ACCESS, MAINTENANCE, COST-SHARING AND CONSTRUCTION EASEMENT AGREEMENT

THIS ACCESS, MAINTENANCE, COST-SHARING AND CONSTRUCTION EASEMENT AGREEMENT (this "Agreement") is made as of the _____ day of ______, 2024 (the "Effective Date"), by and between THE STEAMBOAT GRAND RESORT HOTEL CONDOMINIUM ASSOCIATION, INC., a Colorado nonprofit corporation ("Grand Association"), and STEAMBOAT RESORT DEVELOPMENT COMPANY, a Delaware corporation ("SRDC"). The parties may be referred to collectively as the "Parties" or individually as a "Party."

RECITALS

A. The Grand Association is the association of unit owners established under the Declaration of Condominium and Plan of Quarter Share Ownership for The Steamboat Grand Resort Hotel Condominium recorded at Reception No. 533317, as amended by the First, Second, Third, Fourth, Fifth and Sixth Amendments thereto (collectively, the "Grand Declaration") and the related Condominium Map of Steamboat Grand Resort Hotel Condominium recorded at Reception No. 533318, as supplemented by the First, Second, Third and Fourth Supplements thereto (collectively, the "Grand Map"), each as recorded in the real property records of Routt County, Colorado (the "Records") (the condominium project established pursuant to the Grand Declaration and the Grand Map, the "Grand Resort Condominium").

B. SRDC (as successor in interest to the Development Rights (defined below) from Steamboat Ski & Resort Corporation, a Delaware corporation ("SSRC")) and the Grand Association are parties to that certain Easement Agreement (Access to Development Property) recorded at Reception No. 681998 in the Records (the "Access Easement") pursuant to which the Executive Board of the Grand Association is authorized to approve specific improvements for vehicular and pedestrian access as described in the Access Easement.

C. SRDC (as Successor Declarant of SSRC under the Grand Declaration with respect to the Development Rights) is the owner or holder, as applicable, of certain Special Declarant Rights and Development Rights as defined in the Grand Declaration and other rights and easements reserved to SRDC and/or its affiliates under the Grand Declaration and the Grand Map and as granted in certain recorded easements (collectively, the "**Development Rights**"), the Development Rights including without limitation, the right to develop surface transportation and/or other lifts, gondolas or other passenger tramway and appurtenant facilities (the "**Tram Facility**" and all rights thereto, the "**Tram Development Rights**") and the right to develop a future condominium project currently known as Amble (the "**Amble Development**" and all rights thereto, the "**Amble Development Rights**").

D. The City of Steamboat Springs, Colorado (the "**City**") has approved that certain Preliminary Plat attached hereto as <u>Exhibit A</u> and incorporated herein (the "**Preliminary Plat**") that depicts and describes thereon (i) a separate parcel of land shown as the "Tram Lot" (the "**Tram** Lot") on which it is anticipated, without obligation, that a portion of the Tram Facility will be developed, (ii) a separate parcel of land shown as "Lot 1" (the "**Amble Lot**") on which it is anticipated, without obligation, that the Amble Development will be developed, and (iii) a separate parcel of land establishing revised property lines for the Grand Resort Condominium (the "**Grand** Lot") (the Tram Lot, the Amble Lot and the Grand Lot sometimes referred to collectively as the "Lots" or as the "Property" and individually as a "Lot"). It is acknowledged and understood that, as of the Effective Date, the Lots have not been created as legally subdivided parcels as discussed in Section 1 below.

E. SRDC is currently the holder and beneficiary of the Tram Development Rights and, upon any approval and recording of the Final Plat (defined below), is anticipated to become the initial fee simple owner of the Tram Lot (SRDC is such capacity or its successor in interest to the Tram Development Rights and, if applicable, the Tram Lot is referred to herein as "Steamboat"). SRDC is also currently the holder and beneficiary of the Amble Development Rights and, upon any approval and recording of the Final Plat, is anticipated to become the initial fee simple owner of the Amble Lot (SRDC is such capacity or its successor in interest to the Amble Development Rights and, if applicable, the Amble Lot is referred to herein as "Amble"), although it is acknowledged that a certain purchase contract interest exists with respect to the Amble Development Rights and such purchaser (such purchaser or its successor in interest may be referred to herein as the "Current Amble Purchaser") may become the holder and beneficiary of the Amble Development Rights and the initial fee simple owner of the Amble Lot. It is further acknowledged that the Current Amble Purchaser applied to the City for approval of, and Planning Commission for the City approved on December 28, 2023, a development plan for the Amble Development designated Project PL20220623 (as revised with the approval of the City, the "Current Amble Development Plan"). By virtue of the Grand Declaration, the Grand Association is the entity responsible for management and maintenance of the Grand Lot and the holder of the rights and obligations hereunder relative to the Grand Lot.

F. In furtherance of and as contemplated by the Access Easement Agreement, the Parties desire to grant each other certain mutually beneficial rights and easements and burden each other with certain responsibilities and obligations, all as more fully set forth in this Agreement below.

NOW, THEREFORE, in consideration of the Recitals and the agreements, covenants, restrictions and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree, for themselves and their respective successors and assigns, as follows:

AGREEMENT

1. <u>ALLOCATION OF RIGHTS AND OBLIGATIONS</u>. It is acknowledged and understood that, as of the Effective Date, the Lots have not been created as legally subdivided parcels by approval by the City and recording in the Records of a Final Plat creating the Lots (the "**Final Plat**"). This Agreement nonetheless grants and allocates certain rights, responsibilities and obligations to each of the Lots as provided in this Agreement below. Upon recording of the Final Plat, the Lots as defined above will be automatically redefined to mean the Lots as created by the Final Plat, including any modifications to such Lots approved by the City and reflected on the Final Plat as recorded, and this Agreement shall burden and benefit each of the three (3) Lots as created by the Final Plat and shall run with the land as provided in Section 13 below. This Agreement is effective on the Effective Date and is not conditioned upon the acquisition of the Amble Lot by the Current Amble Purchaser, recording of the Final Plat or development of the

Amble Lot pursuant to the Current Amble Development Plan. Until such time that the Final Plat is recorded, (a) the rights and obligations hereunder attached to the Tram Lot shall be held by and bind the holder of the Tram Development Rights and references herein to Steamboat shall mean and refer to such holder of the Tram Development Rights, (b) the rights and obligations hereunder attached to the Amble Lot shall be held by and bind the holder of the Amble Development Rights and references herein to Amble shall mean and refer to such holder of the Amble Development Rights, and (c) the rights and obligations hereunder attached to the Grand Lot shall be held by and bind the Grand Association as the unit owners association for the Grand Resort Condominium. Further, until such time that the Final Plat is recorded, SRDC, as the current holder of all of the Development Rights (or its successor to the Tram Development Rights and/or the Amble Development Rights), may record a written notice in the Records evidencing that the Tram Development Rights and/or the Amble Development Rights have been assigned and conveyed to a successor to same, whereupon such successor shall hold and be bound by the rights and obligations hereunder attached to the Tram Lot or Amble Lot, as applicable. The rights and obligations of Amble hereunder shall accrue to and be deemed assigned to the future Amble Owners Association as provided in Section 13 below.

2. <u>GRANT OF EASEMENTS</u>. The following easements (collectively, the "Easements" and individually, an "Easement") are hereby granted and conveyed:

2.1 <u>Amble Easements</u>. The Parties hereby grant to Amble and for the benefit of the Amble Lot the following easements, subject to the terms and conditions of this Agreement:

(a) A temporary, non-exclusive easement (the "Construction Easement"), which may be exercised by Amble for a temporary period from time to time, for testing, inspection, construction, installation and operation of all new, removed or modified improvements to the Property as depicted on Exhibit A (i.e., the Preliminary Plat) and on Exhibit A-1 (i.e., the development plan easements), including, without limitation, new vehicular access drives and related emergency access drives, the removal of certain pedestrian walkways and construction of certain new pedestrian walkways and stairs, the removal of a pond and construction of a new water quality pond and the construction of new sidewalks along Mt. Werner Circle, together with related regrading, relandscaping, landscape irrigation, structural elements and retainage, hardscaping, utilities, lighting, and similar improvements as approved by the City (the "Improvements") in compliance with the requirements of the City as set forth in the Preliminary Plat (and any later requirements of the City applicable to construction of the Improvements such as, but not limited to, the conditions to approval of the Final Plat and/or the Amble Development) and in material conformity with plans and specifications for the Improvements submitted to and approved by the City or by the applicable public utility provider in conjunction with the issuance or pending issuance by the City of related grading and/or building permits for the Improvements, as the same may be subsequently modified by approval by the City (the "Plans") within those areas of the Property in which the Improvements are located as generally depicted on Exhibit A and Exhibit A-1 hereto and within areas located above, below, and immediately adjacent thereto as reasonably needed for the installation and construction (and the later maintenance, repair, replacement and operation) of the Improvements (such areas, the "Easement Areas"). It is understood and agreed that the Construction Easement shall include the right to use the Easement Areas for construction support uses, such as, but not limited to, construction staging, access for construction vehicles and equipment and storage of construction materials and equipment and/or construction-support temporary improvements. The Construction Easement shall expire and automatically terminate upon the completion of construction of the Improvements.

(b) Following construction and the commencement of operation of any applicable Improvements, a permanent, nonexclusive access and use easement upon, across and through those Easement Areas and Improvements providing access to and from the Amble Lot, including both vehicular access drives and pedestrian access walkways, except that the area identified as "Easement No. 3" on Exhibit A-1 attached hereto will not be the primary pedestrian access to the Amble Lot and is subject to closure by the Grand Association in its sole discretion as described in Section 4.1(c) below.

(c) Following construction and the commencement of operation of any applicable Improvements, a permanent, nonexclusive easement within the related Easement Areas for the operation, maintenance, repair, replacement and improvement of (i) those Improvements comprising vehicular access drives for which Amble is responsible as specifically identified on Exhibit B attached hereto and incorporated herein, together with any related retainage and other Improvements serving such access drives (the "Amble Maintenance Improvements"), (ii) those Improvements comprising a pedestrian walkway for which The West Condominium Association, Inc. has been granted a non-exclusive easement as discussed in Section 4.2 below and specifically identified on Exhibit B hereto (the "West/Amble Maintenance Improvements"), (iii) those Improvements comprising a common water quality pond as specifically identified on Exhibit B, together with any related Improvements serving same (the "Water Quality Pond Improvements"), and (iv) any other Improvements serving same (the "Amble Exclusive Improvements").

2.2 <u>Grand Easements</u>. The Parties hereby grant to the Grand Association and for the benefit of the Grand Lot the following easements, subject to the terms and conditions of this Agreement:

(a) Following construction and the commencement of operation of any applicable Improvements, a permanent, nonexclusive access easement upon, across and through those Easement Areas and Improvements providing access to and from the Grand Lot, including both vehicular access drives and pedestrian access walkways.

(b) Following construction and the commencement of operation of any applicable Improvements, a permanent, nonexclusive easement within the related Easement Areas for the operation, maintenance, repair, replacement and improvement of (i) those Improvements comprising vehicular access drives for which the Grand Association is responsible as specifically identified on Exhibit B, together with any related retainage and other Improvements comprising pedestrian walkways and stairs for which the Grand Association is responsible as specifically identified on Exhibit B, together with any related retainage and other Improvements comprising pedestrian walkways and stairs for which the Grand Association is responsible as specifically identified on Exhibit B, together with any related retainage and other Improvements serving such pedestrian improvements (the "Grand Pedestrian Improvements") (the Grand Vehicular Improvements are sometimes referred to collectively as the "Grand Maintenance Improvements"), and (iii) any other Improvements exclusively serving

the Grand Lot, if any, together with any related retainage and other Improvements serving same (the "Grand Exclusive Improvements").

(c) A permanent, non-exclusive easement, which may be exercised for a temporary period from time to time by the Grand Association by a two (2) business day prior written notice to Amble except in the event of an emergency in which case the Grand Association shall provide notice to |Amble as soon as reasonably practical, within reasonable areas of the Amble Lot located immediately adjacent to the Grand Lot as reasonably necessary for the Grand Association to conduct maintenance, repair or replacement of the building improvements that directly abut the Amble Lot, which shall be conducted by the Grand Association at its sole cost; provided, however, such temporary use of the Amble Lot shall not be used in any invasive or destructive manner and shall be subject to all terms of this Agreement, including, without limitation, the prompt restoration of the Amble Lot as provided below.

2.3 <u>Tram Easements</u>. The Parties hereby grant to Steamboat and for the benefit of the Tram Lot the following easements, subject to the terms and conditions of this Agreement:

(a) Following construction and the commencement of operation of any applicable Improvements, a permanent, nonexclusive access easement upon, across and through those Improvements providing access to and from the Tram Lot, limited to the vehicular access drive and related improvements providing such access. It is understood and agreed that the Tram Lot has other means of access from Mt. Werner Circle and that the access provided by the Improvements will not normally be used to Access the Tram Lot if in the reasonable judgment of Steamboat equivalent or better access is available for the desired purpose from Mt. Werner Circle.

A permanent, nonexclusive easement, which may be exercised by (b) Steamboat for a temporary period from time to time, for Steamboat to enter onto the Lots for the purpose of reasonably relocating any of the Improvements as necessary for Steamboat to develop the Tram Facility, which relocation(s) may involve the relocation of Improvements located within the Tram Lot and/or the relocation of Improvements located upon the Amble Lot; provided, however, in each instance in order for Steamboat to exercise this easement and as conditions to such exercise, (i) Steamboat shall provide a minimum sixty (60) day prior written notice to the Party or Parties whose Lot is affected by such proposed relocation (the "Affected Parties"), together with all plans and specifications for the proposed relocation and the specific areas and impacts of same, (ii) the proposed relocation does not propose an unreasonable rerouting of the applicable Improvements (e.g., an unnecessarily circuitous new access route), (iii) the proposed relocation provides the Grand Lot and the Amble Lot with reasonably equivalent facilities, and (iv) in no event shall any existing or proposed Improvements be relocated, altered, modified or added to or on the Grand Lot without the prior express approval of the Grand Association, which approval may be withheld by the Grand Association in its sole discretion. Further, with respect to any relocation of Improvements on the Amble Lot that comply with the foregoing or if no relocation of Improvements is needed, it is acknowledged that a new nonexclusive tramway easement over a portion of the Amble Lot may be needed for the Tram Facility and Amble agrees to grant such easement as Steamboat shall reasonably request to Steamboat or to an entity as directed by Steamboat and to otherwise cooperate with any reasonable request of Steamboat made in connection with the development of the Tram Facility.

2.4 <u>Metes and Bounds Description of Easement Areas</u>. The depiction of the Easement Areas on <u>Exhibit A</u> represents a rough approximation of the location of the future Improvements. Following the completion of construction of the Improvements, the Parties agree to mutually cooperate and agree to the final surveyed locations of the Improvements and to the surveyed limits of the Easement Areas and to specify such Easement Areas by metes and bounds description and/or surveyed depictions in a document recorded in the Records, whereupon the Easement Areas shall automatically be redefined as the Easement Areas so defined.

2.5 <u>Release of Parking Unit</u>. That certain easement granted in Section 1(b) of the Access Easement granting vehicular and pedestrian access rights to and through the Parking Unit (as that term is used in the Access Easement) is hereby released and the Parking Unit is hereinafter released and unencumbered by the Access Easement.

2.6 <u>Utilities; Future Easements</u>. It is acknowledged and agreed that public and private utility, communication and drainage improvements are being constructed serving any of the individual Lots and/or more than one Lot, the location of which in certain instances will be on a Lot or Lots other than the Lot served by such utility. Upon the request of the City, of any public or private utility company, or of any Party, each Party agrees to grant an easement as needed for the applicable utility improvement, including, without limitation, the execution and recording of a utility easement as required by the public or private utility; provided that such easement will not disturb any existing Improvements or the use thereof; the easement will not prohibit the Party granting the easement from any use of its Lot; and the easement shall not create any increased maintenance obligations on the part of the Party granting such easement.

3. <u>CONSTRUCTION ACTIVITIES</u>. Any Party conducting or performing construction or installation activities (in each case, the "Constructing Party") pursuant to an Easement on another Party's Lot, including, without limitation, Amble's initial construction and installation of Improvements, shall be subject to the following terms and conditions:

3.1 <u>Construction and Installation</u>. All construction and installation activities conducted or performed by the Constructing Party or on behalf of the Constructing Party pursuant to an Easement (the "**Construction Work**"), including, without limitation, by the Constructing Party's agents, employees, contractors, and designees, and any other agents, contractors and invitees acting by, through or under any of them (collectively, the "**Permittees**") shall be performed at the Constructing Party sole cost and expense; in accordance with all applicable laws, rules, regulations, covenants, ordinances and building codes (including, without limitation, the construction and work rules and procedures of the City); in a good and workmanlike manner; in such manner as will, to the extent commercially practicable, minimize interference to the operations and activities on the Lot on which the Construction Work is being performed; and, with respect to the initial construction and installation of Improvements by Amble, in material compliance with the Plans. Once commenced, the Constructing Party shall diligently prosecute the Construction Work so commenced until completion.

3.2 <u>Restoration</u>. Prior to and as part of the completion of the Construction Work, the Constructing Party will, at its sole cost and expense, return and restore the applicable Easement Areas to a condition as close to the condition which exists as of the date of this Agreement as is commercially reasonable, subject to the existence of and modifications effected by the

Improvements and subject to reasonable wear and tear. The restoration required hereunder shall be completed reasonably promptly, taking into account the season and such other factors as may be relevant under the circumstances.

3.3 <u>Other Requirements</u>. The Construction Work shall be subject to and the Constructing Party shall comply with all other provisions of this Agreement applicable to the Construction Work, including, without limitation, the damage provisions of Section 5, the mechanic lien protection provisions of Section 6, the insurance provisions of Section 9 and the indemnity provisions of Section 10 below.

3.4 <u>Acknowledgment</u>. While the Constructing Party agrees to minimize interference as provided in Section 3.1 above, the other Parties acknowledge that, during periods of construction, there may be certain inconveniences such as, but not limited to, construction fencing and exclusive areas of construction work (which areas shall not be entered without the express approval and presence of a representative of the Constructing Party and which entry is at any such entering person's own risk), construction traffic, temporary traffic closures and slowdowns, and noise and other impacts and inconveniences of construction activity

3.5 <u>Initial Construction of Improvements</u>. In connection with Amble's initial construction and installation of the Improvements, Amble agrees to the following:

(a) <u>Landscape Plan</u>. As part of the initial construction of Improvements, Amble agrees to install the landscape plan attached hereto as <u>Exhibit C</u> and incorporated herein, which landscape plan is hereby approved by the Parties.

(b) <u>Construction Rules</u>. Amble agrees to abide by all rules within the City's Municipal Code applicable to its Construction Work without request to the City for exception or variance to the Municipal Code's requirements without the consent of the Grand Association, which consent shall not be unreasonably withheld.

(c) <u>Construction Meetings</u>. During the period of ongoing initial construction of the Improvements by Amble, Amble agrees to meet with Grand Association representatives on a monthly basis as requested by the Grand Association to discuss construction updates and matters, including any construction-related concerns raised by the Grand Association, and to further meet on an interim basis between monthly meetings as reasonably requested by the Grand Association to discuss specific construction concerns that have arisen.

4. <u>MAINTENANCE AND OPERATION</u>. Following the completion of construction and commencement of operation of any Improvements, the following provisions governing the maintenance and operations of such Improvements (the "Maintenance Work") shall become effective:

4.1 <u>Amble and Grand Maintenance Improvements</u>.

(a) Amble Maintenance Improvements. Upon the completion of construction and commencement of operation of the applicable Amble Maintenance Improvements, Amble shall be responsible at its sole cost and expense for the operation, maintenance, repair, replacement,

improvement and insurance of the Amble Maintenance Improvements at its sole cost and expense in a manner commensurate with the Maintenance Standard (defined below).

(b) <u>Grand Maintenance Improvements</u>. Upon the completion of construction and commencement of operation of the applicable Grand Maintenance Improvements, the Grand Association shall be responsible at its sole cost and expense for the operation, maintenance, repair, replacement, improvement and insurance of the Grand Maintenance Improvements at its sole cost and expense in a manner commensurate with the Maintenance Standard.

Maintenance Standard; Cure Rights. Amble, with respect to the Amble (c) Maintenance Improvements, and the Grand Association, with respect to the Grand Maintenance Improvements, will maintain and keep the applicable Improvements in a good and safe condition and repair including, without limitation, customary cleaning and debris removal, snow and ice removal, patching, and resurfacing or replacement of the surface in a manner reasonably commensurate with the quality of the Improvements originally installed, and shall keep such Improvements continuously open and operable, subject to customary and reasonable interruptions for maintenance and repair; provided that the Grand Association shall have the right to close the area identified as "Easement No. 3" on Exhibit A-1 attached hereto anytime in its sole discretion that such closure is necessary for safety reasons, and the Parties acknowledge that it is likely that Easement No. 3 will be closed and inaccessible for the majority of each winter season (in each case, the "Maintenance Standard"). Amble and the Grand Association (each, as applicable, as the "Demanding Party") shall each have the right (but not the obligation), to provide written notice to the other Party (each, as applicable, as the "Non-Performing Party") that the Non-Performing Party has not performed its maintenance and repair obligations in accordance with the Maintenance Standard and, if the Non-Performing Party then fails to cure such performance of its maintenance and repair obligations within thirty (30) days after delivery of such written notice to the Non-Performing Party, the Demanding Party may perform the Non-Performing Party's obligations in default, in which case the Non-Performing Party shall reimburse to the Demanding Party all of the third party costs incurred by the Demanding Party within thirty (30) days after receiving an invoice from the Demanding Party for such expenses, together with reasonable support documentation of such costs. The foregoing notwithstanding, in the event of an emergency, the Demanding Party may commence its self-help rights without prior notice. For purposes of the preceding sentence, an "emergency" shall be any situation which materially impairs the Demanding Party's ability to use the applicable Easement Area for access to its Lot, including but not limited to the necessity to remove from the applicable Easement Area snow and ice or other debris causing such material impairment of access; however, temporary and customary closures or interruptions of access due for reasons of repair and maintenance shall not be deemed an emergency.

4.2 <u>West/Amble Maintenance Improvements</u>. It is acknowledged that the West/Amble Maintenance Improvements as depicted on <u>Exhibit B</u> are subject to that certain non-exclusive easement granted to the benefit of The West Condominium Association, Inc. under that certain Grant of Temporary Pedestrian Easement recorded at Reception No. 313913 in the Records, which easement was made permanent but remaining subject to relocation as set forth in that certain Conveyance of Property and Grants of Easements recorded at Reception No. 559709 in the Records (collectively, the "Walkway Easement Instruments"). The West/Amble Maintenance Improvements shall be maintained, operated, insured, repaired and replaced as provided in the

Walkway Easement Instruments; provided, however, it is acknowledged and agreed that the easement granted to The West Condominium Association, Inc. under the Walkway Easement Instruments is non-exclusive and Amble shall have the right to handle or enhance such obligations as it determines appropriate in its sole discretion.

4.3 <u>Exclusive Improvements</u>. Any and all Amble Exclusive Improvements and Grand Exclusive Improvements (collectively, the "**Exclusive Improvements**") shall be maintained, operated, insured, repaired and replaced by the Party exclusively benefited by the applicable Exclusive Improvements at its sole cost and expense in a manner commensurate with the Maintenance Standard. Nothing in this Section 4.3 shall be construed to prohibit such Party from removing any Exclusive Improvements, provided, however, that in the event of any such removal the Easement Areas shall be promptly restored in accordance with the terms of Section 3.2 above.

4.4 <u>Water Quality Pond</u>. Upon the completion of construction of the Water Quality Pond Improvements, the Water Quality Pond Improvements shall be maintained, managed, operated, insured, repaired and replaced by Amble in manner reasonably determined by Amble to maintain the performance of the Water Quality Pond Improvements as intended.

4.5 <u>Other Requirements</u>. Any Party conducting Maintenance Work shall comply with the provisions of Section 3 above as though such Party were a Constructing Party and shall comply with all other provisions of this Agreement applicable to the Maintenance Work, including, without limitation, the damage provisions of Section 5, the mechanic lien protection provisions of Section 6, the insurance provisions of Section 9 and the indemnity provisions of Section 10 below.

4.6 <u>Future Modifications</u>. By agreement of Amble and the Grand Association (such approval effected by a vote of its Executive Board if such Party is an owners association), such Parties may agree in writing to modify, improve, remove and/or otherwise alter any of Amble Maintenance Improvements and/or the Grand Maintenance Improvements, and may agree in writing to other matters relative to such Improvements.

4.7 <u>Limitation on Liability</u>. NOTWITHSTANDING THE DUTY OF A PARTY TO MAINTAIN AND REPAIR CERTAIN IMPROVEMENTS, SUCH PARTY SHALL NOT BE LIABLE FOR DAMAGE OR INJURY, INCLUDING DEATH, CAUSED BY ANY LATENT CONDITION, INHERENT RISK OR OTHER PERSONS, UNLESS SUCH DAMAGE OR INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, IT BEING ACKNOWLEDGED AND AGREED THAT ACCESS IMPROVEMENTS AND RELATED TRAVEL POSSESS INHERENT RISKS OF DAMAGE OR INJURY, INCLUDING DEATH, AND EACH USER OF AN ACCESS IMPROVEMENT IS HEREBY DEEMED TO FULLY ACKNOWLEDGE, ACCEPT AND ASSUME SUCH RISKS.

5. <u>DAMAGE</u>. Any Party or a Party's Permittees conducting or performing Construction Work, Maintenance Work or any other activity or use pursuant to an Easement (such as, but not limited to, access upon the Improvements by heavy vehicles or equipment) (as applicable, the "Use") pursuant to this Agreement (the "**Performing Party**") agrees to use its reasonable efforts to avoid causing damage to the Improvements, the Property and/or improvements on a Lot or serving a Lot (except in the manner contemplated in this Agreement (i.e., the construction of Improvements), subject to the restoration obligation provided in Section 3.2 above), which

improvements may include, but are not limited to, paved drives and walkways, curbs and drainage, utilities and landscaping. In the event that the Performing Party causes damage to such areas or improvements (except in the manner contemplated in this Agreement, subject to the restoration obligation provided in Section 3.2 above), the Performing Party agrees to be fully responsible for the costs and expenses of, and agrees to promptly complete, any repair and/or reconstruction of all improvements so damaged or destroyed as a result of or arising from the Use.

MECHANICS' LIENS. The Performing Party shall not cause, suffer or permit any 6. mechanics', materialmen's or other liens to attach to or be recorded against another Party's Lot that arise from the Use unless the Performing Party secures the release of or provides security for any such lien claim in accordance with the following provisions. The Performing Party shall indemnify and hold the other Parties and their respective Lots harmless from and against all costs, expenses, liabilities and damages (including reasonable legal fees and expenses of litigation) arising out of or incurred in connection with any such lien filed or asserted against a Lot or any part thereof, as a result of the Use. If any such lien claim is recorded against a Lot or any interest therein, then the Performing Party shall, within thirty (30) days after the recording of such lien claim, (i) obtain the release of the Lot(s) from such lien claim, whether by discharge, bonding or otherwise in accordance with applicable law, or (ii) provide security satisfactory to the other Party in its sole, absolute discretion (and so long as (i) or (ii) is satisfied, the Performing Party may contest any mechanic's lien claim in good faith). If the Performing Party shall fail to furnish the requisite release or security within the aforesaid 30-day period, then the other Party may, at its option, secure the release of the lien claim by any means available, including bonding, settlement or resort to any security furnished by the Performing Party, in which case the Performing Party shall, within thirty (30) days after notice of demand, reimburse the other Party for its reasonable, actual costs and expenses incurred in securing the lien release, including reasonable legal fees.

7. <u>**RESERVED RIGHTS.</u>** Each Party expressly reserves all rights of ownership, use, enjoyment and occupancy of such Party's Lot, including, without limitation, the Easement Areas located within such Lot, for any and all purposes, all to the extent not inconsistent with the Easements herein granted and the rights and interests of the other Parties under the terms of this Agreement.</u>

8. **REIMBURSEMENT OBLIGATIONS.** All payments required under this Agreement from one Party to another Party shall be made within thirty (30) days of receipt of the invoice and reasonable supporting documentation. Any amount not paid when due shall bear interest at two (2) percentage points greater than the "prime rate" as reported by the Wall Street Journal from time to time. With respect to any obligation of a Party to share or reimburse expenses of another Party, the Party from whom payment is requested shall be entitled, upon reasonable notice, to inspect all of the records of the Party requesting reimbursement. The Party requesting reimbursement shall maintain complete and accurate records, including original invoices, and copies of checks and lien waivers, with respect to all expenditures related to a project for which reimbursement is requested. The Party requesting inspection may copy all such records at its own expense.

9. <u>INSURANCE</u>.

9.1 <u>During Construction</u>. During period(s) of construction and major work on the Improvements, the Performing Party shall carry and maintain or shall cause its general contractor to carry and maintain, in full force and effect, at its sole cost and expense, the following insurance policies with insurance companies duly qualified to do business in the State of Colorado (a) an all risks course of construction insurance policy (builder's risk), with extended coverage covering the Improvements, (b) owners and General Contractor general liability insurance, public liability and workmen's compensation insurance, in each case in amounts and coverage customary for construction projects in Steamboat Mountain Village, Colorado and naming the non-Performing Party as an additional insured party under such policy or policies, which additional insured coverage shall be primary and noncontributory.

9.2 <u>Other Times</u>. At all other times, each Party shall, at its sole cost and expense, provide and keep in force general commercial liability and property damage insurance against claims arising from the performance of this Agreement or occurring in, on or upon the Easement Areas and Improvements in a limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate per policy period and shall name the other Parties as additional insured parties under such policy or policies, which additional insured coverage shall be primary and noncontributory.

9.3 <u>Certificates</u>. Upon reasonable request, a Party shall deliver to the requesting Party certificates evidencing all insurance required to be carried under this Section in a form and content consistent with insurance industry standards.

9.4 <u>No Relief from Obligations</u>. The furnishing of insurance by a Party shall in no way relieve, limit, or be construed to relieve such Party of any responsibility or obligation whatsoever otherwise imposed by the Agreement or any law, rule, regulation, ordinance or other requirement.

10. **INDEMNITY.** Each Party shall indemnify and defend the other Parties, the other Party's Lot and other Party's affiliates, agents, officers, directors, servants and employees ("Representatives") of and from any and all liability, claims, liens, demands, taxes, fines, penalties, proceedings, actions, causes of action, losses, damages, costs and expenses (including reasonable legal fees, experts' fees and expenses of litigation) of every kind and nature arising out of the use by the indemnifying Party, by any of its Permittees or by any of its unit owners or their guests, invitees or licensees of any Easement hereunder or otherwise resulting from their activities pursuant to this Agreement, including, without limitation, injury or death of any person or damage to property of any kind. This indemnity is not intended to cover claims by a Party against another Party asserting a breach of this Agreement, except as may pertain to personal injury, death or damage to property. This indemnity will survive and continue in effect after the termination of this Agreement and/or the termination of any Easement granted herein. Notwithstanding the foregoing, this indemnity shall not apply if the Loss(es) involves the gross negligence or intentional misconduct of the indemnified Party or its Representatives or unit owners or involves a breach of the terms of this Agreement by the indemnified Party.

11. <u>**REMEDIES.**</u> If a Party fails to perform in accordance with the terms, covenants and conditions of this Agreement or is otherwise in default of any of the terms of this Agreement, then the non-defaulting Party, after giving ten (10) days' prior written notice to the defaulting Party of the alleged default, and upon the defaulting Party's failure to cure within said ten-day period (or within thirty (30) days if the cure is not susceptible to cure within such ten (10) day period,

provided that the defaulting Party commences to remedy such default within such ten (10) day period and proceeds with reasonable diligence thereafter to cure such default), shall have the option to pursue all remedies available at law or in equity, including, without limitation, the recovery of all damages and, where appropriate, injunctive or other equitable relief to prevent the occurrence or continuance of any default hereunder or to enforce the performance and observance of the terms of this Agreement. Notwithstanding the foregoing, no Party shall have a right of termination of this Agreement or of any Easement granted hereunder. All remedies shall be cumulative with and in addition to, and not exclusive of, one another; any and all remedies may be pursued by the nondefaulting party either successively or concurrently; and the exercise of any one remedy shall not be construed as or constitute a bar to the exercise of any other remedy. Without limiting the generality of the foregoing, each Party to this Agreement shall be entitled to enforce the grants, conditions, restrictions, covenants and other provisions contained in this Agreement by seeking specific performance of this Agreement by the other Party, or seeking any other injunction or restraining order to prevent a violation or attempted violation of the Agreement by bringing an action for damages without the necessity of making an election. Except in cases of indemnification obligations arising hereunder with respect to third-party claims and damages, the Parties release each other from, and waive all rights to claims against the other for, special, incidental, consequential, indirect, exemplary or punitive damages but only to the extent such damages are not covered by any insurance that the Party causing such damages holds or is required to hold under this Agreement.

12. <u>DISPUTE RESOLUTION</u>.

If a dispute arises under this Agreement, and the particular Parties in dispute (the 12.1 "Dispute Parties") do not agree as to the resolution of such dispute, then after written notice by any of the Dispute Parties (the "Commencement Notice") and a fifteen (15) day negotiation period, the dispute shall be referred to mediation for expeditious resolution. In such event, the Dispute Parties shall use their best efforts to select a single mediator who is mutually satisfactory to both Parties. If the Dispute Parties cannot promptly agree on a mutually satisfactory mediator, the parties shall request the Judicial Arbiter Group of Denver, Colorado, or a similar alternative dispute resolution provider agreed to by the Parties to select the mediator. Such mediation shall be conducted in Steamboat Springs, Colorado within forty-five (45) days following service of the Commencement Notice and in accordance with mediation practices customarily followed in Colorado at the time of the dispute. The costs of such mediation shall be borne by the Dispute Parties equally. If no Dispute Party requests mediation pursuant to this Section, or, if mediation is requested and such mediation does not produce a satisfactory resolution of the dispute within thirty (30) days of the mediation, then each Party shall have the right to seek arbitration. Any applicable statutes of limitation or repose shall be tolled during the period between the service of the Commencement Notice and thirty (30) days after the mediation.

12.2 Any controversy or claim arising out of or relating to this Agreement, including, without limitation, any breach or interpretation hereof, shall be settled by binding arbitration with the Judicial Arbiter Group of Denver, Colorado, or a similar alternative dispute resolution provider agreed to by the Dispute Parties, in accordance with the construction rules and regulations of the American Arbitration Association. The arbitrator selected or appointed must be an attorney with substantial experience in real estate and construction-related matters. In the event that the Dispute Parties are unable to mutually agree to an arbitrator within thirty (30) days after a request for

arbitration, then such arbitrator may be appointed by any judge of a competent state court having jurisdiction in Routt County, Colorado upon application of any of the Dispute Parties. Any such arbitrator shall have the power to grant any relief as permitted under this Agreement, including, without limitation, equitable relief as just and appropriate. Any award in such arbitration shall be binding and may be entered as a judgment by any court having jurisdiction thereof. A Dispute Party may request any accelerated or emergency procedures available under the foregoing procedures. The fees and costs of the neutral arbitrator shall be shared equally by the Dispute Parties. The arbitrator's award shall include recovery by the prevailing Dispute Party of all of its reasonable costs of arbitration, including its reasonable attorneys' fees.

12.3 Notwithstanding anything in this Agreement to the contrary, a Dispute Party also may, without waiving any other remedy, seek from any court having jurisdiction (i) any interim or provisional relief that is necessary to protect the rights or property of that Party pending the mediator's or arbitrator's appointment or the conclusion of mediation or decision on the merits of the dispute, or (ii) any equitable relief including, but not limited to, injunctive relief.

12.4 This Section shall not alter any date for performance in this Agreement, unless otherwise agreed.

13. SUCCESSORS IN INTEREST; RELEASE. The terms of this Agreement shall touch and concern and run with the land as a benefit and burden to the ownership of the Property and of each of the Lots and shall bind and burden the successors and assignees of such ownership. If the Amble Lot is made subject to a declaration recorded in the Records creating a common interest community as provided by the Colorado Common Interest Ownership Act set forth in Article 33.3, Title 38, Colorado Revised Statutes ("CCOIA"), then for all purposes of this Agreement, the unit owners association or similar entity formed pursuant to such declaration (the "Amble Owners Association") shall be substituted in all respects instead of and to the exclusion of Amble and Amble shall be released of any further obligations or liability under this Agreement. Upon such substitution, the Executive Board of the Amble Owners Association shall be empowered in all matters to act on behalf of the Amble Owners Association in the administration of this Agreement. It is agreed that the Grand Association and, when formed, the Amble Owners Association shall have the burdens and benefits imposed and afforded under this Agreement with respect to the Grand Lot and the Amble Lot, respectively, and no individual unit owner within such common interest community shall have any of such burdens or benefits other than a right of access through applicable Easement Areas benefiting a Party by its unit owners and their guests, invitees and licensees. Further, each Party shall be liable for any default or failure to comply herewith which arises or accrues during the period of time in which such Party holds an interest in the applicable Lot, but such Party shall not be liable for any default or failure to comply herewith which arises or accrues after such Party shall have conveyed or otherwise transferred its entire interest in the applicable Lot and shall be fully released upon such conveyance or transfer.

14. <u>AUTHORITY</u>. It is acknowledged and agreed that all Easements herein granted are nonexclusive and, accordingly, not considered a conveyance of common elements under the provisions of CCOIA requiring the vote of individual unit owners. The Executive Board of the Grand Association and, when formed, the Executive Board of the Amble Owners Association shall have all authority and power to act on behalf of each such owner association and its members with respect to this Agreement, including, without limitation, all decisions under Section 4.1(c) above and any proposed amendment to this Agreement.

15. LEGAL FEES. In the event any arbitration or other legal proceeding arises out of this Agreement, it is the intent of the Parties that the prevailing Party (or substantially prevailing Party) shall be awarded all of its reasonable costs and expenses incurred in connection therewith, including reasonable legal fees, and any arbitrator or presiding court will enter this award against the other Party. Should the application of this provision in any circumstance prove to conflict with any other provision of this Agreement for the allocation of legal fees, this provision shall be controlling.

16. <u>GOOD FAITH</u>. The Parties shall cooperate in good faith to carry out the transactions contemplated in this Agreement and to achieve the purposes set forth herein. The covenant of good faith and fair dealing shall apply to all matters under this Agreement.

17. NO REPRESENTATION MADE. It is acknowledged and agreed that no Party has made any representation or warranty as related to the physical aspects and condition of the Property, and no Party has relied on and hereby waives any representation, statement or warranty, other than as expressly contained in this Agreement, and the Easements granted herein are being AS IS, WITH ALL FAULTS.

18. <u>NO PUBLIC DEDICATION; NO THIRD PARTY BENEFICIARIES</u>. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any property or interest therein to or for the general public or for any public purpose whatsoever. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a Party to this Agreement.

19. SEVERABILITY; NO MERGER. If any term, covenant, condition or provision of this Agreement shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, it being the intent of the parties that this Agreement and each provision hereof shall be enforceable and enforced to the fullest extent permitted by law. The Easements created hereunder shall not merge with any fee interest owned by a Party either presently or in the future but shall remain separate and distinct property rights, unless and until terminated as provided herein or otherwise relinquished in accordance with law.

20. <u>ENTIRE AGREEMENT</u>. This Agreement and any other contracts or agreements specifically referred to herein represent the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior or extrinsic agreements, understandings or negotiations shall be deemed merged herein. All Exhibits referred to in this Agreement as attached hereto are hereby deemed incorporated into this Agreement and made a part hereof.

21. <u>**RULES OF CONSTRUCTION.</u>** The headings which appear in this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the paragraphs in which they appear. References herein to the singular shall include the plural, and to the plural shall include the singular, and any reference to any one gender shall be deemed to include and be applicable to all genders.</u>

22. <u>**GOVERNING LAW.**</u> This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

23. <u>MODIFICATION AND WAIVER</u>. No purported modification of the terms of this Agreement, or purported waiver by any party of any of its rights and interests hereunder, shall be binding unless and except to the extent specifically set forth in a written instrument executed by the Party against whom enforcement of the purported modification or waiver is sought. This Agreement may be amended by the written agreement of the Parties and recorded in the Records.

24. <u>COUNTERPARTS; SIGNATURES</u>. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument and agreement. Signatures that are electronically transmitted shall be bind as originals.

25. <u>NOTICES</u>. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (a) hand delivery, (b) one (1) business day after being deposited with a reliable overnight courier service, with receipt acknowledgment requested, (c) upon receipt if transmitted by email, or (d) three (3) business days after deposit if deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

IF TO SRDC:	Steamboat Resort Development Company Attn: Krista Sprenger, President and Chief Development Officer 3501 Wazee Street Denver, CO 80215
WITH A COPY TO:	Alterra Mountain Company Attention: Chief Legal Officer 3501 Wazee Street Denver, CO 80215
IF TO GRAND ASSOCIATION:	Board President Steamboat Grand Resort Hotel Condominium Association, Inc. 2300 Mount Werner Circle Steamboat Springs, CO 80487
WITH A COPY TO:	Winzenburg, Leff, Purvis & Payne, LLP 8020 Shaffer Parkway, Suite 300 Littleton, CO 80127

or such other address as either Party may from time to time specify in writing to the other Party.

26. <u>**RECORDING.**</u> This Agreement may be recorded in the real property records of Routt County, Colorado.

27. **FORCE MAJEURE**. No Party shall be liable to another Party for damages for any failure or delay in performance under this Agreement caused directly or indirectly by any person, authority, event or circumstance beyond such party's reasonable control and without such Party's fault or negligence, including without limitation, fire, casualty, strike, lockout, government control, shortages, pandemic or act of God, in each case despite the diligent efforts of the obligated Party, and performance shall be extended for a period of time equal to the length of any such permissible delay or delays.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

SRDC:

STEAMBOAT RESORT DEVELOPMENT COMPANY, a Delaware corporation

Ву:	
Name:	

Title:			

COUNTY OF ROUTT)
) ss.
STATE OF COLORADO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by ______ as _____ of Steamboat Resort Development Company, a Delaware corporation.

WITNESS my hand and seal.

My commission expires: _____

Notary Public

[SEAL]

[SIGNATURE BLOCKS CONTINUED ON FOLLOWING PAGE]

GRAND ASSOCIATION:

THE STEAMBOAT GRAND RESORT HOTEL CONDOMINIUM ASSOCIATION, INC., a Colorado nonprofit corporation

By:		
Name:		
Title:		

COUNTY OF ROUTT)
) ss.
STATE OF COLORADO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____ as _____ of The Steamboat Grand Resort Hotel Condominium Association, Inc., a Colorado nonprofit corporation.

WITNESS my hand and seal.

My commission expires: _____

Notary Public

[SEAL]

EXHIBIT A

Preliminary Plat

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EXHIBIT C

Landscape Plan

