

ALAN SPRIGGS, SUMMIT CO RECORDER  
 2006 JUN 29 15:45 PM FEE \$79.00 BY BW  
 REQUEST: US TITLE - PARK CITY  
*Electronically Recorded by Simplifile*

When recorded, return to:

TESCH LAW OFFICES, P.C.  
314 Main Street, Suite 200  
P.O. Box 3390  
Park City, Utah 84060-3390

### PARTIAL ASSIGNMENT OF DECLARANT'S RIGHTS

THIS PARTIAL ASSIGNMENT OF DECLARANT'S RIGHTS ("Assignment") is made as of this 28<sup>th</sup> day of June, 2006, by and between PARK WEST ASSOCIATES, LLC, a Utah limited liability company ("Original Declarant") and DUVAL DEVELOPMENT PARTNERS I, LLC, a Delaware limited liability company authorized to transact business in Utah (Assignee of DuVal Development LLC) ("Successor Declarant") and its successors and assigns.

#### RECITALS

A. Original Declarant has recorded that certain Master Declaration, more particularly described in Section 1(a) below, subjecting certain real property to certain covenants, conditions, easements and restrictions, as such property is further described in Exhibit "A" attached hereto and incorporated herein by this reference ("Frostwood").

B. Concurrently with this Assignment, Original Declarant is conveying to Successor Declarant certain real property within Frostwood known as Parcels F2-A and F3-B (the "Successor Declarant Property"), as shown on the Master Development Plat of Frostwood, a planned community (the "Master Plat"), pursuant to that certain Real Estate Purchase and Sale Agreement dated February 7, 2006, including Addendums One, Two, and Three and all Exhibits attached thereto (the "REPC").

C.

D. Section 21.1 of the Master Declaration provides that: "any or all of the special rights and obligations of the Declarant or any Declarant Affiliate (the "Declarant Rights") may be transferred to other Persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Master Declaration, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly Recorded."

E. Subject to Section 2 below, Original Declarant wishes to assign to Successor Declarant all rights it may have as Declarant under the Declaration solely with respect to the Successor Declarant Property, and Successor Declarant is willing to accept such assignment.

#### AGREEMENT

NOW THEREFORE, incorporating the Recitals and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed:

1. Assignment. Subject to Section 2 below, effective immediately, Original Declarant does hereby assign, transfer, convey and set over to Successor Declarant all of

Original Declarant's rights, title and interest as "Declarant", or in any related capacity, solely with respect to the Successor Declarant Property, and pro rata rights under the Frostwood Homeowner's Association and other related agreements in and to or arising out of the following documents and instruments:

a. The Master Declaration of Covenants, Conditions, Easements and Restrictions for Frostwood a Planned Community, recorded on September 18, 2000 as Entry No. 00573073, in Book 1334, at Page 160 of the Official Records of Summit County, Utah (the "Declaration");

b. The Articles of Incorporation and Bylaws of The Frostwood Master Owners Association, Inc., a Utah nonprofit corporation, and all amendments thereto; and

c. Any and all other documents, maps and instruments and any amendments relating to or in any way connected with the operation, organization, control or development of the real property described in the documents and instruments referred to above. The Declaration, the Articles of Incorporation, the Bylaws and all other project-related documents described in this Section 1 are collectively referenced as the "Project Documents".

2. Retention of Declarant Rights. Notwithstanding anything in this Assignment to the contrary, Original Declarant shall retain all rights, title and interest as "Declarant" under the Master Declaration except with respect to the Successor Declarant Property as expressly provided in Section 1 above. In relation to accomplishing the Seller's Tasks prior to the Completion Date as extended, as such terms are defined in Addendum Three, including, but not limited to the negotiation and construction of the Frostwood Tramway, the Original Declarant reserves the exclusive right to grant any roadway easements or other easements benefiting any property owners in West Willow Draw. Successor Declarant agrees to exercise its voting rights relating to the above referenced easements and negotiations under the Declaration consistent with the votes of the Original Declarant.

3. Co-Declarants; Cooperation Between Original Declarant and Successor Declarant. Original Declarant and Successor Declarant acknowledge that in many respects under the Project Documents, the parties will be acting as co-Declarants. Original Declarant and Successor Declarant hereby agree to cooperate with each other with respect to the Declarant Rights to the extent that such Declarant Rights are shared by both Original Declarant and Successor Declarant. In addition, Original Declarant and Successor Declarant hereby agree to cooperate with each other with respect to the other party's developments within Frostwood, including, but not limited to facilitating any amendments to the Master Plat reasonably requested by either party and each party agrees that it will not do any act as "Declarant" that would materially adversely effect the other party's properties within Frostwood or the development thereof.

4. SPA Escrow and Closing. Successor Declarant acknowledges that Original Declarant is a party to those certain Escrow and Closing Instructions, dated as of April 3, 2006, as amended (the "Closing Instructions") and that Seller is a party to several of the documents referenced therein, including, but not limited to, that certain First Amendment to Master Declaration of Covenants, Conditions, Easements and Restrictions for Frostwood, a planned community (collectively the "Escrow Documents"). The Escrow Documents have been executed

by Original Declarant and are currently in escrow with U.S. Title Company of Utah. Successor Declarant has had an opportunity to review the Escrow Documents and hereby agrees to the form and content of the Escrow Documents. As may be necessary to complete the closing contemplated under the Closing Instructions, Successor Declarant may be required to be a signator to certain of the Escrow Documents as a result of its acquisition of the Successor Declarant Property. Successor Declarant agrees to execute any such Escrow Documents as may be necessary to complete the closing under the Closing Instructions. In addition, Successor Declarant acknowledges and agrees that Original Declarant shall have the right to negotiate with Summit County, or such other parties to the Closing Instructions, for the purpose of modifying the existing Escrow Documents or to enter into such new documents or agreements, as Original Declarant shall deem reasonably necessary, in relation to the closing under the Closing Instructions, provided, however, that any such modifications to the Escrow Documents or any such additional documents or agreements shall not materially adversely affect, as defined in Addendum Three of the REPC, Successor Declarant's development of the Successor Declarant Property.

5. Release of Bonds. Original Declarant shall have the exclusive right to negotiate the release of that certain Completion Bond dated October 30, 2000, in the amount of \$1,329,885.50 in favor of Private Residence Club Associates, LLC and Textron Financial Corporation and Finova Capital Corporation and that certain Bond for Installation of Improvements dated September 15, 2000, in the amount of \$2,197,273.55 in favor of Summit County (the "Bonds"). Successor Declarant shall not interfere with any such negotiations and hereby agrees to cooperate with Original Declarant in releasing the Bonds provided that Successor Declarant shall not be required to incur any costs or expenses associated therewith or incur any liability thereby and or participate in any resulting litigation.

6. Reservation of Litigation Rights. Successor Declarant hereby acknowledges and agrees that Original Declarant reserves unto itself the right to any claims Original Declarant may have now or in the future against ASC Utah, Inc., American Skiing Resort Properties, Inc., Wolf Mountain Resorts, L.L.C., or any other party, in relation to any Frostwood matters, including, but not limited to, any interference with Original Declarant's development within Frostwood or the implementation of The Canyons Specially Planned Area Zone District created pursuant to Summit County Ordinance No. 333-A, 334-A and amendments thereto (the "SPA") and the construction of the golf course within the SPA. Successor Declarant shall not interfere with any such claims and hereby agrees to cooperate with Original Declarant in adjudicating such claims provided that Successor Declarant shall not be required to incur any costs or expenses associated therewith or incur any liability thereby and or participate in any resulting litigation.

7. Water Rights; Disclosure of Water Fees. Original Declarant hereby represents and warrants that there are no deeds or stock certificates to be transferred to Successor Declarant pursuant to Section 14(b) of the REPC. Original Declarant shall transfer any water rights appurtenant to the Successor Declarant Property via the Special Warranty Deed from Original Declarant to Successor Declarant as provided in Section 14(a) of the REPC. Original Declarant hereby discloses to Successor Declarant that The Canyons Resort Village Association, Inc. (the "RVMA") has notified Original Declarant that all purchasers of land within Frostwood will have to pay a Summit water utilization fee to ASC Utah, Inc. prior to such owners Phase III approval. Original Original Declarant does not believe that the aforementioned fees are valid and agrees to cooperate with Successor Declarant to attempt to resolve any dispute relative to such fees.

8. Share of Costs. Original Declarant and Successor Declarant agree to amend and re-state Section 30 of the REPC as follows:

From and after Closing, Seller and Buyer shall be responsible for their proportionate shares of the common costs and expenses associated with the construction and development of the Frostwood property, including but not limited to the costs and expenses of operation of the ski lift, pursuant to the Final Tramway Agreement as defined in Addendum Three, the installation of the landscaping, and putting the overhead power under ground (as described in Sections 25-27 of the REPC). The terms of this Section shall survive the Closing.

9. Original Declarant's Representations. Original Declarant represents, warrants and covenants that it has the full power, right and authority to execute and deliver this Assignment and has not conveyed, transferred, or assigned the Project Documents, or any right or interest therein and has not executed any other document or instrument which might prevent or limit Successor Declarant from operating under the terms, conditions and provision of this Assignment.

10. Indemnification. Successor Declarant hereby indemnifies and holds Original Declarant harmless from any liability or obligation arising out of Successor Declarants' exercise of the Declarant's rights and duties under the Declaration subsequent to this Assignment. Successor Declarant, however, will not hold Original Declarant harmless from any liability or obligation that Original Declarant has arising out of the REPC, Addendum One, Addendum Two, and Addendum Three.

11. Successor Declarant Rights. As successor in interest to Original Declarant, Successor Declarant shall have the right, subject to the terms of this Assignment, to exercise all of the Declarant's rights with respect to the Successor Declarant Property as described in the Project Documents and as available under Utah law.

12. Additional Documents. Each party, upon request of the other party, shall execute and deliver such additional documents and do such other acts as may be reasonably necessary to fully implement the intent of this Assignment and to perfect and preserve the rights and interests of Original Declarant and Successor Declarant hereunder.


13. Successors and Assigns. This Assignment shall be binding upon Original Declarant and its successors and assigns and shall inure to the benefit of Successor Declarant and its successors and assigns; this Assignment, however, is not intended to confer any right or remedies upon any person other than the parties hereto and their successors and assigns.


14. Governing Law. This Assignment shall be governed by and construed according to the laws of the State of Utah.

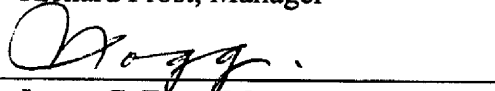
IN WITNESS WHEREOF, this Assignment has been executed by Original Declarant and Successor Declarant as of the day and year first above written.

**ORIGINAL DECLARANT:**

PARK WEST ASSOCIATES, LLC,  
a Utah limited liability company

By:   
Walter J. Plumb III, Manager

By:   
Richard Frost, Manager


By:   
James C. Fogg, Manager

**SUCCESSOR DECLARANT:**

**DuVal Development Partners I,  
a Delaware limited liability company,**

By: DuVal Development Partners I Holdings, LLC,  
a Delaware limited liability Company its sole member and manager:

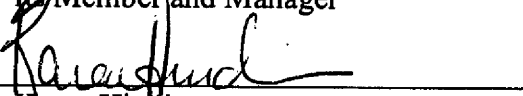
By: DAKOTA MOUNTAIN LODGE, LLC, a  
Utah limited liability company, Member and Manager

By:   
Lee M. Hindin  
Its Member and Manager

**ACKNOWLEDGED AND AGREED TO BY ("Assignor"):**

**DuVal Development, LLC a Utah limited liability company**

By:   
Lee Hindin  
Its Member and Manager

By:   
Karen Hindin  
Its Member

STATE OF UTAH )  
 : SS.  
COUNTY OF Salt Lake )

This instrument was acknowledged before me on this 28 day of June, 2006, by Walter J. Plumb, managing member of Park West Associates, LLC, a Utah limited liability company.



Michelle Sorensen  
NOTARY PUBLIC  
Residing at: Midvale, Utah  
My Commission Expires 11-22-09

STATE OF UTAH )  
 : SS.  
COUNTY OF Salt Lake )

This instrument was acknowledged before me on this 28 day of June, 2006, by Richard Frost, managing member of Park West Associates, LLC, a Utah limited liability company.



Michelle Sorensen  
NOTARY PUBLIC  
Residing at: Midvale, Utah  
My Commission Expires 11-22-09

STATE OF UTAH )  
 : SS.  
COUNTY OF Salt Lake )

This instrument was acknowledged before me on this 28 day of June, 2006, by James C. Fogg, managing member of Park West Associates, LLC, a Utah limited liability company.



Michelle Sorensen  
NOTARY PUBLIC  
Residing at: Midvale, Utah  
My Commission Expires 11-22-09

STATE OF UTAH )  
 ) : SS.  
COUNTY OF Salt Lake )

This instrument was acknowledged before me on this 28 day of June, 2006, by La Hinda Manager of DuVal Development Partners I, LLC, a Utah limited liability company.



Michelle Sorensen  
NOTARY PUBLIC  
Residing at: Midvale Utah  
My Commission Expires 11-22-09

**EXHIBIT "A"**

(Legal Description of the Property)

All of that certain real property situated in the County of Summit, State of Utah, as shown on the official Master Development Plat of Frostwood, a Planned Community, recorded as of the even date herewith in the Official Records of Summit County, Utah Entry No. 573023 and being more particularly described as follows:

Beginning at the Southwest corner of Section 31, Township 1 South, Range 4 East, Salt Lake Base & Meridian; thence along the West line of said Section 31, North 00°00'55" East 2103.17 feet to the True point of beginning; (basis of bearing being North 00°00'55" East 2639.29 feet between the Southwest Corner of said Section 31 and the West Quarter Corner of said Section 31); thence North 89°27'00" West 1337.92 feet to the West line of the Northeast quarter of the Southeast quarter of Section 36, Township 1 South, Range 3 East, Salt Lake Base & Meridian; thence along said West line North 00°06'06" West 540.19 feet to the Northwest corner of the Northeast quarter of the Southeast quarter of said Section 36; thence North 00°06'36" West 1354.90 feet to the Northwest corner of the Southeast quarter of the Northeast quarter of said Section 36; thence along the North line of the Southeast quarter of the Northeast quarter of said Section 36, South 88°57'12" East 1341.75 feet to the boundary line of Willow Draw Plat "B" Subdivision on the file and of record in the office of the Summit County Recorder; Thence along said Willow Draw Plat "B" Subdivision boundary South 00°00'06" East 74.06 feet; thence South 89°30'00" East 263.88 feet; thence South 61°04'36" East 187.87 feet; thence South 41°58'44" West 60.00 feet; thence South 68°49'08" East 210.07 feet to the Westerly line of the Willow Draw Plat "E" Subdivision on file and of record in the office of the Summit County Recorder; thence leaving said Willow Draw Plat "B" and continuing along said Willow Draw Plat "E" and along Willow Draw Plat "F" on file and of record in the office of the Summit County Recorder, South 1240.08 feet; thence leaving said Willow Draw Plat "F" Subdivision West 584.06 feet to the West line of Section 31, Township 1 South, Range 4 East, Salt Lake Base & Meridian; thence along said West line of Section 31 South 00°00'55" West 356.61 feet to the point of beginning.

Containing 76.73 acres more or less.

FRSTW - Lot #  
CRPCC - Unit #  
CRPCC - 2  
FWSC - Lot #