

**PRESERVATION OF  
ASSOCIATION MAINTENANCE RESPONSIBILITIES**

**(A-Lift Neighborhood, Copper Mountain Resort)**

This Agreement for the Preservation of Association Maintenance Responsibilities (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the A-Lift Community Association, Inc., a Colorado non-profit corporation (the “Association”) and the Board of County Commissioners of Summit County, Colorado (herein the “County”).

RECITALS

**WHEREAS**, pursuant to Sections 8108.05 and 3508 of the Summit County Land Use and Development Code (“Code”), during any subdivision review provisions shall be made for the maintenance of common areas and improvements; and

**WHEREAS**, Section 3508 of the Code specifically requires that the developer shall provide for the continued maintenance and repair of common areas, driveways, parking areas, and private roads, through the formation of an owners association, and further mandates that no final plat shall be approved unless the County determines that the appropriate covenants pertaining to the subdivision contain adequate provisions for maintenance and repair of common areas; and

**WHEREAS**, the Summit County Government desires to provide for the continued maintenance of all such common areas, as well as for maintenance of related improvements; and

**WHEREAS**, the Association is, pursuant to the terms and provisions of the Planned Community Declaration for A-Lift Community, recorded in the records of Summit County, Colorado, on \_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_ (the “Declaration”), obligated to maintain the common areas, road, driveways, and other improvements pursuant to the [General Subdivision Exemption] Plat recorded in the records of Summit County, Colorado, on \_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_ (the “Plat”); and

**WHEREAS**, the County has expressed concerns regarding the potential for the Declaration to be modified in the future, in a manner that could potentially jeopardize the nature or level of maintenance of the same; and

**WHEREAS**, the Association is or will become the owner of the “Road Tract” and will be responsible for the maintenance of certain other roadway easements, as delineated and depicted on the Plat and described in the Declaration; and

**WHEREAS**, the County approved the Plat subject to certain terms and conditions;  
and

**WHEREAS**, as one such condition of Plat approval, the County has required the execution of this Agreement, in lieu of the County acting as a party to the Declaration, in order to ensure that such maintenance persists in a proper fashion.

**NOW, THEREFORE**, in consideration of the approval of the Plat, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Association agree as follows:

1. Adequacy of Current Declaration Language. The County has indicated that the Declaration contains adequate language addressing the maintenance responsibilities of the Association as set forth in Article 9, Section 11.11, Section 12.06, and Section 12.07 of the Declaration (collectively, the “Declaration Maintenance Provisions”), which obligates the Association to maintain the Common Elements and provides the Association with the right (including the right to recoup costs) to maintain any exterior portion of any Site in the event the Owner thereof fails to do so in accordance with the requirements of the Declaration.

The County has further determined that such provisions in the Declaration not only address the responsibility for maintenance, but also address the appropriate level or standards of maintenance required for the above referenced elements.

2. Provision for Continued Maintenance in Accordance with Existing Declaration. Notwithstanding the foregoing, in order to ensure that such maintenance responsibilities persist pursuant to the scope and standards set forth in the existing Declaration, the Association hereby agrees that no modifications to the Declaration Maintenance Provisions of the Declaration, referenced above in paragraph 1 of this Agreement, shall be adopted without the advance written notice to and express consent of the Summit County Government. This provision is by its terms expressly limited to the Declaration Maintenance Provisions as articulated herein and shall not directly or indirectly apply to any other provisions in the Declaration.

3. Good Faith Compliance with Declaration Responsibilities for Maintenance. The Association agrees to bind itself and all successors, heirs and assigns to make good faith efforts to reasonably comply with the maintenance responsibilities set forth in the Declaration Maintenance Provisions of the Declaration. Any failure to make such good faith efforts may be deemed a violation of this Agreement subject to enforcement by the County as provided for herein. In determining if good faith efforts have been made, the County shall affirmatively consider any factors that the Association presents as justification for any such alleged failure, including, without limitation, delays occasioned by weather, necessity for investigations and/or third-party reports, and notice and cure periods under the Declaration.

4. Default; Notice. In the event the County determines that the Association is in default hereunder, the County shall notify the Association of such default in writing. Within thirty (30) days following receipt of such notice the Association shall commence correcting such default and shall diligently pursue completion of such correction thereafter, provided that in the event a default is not reasonably capable of being corrected within ninety (90) days, the Association shall contact the County staff and shall develop a timetable agreeable to the staff to correct the default and thereafter successfully correct the default with due diligence. If the Association fails or refuses to correct any default as provided above, the County may enforce this Agreement as hereafter provided.

5. Equitable Relief. The Association agrees that in the event of the Association's default under or non-compliance with the terms of this Agreement, the County shall have the right of specific performance of this Agreement and the right to obtain from any court of competent jurisdiction a temporary restraining order, preliminary injunction and permanent injunction to obtain such performance. Any equitable relief provided for in this paragraph may be sought singly or in combination with such legal remedies as the County may be entitled to, either pursuant to the provisions of this Agreement or under the laws of the State of Colorado.

6. County Authority to Enforce. The restrictions, covenants and limitations created herein are for the benefit of the County which is given the sole power to enforce this Agreement in the manner herein provided.

7. Code Enforcement Authority. The parties hereto expressly acknowledge that neither the execution of this Agreement, nor the exercise of any rights or enforcement authority provided for herein, shall in any manner abrogate from the right of the County to enforce any applicable provision of state or local law or regulation, including without limitation any Code enforcement action in accordance with C.R.S. §30-28-124 & 30-28-124.5.

8. No Waiver/Latches. The failure of either party hereto to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof. No such action or inaction shall serve as the basis for any claim of waiver or latches by either party.

9. Modification of Agreement. The restrictions, covenants and limitations created herein may be modified or amended with the written consent of both the Association and the County. No such modification or amendment shall be effective until the proper written instrument shall be executed by duly authorized representatives of the parties hereto and recorded in the office of the Clerk and Recorder of Summit County, Colorado.

10. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter of this Agreement, and supersedes any prior agreement or understanding relating thereto.

11. Severability. In case one or more of the provisions contained in this Agreement or any application hereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement and the application thereof shall not in any way be affected or impaired thereby.

12. Notices. Except as otherwise provided, all notices provided for or required under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given when actually received, five (5) days after mailed, postage prepaid, certified, return receipt requested, or one business day after deposit with a private courier or overnight delivery service, if such courier or service obtains a written acknowledgment of receipt, addressed to the parties hereto at their addresses appearing on the signature pages. Each party, by written notice to the other party, may specify any other address for the receipt of such instruments or communications.

13. Jurisdiction and Venue. The laws of the State of Colorado shall govern the interpretation and performance of this Agreement. Venue shall only be proper in Summit County, Colorado.

14. Recording And Filing; Agreement Running With The Land. This Agreement shall be placed of record in the real property records of Summit County Colorado, and, except as otherwise provided herein, the benefits and burdens contained herein shall run with the land and shall bind and inure to, the Association and its successors and assigns; as well as to the County, its successors and assigns.

15. No Benefit to Third Parties. This Agreement does not and shall not be deemed to confer upon or grant to any third party any rights to claim damages or to bring any lawsuit, action or other proceedings against any of the parties hereto because of any breach hereof, or because of any terms, covenants, agreements or conditions contained herein. Other than as specified herein, this Agreement is not intended to impose any legal or other responsibility on the parties.

16. Governmental Immunity. The County does not intend to waive, by any provision of this Agreement, the monetary limits or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as amended from time to time.

17. Defined Terms. Any initially capitalized terms used but not defined in this Agreement shall have the meanings given to such terms in the Declaration.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement for the Preservation of Association Maintenance Responsibilities as of the date first written above.

INC.

A-LIFT COMMUNITY ASSOCIATION,  
a Colorado non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address:  
c/o Continuum Partners, LLC  
1881 16<sup>th</sup> Street, Suite 500  
Denver, Colorado 80202

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF DENVER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of A-Lift Community Association, Inc., a Colorado non-profit corporation.

Witness my hand and official seal.  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

SUMMIT COUNTY, COLORADO

ATTEST:

By: \_\_\_\_\_  
Clerk and Recorder \_\_\_\_\_, Chair

Board of County Commissioners

Address:  
P.O. Box 68  
Breckenridge, CO 80424

## SUBDIVISION IMPROVEMENTS AGREEMENT

PLN \_\_\_\_\_

This Subdivision Improvements Agreement (Agreement) is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between CONTINUED COPPER, LLC, a Colorado limited liability company (Owner/Developer), whose address is c/o Continuum Partners, LLC, 1881 16<sup>th</sup> Street, Suite 500, Denver, Colorado 80202, and the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY (County), whose address is P.O. Box 68, Breckenridge, Colorado 80424, Attention: County Engineer.

### **I. GENERAL**

1.1 Purpose. The purpose of this Agreement is to provide for the completion of the Subdivision Improvements as hereinafter defined, for the Subdivision, as hereinafter defined.

1.2 Recitals.

(a) Owner/Developer is the owner and subdivider of the Subdivision and has presented a final plat of the Subdivision to the County for approval.

(b) The subdivision statutes of the State of Colorado, Section 30-28-137, C.R.S., and the Subdivision Resolution of the County authorize the execution of a subdivision improvements agreement between the County and Owner/Developer whereby Owner/Developer agrees to construct any required public improvements for the Subdivision and to provide security for completion of the Subdivision Improvements.

(c) This Agreement will provide for the completion of the Subdivision Improvements within the Subdivision and will protect the County from the cost of completing the Subdivision Improvements.

(d) This Agreement is not executed for the benefit of third parties such as, but not limited to, materialmen, laborers or others providing work, services or material for the Subdivision Improvements or lot or home buyers in the Subdivision.

1.3 Subdivision. The "Subdivision" shall mean A-Lift Neighborhood, a Resubdivision of Lot 2B, Copper Mountain East Neighborhood Subdivision, Summit County, Colorado, the final plat for which has been presented to the County and is expected to be approved by the County at the time of, and in connection with, approval of this Agreement by the County.

1.4 Subdivision Improvements. The "Subdivision Improvements" shall mean the street, drainage and other improvements listed on attached Exhibit A, and improvements described in the Plans, as hereinafter defined. Exhibit A includes estimated costs and completion dates for the Subdivision Improvements.

1.5 Plans. The "Plans" shall mean the Subdivision Improvement Plans approved by the County Engineer and the Board of County Commissioners, which Plans shall include grading, drainage, erosion control, revegetation, road improvement and composite utility plans.

### **II. CONSTRUCTION OF SUBDIVISION IMPROVEMENTS.**

2.1 Agreement to Construct. Subject to and in accordance with the terms and provisions of this Agreement, Owner/Developer agrees to cause the Subdivision Improvements to be constructed and completed at its expense, in accordance with the Plans.

2.2 Final Plat Approval as Condition of Construction. Owner/Developer shall not commence construction and installation of the Subdivision Improvements until the County has given its approval to the final plat of the Subdivision.

2.3. Recordation of Final Plat. This Agreement must be entered into prior to recordation of the final plat in Summit County. The final plat shall not be recorded until either the Subdivision Improvements have been satisfactorily completed or until the receipt by the County of security in a form acceptable to the County for 115% of the estimated construction costs of said Subdivision Improvements as identified on Exhibit A of this Agreement.

2.4 Completion Date. Subdivision Improvements shall be completed within the time limits set forth on the attached Exhibit A ("Completion Date"). The Completion Date may only be extended for good cause, as determined by and approved by the County Planning Department in writing. Good cause for extension of the Completion Date will, without limitation, be deemed to exist if Owner/Developer is delayed in completing the Subdivision Improvements for a reason beyond the reasonable control of Owner/Developer, which Owner/Developer, despite the use of good faith and diligent efforts, is unable to overcome, including any delay caused by adverse weather conditions that do not allow for necessary work to be completed, fire, avalanche, land slide, flood, civil disturbance, act of a public enemy, terrorist acts, war, riot, sabotage, blockage, embargo, earthquake or other natural disaster, or a labor or material shortage not caused by Owner/Developer.

2.5 Construction Standards. The Subdivision Improvements, including water and sanitary sewer, shall be constructed in accordance with the Plans approved by the County Engineer and/or the applicable District, to the extent not otherwise provided in the Plans, in accordance with the County's ordinances, resolutions, and regulations.

2.6 Warranties of Owner/Developer. Owner/Developer warrants that the Subdivision Improvements will be installed in a good and workmanlike manner and in substantial compliance with the Plans and requirements of this Agreement and shall be substantially free of defects in materials and workmanship. These warranties of Owner/Developer shall remain in force and effect as to any completed Subdivision Improvements until the lapse of two years after Preliminary Acceptance of the Subdivision Improvements as hereinafter provided in this Agreement, except as specifically provided below with respect to landscaping on steep slopes and wetlands mitigation work.

2.7 Title of Subdivision Improvements. All Subdivision Improvements shall be constructed within streets or easements or as otherwise shown on the Plans dedicated to the County in the final plat of the Subdivision or conveyed by other recorded instruments at the time the final plat is recorded. Subdivision Improvements for roads shall be in accordance with the Summit County Road and Bridge Design and Construction Standards. Title to the property shown on the final plat shall be vested, at the time the final plat is presented to the County for approval, in Owner/Developer and any other parties executing the final plat and shall be certified by a title company's or attorney's certificate shown on the final plat.

### **III. SECURITY FOR COMPLETION.**

3.1 Deposit of Security for Owner/Developer Obligations. To secure the performance of the obligations of Owner/Developer under this Agreement to complete the Subdivision Improvements for the Subdivision, Owner/Developer shall deposit with the County an irrevocable letter of credit with provisions as hereinafter set forth, or a cash deposit or other financial guarantee deemed adequate by the County ("Security"). The Security shall be deposited after approval of the final plat for the Subdivision and shall be 115% of the estimated cost to construct the Subdivision Improvements which the Owner/Developer desires to construct. No conveyance or transfer of title to any lot(s), tract(s) of land within the Subdivision with uncompleted Subdivision Improvements shall be made, nor any building permit issued, unless the approved Security has been deposited with the County or unless all public improvements have been completed and Security in the amount of 115% of the estimated cost of said improvements has been deposited with the County as provided in Section 3.2 below. The Security shall be retained by the County until satisfaction of Owner/Developer's obligations under this Agreement or earlier release by the County.

3.2 Provisions for Letter of Credit. If an irrevocable letter of credit is provided as Security, such letter for credit shall be in an amount equal to 115% of the estimated cost to construct the Subdivision Improvements. The letter of credit shall be issued from [insert bank name], or such other bank as shall be approved by the County; shall have an expiration date no earlier than two years after its date of issue; and shall provide that it may be drawn upon from time to time by the County in such amount or amounts as the County may designate as justified, such amounts not to exceed, in the aggregate, the amount of the letter of credit. Draws under any such letter of credit shall be by a certificate signed by the Chairman or Acting Chairman of the Board of County Commissioners of Summit County stating that the County is entitled to draw the specified amount under the terms of this Agreement.

The right of the County to draw on any letter of credit shall be as provided in, and subject to, the provisions of Sections 5.1 through 5.5 of this Agreement.

3.3 Recording of Agreement. After approval of the final plat of the Subdivision by the County, this Agreement may, at the option and expense of the County, be recorded in the office of the Clerk and Recorder of Summit County. Upon Final Acceptance of all of the Subdivision Improvements by the County, the County shall deliver to Owner/Developer a recordable executed document which shall release all property within the Subdivision from any further effect of this Agreement.

#### **IV. ACCEPTANCE OF IMPROVEMENTS.**

4.1 Preliminary/Partial Acceptance. Upon the satisfactory completion of any of the specific Subdivision Improvements listed in Exhibit A, Owner/Developer shall be entitled to obtain preliminary acceptance thereof by the County ("Preliminary Acceptance") in accordance with the following provisions:

a) Upon such partial completion, Owner/Developer shall give written notice to the County Engineer requesting an inspection of the completed Subdivision Improvements ("Preliminary Inspection Notice"). The County shall inspect (or cause to be inspected by any applicable special district) the completed Subdivision Improvements within fourteen days after receipt by the County Engineer of the Preliminary Inspection Notice and, if the County Engineer (or any applicable special district) finds that the specified improvements have been completed substantially in accordance with the Plans and the other requirements of this Agreement, the County Engineer shall issue a letter evidencing Preliminary Acceptance within fourteen days after the inspection. The County's duty to inspect within fourteen days shall be extended, if necessary, due to weather or winter conditions causing inspection to be impractical or impossible.

b) If, upon inspection of the completed Subdivision Improvements, the County Engineer (or any applicable special district) finds that the specified improvements have not been completed substantially in accordance with the Plans and the other requirements of this Agreement, the County Engineer shall issue a written notice of noncompliance within fourteen days after the inspection specifying the respects in which the completed Subdivision Improvements have not been completed substantially in accordance with the Plans and the other requirements of this Agreement. Owner/Developer shall thereupon take such action as is necessary to cure any noncompliance and, upon curing the same, shall give a new Preliminary Inspection Notice to the County Engineer. Upon the giving of such a new Preliminary Inspection Notice, the foregoing provisions of this Section 4.1 shall apply.

c) Length of Guarantee Period for Landscaping and Wetlands Mitigation: In order to insure that successful, stable plant establishment is achieved, all landscape planting shall be subject to a guarantee period of two years from the date installation is completed, except, where planting, seeding, or revegetation is done on 3.33:1 or greater slopes, the initial guarantee period shall be three years. With respect to wetlands mitigation work, the guarantee period shall be five years.

4.2 Partial Release of Security. At the time of Preliminary Acceptance of any specific completed work items listed in Exhibit A, the County shall issue a written release of the Security and the plat restriction provided in Section 3.1. The amount to be released for the completed Subdivision Improvements shall be the total amount of the Security for each completed work item, provided sufficient amounts exist on deposit for completion of the remaining incomplete Subdivision Improvements. A "Warranty Security" in the amount of 15% of the total cost of such work items shall remain on deposit with the County until final acceptance of the completed Subdivision Improvements.

a) Prior to the release of any financial guarantee for landscape improvements, the County must determine that revegetation of the site is essentially free from weeds as identified by the County as invasive, noxious or otherwise nuisance weed species.

4.3 Maintenance Prior to Final Acceptance. Until Final Acceptance by the County (or any applicable special district) of the Subdivision Improvements, Owner/Developer shall, at Owner/Developer's expense, make all needed repairs or replacements to the Subdivision Improvements required on account of defects in materials or workmanship and shall be responsible for ordinary repairs and maintenance thereof including street sanding, snow removal, cleaning and sewer drainage.

4.4 Final Acceptance. Upon final completion of the Subdivision Improvements, Owner/Developer shall be entitled to obtain final acceptance thereof by the County ("Final Acceptance") in accordance with the following provisions.

a) No later than 60 days prior to the expiration of the warranty period for any phase of the Subdivision Improvements, Owner/Developer shall give written notice to the County Engineer requesting a final inspection of such phase of the Subdivision Improvements ("Final Inspection Notice"). The County shall inspect (or cause to be inspected by any applicable special district) such phase of the Subdivision Improvements within fourteen days after receipt by the County Engineer of the Final Inspection Notice and, if the County Engineer (or any applicable special district) finds that the phase of the Subdivision Improvements is substantially free of defects in materials and workmanship and has been repaired and maintained as and to the extent required in this Agreement, the County Engineer shall issue a letter evidencing Final Acceptance of the phase of the Subdivision Improvements. Again, the County may extend the inspection period due to weather and seasonal snow conditions.

b) If, upon final inspection of a phase of the Subdivision Improvements, the County Engineer (or any applicable special district) finds that the phase of the Subdivision Improvements is not substantially free of defects in materials and workmanship or has not been repaired and maintained as required under this Agreement, the County Engineer shall issue a written notice of noncompliance within fourteen days after the final inspection specifying the respects in which the Subdivision Improvements are not substantially free of defects in materials and workmanship or have not been repaired and maintained as required under this Agreement. Owner/Developer shall thereupon take such action as is necessary to cure any noncompliance and, upon curing the same, shall give a new Final Inspection Notice to the County Engineer. Upon the giving of such new Final Inspection Notice, the foregoing provisions of this Section 4.4 shall apply.

c) At the time of Final Acceptance of the Subdivision Improvements, Owner/Developer shall be entitled to a release of the Warranty Security for that phase. The release shall be in writing, signed by the County Engineer.

d) Upon Final Acceptance of the Subdivision Improvements, the County may, at its sole discretion, assume full responsibility for repairs and maintenance of the Subdivision Improvements as would normally be the responsibility of the County by law.

e) Prior to Final Acceptance of all of the Subdivision Improvements, "as constructed" engineering drawings shall be submitted to the County in accordance with County policy.

## **V. DEFAULTS AND REMEDIES**

5.1 Default by Owner/Developer. A default by Owner/Developer shall exist after notice and an opportunity to cure as hereinafter provided if (a) Owner/Developer fails to construct the Subdivision Improvements in substantial compliance with the Plans and the other requirements of this Agreement; (b) Owner/Developer fails to complete construction of the Subdivision Improvements by the Completion Date provided herein, as it may be extended pursuant to the terms of this Agreement; (c) Owner/Developer fails to cure any noncompliance specified in any written notice of noncompliance within a reasonable time after receipt of the notice of noncompliance; (d) Owner/Developer otherwise breaches or fails to comply with any obligation of Owner/Developer under this Agreement; (e) Owner/Developer becomes insolvent, files a voluntary petition in bankruptcy, is adjudicated a bankrupt pursuant to an involuntary petition in bankruptcy, or a receiver is appointed for Owner/Developer; (f) Owner/Developer fails to maintain in full force and effect the Security in the amounts specified in this Agreement. Notice of default as to the Subdivision Improvements must be given prior to expiration of the warranty period for such Subdivision Improvements as hereinafter provided.

5.2 Notice of Default. In the event a default by Owner/Developer is believed to exist, the County shall give written notice thereof to Owner/Developer, specifying the default and specifying a reasonable time within which Owner/Developer shall be required to cure the default.

5.3 Remedies of County. If Owner/Developer fails to cure such default within the reasonable time specified by the County, the County shall be entitled to (a) make a draw on the Security for the amount reasonably

determined by the County to be necessary to cure the default in a manner consistent with the approved Plans up to the amount of the Security; and (b) sue the Owner/Developer for recovery of any amount necessary to cure the default over and above the amount available under the Security, including court costs, witness fees and reasonable attorneys' fees; and (c) any other remedy at law or equity.

5.4 County Right to Complete Subdivision Improvements. The right of the County to complete or cause completion of the Subdivision Improvements as herein above provided shall include the following rights. The County shall have the right to complete the Subdivision Improvements, in substantial accordance with the Plans, the estimated construction costs, and other requirements of this Agreement, either itself or by contract with a third party or by assignment of its rights to a successor Owner/Developer who has acquired the Subdivision by purchase, foreclosure, or otherwise. The County, any contractor under the County, or any such successor Owner/Developer, their agents, subcontractors and employees shall have the non-exclusive right to enter upon the streets and easements shown on the final plat of the Subdivision and upon any part of the Subdivision owned by Owner/Developer for the purpose of completing the Subdivision Improvements.

5.5 Use of Funds by County. Any funds obtained by County as Security, or recovered by the County from Owner/Developer by suit or otherwise, shall be used by the County to pay the costs of completion of the Subdivision Improvements substantially in accordance with the Plans and the other requirements of this Agreement and to pay the reasonable costs and expenses of the County in connection with the default by Owner/Developer, including costs, witness fees and reasonable attorneys' fees, with the surplus, if any, to be returned to Owner/Developer. Provided, however, that any funds or rights to such funds obtained may at the County's option be assigned or otherwise directed to the account of any third party for the purpose of completing the Subdivision Improvements.

## VI. MISCELLANEOUS.

6.1 Indemnification. Owner/Developer shall indemnify and save harmless the County from (a) any and all suits, actions, claims, judgements, obligations, or liabilities of every nature and description which both arise from an event or occurrence prior to the date of Final Acceptance of the Subdivision Improvements and to the extent caused by, arise from, or on account of Owner/Developer's obligations under this Agreement; and (b) any and all suits, actions, claims, or judgments which both arise from an event or occurrence prior to the date of the Final Acceptance and are asserted by or on behalf of contractors or subcontractors working in the Subdivision, lot owners in the Subdivision, or third parties claiming injuries to the extent resulting from defective improvements constructed by Owner/Developer. This indemnification shall not apply to claims arising from the negligent acts or omissions of the County. Owner/Developer shall pay any and all judgements rendered against the County on account of any such suit, action, or claim, together with all reasonable expenses and attorneys' fees incurred by the County in defending such suit, action, or claim. The County shall, within fifteen days after being served with any such claim, suit, or action, provide Owner/Developer with a copy of the complaint. The Owner/Developer may provide proper legal representation for the County in said action, in which case the Owner/Developer shall not be responsible for any additional legal fees incurred by the County. The County agrees that the Owner/Developer may also, on its own behalf, become a party to any such action and the County agrees to execute any documents as may be necessary to allow the Owner/Developer to be a party.

6.2 Insurance. Owner/Developer shall require that all contractors engaged in the construction of the Subdivision Improvements maintain Worker's Compensation insurance. Before proceeding with the construction of Subdivision Improvements, Owner/Developer shall provide the County Engineer with written evidence of liability insurance in an amount of not less than One Million Two Hundred Thousand Dollars (\$1,200,000) each, or such other maximum amount of liability as may be specified in the Colorado Governmental Immunity Act, and protecting the County, as an endorsed additional insured, against any and all claims for injury or death to persons or damage to tangible property resulting from construction and/or installation of any Subdivision Improvements pursuant to this Agreement. The policy shall provide that the County shall be notified at least thirty days in advance of any reduction in coverage, termination, or cancellation of the policy. Owner/Developer agrees that any contractors engaged by or for Owner/Developer to construct the Subdivision Improvements shall maintain liability coverage in limits not less than those described above.

6.3 No Third Party Beneficiaries. No person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and material,

laborers or others providing work, services, or materials for the Subdivision Improvements.

6.4 Assignability. Subject to the provisions of Section 3.1 above, Owner/Developer may convey or transfer title or interests in the Subdivision or any lot therein without the consent of the County and a grantee or transferee of Owner/Developer shall not be obligated to fulfill any of the obligations of Owner/Developer under this Agreement unless such grantee or transferee is the successor or assignee of Owner/Developer in its capacity as Owner/Developer of the Subdivision. Owner/Developer may assign its rights and obligations under this Agreement to a party who is the successor or assignee of Owner/Developer in its capacity as Owner/Developer of the Subdivision without the consent of the County; provided, however, that (a) Owner/Developer notifies the County of the assignment and of the name and address of the successor Owner/Developer; and (b) the successor Owner/Developer assumes the obligations of Owner/Developer under this Agreement. Unless otherwise agreed to in writing by the County, Owner/Developer shall remain liable for performance of the obligations of Owner/Developer under this Agreement. The County shall release Security furnished by Owner/Developer if the County accepts new security from any successor Owner/Developer of the Subdivision.

6.5 No Automatic Further Approvals. Execution of this Agreement by the County shall not be construed as a representation or warranty that Owner/Developer is entitled to any other approvals required from the County, if any, before Owner/Developer is entitled to commence development of the Subdivision or to transfer ownership of property in the Subdivision.

6.6 Notices. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposit for delivery in an overnight courier service such as Federal Express; or (c) three business days after deposit in the United States mail, by registered or certified mail with return receipt requested. All such notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the party at the address below for that party or to such other address as such party may designate by written notice to the other party:

If to Owner/Developer:                      Continued Copper, LLC  
c/o Continuum Partners  
Attn: Mark G. Falcone  
1881 16<sup>th</sup> Street, Suite 500  
Denver, Colorado 80202

With a copy to:  
Continuum Partners  
Attn: Lenn Moldenhauer  
1881 16<sup>th</sup> Street, Suite 500  
Denver, Colorado 80202

If to County:                                      Summit County Government  
Attn: County Engineer  
Post Office Box 68  
Breckenridge, Colorado 80424

6.7 Further Assurances. At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.

6.8 Binding Effect. Subject to Section 6.4 above, this Agreement shall run with the land and binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6.9 Headings for Convenience. All headings and captions used herein are for convenience only and are

of no meaning in the interpretation or effect of this Agreement.

6.10 No Implied Waivers. The failure by a party to enforce any provision of this Agreement or the waiver of any specific requirement of this Agreement shall not be construed as a general waiver of this Agreement or any provision herein nor shall such action act to stop the party from subsequently enforcing this Agreement according to its terms.

6.11 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this Agreement as a whole or any part thereof other than the part declared to be invalid and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.

6.12 No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall constitute a waiver of the sovereign immunity of the County under applicable state law.

6.13 Agent/Employee. The Owner/Developer is not an agent or employee of the County.

6.14 Consent to Jurisdiction and Venue. Personal jurisdiction and venue of any civil action commenced by either party to this Agreement with respect to this Agreement or a letter of credit shall be proper only if such action is commenced in the District Court for Summit County, Colorado. Owner/Developer expressly waives the right to bring such action in or to remove such action to any other court, whether state or federal.

6.15 Entire Agreement. This Agreement, and any agreement or document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

OWNER/DEVELOPER: CONTINUED COPPER, LLC

BY: \_\_\_\_\_  
Mark G. Falcone, Manager

STATE OF COLORADO            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Mark G. Falcone, as Manager of Continued Copper, LLC, a Colorado limited liability company.

Witness my hand and official seal:

\_\_\_\_\_  
Notary Public

My commission Expires: \_\_\_\_\_

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF SUMMIT COUNTY

BY: \_\_\_\_\_  
Kathleen Neel, Clerk and Recorder

BY: \_\_\_\_\_  
Chair of the BOCC