mortgagee under a first lien Mortgage encumbering a Unit shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association, or of the Project. From and after the time such Mortgagee makes such written request, the Association shall furnish to such Mortgagee copies of annual operating reports and other reports or writings summarizing or reflecting the financial position or history of the Project as may be prepared for distribution to the Unit Owners.

**15.06: NOTICE:** From and after the time a Mortgagee under a first lien Mortgage encumbering a Unit makes written request to the Association, the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (a) The Unit encumbered by such mortgage; (b) The Common Elements involving an amount in excess of, or reasonably estimated to be in excess of, Twenty Thousand Dollars (\$20,000.00); or (b) any other Unit involving an amount in excess of, or reasonably estimated to be in excess of, Twenty Thousand (\$20,000.00). Said notice shall be given within ten (10) days after the Association learns of such damage, loss, taking or anticipated condemnation.

**15.07: INTERPRETATION:** In the event another provision or condition of this Declaration deals with the same subject matter as is dealt with in any provision or condition of this Article, the provision or condition which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority as the case may be, applicable to the Board of Directors, the Management Committee and the Association with respect to the subject concerned.

**15.08: AMENDMENT:** No amendment to the Declaration which affects the rights, protection or security afforded to Mortgagees shall be accomplished or effected as to Mortgagees holding Mortgages of record prior to such amendment, unless and until 75% off said Mortgagees have given their prior written approval to such amendment.

## **ARTICLE XVI EMINENT DOMAIN**

**16.01:** In the event that eminent domain proceedings are commenced against the Project or any portion thereof, the provisions of Section 57-8-32.5, of the Act shall apply. The Association shall give written notice of such proceedings to all Mortgagees holding first lien Mortgages on Condominiums. No first lien priority of any Mortgagee shall be diminished or otherwise disturbed by virtue of such proceedings. Notwithstanding anything herein to the contrary, those proceeds payable to a Unit Owner because of an eminent domain proceeding relating to all or a portion of the Condominium Project or said Unit Owner's Condominium Unit shall first be applied to the interest of any Mortgagee as required under the mortgage instruments applicable to the Condominium Unit of such Unit Owner.

## **ARTICLE XVII**



## MAINTENANCE

**17.01: OWNER'S RESPONSIBILITY:** For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own the interior non-supporting walls, the materials (such as, but not limited to, plaster, gypsum drywall, paneling, wallpaper, paint, wall and floor tile and flooring) making up the finished surfaces of the perimeter walls, ceilings, and floors within the Unit, including any non-exterior Unit doors and non-exterior windows. The Owner shall not be deemed to own lines, pipes, wires, conduits, or systems (which for brevity are herein and hereafter referred to as utilities) which serve one or more other Units except as tenant in common with the other Owners. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Association. Such right to repair, alter and remodel is coupled with the obligation to replace any finished or other materials removed with similar or other types or kinds of materials. An Owner shall maintain and keep in repair the interior of his Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will or may impair the structural soundness or integrity of the Building, impair any easement or hereditament, nor violate any laws, ordinances, regulations and codes of the United States of America, the State of Utah, the County of Salt Lake, or any other agency or entity which may then have jurisdiction over said Unit; without the written consent of the Association after first proving to the satisfaction of the Association that compliance with this section's requirements will be maintained during and after any such act or work shall be done or performed. Any expense to the Association for investigation under this Article shall be borne by the relevant Owner. However, nothing herein contained shall be construed to permit structural modification and any decision relating thereto shall be in the absolute discretion of the Board of Directors, including, but not limited to the engaging of a structural engineer at the Owner's expense for the purpose of obtaining his opinion. An Owner shall also keep the Limited Common Elements appurtenant to his Unit in a well-repaired, maintained, clean and sanitary condition; provided however the Association shall be responsible to keep any decks free and clear of snow, ice, dirt, debris, and any accumulation of water as a Common Expense. An Owner shall be obligated to reimburse the Association promptly upon receipt of its statement of any expenditures incurred by it in repairing or replacing any Unit elements or Limited Common Element for which the Owner is responsible, or for the repairs of another's Unit or any General Common Element damaged by any act or failure to act of the Unit Owner, his tenants, guests, invitees or agents.

**17.02: ASSOCIATION'S RESPONSIBILITY:** The Association shall have the duty of maintaining and repairing all of the General Common Elements within the Project and the cost of said maintenance and repair shall be a Common Expense of all of the Owners. The Association shall not need the prior approval of its members to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof; subject, however, to Article XIII hereof.

The Association shall, on its own or through its Manager, provide to the Owners the following services which shall be paid for out of the Common Expense Assessment, to-wit:

- (1) maintaining the General Common Elements; including without limitation the parking areas (and including the specifically designated parking spaces which are otherwise Limited Common Elements), the landscaping, and sidewalks;
- (2) administering and managing the Condominium Project;
- (3) providing common utilities;
- (4) setting aside reserves for future maintenance, repairs and replacements;
- (5) providing site maintenance, including snow and trash removal;
- (6) providing fire, life and safety monitoring;
- (7) obtaining the insurance required in Article XIV hereof;
- (8) acting as attorney-in-fact in the event of damage or destruction as provided for in Article XIII hereof; and
- (9) performing all other acts required by this Declaration, or the Articles of Incorporation and By-Laws of the Association.

The Association reserves the right to hire one or more persons or entities including a manager, contractors, and employees to perform such services; provided, however, that any such hiring shall be subject to the provisions set forth herein.

#### **ARTICLE XVIII ADMINISTRATIVE RULES AND REGULATIONS**

The Association, by its Board of Directors, shall have the power to adopt and establish by resolution, such Project management and operational rules as it may deem necessary and proper for the maintenance, operation, management and control of the Project. The Association may, from time to time by resolution, alter, amend and repeal such rules. Unit Owners shall at all times obey such rules and see that they are faithfully observed by their respective tenants, subtenants and any other occupant or user of their Unit.

**ARTICLE XIX**  
**OBLIGATION TO COMPLY HEREWITH**

Each Unit Owner, tenant, subtenant or other occupant or user of a Unit shall comply strictly with the provisions of the Act, this Declaration, the By-Laws of the Association from time to time in effect, the rules and regulations promulgated by the Association or its Board of Directors from time to time and all agreements and determinations lawfully made and (or) entered into by the Association. Any failure to comply with the foregoing shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association in its own name and/or on behalf of the Unit Owners, or in a proper case, by an aggrieved Unit Owner.

**ARTICLE XX**  
**INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Each member of the Board of Directors and all officers and agents of the Association shall be indemnified and held harmless by the Association against all costs, expenses and liabilities whatsoever, including, without limitation, attorneys' fees, reasonably incurred by him in connection with any proceeding in which he may become involved by reason of his being or having been such Director or officer, all to the maximum extent permitted by law; provided, however, the foregoing indemnification shall not apply if the loss, expense or liability involved resulted from the willful misconduct of such individual.

**ARTICLE XXI**  
**AMENDMENT**

Subject only to the restrictions on amendment elsewhere contained herein, this Declaration and (or) the Map may be amended upon the affirmative vote or approval and consent of a two-thirds (2/3) majority of the Unit Owners. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the appropriate officers at the Association. In said instrument the Committee shall certify that the vote or consent required by this Article XXI has occurred. In addition to the amendment procedure set forth above, for a period of two (2) years after the date of recording of this Declaration or any amendment hereto, Declarant may make and record such minor amendments as it deems necessary to clarify or amend this Declaration, without the necessity of any vote or approval by any party other than Declarant, provided that such right of amendment in Declarant shall not be exercised in any manner which would adversely affect the substantive right of any Unit Owner or Mortgagee.

**ARTICLE XXII**  
**PERSON TO RECEIVE SERVICE OF PROCESS**

The initial person to receive service of process in the cases provided herein or in the Act is Scott DeSeelhorst whose address is c/o Solitude Development Company, Inc., c/o 12000 Big Cottonwood Canyon, Solitude, Utah 84121. Said person may be changed by the filing by the Association with the State of Utah of an appropriate instrument.

### **ARTICLE XXIII MARKETING BY DECLARANT**

Until such time as the Declarant ceases to be a Unit Owner or the expiration of four (4) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, whichever first occurs (hereinafter referred to as the "Occurrence"), Declarant, or its designee, successors or assigns shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of Units owned by Declarant.

(a) Declarant shall have the right to maintain a model Unit on or about the Project.

(b) 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 on or about the Project, but any such device shall be of a size and in a location as is reasonable and customary.

### **ARTICLE XXIV (Intentionally Omitted)**

### **ARTICLE XXV SEPARABILITY**

The invalidity of any one or more phrases, sentences, subparagraphs, paragraphs, sections or articles hereof shall not affect the remaining portions of this instrument nor any part thereof, and in the event that any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, section or sections, or article or articles had not been inserted.

**ARTICLE XXVI  
DECLARANT'S RIGHTS ASSIGNABLE**

All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a recorded voluntary conveyance, transfer or assignment. Any Mortgage covering Condominiums in which title is vested in the Declarant, shall, at any given point in time and whether or not such Mortgage does so by its provisions, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant thereunder.

**ARTICLE XXVII  
WAIVERS**

No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

**ARTICLE XXVIII  
TOPICAL HEADINGS**

The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

**ARTICLE XXIX  
EFFECTIVE DATE**

This Declaration shall take effect upon recordation.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed on its behalf this 9<sup>th</sup> day of February 2008.

SOLITUDE DEVELOPMENT COMPANY,  
INC., a Utah corporation

By   
Scott DeSeelhorst  
Its: President

STATE OF UTAH                    )  
  : ss.

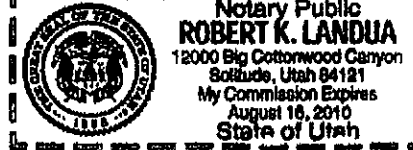
COUNTY OF SALT LAKE )

On the 9<sup>th</sup> day of February 2008, the foregoing was acknowledged before me by Scott DeSeelhorst, in his capacity as President of Solitude Development Company, Inc., a Utah corporation.

Robert K. Landua

Notary Public

My Commission Expires: August 16, 2010



I, William L. Clark, do hereby certify that I  
that I hold certificate No. 5251265 as pres  
Utah. I further certify that a survey ~~was~~  
performed by me or under my direction ~~and~~  
findings of that survey. ~~and~~

No. 5251  
Z/15/  
STATE OF

**RECORD LEGAL !**

CORRECTIVE SPECIAL WARRANTY DEED  
ENRITY NO. 10306756 BOOK 95S1 PAGE 20  
SALT LAKE COUNTY RECORDER

A parcel of land lying in the Northeast Quarter of Section 27, Township 2 South, Range 3 East Comprising 0.99 acres of those particular parcels of land owned by the State of Alaska and being a part of the Mineral Survey 4960. Basis of Bearing for said parcel is East 1309.22 feet (measured) between the Monumentalizing the North line of Northeast Quarter Section 27. Subject parcel being more or

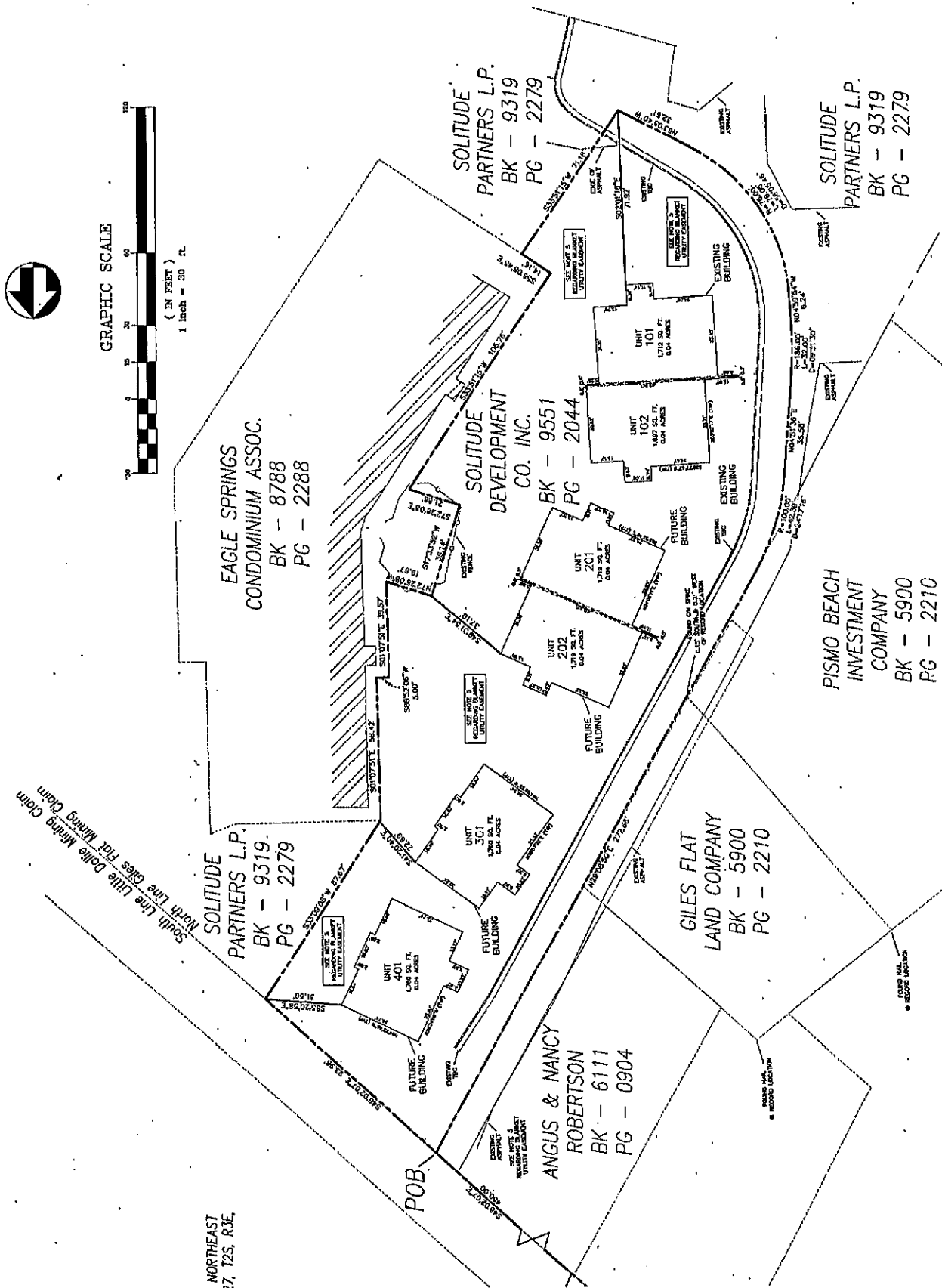
Commencing at the Southwest Corner of the Quarter of Section 22, Township 2 South, Range 10 East, Tenth Principal Meridian, and running thence South 23°34'03" West 87.67 feet to the corner of said Giles Flat Mining Claim; Thence continuing coincident with the north line of said mining claim South 33°09'08" West 87.67 feet to the corner of said Eagle Springs West Condominium; Thence following the westerly and southerly boundary of said condominium South 33°13'16" West 87.67 feet to the

- 1) South  $107^{\circ}51'$  West 58.42 feet;
- 2) South  $89^{\circ}30'$  East 5.00 feet;
- 3) South  $107^{\circ}51'$  East 39.57 feet;
- 4) North  $72^{\circ}26'$  West 19.67 feet;
- 5) South  $17^{\circ}35'52''$  East 39.14 feet;
- 6) South  $72^{\circ}26'$  East 21.68 feet;
- 7) South  $33^{\circ}51'18''$  West 105.76 feet;
- 8) South  $96^{\circ}48'45''$  East 14.16 feet; The South  $33^{\circ}51'18''$  West  $71.18$  feet; The foot radius curve; Thence northerly  $75^{\circ}$  to a point of curvature; Thence northerly bearing a central angle of  $59^{\circ}05'45''$  to a point of tangency  $6.24$  feet to a point of curvature; thence north  $186.00$  foot radius curve to a point of center a central angle of  $09^{\circ}51'30''$  to the right; thence south  $35.58$  feet to a point of curvature; Thence north  $100.00$  foot radius curve to the right ( $\frac{1}{2}$  through a central angle of  $241^{\circ}71'6''$ ) to a point of tangency  $272.66$  feet to the point of

**NOTE:**

- 1) Passmoas was retained by Saddle Mountain Survey and record a Record of Survey on to the north of the road, showing the locations of existing and future boundaries.
- 2) At the time of survey the foundations of the remainder of the units have been positive.
- 3) The centerline of a 1 foot wide wall (0.5C) party wall line separating the individual units from the remainder of the site.
- 4) An improved fence encroachment with Eo shown hereon.
- 5) Area within subject parcel and outside a blanket utility easement.

EGEN



### Exhibit C

Each Unit Owner shall be entitled to the fee simple ownership of an undivided interest in the Common Elements in the percentage of One-sixth (1/6).