

10/01/2018

IRONBRIDGE GOLF CLUB  
AMENDED AND RESTATED  
RESIDENT MEMBERSHIP AGREEMENT

This AMENDED AND RESTATED RESIDENT MEMBERSHIP AGREEMENT (the "Agreement") is entered into as of September 29, 2018, by and between BLUE HERON PROPERTIES, LLC, a Colorado limited liability company (the "Club Owner") and IRONBRIDGE PROPERTY OWNERS' ASSOCIATION, a Colorado nonprofit corporation (the "Association").

RECITALS

- A. Association is a common interest community association formed pursuant to that certain Restated Declaration of Covenants, Conditions, Restrictions and Easements for Ironbridge dated February 20, 2003, and recorded in the real property records of Garfield County, Colorado, on March 18, 2003, as Reception No. 623133, as amended by a document recorded December 9, 2004 at Reception No. 664762 (First Amendment to Restated Declaration of Covenants, Conditions, Restrictions and Easements for Ironbridge), as further amended by a document recorded August 3, 2007 at Reception No. 729973 (Second Amendment to Restated Declaration of Covenants, Conditions, Restrictions and Easements for Ironbridge) and collectively referred to in this Agreement at the "Declaration." Any capitalized term used in this Agreement without definition shall have the meaning given that term in the Declaration.
- B. All owners of Property subject to the Declaration ("Lot Owners") are members of the Association, and the Association represents certain interests of its members as they relate to the Ironbridge community.
- C. Club Owner is the owner and operator of the Club Facilities, as defined below. The Club Facilities are a Private Amenity (as that term is defined in the Declaration), and the Lot Owners do not have the right to utilize Club Facilities solely by virtue of their ownership of a Lot.
- D. Club Owner and the Association entered into a Resident Membership Agreement on July 1, 2006, as amended on April 19, 2007 (the "Initial RMA"), whereby all members of the Association were provided with the opportunity to become members of the Club and therefore avail themselves of the Club facilities on and subject to the terms of the Initial RMA.
- E. The parties desire to amend and restate the Initial RMA as more particularly provided herein.
- F. The Association, as a benefit to its members, and pursuant to Section 4.13 of the Declaration, is willing to pay Monthly Dues and the Activation Fee (defined below)

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charged by the Club Owner on account of membership in the Club as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, Club Owner and the Association hereby agree as follows:

1. Certain Definitions. As used in this Agreement, the following terms shall have the following meanings:

- a. "*Club Facilities*" means the recreational and social facilities of the Club made available to members of the Club from time to time, in the discretion of Club Owner, including, without limitation, a golf course, restaurant, fitness center and recreation center (including swimming pool).
- b. "*Effective Date*" is September 29th, 2018.
- c. "*Membership Documents*" mean the Club's membership plan, rules and regulations, and other related documents in effect from time to time and binding on all members of the Club, and the member agreement executed by each individual Resident Member pursuant to this Agreement.
- d. "*Resident Membership*" means the membership in the Club which is associated with each Lot that is subject to the Declaration.

2. Club Membership. Club Owner and the Association agree that each member of the Association shall be eligible to become a "Resident Member" as defined in the Membership Documents, or such similar designation as Club Owner shall determine from time to time in its sole discretion. There shall be only one (1) Resident Membership associated with each Lot which is subject to the Declaration and of which the Owner of the Lot is entitled under this Agreement to activate. The following terms and conditions shall apply to each Resident Membership:

- a. Each member of the Association, in order to activate membership in the Club and become a Resident Member, shall be required to sign and submit to the Club Owner the Club's membership agreement and such other documentation as is required by Club Owner of Club members generally. Club Owner reserves the right to amend or supplement the Membership Documents (other than the executed membership agreements with each Resident Member) from time to time in its sole discretion, but not in a manner that would be in contravention of the terms of this Agreement. Club Owner agrees that it shall give prior notice of any amendment or supplement to the Membership Documents applicable to the Resident Members to the Association, and that no such amendment or supplement shall become effective prior to thirty (30) days after such notice.



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b. Each Resident Member shall be subject to all of the terms and conditions applicable to membership in the Club as provided in the Membership Documents from time to time, including the obligation to pay greens fees, if any, cart fees and other charges related to golf play. Club Owner reserves all rights under the Membership Documents in the event of breach thereof by any Resident Member, including, without limitation, the rights to impose a monetary charge upon a Resident Member based on a failure to timely pay applicable charges and fees, to deny access to Club Facilities to any Resident Member, to suspend membership privileges, and/or to permanently revoke membership privileges of the Resident Member in the Club. So long as a Resident Member's membership privileges are revoked in good faith by Club Owner, the Association shall have no claim against Club Owner as a result of such revocation, and shall specifically have no right to reduce any payments for which the Association is obligated under this Agreement as a result of such revocation. The rules and regulations of the Club shall not discriminate against Resident Members in connection with the rights to use facilities of the Club. Club Owner shall at all times provide the Association with current versions of the Membership Documents and shall notify the Association, in writing, of any changes to the Membership Documents.

c. Any Lot Owner who desires to become a Resident Member shall be required to pay Club Owner a non-refundable Activation Fee prior to activation of a Resident Membership. The Activation Fee shall be \$5,000.00 if paid on or before December 31, 2018, and \$7,500.00 if paid during 2019. Thereafter, the Activation Fee may be increased at the discretion of Club Owner, but not by more than \$300.00 per year. Club Owner shall provide notice of any increase in the Activation Fee to the Association no later than September 15<sup>th</sup> of each year, which increase shall be effective for the following year. No Lot Owner who is a Resident Member on the Effective Date shall be obligated to pay an Activation Fee. With respect to Lot Owners who acquire a Lot after the Effective Date (the "Lot Purchaser(s)"), the Association may be obligated, pursuant to Section 3.e., to pay the Activation Fee to Club Owner on behalf of the Lot Purchaser.

d. The Association expressly understands, acknowledges and agrees that:

- i. this Agreement shall confer upon Association members the right to become Resident Members, but that the Association shall have no direct right, ownership or control of the Club or its facilities or properties, and neither the Club nor its facilities nor properties shall be considered common areas or common elements of the Association;
- ii. there will be other categories of membership in the Club other than Resident Members, and non-Owners shall be afforded opportunities to become members of the Club, all in the sole and absolute discretion of Club Owner and as provided in the Membership Documents from time to time; provided, however, the services and amenities that are included with a Resident Membership shall never be less favorable or less inclusive than the services and amenities available to non-Owner members;



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- iii. all of the rights and obligations of the Lot Owners as Resident Members, and the rights and obligations of the Club Owner to its Resident Members, are and shall be provided in the Membership Documents, and shall not in any way be limited, defined, restricted, interpreted or governed by the terms and conditions of this Agreement;
- iv. In the event that Club Owner determines that the Club Facilities require significant improvement (over \$50,000.00) in order to maintain quality and functionality, Club Owner shall provide information to the Association Board of Directors describing the nature and extent of the improvements required and the estimated cost thereof. The Board of Directors shall meet with Club Owner to review the information and shall consider making a contribution to such costs, through a special assessment or otherwise, for the benefit of Resident Members. If the Association decides to so contribute, Club Owner shall provide the Association with copies of the plans and specifications relating to such improvements, together with cost estimates, bids, contracts for the work and paid invoices;
- v. Club Owner expressly reserves all rights it has under the Membership Documents from time to time, including, without limitation, the right to close facilities of the Club for maintenance, special events, casualty loss, or otherwise, and to discontinue operation of any or all Club Facilities for any reason; and
- vi. In the event that Club Owner elects to close any or all Club Facilities, Club Owner shall first provide the Association with written notice of such intent at least one month prior to the effective date of closure. If the closure is to be permanent and applies to all Club Facilities, the Association's obligation to pay Monthly Dues, the Per Lot Amount and Activation Fees shall terminate on the date that the closure takes effect. If the closure is permanent or expected to last more than thirty (30) days, but does not affect all Club Facilities, Club Owner and the Association shall attempt in good faith to renegotiate and equitably adjust the Monthly Dues, Per Lot Amount and Activation Fee in light of such reduced Club Facilities. If the parties cannot agree upon an equitable adjustment within sixty (60) days after the notice required above, the parties shall submit the matter to binding arbitration. Arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association. Either party may terminate the arbitration proceedings if a final decision is not rendered within ninety (90) days after commencement of the such proceedings, and there shall be no further obligation to pursue arbitration in the specific matter. During arbitration, the Club Facilities shall remain open and the Association shall continue to make all payments required

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hereunder. The foregoing requirements only apply to closures that are not required for maintenance, necessary repairs, casualty loss, replacement of Club Facilities and normal seasonal closures.

e. Resident Member status shall terminate with respect to a Lot Owner at such time as the Owner no longer holds legal title to such Owner's Lot, it being understood, acknowledged and agreed that Resident Member status shall be available to an Owner only during the time that the Owners hold title to such Owner's Lot and shall terminate upon sale of the Lot to another Owner. Nevertheless, a Resident Member who sells such Member's Lot shall be entitled to become a non-resident member of the Club with no additional activation fee upon signing a non-resident membership agreement which requires the payment of monthly dues.

f. Club Owner will credit twelve (12) months of the Monthly Dues (defined below) payable by a Lot Owner for each pre-registered referral of an individual who either becomes a Non-Resident Member or who purchases a Lot owned by Blue Heron Development Company or BH Holdings, LLC within twelve (12) months of the referral. There shall be no limit on the number of referrals. Club Owner will maintain the referral incentive program as long as this Agreement is in effect. Club Owner shall establish a procedure for registration and credit of Monthly Dues and shall provide notice of such procedure to the Association within thirty (30) days after the Effective Date.

g. A Resident Member shall be entitled to temporarily assign his/her Membership to a renter as long as the Resident Member relinquishes Resident Membership privileges during the term of the lease pursuant to the Membership Documents. Club Owner may charge a fee to approve any such assignment.

3. Payments by Association. In consideration of Club Owner's agreement to grant Memberships to all Lot Owners, the Association agrees to pay to Club Owner the Monthly Dues and the Activation Fee (hereinafter defined), upon the following conditions and terms:

a. On or before September 15 of each year, Club Owner shall provide the Association with a schedule of all fees, charges, and dues to apply for the following calendar year for membership in the Club and use of Club Facilities, both for Resident Members and other members.

b. The term "Monthly Dues" means the Per Lot Amount (hereinafter defined) times the number of Lots annexed to the Declaration from time to time. The "Per Lot Amount" for the period from the Effective Date to December 31, 2018 is \$280.00. Except as provided below, the Per Lot Amount may be increased by the Club Owner in the sole discretion of the Club Owner, as provided in the Membership Documents, and there shall be no limitation on the ability of the Club Owner to determine the Per Lot Amount pursuant to this Agreement. If Club Owner desires to exercise its right to increase the Per Lot Amount, notice of such intent shall be provided to the Association no later than September 15 of each year and shall become effective no earlier than the following January 1. Club Owner agrees that the Per Lot Amount for the

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calendar years 2019 through 2023 shall not be increased by more than 10% from the previous year's Per Lot Amount.

c. Monthly Dues shall be payable in installments by the Association on the first day of each month during the Term of this Agreement (hereinafter defined). If any installment of monthly dues is not paid within five (5) days of when due, Club Owner may impose, and the Association agrees to pay, a late charge in the amount of five percent (5%) of such installment. If any installment of monthly dues is not paid within thirty (30) days of when due, Club Owner may charge, and the Association agrees to pay, interest on such unpaid amount from the due date until paid at the annual rate of eighteen percent (18%). Club Owner acknowledges that the Association intends to collect the Per Lot Amount from each member of the Association as part of the regular assessments imposed on lot owners by the Association pursuant to the Ironbridge Declaration of Covenants. To the extent that any individual member of the Association fails to pay assessments in full and on time to the Association, then Club Owner and the Association agree to cooperate with respect to such delinquent members as follows:

- i. The Association shall notify Club Owner of delinquent members, and Club Owner shall keep a list of all such members and shall prohibit such delinquent members from access to or use of any and all Club Facilities until such time as the Association certifies, in writing, that such member has cured the delinquency, including the payment of all late fees and charges that may be due to the Association.
- ii. Club Owner shall have the right, in its discretion, to charge a reactivation fee up to \$2,500.00 to any Resident Member whose rights were suspended due to delinquent payment of assessments to the Association as a condition of restoring such member's rights to use Club Facilities. The Association shall have no obligation to pay any reactivation fees.

d. The Association acknowledges and agrees that, subject to the provisions of Sections 4.b., 4.c. and 5, it shall be obligated to pay Monthly Dues on the per Lot basis regardless of whether or not the Owner of a Lot shall activate a Resident Membership in the Club, whether or not a Resident Membership is active with respect to a Lot, and whether or not the membership privileges are actually being exercised under a Resident Membership associated with a Lot.

e. Following the sale of any Lot occurring after the Effective Date, the Association shall be obligated to pay to Club Owner, on behalf of any Lot Purchaser who chooses not to become a Resident Member, an amount equal to the Activation Fee that such Lot Purchaser would otherwise be obligated to pay, subject to the following:

- i. Club Owner shall promptly provide information to the Association regarding Lot Sales, including the name of the purchaser.

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- ii. Club Owner shall provide written notice to the Association upon the sale of a Lot. Club Owner will communicate with the Lot Purchaser regarding Resident Membership and the requirement to pay the Activation Fee as provided herein, and shall make a reasonable effort to collect such Fee. If the Activation Fee has not been paid by a Lot Purchaser within thirty (30) days after closing of the Lot sale, Club Owner shall provide an additional notice to the Association that the Lot Purchaser has elected not to activate a Resident Membership. The Association shall then pay to Club Owner the amount of the Activation Fee that would be required in order for the Lot Purchaser to activate a Resident Membership within thirty (30) days of such notice.
  - iii. If the Lot Purchaser subsequently becomes a Club Member and pays the required Activation Fee, Club Owner shall reimburse the Association for the Activation Fee amount paid on behalf of that Lot Purchaser within thirty (30) days after receipt of the Activation Fee by Club Owner. Until the Lot Purchaser pays the Activation Fee and becomes a Resident Member, said Purchaser shall not be entitled to utilize the Club Facilities or to enjoy the benefits of Resident Membership, except for access to the restaurant.
  - iv. The Association's obligation to pay the Activation Fees amount to Club Owner on behalf of a Lot Purchaser who does not choose to become a Resident Member shall not exceed, in any calendar year, \$37,500.00, plus an amount calculated as follows: one third (33.33%) of total Lot sales in that year times the number of Lot Purchasers in excess of five (5) who do not choose to become Resident Members (rounded up to a whole number) times the Activation Fee. In no event, however, shall the Activation Fee amount to be paid in any calendar year exceed ten (10) times the Activation Fee for that year.
  - v. The Activation Fee amount to be paid by the Association constitutes a common expense authorized by Section 4.13 of the Declaration.
  - vi. At least one-third of the total Activation Fee revenue collected in any calendar year commencing on January 1, 2019 (not including the Activation Fees paid by the Association as provided above) shall be deposited by Club Owner to a capital renewal and replacement reserve fund and utilized for capital improvements to Club Facilities.
- f. The following transactions shall be exempt from the Activation Fee:
- i. The acquisition of a Lot by an individual who is a Resident Member at the time of sale;

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- ii. The granting or conveying of title to a Lot either in consequence of a gift, where no consideration other than love and affection or a charitable donation is evidenced by the instrument of transfer, or to the heirs or devisees of a Lot Owner pursuant to a will or orders testamentary.
- iii. The lease of a Lot, provided that such lease does not, by its terms, constitute a de facto conveyance. In the latter event the Activation Fee shall be based upon the capitalization at five percent (5%) of the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, other than rent, paid or to be paid. When the average annual rental cannot be determined, the Activation Fee shall be based upon the assessed value of the property covered by the lease;
- iv. Transfers to secure a debt or other obligation, or transfers or release of property which is security for a debt or other obligation;
- v. Any transfer under execution, sale, or foreclosure sale under a power sale or court decree of lien foreclosure; sheriff's deed; public trustee deed or treasurer's deed or deed in lieu of foreclosure provided that the person holding the obligation or instrument upon which the proceeding or sale is based intends, as market conditions will allow, to resell the property in order to satisfy the obligation. If the property is not sold within two years, then the transfer shall be considered an "artifice" and the Activation Fee shall be payable as provided herein.

g. Club Facilities Credit. Beginning January 1, 2019, and continuing as long as this Agreement is in effect, Club Owner shall grant to each Resident Member who has paid an Activation Fee a credit to be applied automatically each month to offset the cost of utilizing any Club Facilities incurred by such Resident Member, including the cost of food and beverage at the Ironbridge Grill, golf cart rentals, merchandise, pool charges and the like. The amount of the credit for each month shall be one-twelfth of any annual increase in the Per Lot Amount from the previous year (which Amount is subject to a cap as provided in Section 3.b.). Only the increase in the Per Lot Amount from the previous calendar year will be utilized to calculate the credit. Any increases for prior years shall not be included. If the credit available for any month is not utilized by a Resident Member in the calendar quarter which includes that month, it will expire and will not carry forward to the next calendar quarter. Club Owner shall establish and manage the mechanism for tracking and applying such credit. By way of example, if the Per Lot Amount is increased by \$240.00 for a calendar year, the monthly credit during that year will be \$20.00.

4. Term and Termination.





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a. The term of this Agreement shall expire on December 31, 2023. The term of this Agreement shall automatically renew for successive five (5) year terms unless written notice of termination of this Agreement is provided by a party to this Agreement to the other party on or before six (6) months prior to the expiration of the initial term or any future extension terms. Termination of this Agreement by the Association shall be subject to the provisions of Section 4.c. below.

b. By written notice to the Association, Club Owner shall have the right to terminate this Agreement at any time and for any reason in the sole and absolute discretion of Club Owner. Such termination shall be effective thirty (30) days after such notice. Upon such termination, the Association's obligation to pay Monthly Dues, the Per Lot Amount and Activation Fees shall terminate.

c. The parties acknowledge that this Agreement constitutes a substantial benefit to Lot Owners, and that it is therefore in the best interest of the Association to assure that this Agreement remains in full force and effect. Therefore, in the event that the Association determines to unilaterally terminate this Agreement based on any provisions of applicable law or otherwise, such termination must be approved by the affirmative vote of at least sixty-seven (67%) of the Lot Owners who are then members of the Association. Any attempt to terminate this Agreement without such vote of the Lot Owners shall be null and void, and of no further force and effect whatsoever. The parties acknowledge and agree that the provisions of C.R.S. 38-33.3-305 shall not apply to this Agreement.

5. Right of First Refusal. In the event that Club Owner decides to sell the Club Facilities, Club Owner shall first provide the Association with at least 45 days' written notice of such intent, which may or may not include a proposed sale price in Club Owner's discretion. The Association shall have 45 days to provide a written offer to purchase all Club Facilities, which Club Owner shall be free to accept or reject in its discretion. Thereafter, Club Owner may offer to sell the Club Facilities to the general public or any third party, and if Club Owner receives a bona fide offer from a third party purchaser, then Club Owner shall provide the Association written notice of the terms of the offer, and the Association shall have twenty-one days after receipt of the notice to notify Club Owner that it intends to purchase the Club Facilities on the same terms as the offer. If the Association fails to provide such notice, then Club Owner shall be free to sell any or all of the Club Facilities to the third party on the terms set forth in the offer. If Club Owner fails to close on said terms, then the same procedure shall apply for any future offers. This right of first refusal shall expire on upon the termination of this Agreement.

6. Default.

a. In the event of any default by the Association under this Agreement which is not cured within ten (10) days after notice thereof, the Club Owner shall be entitled to all remedies available to it at law or in equity, including damages, or, at the sole discretion of the Club Owner in the event of material default (breach) including,

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but not limited to, nonpayment of fees owed to Club Owner by Association, Club Owner may elect to terminate this Agreement effective immediately upon notice given to the Association.

- b. In the event of any default by the Club Owner under this Agreement which is not cured within ten (10) days after notice thereof, the Association shall be entitled to all remedies available to it at law or in equity, including damages, or, at the sole discretion of the Association, in the event of an uncured material default the Association may elect to terminate this Agreement pursuant to the provisions of Section 4.c. of this Agreement. In no event shall the Association have any right to withhold payment amounts due to Club Owner, unless otherwise provided in this Agreement.

7. Mediation. Except as provided in Section 2.d.vi., all claims, disputes and other matters in question between the Association and the Club Owner arising out of, or relating to, this Agreement or breach thereof shall be first submitted to mediation by a mediator selected by the parties. Unless Club Owner and the Association can agree on a mediator, each party shall select a mediator of their choice and both mediators shall then select a third mediator who shall conduct the mediation hereunder. In the event mediation is unsuccessful in resolving the dispute, Club Owner or the Association or both, may pursue other remedies as are allowed at law as provided above. Notwithstanding the foregoing, either party may file an action for injunctive or other relief to preserve its rights or seek temporary relief while mediation is pending. Mediation shall be conducted as soon as possible but either party shall be relieved of the mediation requirement if the other party refuses, without good cause, to commence mediation within ten (10) days of the request for mediation, or if the dispute has not been resolved within sixty (60) days after a party's first notice to the other party of a request to mediate.

8. Notice.

- a. Manner of Notice. All notices or demand under this Agreement shall be in writing and shall be deemed given and received according to the following criteria:

- i. Personal Delivery. In case of personal delivery, notice shall be deemed to have been given and received the day of the actual receipt by the receiving party.
- ii. Overnight Courier. In case of nationally recognized overnight courier service, notice shall be deemed to have been given and received on the second (2<sup>nd</sup>) business day following its deposit with such courier service. No signature affirming receipt by the receiving party is required. The internal records of the courier service are to be accepted as sufficient evidence of receipt.

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- iii. Postal Service. In the case of U.S. Postal Service, notice shall be deemed to have been given and received on the third (3<sup>rd</sup>) business day after the deposit of a postage prepaid, certified return receipt requested, envelope, containing the notice, addressed to the receiving party, with the U.S. Postal Service.
- iv. Facsimile or Email Transmission. In the case of a facsimile or email transmission, notice shall be deemed to have been given and received on the day of such transmission. Such facsimile or email transmission, to be considered effective, shall be corroborated by a copy of the facsimile or email printout showing the telephone number or email address from which transmitted, the telephone number or email address to which transmitted, the date and time of such transmission. The copy of such printout and the notice shall be mailed the day of transmission by regular U.S. Postal Service to the receiving party.

b. Addresses for Notice. All notices shall be given to the respective parties at the following addresses, until further written notice. Notice must be given to the primary notice party to be effective. The secondary notice party is made a part of this provision for courtesy purposes only.

If to Club Owner: Blue Heron Properties, LLC  
Ironbridge Golf Club  
430 Ironbridge Drive  
Glenwood Springs, CO 81601  
Telephone: 970-384-0630  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: The Myler Law Firm, P.C.  
David J. Myler, Esq.  
211 Midland Avenue, Suite 201  
Basalt, CO 81621  
Telephone: 970-927-0456  
Facsimile: 970-927-0374  
Email: dmyler@mylerlawpc.com

If to the Association: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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9. Miscellaneous.

a. Assignment. Club Owner may assign its rights and obligations under this Agreement to any future owner, manager or operator of the Club, without any requirement of consent by the Association. The Association may not assign its rights and obligations under this Agreement to any other party or entity without the express written consent of Club Owner, which consent may be granted or denied in the sole and absolute discretion of Club Owner.

b. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Association and Club Owner and their successor and permitted assigns.

c. Governing Law. This Agreement has been executed in the State of Colorado and shall be governed by the laws of the State of Colorado.

d. Gender and Number. Any term of gender used in this Agreement shall include all genders and legal entities, and the plural shall include the singular, and the singular shall include the plural, all as the context may require.

e. Severability. The invalidity of any provisions of this Agreement shall not affect the validity or enforceability of any other provision set forth in this Agreement.

f. Section Headings. The section headings contain in this Agreement are for the purpose of identification only and shall not be considered in construing this Agreement.

g. Attorneys' Fees and Costs. In the event of any litigation between the parties (or arbitration pursuant to the arbitration provisions of this Agreement) concerning this Agreement and the enforcement of this Agreement, the prevailing party shall receive payment of all its reasonable costs and expenses relating to such action) including, but not limited to court costs and reasonable attorney's fees incurred by the prevailing party at trial and upon appeal. For the purpose of this Section, the term "prevailing party" shall include a party which withdraws or dismisses a claim in return for payment allegedly due, performance of a covenant allegedly owed, or other consideration substantially satisfying the claim withdrawn or dismissed.

h. Entire Agreement. Replacement of Initial RMA; Modification of Agreement. This Agreement supersedes any and all prior understandings and agreements between the Association and Club Owner and, in particular, supersedes and replaces the 2006 Resident Membership Agreement, as amended in 2007, in its entirety. This Agreement may only be modified by an agreement in writing and signed by the Association and Club Owner.

i. Negotiated Agreement. This Agreement shall not be construed more strictly against one party than against the other merely by virtue that it may have been prepared by



Reception#: 915715  
12/27/2018 12:47:22 PM Jean Alberico  
13 of 14 Rec Fee:\$78.00 Doc Fee:0.00 GARFIELD COUNTY CO

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counsel for one of the parties. This Agreement was reviewed and approved on behalf of the Association by its Board of Directors following an opportunity for all Lot Owners to reject it.

j. Counterparts; Facsimile/Electronic Signature. This Agreement may be executed in counterparts, which, taken together, shall constitute the agreement of the Association and Club Owner. This Agreement and its signatures may be transmitted by telefax copier or by other electronic means and all parties agree it shall be a legal, binding agreement.

k. No Partnership. Notwithstanding any terms of this Agreement to the contrary, in carrying out their respective obligations and exercising their respective rights under this Agreement it is fully understood and agreed that the parties are acting as independent contractors and not in any way as agents, partners, joint venturers or employees of each other.

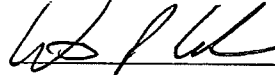
[This space intentionally left blank. Signatures on the following page.]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

BLUE HERON PROPERTIES, LLC,

By: Wesley Coje, General Manager

 its Manager

IRONBRIDGE PROPERTY OWNERS'  
ASSOCIATION

By:  \_\_\_\_\_

 its President

12/7/2018