

TIME SHARE AGREEMENT

BANFF GATE MOUNTAIN RESORT ASSOCIATION

302 George Biggy Sr Road

Canmore Alberta (Dead Man's Flats)

Plan 0910154, Block 1, Lot 1

Pt. S1/2 Section 7, Township 24, Range 9, West of 5th Meridian

THIS AGREEMENT dated with effect the _____ day of _____
at the Town / City of _____ in the Province of _____

BETWEEN:

BANFF GATE MOUNTAIN RESORT ASSOCIATION, a corporation incorporated
under the laws of the Province of Alberta (hereinafter called the
"**Association**")

- and -

(Names)
(Address)

(hereinafter called the "Member")

**This Agreement is subject to the Consumer's (Member's)
cancellation rights in the Fair Trading Act C. F-2 RSA 2000 as
amended and Alberta Regulation 105/2010, referenced herein at
Article 11.3(1) Fair Trading Act.**

In Consideration of the payment by the Member to the Association in the sum of
\$ _____ CAD, as the purchase price including GST for the use of One (1)
Annual week (Timeshare week); or

\$ _____ CAD, as the purchase price including GST to upgrade from right
to use of One (1) Biennial Week to the right to use One (1) Annual Week
(Timeshare week); or

\$ _____ CAD, as the purchase price including GST for the use of one (1)
Biennial Week (Timeshare week).

*The words "use of" were added to be consistent with Article 2.2 in that what Members
purchase is the right to use a week plus the right to participate if the Association is
wound up.*

This agreement provides the rights of the Member to the use of a vacation unit and resort facilities, and participation in the value of the resort as long as the Member is in good standing (as provided in the Articles of Association).

These clauses set out what we buy as set out in Clause 2.2 and the obligations to pay maintenance fees.

The purchase of a Timeshare week or Biennial Week obligates the Member to pay an annual maintenance fee which is presently \$_____ per annum. The amount of this fee can be changed and additional assessments can be levied by the Board of Directors of the Association.

The Member acknowledges receipt of the disclosure statement in effect at the time this agreement is signed and attached as Schedule "A"

The Member and the Association agree to be bound by the terms of this Agreement and any properly authorized amendments. Full consideration for this Agreement is itemized as ~~on the page following~~:-

| | Quantity | Selling Price | Cost | GST (included) | Administration Fee | Total |
|---------------------------|----------|---------------|------|----------------|--------------------|-------|
| Upgrade Biennial (0.5) | | | | | | |
| Purchase Annual (1.0) | | | | | | |
| <u>Purchase Biennial</u> | | | | | | |
| Upgrade Color (Week Type) | | | | | | |
| TOTAL | | | | | | |

| | | | |
|-----------|------------|----------------|------------|
| Week Type | Red (high) | White (medium) | Blue (low) |
|-----------|------------|----------------|------------|

1 ARTICLE 1 DEFINITIONS

1.1 Definitions

For all purposes of this Agreement, the terms defined in this Article 1.1 shall have the following meanings unless the context expressly or by necessary implication otherwise requires:

- (a) "**Agreement**" means this agreement, as amended from time to time.
- (b) "**Aggregate Annual Maintenance Fees**" means the aggregate amount of the estimated Operating Costs, and to the extent levied by the Association, the additional amount to be added to the Replacement

Reserve, together with such adjustments and carry forwards as may be determined to be appropriate, all as determined by the Board.

This is the term we now commonly use to represent the total maintenance fees determined by the Board. It includes our operating costs, reserve allotment, and any adjustments.

(c) "**Annual Maintenance Fee**" means:

- (i) in respect of a Member that has one (1) or more timeshare weeks each Year as identified on page 1 hereof, the Proportionate Share of the Aggregate Annual Maintenance Fee for one timeshare week; and
- (ii) in respect of a Member that holds less than a whole timeshare week each Year as identified on page 1, (i.e. the Member holds a biennial week), **50%** of the Annual Maintenance Fee levied on a Member that holds one (1) timeshare week plus an administration fee to be determined by the Association from time to time.

The term "Annual Use Fee" is replaced with "Annual Maintenance Fee".

(d) "**Articles**" means the Association's Articles of Association, as amended from time to time.

~~(e)~~ (hh) "Association" means Banff Gate Mountain Resort Association and refers to the Board of Directors of Banff Gate Mountain Resort Association in circumstances where duties, steps or authorizations to be taken are within the Jurisdiction of the Board of Directors.

This change was approved at the 2013 AGM.

~~(f)~~ "Biennial Week" means the right to utilize a timeshare week every second year.

(g) "**Claims**" means, in respect of any matter, any and all claims, demands, actions, proceedings, causes of action, losses, damages, liabilities, deficiencies, interest, penalties, fines, and amounts paid in settlement, costs and expenses of every nature and kind whatsoever (including, without limitation, all legal fees rendered on a solicitor and his own client basis and other professional fees and disbursements) arising directly or indirectly as a consequence of such matter.

(h) "**Common Facilities**" means the common areas and facilities from time to time located on the Lands, including without limitation, walkways, parking areas and roadways, common recreational facilities, restaurant and lounge, swimming pool and laundry areas.

(i) "**Event of Default**" means any of the following events:

- (i) the Member fails to pay an amount required to be paid pursuant to this Agreement on or before the day or dates appointed for the payment thereof and such failure continues for a period of **thirty (30)** consecutive days after written notice thereof has been given to the Member by the Association;

Changed to 30 days to be consistent with other provisions and current practice.

- (ii) the Member fails to observe or perform any of the terms, covenants, obligations or conditions of this Agreement (other than the payment of amounts due) to be observed or performed by the Member and:
- I. fails to remedy such breach within 15 days (or such shorter period as may be provided in this Agreement) after written notice thereof has been given to the Member by the Association respecting such breach; or
 - II. if such breach cannot be reasonably remedied within such 15 day period or such shorter period, the Member fails to commence to remedy such breach within such 15 day period or shorter period or thereafter fails to proceed diligently to remedy such breach; and
- (iii) at the option of the Association upon written notice to the Member, if the Member becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors.

- (j) "**Exchange Program**" means a program provided by a third party whereby the Member may trade or exchange a **Timeshare Week** for a right to use and occupy vacation accommodations in other resorts or facilities, which program has been authorized by the Association.

The terms "Vacation Interval" and "Timeshare Week" were used inconsistently. We have tried to change all references so that "Timeshare Week" refers to the week purchased by a Member and "Vacation Interval" means anytime anyone is staying at the resort. When you are at the resort for your timeshare week both terms apply.

- (k) "**Exchange Program Users**" means users pursuant to a valid Exchange Program authorized by the Association.

- (l) "**GST**" means goods and services tax imposed under the *Excise Tax Act* (Canada) and all other goods and services taxes, business transfer taxes, value-added or transaction taxes, sales taxes, multi-stage sale taxes, use of consumption taxes or any other taxes of

the Association with respect to any amounts payable by the Member pursuant to this Agreement.

- (m) **"Injury"** means without limitation, bodily injury, personal injury, personal discomfort, mental anguish, shock, sickness, disease, death, false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation of character, invasion of privacy, wrongful entry or eviction and discrimination or any of them, as the case may be.
- (n) Deleted.
- (o) Deleted.

These references have been omitted as the Association now owns the resort.

- (p) **"Management Agreement"** means the agreement made between the Association and a management company as amended in effect at any given time.
- (q) **"Member"** means a person who has entered into a timeshare agreement with Banff Gate Mountain Resort Association that has not been terminated or who is defined as a Member in Articles 2.1 or 2.2 of the Articles of Association.

This qualifies who is a Member. The reference to the Articles are the directors/Members who first formed the association before any timeshares were sold.

- (r) "Notice of Assessment" means a notice as defined within Article 4.1(b) or Notice of a Special Assessment as defined in Article 4.5.
- (s) **"Operating Costs"** shall have the meaning as set forth in Article 4.2.
- (t) **"Permitted Users"** shall mean the Member(s), their family, guests and renters of a Member's Timeshare Week, or bonus time arranged by or on behalf of a Member other than through an authorized exchange program.

"Permitted users" are the Members, family, guests, renters and others the Member arranges to come to the Resort. Members are responsible for the acts of Permitted Users and must get prior approval if the Member is not also going to be at the resort. Members are not responsible for costs or damages by persons who come to the resort under exchanges with GP, RCI or rentals, if arranged by management.

(u) **"Personal Charges"** means any cost, expense or charge resulting from the act or omission of the Member or a Permitted User including without limitation:

- (i) local and long distance telephone charges;
- (ii) charges for food and beverages;
- (iii) charges for any special services;
- (iv) charges for housekeeping services in addition to Usual Housekeeping Services;
- (v) costs and expenses to repair any damage to or destruction of the Unit or any part of the Resort;
- (vi) costs and expenses to repair or replace any furnishings or fixtures in the Unit or of the Resort, including replacement due to theft or removal thereof and replacement and repair due to breakage of furnishings or fixtures. Chipped, cracked, burned, torn or otherwise damaged furnishings or fixtures shall be deemed to constitute breakage of furnishings or fixtures; and
- (vii) costs and expenses of other Members, their Permitted Users and the

Association due to the breach by the Member or Permitted User (other than an Exchange Program User) of any provisions of this Agreement, the Articles or the Rules and Regulations, including the costs of accommodating other Vacationers or occupants of the Unit in other units during the period of repairs or restoration.

(v) **"Proportionate Share"** means, in respect of the Member, the fraction the numerator of which is the number of timeshare weeks held by the Member and the denominator of which is the aggregate number of timeshare weeks held by all Members (including the Member) for Units at the Resort at the time of the calculation.

(w) **"Purchase Costs"** means the amounts payable by the Association to third parties in connection with the acquisition or lease of all or part of the assets constituting the Resort.

(x) **"Replacement Reserve"** shall have the meaning set forth in Article 4.3.

(y) **"Replacement Reserve Account"** means the account containing the Replacement Reserve funds.

(z) **"Resort"** means: Banff Gate Mountain Resort, located at 302 George Biggy Sr. Road, Canmore, Alberta (Dead Man's Flats) and includes:

- (i) the Units;

- (ii) the Common Facilities;
- (iii) the Lands comprising the 9.69 ha (23.94 ac) of Lot 1, Block 1, Plan 0910154, Town of Canmore, in the Province of Alberta. The lands may be enlarged, reduced, or otherwise altered or changed from time to time, whether pursuant to purchase, lease or otherwise; and
- (iv) any lands as may from time to time be subject to lease by the Association.

(aa) "Rules and Regulations" means the rules and regulations established from time to time by the Association.

(bb) "Special Assessment" means any special assessment levied pursuant to Article 4.5.

Timeshare week was not previously defined but portions of this were in Clause 2.1

(cc) "Timeshare Week" means a week long interval at the resort beginning at 4:00 pm on a Friday or Saturday and ending at 10:00 am on the following Friday or Saturday, respectively. By this agreement the Member purchases the right to the use of one Timeshare Week, subject to the terms hereof.

(dd) "Units" means the forty six (46) furnished accommodation units located on the Lands, and such additional accommodation units as the Association may erect from time to time on the Lands and "Unit" means any one of them, together with all furnishings and fixtures located therein.

This consolidates the definitions.

(ee) "Usual Housekeeping Services" means the housekeeping services provided to each Unit from time to time, including the provision of towel and linen changes, soap and paper products at the commencement of the Vacation Interval of the Vacationer, the provision of additional towels, soap and paper products as reasonably required by the Vacationer thereafter and a general clean-up and housekeeping of the Unit following the termination of the Vacation Interval of the Vacationer.

(ff) "Vacation Interval" includes a timeshare week and any rental period, bonus time, or other period of time a Member or permitted user is entitled to stay at the resort.

This now means any time a member or a guest is at the resort. The start and end of a week are defined in the definition of a timeshare week.

(gg) "Vacationer(s)" means any or all Permitted Users including Members.

(hh) "Year" shall have the meaning ascribed to such term in Article 2.1.

2 ARTICLE 2 TERM AND GRANT

2.1 Year

For the purpose of this Agreement, a year ("**Year**") shall be the period commencing at 4:00 o'clock p.m. on the first Friday in January and ending at 3:59 o'clock p.m. on the first Friday in the following year and each Year shall be divided into 52 timeshare weeks numbered consecutively, the first timeshare week being number "1" and the last week being number "52".

2.2 Rights to Use

Subject to the terms and conditions hereinafter set out, the Association hereby grants to the Member a license to use and occupy a Unit together with the non-exclusive right to use the Common Facilities during the Timeshare week(s). If any portion of any Timeshare Week is not utilized by the Member in any Year, there shall be no accrual or carry-over of the unused time to subsequent Years, unless the Member has properly deposited his Timeshare Week with an Exchange Program which permits the accrual or carryover of unused time to subsequent Years.

2.3 Designation of Week Type

The designation of a specific color of "Week Type" on page 2 hereof shall permit the Member each Year to request the use of a Unit during the following periods:

- (a) if the "Week Type" is designated as Red (high season): Weeks 1 to 38 (inclusive), and Weeks 50-52 (inclusive);
- (b) if the "Week Type" is designated as White (medium): Weeks 39 to 46 (inclusive); and
- (c) if the "Week Type" is designated as Blue (low season): Weeks 47 to 49 (inclusive).

If the Member's "Week Type" is designated as Red, the Member may also request to use and occupy a Unit during the weeks referred to in paragraph (b) and (c) above, and if a Member's "Week Type" is designated as White, the Member may also request to use and occupy a Unit during the weeks referred to in paragraph (c) above. The Member shall be required to request to use and occupy a Unit each Year. Such request and the allocation of a Timeshare Week each Year shall be in accordance with the Association's rules and procedures (or the rules and procedures of its manager) in place from time to time. The

allocation of a specific Timeshare Week by the Association to the Member each Year shall be based on availability.

2.4 Exchange Program

The Association reserves the right, but shall be under no obligation, to institute from time to time one or more Exchange Programs in which the Member may participate, to cancel or otherwise deal with such Exchange Program and to negotiate with independent exchange agencies on behalf of Members from time to time. The Member acknowledges that:

- (a) any exchange agency, including Resort Condominium International, LLC ("RCI") and Grand Pacific Exchange GPX are independent organizations and are governed by their own rules and regulations;
- (b) An exchange agency may charge a separate fee to Members who wish to participate in an exchange program;
- (c) if the Timeshare Week is deposited or exchanged through an Exchange Program, the Member may not otherwise deal with the Timeshare Week under any circumstances or exchange the Timeshare Week through another exchange program;
- (d) The Member is not personally responsible for acts or omissions by any vacationer of a timeshare week arranged through an exchange company.

This is just to be clear that on exchanges through RCI or GPX a Member is not personally responsible for any damages caused by whoever the exchange company sends to the resort. A Member is responsible for damages by him or guests during his stay or by someone he arranges to take over his stay at the resort.

3 ARTICLE 3 COVENANTS OF MEMBER

3.1 Use of Unit

Subject to the Rules and Regulations, unless during an exchange arranged through RCI, GPX or other exchange agency, the Unit shall not be occupied by any person during a Member's Timeshare Week other than the Member and their immediate family, except:

- (a) the Member's extended family or friends, if the Member or a Member of his immediate family is present; and
- (b) Permitted Users, provided that the Member has first given notice thereof to the Association as provided in Article 3.2.

The Member shall be responsible for the Personal Charges, including Personal Charges of Permitted Users and for any damage or destruction to the Unit or any part of the Resort or any breach or violation of this Agreement which occurs during the occupancy of the Unit by the Member or Permitted Users. The Unit

shall not be occupied by more than 6 persons at one time, unless the Member has requested and received the use of a Unit that sleeps 8, in which case the maximum is 8 persons. For the purpose of the Agreement "Occupied" means sleeping overnight.

3.2 Allocation of Rights to Use

In any Year, the Member may allocate their Vacation Interval(s) to a Permitted User provided that, prior to the commencement of the Vacation Interval, he shall notify the Association in writing of the name and address of the person to be occupying the Unit. The association reserves the right to refuse occupancy to anyone except the Member, such refusal not to be arbitrary. Regardless of such allocation, the Member shall continue to be liable for all Maintenance Fees and all other liabilities and obligations that may arise from the use of the Resort as set out in this Agreement.

3.3 Covenants of the Member Respecting Use of Resort

The Member covenants and agrees with the Association that he shall and shall cause all Permitted Users to:

- (a) during the Vacation Interval(s), keep the Unit and the furnishings and fixtures therein in good condition and repair and prevent damage to the Unit and the Resort, normal wear and tear only excepted;
- (b) not use or permit the Unit or any part of the Resort to be used for any unlawful, improper, immoral or offensive purpose or permit any disturbances, nuisance or annoyance detrimental to the enjoyment of other persons occupying any of the other Units;
- (c) observe and perform and comply with the Rules and Regulations;
- (d) not display any sign, advertisement or notices of any type on or in the Unit or on any property of the Resort or erect any exterior antenna or aerials;
- (e) not permit or suffer to be done or kept in the Unit or in any part of the Resort anything which could increase the rate of insurance on the Unit, the other Units or the Resort as a whole;
- (f) not remove or carry away from the Unit or any part of the Resort any furnishings or fixtures, not to make or permit to be made any alterations, additions, or improvements or changes in or to the Unit or any part of the Resort, or alter, or replace or change any of the furnishings or fixtures;
- (g) vacate the Unit and the Resort and remove all other persons and the Member's personal property from the Unit and the Resort at the end of the Vacation Interval(s);
- (h) leave the Unit and the Resort and the furnishings therein in good and sanitary condition and repair at the end of the Vacation Interval(s);

- (i) not register or cause to be registered any notice or caveat with respect to this Agreement on the title to the Lands;
- (j) respect the wildlife and the natural state of the Lands and surrounding lands, and not to impair, destroy or otherwise harm or endanger the wildlife or the natural state of the Lands; and
- (k) use the Unit and the Resort in a proper and prudent manner.

3.4 Personal Charges

The Member shall pay and be responsible for all Personal Charges for himself and permitted users. Personal Charges shall be payable as follows:

- (a) if the Association is able to determine the amount of the Personal Charges at check-out time at the end of the Vacation Interval(s), such Personal Charges shall be payable at that time; and
- (b) Personal Charges which are not ascertainable as provided in paragraph (a) above, shall be payable by the Member within thirty (30) days of the date of the billing statement setting forth such charges.

4 ARTICLE 4 FINANCIAL MATTERS

4.1 Financial Matters:

The Association shall:

- (a) in each year prior to November 30 (or such other date as the Association may determine from time to time), prepare a budget consisting of the estimated amount of the following for the succeeding calendar year:
 - (i) any revenues;
 - (ii) Operating Costs (the "Maintenance Assessment");
 - (iii) the amount, if any, to be added to the Replacement Reserve;
 - (iv) the amount, if any, of the Purchase Costs; and
 - (v) any adjustments or carry forwards.
- (b) prior to December 1 (or such other date as the Association may determine from time to time) in each year, send to the Member a notice of assessment (the "Notice of Assessment") setting out the Annual Maintenance Fee for each timeshare week; and
- (c) At least ten (10) days prior to the Annual General Meeting, prepare and submit to the Member a report for the previous calendar year, which report shall include: complete financial statements prepared in accordance with generally accepted accounting practices together with auditor's report thereon.

This aligns with the Act, and rather than list specific financial documents we put in the term "complete financial statements and the auditor's report".

4.2 Operating Costs

Operating Costs shall mean the total of any and all costs and expenses incurred or to be incurred by the Association, whether directly or indirectly, in managing, maintaining, operating, repairing and supervising the Resort, including without limiting the generality of the foregoing:

- (a) the costs and expenses to provide heating, ventilating, air-conditioning, lighting, window cleaning services, landscaping, snow removal services, parking area and roadway maintenance, garbage and waste removal and disposal services, security services and janitorial services to the Resort;
- (b) the costs and expenses to supply heating fuel, water (hot and cold), electricity, sewage, other utilities, telephones and telephone services to the Resort;
- (c) the costs and expenses to rent office space and to rent or purchase any equipment, supplies and signs used by the Association in the management, maintenance, repair, operation and supervision of the Resort;
- (d) the costs and expenses to provide Usual Housekeeping Services;
- (e) costs and expenses related to the provision of internet, cable or satellite dish services and the maintenance thereof;
- (f) wages, salaries or other compensation for any employees, agents or contractors of the Association performing services in connection with the management, maintenance, operation, repair and supervision of the Resort, and unemployment insurance expenses, workers' compensation insurance and pension plan payments required by law to be paid in connection with the employment of any such employees and other employee benefits paid to such employees;
- (g) real property taxes, business taxes, income taxes, or other taxes, assessments or levies, interest and penalties thereon, and all fees, costs and disbursements incurred in connection with proceedings for the contestation of any of the foregoing;
- (h) sales and excise taxes on goods and services provided by or to the Association;
- (i) legal and accounting costs, including fees and expenses of the Association's chartered accountants for the preparation of financial statements;

- (j) costs and expenses in obtaining and maintaining insurance, including fire and all perils coverage, liability insurance and any other insurance the Association deemed advisable and the cost of any deductible amounts payable by the Association in respect of any damage, risk or claim;
- (k) rent and any other payment required to be made by the Association;
- (l) management and administrative fees, including the management fee and any other payment required to be made by the Association to any manager appointed by the Association;
- (m) interest, fees and other amounts charged to the Association by any chartered bank, trust company or other financial institution in connection with any sums borrowed by the Association;
- (n) costs of procuring other vacationers for the Units, including advertising, commissions, salaries, and legal fees in relation to any of the foregoing; and
- (o) such other costs, expenses, charges and expenditures of a similar nature as may be incurred and expended in respect of the proper management, maintenance, repair, operation and supervision of the Resort.

The Association shall deduct from the Operating Costs:

- (a) net proceeds received by the Association from insurance policies taken out by the Association to the extent that such proceeds relate to costs and expenses incurred in the maintenance and operation of the Resort; and
- (b) other recoveries made by the Association in connection with the maintenance and operation of the Resort.

4.3 Replacement Reserve

The Association shall establish and maintain a Replacement Reserve for the Resort in such amount as it determines appropriate from time to time, which shall be used by the Association as follows:

- (a) for major repairs and refurbishing to and development of all or any part of the Resort, including structural repairs;
- (b) for major painting and redecorating of the interior and exterior of the Units and the Common Facilities;
- (c) for the refurbishing of the interior and exterior of the Units and the Common Facilities;
- (d) for new additions to the Common Facilities;
- (e) for unexpected contingencies; and

- (f) for such other projects as approved by an ordinary resolution of the Members of the Association from time to time.

The Association shall not be required to expend all of the monies in the Replacement Reserve in any one year and may accrue monies in the Replacement Reserve as it determines to be appropriate.

4.4 Budget Surplus

At the end of any fiscal year, any sums held by the Association which are paid to the Association on account of:

- (a) Operating Costs and which were not expended by the Association shall be applied to reduce the following Year's Maintenance Assessment, or added to the Replacement Reserve if so determined by the Association; and
- (b) Purchase Costs and which were not expended by the Association shall be applied to reduce the following Year's assessment for Purchase Costs, or applied to reduce the following Year's Maintenance Assessment or added to the Replacement Reserve, as determined by the Association.

4.5 Special Assessments

If the Association determines that the Aggregate Annual Maintenance Fee is, or will become, inadequate to meet the Operating Costs incurred or to be incurred by the Association hereunder or to maintain an adequate replacement reserve, for any reason, including non-payment of any Annual Use Fees by other Members, the Association may immediately determine the supplemental budget in an amount sufficient to provide for such inadequacy and provide an additional levy against the Member.

We added that a special assessment can include an assessment to maintain our reserves.

5 ARTICLE 5 OTHER COVENANTS AND RIGHTS OF ASSOCIATION

5.1 Obligation to Maintain Resort

The Association covenants with Member to maintain and operate the Resort in accordance with reasonable standards consistent with the character, age, size and location of the Resort; and in accordance with the Articles, this agreement, and all applicable regulatory and legislative requirements.

5.2 Manager

The Association shall have the right to engage a manager for the Resort from time to time and may contract with the manager for the manager to perform all or part of the obligations of the Association set forth herein and such other services

as the Association determines appropriate. The Member acknowledges that the Association has entered into a Management Agreement.

5.3 Entry for Inspection, Repairs and Alterations

The Association shall have the right to enter the Unit for inspection thereof at all reasonable hours and whenever necessary to make repairs and alterations to the Unit (including without limitation emergency repairs), or to carry out its obligations hereunder, including without limitation, providing Usual Housekeeping Services.

5.4 Rental Program

The Association may allow the manager to institute and carry out a rental program for units not sold or not utilized by Members or exchange programs.

These are for rentals currently being arranged by the Management Company (GPR).

6 ARTICLE 6 PAYMENTS BY THE MEMBER

6.1 Maintenance Fee

Each Year, the Member shall pay an Annual Maintenance Fee in respect of the Timeshare Weeks held by him and any special assessment(s). All fees and assessments shall be payable by the Member within thirty (30) days of the date of the Notice of Assessment.

This terminology is in line with the terms we use and have been using setting out what we have to pay and when.

6.2 GST and Taxes

The Member shall pay to the Association all GST and other taxes, payable on all fees, charges, assessments and other payments required to be made by them under this Agreement.

6.3 No Set-off

All amounts payable by the Member pursuant to this Agreement shall be paid without abatement, deduction or set-off for any reason whatsoever.

6.4 Interest

Any payment required to be made by the Member pursuant to this Agreement which is not paid when due shall bear interest at the rate of 18% per annum from the date such payment was due to the date of receipt of such payment by the Association or such other rate as determined by the Association from time to time.

6.5 NSF Charges

If any cheque given by the Member to the Association pursuant to this Agreement is refused payment by their bank for any reason, the Member shall immediately replace such cheque with cash or a certified cheque or bank draft and, in addition shall pay the sum of \$100.00, or such other amount determined by the

Association, plus GST as a service charge to the Association upon demand being made by the Association.

7 ARTICLE 7 DEFAULT BY THE MEMBER

7.1 Suspension of Rights

Upon the occurrence of an Event of Default, the Association shall have the right to suspend the Member's right to occupy the Unit until such time as the Event of Default has been rectified, if the Event of Default is capable of being rectified. Until such time as the Event of Default is rectified, the Association shall have the right to use and occupy the Unit and/or rent the Unit to any person and at such rate as the Association, in its sole discretion determines, and shall have the right to receive all revenues in respect thereof. Once a Unit has been rented by the Association, the curing of the Event of Default shall not entitle the Member to the use of a Unit during that Year.

7.2 Continued Default

If an Event of Default has not been remedied within 60 days of the commencement of such default, the Association shall have the right at any time thereafter to terminate this Agreement by giving the Member written notice of such termination (a "**Termination Notice**"). Upon the Association delivering a Termination Notice to the Member, he shall cease to be a Member, cease to have any further rights under this Agreement, in any Unit or any part of the Resort and the Association shall be entitled to possession of the Unit for the Member's Timeshare Week, free and clear of any Claims of the Member. Notwithstanding the foregoing, the Association shall not be entitled to give a Termination Notice if the Member has commenced and is continuing to remedy the Event of Default. From and after the date of termination:

- (a) the Association shall be entitled to the full and exclusive right to use and occupy the Unit, free and clear of all Claims of the Member;
- (b) the Association may sell, transfer, lease or grant the rights to use the Unit (or the Timeshare Week(s) for timeshare weeks , or may retain the Unit for its own purposes; and

*Rights of the Association to utilize the timeshare week of a Member in default.
We added the words sell, transfer, and lease in addition to "Grant".*

- (c) the Association shall not be obliged to account to the Member for the proceeds of the income derived from the Unit.

Notwithstanding the foregoing, the termination of this Agreement by the Association shall not affect any rights of any party prior to the date of termination and shall not relieve any party of any liabilities or obligations arising under this Agreement prior to the date of termination.

7.3 Exchange Program if in Default

Notwithstanding any other terms of this Agreement, the Association may choose whether or not to honour any exchange that is to take place after an Event of Default but prior to termination pursuant to any timeshare exchange program. The Member shall indemnify and save the Association harmless from and against all Claims arising as a result of the Association choosing to honour or not to honour such exchange. If the Association elects to honour such exchange, the Member shall be liable to the Association for the rental at the daily rates established by the Association and in effect for similar units during the period the Unit is occupied pursuant to such program.

7.4 Legal Fees

If the assistance of any third party, including without limitation, legal counsel, is required by the Association to recover possession of the Unit, recover amounts owing, or due to the breach of any other covenants herein contained on the part of the Member or permitted users, to be kept or performed, or to advise the Association on any of the foregoing matters, the Member shall pay to the Association all expenses incurred by the Association in connection therewith, including legal fees as rendered on a solicitor and his own client basis.

7.5 Additional Penalties and Sanctions Upon Default

The Association, through the Board, may, from time to time, prescribe additional penalties, sanctions or other measures that may be taken against the Member if in default of payment or other obligations and set policies with respect to notices, dates for imposition of penalties or sanctions, and other matters relating thereto.

8 ARTICLE 8 FAILURE TO VACATE AND UNAUTHORIZED USE

8.1 8.1 Failure to Vacate

In the event that the Member or other Permitted User fails to vacate the Unit at the expiration of his Vacation Interval as herein provided, or otherwise makes unauthorized use or occupancy of the Unit or any part of the Resort or prohibits another vacationer or other entitled person from occupying and making use of the Unit or any part of the Resort during their period of entitlement the occupying person and his guests, if any, shall, at the option of the Association:

- (a) be subject to immediate removal, eviction or ejection from the Unit or part of the Resort wrongfully used and occupied;
- (b) the Member will reimburse the Association and the other Permitted Users all costs and expenses incurred by it and them, as the case may be, as a result of such conduct including but not limited to costs of alternate accommodation, travel costs, legal fees (as rendered on a solicitor and his own client basis) incurred in connection with removing or ejecting the person(s) using or occupying the Unit or any part of the Resort;

- (c) the Member will pay to the Association for and on behalf of the other vacationer or others affected by such failure to vacate or unauthorized use or occupancy of the Unit as liquidated damages (in addition to the costs and expenses referred to above) and not as a penalty, an amount equal to three times that rate established from time to time for such Unit or similar accommodation at the Resort for each and every day or fraction thereof that the occupying person occupies in contravention of this Agreement, or such other amount as determined from time to time by the Association.

9 ARTICLE 9 RIGHT OF ASSIGNMENT AND MORTGAGES

9.1 Assignment of This Agreement

- (a) Subject to Subsections (b), (c) and (d) of this Article, the Member may transfer, assign or otherwise dispose of all of his interest in this Agreement, provided that the Member first provides to the Association an agreement (in the Association's standard form or in such other form satisfactory to the Association in its sole discretion) executed by the Member and the transferee where under the Member transfers and assigns all of his interest in this Agreement to the transferee, and the transferee agrees to perform all of his obligations under this Agreement.
- (b) the Member shall not mortgage, charge, grant a security interest in or otherwise encumber this Agreement or his interest herein.
- (c) Unless otherwise approved by the Board, the Member may not transfer, assign or otherwise dispose of his interest in this Agreement:
 - (i) if an Event of Default has occurred and is continuing;
 - (ii) without the prior approval in writing of the Association, such approval to be not unreasonably withheld, and
 - (iii) unless they have paid to the Association a transfer fee in such amount determined from time to time by the Association, plus GST thereon.
- (d) the Member shall not transfer, assign or otherwise dispose of less than all of his interest in this Agreement.
- (e) Upon the death or disability of a Member in good standing, the interest of the Member may be transferred to his executor, trustee, attorney, other legal representative, heirs and beneficiaries without the approval of the board.

This clause is changed to give the Board leeway to approve transfers in special circumstances, allow transfer on death, and is repeated in the Articles so they read the same.

9.2 Registration of Transfer

Any valid transfer, assignment or other disposition of this Agreement pursuant to Subsection 9.1(a) immediately above, shall be registered in the books and records of the Association upon receipt of the documentation referred to in Subsection 9.1(a) duly executed by the Member and the transferee or by their attorney duly appointed, together with such reasonable assurance or evidence of signature, identification and authority to transfer as the Association may from time to time prescribe and upon payment of a transfer fee (in such amount as determined by the Association from time to time).

9.3 Rental Service

If the Member wishes the Association to rent his Timeshare Week(s) in any Year, the Member shall comply with the rental policy and program in effect at the time, if any. The Association does not represent or warrant that it will be able to rent the Timeshare Week on behalf of the Member.

The Association does not currently offer this service.

10 ARTICLE 10 INSURANCE DAMAGE AND DESTRUCTION

10.1 Insurance

The Association shall obtain fire insurance for the Units, the furnishings and the Resort and such fire insurance shall be in an amount sufficient to cover the full replacement value of the Units, furnishings and the Resort, as reasonably determined by the Association. Such fire insurance policy shall contain all standard extended and supplementary coverage clauses, including all risk coverage, as may be applicable. In addition, the Association shall obtain comprehensive general liability insurance with respect to the Units, the furnishings and the Resort in amounts and on terms reasonably determined by the Association and its insurance advisors. Such insurance policy shall contain a waiver of subrogation against all Members and assignees.

11 ARTICLE 11 GENERAL PROVISIONS

11.1 Limitation on Liability

The Association shall not be liable or responsible in any way to the Member, or to any other person and the Member on behalf of himself and his family, hereby releases the Association in respect of:

- (a) any Injury arising from or out of any occurrence on, in or relating to the Unit or any loss or damage to property (including loss of use thereof) of the Member or any other person located in, on or around the Resort from any cause whatsoever;
- (b) without limiting the generality of the provisions of Subsection (a) herein, any Injury to the Member or any other person or loss or damage to property resulting from: strikes; lockouts; war; riots; insurrections; Acts of God; fire; smoke; explosion; falling or defective plaster, ceiling tiles; fixtures or signs; broken glass; steam; fumes; vapours; odours; dust; dirt; cinders; grease; acid; oil; any notions; offensive or excessive liquids, solids or gases, debris, vibration; radiation; air or noise pollution; theft; vandalism; breakage; wildlife; electricity; electrical or other wiring; computer or electronic equipment or systems malfunction or stoppage; water; rain; floods; flooding; freezing; earthquake, tornado or hurricane; wind; snow; avalanche, sleet; hail; frost; fog; excessive heat or cold; sewage; sewer backups; toilet overflow; leaks or discharges from any part of the Resort, or from any pipes, sprinklers, appliances, equipment, electrical or other wiring; plumbing fixtures, roof, windows, skylights, doors, trap doors or subsurface or any floor ceiling of any part of the Resort or from the street or any other place, or by dampness or climatic conditions or from any other cause whatsoever;
- (c) any injury, loss or damage caused by other Vacationers or any person in the Resort or by occupants of adjacent property thereto, or by the public, or by construction or renovation, or by any private public or quasi-public work, or by interruption, cessation or failure of any public or other utility service or any other cause whatsoever; or
- (d) an Injury to the Member or any other person or any loss or damage suffered to the Resort or the contents thereof by reason of the Association or its representatives entering the Resort to undertake any work therein, or to exercise any of the Association's rights or remedies hereunder, or to fulfill any of the Association's obligations hereunder, or in the case of emergency.

11.2 Indemnity

The Member hereby indemnifies and saves harmless the Association from and against any and all Claims in connection with:

- (a) the failure of the Member or any Permitted User to observe and perform any of the terms, covenants and provisions of this Agreement on its part to be observed and performed;
- (b) the occupancy or use by the Member or any Permitted User of the Unit or any part of the Resort;
- (c) Injury to a person, occurring in or about the Unit, including death resulting from the Injury, and Injury to the Member or any Permitted User, occurring on any part of the Resort, or any lands adjacent to the Resort;
- (d) any occurrence on or in the Unit during the Timeshare Week(s) or other vacation interval however caused; and
- (e) damage to or loss of property arising out of the use and occupation by the Member or any other Permitted Users of the Unit or any part of the Resort.

In case the Association, without actual fault on its part, is made a party to any litigation commenced by or against the Member, the Member indemnifies and saves harmless the Association and shall pay all costs and expenses, including legal fees as rendered on a solicitor and his own client basis, incurred or paid by the Association in connection therewith. The provisions of this section shall survive the expiration or termination of this Agreement.

11.3 Cancellation of Purchase

11.3.1 Fair Trading Act Statutory Right to Cancel

- (a) **The *Fair Trading Act* and its regulations provide that:**
 - (i) **A consumer (buyer) may cancel a time share contract or a points-based contract at any time from the day it is entered into until 10 days after the consumer receives a copy of the contract.**
 - (ii) **In addition, a consumer may cancel the contract at any time within one year after the day on which the contract is entered into if section 37(2) of the *Fair Trading Act* or section 5 of the *Time Share and Points-based Contracts and Business Regulation* applies.**
 - (iii) **To cancel the contract, the consumer must give a written notice of cancellation to the supplier at the most recent business address, e-mail address or facsimile number provided by the supplier. If the contract is being cancelled more than 10 days after it was made, the notice must state the reason for the cancellation.**

- (iv) **After the consumer cancels the contract, the supplier has 15 days to refund the consumer's money.**
- (b) **The *Fair Trading Act* provides other remedies that may apply in addition to cancellation.**
- (c) In this Act and Regulation the terms "consumer" or "buyer" refers to a Member and the term "supplier" refers to Banff Gate Mountain Resort.

11.3.2 Cancellation after Use

If the buyer cancels after using the property, the buyer shall pay a reasonable fee for that use after the buyer's money has been refunded. The fee shall be equal to the rental cost at the daily rates established by the Association and in effect for the Unit during the period of use.

11.4 Rules and Regulations

All Rules and Regulations of the Association shall be deemed to be incorporated into and form part of this Agreement. If there is a conflict between the Rules and Regulations and the provisions of this Agreement, the provisions of this Agreement shall in all cases prevail. The Association shall not be responsible to the Vacationer for the non-observance or violation of any provisions of the Rules and Regulations by other Vacationers or the non-observance or violation of the terms of any other agreement between the Association and other Vacationers, and shall be under no obligation to enforce any such provisions.

11.5 Membership in Association

The Member acknowledges and agrees that

- (a) upon the Member executing and delivering this Agreement to the Association, the Member will become a Member of the Association and shall remain a Member thereof until they cease to be a party to this Agreement pursuant to Article 7 or the Association terminates this Agreement in accordance with its terms;
- (b) the membership of the Member in the Association is inseparable from their ownership of this Agreement and such membership shall be automatically transferred in accordance with the Articles of Association;
- (c) the Member shall comply with, and not act contrary to, the Articles of the Association, this agreement, or the Rules and Regulations of the Association;
- (d) this Agreement is subject to a restriction on the voting rights on all business of the Association that comes before its Members as set out in the Articles of Association.

11.6 Amendment of Agreement

This Agreement may be amended from time to time without the consent, approval, agreement or ratification of the Member, provided that the Members of the Association approve the amendment by ordinary resolution (as defined in the

Articles). As soon as shall be practicable after the making of any such amendment, the Association shall furnish written notification of the substance of such amendment to the Member.

11.7 Joint and Several

If more than one Member signs this Agreement, the liabilities and obligations pursuant to this Agreement shall be joint and several.

11.8 Execution of Documents

The parties hereto shall and will sign such further and other papers, cause such meetings to be held, resolutions passed, by-laws enacted, exercise their votes and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable to give full force and effect to this Agreement and any part thereof.

11.9 Time

Time shall be of the essence of this Agreement.

11.10 Entire Agreement

This agreement expresses the entire agreement between the parties hereto with respect to the subject matter hereof and its execution has not been induced by, nor do any of the parties rely upon or regard as material any representations or warranties whatsoever not incorporated herein and made part hereof.

11.11 Notices

Any notice, direction or instrument ("**Notice**") required or permitted to be given hereunder shall be hand delivered, mailed postage prepaid, transmitted by facsimile, or delivered by overnight courier at the address of the party written below. Any Notice delivered to the party to whom it is addressed or faxed to the address or fax number hereinbefore provided shall be deemed to have been received on the day it is so delivered, or on the date that it is faxed, receipt confirmed or if mailed, shall be deemed to have been received on the fifth business day following the day after which it was mailed, provided that if the Notice is delivered after 4:00 p.m. (local time) or if such day is not a business day then the Notice shall be deemed to have been received on the next following business day. Any of the parties hereto may, from time to time, give notice of any change of their addresses in the manner herein provided and, in such event the address of the party shall be deemed to be changed accordingly. Provided that in the event of threatened or actual mail strike or slow down, notice shall not be given by mail.

11.11(a)

Notices required or permitted to be sent may also be sent by e-mail or other electronic means to any addresses, sites, platforms or other places provided by the Member to the Association as a method of communication. The Member shall be responsible to update any changes to such contact information. Such Notices shall be deemed to have been received on the day it was so delivered. Notices shall also be able to be given in such other forms as may become accepted and

adopted from time to time by businesses and organizations in the Province of Alberta and as may be adopted by the Board.

11.12 Succession and Assigns

Subject to the restrictions on assignment herein contained, this agreement shall ensure to the benefit of and be binding upon the parties hereto, their respective administrators, successors and assigns.

11.13 Interpretation

In this Agreement, words importing the singular number only shall include the plural and vice versa, words importing gender shall include all genders.

11.14 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

11.15 Headings

The division of this Agreement into articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement

11.16 Severability

If any provision of this Agreement shall be or become illegal or unenforceable in whole or in part the remaining provisions shall nevertheless be valid, binding and subsisting.

THE MEMBER(S): _____

(Name and Address: _____ of Record)

(Phone) _____

(Fax): _____

(Email): _____

THE ASSOCIATION:

Banff Gate Mountain Resort Association

Mailing Address

*P.O. Box 8113
Canmore AB
T1W 2T8*

Municipal Address

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Canmore, AB (Dead Man's Flats)

Phone 1 403 609 9229 or 1 877 609 9229

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