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RHONDA FRANCIS, SUMMIT COUNTY RECORDER

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NEIGHBORHOOD DECLARATION AND

DECLARATION OF CONDOMINIUM

FOR

MOONSHADOW

(A Residential Condominium Project in Summit County, Utah)

Declarant: STORIED DEER VALLEY, LLC, a Delaware limited liability company

Note: The Project Property subject hereto is also subject to the terms and conditions of that certain: (i) *Certificate of Amendment and Amended and Restated Master Declaration of Covenants, Conditions and Restrictions of Empire Pass* recorded December 14, 2004 in the Office of the Summit County Recorder as Entry Number 719855 in Book 1666 at Page 1054, as the same may be amended from time to time (the "Master Declaration"); and the (ii) *Supplemental Declaration to Amended and Restated Master Declaration of Covenants, Conditions, and Restrictions of Empire Pass [Marsac Horseshoe]* recorded January 31, 2018 in the Office of the Summit County Recorder as Entry Number 01085837 in Book 2448 at Page 0532. THIS DECLARATION WILL CONSTITUTE A NEIGHBORHOOD DECLARATION UNDER THE MASTER GOVERNING DOCUMENTS (AS DEFINED HEREIN). THE PROJECT WILL CONSTITUTE A RESIDENTIAL CONDOMINIUM DEVELOPMENT, AS PERMITTED UNDER THE MASTER GOVERNING DOCUMENTS, AND THE ASSOCIATION WILL CONSTITUTE A SUB-ASSOCIATION AS PERMITTED UNDER THE MASTER GOVERNING DOCUMENTS. AN OWNER WHO ACQUIRES A RESIDENTIAL CONDOMINIUM UNIT CREATED BY THIS INSTRUMENT IS ALSO SUBJECT TO THE TERMS AND PROVISIONS OF THE MASTER GOVERNING DOCUMENTS (AS DEFINED HEREIN).

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NEIGHBORHOOD DECLARATION AND DECLARATION OF CONDOMINIUM

**FOR
MOONSHADOW**

(A Residential Condominium Project in Summit County, Utah)

This *Neighborhood Declaration and Declaration of Condominium for Moonshadow* ("Declaration") is made and executed by STORIED DEER VALLEY LLC, a Delaware limited liability company ("Declarant"), for itself, and its successors and assigns, pursuant to the provisions of Title 57 Chapter 8, UTAH CODE ANNOTATED, as amended ("Act").

1. RECITALS.

1.1 Moonshadow is part of a larger master planned community development known as Empire Pass, situated in Park City, Summit County, State of Utah ("Empire Pass"), organized pursuant to that certain *Certificate of Amendment and Amended and Restated Master Declaration of Covenants, Conditions and Restrictions of Empire Pass* executed by United Park City Mines Company, a Delaware corporation, and Empire Pass Master Owners Association, Inc., a Utah nonprofit corporation ("Master Association") and recorded December 14, 2004 in the Office of the Summit County Recorder as Entry Number 719855 in Book 1666 at Page 1054, as may be further amended and/or supplemented from time to time (collectively, the "Master Declaration").

1.2 Pursuant to the *Supplemental Declaration to Amended and Restated Master Declaration of Covenants, Conditions, and Restrictions of Empire Pass [Marsac Horseshoe]* recorded January 31, 2018 in the Office of the Summit County Recorder as Entry Number 01085837 in Book 2448 at Page 0532, as may be further amended and/or supplemented from time to time (the "Marsac Horseshoe Supplemental Declaration"), Redus Park City LLC, a Delaware limited liability company ("Redus") exercised its rights as "Declarant" under the Master Declaration to amend the provisions of the Master Declaration and subject the real property located in the County of Summit, State of Utah, more particularly described as Lot 1, Village of Empire Pass North Subdivision, according to the official plat recorded January 23, 2018, as Entry No. 1085414 in the office of the Summit County Recorder's Office (the "Marsac Horseshoe Property") to the Master Declaration. Pursuant to *Section 4.1* of the Master Declaration, the Marsac Horseshoe Property was designated with the Land Use Classification of Cluster Residential Use.

1.3 Pursuant to that certain *Assignment of Declarant's Rights and Agreement Regarding Co-Declarant's Rights*, recorded on January 31, 2018 in the Office of the Summit County Recorder as Entry Number 1085839 in Book 2448 at Page 0542 (the "Partial Assignment"), Redus assigned to Declarant certain of its rights, title and interests as "Declarant" under the Master Declaration.

1.4 Declarant holds both legal and equitable title on that portion of the Marsac Horseshoe Property more particularly described on the attached Exhibit A (the "Project Property"). On the Project Property, Declarant desires to develop a condominium project.

1.5 Pursuant to *Section 1.71* of the Master Declaration, the Declarant may Record a Neighborhood Declaration to establish additional restrictions and uses. This Declaration shall be deemed a "Neighborhood Declaration" as set forth and permitted under *Section 4.1* of the Master Declaration.

1.6 As permitted by the Master Declaration, Declarant intends to create a residential community subject to the condominium form of ownership (hereinafter referred to as the "Project," as further defined below) and to carry out a uniform plan for the improvement and development of the Project Property for the benefit of the present and future owners thereof. Pursuant to Section 4.1.3 of the Master Declaration, this Declaration establishes the use of the Project as a Residential Condominium Development Use.

1.7 Declarant hereby submits the Project Property, together with all Improvements thereon, and all easements, rights, and appurtenances thereto, to the terms and provisions of the UTAH CONDOMINIUM OWNERSHIP ACT (TITLE 57, CHAPTER 8, UTAH CODE), for the purpose of creating a residential development subject to the condominium form of ownership. The Project shall be known as "Moonshadow" and is intended to be a condominium project pursuant to the Act. The covenants, conditions, and restrictions contained in this Declaration and in the Exhibits hereto shall be enforceable equitable servitudes and shall run with the land.

1.8 Recorded simultaneously herewith is a condominium Plat of the Project as required by the Act.

1.9 Declarant shall cause the incorporation and organization of the Association, which Association will maintain the Common Area and Facilities within the Project as hereinafter described, provide for the management and operation of the Common Area and Facilities, levy and collect Assessments, and administer and enforce the terms of this Declaration.

NOW, THEREFORE, it is hereby declared that: (i) Declarant submits the Project Property, the Units, the Dwellings, the Common Area and Facilities, and all Improvements thereon to the provisions of the Act. All of the Project Property and the Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, occupied, insured, used and improved as a residential condominium project and encumbered with the provisions of this Declaration, including the representations and reservations of Declarant, each and all of which are declared and agreed to be for the benefit of the Project Property and the Project and in furtherance of a plan for improvement of the Project Property and the Project and division thereof into Units; further, each and all of the provisions hereof shall be deemed to run with the land, together with all Improvements thereon and all easements, rights, and appurtenances thereto, and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns, and shall be a burden and a benefit to the Declarant, the successors and assigns of the Declarant, and any Person acquiring, leasing, subleasing, or owning an interest in the real property and improvements comprising the Project Property and the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors; (ii) each contract or deed which may hereafter be executed with regard to the Project and the Project Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) this Declaration shall supplement and be in addition to the covenants, conditions, and restrictions of the Master Declaration. In the event of a conflict between the terms and provision of this Declaration and the Master Declaration, the terms of the Master Declaration will control.

2. DEFINITIONS.

All capitalized terms used in this Declaration shall have the definitions as set forth herein.

2.1 Act means the Utah Condominium Ownership Act (Title 57, Chapter 8, UTAH CODE ANNOTATED).

2.2 Amendment means any Supplemental Declaration or any amendment to this Declaration made in accordance with the Declaration and the Act.

2.3 Applicable Law means the statutes and public laws and ordinances in effect at the time a provision of the Condominium Documents or Master Governing Documents is applied, and pertaining to the subject matter of the Condominium Document or the Governing Document provision, including but not limited to Ordinance No. 2018-54 of the Park City Code. Statutes and ordinances specifically referenced in the Condominium Documents or Master Governing Documents are "Applicable Law" on the date of the Condominium Document or Governing Document, and are not intended to apply to the Project Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

2.4 Articles mean the Articles of Incorporation of the Moonshadow Owners Association, Inc., a Utah non-profit corporation, as amended from time to time.

2.5 Assessment means any charge levied against a Unit or Owner by the Association, pursuant to the Condominium Documents, the Act, or Applicable Law, including but not limited to Regular Common Assessments, Special Common Assessments, Individual Assessments, Service Assessments, and Master Assessments, and all costs, expenses, and attorneys' fees incurred by the Association and assessed to an Owner for any reason provided for in this Declaration or under the Act, including the cost and attorneys' fees incurred during collections.

2.6 Association means the *Moonshadow Owners Association, Inc.*, a Utah non-profit corporation, organized for the purposes set forth in this Declaration.

2.7 Buffer Area shall be defined as set forth under *Section 7.2*.

2.8 Bylaws means the Bylaws of the Association, a copy of which is attached hereto as Exhibit B and incorporated herewith, as amended from time to time.

2.9 City means Park City Municipal Corporation, a body politic of the State of Utah.

2.10 Club means the Talisker Club and the Club Facilities.

2.11 Club Board means the board of directors of the Club.

2.12 Club Facilities means any golf course, the Talisker Club Ski Lodge, the Tuhaye Park, and any other recreational facilities and amenities owned, operated, and/or maintained by the Club Owner or the Club Board, including but not limited to golf courses and related facilities (including but not limited to practice facilities including a driving range and putting green), club buildings and related facilities (including but not limited to any spa and fitness facilities, clubhouse, swimming pool, pro shop, locker rooms, dining facilities, lounge and bar, activity centers, children's centers, fitness facilities, hot tubs, pool facilities), tennis courts and related facilities, ski club's and related facilities, boating facilities, parking facilities, hiking trails, mountain biking trails, and open spaces.

2.13 Club Membership Application means the Membership Application and Agreement or Membership Enrollment Agreement, as applicable, as such may be amended and supplemented from time to time.

2.14 Club Membership Documents means collectively, the Club Declaration, the Club Membership Application in effect from time to time, the Club Membership Plan, the Talisker Club Rules and Regulations, and such other documents adopted by the Club Owner from time to time governing membership in the Club, each as may be amended, modified, or supplemented from time to time.

2.15 Club Membership Plan means the Talisker Club Membership Plan, as such may be amended and supplemented from time to time.

2.16 Club Owner means any Person who at any time owns the Club, the Club Facilities, and the Club Property and any of its designees, successors and assigns who receive a written assignment of all or some of the rights of Club Owner hereunder. Such assignment need not be Recorded in order to be effective. In the event of a partial assignment, the assignee shall not be deemed Club Owner but may exercise such rights of Club Owner specifically assigned to it. Any such assignment may be made on a non-exclusive basis. As of the date this Declaration is Recorded, Talisker Club 2.0, LLC, a Delaware limited liability company is the Club Owner. The identity of the Club Owner may change from time to time (e.g., the current Club Owner may sell all or some portion of the Club Facilities to a third party). Notwithstanding that Club Owner and the Declarant may be the same party, affiliates, or related parties from time to time, each Owner acknowledges that Club Owner and Declarant shall not be considered one and the same party and neither of them shall be considered the agent or partner of the other. At all times, Club Owner and Declarant shall be considered separate and viewed in their separate capacities. No act or failure to act by Declarant shall at any time be considered an act of Club Owner and shall not serve as the basis for any excuse, justification, waiver or indulgence to the Owners with regard to their prompt, full, complete and continuous performance of their obligations and covenants hereunder. The term "Club Owner" shall not include any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

2.17 Club Property means the real property on which or within which the Club Facilities are located.

2.18 Common Area Manager means the person, firm or company designated by the Management Committee to manage, in whole or in part, the affairs of the Association and the Common Area and Facilities. Declarant shall have the right to appoint the first Common Area Manager, which Common Area Manager may be Declarant or a Declarant Affiliate.

2.19 Common Area and Facilities means all portions of the Project SAVE AND EXCEPT the Units, as described in *Article 5* hereof, including the Limited Common Area and Facilities and any real property or improvements within the Project that the Association has the obligation to maintain, repair, or replace for the common benefit of the Owners. The Common Area and Facilities include, without limitation all Common Area and Facilities as hereinafter described and designated as such on the Plat, and all Limited Common Area and Facilities as hereinafter described and as designated as such on the Plat. In the event of a conflict between this Declaration and the Plat, the provisions of the Declaration shall control. The Common Area and Facilities may also include, but are not limited to, the land within the Project which is hereby submitted to the provisions of the Act; all utility lines and facilities used by or useful to more than one Unit (and which lines and facilities are not the property of the entity

providing the utility service, and all other parts of the Project necessary or convenient to its existence, maintenance, and safety. The undivided ownership interest in the Common Area and Facilities appurtenant to each Unit, and the voting rights and the percent of assessments attributable to each Unit are set forth on Exhibit C attached hereto.

2.20 Common Expense Fund means one or more deposit or investment accounts of the Association into which the Assessments are deposited. The Common Expense Fund shall consist of at least one operating fund for daily operating expenses and at least one capital fund for reserve and replacement expenses.

2.21 Common Expenses means all charges and expenses of the administration, maintenance, repair, or replacement of the Project and the Common Area and Facilities, including without limitation all premiums for insurance (including deductibles) obtained by the Management Committee on behalf of the Association for the benefit of the Project, all expenses of and lease payments associated with utilities, cable, satellite television, internet, and all other telecommunications equipment servicing the Units, expenses levied against the Association by the Master Association, and all other expenses denominated as Common Expenses by this Declaration or by the Act, which are assessed by the Management Committee on behalf of the Association.

2.22 Community Area is defined as set forth under the Master Declaration.

2.23 Condominium Design Guidelines means the standards for design and construction of Improvements, landscaping, and exterior items proposed to be placed on any Unit, and adopted pursuant to *Section 13.5.2*, as the same may be amended from time to time. The Condominium Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Project Property. At Declarant's option, the Moonshadow Reviewer or its designee may adopt, and amend from time to time, with the prior written approval of the Design Review Board, the Condominium Design Guidelines applicable to the Project Property, or any portion thereof. The Condominium Design Guidelines may be Recorded as a separate written instrument or may be incorporated into a Supplemental Declaration by exhibit or otherwise. Notwithstanding anything in this Declaration to the contrary, Declarant will have no obligation to establish Condominium Design Guidelines for the Project Property or any portion thereof and the Condominium Design Guidelines, if adopted, shall be subject to and subordinate to the terms and conditions of the Design Guidelines.

2.24 Condominium Documents means this Declaration, the Plat, the Policy Manual, the Bylaws, the Articles, the Project Rules, the Condominium Design Guidelines (if any), and the Management Committee's authorized resolutions, as each document may be amended and/or restated from time to time.

2.25 Cost of Living Index means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average for All Items (1982-84=100), compiled by the Bureau of Labor Statistics, United States Department of Labor. Declarant may select any other comparable index which measures changes in the cost of living.

2.26 County means Summit County, Utah.

2.27 Declarant means STORIED DEER VALLEY, LLC, a Delaware limited liability company, or any successor in interest, as provided in the Act and in *Article 32* below.

2.28 Declarant Affiliate means any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder or any third party that acquires title to the entire Project or a particular phase thereof as successor in interest to Declarant.

2.29 Declarant Control Period is defined as set forth under *Section 11.1.7*.

2.30 Declaration means this *Neighborhood Declaration and Declaration of Condominium for Moonshadow*, and all amendments, modifications and supplements hereto.

2.31 Declaration of Development Covenants means that certain *Declaration of Development Covenants [Marsac Horseshoe]* dated as of January 31, 2018, and recorded with the Summit County Recorder on January 31, 2018 as Entry No. 01085832 in Book 2448, Page 0495.

2.32 Design Guidelines is defined as set forth under the Master Declaration, and all amendments, modifications and supplements thereto.

2.33 Design Review Board is defined as set forth under the Master Declaration.

2.34 Development Agreement means the *Amended and Restated Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, The 20-Acre Quinn's Junction Parcel and Iron Mountain*, dated as of March 2, 2017, and recorded with the Summit County Recorder on March 2, 2007 as Entry No. 00806100 in Book 1850, Page 1897, and all amendments, modifications and supplements thereto.

2.35 Development Period means the period of time that the Declarant holds any Development Rights under this Declaration and the Act and shall expire at such time Declarant no longer owns a legal interest in any portion of the Project Property.

2.36 Development Rights means the Declarant's right, under the Act and this Declaration, to exercise: (a) any of the unilateral amendment rights set forth in *Article 23* below; and (b) any other right, benefit, privilege, entitlement, easement, license, or Trademark granted to or reserved by Declarant pursuant to this Declaration, the Bylaws, or the Act.

2.37 Dwelling(s) means single-family residential structures to be constructed on the Project Property, as further described in *Section 3.2*.

2.38 Eligible Mortgagee means and refers to a First Mortgagee that has requested notice of certain matters from the Association in accordance with *Section 22.1* of this Declaration.

2.39 Empire Pass or Empire Pass at Deer Valley means and refer to that certain planned community situated in Park City, Utah, more particularly described in *Recital 1.1* above, of which the Project is a part.

2.40 Exempt Property means any Unit owned by Declarant or any Declarant Affiliate.

2.41 Guest means an Owner's accompanied or unaccompanied family member, guest, invitee, licensee, renter, or tenant, and any Person or occupant who has the right or permission to use and occupy a Unit.

2.42 Improvement means every structure and all appurtenances of every type and kind within or appurtenant to the Project, whether temporary or permanent in nature, including, but not limited to: Dwellings, outbuildings, patios, recreational facilities, swimming pools, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, and other facilities used in connection with water, irrigation, sewer, gas, electric, telephone, regular or cable television, or other utilities.

2.43 Limited Common Area and Facilities means that portion of the Common Area and Facilities designated by the Declaration or the Act, and as may be shown on the Plat, for the exclusive use of one or more, but fewer than all, of the Units.

2.44 Maintenance Agreement is defined as set forth under the Master Declaration, and all amendments, modifications and supplements thereto.

2.45 Management Committee means the Board of Directors of the Association, appointed or elected in accordance with this Declaration, the Articles, and the Bylaws.

2.46 Master Assessments means assessments and other charges levied by the Master Association pursuant to the Master Declaration, including but not limited to the Annual Assessments, the Special Assessments, the Maintenance Charges, the Transfer Assessments, and the Park City Assessments.

2.47 Master Association means the Empire Pass Master Owners Association, Inc., a Utah nonprofit corporation, and its successors and assigns.

2.48 Master Declarant means STORIED DEER VALLEY, LLC, a Delaware limited liability company, as Declarant over the Empire Pass Properties pursuant to *Section 3* of the Partial Assignment.

2.49 Master Declaration means and refers to that certain *Certificate of Amendment and Amended and Restated Master Declaration of Covenants, Conditions and Restrictions of Empire Pass* executed by United Park City Mines Company, a Delaware corporation, and the Master Association and recorded December 14, 2004 in the Office of the Summit County Recorder as Entry Number 719855 in Book 1666 at Page 1054, and all amendments, modifications and supplements thereto as more particularly described in *Recital 1.1* above.

2.50 Master Governing Documents mean the governance documents adopted pursuant to the Master Declaration and is defined as set forth under the Master Declaration, and all amendments, modifications and supplements thereto.

2.51 Master Management Committee means the Board of Directors of the Master Association, appointed or elected in accordance with the Master Governing Documents.

2.52 Moonshadow Reviewer means the party holding the rights to approve Improvements within the Project Property and shall be Declarant or its designee so long as Declarant holds any Development Rights under this Declaration. Upon expiration or termination of the Development Rights, the rights of the Moonshadow Reviewer will automatically be transferred to the architectural control committee appointed by the Management Committee, as set forth in *Article 13* below.

2.53 Mortgage means any mortgage, deed of trust or other security instrument (including the seller's rights under a contract for deed) by which a Unit or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

2.54 Mortgagee means any Person named as the mortgagee, beneficiary or holder of the seller's interest (so long as a copy of the contract for deed is given to the Association) under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee means any Person holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in the Declaration shall also protect the Declarant as the holder of a First Mortgage of a Unit or any interest therein.

2.55 Neighboring Property means any property or street within the Project (including annexed property) other than the specific property in reference.

2.56 Owner means any Person, including Declarant, at any time owning a Unit within the Project. The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

2.57 Person means any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other legal entity, including any governmental entity (federal, state, county, district, municipal, city or otherwise) and any fiduciary acting in such capacity on behalf of any of the foregoing.

2.58 Plat means the *Condominium Plat of Moonshadow* Recorded in the Office of the County Recorder for Summit County, State of Utah, concurrently herewith, as it may be amended or supplemented from time to time pursuant to this Declaration and the Act. Such amendments to the Plat are expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners. The initial Plat shall also be amended by a Supplemental Plat Recorded by the Owner at such time as such Owner's Dwelling is designed to memorialize and document the constructed Dwelling and to identify Common Area and Facilities and Limited Common Area and Facilities for the Unit, or as otherwise provided herein. Such Supplemental Plat is expressly authorized and shall be undertaken by the Owner without the joinder or consent of any other Owner so long as (1) the Owner is in compliance with any Plats previously recorded by the Declarant and (2) such Supplemental Plat is approved in writing in advance of its Recording by the Moonshadow Reviewer, the Design Review Board, and the City.

2.59 Policy Manual means the policy manual, if any, which may be initially adopted by Declarant as part of the initial project documentation for the Project. The Policy Manual may include the Articles and Project Rules and policies governing the Association as the Management Committee determines to be in the best interest of the Association, in its sole and absolute discretion. The Policy Manual may be amended, from time to time, by a Majority of the Management Committee; provided,

however, that during the Development Period, any amendment to the Policy Manual must be approved in advance and in writing by Declarant.

2.60 Project means the Project Property, the Units, the Dwellings, the Common Area and Facilities, the Limited Common Area and Facilities, and all Improvements submitted by this Declaration to the provisions of the Act.

2.61 Project Design Guidelines means the written review standards promulgated by the Moonshadow Reviewer pursuant to this Declaration.

2.62 Project Maintenance Standard means the standards of construction, operation, service, maintenance, repair and refurbishment of the Project which shall be at the level of service and quality of a high-end residential project and reasonably likely to protect and preserve the assets that comprise the Project and optimize the long-term value of the Project over the life of the Project as Declarant shall determine in its sole and exclusive discretion during the Development Period. This definition may not be amended without the prior written consent of Declarant.

2.63 Project Rules means all rules and regulations of the Association promulgated by the Management Committee covering the operation and maintenance of the Project and the Units, as the same may from time to time be amended.

2.64 Property is defined as set forth under the Master Declaration, and all amendments, modifications and supplements thereto.

2.65 Project Property means that certain real property situated in the County of Summit, State of Utah, more particularly described on the attached Exhibit A, on which the Units and other improvements are located.

2.66 Record, Recording, Recorded and Recordation means placing or having placed an instrument of public record in the Official Records of Summit County, Utah.

2.67 Regular Common Assessments means the annual assessments levied by the Association to pay the budgeted Common Expenses.

2.68 Released Parties or Released Party means the Master Declarant, the Declarant, any of Declarant's Affiliates or agents, the Club Owner, the Club Board, the Common Area Manager, the Management Committee, the Association, the Moonshadow Reviewer, the Master Management Committee, the Master Association, and the Design Review Board, and all the aforementioned entities' respective past and present directors, officers, shareholders, and all of their respective agents, representatives, attorneys, and employees.

2.69 Service Area means a group of Units designated as a separate Service Area pursuant to this Declaration for purpose of receiving benefits or services from the Association which are not provided to all Units. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Units. A Unit may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 11.1.18*.

2.70 Service Area Assessments means the assessments levied against certain Units in a particular Service Area to fund Service Area Expenses, as further described in *Section 16.5*.

2.71 Service Area Expenses means the estimated or actual expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include reserves for operations, capital repairs, and replacements.

2.72 Ski Facilities means the public skiing facilities, equipment, trails, and recreation areas within Park City and its adjacent areas.

2.73 Snowmelt System means the equipment installed in and about the Units for the purpose of heating the driveways, certain walkways and portions of the roof, and melting the snow and ice, on and around the Units. The Snowmelt System of each Unit includes the boilers, pumps, pipes, thermostats, controls, hoses, heat tape, wiring and coils and other equipment and facilities that comprise the system, whether such equipment is located within a Unit or situated within the Common Area and Facilities or Limited Common Area and Facilities surrounding the Unit.

2.74 Special Common Assessments means assessments which the Association may levy from time to time, in addition to the Regular Common Assessments, for unexpected Common Expenses or other purposes as provided herein.

2.75 Supplemental Declaration means any amendment to this Declaration Recorded in connection with Declarant's exercise of any of its Development Rights.

2.76 Supplemental Plat means any amendment to the Plat by an Owner made in accordance with this Declaration and the Act and as set forth in *Section 2.58* and *Section 23.5*.

2.77 Total Votes of the Association means the total number of votes within the Association appertaining to all Units, as described in *Article 15* hereof.

2.78 Undivided Interest means the undivided ownership interest of each Owner in the Common Area and Facilities and the Common Expenses allocated to each Unit as shown on Exhibit C to this Declaration, as may be reallocated as required from time to time pursuant to the provisions of this Declaration. The Undivided Interest shall have a permanent character and shall not be altered without the consent of at least two-thirds (2/3) of the Owners expressed in an amendment of this Declaration duly recorded.

2.79 Unit means the physical portion of the Project Property subdivided and designated by this Declaration for separate ownership, the boundaries of which are shown on the Plat and any subsequently recorded Supplemental Plat, as further described in this Section and *Article 5* of this Declaration, together with the Undivided Interest in the Common Area and Facilities appertaining to that Unit. In the event of a conflict between this Declaration and the Plat, the provisions of the Declaration shall control.

2.80 Unit Number means the number, letter or combination of numbers and letters that identifies only one Unit in the Project.

2.81 Villages Plat means that official plat entitled Village at Empire Pass North Subdivision, and recorded under January 23, 2018, as Entry No. 1085414 of the Summit County Recorder's Office, as amended.

2.82 Visible from Neighboring Property means with respect to any given object, that such object is or would be visible to an individual six feet (6') tall standing on Neighboring Property, on the level of the base of the object being viewed.

3. DESCRIPTION OF THE PROJECT PROPERTY AND IMPROVEMENTS.

3.1 Description of the Project Property. The Project Property on which the Units and Improvements are located is situated in Summit County, Utah, and is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

3.2 Initial Improvements. When completed, the Project will consist of eight (8) freestanding residential Dwellings with each Dwelling comprising one (1) Unit. The Dwellings will be of wood frame construction. The roofs will be sloped, with fire-resistant shake shingles or metal. Exteriors will be of natural stone and wood siding. The Dwellings will be supplied with telephone, cable television, electricity, natural gas, water, and sewer service.

3.3 Disclaimer of Development Representations. All Persons, including without limitation all Owners, are hereby advised that, except as expressly set forth in this Declaration and in the Plat, no representations, warranties or commitments have been or are made by Declarant, Declarant Affiliates, or any other Person with regard to the present or future development, ownership, operation or configuration of the Project, including the Units, the Dwellings, the Improvements, and Common Area and Facilities, whether or not depicted on any other land use plan, sales brochure or other marketing display, rendering or plan or statements made by any real estate broker or agent in any sales presentation. No purported representation, warranty or commitment, written or oral, in such regard shall ever be effective without an amendment hereto executed by Declarant.

4. SUBMISSION OF PROJECT.

4.1 Submission to the Act. Declarant hereby submits the Project Property, the Project, the Dwellings, and all other Improvements thereon and therein to the provisions of the Act. All of said Project and Project Property and all other Improvements thereon or therein are and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a Residential Condominium Development Project. All of the Project and Project Property and all other Improvements thereon or therein are and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and Project Property and such Improvements, and in furtherance of a plan for improvement of said Project and Project Property and division thereof into Units; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to Declarant, the successors and assigns of Declarant, and any Person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project and the Project Property, and all other Improvements thereon or therein, their assigns, lessees, sublessees, heirs, executors, administrators, devisees, and successors. In addition to the foregoing, each and all of the provisions of the Master Declaration, including any assessment provisions thereof, shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, the successors and assigns of the Declarant, and any Person acquiring, leasing, subleasing or owning an interest in the real property and Improvements comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees, and successors.

4.2 Submission to the Master Declaration. As set forth under *Section 4.1* of the Master Declaration, upon the Recording of this Declaration, all liabilities, costs, expenses, charges, and assessments under the Master Declaration attributable to the ownership of a portion of a condominium classified as Residential Condominium Development Use are hereby assigned and allocated to each Residential Unit in accordance with the allocation and assignments set forth in this Declaration. Pursuant to *Section 6.1* of the Master Declaration, Owners of Units designated as a Residential Condominium Development under the Master Declaration shall be members of the Master Association by virtue of such ownership and liable for the payment of Master Assessments pursuant to the terms and provisions of the Master Governing Documents.

4.3 EACH OWNER OF A UNIT AGREES TO INDEMNIFY AND HOLD HARMLESS THE RELEASED PARTIES FROM SUCH OWNER'S SHARE OF ANY AND ALL LIABILITIES, COSTS, EXPENSES (COMMON OR OTHERWISE), CHARGES AND ASSESSMENTS ALLOCATED TO SUCH OWNER'S UNIT UNDER THE TERMS AND PROVISION OF THIS DECLARATION. This provision does not act to assign any rights retained by "Declarant" as such term is defined in the Master Declaration or this Declaration.

5. DESCRIPTION OF UNITS.

5.1 Description of the Units. The Units are more particularly described under *Section 2.79* and the Plat, including any Supplemental Plat Recorded by an Owner as required under *Section 2.58* and *Section 23.5* of this Declaration. The Units in this Project are detached single family home Units. A Unit shall initially mean and refer to an individual Unit as set forth on the Plat. Each Owner shall have the right to construct a Dwelling on the real property underlying each Unit, subject to the MGFA limitations set forth under *Section 5.1.1*. After the Dwelling for each Unit has been designed and the Supplemental Plat has been Recorded, the boundaries of such Unit shall automatically be amended to be the outermost structural and nonstructural components of the Dwelling, including, but not limited to, the roof, exterior walls, foundation, balconies, porches and decks. Each Owner acquiring a Unit in the Project shall have fee title to and exclusive right to the use and occupancy of the Unit. Decks, balconies, and porches shall not be utilized for, or converted to, habitable space, without the consent of the Moonshadow Reviewer, the City, and the Design Review Board. Owners are responsible for the construction, maintenance, repair, and replacement of all utility improvements serving their Unit exclusively, including any sewer lines, water lines and other utilities. Owners are also responsible for the construction, maintenance, repair, and replacement of all driveways (including snow removal and resurfacing) and all landscaping, irrigation, and other facilities of every kind and nature serving their Unit exclusively. No Owner, Guest, invitee, or tenant of an Owner may park a vehicle or equipment of any kind or nature on a driveway which services or is designated for another Owner's Unit. Any parking stalls, driveways, sidewalks, or storage facilities that are identified on the Plat with the same number or other designation by which a Unit is identified or is adjacent to the Unit, shall be Limited Common Area and Facilities for the exclusive use of the Owner of the Unit bearing the same number of designation.

5.1.1 Maximum Gross Floor Area. The maximum gross floor area ("MGFA") of a Unit is 7,750 square feet, which such 7,750 square feet MGFA calculation shall include without limitation: (a) all enclosed area of the Unit (including area below final grade and mechanical spaces); (b) all ancillary buildings, including guesthouses; and (c) any garage area in excess of 600 square feet. Any garage area that is 600 square feet or smaller shall not count towards the MGFA calculation.

5.2 The Plat. The Plat sets forth those things required under SECTION 57-8-13 of the Act including but not limited to the following: (i) a general description and diagrammatic plan of the Project; and (ii) any encroachments by or on any portion of the Project. The measurements set forth on the Plat as to each Unit are approximate values taken from the plans and specifications for the Project and may not be precisely accurate as to any Unit due to variances in construction, building dimensions, and interior floor plans. NONE OF THE RELEASED PARTIES SHALL BE LIABLE TO ANY OWNER AS A RESULT OF ANY DISCREPANCIES IN ACTUAL UNIT MEASUREMENTS FROM THOSE SET FORTH ON THE PLAT, AND EACH OWNER, BY ACCEPTING A DEED TO A UNIT, HEREBY WAIVES ANY SUCH CLAIM OR CAUSE OF ACTION.

5.3 Units Generally. If the foregoing description of Unit boundaries is inconsistent with the Plat, then this Article 5 will control. It is the express intent of Declarant that the property described as being part of a Unit shall for all purposes herein be treated as and constitute a lawfully described "Unit" as that term is defined in the Act. In the event that there is a final judicial determination by a court of competent jurisdiction that the boundaries of a Unit or any portion thereof are so indefinite and vague so as to not create a legally constituted "Unit" within the meaning of the Act, then that portion of the Unit that has not been adequately described shall be severed from the property deemed a part of the Unit (if the remainder of the Unit, excluding the severed portion thereof, constitutes a property described as being part of a "Unit" under the Act) and shall thereafter be deemed to be Limited Common Area and Facilities reserved to the exclusive use of said Unit, subject to the rights and obligations of other Owners with respect to said property.

6. DESCRIPTION AND OWNERSHIP OF COMMON AREA AND FACILITIES.

6.1 Description of Common Area and Facilities. The Common Area and Facilities shall mean and include the Project Property on which all Units are located and all portions of the Project, SAVE AND EXCEPT the Units. Consequently, in general, the Common Area and Facilities means those portions of the Project described under Section 2.19 and all other parts of the Project designated by Declarant as Common Area and Facilities and existing for the use of one or more of the Owners. In the event of a conflict between this Declaration and the Plat, the provisions of the Declaration shall control. Each Owner hereby acknowledges and agrees that area labeled "Recreational Open Space Zoning and Common Area" (the "ROS Area") on the Plat is zoned ROS - MPD and thus subject to the restrictions and requirements of such zoning, as more particularly set forth in the Park City Municipal Code, the Development Agreement, and the Plat. Such restrictions and requirements include, but shall not be limited to, the following: (1) no portion of the Units or any other improvements (including but not limited to patios, retaining walls, gazebos, hot tubs, fire pits and fencing) are permitted to be installed, built, planted, or constructed within the ROS Area, (2) all construction disturbances within the ROS Area are subject to the requirements and provisions of the Development Agreement and its associated Technical Reports, (3) all vegetation in the ROS Area must remain in its natural state, (4) only limited tree and underbrush clearing is permitted within ROS Area, and (5) the general public shall have the right of ingress and egress through the ROS Area within the fifteen (15') foot wide Recreational Trail Easement shown on the Plat.

6.2 Calculation of Undivided Interests. The Undivided Interest in the Common Area and Facilities appurtenant to each Unit in the Project shall be allocated equally among each Unit in the Project. The Undivided Interest in the Common Area and Facilities appurtenant to each Unit shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units in the Project, as shown on the Plat. Alternatively, such fraction may be expressed as a decimal number.

Except as otherwise provided in this Declaration, the Undivided Interest appurtenant to each Unit shall have a permanent character and shall not be altered, except as provided in this Declaration and the Act. The sum of the Undivided Interests in the Common Area and Facilities and votes allocated to all Units shall at all times equal one hundred percent (100%); provided however, that such total may be slightly more or less than one hundred percent (100%) due to rounding.

7. DESCRIPTION OF LIMITED COMMON AREA AND FACILITIES.

7.1 Description of Limited Common Area and Facilities. Limited Common Area and Facilities means a portion of the Common Area and Facilities reserved for the use of certain Owners to the exclusion of other Owners. The Limited Common Area and Facilities means those portions of the Project described under *Section 2.43*. The Limited Common Area and Facilities shall be those areas designated as such on the Plat, in this Declaration, or as provided for by the Act. In the event of a conflict between this Declaration and the Plat, the provisions of the Declaration shall control. Owners may not reallocate or reassign Limited Common Area and Facilities between or among Units in which they have an interest. Notwithstanding the foregoing, Declarant hereby reserves the right and grants to the Association the right to reallocate or reassign Limited Common Area and Facilities to the fullest extent permitted under the Act.

7.2 Buffer Areas. Upon the completion of a Dwelling on the land underlying a Unit, there shall be Limited Common Areas and Facilities surrounding each Unit that extend thirty (30') feet from the rear boundary of each Unit and ten (10') feet on the sides and front boundary of each Unit (the "Buffer Areas"). The purpose of the Buffer Areas is to provide Owners with added privacy and the exclusive right to use, enjoy and occupy such area surrounding their respective Unit. The Buffer Areas are in addition to the other Limited Common Areas and Facilities described in *Section 7.1* above. Notwithstanding the foregoing, the Association shall maintain, repair, and improve the Buffer Areas in the same manner as the Common Areas and Facilities within the Project. Owners shall not maintain or construct any improvements on or in the Buffer Areas without the consent of the Management Committee and the City, nor shall any Owner make or install any landscape improvements on or in the Buffer Areas without the consent of the Management Committee.

8. MOUNTAIN RESORT DEVELOPMENT.

8.1 ASSUMPTION OF RISK, WAIVER AND GENERAL RELEASE OF CLAIMS. EACH OWNER AND GUEST, BY ACCEPTING TITLE TO OR AN INTEREST IN A UNIT (WHETHER BY DEED OR LEASE OR OTHERWISE), AND WHETHER OR NOT IT IS SO EXPRESSED IN THE INSTRUMENT OF CONVEYANCE, HEREBY ACKNOWLEDGES THAT THE PROJECT IS LOCATED WITHIN A MOUNTAIN RESORT COMMUNITY WITH RESORT-TYPE ACTIVITIES, WHICH MAY INCLUDE, WITHOUT LIMITATION: THE CLUB FACILITIES, TRAILS, OPEN SPACES, WILDLIFE, RUGGED TERRAIN, SNOWMAKING, HORSES AND HORSEBACK RIDING, GAMES AND ACTIVITIES, RUNNING, SNOW SHOEING, ALPINE AND CROSS COUNTRY SKIING AND MOUNTAIN BIKE FACILITIES AND/OR TRAILS AND/OR COURSES AND/OR RACES AND/OR OTHER COMPETITIONS OF VARIOUS KINDS, AND OTHER RESORT-TYPE FACILITIES, EVENTS, ACTIVITIES AND PROGRAMS WHETHER OR NOT OWNED OR OPERATED BY THE CLUB OWNER OR THE CLUB BOARD (COLLECTIVELY, "RESORT ACTIVITIES"). EACH OWNER AND GUEST, BY ACCEPTING TITLE TO OR AN INTEREST IN A UNIT (WHETHER BY DEED OR LEASE OR OTHERWISE), AND WHETHER OR NOT IT IS SO EXPRESSED IN THE INSTRUMENT OF CONVEYANCE, HEREBY EXPRESSLY ASSUMES THE INCONVENIENCES, RISKS, NOISE, NUISANCES, HAZARDS, PERSONAL INJURY (INCLUDING DEATH), OR PROPERTY DAMAGE RELATED TO OR ARISING OUT OF THEIR UNIT'S LOCATION WITHIN A MOUNTAIN RESORT COMMUNITY

OR PROXIMITY TO ANY AND ALL RESORT ACTIVITIES OR SUCH OWNER'S OR SUCH GUEST'S (AND ANY INVITEE OF SAME), USE OF OR PARTICIPATION IN THE RESORT ACTIVITIES, INCLUDING WITHOUT LIMITATION: (A) SLIDING SNOW AND ICE, (B) DRIPPING WATER ONTO DECKS, PORCHES, AND WALKWAYS FROM SNOW MELT, (C) SNOW AND ICE BUILD-UP ON DECKS AND PORCHES DURING SNOW AND ICE WEATHER EVENTS, (D) PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE DUE TO THE BUILD-UP OF SNOW OR ICE, (E) PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE DUE TO FOREST FIRES, EARTHQUAKES, OR SEISMIC ACTIVITY, (F) PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE DUE TO ADVERSE OR DANGEROUS TRAVEL CONDITIONS, (G) THE EFFECTS OF HARSH WEATHER AND HIGH ALTITUDE UPON CONSTRUCTION PROCEDURES AND COSTS, BUILDING MATERIALS AND FINISHES, (H) HEALTH RISKS FROM HIGH ALTITUDE AND SEVERE WEATHER, (I) NOISE FROM MAINTENANCE EQUIPMENT (IT BEING SPECIFICALLY UNDERSTOOD THAT SUCH MAINTENANCE MAY TAKE PLACE AT ANY TIME(S) OF THE DAY OR NIGHT), (J) NOISE CAUSED BY OR ARISING FROM RESORT ACTIVITIES AND ANY PARTICIPANTS, (K) NOISE FROM SNOWMAKING SYSTEMS AND TRAIL GROOMING MACHINERY, (L) CONSTRUCTION AND DEVELOPMENT ACTIVITIES, (M) VIEW RESTRICTIONS CAUSED BY THE ONGOING DEVELOPMENT ON THE PROJECT PROPERTY OR THE INSTALLATION, RELOCATION, OR MATURATION OF TREES AND SHRUBBERY, (N) REDUCTION IN PRIVACY, (O) THE CONDITION OF ANY FACILITY OR EQUIPMENT, INCLUDING BUT NOT LIMITED TO SKIS, SKI LIFTS, AND MOUNTAIN BIKES, (P) THE DESIGN OF ANY OF THE CLUB FACILITIES, AND (Q) ANY OTHER INCONVENIENCES AND RISKS ARISING FROM THE HIGH ALTITUDE AND WEATHER CONDITIONS IN THE ROCKY MOUNTAINS. EACH OWNER AND GUEST, BY ACCEPTING TITLE TO OR AN INTEREST IN A UNIT (WHETHER BY DEED OR LEASE OR OTHERWISE), AND WHETHER OR NOT IT IS SO EXPRESSED IN THE INSTRUMENT OF CONVEYANCE, HEREBY AGREES THAT NONE OF THE RELEASED PARTIES NOR ANY RESORT ACTIVITIES PARTICIPANT (UNLESS ACTING RECKLESSLY OR IN A WILLFULLY WRONGFUL MANNER) SHALL BE LIABLE TO AN OWNER, GUEST, OR ANY OTHER PERSON CLAIMING ANY LOSS OR DAMAGE, INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, OR CONSEQUENTIAL LOSS OR DAMAGE ARISING FROM PERSONAL INJURY OR DEATH, DESTRUCTION OF PROPERTY, TRESPASS, LOSS OF ENJOYMENT, OR ANY OTHER ALLEGED WRONG OR ENTITLEMENT TO REMEDY BASED UPON, DUE TO, ARISING FROM, OR OTHERWISE RELATED TO THEIR PARTICIPATION IN, PROXIMITY TO, OR USE OF THE RESORT ACTIVITIES, INCLUDING BUT NOT LIMITED TO ANY CLAIM ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF ANY OF THE RELEASED PARTIES (COLLECTIVELY REFERRED TO HEREIN AS THE "WAIVED CLAIMS"). EACH OWNER AND GUEST, BY ACCEPTING TITLE TO OR AN INTEREST IN A UNIT (WHETHER BY DEED OR LEASE OR OTHERWISE), AND WHETHER OR NOT IT IS SO EXPRESSED IN THE INSTRUMENT OF CONVEYANCE, ON BEHALF OF ITSELF, AND HIS, HER OR ITS HEIRS, SPOUSE, ADMINISTRATORS, REPRESENTATIVES, SUCCESSORS, AFFILIATES, AGENTS, AND ASSIGNS (HEREINAFTER, "RELEASORS"), DOES HEREBY FULLY, FINALLY, AND UNCONDITIONALLY RELEASE, AND FOREVER DISCHARGE THE RELEASED PARTIES FROM AND WAIVES ALL ACTIONS, CAUSES OF ACTION, LAWSUITS, APPEALS, CLAIMS (INCLUDING NEGLIGENCE), CHARGES, COMPLAINTS, DEBTS, OBLIGATIONS, DEMANDS, RIGHTS, GRIEVANCES, PROMISES, LIABILITY, DAMAGES, COSTS AND/OR FEES WHATSOEVER IN LAW OR EQUITY RELATED TO THE RESORT ACTIVITIES AND ALL WAIVED CLAIMS ASSERTED BY SUCH OWNER AND/OR BY SUCH GUEST (AND ANY INVITEE OF SAME). EACH OWNER AND GUEST (AND ANY INVITEE OF SAME) UNDERSTANDS AND AGREES THAT THE WAIVER AND RELEASE SET FORTH IN THIS ARTICLE 8 IS INTENDED TO BE A "GENERAL RELEASE" AND IS NOT AN ADMISSION OF WRONGDOING OR LIABILITY BY OR ON THE PART OF ANY RELEASED PARTY. NOTHING IN THIS ARTICLE 8 SHALL IN ANY WAY BE CONSTRUED AS AN ADMISSION BY ANY RELEASED PARTY THAT IT ACTED WRONGFULLY WITH RESPECT TO THE RELEASORS. EACH OWNER AND GUEST (AND ANY INVITEE OF SAME) AGREES THAT HE, SHE, OR IT WILL NOT DIRECTLY OR INDIRECTLY, DISPARAGE, DEFAME, OR MAKE DEFAMATORY OR DISPARAGING STATEMENTS TO ANY PERSON, INCLUDING THE PRESS, REGARDING THE RELEASED PARTIES, ANY WAIVED CLAIM, OR DECLARANT'S PRESENT MANAGEMENT, DIRECTORS, OFFICERS, EMPLOYEES, AND

AGENTS. IF ANY COVENANT OR PROVISION OF THIS ARTICLE 8 IS DECLARED INVALID, ILLEGAL, OR INCAPABLE OF BEING ENFORCED BY REASON OF ANY RULE OF LAW, ADMINISTRATIVE ORDER, JUDICIAL DECISION, OR PUBLIC POLICY, ALL OTHER COVENANTS AND PROVISIONS HEREIN SHALL, NEVERTHELESS, REMAIN IN FULL FORCE AND EFFECT. IF ANY PORTION OF THIS ARTICLE 8 IS HELD TO BE ILLEGAL, VOID, OR UNENFORCEABLE, EACH OWNER, ON BEHALF OF HIMSELF, HERSELF, AND ITSELF AND HIS, HER, OR ITS GUESTS, HEIRS, SPOUSE, ADMINISTRATORS, REPRESENTATIVES, SUCCESSORS, AFFILIATES, AGENTS, AND ASSIGNS, AGREES TO EXECUTE A VALID RELEASE, WAIVER, OR COVENANT SATISFACTORY TO EACH RELEASED PARTY WITHOUT ADDITIONAL CONSIDERATION. NEITHER AN OWNER NOR ANY GUEST SHALL SEEK TO HAVE ANY COURT OR OTHER ADJUDICATIVE BODY DETERMINE THAT ANY PORTION OF THIS ARTICLE 8 IS ILLEGAL, INVALID, OR UNENFORCEABLE. IN THE EVENT AN OWNER OR GUEST COMMENCES, JOINS IN, CONTINUES, OR IN ANY MANNER ASSERTS OR ATTEMPTS TO ASSERT ANY WAIVED CLAIM RELEASED BY THIS ARTICLE 8, SUCH OWNER OR GUEST SHALL INDEMNIFY AND HOLD HARMLESS ANY AFFECTED RELEASED PARTY FROM AND AGAINST ALL LOSSES INCURRED THEREBY, INCLUDING WITHOUT LIMITATION ITS ATTORNEYS' FEES AND OTHER COSTS ASSOCIATED WITH DEFENDING AGAINST SUCH CLAIM AND ENFORCING ITS RIGHTS UNDER THIS ARTICLE 8.

8.2 Club Facilities and Ski Facilities

8.2.1 Mandatory Club Membership. Unless otherwise exempted from the mandatory membership requirement by Club Owner or the Declarant, every Owner must apply for, and if accepted, acquire a membership in the Club (a "Club Membership") for which the Owner is eligible by submitting a completed and executed Club Membership Application along with the required initiation fee, all as more particularly provided in the Club Membership Documents. The purchase of a Unit is not a guarantee that an application for Club Membership in the Club will be accepted. If a prospective Owner's application for Club Membership is accepted and the prospective Owner becomes a member of the Club ("Club Member"), such prospective Owner shall be required to maintain the Club Membership in good standing until such Club Membership is resigned or otherwise terminated pursuant to the terms of the Club Membership Documents. The Club Owner or the Club Board, as applicable, shall be entitled to charge and collect dues from each Club Member as set forth in the Club Membership Documents. Additionally the Unit shall be subject to the terms, provisions, and covenants of the Club Membership Documents. The Club Membership Documents also address the conversion of the Club to an equity, member-owned club and the rights and obligations of Club Members in this eventuality. A Unit which is subject to the terms of this Section 8.2.1 shall be subject to the terms, provisions, and covenants of the Club Membership Documents.

8.2.2 Disclaimer. All Persons, including without limitation all Owners, are hereby advised that, except as expressly set forth in this Declaration, no representations, warranties or commitments have been or are made by Declarant, any Declarant Affiliates, the Club Owner, or any other Person with regard to the present or future development, ownership, operation or configuration of, or right to use, the Club Facilities or any Ski Facilities within, near, or adjacent to the Project, whether or not depicted on the Plat, or any other land use plan, sales brochure or other marketing display, rendering or plan. No purported representation, warranty or commitment, written or oral, in such regard shall ever be effective without an amendment hereto executed by Declarant. Further, the ownership, operation or configuration of, or rights to use, any such facilities may change at any time and from time to time. No Owner or Guest shall have any ownership interest in or right to use, or right to exercise any degree of control over the Club Facilities or the Ski Facilities solely by

virtue of: (i) his, her, or its membership in the Association; or (ii) his, her, or its ownership, use or occupancy of any Unit, or portion thereof or interest therein. The owners of nearby facilities such as the Club Facilities or the Ski Facilities shall have the right, in their sole discretion, to remove, relocate, discontinue operation, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to any residents of the Project. Declarant is not the operator of the Club Facilities or the Ski Facilities, and accordingly, Declarant cannot make any representations relating thereto. Neither Declarant, nor any of Declarant's Affiliates, nor any of its employees or agents have made any representations regarding the opening or closing dates of the Club Facilities or the Ski Facilities in any given year. The operators of the Ski Facilities may decide, in their sole discretion, whether any or all of the chairlifts (including any near the Project) should be operated.

8.2.3 Operation of Ski Facilities. Each Owner and each Guest acknowledges that the Project is located near Ski Facilities that may generate an unpredictable amount of visible, audible, and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof. The activities associated with the Ski Facilities include, without limitation: (a) vehicular and residential traffic, including, without limitation (i) buses, vans, snowcats, snowmobiles and other vehicles which transport residents and guests of the Ski Facility over, around and through the Ski Facility, and (ii) construction vehicles and equipment; (b) activities relating to the construction, operation, and maintenance of ski trails, skiways and skier bridges and tunnels relating to the Ski Facility, including, without limitation, (i) tree cutting and clearing, grading and earth moving, and other construction activities, (ii) construction, operation, and maintenance of access roads, snowmaking equipment and chair lifts, gondolas and other skier transportation systems, (iii) operation of snowmaking equipment, and (iv) operation of snow-grooming vehicles and equipment and safety and supervision vehicles; and (c) activities relating to the use of the Ski Facility, including, without limitation, skiing, snow-boarding, hiking, horseback riding, bicycling and other recreational activities and organized events and competitions relating to such activities. Further, each Owner and Guest acknowledges that the operation and maintenance of any Ski Facilities within, near, or adjacent to the Project, will require that maintenance personnel and other workers perform work relating to the operation and maintenance of such ski resorts and facilities and that snowmaking, snow grooming, and other equipment may operate at any time(s) of the day or night. In connection therewith, each Owner and Guest agrees that the Released Parties shall not be responsible or accountable for, liable for and shall be held harmless from, any claims, causes of action, losses or liabilities arising in connection with or associated with any noise or inconvenience normally associated with any such operations.

8.2.4 Other Ski Agreements. No Owner shall (or permit his, her or its occupants, Guests, invitees, employees, agents or contractors to) interfere in any way with skiing and related Resort Activities (whether in the form of physical interference, noise, harassment of skiers or spectators, or otherwise). EACH OWNER (ON BEHALF OF SUCH OWNER AND SUCH OWNER'S OCCUPANTS, GUESTS, AND INVITEES) RECOGNIZES, AGREES AND ACCEPTS THAT: (A) OPERATION OF A YEAR-ROUND RESORT AND RELATED FACILITIES WILL OFTEN INVOLVE PARTIES, EVENTS AND OTHER GATHERINGS (WHETHER OR NOT RELATED TO SKIING, AND INCLUDING WITHOUT LIMITATION WEDDINGS AND OTHER SOCIAL FUNCTIONS) AT OR ON THE PROJECT AND/OR THE CLUB PROPERTY, COMPETITIONS, LOUD MUSIC, USE OF PUBLIC ADDRESS SYSTEMS AND THE LIKE, SUPPLEMENTAL LIGHTING AND OTHER SIMILAR OR

DISSIMILAR ACTIVITIES FROM EARLY IN THE MORNING UNTIL LATE AT NIGHT; (B) BY THEIR VERY NATURE, SKI RESORTS PRESENT CERTAIN POTENTIALLY HAZARDOUS CONDITIONS WHICH MAY INCLUDE, WITHOUT LIMITATION, MAN-MADE OR NATURALLY OCCURRING SNOW, AVALANCHES, AND TOPOGRAPHICAL FEATURES SUCH AS WASHES, GULLIES, CANYONS, UNEVEN SURFACES AND THE LIKE; AND (C) GROOMING AND SNOWMAKING OR RELATED FACILITIES MAY RESULT IN SNOW DRIFTING OR BLOWING ONTO ADJACENT OR NEARBY UNITS AND THE COMMON AREA AND FACILITIES, AND NEITHER SUCH OWNER NOR HIS, HER OR ITS GUESTS SHALL BE ENTITLED TO, AND HEREBY WAIVE THE RIGHT TO, MAKE ANY CLAIM AGAINST THE RELEASED PARTIES IN CONNECTION WITH THE MATTERS DESCRIBED OR REFERENCED IN (A), (B) AND (C) ABOVE, WHETHER IN THE NATURE OF A CLAIM FOR DAMAGES RELATING TO PERSONAL INJURY OR PROPERTY DAMAGE, OR OTHERWISE.

8.2.5 Club Operation. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, the Management Committee, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership, operation, existence, location or configuration of the Club Property and the Club Facilities. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Club Property. The ownership, operation, existence, location or configuration of any portion of the Club or the Club Property may change at any time by virtue of, without limitation, (a) the sale to or assumption of operations of the Club by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Club or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Club; (c) the conveyance of any portion of the Club Property to one or more of Declarant's Affiliates, shareholders, employees, or independent contractors, and/or (d) the decision of the owner or operator of the Club to abandon, redevelop, or change the location or configuration of, all or any portion of the Club Property, subject to all required approvals of Declarant, the Design Review Board, and any applicable municipal authority. Consent of the Association or any Owner shall *not* be required to effectuate any change in ownership or operation of the Club Property or to subject any portion of the Club Property to or release any portion of the Club Property from any mortgage, covenant, lien or other encumbrance.

9. NATURE AND INCIDENTS OF UNIT OWNERSHIP

9.1 Nature of Units. Each Unit is and shall hereafter be a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration.

9.2 Use of Project Property. Subject to the limitations contained in this Declaration and the Condominium Documents and payment of all Assessments and other charges approved by the Association and levied against the Owners, and subject to compliance with the provisions of the Condominium Documents, each Owner shall have the non-exclusive right to use and enjoy the Common Area and Facilities and the exclusive right to occupy and use his or her Unit and any Limited Common Area and Facilities designated for exclusive use by such Owner or all Owners. Nothing in this Declaration shall limit the rights of Declarant or any other Owner to operate Units for transient rental purposes.

9.3 Maintenance of Unit. Each Owner shall have the exclusive right and duty to maintain and repair all portions of their Unit and all Improvements located thereon in accordance with the Project Maintenance Standard. Each Owner shall keep their Unit, including without limitation, all walls, any windows, roofs, sidewalks, patios, driveways, landscaping, lighting, doors, roofs, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. With the exception of the Buffer Areas, each Owner is also responsible to maintain the Limited Common Area and Facilities appurtenant to such Owner's Unit. In the event that any such Unit should develop an unsanitary condition or fall into a state of disrepair and the Owner of such Unit should fail to correct such condition or state of disrepair promptly following written notice from the Management Committee, the Management Committee shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary condition or state of disrepair. The cost of such work shall be assessed against a particular Unit as an Individual Assessment. No Owner may subdivide his or her Unit. Each Owner shall be responsible for snow removal from their Unit and the Limited Common Area and Facilities appurtenant to their Unit.

9.4 Right of Entry. The Management Committee, or the Common Area Manager on its behalf, shall have the right, but not the obligation, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter into any Unit for the purpose of maintenance, and repairs, including emergency repairs, enforcing the Condominium Documents, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity.

9.5 Rental. Nothing in this Declaration shall limit the rights of Declarant or any other Owner to operate the Unit(s) owned by Declarant or the Owner for transient rental purposes and the Declarant reserves to itself and shall have the right to operate its Units in the Project for, among other things, transient rental purposes.

9.6 Membership in the Association. The Persons who are at the time of reference Owners shall be members of the Association ("Members"), the characteristics and nature of which are determined by the Act, this Declaration, the Bylaws, the Articles and other applicable Utah law.

9.7 Membership in the Master Association. Pursuant the Master Declaration, all Owners shall be members of the Master Association.

9.8 Joint Driveway. In the event two (2) or more Units share the use of all or part of a common driveway (the "Joint Driveway"), each Unit is hereby granted an access easement over the Joint Driveway and shall be jointly responsible for the maintenance (including snow removal), repair and replacement of the Joint Driveway. The Owners of any Units sharing a Joint Driveway shall, prior to the sale of such Units, Record a Supplemental Plat that depicts the full driveway and identifies those portions of the full driveway, if any, that are Limited Common Area and Facilities assigned to a particular Unit and those portions of the full driveway, if any, that are part of the Joint Driveway. This Supplemental Plat must be approved in advance of its Recording by the Moonshadow Reviewer but may be Recorded by the then Owners of the participating Units without joinder or consent of any other Owner.

9.9 Fire Suppression System. Each Owner is required to have an automatic fire suppression system professionally installed and maintained in their Unit and to have such automatic fire suppression system inspected annually by a fully insured inspector that is licensed and registered in accordance with

Applicable Law. The Owner shall supply a copy of the inspection report to the Association after each inspection. This Section shall not act to imply any duty or liability on the Declarant or the Association for any acts or omissions related to fires and fire suppression systems in the Project.

9.10 SBWRD Easements. No trees, structures, or retaining walls shall be located within any easements held by the Snyderville Basin Water Reclamation District ("SBWRD").

10. TITLE TO UNITS.

10.1 Title to Units. Title to a Unit within the Project may be held or owned by any Person and in any manner in which title to any other real property may be held or owned in the State of Utah.

10.2 Title Inseparable. Title to no part of a Unit within the Project may be separated from any other part thereof and each Unit and the Undivided Interest in the Common Area and Facilities appurtenant to each Unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration, including appurtenant membership in the Association as herein set forth. Excluding the initial transfer of Units by Declarant, upon an Owner's transfer of such Owner's Unit, the Management Committee may charge a reasonable transfer fee to cover the cost to the Management Committee of changing its books and records.

10.3 No Partition. The Common Area and Facilities shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

10.4 Right to Mortgage. Each Owner shall have the right to encumber his or her interest in a Unit with a Mortgage. However, no Owner shall attempt to or shall have the right to encumber the Common Area and Facilities or any part thereof except the Undivided Interest therein appurtenant to his, her, or its interest in a Unit. Any Mortgage of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

10.5 Labor and Services; Liens. No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner (including any interest in any portion of the Common Area and Facilities) unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if authorized by the Association and provided for in the Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. In such event, the Owner may remove his or her Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his or her Unit.

10.6 Legal Description of Units. Every contract for the sale of a Unit, and every other instrument affecting title to a Unit within the Project, may describe a Unit by the name of the Project, the Recording date for this Declaration, the county wherein the Project is located and its Unit Number as

indicated in this Declaration or as shown on the Plat. Such description will be construed to describe the Unit, together with the appurtenant Undivided Interest in the Common Area and Facilities, and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership as described in this Declaration.

10.7 Notice of Ownership to be Provided. Any Person, on becoming an Owner, will furnish the Secretary of the Association with a photocopy of the Recorded deed or other instrument or such other evidence as may be specified by the Management Committee under the Bylaws or the Association rules, vesting the Person with the interest required to make the Person an Owner. At the same time, the Owner will provide the Association with the single name and address to which the Association will send any notices given pursuant to the Condominium Documents of the Project. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Owner will give a new written notice to the Association containing all of the information required to be covered in the original notice. The Association will keep and preserve the most recent written notice received by the Association with respect to each Owner.

11. CERTAIN ADDITIONAL DEVELOPMENT RIGHTS.

11.1 The following additional Development Rights are hereby granted or reserved by Declarant:

11.1.1 Reservation of Easement. Declarant hereby reserves an easement throughout the Project Property for the purpose of completing all improvements contemplated by the Declaration and the Plat. The Declarant shall hold, and have the power to exercise, all easements and rights set forth in this Article 11 and in Article 24, regardless of whether such provisions are written to expressly include the Declarant as the beneficiary of the easement.

11.1.2 Exercising Development Rights. Declarant may exercise its Development Rights until the expiration of the earlier of the maximum period allowed by law, or the maximum period set forth in this Declaration. Declarant may exercise its Development Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Development Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Development Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners. Declarant's exercise of a Development Right that appears to violate a provision or restriction of this Declaration does not constitute waiver or abandonment of the provision or the restriction by the Association.

11.1.3 Assignment of Declarant Rights. Notwithstanding any provision in this Declaration to the contrary, the Declarant may execute and Record in the Office of the Summit County Recorder, State of Utah, a written waiver or assignment of its Development Rights to any Person, which rights may be waived or assigned in whole or in part (an "Assignment of Declarant Rights"). Upon such Recording, the assigning Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

11.1.4 No Actions Adverse to Development Rights. Neither the Association, the Management Committee, nor any Owner may take any action or adopt any rule or regulation that interferes or diminishes any Development Rights hereunder without Declarant's prior written consent. Any action taken in violation of this Section 11.1.4 shall be null and void and have no force or effect.

11.1.5 No Modification of Development Rights. The Development Rights and other rights and easements held by the Declarant pursuant to this Declaration (and specifically this Article), the other Condominium Documents, or the Act shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until the end of the Development Period, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant without its consent.

11.1.6 Declarant Exempt. Unless expressly and specifically bound by a provision of the Declaration or other Condominium Documents, Declarant shall be exempt from the provisions and restrictions of the Condominium Documents.

11.1.7 Declarant Control Period. There is hereby established a period of Declarant control of the Association (the "Declarant Control Period"), during which period Declarant shall have the right to act as the Management Committee or shall otherwise have the authority to appoint and remove all of the Association officers and members of the Management Committee. The Declarant Control Period shall terminate no later than the earlier of:

11.1.7.1 Three (3) years after the first Unit is conveyed to an Owner (or such longer period of time as otherwise provided by the Act); or,

11.1.7.2 after Units to which three-fourths (3/4) of the Undivided Interest in the Common Area and Facilities appertain have been conveyed to Owners; or,

11.1.7.3 the surrender by Declarant of such right by written notice to the Management Committee.

The expiration of the Declarant Control Period shall have no effect on the termination or expiration of the Development Period and all other Development Rights as set forth in this Declaration.

11.1.8 Architectural Control. During the Development Period, Declarant has the absolute right of architectural control.

11.1.9 Additional Construction. Declarant hereby reserves the right, but is not obligated to construct:

11.1.9.1 any Improvements, as shown on the Plat; and

11.1.9.2 any other buildings, structures or improvements that Declarant desires to construct on the Project Property in connection with its exercise of the Development Rights, including, without limitation, the Common Area and Facilities, or any other real

estate owned by Declarant, regardless of whether the same ever becomes part of the Project.

11.1.10 Exclusive Development Easement. Declarant, and its Declarant Affiliates, successors, and assignees, hereby reserves the right and easement to conduct any activity or operations on or in connection with the Project that Declarant determines to be necessary or advisable in connection with the completion of the development of the Project, including the right to alter Declarant's construction plans and designs as Declarant deems advisable in the course of development or enlargement of any Improvements. Declarant or any Declarant Affiliate shall have the right and easement to conduct on the Project Property Declarant's or any Declarant Affiliate's business of developing, subdividing, grading and constructing Improvements in the Project. Declarant shall have the right and easement to determine in Declarant's sole discretion the nature of and the types of Improvements to be constructed as part of the Project. Declarant hereby reserves for itself, its Declarant Affiliates, successors, and assignees, an easement to make such use of the Common Area and Facilities and any portion of the Project Property owned by Declarant or any Declarant Affiliate as may be necessary or convenient to exercise the rights reserved under this *Article 11* and to perform the duties and functions that Declarant is obligated or permitted to perform pursuant to this Declaration and the Act, including, without limitation, the right to construct and maintain the applicable Common Area and Facilities. It is further acknowledged that Declarant and the Declarant Affiliates may develop other residential and recreational facilities within Empire Pass, and that such facilities are intended to create a community of luxury resort accommodations and amenities. In furtherance of such objective, Declarant hereby reserves for itself, its Declarant Affiliates, successors, and assignees, the right to grant easements, licenses, leases, and other use rights to third parties in and to portions of the Common Area and Facilities and Project Property, at Declarant's sole discretion, without the vote or concurrence of Owners, Mortgagees or the Association, which may benefit owners of interests in other projects within Empire Pass.

11.1.11 Sales and Leasing Rights. Declarant hereby reserves the right to sell or lease any Unit owned by Declarant. Units owned by Declarant are not subject to leasing or occupancy restrictions or prohibitions contained elsewhere in this Declaration or the other Documents.

11.1.12 Sales and Marketing Rights. Declarant hereby reserves the right and easement, on behalf of itself and its Declarant Affiliates, successors, and assignees, to erect, construct, and maintain on any portion of the Project Property owned by Declarant or any Declarant Affiliate or on Common Area and Facilities during the Development Period, such structures, sales offices, management offices, leasing offices, business offices, promotional facilities, and model Units in any of the Units which it owns or leases or on Common Area and Facilities for so long as such Declarant is an Owner of a Unit, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development, sale, or lease of any Unit. Declarant shall be entitled to utilize, at any one time, any number of Units which it owns or leases and some or all of the Common Area and Facilities as sales offices, management offices, and models for so long as such Declarant is an Owner of a Unit. Declarant or any Declarant Affiliate may relocate sales offices, management offices and models to other Units or the Common Area and Facilities at any time. For purposes of promoting, identifying, and marketing the Project, Declarant or any Declarant Affiliate reserves an easement and right over and across the Project Property: (i) for

the placement and maintenance of signs, banners, balloons, decorations, marketing materials and tables; and (ii) for marketing events, special events, promotional activities and grand opening celebrations. In connection with the hosting of special events, promotional activities, and grand opening celebrations in the Common Area and Facilities, Declarant or any Declarant Affiliate shall be permitted to have live entertainment and any noise created therefrom shall not be deemed a nuisance. Declarant or any Declarant Affiliate also reserves the right to establish, operate, and maintain a bar or other beverage stand, providing alcoholic and/or nonalcoholic beverages open to the public and to Owners and Guests which may be located in any Unit, and the Limited Common Area and Facilities attached thereto, owned by such Declarant.

11.1.13 Decorations. Declarant has an easement and right of ingress and egress in and through the Project Property for the placement or installation of signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping, including items and locations that are prohibited to other Owners and Guests.

11.1.14 Website & Property Name. During the Development Period, Declarant has the unilateral right to approve or disapprove uses of any website purporting to serve the Association, all information available on or through the Association website, if any, and all uses of the property name by the Association.

11.1.15 Marketing Other Locations. This Declaration grants to Declarant a number of significant rights to market the Units. Declarant hereby reserves for itself and Declarant Affiliates the right to use each and every such right and privilege for the additional purposes of promoting, identifying, and marketing off-site developments of Declarant or of Declarant Affiliates for the duration of the Development Period, even though Declarant may have completed the marketing of Units.

11.1.16 Change Project Name; Declarant's Exemption. During the Declarant Control Period, Declarant hereby reserves the right to unilaterally change the name of the Project, or any portion thereof, without the consent of any other Owner or of the Management Committee. Nothing contained in this Declaration shall be construed to prevent the sales of Units or the construction, installation or maintenance of sales area improvements by Declarant, any Declarant Affiliate, or any agents or contractors thereof, during the development and sales period deemed necessary or convenient by the Declarant, in its sole and exclusive discretion.

11.1.17 Conveyance of Units to the Association. Declarant hereby reserves the right, but not the obligation, to convey any Unit(s) owned by the Declarant free of monetary liens to the Association and to the extent necessary or required, and to unilaterally amend this Declaration to effect the same. The Association shall maintain, repair and replace such Units in the same manner as the Common Area and Facilities in accordance with the Project Maintenance Standard. Upon the completion of any such conveyance, and subject to the Declarant's prior written consent, Declarant's obligation, if any, to pay all Assessments and other sums and amounts attributed to the Unit(s) will cease, and the attributed Assessments will be allocated as Common Expenses among the other Units which are subject to assessment. Further, the Association shall not have the right to exercise any of the voting

rights associated with the Unit(s) that have been conveyed by the Declarant to the Association. The right to convey Units, and, to the extent necessary, to amend this Declaration to effect the same, shall occur at any time prior to the date when Declarant both owns no Units and has no further Development Rights under this Declaration. Declarant may, without being required to obtain the consent or joinder of any other Owner, Mortgagee lien holder or other Persons, jointly execute, deliver and Record any deed of conveyance and/or amendments to this Declaration and any and all other instruments necessary or appropriate for the purpose of carrying out the provisions or exercising the foregoing rights, powers or privileges.

11.1.18 Provision of Benefits and Services to Service Areas.

11.1.18.1 Designated by Declarant. Declarant in any written Recorded notice, may assign Units to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Units in addition to those which the Association generally provides to the Development. Declarant may unilaterally amend any written Recorded notice to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area will be assessed against the Units within the Service Area as a Service Area Assessment.

11.1.18.2 Owner Petition. In addition to Service Areas which Declarant may designate, any group of Owners may petition the Management Committee to designate their Units as a Service Area for the purpose of receiving from the Association: (a) special benefits or services which are not provided to all Units; or (b) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Units within the proposed Service Area, the Management Committee will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and associated expenses, which may include a reasonable administrative charge in such amount as the Management Committee deems appropriate (provided, any such administrative charge will apply at a uniform rate per Unit among all Service Areas receiving the same service). If approved by the Management Committee, Declarant during the Development Period, and the Owners of at least sixty-seven percent (67%) of the Total Number of Votes held by all the Units within the proposed Service Area, the Association will provide the requested benefits or services on the terms set forth in the proposal or in a manner otherwise acceptable to the Management Committee. The cost and administrative charges associated with such benefits or services will be assessed against the Units within such Service Area as a Service Area Assessment.

12. RESTRICTIONS ON USE. Subject to the Development Rights, the Units, the Project Property, and Common Area and Facilities, including but not limited to the Limited Common Area and Facilities, except as otherwise permitted in writing by the Management Committee, shall be used in accordance with the following restrictions:

12.1 Variance. Declarant, and after the expiration of the Development Period, the Management Committee, may grant a variance or waiver of a restriction or Project Rules on a case-by-

case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not effect a waiver or estoppel of the Association's right to deny a variance in other circumstances.

12.2 Commercial Use. No Unit shall be used for commercial purposes; provided, however, that nothing in this Section 12.2 shall prevent (a) Declarant or a Declarant Affiliate or a duly authorized agent from using any Unit owned or leased by Declarant as sales offices and model Units or a property management office as provided in Section 11.1.12 hereof, or (b) any Owner or his or her duly authorized agent from renting or assigning the use of his or her Unit from time to time.

12.3 Rental and Leasing. Any Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Owner may deem advisable, subject to the following, and to other restrictions regarding short-term and overnight rentals, which may be contained in the Policy Manual:

12.3.1 Each lease must be in writing.

12.3.2 Any Owner who rents or leases his or her Unit shall advise the Common Area Manager in writing that the Unit has been leased or rented.

12.3.3 Short-term occupancies and rentals (of less than 30 days) of Units for resort lodging to overnight and short-term guests shall be subject to reasonable regulation of the Management Committee.

12.3.4 All short-term occupancies, leases and rental agreements of Units shall state that the failure of the tenant, renter or guest to comply with the terms of the Condominium Documents or the Master Governing Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

12.3.5 All Guests shall be subject to the right of the Association to remove and/or evict the Guest or the Guest's invitees for failure to comply with the terms of the Condominium Documents or the Master Governing Documents.

12.3.6 Except as restricted in this Declaration and the Policy Manual, the right to lease or allow occupancy of a Unit shall not be restricted.

12.3.7 Any Owner who rents or leases or otherwise permits any other individual to utilize his or her Unit shall be responsible for the conduct of his or her tenants or Guests, and upon written notice from the Management Committee or the Common Area Manager, said Owner shall be responsible for correcting violations of the Condominium Documents or the Master Governing Documents committed by such tenants or Guests. If an Owner fails to correct violations by Guests within seventy-two (72) hours of such notice, the Management Committee or Common Area Manager shall be deemed to be the agent of the Owner and empowered to take any enforcement action the Owner would be entitled to take, the reasonable costs of such action, including but not limited to fees and costs paid to third parties, to be assessed to the Owner and payable within thirty (30) days of Assessment. Such costs shall be collected and enforced in the same manner as Common Expenses under the Declaration.

12.3.8 As provided for in *Section 16.16* of the Declaration, if an Owner shall at any time lease his or her Unit and shall default in the payment of Assessments, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant and the Owner for such Assessments to the extent of the amount so paid. This *Section 12.3.8* shall be incorporated by reference into every lease agreement entered into by and between an Owner and his or her tenant, whether or not this Section is expressly referenced therein.

12.4 Occupancy and Use of Common Area and Facilities. Subject to the payment of all Assessments and other charges approved by the Association and levied against the Owners, and subject to compliance with the provisions of the Condominium Documents, each Owner shall have the right with all other Owners to occupy and use the Common Area and Facilities, subject to all Project Rules and other policies set forth under the Policy Manual.

12.5 Obstruction or Alteration of Common Area and Facilities Prohibited. There shall be no obstruction of the Common Area and Facilities by any Owner. Owners shall neither store nor leave any of their property in the Common Area and Facilities, other than Limited Common Area and Facilities appurtenant to their Unit, except with the prior consent of the Management Committee. No Owner shall erect or construct in the Common Area and Facilities any structure of any type whatsoever without the prior written approval of the Management Committee. No Owner shall place, store, keep or permit to be placed, stored or kept, upon the Common Area and Facilities any personal property, including, but not limited to, vehicles of any type except pursuant to the Project Rules without the prior written approval of the Management Committee. Except as expressly provided in this Declaration, no Owner shall have the right to redecorate or make alterations or repairs to any Common Area and Facilities, nor shall any Owner have the right to subject the Project or any portion thereof to any liens for the making of improvements or repairs to the Project or any portion thereof. The provisions of this Article are intended to benefit and protect First Mortgagees as well as Owners and may be enforced by any First Mortgagee, the Management Committee or by an Owner.

12.6 Nuisance. No noxious, offensive, illegal or unauthorized activity shall be carried on in or upon any part of the Project nor shall anything be done on or placed in or upon any part of the Project which is or may become a nuisance or may cause unreasonable embarrassment, disturbance or annoyance to Owners. Normal construction activities shall not be considered to violate the terms and conditions of this Section and by accepting a deed to a Unit, an Owner acknowledges that noises, lights and odors common to recreational and commercial activities, as well as construction activities, may exist on or near the Project Property, at any time and from time to time.

12.7 Prohibition of Hazardous Activities. No activities shall be conducted, or improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

12.8 Firearms and Fireworks. The display or discharge of firearms or fireworks within the Project is prohibited; provided, however, that the display of lawful firearms within the Project is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Area and Facilities to or from the Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size, and shall also include,

without limitation, sling shots, archery, and other projectile emitting devices. Notwithstanding the foregoing, all firearms must be permitted as required under Applicable Law.

12.9 Prohibition of Signs. No signs, flags or advertising devices of any nature which are Visible From Neighboring Property, including, without limitation, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except (i) as may be necessary temporarily to caution or warn of danger, (ii) as required by law, (iii) for Dwelling identification signs, provided the size, color, content and location of such signs have been approved in writing by the Management Committee, or (iv) as may be used by Declarant as part of its sales program.

12.10 Prohibition of Combustible Devices. No solid-fuel burning devices such as charcoal grills and wood burning stoves, wood burning fireplaces, or other wood burning devices shall be used, kept, or stored within any Units.

12.11 Storage of Vehicles. No motor vehicle classed by manufacturing rating as exceeding three-quarter ton and no recreational vehicle, motor home, trailer, detached camper or camper shell, boat, snowmobile, ATV, or other similar equipment or vehicle may be kept or parked at the Project.

12.12 Prohibition of Vehicle Repairs. No motor vehicle shall be constructed, repaired or serviced at the Project.

12.13 Prohibition of Littering. Owners shall not, and shall not permit their Guests to litter. No burning trash, garbage or other waste materials will be permitted within the Project Property.

12.14 Poles. All poles, including but not limited to a flag pole, must comply with the requirements of Section 4.2.41 of the Master Declaration.

12.15 Window Coverings. All draperies, shades or other interior window coverings shall be installed only with the prior written approval of the Management Committee.

12.16 Restriction on Alterations. No Owner shall, without the prior written consent of the Declarant or Management Committee, do any act that would impair the structural soundness or integrity of the Dwellings or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Common Area and Facilities (including Limited Common Area and Facilities). Furthermore, no Owner shall, without the prior written consent of the Declarant, so long as the Declarant or an Declarant Affiliate owns any land or improvements in Empire Pass, improve or modify a Unit, any Limited Common Area and Facilities, or other Common Area and Facilities in a manner that would increase the habitable square footage of any Unit.

12.17 Safety. Nothing shall be done or kept in any Unit or in the Common Area and Facilities or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit which would increase the rate of insurance on the Project or any part thereof over what the Association but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Area and Facilities or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. NO DAMAGE TO, OR WASTE OF, THE COMMON AREA AND FACILITIES OR ANY PART THEREOF SHALL BE COMMITTED BY ANY OWNER OR GUEST, LESSEE, LICENSEE OR INVITEE OF ANY OWNER, AND EACH

OWNER SHALL INDEMNIFY AND HOLD THE RELEASED PARTIES AND THE OTHER OWNERS HARMLESS AGAINST ALL LOSS RESULTING FROM ANY SUCH DAMAGE OR WASTE CAUSED BY HIM OR HER OR HIS OR HER GUESTS, LESSEES, LICENSEES OR INVITEES.

12.18 Pet Restriction. No animal, bird, or fish, other than a reasonable number of generally recognized house or yard pets as determined by the Management Committee, shall be maintained in any Unit and then only if they are kept and raised thereon solely as domestic pets and not for commercial purposes. All pets must be kept on a leash at all times when outside of a Unit. No animal or bird shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing, or confinement of any animal or bird shall be maintained so as to be Visible from Neighboring Property, unless otherwise approved by the Management Committee. The Management Committee shall have the right to adopt additional limitations, rules and regulations regarding pets within the Project. Pedestrians within the Project who are accompanied by pets permitted under this Declaration must have the pets under the pedestrians' direct control by use of a leash not to exceed ten feet (10') in length.

12.19 Structural Integrity. No Person may directly or indirectly impair the structural soundness or integrity of a Dwelling or other Unit, nor do any work or modification that will impair an easement or real property right.

12.20 Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Project, including the Unit or a balcony; provided, however, that the Association shall have the right to erect, construct and maintain such devices. All such devices must comply with *Section 4.2.10* of the Master Declaration. The following shall apply to all Unit Owners:

12.20.1 No transmission antenna, of any kind, may be erected anywhere within the Residential Master Unit, without written approval of the Association.

12.20.2 DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, and only if and to the extent such rules mandate that such dishes or antennas be allowed, both as may be amended from time to time. In such event, the Association may designate and restrict the specific location and color of such satellite dishes and antennas, to the extent permitted under the FCC rules and regulations.

12.21 Zoning Restrictions. Each Owner acknowledges that other properties located in the vicinity of the Project may be developed pursuant to the land uses and restrictions set forth in the applicable zoning for Empire Pass, with no representation being made herein concerning the planned uses of such other properties. Each Owner acknowledges that the zoning for the property on which the Project is located and for other properties in the vicinity of the Project is established and governed by the Park City Land Management Code and certain agreements between Park City and the master developer of Empire Pass, as the same may be amended or replaced from time to time.

12.22 Rubbish, Trash and Garbage. All rubbish, trash and garbage shall be regularly removed from a Unit and shall not be allowed to accumulate therein. No rubbish, trash or garbage shall be placed on the Common Area and Facilities or Limited Common Area and Facilities outside of the Unit or any

balcony, temporarily or otherwise, and shall be moved to the Project's common trash facilities for collection or otherwise removed from the Project by an Owner or Guest.

12.23 Waiver of Right of Partition. By accepting title to a Unit, each Owner, for himself or herself and for his or her heirs, successors-in-title and assigns, does absolutely and forever waive any right to seek or obtain physical partition of the Project or any portion thereof, and does further waive the right to seek or obtain partition of the Project or any portion thereof by means of the sale of the Project or any portion thereof unless the institution of such suit or action for partition has been approved by the affirmative vote of the same number of Owners that would be required to sell all or any portion of the Project pursuant to and in compliance with this Declaration and Declarant during the Declarant Control Period. Notwithstanding the foregoing, there shall be no limitation on judicial sale in lieu of partition in the case of co-Owners of individual Units.

12.24 No Further Subdivision of Units; Declarants' Rights to Create Shared Ownership Program. Except as otherwise provided in the Master Declaration and this Declaration, no Unit, or portions thereof may be further divided or subdivided (either physically or legally). No Owner shall have the right to create or operate, or permit the creation or operation of, a timeshare, fractional, club, or any other shared ownership or use program in any Unit within the Project, whereby the right to exclusive use of a Unit rotates among participants in such program, regardless of whether use is allocated on a fixed, floating or reserved time basis, without Declarant's prior written consent, which consent may be withheld for any reason or no reason as Declarant shall determine in its sole and exclusive discretion. Notwithstanding the foregoing, Declarant shall have the right to create or operate, or permit the creation or operation of, a timeshare, fractional, club, or any other shared ownership or use program in any Unit within the Project ("Right to Create Shared Ownership Program"). Declarant may exercise its Right to Create Shared Ownership Program with respect to the Project without the prior consent of any Owners or Mortgagees, the Management Committee, the Association, or any other Person having any right or interest in all or any portion of the Project. In connection with its exercise of its Right to Create Shared Ownership Program, Declarant may cause the formation of a timeshare, fractional, club, or other shared ownership or use sub-association governing the applicable portion of the Project and create and Record such covenants, restrictions, and conditions governing such sub-association and its members as Declarant, in its sole and absolute discretion, deems reasonably necessary or appropriate for such portion of the Project (collectively, including any related articles of incorporation, bylaws, rules and regulations, and other documents, the "Timeshare Documents").

12.25 Snowmelt System. Each Owner shall: (i) at all times keep the Snowmelt System in and about their Unit (if any) in good working condition repair; (ii) pay the costs of operating, maintaining, repairing and replacing the Snowmelt System serving their Unit, including without limitation the cost of natural gas, electricity and other utilities necessary to the operation of such systems; and (iii) properly operate the Snowmelt System during the snow season so that the snow properly melts off the roof of the Unit and the driveway and walkways about the Unit ("Snowmelt Obligations"). In the event that an Owner fails to comply with its Snowmelt Obligations, the Association shall have the right to enter into such Owner's Unit and any Limited Common Area and Facilities appurtenant to such Unit for the purposes of inspecting the operating condition of the Snowmelt System within such Unit. If the Association determines that repairs are necessary to the Snowmelt System in any particular Unit, and if the Owner of such Unit fails to make such repairs within fifteen (15) days following written notice from the Association, then the Association shall have the right (but not the obligation) to make such repairs or take such other actions as may be necessary to carry out the Snowmelt Obligations for such Unit, and shall assess the Owner thereof for the costs and expenses incurred by the Association in taking such

corrective action as an Individual Assessment. Any such assessments shall be added to, and considered part of the Assessments for such Unit, and the Association shall have the same rights and remedies with respect to the collection and recovery of such assessments, as with all other Assessments. In addition, in the event that a Snowmelt System is inoperable or not effective in the melting of snow and ice from a Unit, the Association may, but shall have no obligation to, cause any accumulation of snow and ice to be removed around the Unit or Dwelling or on top of the Dwelling, and the cost thereof shall be assessed as an Individual Assessment. An easement is hereby created in favor of the Association and its agents to enter into each Unit and the appurtenant Limited Common Area and Facilities for the purpose of carrying out the provisions of this Section 12.25.

12.26 Solar Energy Systems. Solar energy systems and attendant equipment shall be prohibited from being constructed or installed on Units, or upon any part of the Common Area and Facilities in the Project, without the consent of the Moonshadow Reviewer and the Management Committee. The Management Committee shall be allowed to adopt Project Rules and regulations for the installation and ongoing maintenance of solar panels or other energy conservation equipment. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Dwellings. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system.

12.27 Compliance with Condominium Documents. It is intended that this Declaration alone, incorporating by reference the other Condominium Documents, shall govern all rights with respect to the use, possession, enjoyment, management, and disposition of Units in the Project. Accordingly, all rights with respect to the use, possession, enjoyment, management and disposition of any Units which an Owner might otherwise have as a tenant-in-common (including, but not limited to, any common law or statutory right jointly to use, possess, or manage commonly-owned property), are hereby unconditionally and irrevocably subordinated to this Declaration and related Condominium Documents for so long as this Declaration shall remain in effect.

12.28 Compliance with Project Rules. All Owners are given notice that use of their Units and the Common Area and Facilities is limited by the Project Rules. By acceptance of a deed, each Owner acknowledges and agrees that the use and enjoyment and marketability of the Owner's Unit can be affected by this provision and that the Project Rules may change from time to time.

12.29 Compliance with Master Governing Documents. All of the Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth in the Master Governing Documents, including but not limited to Article IV of the Master Declaration, each and all of which are declared and agreed to be for the benefit of the Project; further, each and all of the provisions of the Master Governing Documents, shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, the successors and assigns of said Declarant, and any Person acquiring, leasing, subleasing or owning an interest in the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors. Each Owner, by accepting a deed to a Unit, recognizes that (a) the Project is subject to the Master Governing Documents, and (b) by virtue of his or her ownership, he or she has become a member of the Master Association and is subject and subordinate to the provisions of the Master Governing Documents. Each Owner, by accepting a deed to a Unit, acknowledges that he or she has received a copy of the Master Governing Documents. The Owner agrees to perform all of his or her obligations as a member of the Master Association as they may from time to time exist, including, but not limited to, the obligation to pay assessments as required under the Master Governing Documents. Any member of the Design Review Board, the Master Management Committee, or any

authorized representative of either such entities shall have a right of entry to inspect any Lot, Unit, or Parcel, and the Improvements thereon, pursuant to *Section 4.2.29* of the Master Declaration.

12.29.1. Third-Party Costs. The Association may contract or cooperate with the Master Association or with other homeowners' associations or entities within Empire Pass as convenient or necessary to provide services and privileges, such as access to recreational and transportation facilities in Empire Pass, and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their family members, Guests, and invitees. The costs and expenses associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense.

12.29.2. Power to Collect Master Assessments. Unless the Master Association elects otherwise (which election may be made at any time), the Association will collect all Master Assessments payable to the Master Association in accordance with the Master Declaration. The Association will promptly remit all Master Assessments collected from Owners to the Master Association. If the Association fails to timely collect any portion of the Master Assessments due from the Owners, then the Master Association may collect such Master Assessments allocated to a Unit on its own behalf and enforce its lien against the Unit without joinder of the Association. The Association's right to collect Master Assessments on behalf of the Master Association is a license from the Master Association which may be revoked by written instrument at any time, and from time to time, at the sole and absolute discretion of the Master Management Committee.

12.29.3. Transfer Assessments. The Owners acknowledge that, as more particularly defined in the Master Declaration, the Master Association has the right to assess a transfer fee ("Transfer Assessment") upon an Owner selling, transferring, leasing (for a term greater than fifteen years) or conveying a Unit (collectively, a "Transfer") to a third party ("Transferee"). As more particularly described in the Master Declaration: (i) there are certain Transfers that are exempt from the Transfer Assessment; (ii) the Transfer Assessment shall be payable to the Master Association by the Transferee; and (iii) the Transfer Assessment equals the Gross Sales Price of a Unit multiplied by the Transfer Assessment Rate. As more particularly described in the Master Declaration, the "Gross Sales Price" means the total consideration given by the Transferee for a Unit less actual customary expenses of sale (or the equivalent thereof which would have been received by the Owner had the Transfer been an arms-length, third-party cash transaction, in the event the Transfer is not an arms-length, third-party cash transaction). As more particularly described in the Master Declaration, the "Transfer Assessment Rate" means one percent (1%) unless and until the Master Management Committee adopts a different rate, provided that such rate may not be higher than two percent (2%) unless the increase is approved by the affirmative vote of the Class A Memberships of the Master Association at a meeting duly called for such purpose. In the event of any conflict between the provisions of this *Section 12.29.3* and the provisions of the Master Declaration, including future amendments to the Master Declaration, the terms and provisions of the Master Declaration shall control.

12.29.4. Pets—Master Declaration. The Master Declaration includes provisions governing the kind and number of pets that may be kept by an Owner. All such provisions shall be binding upon the Project and all Owners, Guests, and invitees.

13. ARCHITECTURAL CONTROL

13.1 DESIGN REVIEW BOARD. PURSUANT TO THE MASTER DECLARATION, EACH OWNER OF A UNIT IS REQUIRED TO COMPLY WITH THE DESIGN GUIDELINES, UNLESS OTHERWISE APPROVED BY THE DESIGN REVIEW BOARD. NO IMPROVEMENTS SHALL BE CONSTRUCTED ON ANY PORTION OF THE PROJECT PROPERTY UNTIL APPROVAL IS OBTAINED BY THE DESIGN REVIEW BOARD. NOTWITHSTANDING ANY PROVISION HEREOF TO THE CONTRARY, THE REVIEW AND APPROVAL OF THE DESIGN REVIEW BOARD AND COMPLIANCE WITH THE DESIGN GUIDELINES IS IN ADDITION TO THE ARCHITECTURAL CONTROL AND REVIEW ESTABLISHED HEREUNDER AND NO IMPROVEMENTS MAY BE CONSTRUCTED ON ANY PORTION OF THE PROJECT PROPERTY WITHOUT ALSO OBTAINING THE ADVANCE WRITTEN APPROVAL OF THE MOONSHADOW REVIEWER AS PROVIDED HEREIN. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS AND PROVISIONS OF THE DESIGN GUIDELINES AND THE CONDOMINIUM DESIGN GUIDELINES, IF ADOPTED PURSUANT TO THIS DECLARATION, THE TERMS OF THE DESIGN GUIDELINES WILL CONTROL.

13.2 Architectural Control. During the Development Period, neither the Association or Management Committee, nor a committee appointed by the Association or Management Committee (no matter how the committee is named) may involve itself with the approval of any Improvements. Until expiration of the Development Period, the Moonshadow Reviewer for Improvements is the Declarant or its designee, the Design Review Board. No Improvement constructed or caused to be constructed by the Declarant will be subject to the terms and provisions of this Article 13 and need not be approved in accordance herewith

13.2.1 Declarant's Rights Reserved. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that during the Development Period, no Improvements will be started or progressed without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other Person. Declarant may designate one or more Persons from time to time to act on its behalf in reviewing and responding to applications.

13.2.2 Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to an architectural control committee appointed by the Management Committee or a committee comprised of architects, engineers, or other individuals who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. The Declarant is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the Declarant; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

13.3 Architectural Control by Association. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Management Committee, or the Development Period is

terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through an architectural control committee (the "Condominium ACC") will assume jurisdiction over architectural control and will have the powers of the Moonshadow Reviewer hereunder.

13.3.1 Condominium ACC. The Condominium ACC will consist of at least three (3) but no more than five (5) individuals appointed by the Management Committee. Members of the Condominium ACC serve at the pleasure of the Management Committee and may be removed and replaced at the Management Committee's discretion. At the Management Committee's option, the Management Committee may act as the Condominium ACC, in which case all references in the Condominium Documents to the Condominium ACC will be construed to mean the Management Committee. Members of the Condominium ACC need not be Owners, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Management Committee.

13.3.2 Limits on Liability. The Condominium ACC has sole discretion with respect to taste, design, and all standards specified in this Article. The members of the Condominium ACC have no liability for the Condominium ACC's decisions made in good faith, and which are not arbitrary or capricious. The Condominium ACC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the Condominium ACC; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

13.4 Prohibition of Construction, Alteration and Improvement. No Improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof may occur unless approved in advance by the Moonshadow Reviewer. The Moonshadow Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Project Property and the Property. Notwithstanding the foregoing, each Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of a Dwelling, provided that such action is not Visible From Neighboring Property.

13.5 Architectural Approval.

13.5.1 Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to plat, re-subdivide, or consolidate Units, a proposal for such plat, re-subdivision, or consolidation, will be submitted in accordance with the Condominium Design Guidelines, if any, or any additional rules adopted by the Moonshadow Reviewer together with any review fee which is imposed by the Moonshadow Reviewer in accordance with Section 13.5.2. No plat, re-subdivision, or consolidation will be made, nor any Improvement placed or allowed on any Unit, until the plans and specifications and the contractor which the Owner intends to use to construct the proposed Improvement have been approved in writing by the Moonshadow Reviewer. The Moonshadow Reviewer may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Moonshadow Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation,

and finished grade elevation. The Moonshadow Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Moonshadow Reviewer, in its sole discretion, may require. Construction or site plans must be approved by the Moonshadow Reviewer prior to the clearing or renovation of any Condominium Unit, or the construction of any Improvements. The Moonshadow Reviewer may refuse to approve plans and specifications for proposed Units or for the plat, re-subdivision, or consolidation of any Unit on any grounds that, in the sole and absolute discretion of the Moonshadow Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

13.5.2 Condominium Design Guidelines. The Moonshadow Reviewer will have the power, from time to time, to adopt, amend, modify, or supplement the Condominium Design Guidelines which may apply to all or any portion of the Project Property. In the event of any conflict between the terms and provisions of the Condominium Design Guidelines and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the Moonshadow Reviewer will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the Moonshadow Reviewer and used to defray the administrative expenses and any other costs incurred by the Moonshadow Reviewer in performing its duties hereunder; provided, however, that any excess funds held by the Moonshadow Reviewer will be distributed to the Association at the end of each calendar year. The Moonshadow Reviewer will not be required to review any plans until a complete submittal package, as required by this Declaration and the Condominium Design Guidelines, is assembled and submitted to the Moonshadow Reviewer. The Moonshadow Reviewer will have the authority to adopt such additional or alternate procedural and substantive rules and guidelines not in conflict with this Declaration (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any improvement, and the right to approve in advance any contractor selected for the construction of improvements), as it may deem necessary or appropriate in connection with the performance of its duties hereunder

13.5.3 Failure to Act. In the event that any plans and specifications are submitted to the Moonshadow Reviewer as provided herein, and the Moonshadow Reviewer fails to either approve or reject such plans and specifications for a period of sixty (60) days following such submission, the plans and specifications will be deemed disapproved.

13.5.4 Variations. The Moonshadow Reviewer may grant variances from compliance with any of the provisions of the Condominium Documents, when, in the opinion of the Moonshadow Reviewer, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and, if Declarant has assigned its rights to the Condominium ACC, must be approved by the Declarant until expiration or termination of the Development Period, a Majority of the Management Committee, and a Majority of the members of the Condominium ACC. Each variance must also be Recorded; provided, however, that failure to Record a variance will not affect the validity thereof or give rise to any claim or cause of action against the Moonshadow Reviewer, Declarant, the Management Committee or the Condominium ACC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in the Condominium Documents will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will

not operate to waive or amend any of the terms and provisions of the Condominium Documents for any purpose, except as to the particular property and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of the Condominium Documents.

13.5.5 Duration of Approval. The approval of the Moonshadow Reviewer of any final plans and specifications, and any variances granted by the Moonshadow Reviewer will be valid for a period of one hundred eighty (180) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and eighty (180) day period and diligently prosecuted to completion thereafter, the Owner will be required to resubmit such final plans and specifications or request for a variance to the Moonshadow Reviewer, and the Moonshadow Reviewer will have the authority to re-evaluate such plans and specifications in accordance with this *Section 13.5.5* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

13.5.6 No Waiver of Future Approvals. The approval of the Moonshadow Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Moonshadow Reviewer will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different Person, nor will such approval or consent be deemed to establish a precedent for future approvals by the Moonshadow Reviewer.

13.5.7 Non-Liability of Moonshadow Reviewer. NONE OF THE RELEASED PARTIES WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE MOONSHADOW REVIEWER'S DUTIES UNDER THIS DECLARATION.

14. ASSOCIATION AND MANAGEMENT COMMITTEE.

14.1 Association. The Owners shall be members of the Association, the characteristics and nature of which are determined by the Act, the Declaration, the Bylaws, the Articles and Applicable Law. The Association shall be governed by the following provisions:

14.1.1 Management Committee. During the Declarant Control Period, the management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Management Committee consisting of not less than three (3) nor more than five (5) individuals appointed by the Declarant as provided in the Bylaws. Upon the termination of the Declarant Control Period, the management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Management Committee consisting of not less than three (3) individuals who shall be elected by the Owners as provided in this Declaration and the Bylaws.

14.1.2 Powers of the Management Committee. Except as otherwise provided herein, the Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration, and the Bylaws, including but not limited to the following:

14.1.2.1 To adopt, amend, repeal, replace, and enforce all Project Rules and penalties for infractions thereof. The Association, acting through a Management Committee, is further granted the right to amend, repeal, and enforce the Policy Manual, setting forth therein such policies governing the Association as the Management Committee determines to be in the best interest of the Association, in its sole and absolute discretion; provided, however, that during the Development Period, any modification, amendment, or repeal to the Policy Manual or the Project Rules, and each new policy or Project Rule must be approved in advance and in writing by Declarant.

14.1.2.2 To engage the services of the Common Area Manager, accountants, attorneys or other employees or agents and to pay to said Persons a reasonable compensation therefor.

14.1.2.3 To operate, maintain, repair, improve, and replace the Common Area and Facilities, the Buffer Area, and/or any Service Area.

14.1.2.4 To determine and pay the Common Expenses.

14.1.2.5 To assess and collect the proportionate share of Common Expenses from the Owners, as provided in *Article 16* hereinafter.

14.1.2.6 To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

14.1.2.7 To open bank accounts on behalf of the Association and to designate the signatories therefor.

14.1.2.8 To purchase, hold, sell, convey, mortgage or lease any one or more Units in the name of the Association or its designee.

14.1.2.9 To bring, prosecute, and settle litigation for itself, the Association, and the Project.

14.1.2.10 To obtain insurance for the Association with respect to the Units and the Common Area and Facilities, as well as workers' compensation insurance.

14.1.2.11 To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.

14.1.2.12 To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary or convenient to the Association and the Management Committee and the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

14.1.2.13 To pledge, hypothecate or otherwise encumber current or future Assessments for any purpose permitted under this Declaration.

14.1.2.14 To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws. The Association or the Management Committee shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, the Policy Manual, Articles, Bylaws and other Project Rules governing the Project and other books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

14.1.2.15 To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

14.1.2.16 To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

14.1.2.17 To grant conveyances, easements, and rights-of-way over the Common Area and Facilities and to approve signage to the management of the business and affairs of for the Project.

14.1.2.18 To enforce the rules, regulations, policies and procedures of the Management Committee.

14.1.2.19 Subject to the limitations of *Section 14.1.5*, the Act and any other Applicable Law, the Management Committee may delegate to a Common Area Manager by written agreement all of the foregoing powers, duties and responsibilities referred to in *Section 14.1.2*.

14.1.2.20 The Management Committee may convey or subject to a Mortgage all or portions of the Common Area and Facilities of the Project if Owners entitled to cast a majority of the Total Votes of the Association agree to that action at a meeting or by written ballot distributed to Owners by mail. Any such agreement shall comply with all other applicable provisions of the Act.

14.1.2.21 Members of the Management Committee, the officers and any assistant officers, agents and employees of the Association (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to an Owner or any other Person under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any Person, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for and/or by them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Project,

which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

14.1.2.22 When a member of the Management Committee is sued for liability for actions undertaken in such member's role as a member of the Management Committee, the Association shall indemnify such member for such member's losses or claims, and undertake all costs of defense, until and unless it is proven that such member acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Management Committee who so acted. Members of the Management Committee are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association or its officers or directors, but may be recovered from Persons whose gross negligence gave rise to the damages.

14.1.2.23 To create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area and Facilities, or Service Area to any nonprofit, tax-exempt organization, the operation of which confers some benefit upon the Project, the Association, or members of the Association. The Association may contribute money, real or personal property, or services to such entity. Any such contribution shall be a common expense to be included in the Assessments levied by the Association and included as a line item in the Association's annual Budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code (the "Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time. The Association may maintain multiple-use facilities within the Project and allow use by tax-exempt organizations. Such use may be on a scheduled or "first-come, first-served" basis. A reasonable maintenance and use fee may be charged for the use of such facilities.

14.1.3 Project Maintenance Standard. The Management Committee shall provide for the repair, replacement, management, and maintenance of the Common Area and Facilities and any Units that the Association may own or lease, or in the future may own or lease, in accordance with the Project Maintenance Standard so that the Project will reflect a high grade of maintenance. In this connection, the Association may, subject to any applicable provisions on Special Common Assessments, in the discretion of the Management Committee, reconstruct, repair, replace or refinish any Unit that it may own or lease, or any improvement or portion thereof upon the Common Area and Facilities, and do all such other and further acts which the Management Committee deems necessary to preserve and protect the Units it may own or lease, or in the future may own or lease, and the Common Area and Facilities and the beauty thereof, in accordance with the Project Maintenance Standard and the general purposes specified in this Declaration.

14.1.4 No Sale of Property. Neither the Management Committee nor the Common Area Manager shall sell any property of the Association except as permitted by the Act and this Declaration.

14.1.5 Common Area Manager. The Association acting through the Management Committee may enter into a contract with a Common Area Manager for the management of the entire Project or separate contracts with different Common Area Manager for the management of any Unit. The Common Area Manager so engaged shall be responsible for managing the Project, or the applicable portion thereof, for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required to be performed by the Association itself.

14.2 Cooperation Amongst Area Associations. The Association may contract or cooperate with the Master Association or with other homeowners' associations or entities within Empire Pass as convenient or necessary to provide services and privileges such as access to recreational facilities in Empire Pass, and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their family members, guests, tenants and invitees. The costs and expenses associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense.

14.3 Providing Payoff Information; Written Statement. The Management Committee may charge a reasonable fee (to be paid after closing) for providing Association payoff information needed in connection with the closing of an Owner's financing, refinancing, or sale of a Unit. Such fee shall not exceed the maximum amount (if any) set forth in the Act. The Management Committee must provide payoff information within five (5) business days after the closing agent for a transaction requests such information. Such request shall include all information required by the Act and be delivered in accordance with the requirements set forth in the Act.

14.4 Registration with the Department of Commerce. Within ninety (90) days after a change of any information provided in the Association's registration with the Department of Commerce, the Management Committee shall submit an updated registration in the manner established by the Department of Commerce and the Act.

15. VOTING.

15.1 Voting Rights. At any meeting of the Association, each Owner of a Unit, including Declarant, either in person or by proxy, shall be entitled to vote the number of votes appurtenant to each respective Unit as set forth in Exhibit C. The voting rights appurtenant to each Unit shall vest upon execution and Recording of this Declaration.

15.2 Character of Votes. The vote appurtenant to each respective Unit shall be based on the Undivided Interest of the Unit in the Common Area and Facilities as set forth in Exhibit C. The vote appurtenant to each Unit shall have a permanent character, and, except as otherwise permitted and provided for in this Declaration, shall not be altered without the unanimous consent of all Owners expressed in a duly Recorded Amendment.

15.3 Master Association. Every Owner shall be a member of the Master Association. Pursuant to *Section 6.6* of the Master Declaration, the Units shall be designated as the "Moonshadow Neighborhood". Pursuant to the Master Governing Documents, the Members within the Moonshadow Neighborhood shall elect one Voting Member (and one alternate Voting Member) to represent them on all Master Association matters requiring a vote of the members of the Master Association, and on such matters the Voting Member shall be entitled to cast all votes allocated to the Moonshadow

Neighborhood under the Master Governing Documents. The term "Voting Member" as used herein shall be defined as such term is defined under the Master Declaration.

16. ASSESSMENT OF UNITS BY THE ASSOCIATION.

16.1 Personal Obligation. Except as otherwise set forth in this Declaration, each Owner is obligated to pay Assessments levied by the Management Committee against the Owner or the Owner's Unit. Payments are made to the Association at its principal office or at any other place the Management Committee directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other Person regarding any matter to which the Condominium Documents pertain. An Owner's obligation for Assessments is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Unit.

16.2 Regular Common Assessments. Regular Common Assessments are used for Common Expenses related to the recurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

16.2.1.1 Maintenance, repair, and replacement, as necessary, of the Common Area and Facilities, the Buffer Areas, and any Improvements, equipment, signage, and property owned by the Association;

16.2.1.2 Maintenance, repair, and replacement, as necessary, of any landscaping of the Common Area and Facilities;

16.2.1.3 Utilities billed to the Association;

16.2.1.4 Pest control and other services obtained by the Association and available to all Units;

16.2.1.5 Taxes on property owned by the Association and the Association's income taxes;

16.2.1.6 Management, legal, accounting, auditing, and professional fees for services to the Association;

16.2.1.7 Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association;

16.2.1.8 Insurance premiums and deductibles;

16.2.1.9 Contributions to reserve funds, and,

16.2.1.10 Any other expense which the Association is required by Applicable Law or the Condominium Documents to pay, or which, in the opinion of the Management Committee, is necessary or proper for the operation and maintenance of the Project or for enforcement of the Condominium Documents.

16.2.2 Annual Budget-Regular. The Management Committee will prepare and approve an annual budget with the estimated expenses to be incurred by the Association for each fiscal year. The budget will take into account the estimated income and Common Expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Management Committee will make the budget or a summary of the budget available to each Owner, although failure to receive a budget or budget summary will not affect an Owner's liability for Assessments. The Management Committee will provide copies of the budget to Owners who make written request. The first copy of the budget provided to an Owner shall be free of charge. The Association may charge a reasonable charge for any additional copy of the budget provided to an Owner.

16.2.3 Basis of Regular Common Assessments. Regular Common Assessments will be based on the Common Expenses set forth in the annual budget. Each Unit will be liable for the Unit's share of the Common Expenses set forth in the annual budget, such share being the same as the Undivided Interest in the Common Area and Facilities appurtenant to the Unit. If the Management Committee does not approve an annual budget or fails to determine new Regular Common Assessments for any year, or delays in doing so, Owners will continue to pay the Regular Common Assessments as last determined.

16.2.4 Supplemental Increases. If, during the course of a year, the Management Committee determines that Regular Common Assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, the Management Committee may increase Regular Common Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Supplemental increases will be apportioned among the Units in the same manner as Regular Common Assessments.

16.3 Common Expense Fund. At least two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital reserve expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Assessments under this Article 16 shall be the Common Expense Fund.

16.4 Special Common Assessments. In addition to the Regular Common Assessments, the Association may levy in any calendar year, Special Common Assessments applicable to that year only, for any purpose that the Management Committee may determine in its sole and exclusive determination, including without limitation for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Area and Facilities, including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Assessments from the Owners; structural alterations or capital additions or capital improvements to the Common Area and Facilities as are necessary in the Management Committee's sole and exclusive judgment to preserve or maintain the Common Area and Facilities or the Buffer Areas, or to pay an increase in real property taxes. The portion of any Special Common Assessment levied against a particular Unit shall be equal to the Undivided Interest in the Common Area and Facilities appurtenant to such Unit. The Management Committee shall provide notice by first-class mail to all Owners of any Special Common Assessments not less than thirty (30) days nor more than sixty (60) days prior to the date such Assessment is due.

16.5 Service Area Assessments. Prior to the beginning of each fiscal year, the Management Committee will prepare a separate budget for each Service Area reflecting the estimated Service Area

Expenses to be incurred by the Association in the coming year, if any. The total amount of Service Area Expenses will be allocated either: (a) equally among Units within the Service Area; or (b) based on the benefit received among all Units in the benefited Service Area. The Association shall then levy Service Area Assessments against Owners to cover the Service Area Expenses associated with their Unit. All amounts that the Association collects as Service Area Assessments will be expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from the Association's general fund.

16.6 Individual Assessments. The Management Committee may levy an Individual Assessment against an Owner and the Owner's Unit. Individual Assessments may include, but are not limited to: (i) interest, late charges, and collection costs on delinquent Assessments; (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Unit into compliance with the Condominium Documents; (iii) fines for violations of the Condominium Documents or the Master Governing Documents; (iv) transfer-related fees and resale certificate fees; (v) fees for estoppel letters and copies of the Condominium Documents; (vi) insurance deductibles; (vii) reimbursement for damage or waste caused by willful or negligent acts of the Owner, Guest, or their invitees; (viii) Common Expenses that benefit fewer than all of the Units, which may be assessed according to benefit received as reasonably determined by the Management Committee; (ix) fees or charges levied against the Association on a per-Unit basis; and (x) "pass through" expenses for services to Units provided through the Association and to be paid by each Unit according to benefit received as reasonably determined by the Management Committee.

16.7 Master Assessments. Each Owner shall be liable and responsible for payment of all Master Assessments pursuant to the Master Governing Documents. Among other things, the Master Association is authorized and legally entitled to assess any assessments and other charges as set forth in the Master Governing Documents.

16.8 Collection of Master Assessments Levied Pursuant to Master Declaration. In accordance with Article 7 of the Master Declaration, the Master Association shall bill each Owner for the Master Assessments owed on such Owner's Unit. The allocation of Master Assessments attributable to each Unit set forth set forth Section 7.4 of the Master Declaration.

16.9 Extension of Collection Rights. To the extent any Owner fails to pay its Master Assessments, all of the lien rights and other remedies contained in this Article 16 shall be available to the Association in order to cause collection of said Master Assessments.

16.10 Interest; Late Fees. All Assessments shall be due as set forth under the Condominium Documents. Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Management Committee, from the date when due until paid. Furthermore, Owners who do not pay their Assessments when due shall be subject to a reasonable late fee, established by the Management Committee from time to time. All payments of Assessments shall be first applied to accrued interest and late fees, costs of collection, and then to the Assessment payment first due. All Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit(s). If the Owners' percentage interests in the Common Area and Facilities are reallocated, assessments for Common Expenses and any installment

thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

16.11 Declarant's Right to Inspect and Correct Accounts. During the Development Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association financial records and accounts from the formation of the Association until the termination of the Development Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to re-characterize an expense or payment to conform to Declarant's obligations under the Documents or Applicable Law. This Section may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Unit, hereby grants to Declarant a right of access to the Association's books and records that is independent of Declarant's rights during the Declarant Control Period and Development Period.

16.12 No Assessments for Exempt Property. Notwithstanding any other provision of this Declaration to the contrary, no Assessments shall be levied against Exempt Property owned by Declarant or a Declarant Affiliate until the Declarant elects in writing to pay Assessments, and only so long as the Declarant elects to pay Assessments. However, the Declarant shall have the option and sole discretion to contribute cash, goods, or services, or any combination of the foregoing, to reduce the Association's costs and expenses. If Declarant chooses to subsidize the Association's costs and expenses, then the Management Committee shall make an accounting of the Declarant's subsidy contributions and provide a copy of the accounting to Declarant and each Owner.

16.13 Working Capital Fund. A working capital fund (the "Working Capital Fund") equal to at least three (3) monthly installments of the Annual Assessment for each Unit shall be established and maintained for the Project. Each Unit's share of the Working Capital Fund shall be collected from the purchaser of a Unit and transferred to the Association at the time of the closing of sale of that Unit. The Working Capital Fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the Working Capital Fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the Working Capital Fund are not to be considered advance payments of any Regular Common Assessment. The Working Capital Fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners. The Declarant shall not use any monies in the Working Capital Fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

16.14 Lien for Assessments

16.14.1 Lien for Assessments. Upon Recordation, there shall be a lien upon the applicable Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Declaration and the Act. Pursuant to UTAH CODE ANNOTATED Section 57-8-44, the Recordation of the Declaration constitutes record notice and perfection of the lien. The Board shall have the right to Record of a written notice of lien which shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. No notice of lien shall be Recorded until there is a delinquency in payment of the Assessment. Such lien may be

enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the State of Utah for the enforcement of a mechanic's lien which has been established in accordance with the provisions of Chapter 1, Title 38, UTAH CODE ANNOTATED, as amended from time to time.

16.14.2 **Appointment of Trustee.** In any foreclosure of such lien, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Unit which shall become due during the period of foreclosure, together with interest and late fees as set forth herein, and all such Assessments shall be secured by the lien being foreclosed. In furtherance of such foreclosure rights, the Association may bring an action at law against the Owner personally obligated to pay the same or the Association may foreclose the lien in accordance with the provisions of the Act. The Declarant hereby conveys and warrants pursuant to UTAH CODE ANNOTATED Sections 57-1-20 and 57-8-45, to Metro National Title, with power of sale, for the benefit of the Association, the Units and all improvements to the Units for the purpose of securing payment of Assessments under the terms of this Declaration. Provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1, Utah Code Annotated. The Association may, through its duly authorized agents, bid on the Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same.

16.14.3 **Foreclosure Notice.** At least thirty (30) calendar days before initiating a nonjudicial foreclosure, the Association shall provide notice ("**Foreclosure Notice**") to the Owner by certified mail, return receipt requested, that is the intended subject of the nonjudicial foreclosure. The Foreclosure Notice shall: (i) notify the Owner that the Association intends to pursue nonjudicial foreclosure with respect to the Owner's Unit to enforce the Association's lien for unpaid assessments; (ii) notify the Owner of the Owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure; (iii) be sent to the Owner by certified mail, return receipt requested and be included with other Association correspondence to the Owner; and (iv) be in substantially the following form:

**NOTICE OF NONJUDICIAL FORECLOSURE
AND RIGHT TO DEMAND JUDICIAL FORECLOSURE**

The Moonshadow Condominium Association, Inc., a Utah nonprofit corporation (the "**Association**"), the association for the project in which your unit is located, intends to foreclose upon your unit and allocated interest in the Common Area and Facilities using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the Association's lien against your unit and to collect the amount of an unpaid assessment against your unit, together with any applicable late fees and the costs, including attorneys' fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the Association prevails in the lawsuit, the costs and attorneys' fees associated with

the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorneys' fees. If you want to make this demand, you must state in writing that 'I demand a judicial foreclosure proceeding upon my unit,' or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within 15 days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is _____ (insert the address of the Association for receipt of a demand).

The Association may not use a nonjudicial foreclosure to enforce a lien if an Owner mails the Association a written demand for judicial foreclosure: (i) by U.S. mail, certified with a return receipt requested; (ii) to the address stated in the Foreclosure Notice; and (iii) within fifteen (15) days after the date of the postmark on the envelope of the Foreclosure Notice.

16.14.4 Priority of Lien. The lien of the Association shall be superior (prior) to all other liens and encumbrances except (i) liens and encumbrances Recorded before Recordation of this Declaration, (ii) a First Mortgage on a Unit as provided for herein, (iii) liens for real estate taxes or other governmental assessments or charges against the Unit, and (iv) Master Assessments levied pursuant to the terms and provisions of the Master Declaration. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

16.14.5 Statement of Unpaid Assessments. In a voluntary conveyance of a Unit, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. The Management Committee, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Unit. This statement shall be furnished within ten (10) days after receipt of the request and upon payment of a reasonable fee and is binding on the Association, the Management Committee, the Common Area Manager and every Owner, in favor of all who rely on such statement in good faith. The grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments against the grantor in excess of the amount set forth in the statement furnished under this Section.

16.14.6 Action to Recover. The amount of any Assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Area and Facilities or by abandonment of his or her Unit or by waiving any services or amenities provided for in this Declaration. A court entering a judgment or decree in a judicial action shall award the prevailing party its costs and reasonable attorneys' fees incurred before the judgment or decree and, if the Association is the prevailing party, any costs and reasonable attorneys' fees that the Association incurs collecting the judgment. In a nonjudicial foreclosure, the Association may include in the amount due, and may collect, all costs and reasonable attorneys' fees incurred in collecting the amount due, including the costs of preparing, Recording, and foreclosing a lien.

16.14.7 Sale of Unit. The lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a First Mortgagee is involved in which case any First Mortgagee who obtains title to a Unit pursuant to the remedies in the Mortgage or through foreclosure will not be liable for Assessments or charges accrued before the acquisition of the title to the Unit by the First Mortgagee, but such acquisition shall not relieve any Owner from paying further Assessments. If the Association's lien priority includes costs of collecting unpaid Assessments, the Owner will be liable for any fees or costs related to the collection of such unpaid Assessments.

16.14.8 Lien Rights under Master Declaration. In addition to the lien rights granted to the Association pursuant to the terms and provisions of this Declaration, in accordance with *Section 7.1* and *Article 7* of the Master Declaration, each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants, and agrees to pay the Master Association, all assessments levied in accordance with the terms and provisions of the Master Governing Documents. Each Master Assessment is a charge on the Unit and is secured by a continuing lien on the Unit as set forth in the Master Declaration. Each Owner, and each prospective Owner, is placed on notice that his or her title may be subject to the continuing lien for Master Assessments attributable to a period prior to the date the Owner purchased his or her Unit. Each Owner is advised to review the Master Declaration (and, in particular, *Section 7.1* and *Article 7* of the Master Declaration) for more information concerning the liens granted to secure payment of the Master Assessments.

16.15 Reserves. Pursuant to this Section, the Association through the Management Committee may levy Assessments at a level determined by the Management Committee to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including but not limited to the replacement of capital items and improvements or deductibles on insurance policies maintained by the Association. Such reserves shall be included in the Association's budget or established by levying Assessments upon all of the Owners in such amount as the Management Committee determines to be necessary or appropriate. Owners shall be responsible for contributing to such reserves as set forth in *Section 16.2* of this Article and such contribution may only be waived to the extent permitted under Applicable Law.

16.15.1 Reserve Funds. The Association shall maintain at a minimum the following two (2) reserve funds as part of the Common Expense Fund:

16.15.1.1 Operations Reserves. The Association will maintain operations reserves at a level determined by the Management Committee to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association. Reserves for operations may be funded from Regular Common Assessments or Special Common Assessments.

16.15.1.2 Replacement & Repair Reserves - Common Area and Facilities. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled maintenance, replacement, or major repair of components of the Common Area and Facilities. Reserves for the maintenance, replacement, or repair of Common Area and Facilities may be funded from Regular Common Assessments or Special Common Assessments.

16.15.2 Management of Reserve Funds. The Management Committee shall maintain a reserve fund separate from other funds managed by the Association. The Management Committee shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement, or maintenance of major components of the Common Area and Facilities for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters. Furthermore, the Association shall not use money in a reserve fund for daily maintenance expenses, unless sixty-seven percent (67%) of the Total Votes of the Association consent and vote to approve the use of the reserve fund money for that purpose. Upon the approval of sixty-seven percent (67%) of the Total Votes of the Association, the Management Committee may authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short-term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Management Committee may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Association, delay such restoration until the time it reasonably determines to be necessary. The Management Committee shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above. The proportionate interest of each Owner in said reserves or any other funds being held by the Association shall not be withdrawn or assigned separately, but shall be deemed to be transferred with each Unit, even though not mentioned or described expressly in the instrument of transfer. If the Association is ever dissolved, all such funds, if any, remaining after full payment of all Common Expenses shall be distributed on a pro rata basis to all then-existing Owners based upon each Owner's Undivided Interest at the time of such dissolution.

16.15.3 Reserve Study. Upon the expiration of the Declarant Control Period, the Management Committee shall present the reserve account study ("**Reserve Study**") to the Owners at either the annual meeting of the Owners or at a special meeting of the Owners. At such meeting, the Owners shall have an opportunity to discuss reserves and to vote on whether to fund a reserve fund and, if so, how to fund it and in what amount. The Association shall prepare and keep minutes of each meeting held pursuant to this paragraph, and indicate in the minutes any decision relating to funding a reserve fund. Any Reserve Study shall include, at a minimum:

16.15.3.1 Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the Reserve Study, have a useful life of less than thirty (30) years.

16.15.3.2 Identification of the probable remaining useful life of the components identified in *subparagraph 16.15.3.1* above, as of the date of the Reserve Study.

16.15.3.3 An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in *subparagraph 16.15.3.1* above, during and at the end of its useful life.

16.15.3.4 An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the Reserve Study.

16.15.3.5 A reserve funding plan that recommends how the Association may fund the annual contribution identified in *subparagraph 16.15.3.4* above.

For the purposes of this Section, the term “**reserve account requirements**” means the estimated funds which the Management Committee has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain in accordance with the Project Maintenance Standard. The Board shall cause a Reserve Study to be conducted no less frequently than every six (6) years. Additionally, the Board shall review, and if necessary, update a previously conducted Reserve Study no less frequently than every three (3) years. The Association shall annually provide Owners a summary of the most recent Reserve Study or update, and provide a copy of the complete Reserve Study or update to an Owner who requests a copy.

16.15.4 Declarant Exemption. Pursuant to Utah Code Section 57-8-7.5(10), Utah Code subsections 57-8-7.5(2) through (9), shall not apply or have any effect during the Declarant Control Period, and the Declarant shall have no duty to obtain a Reserve Study, or to fund any reserve fund during the Declarant Control Period.

16.16 Leased Units. If an Owner fails to pay Assessments and other amounts due under this Declaration for a period of more than sixty (60) days after such amounts are due and payable, the Association may require a Tenant (defined below) under a Lease (defined below) with an Owner to pay the Association all future Lease payments due to the Owner beginning with the next monthly or periodic payment due from the Tenant and until the Association is paid the Amount Owing (defined below).

16.16.1 Notice to Landlord. Before requiring a Tenant to pay Lease payments to the Association, the applicable Common Area Manager or Management Committee shall give the Owner notice (“Notice to Landlord”), in accordance with this Declaration. The Notice to Landlord shall state: (i) the amount of the Assessment due, including any interest, late fee, collection cost, and attorneys’ fees; (ii) that any costs of collection, including attorneys’ fees, and other Assessments that become due may be added to the total amount due and be paid through the collection of Lease payments; and (iii) that the Association intends to demand payment of future Lease payments from the Owner’s Tenant if the Owner does not pay the Amount Owing within fifteen (15) days.

16.16.2 Notice to Tenant. If an Owner fails to pay the Amount Owing within fifteen (15) days after the Common Area Manager or Management Committee gives the Notice to Landlord, the Common Area Manager or Management Committee may exercise the Association’s rights to collect Lease payments by delivering written notice (“Notice to Tenant”) to the Tenant. The Notice to Tenant shall state that: (i) due to the Owner’s failure to pay an Assessment within the required time, the applicable Common Area Manager or the Management Committee has notified the Owner of the Association’s intent to collect all Lease payments until the Amount Owing is paid; (ii) the law requires the Tenant to make all future Lease payments, beginning with the next monthly or other periodic payment, to the

Association, until the Amount Owing is paid; and (iii) the Tenant's payment of Lease payments to the Association does not constitute a default under the terms of the Lease with the Owner. The applicable Common Area Manager or Management Committee shall mail a copy of the Notice to Tenant to the Owner.

16.16.3 Future Lease Payments. A Tenant to whom the Notice to Tenant has been given shall pay to the Association all future Lease payments as they become due and owing to the Owner: (i) beginning with the next monthly or other periodic payment after the Notice to Tenant is delivered to the Tenant; and (ii) until the Association notifies the Tenant that the Amount Owing is paid. An Owner shall credit each payment that the Tenant makes to the Association under this Section against any obligation that the Tenant owes to the Owner as though the Tenant made the payment to the Owner. An Owner may not initiate a suit or other action against a Tenant for failure to make a Lease payment that the Tenant pays to the Association as required under this Section. Within five (5) business days after the Amount Owing is paid, the applicable Common Area Manager or Management Committee shall notify the Tenant in writing (and mail a copy thereof to the Owner) that the Tenant is no longer required to pay future Lease payments to the Association.

16.16.4 Deposit. The Association shall deposit money paid to the Association under this Section in a separate account and disburse that money to the Association until the Amount Owing is paid and any cost of administration, not to exceed the maximum amount set forth in the Act (if any) is paid. The Association shall, within five (5) business days after the Amount Owing is paid, pay to the Owner any remaining balance.

16.16.5 Amount Owing. As used in this Section "Amount Owing" means the total of any Assessment or obligation under this Declaration that is due and owing together with any applicable interest, late fee, and cost of collection, "Lease" means an arrangement under which a Tenant occupies a Unit in exchange for the Owner receiving a consideration or benefit, including a fee, service, gratuity, or emolument, and "Tenant" means a Person, other than the Owner, who has regular, exclusive occupancy of an Owner's Unit.

16.17 Termination of Delinquent Owner's Rights. The Management Committee may terminate a Delinquent Owner's (defined below) right to receive a utility service for which the Owner pays as a Common Expense and may also terminate the right of access to and use of recreational facilities at the Project (collectively, the "Owner's Rights").

16.17.1 Notice of Delinquency. Before terminating an Owner's Rights, the Common Area Manager or the Management Committee shall give the Delinquent Owner notice ("Notice of Delinquency") of such termination. The Notice of Delinquency shall state: (i) that the Association will terminate any of the Owner's Rights, if the Association does not receive payment of the Assessment owed to the Association within fourteen (14) days after the Delinquent Owner receives the Notice of Delinquency; (ii) the amount of the Assessment due, including any interest or late payment fee; and (iii) the Owner's right to request a hearing, pursuant to *Section 16.17.2*.

16.17.2 Request for Hearing. A Delinquent Owner may submit a written request to the Management Committee for an informal hearing to dispute the Assessment. Such request shall be submitted within fourteen (14) days after the date the Delinquent Owner receives the

Notice of Delinquency. The Management Committee shall conduct the informal hearing in accordance with the standards provided in the Condominium Documents. If a Delinquent Owner requests a hearing, the Association may not terminate the Owner's Rights until after the Management Committee conducts the hearing and enters a final decision.

16.17.3 Reinstatement of Rights. If the Association terminates an Owner's Rights, the Association shall take immediate action to reinstate the service or right following the Owner's payment of the Assessment, including any interest, late payment fee or other charges. An Association may assess an Owner for the cost associated with reinstating a utility service that the Association terminates and demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in the Notice of Delinquency.

16.17.4 Delinquent Owner. As used in this Section, "Delinquent Owner" means an Owner who fails to pay an Assessment or other amounts owed to the Association when due.

17. MAINTENANCE, ALTERATION, AND IMPROVEMENT.

17.1 DISCLAIMER. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR PORTIONS OF THE PROJECT, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE 18, NONE OF THE RELEASED PARTIES SHALL BE LIABLE TO OWNERS FOR PERSONAL INJURY, DEATH, OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THOSE PORTIONS OF THE PROJECT TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION, OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

17.2 Maintenance of Common Area and Facilities. Subject to provisions in this Declaration pertaining to eminent domain and the destruction of Improvements, the Association shall maintain, repair and replace the Common Area and Facilities (including but not limited to the Buffer Areas), and all Improvements and landscaping thereon (including the initial landscaping installed by the Declarant or its predecessors in interest on the Units), or shall contract for such maintenance, repair, and replacement to assure maintenance of such areas in good condition. However, the Association shall not be responsible for, or obligated to perform those items of maintenance, repair, or improvement that are the responsibility of the Owners as provided in Section 17.4 below. All incidental damages caused to a Unit by the maintenance, replacement, and repairs of the Common Area and Facilities or utility services shall be repaired promptly and the cost thereof shall constitute a Common Expense.

17.3 Right of Access. Some of the Common Area and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Association, its agents and contractors, shall have the irrevocable right to have access to, through, and across, each Unit and to, through, and across all Common Area and Facilities from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair, or replacement of any Common Area and Facilities or for making any emergency repairs at any time and when necessary to prevent damage to the Common Area and Facilities or to any Unit. The Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction, or reconstruction for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful

condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Association.

17.4 Owner Maintenance Obligation. Notwithstanding anything in this Declaration to the contrary, the Owner, at the Owner's expense, shall maintain and keep in good repair the Dwelling and their Unit, as well as all landscaping and other Improvements located within the Unit, in accordance with the Project Maintenance Standard. An Owner shall be responsible for snow removal from Improvements within its Unit and any appurtenant Limited Common Area and Facilities (with the exception of the Buffer Area). All fixtures, equipment, and utilities installed and included in a Unit serving only that Unit, commencing at a point where the fixtures, equipment and utilities enter the Unit, shall be maintained and kept in repair by the Owner of that Unit. An Owner shall not allow any action or work that will impair the structural soundness of the Improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of any Dwelling, or impair any easement or hereditament. With the exception of the Buffer Areas, an Owner shall have the obligation to maintain and keep in repair all appurtenant Limited Common Area and Facilities in accordance with the Project Maintenance Standard at such Owner's sole cost and expense. No Owner shall alter any Common Area and Facilities or Limited Common Area and Facilities without the prior written consent of the Association.

17.5 Association Right to Cure. In the event that portions of a Unit, Limited Common Area and Facilities, or other Improvements are not properly maintained and repaired by an Owner, or in the event that such Improvements are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association or the Common Area Manager, after written notice to the Owner and the expiration of a thirty (30) day cure period, and with the approval of the Management Committee, shall have the right but not the obligation, to enter upon the Unit without liability to the Owner for trespass or otherwise for the purpose of (i) maintenance, including, but not limited to, snow removal from any deck, balcony or patio and window washing; (ii) repairs, including emergency repairs; (iii) abating a nuisance, or a known or suspected dangerous or unlawful activity; (iv) enforcing the Condominium Documents or the Master Governing Documents; or (v) entering upon the Unit to perform such work as is reasonably required to restore the Unit and other Improvements to a condition of good order and repair; provided, however, if such repair and reconstruction due to an event of casualty cannot be reasonably performed within such thirty (30) day cure period, the Owner shall have such time as reasonably required to perform such repair and reconstruction so long as the work has been commenced within such cure period and is diligently pursued to completion. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be an Individual Assessment secured by a continuing lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Section 16.14 of this Declaration.

17.6 Failure to Maintain. Notwithstanding the foregoing obligations to maintain, repair and replace, if any Owner or those claiming by, through or under it, abuses, misuses or fails to operate, maintain, repair, or replace in the manner provided in this Declaration any item for which it is responsible hereunder or otherwise creates a situation on or within any portion of the Project with respect to which non-exclusive easements and licenses have been granted by this Declaration such that said areas of the Project require maintenance, repair, or replacement in excess of what would be required by normal use of said areas for their intended purposes, the Owner causing the damage or

such excess use shall be responsible for the excess costs of operating, maintaining, repairing, and replacing said areas. EACH OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE RELEASED PARTIES (EXCEPT FOR THEIR OWN NEGLIGENCE) FROM ALL LOSS, DAMAGE, COST, LIABILITY OR EXPENSE, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES ACTUALLY INCURRED, ARISING FROM SUCH OWNER'S FAILURE TO OPERATE, MAINTAIN, REPAIR OR REPLACE IN THE MANNER PROVIDED IN THIS DECLARATION ANY ITEM FOR WHICH IT IS RESPONSIBLE HEREUNDER OR OTHERWISE CREATES A SITUATION IN ANY PORTION OF THE PROJECT PROPERTY WITH RESPECT TO WHICH NON-EXCLUSIVE EASEMENTS AND LICENSES HAVE BEEN GRANTED BY THIS DECLARATION SUCH THAT SAID AREAS REQUIRE MAINTENANCE, REPAIR OR REPLACEMENT IN EXCESS OF WHAT WOULD BE REQUIRED BY NORMAL USE OF SAID AREAS FOR THEIR INTENDED PURPOSES. Each Owner shall maintain and promptly upon request, from time to time, make available to Declarant during the Development Period, the Association and any other Owner complete maintenance records for its Unit with respect to which easement rights exist under this Declaration. As to any items (such as exterior painting) that require coordination or cooperation as to timing, materials, payment or the like, the parties shall be reasonable in so cooperating and coordinating.

17.7 Owner Mechanic's Lien. Subsequent to the Recording of the Plat and this Declaration, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner of the Unit or the Owner's agent, contractor, or subcontractor shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Area and Facilities except as to the Undivided Interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. EACH OWNER SHALL INDEMNIFY AND HOLD HARMLESS EACH OF THE RELEASED PARTIES AND THE OTHER OWNERS AND THE ASSOCIATION FROM AND AGAINST ANY LIABILITY OR LOSS ARISING FROM THE CLAIM OF ANY MECHANIC'S LIEN FOR LABOR PERFORMED OR FOR MATERIALS FURNISHED IN WORK ON SUCH OWNER'S UNIT AGAINST THE UNIT OF ANOTHER OWNER OR AGAINST THE COMMON AREA AND FACILITIES, OR ANY PART THEREOF.

17.7.1 Enforcement of Indemnity. At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper), the Association shall enforce the indemnity provided by the provisions of *Section 17.6* above by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. In the event that the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount of the claim, or any portions thereof from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this *Section 17.7*, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Association in accordance with this Declaration.

17.8 Maintenance of Community Areas. Pursuant to the terms and provisions of the Master Declaration and that certain Maintenance Agreement between the Park City Municipal Corporation (the "City"), United Park City Mines Company, Blue Ledge Corporation and Flagstaff Master Owners Association ("Flagstaff Association"), including any amendments, modifications or replacements thereto, the Flagstaff Association has covenanted with the City that it will, at all times provide or cause the Flagstaff Association, if appropriate, to provide, all necessary maintenance and repairs to certain

roadways, walkways, tunnels, bridges, water system components, drain pipes, detention ponds, and other public infrastructure within Empire Pass (collectively referred to herein as the "Community Areas"). The Master Association is a successor in interest to the Flagstaff Association. In the event the Master Association defaults in the performance of its covenants to maintain and repair the Community Areas as set forth in the Maintenance Agreement, then the City shall have the right (but not the obligation) to cause such maintenance and repair work to be performed on behalf of the Master Association, if appropriate. In the event that the City exercises such right, the City shall have the right to assess the members of the Master Association, if appropriate, in the amount necessary to pay the costs of such maintenance and repair work to the Community Areas, together with reasonable administrative/overhead costs not to exceed ten percent (10%). The Master Association also has the responsibility to maintain and repair certain sewer laterals serving the Project. The Master Association shall have the right to charge the Association, and the Association shall reimburse the Master Association for, all costs and expenses incurred by the Master Association in the maintenance, repair and replacement of sewer laterals serving one or more Units in the Project. All such costs shall be part of the Common Expenses.

18. INSURANCE.

18.1 The Association shall at all times maintain in force insurance meeting the following requirements:

18.1.1 Property Insurance. A "master" or "blanket" type policy of property insurance shall be maintained covering the Common Area and Facilities of the Project, including: Common Area and Facilities; Limited Common Area and Facilities; fixtures, machinery, building service equipment, personal property and supplies comprising a part of the Common Area and Facilities maintained for the service of the Project or owned by the Association, but excluding items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including, without limitation, all perils normally covered by the standard ISO CP 10 30-Cause of Loss-Special Form, commonly referred to as the "all risk" policy form, or its equivalent, where such policy form is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, excluding items normally excluded from property insurance policies. If the Management Committee becomes aware that property insurance under this Section is not reasonably available, the Management Committee shall, within seven (7) calendar days after becoming aware, give all Owners notice pursuant to the requirements of the Act that the insurance is not reasonably available.

18.1.2 Replacement Endorsements; Deductibles.

18.1.2.1 If the Management Committee deems such advisable, the insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which

waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). Unless the Management Committee otherwise determines, the maximum deductible amount for such a policy covering the Common Area and Facilities shall be the lesser of Twenty-Five Thousand Dollars (\$25,000).

18.1.2.2 The Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or Twenty-Five Thousand Dollars (\$25,000), whichever is less.

18.1.3 **General Liability.** The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Area and Facilities, and all other areas of the Project that are under the Association's supervision. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least Five Million Dollars (\$5,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence and Five Million Dollars (\$5,000,000) in the general aggregate. The Association may obtain an umbrella policy in order to achieve such general liability coverage described hereunder or as otherwise determined by the Management Committee in its sole and exclusive discretion. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the Common Area and Facilities, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance for liability assumed under an insured contract (including tort liability of another assumed in a business contract), workers' compensation and employer's liability insurance, and comprehensive automobile liability insurance for any owned (if any), non-owned or hired vehicles in an amount of at least One Million Dollars (\$1,000,000) combined single limit each occurrence. Each Owner is an insured Person under a liability insurance policy that the Association obtains that insures against liability arising from the Owner's interest in the Common Area and Facilities or from membership in the Association. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least thirty (30) days prior written notice to the Association and to each First Mortgagee which is listed as a scheduled holder of a Mortgage in such policy. If the Management Committee becomes aware that liability insurance under this Section is not reasonably available, the Management Committee shall, within seven (7) calendar days after becoming aware, give all Owners notice pursuant to the requirements of the Act that the insurance is not reasonably available.

18.1.4 Fidelity Bonds. The Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Association and for all other individuals handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to the Common Area Manager, the Common Area Manager shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Association, for the Common Area Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association, which shall include the Association as a joint loss payee as its interest may appear. In addition, the Common Area Manager shall, within a reasonable time period, submit evidence to the Association that he or she has secured such fidelity insurance. The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association, or the Common Area Manager, as the case may be, at any given time during the term of each bond.

18.1.5 Directors and Officers Insurance. The Management Committee shall maintain directors and officers insurance (i) to indemnify the Association for any obligation which it incurs as a result of the indemnification of directors and officers, of the Association as required by Applicable Law or by a court order, (ii) to indemnify directors and officers of the Management Committee in instances in which they may be indemnified by the Association under the provisions of this Declaration, and/or (iii) to indemnify directors and officers of the Association in instances in which they may not otherwise be indemnified to the extent provided by such insurance.

18.1.6 Designation of Insured. The name of the insured under each policy required to be maintained by this Article 18 shall be the Association for the use and benefit of the individual Owners (said Owners shall be designated by name if required by Applicable Law.) Notwithstanding the requirement of the preceding sentence, each such policy may be issued in the name of an authorized representative of the Association, including any trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any Insurance Trustee, who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as such Owner's attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall

receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

18.1.7 Required Endorsements. Each policy required to be maintained by this *Article 18* shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

18.1.8 Additional Provisions. Each policy required to be maintained by this *Article 18* shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively or the Association; and the policy is primary and non-contributory in the event the Owner has other insurance covering the same loss. Notwithstanding any of the foregoing, the Management Committee may from time to time require increased limits and coverages as are reasonable and commonly insured in the case of property similarly situated.

18.1.9 Management Committee Duties. In contracting for the policies of insurance required to be maintained by this *Article 18*, the Management Committee shall make reasonable efforts to secure (where economically feasible and reasonably available) coverage commonly required by private mortgage investors for projects similar in construction, location and use.

18.1.10 Policy Requirements. Each insurance policy maintained pursuant to this *Article 18* shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a general policyholder's rating or a financial performance index of VII or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Management Committee, or the Association; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Management Committee, the Association, or Owner) from collecting insurance proceeds. The provisions of this *Article 18* shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

18.1.11 Annual Review. All insurance policies shall be reviewed at least annually by the Management Committee in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

18.2 Owner Insurance. Notwithstanding anything in this Article 18 to the contrary, it shall be the responsibility of each Owner, at such Owner's expense, to maintain general liability insurance and property insurance and physical damage insurance on such Owner's Unit (and such Owner's Dwelling), and any personal property and furnishings located therein. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Unit (and such Owner's Dwelling) as the Owner in the Owner's sole discretion shall conclude to be desirable. However, none of such insurance coverages obtained by such Owner shall affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Association and the Owner. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association as a result of insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners. Each Owner shall be responsible to provide insurance coverage for the amount of any additional value to any Unit caused by any improvement to the Unit made by such Owner and not initially made by Declarant, including, but not limited to, the value of structural upgrades or fixtures supplied by the Owner, or if the applicable insurance is to be provided by the Association, for any additional insurance costs associated with such increased value due to the improvements.

19. DESTRUCTION OR DAMAGE.

19.1 Appointment of the Association. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Common Area and Facilities upon their damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

19.2 Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Common Area and Facilities to substantially the same condition in which they existed prior to the damage or destruction, with the Common Area and Facilities having substantially the same vertical and horizontal boundaries as before.

19.3 Association Duties. In the event all or any part of the Common Area and Facilities is damaged or destroyed, the Association shall proceed as follows:

19.3.1 Notice. The Association shall give timely written notice to any Eligible Mortgagee on a Unit who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Area or Facilities.

19.3.2 Estimates. As soon as practicable after an event causing damage to or destruction of any part of the Common Area and Facilities, the Association shall obtain

complete and reliable estimates of the costs to repair and reconstruct the part of the Common Area and Facilities damaged or destroyed.

19.3.3 Sufficient Proceeds. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Common Area and Facilities, such repair and reconstruction shall be carried out.

19.3.4 Insufficient Proceeds; Repair and Replacement. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Common Area and Facilities, and if less than seventy-five percent (75%) of the Common Area and Facilities are damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Common Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Common Assessment shall be allocated and collected as provided in *Section 16.4* hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

19.3.5 Insufficient Proceeds; Vote to Repair or Replace. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Common Area and Facilities, and if seventy-five percent (75%) or more of the Common Area and Facilities is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote at least seventy-five percent (75%) of the votes of the Total Votes of the Association vote to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the Total Votes of the Association to carry out such repair and reconstruction and if, to the extent permitted by the Act, Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by Eligible Mortgagees do not approve such repair and reconstruction, the Association shall Record in the office of the County Recorder of Summit County, State of Utah, a notice setting forth such facts. Upon the Recording of such notice, the following shall occur:

19.3.5.1 The Common Area and Facilities shall be deemed to be owned in common by the Owners.

19.3.5.2 Each Owner shall own an interest in the Common Area and Facilities equal to his or her Undivided Interest in the Common Area and Facilities;

19.3.5.3 Any liens affecting any of the Units shall be deemed to be transferred, in accordance with the existing priorities, to the Undivided Interest of the relevant Owner in the Project; and

19.3.5.4 The Common Area and Facilities shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the

Common Area and Facilities, if any, shall be considered as one fund and shall be divided among all Owners in an amount equal to the Undivided Interest owned by each Owner in the Common Area and Facilities after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the Undivided Interest in the Common Area and Facilities owned by such Owner.

19.4 Diligence. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Common Area and Facilities damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Common Area and Facilities shall be restored or repaired to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and the Common Area and Facilities having the same vertical and horizontal boundaries as before. Any restoration or repair of the Common Area and Facilities, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

19.5 Repair Fund. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from Assessments made pursuant to Article 16. hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in accordance with their Undivided Interest in the Common Area and Facilities.

19.6 Restrictions on Amendment. This Article 19 shall not be amended unless Owners entitled to vote at least seventy-five percent (75%) of the Total Votes of the Association consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Association and Recorded in accordance with the provisions of this Declaration.

20. TERMINATION

20.1 Termination; Vote Required. Except as otherwise provided in this Declaration, including but not limited to Article 21, the Project may be terminated only by agreement of Owners entitled to vote all of the votes of all Units.

20.2 Sale of Property Following Termination. The Association, on behalf of the Owners, may contract for the sale of the Common Area and Facilities or any other real estate or personal property held in fee or owned by the Association, but the contract is not binding on the Owners until approved pursuant to the Act. If any Common Area and Facilities or any other real estate or personal property held in fee or owned by the Association is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the Owners' respective Undivided Interest in the Common Area and Facilities. Unless otherwise

specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and such Owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted such Owner's Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and such Owner's successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration. Following termination of the Project, the proceeds of any sale of any Common Area and Facilities or any other real estate or personal property held in fee or owned by the Association, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, mortgagees holding Mortgages on the Units which were Recorded before termination may enforce those liens in the same manner as any lienholder.

21. EMINENT DOMAIN.

21.1 Notice. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Area and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Management Committee and each Owner shall be entitled to notice thereof and the Management Committee shall, and the Owners at their respective expense may, participate in the proceedings incident thereto.

21.2 Condemnation of Common Area and Facilities or Limited Common Area and Facilities. With respect to the Common Area and Facilities or Limited Common Area and Facilities, any damages or awards shall be determined for such taking, injury, or destruction as a whole and not for each Owner's interest therein. After such determination, each Owner shall be entitled to a share in the damages in the same proportion as such Owner's Undivided Interest in the Common Area and Facilities. This provision does not prohibit a majority of the Owners from authorizing the Management Committee to use such damages or awards for replacing or restoring the Common Area and Facilities so taken on the remaining land or on other acquired land, provided that this Declaration and the Plat are duly amended.

21.3 Condemnation of Units. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damages or destruction pursuant to *Article 18* above and shall be deposited with the Management Committee as trustee. Even though the damage or awards may be payable to one or more Owners, the Owners shall deposit the damages or awards with the Management Committee as trustee. In the event an Owner refuses to so deposit such Owner's award with the Management Committee, then at the option of the Management Committee, either a Special Common Assessment shall be made against the defaulting Owner and such Owner's Unit in the amount of this award or the amount of such award shall be set off against the sum hereafter made payable to such Owner.

21.4 Removal from the Act. In the event the Project is removed from the provisions of the Act pursuant to *Article 20* above, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners respective Undivided Interest in the Common Area and Facilities.

21.5 Result of Condemnation. If one or more Units are taken, in whole or in part, and the Project is not removed from the provisions of the Act, the taking shall have the following effects:

21.5.1 Reduction in Size of the Unit. If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be

assessed against the Owner of the Unit. The balance of the award, if any, shall be distributed to the Mortgagee to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owner.

21.5.2 Condemnation of Entire Unit. If the taking destroys or so reduces the size of a Unit that it cannot be made tenable, the award shall be distributed to the Mortgagee of the Unit to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owner thereof. The remaining portion of such Unit, if any, shall become a part of the Common Area and Facilities and shall be placed in condition for use by all Owners in the manner approved by the Management Committee. The Undivided Interest in the Common Area and Facilities appurtenant to the Units that continue as part of the Project shall be equitably adjusted to distribute the ownership of the Common Area and Facilities among the reduced number of Owners.

21.6 Amendment Following Condemnation. Changes in Units, in the Common Area and Facilities, and in the Undivided Interest of the Common Area and Facilities that are effected by the taking referred to in this *Article 21* shall be evidenced by an amendment to this Declaration and the Plat, which need not be approved by the Owners.

22. MORTGAGEE PROTECTION

22.1 Roster of Eligible Mortgagees; Notice. The Management Committee shall maintain a roster containing the name and address of each First Mortgagee that has provided the Management Committee with written notice as described in this *Section 22.1* ("Eligible Mortgagee"). To be considered an Eligible Mortgagee, a First Mortgagee shall provide the Management Committee with a certified copy of its Recorded First Mortgage and the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage together with a written request that it receive notice of the matters and actions described below. The Eligible Mortgagee shall be stricken from the roster upon request by such Eligible Mortgagee or upon receipt by the Management Committee of a certified copy of a Recorded full release or satisfaction of the Eligible Mortgage. Notice of such removal shall be given to the Eligible Mortgagee unless the removal is requested by the Eligible Mortgagee. Upon the Association's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

22.1.1 Loss. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee;

22.1.2 Delinquency. Any delinquency in the payment of Assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, which default remains uncured for a period of sixty (60) days;

22.1.3 Insurance. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

22.1.4 Required Consent. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in *Section 22.4* below or elsewhere herein; and,

22.1.5 Judgments. Any judgment rendered against the Association.

22.2 Subordination of Lien. The Assessment or claim against a Unit for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit, if the First Mortgage was Recorded before the delinquent Assessment was due, and the First Mortgagee thereunder that comes into possession of, or which obtains title to, such Unit shall take the same free of such lien or claim for unpaid Assessment or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No Assessment, charge, Assessment lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit therein, affected or previously affected by the First Mortgage concerned. All taxes, Assessments, and charges that may become liens prior to the First Mortgage under Utah law relate only to the individual Units and not to the Project as a whole.

22.3 Payment of Charges. In the event any taxes or other charges which may or have become a lien on the Common Area and Facilities are not timely paid, or in the event the required hazard insurance described in Article 18 lapses, is not maintained, or the premiums therefor are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly pay such taxes or premiums or secure such insurance. Any First Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

22.4 Consent of Eligible Mortgagees. Except as provided elsewhere in this Declaration, or except as provided by the Act, the vote or prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the Total Votes of the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Units having at least fifty-one percent (51%) of the votes of the Units subject to First Mortgages held by Eligible Mortgagees, shall be required to:

22.4.1 Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.

22.4.2 Amend any material provision of the Declaration, Articles, Bylaws or Plat. "Material provisions" include any provision affecting the following (an amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, to comply with Applicable Law, or for clarification only):

22.4.2.1 Voting rights;

22.4.2.2 Changes in the method of calculating the Assessments, obligations, maintenance fees, or other charges which may be levied against an Owner;

22.4.2.3 Reductions in reserves for maintenance, repair, and replacement of Common Area and Facilities;

22.4.2.4 Responsibility for maintenance and repairs;

22.4.2.5 Reallocation of interests in the Common Area and Facilities, except where otherwise specifically permitted by this Declaration, or rights to their use;

22.4.2.6 Convertibility of Units into Common Area and Facilities or vice versa, except as otherwise permitted by this Declaration;

22.4.2.7 Substantial reduction in hazard or fidelity insurance requirements;

22.4.2.8 Imposition of any restrictions on the leasing of Units;

22.4.2.9 Imposition of any restrictions on Owner's right to sell or transfer such Owner's Unit;

22.4.2.10 Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or,

22.4.2.11 The benefits of Eligible Mortgagees.

Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

22.5 Association Records. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other Project Rules concerning the Project, as well as its own books, records, and financial statements, available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during normal business hours.

22.6 No Priority in Case of Distributions. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Area and Facilities. All proceeds or awards shall be paid directly to any Mortgagees of record, as their interest may appear.

23. AMENDMENT.

23.1 Amendment by the Association. Except as provided elsewhere in this Declaration, any amendment to this Declaration or the Plat shall require the affirmative vote of at least sixty-seven percent (67%) of the Total Votes of the Association cast in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any amendment authorized pursuant to this Section 23.1 shall be accomplished through the Recordation of an instrument executed by the Association. In such instrument an officer or trustee of the Association shall certify that the vote required by this Section 23.1 for amendment has occurred.

23.2 Amendment by Declarant. During the Development Period, Declarant may unilaterally amend any of the Condominium Documents or the Plat for any purpose; provided, however, any such Amendment shall not materially adversely affect title to any property without the consent of the

affected Owner. For purposes of this *Section 23.2* and other applicable sections of the Declaration, "materially adversely affect title" shall mean an action which prevents any reputable title insurance company from issuing title insurance coverage with respect to the Units subject to this Declaration. Further, notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant: (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, ordinance, rule, or regulation or judicial determination which shall be in conflict therewith; (b) to make technical corrections to fix mistakes or remove/clarify ambiguities; or (c) if such amendment is reasonably necessary to enable a title insurance company to issue title insurance coverage with respect to the Project or any Unit.

23.3 Amendment to Comply with Law. Anything in this Article or Declaration to the contrary notwithstanding, Declarant also reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA, and to further amend to the extent requested by any other federal, state or local governmental agency that requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Units, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof. Any such amendment shall be effected by the Recordation by Declarant of an Amendment duly signed by the Declarant, specifying the nature of the qualifying reason for such amendment pursuant to this *Section 23.3*. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when Recorded, shall be binding upon all Units and all Persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Article deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control. The Declarant further reserves the right, at any time and without the consent, approval or joinder of any other Owner, to amend the Plat in order to reflect the "as built" details of the Dwellings or other improvements to the Project.

23.4 Declarant's Reserved Right to Amend Plat. Notwithstanding anything contained in this Declaration to the contrary, because the Plat has been Recorded prior to the construction of the Units, Declarant reserves the right to unilaterally amend the Plat at any time and from time to time if such Amendment is necessary to make technical corrections, to satisfy the requirements of any governmental authority, to correct mistakes, remove/clarify ambiguities or to accurately reflect the "as-built" Units on the Plat or for any other purpose so long as such amendment to the Plat does not materially adversely affect title to any property without the consent of the affected Owner. For purposes of this *Section 23.4*, "materially adversely affect title" shall mean an action which prevents any reputable title insurance company from issuing title insurance coverage with respect to the Units subject to this Declaration. By acceptance of a deed to a Unit in the Project, each and every party by acquisition of a Unit hereby (i) consents to such Plat amendments as provided in this *Section 23.4*, and to the Recordation of any and all documents necessary to effect the same; (ii) agrees to execute, deliver and Record such documents and instruments and do such other things as may be reasonably necessary or convenient to effect the same; and (iii) appoints Declarant and its assigns as his, her or its attorney-in-fact with full power of substitution to execute, deliver and Record such documents and instruments and to do such things on his, her or its behalf to effectuate the purposes of this *Section 23.4*, which grant of such power, being coupled with an interest, is irrevocable for the term of said reserved rights, and shall not be affected by the disability of such party or parties; which grant of such power shall be binding upon any assignee of,

or successor-in-interest to, any such party and shall be deemed to be automatically granted anew by any assignee or successor-in-interest upon any transfer of any Unit, whether by deed, mortgage, or any other instrument of conveyance.

23.5 Owner's Duty to Record Supplemental Plat. After the Dwelling and other Improvements on or within each Unit has been designed, the Owner is required to prepare and Record a Supplemental Plat for that Unit as specifically set forth in Plat Note 3 (see Exhibit D hereto) and *Section 2.57*. All Supplemental Plats must be approved in advance by the Moonshadow Reviewer, the Design Review Board, and the City prior to their Recording.

23.6 No Violation of Condominium Documents/Master Governing Documents. Notwithstanding the foregoing, no Amendment to this Declaration may be Recorded that would render the Project in violation of the Condominium Documents or the Master Governing Documents without the prior written consent of the Declarant or Master Declarant, as applicable or necessary.

23.7 Preservation of Development Rights and Control. It is the desire of the Declarant to preserve its Development Rights and retain control of the Association and its activities during the anticipated period of planning and development of the Project. Any Amendment pursuant to the provisions of this *Article 23* that diminishes or alters any Development Right or such control of the Association shall be deemed null, void, and of no effect whatsoever unless the Declarant has joined in the execution of such Amendment.

24. EASEMENTS.

24.1 Disclosure. All conveyances of Units within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

24.2 Reserved Easements. In addition to the easements and restrictions contained in this Declaration and the Master Declaration, all dedications, limitations, restrictions and reservations shown on any plat, including but not limited to the Plat and the Villages Plat, and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant or any third-party prior to any portion of the Project Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Specifically, and not by way of limitation, the Project Property is subject to the terms and provisions and regulations of the Development Agreement and the Declaration of Development Covenants. EACH OWNER IS ADVISED TO REVIEW THE DEVELOPMENT AGREEMENT AND THE DECLARATION OF DEVELOPMENT COVENANTS TO ENSURE STRICT COMPLIANCE WITH THE TERMS AND PROVISIONS AND REGULATIONS THEREOF. This Declaration is not intended to modify the terms and provisions of the Development Agreement or the Declaration of Development Covenants and, to the extent of any conflict between any of the Condominium Documents or the Master Governing Documents and the Development Agreement or the Declaration of Development Covenants, the terms and provisions of the Development Agreement or the Declaration of Development Covenants, as applicable, will control. Declarant reserves the right to relocate, make changes in, and additions to said dedications, limitations, restrictions, easements, rights-of-way, licenses, leases, encumbrances, reservations and other grants for the purpose of developing the Project Property.

24.3 Encroachment Easement. If any part of the Common Area and Facilities encroaches or shall hereafter encroach upon a Unit or Units, Declarant hereby grants and reserves an easement for such encroachment and for the maintenance of the same. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area and Facilities, or upon an adjoining Unit or Units, Declarant hereby grants and reserves an easement for such encroachment and for the maintenance of same. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances on either the Common Area and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

24.4 Amenities Access Easement. Declarant hereby grants and reserves for itself, its Declarant Affiliates, successors, assignees, employees, agents, customers, occupants, Guests, invitees and licensees, a perpetual non-exclusive right to use, occupy and enjoy those certain portions of the Common Area and Facilities that constitute amenity and recreational facilities as determined by Declarant in its reasonable discretion ("Amenity Facilities") pursuant to the terms and provisions of this Declaration and the Project Rules, regardless of whether or not Declarant or its Declarant Affiliate is an Owner at the Project.

24.5 Ingress and Egress. Declarant hereby grants and reserves for the benefit of each Owner the non-exclusive right to ingress and egress over, upon, and across the Common Area and Facilities as necessary to gain access to his or her Unit and to any Limited Common Area and Facilities appurtenant to his or her Unit.

24.6 Support. Declarant hereby grants and reserves for itself, its Declarant Affiliates, successors, and assignees, and for the benefit of each Owner, the non-exclusive right to the horizontal, vertical, and lateral support of his or her Unit.

24.7 Association Easement. Declarant hereby grants and reserves for the benefit of the Association a non-exclusive easement to make such use of the Common Area and Facilities as may be necessary or convenient to perform the duties and functions that the Association is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain the Common Area and Facilities.

24.8 Construction Easement. Declarant hereby grants and reserves for itself, its Declarant Affiliates, successors, assignees, agents, and employees a non-exclusive easement over the Common Area and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing any portion of the Common Area and Facilities or improvements within the Project. The Owners of Units do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Units and the Common Area and Facilities appurtenant thereto until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners of Units in the Project. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the restrictions set forth in Article 12 above.

24.9 Warranty Easement. Declarant reserves a non-exclusive easement for itself, its Declarant Affiliates, its successors, and assigns, a non-exclusive easement and right of entry and access to all Units to perform warranty-related work, if any, for the benefit of the Unit being entered, adjoining Units, or Common Area and Facilities. Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.

24.10 Inspection Easement. Declarant reserves a non-exclusive easement for itself, its Declarant Affiliates, its successors, and assigns, an easement over the entire Project Property, including the Units and the Common Area and Facilities, to inspect the Common Area and Facilities and all Improvements thereon and related thereto to evaluate the maintenance and condition of the Common Area and Facilities Improvements.

24.11 Easement for Infrastructure. Declarant hereby grants and reserves a perpetual, assignable, non-exclusive easement for itself, its Declarant Affiliates, its successors, and assigns, on, across, under, about, over, and through the Project Property for ingress to, egress from, and for the installation, replacement, repair, and maintenance of, all utility infrastructure and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity, and cable communication that service the Project Property or any portion thereof as well as any such lines and systems which service other property owned by Declarant. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical, telephone, data transmission, and other communication services to erect and maintain the necessary equipment upon, across, about, over, under, and through the Dwelling and other portions of the Project Property, and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits upon, across, about, over, under, and through the Dwelling and other portions of the Project Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without unduly disturbing the uses of the Owners, the Association, and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Any utility company using this general easement shall have all work and the location of such all utility and service lines, systems, wires, circuits, and conduits approved in advance by the Moonshadow Reviewer. Should any utility company furnishing a service covered by the general easement request a specific easement by separate Recordable document, Declarant or the Management Committee shall have, and are hereby given, the right and authority to grant such easement upon, across, over, under, and through any part or all of the Project Property without conflicting with the terms hereof. The easements provided for in this Section 24.11 shall in no way affect, avoid, extinguish, or modify any other Recorded easement on the Project Property. In the event of a dispute among Owners with respect to the scope of the easement reserved in this Section, the decision of the Management Committee shall be final.

24.12 Telecommunication and Solar Panel Facilities. Declarant hereby grants and reserves for itself, its Declarant Affiliates, and its successors, and assigns, a non-exclusive easement to construct, operate, maintain, repair and replace all types of solar panel and telecommunication facilities and technology and related equipment and facilities within the Project, including but not limited to roof antennas, satellites, and cell phone towers (collectively, the "Telecommunication and Solar Panel Facilities"). Declarant further grants and reserves for itself, its Declarant Affiliates, its successors, and assigns, a right of ingress and egress over, across, and through the Common Area and Facilities of the Project in order to access the Telecommunication and Solar Panel Facilities to exercise the rights established herein. Declarant grants and reserves the perpetual right to transfer by easement, license agreement, or other conveyance the rights reserved hereunder to one or more Telecommunication and

Solar Panel Facilities providers. Declarant may exercise all of the rights under this *Section 24.12* without the consent of any Owner, Mortgagee, or the Association. The Association, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to Declarant, and any assignee of its rights hereunder.

24.13 Emergency Easement. A general non-exclusive easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or individuals to enter upon any portion of the Project Property, including but not limited to any Dwelling or any portion of the Common Area and Facilities, in the proper performance of their duties.

24.14 Private Trail Easement. There are one or more private trail and ski access easements shown on the Plat, identifying certain portions of the Common Area and Facilities that may be used for summer and winter access to trails, ski runs, and other adjacent recreational areas (the "Private Trail Area"). All Owners and their Guests, as well as owners and guests of units or Lots in other projects developed by the Declarant or any Declarant Affiliates adjacent to or near the Project, shall have non-exclusive easement rights over the Private Trail Area and other trails or walkways within the Project. Declarant further reserves the right to grant additional access easement rights to third parties over the Private Trail Area and other trails or walkways within the Project as the Declarant deems appropriate in the Declarant's sole discretion. Declarant also grants and reserves the right to grant the easement rights described in this *Section 24.14* by specific conveyance, and to create additional trail easements not shown on the Plat.

24.15 Master Association's Access Easement. Each Owner and Guest, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, hereby grants to the Master Association and its designees an easement of access and entry over, across, under, and through the Project Property, including without limitation, all Common Area and Facilities and the Owner's Unit and all Improvements thereon for the following purposes:

24.15.1 To perform inspections and/or maintenance that is permitted or required of the Master Association by the Master Governing Documents or by Applicable Law;

24.15.2 To perform maintenance that is permitted or required of the Owner by the Master Governing Documents or by Applicable Law, if the Owner fails or refuses to perform such maintenance;

24.15.3 To enforce the Master Governing Documents;

24.15.4 To exercise self-help remedies permitted by the Master Governing Documents or by Applicable Law;

24.15.5 To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Project Property;

24.15.6 To respond to emergencies; and,

24.15.7 To perform any and all functions or duties of the Master Association as permitted or required by the Master Governing Documents or by Applicable Law and to grant

licenses and easements over the Project Property to third parties as may be necessary to accomplish same.

In exercising the easement reserved herein, in no event will the Master Association be liable to any Owner for trespass.

25. NOTICES.

Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, by facsimile transmission, or by other electronic means, including email or the website of the Association. Notwithstanding the foregoing, an Owner may, by written demand, require that the Association provide notice to the Owner by mail. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Management Committee for the purpose of service of such notice or to the Unit of such Owner if no such address has been given to the Management Committee. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid; if by email, the date on which the notice is transmitted; and if on the website of the Association, the date the notice is posted on the website. Such address may be changed from time to time by notice in writing to the Management Committee addressed to:

Management Committee
Moonshadow Owners Association, Inc.
4188 SR 248
PO Box 99
Kamas, UT 84036
Attn: Trish Waterman

With a Copy to (during the Declarant Control Period only):

Storied Deer Valley, LLC
P.O. Box 4349
Park City, Utah 84060
Attn: Jeff Butterworth

26. **NO WAIVER.** The failure of the Management Committee or its agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of any of the Condominium Documents, to exercise any right or option herein contained or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Management Committee or its agents or designees of the payment of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee.

27. **FAIR HOUSING ACCOMMODATIONS.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Condominium Documents, as required under the Fair Housing Act, as amended, to accommodate an individual with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area and Facilities, and buildings, or deviations from a provision of the Condominium Documents. Any such modification or accommodation made under this Section shall not act as a waiver of the provisions of the Condominium Documents with regard to any other Person or Owner.

28. **ENFORCEMENT.**

28.1 **Compliance with Condominium Documents/Master Governing Documents.** All Owners and Guests, and Persons under Owner's or a Guest's control, shall strictly comply with the provisions of the Condominium Documents and the Master Governing Documents, and decisions of the Management Committee or any Common Area Manager on its behalf issued pursuant thereto.

28.2 **Notice and Hearing.** Before levying a fine for violation of the Condominium Documents or the Master Governing Documents (other than nonpayment of Assessments), the Association will give the Owner written notice of the levy and an opportunity to be heard to the extent required by Applicable Law, and in accordance with the then current Fine Policy included in the Association's Policy Manual. The Management Committee may adopt additional or alternative procedures and requirements for notices and hearings, provided they are consistent with the requirements of Applicable Law.

28.3 **Remedies.** The remedies provided in this Article for breach of the Condominium Documents or the Master Governing Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Condominium Documents or the Master Governing Documents and by Applicable Law, the Association has the following rights to enforce the Condominium Documents or the Master Governing Documents:

28.3.1 **Nuisance.** The result of every act or omission that violates any provision of the Condominium Documents or the Master Governing Documents is a nuisance, and any remedy allowed by Applicable Law against a nuisance, either public or private, is applicable against the violation.

28.3.2 **Fine.** The Association may levy reasonable charges, as an Individual Assessment, against an Owner and the Owner's Unit if the Owner's or Guest, or the Owner's or Guest's

family, guests, employees, agents, or contractors violate a provision of the Condominium Documents or the Master Governing Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Condominium Documents or the Master Governing Documents.

28.3.3 Suspension. The Association may suspend the right of Owners and Guests to use Common Area and Facilities (except that the rights of ingress and egress are not impaired) for any period during which the Owner's or Guest, or the Owner or Guest's family, guests, employees, agents, or contractors, violates the Condominium Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Condominium Documents or the Master Governing Documents.

28.3.4 Self-Help. The Association has the right to enter Common Area and Facilities or a Unit to abate or remove, using force as may reasonably be necessary, any Improvement, thing, animal, individual, vehicle, or condition that violates the Condominium Documents or the Master Governing Documents. In exercising this right, the Association is not trespassing and is not liable for damages related to the abatement. The Management Committee may levy its costs of abatement against the Unit and Owner as an individual Assessment. Unless an emergency situation exists in the good faith opinion of the Management Committee, the Management Committee will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish an Improvement on a Unit without judicial proceedings.

28.3.5 Suit. Failure to comply with the Condominium Documents or the Master Governing Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

28.4 Management Committee Discretion. The Management Committee may use its sole discretion in determining whether to pursue a violation of the Condominium Documents or the Master Governing Documents, provided the Management Committee does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Management Committee may determine that under the particular circumstances: (i) the Association's position is not sufficiently strong to justify taking any or further action; (ii) the provision being enforced is or may be construed as inconsistent with Applicable Law; (iii) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable Person or to justify expending the Association's resources; or (iv) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

28.6 Recovery of Costs. The costs of curing or abating a violation are the expense of the Owner or other Person responsible for the violation. If legal assistance is obtained to enforce any provision of the Master Governing Documents or the Condominium Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Master Governing Documents or the Condominium Documents or the restraint of violations of the Master Governing Documents or the Condominium Documents, the prevailing party is entitled to recover from

the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

28.8 No Forfeiture; Exceptions. The Association shall not be empowered to cause the absolute forfeiture of an Owner's right, title, or interest in the Project on account of the Owner's failure to comply with the provisions of this Declaration or the Project Rules except pursuant to:

28.8.1 The judgment of a court; or

28.8.2 A foreclosure for the failure of an Owner to pay Assessments duly levied by the Association.

28.9 Judicial Authority Required. The Association shall only be empowered to cause or require alteration or demolition of any construction to enforce any restrictions contained in this Declaration pursuant to judicial proceedings.

28.10 Enforcement by Master Association and the Master Declarant. The Master Association or Master Declarant shall have the right, but not the obligation, to enforce any violation of the terms and provisions of the Condominium Documents or the Master Governing Documents. In the event the Master Association or Master Declarant elects to enforce the Condominium Documents or the Master Governing Documents, and except in the case of an emergency (an emergency for the purpose of this Section 28.10 shall mean any violation which may damage all or any portion of the Project Property or the Property or cause physical injury to any Person), the Master Association or the Master Declarant will provide written notice to Declarant, during the Development Period, and the Management Committee, which notice will describe the violation in reasonable detail (the "Violation Notice"). If Declarant or the Association fails to remedy the violation specified in the Violation Notice on or before the expiration of thirty (30) days after receipt of such notice, or fails to exercise diligent and good faith efforts to cause the violation to be corrected (which may include initiating appropriate enforcement actions against an Owner in accordance with the Condominium Documents or the Master Governing Documents), the Master Association or the Master Declarant may, but shall in no event have the obligation, to initiate enforcement actions against the Owner for such violation. If the Master Association or Master Declarant initiates an enforcement action against an Owner, the Master Association, or the Master Declarant, as the case may be, will have the same enforcement and cost recovery rights reserved on behalf of the Association pursuant to this Article 28. NEITHER THE MASTER DECLARANT NOR THE MASTER ASSOCIATION HAVE A DUTY OR OBLIGATION TO THE ASSOCIATION, THE DECLARANT, OR ANY OWNER, OR THEIR GUESTS TO ENFORCE THE CONDOMINIUM DOCUMENTS OR THE MASTER GOVERNING DOCUMENTS.

28.11 Attorneys' fees. If the Association obtains legal counsel to enforce any of the provisions contained in this Declaration or other Condominium Documents, the Association may assess all reasonable attorneys' fees, fines, and costs associated with such legal counsel to the party against whom enforcement is sought as an Individual Assessment, regardless of whether a lawsuit is initiated.

29. RESERVATION OF RIGHTS TO PROJECT NAME.

29.1 Trademarks. Declarant is the owner of all rights in the "Moonshadow" names and trademarks, including all related trademarks, trade names, service marks, designs and logos, including the goodwill associated therewith ("Trademarks"), including but not limited to all rights in the Trademarks in connection with the Project, and any variant or combination of the Trademarks. Neither

the Association nor the Owners have any license to use or other interest in the Trademarks. By accepting a deed or other instrument of conveyance to a Unit in which this Declaration is deemed to be incorporated, each Owner hereby agrees and acknowledges (i) the ownership of the Trademarks in Declarant, (ii) all use of the Trademarks in the Project shall inure to the benefit of and be on behalf of Declarant, (iii) nothing in this Declaration shall give the Association or Owner any right, title or interest in the Trademarks other than the non-exclusive right to use the Trademarks in accordance with this Section 29.1, and (iv) the great value of the goodwill that Declarant has developed in the Trademarks, and hereby stipulates that such Owner will do nothing to damage such goodwill.

29.2 Association Rights. Notwithstanding the foregoing reservation of rights by Declarant, the Association and Owners may identify the Project as "Moonshadow". The Association may use the term "Moonshadow Condominiums" in its name for a period of ten (10) years from the Recording of this Declaration, with automatic consecutive 5-year extensions unless Declarant, in its sole and exclusive discretion, provides a written "Termination Notice" to the Association (which Termination Notice shall be deemed to be notice to each Owner) that it shall no longer be permitted to use such Trademarks to identify the Project or the Association. Upon receipt of a Termination Notice, the Association and each Owner shall immediately take steps to cease all use of the Trademarks identified in the Termination Notice to identify the Project, and shall immediately take the steps necessary to cease and desist from using any and all Trademarks as soon as possible as further described in the Termination Notice, but in any event, within three (3) months.

29.3 Compliance with Standards. The Association shall comply with all standards and instructions as Declarant may reasonably establish with respect to the style, appearance and manner of use of the Trademarks. The Management Committee shall promptly notify Declarant of any unauthorized use of the Trademarks by any third party and will confer with Declarant about appropriate action. Declarant shall have the sole right to determine whether any unauthorized use of the applicable Trademarks is an infringement and whether to take any action.

29.4 Enforcement. The provisions of this Article 29 may be enforced by any remedy at law or in equity, including mandatory and/or prohibitory injunctions, and the remedies hereunder are cumulative with any other rights or remedies that may be granted by law. By accepting a deed or other instrument of conveyance to a Unit in which this Declaration is deemed to be incorporated, each Owner hereby agrees and acknowledges that in the event of non-performance of any of the above-described restrictions, Declarant's remedies at law shall be deemed inadequate to enforce the terms of this Article 29. The failure of Declarant to exercise any right, power or option granted to it under this Article 29, or to insist upon strict compliance with the terms hereof by the Association, an Owner, and any other Person, shall not constitute a waiver of any term and/or condition of this provision with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with the terms and/or conditions set forth herein. Notwithstanding any provision of this Declaration to the contrary, this Article 29 shall not be amended without the prior written consent of Declarant, which consent may be withheld for any reason or no reason as Declarant shall determine in its sole and exclusive discretion.

30. DISCLOSURES.

30.1 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. The Released Parties shall not in any way be considered insurers or guarantors of security within the Project, however,

and the Released Parties shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and his, her, or its Guests and invitees acknowledge that the Released Parties do not represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that fire protection or burglar alarm systems will in all cases provide the detection or protection for which the system is designed or intended. EACH OWNER ON BEHALF OF HIMSELF, HERSELF, OR ITSELF AND HIS, HER, OR IT'S GUESTS OR INVITEES ACKNOWLEDGES AND UNDERSTANDS THAT THE RELEASED PARTIES ARE NOT INSURERS AND THAT EACH OWNER AND HIS, HER, OR IT'S GUESTS OR INVITEES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS OR PROPERTY WITHIN THE PROJECT AND FURTHER ACKNOWLEDGES THAT EACH RELEASED PARTY HAS MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER NOR HIS, HER, OR ITS GUESTS OR INVITEES RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROJECT.

30.2 Budgets. Any budgets provided by the Association or the Master Association are based on estimated expenses only without consideration for the effects of inflation and may increase or decrease significantly when the actual expenses become known. Accordingly, if the actual expenses exceed estimated expenses, the Assessments or charges levied to discharge such expenses will be different from the estimated amounts.

30.3 Natural Light and Views Not Protected. The natural light available to and views from a Unit can change over time due to among other things, additional development and the removal or addition of landscaping. NATURAL LIGHT AND VIEWS ARE NOT PROTECTED.

30.4 Erosion/Flooding. While the drainage system for surface water runoff on the Project Property will be constructed in accordance with applicable governmental standards, the Project Property may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain.

30.5 Photography of the Project Property. Declarant and the Mixed-Use Declarant retain the right to obtain and use photography of the Project Property for publication and advertising purposes.

30.6 Collection of Water. Water may pond on various portions of the Project Property having impervious surfaces, such as the parking area.

30.7 Location of Facilities. Declarant makes no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins.

30.8 Advertising Materials. Any advertising materials, websites, brochures, renderings, drawings, and the like, furnished by Declarant, the Master Declarant, or any Person (including brokers and sales agents) acting on behalf of Declarant or the Master Declarant to an Owner or prospective Owner which purport to depict the Unit to be constructed or any portion thereof, are merely approximations and do not necessarily reflect the actual as-built conditions of the same. Due to the unique nature of the construction process and site conditions, room dimensions, size and elevations may vary from Unit to Unit.

30.9 Supremacy of Master Declaration. Every Owner, by acceptance of deed to a Unit, acknowledges that, in addition to being subject to and bound by this Declaration, he or she is subject to the Master Declaration. In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to this Declaration, the Bylaws, or the Certificate, the Association shall be entitled to exercise any of the rights conferred upon it and shall be subject to all of the obligations imposed upon it pursuant to the Master Declaration and the bylaws of the Master Association. The Association and all committees thereof shall also be subject to all superior rights and powers that have been conferred upon the Master Association, pursuant to the Master Declaration and the bylaws of the Master Association, and as such, decisions made from time to time by the Master Association may affect the rights and interests of an Owner or Guest. The Association shall take no action in derogation of the rights of or contrary to the interests of the Master Association.

31. Powers of the Master Association Relating to the Association.

31.1 The Master Association shall have the authority to veto any action taken or contemplated to be taken by the Association, which the board of directors of the Master Association reasonably determines to be adverse to the interests of the Master Association or its members. The Master Association shall also have the authority to require specific action to be taken by the Association in connection with its obligations and responsibilities hereunder, under the Master Declaration, or under any other covenants or instruments affecting the Project. Without limiting the generality of the foregoing, the Master Association may require specific maintenance or repairs of aesthetic changes to be effectuated by the Association, may require that a proposed budget include certain items and that expenditures be made therefore, and may veto or cancel any contract providing for maintenance, repair or replacement of any portion of the Project.

31.2 The Master Association shall give the Association written notice of any action required to be taken by the Association pursuant to this Section. Such action shall be taken within the time frame set forth in such written notice. If the Association fails to comply with the requirements set forth in the notice, the Master Association shall have the right to effect such action on behalf of the Association and shall assess Owners for their pro-rata share of any expenses incurred in connection with the foregoing in the manner provided in the Master Declaration. Such assessments may be collected as a Special Assessment thereunder and shall be subject to all lien rights provided for therein.

32. DECLARANT

The term "Declarant" as used herein shall mean, unless the context otherwise requires, Declarant, and any Person that might acquire title from Declarant to all or some of the unsold Units through purchase, assignment or other transfer, including foreclosure or deed in lieu of foreclosure; or, in the situation where, any Person purchases all or some of the remaining Units in a sale in the nature of a bulk sale, and is assigned all or a portion of Declarant's Development Rights pursuant to a Recorded Assignment of Declarant Rights.

33. DISPUTE RESOLUTION.

Declarant may assign its rights and obligations pursuant to this *Article 33*, unilaterally and in whole or in part, to one or more third parties participating in construction or design of Improvements within the Project (including, without limitation, architects, engineers, builders and contractors). In the event of a partial assignment of the rights and obligations of this *Article 33*, such assignment shall only govern

defects in Common Area and Facilities, Limited Common Area and Facilities, Units, and/or Improvements constructed or caused to be constructed by the assignee.

33.1 Introduction and Definitions. The Association, the Owners, the Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (singularly, a "Party" and collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Project Property (including any Unit) and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all "Claims", as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

33.1.1 "Claim" means:

33.1.1.1 Claims relating to the rights and/or duties of the Released Parties under the Condominium Documents or the Act, and the interpretation, application, or enforcement of the Condominium Documents.

33.1.1.2 Claims relating to the acts, omissions, rights, or duties of Declarant during its control and administration of the Association, any claim asserted against the Moonshadow Reviewer if the claim relates to any act, omission, right, or duty of the Moonshadow Reviewer while controlled by Declarant, and any claims asserted against an individual appointed by Declarant to serve as a member of its Management Committee or officer of the Association, or to discharge any of the rights, omissions, acts, or duties of the Moonshadow Reviewer.

33.1.1.3 Claims relating to the design, construction, or maintenance of the Units, Common Area and Facilities, or any Improvement located within the Project.

33.1.2 "Claimant" means any Party having a Claim against any other Party.

33.1.3 "Exempt Claims" means the following claims or actions, which are exempt from this Article:

33.1.3.1 The Association's or the Master Association's claim for Assessments, and any action by the Association or the Master Association's to collect Assessments.

33.1.3.2 An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.

33.1.3.3 The rights of the Declarant, the Master Declarant, the Association, or the Master Association pertaining the easements, architectural control, maintenance, use restrictions, rights, and privileges set forth in this Declaration, which exclusion may not be omitted or modified without the advance written Recorded consent of the Declarant, the Master Declarant, the Association, or the Master Association, as applicable.

33.1.3.4 A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

33.1.3.5 A dispute that is subject to alternate dispute resolution - such as mediation or arbitration - by the terms of a public law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article, unless the Parties agree to have the dispute governed by this Article.

33.1.4 **"Respondent"** means any Party against which a Claim has been asserted by a Claimant.

33.2 **Mandatory Procedures.** Claimant may not initiate any proceeding before any court or administrative tribunal seeking redress of resolution of its Claim until Claimant has complied with the procedures of this Article 33.

33.2.1 **Claim by the Association.** In the event the Association asserts a Claim, as a precondition to the Association, initiating the mandatory dispute resolution procedures set forth in this Article 33, or taking any other action to prosecute a Claim, the Association must:

33.2.1.1 **Notice.** Provide written notice to each Owner that: (i) the Association is contemplating legal action, (ii) the percentage vote required to approve the legal action, (iii) the date, time, and location of any Owner meeting that has been scheduled to discuss the legal action or to vote on its approval, and (iv) a description of the Claims that the Association desires to pursue in sufficient detail to permit each Owner to reach an informed decision on approving the legal action; and,

33.2.1.2 **Report.** Provide each Owner a report (the **"Report"**) from a licensed attorney which: (i) identifies the likelihood that the legal action will succeed; (ii) identifies the likely amount in controversy in the legal action; (iii) identifies the likely cost of resolving the legal action to the Association's satisfaction; and (iv) identifies the likely effect the legal action will have on an Owner's or prospective unit buyer's ability to obtain financing for a Unit while the legal action is pending; and,

33.2.1.3 **Owner Meeting and Vote.** Obtain approval of the legal action at a meeting by Owners holding at least 51% of the total Undivided Interests of the Common Area and Facilities; and,

33.2.1.4 **Establish a Trust Account.** Establish a trust account that holds an amount equal to 10% of the cost estimated to resolve the legal action (not including attorneys' fees) that the Association may use only to pay the costs to resolve the legal action.

33.2.2 **Notice.** Claimant must notify Respondent in writing of the Claim (the **"Notice"**), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, Persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Condominium Documents, the Master Governing Documents, the Act, or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve

the Claim; (iv) that the Respondent shall have six (6) months to cure or resolve the Claim; and (v) that the Notice is given pursuant to this Section 33.2.2. The Notice will also include reasonable and credible evidence confirming that the approval required under Section 33.2.1.3 has been obtained.

33.2.3 Right to Cure. For any Claim arising from a dispute over the design, maintenance, or construction of Improvements within the Project or Unit, the Claimant shall provide Respondent six (6) months to rectify, alter, or fix the claimed defect(s) in the Improvements. The expiration of this six-month cure period shall be a prerequisite to Claimant's ability to initiate litigation as permitted in this Article 33. For all Claims involving alleged defects in design, maintenance, or construction of Improvements within the Project or a Unit, the negotiation and mediation requirements shall remain in effect during the cure period, however, the termination of mediation deadline shall be extended to expire on the same date the cure period expires.

33.2.4 Negotiation. After satisfying the requirements set forth above, Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Project Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Project Property, or portion thereof, that is subject to the Claim for the purposes of inspecting the Project Property, or portion thereof. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Project Property, or portion thereof, to take and complete corrective action.

33.2.5 Mediation. If the Parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent may submit the Claim to mediation in accordance with this Section 33.2.5.

33.2.6 Termination of Mediation. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit on the Claim, as appropriate and permitted by this Article 33.

33.3 Allocation of Costs. Except as otherwise provided in this Article 33, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys' fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

33.4 General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to Persons who are not party to Claimant's Claim. A party having an Exempt Claim may submit it to the procedures of this Article.

33.5 Period of Limitation.

33.5.1 For Actions by an Owner of a Unit. The exclusive period of limitation for any of the Parties to bring any Claim of any nature against Declarant, or its contractors, including, but not limited to, a Claim of construction defect or defective design of a Unit, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Owner discovered or reasonably should have discovered evidence of the Claim; and (ii) for Claims other than those alleging construction defect or defective design, two (2) years and one (1) day after the date Declarant conveyed the Unit to the original Owner or such other shorter period specified in any written agreement between Declarant and the Owner to whom the Declarant initially conveyed the Unit.

33.5.2 For Actions by the Association. The exclusive period of limitation for the Association to bring any Claim of any nature against Declarant, or its contractors, including, but not limited to, a Claim of construction defect or defective design of the Common Area and Facilities, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Association or its agents discovered or reasonably should have discovered evidence of the Claim; and (ii) for Claims other than those alleging construction defect or defective design of the Common Area and Facilities, two (2) years and one (1) day after the Declarant Control Period.

33.6 Strict Compliance Required. Any litigation involving the bound Parties shall strictly comply with each of the provisions in this Article. The bound Parties hereby covenant, stipulate, and agree that in the event one of the Parties fails to satisfy the prerequisites set forth herein, the non-compliant Party will indemnify, defend, hold harmless, and exculpate the other Party to the fullest extent permissible by law, and the non-breaching Party shall be entitled to recover any and all attorneys' fees and costs expended as a result of enforcing this Article, which fees and costs may include, without limitation, pre-litigation attorneys' fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. If any claims or actions falling within the scope of this Article are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied.

33.7 Amendment. This Article 33 may only be amended with the prior written approval of Declarant, the Association (acting through a Majority of the Management Committee), and Owners holding a sixty-seven percent (67%) of the Total Votes in the Association.

34. AGENT FOR SERVICE OF PROCESS.

The agent for service of process under the Act until the expiration of the period of Declarant Control Period under Section 11.1.7 shall be Capitol Corporate Services Inc., whose address is 2005 East 2700 South Suite 200, Salt Lake City, UT 84109. Thereafter, the agent for service of process shall be the Common Area Manager, or such other Persons as the Management Committee may designate.

35. SEVERABILITY.

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

36. CONFLICT.

In case of any conflict between this Declaration and the Master Declaration, the Master Declaration shall control. In case of any conflict between this Declaration and the Articles or the Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of a conflict between this Declaration and the Plat, the provisions of the Declaration shall control. The foregoing to the contrary notwithstanding, in the event of any inconsistency between this Declaration or the Articles or the Bylaws, on the one hand, and or any Applicable Law, including the Act or the Federal Fair Housing Administration Act, on the other, then in all events the Applicable Law shall control.

37. CAPTIONS.

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

38. LAW CONTROLLING.

This Declaration and the Plat and all issues and disputes arising out of either, shall be construed and controlled by and under the laws of the State of Utah.

39. EFFECTIVE DATE.

This Declaration shall take effect when Recorded in the office of the County Recorder for Summit County, State of Utah.

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EXHIBIT A

Legal Description of Project Property

Units A through H, Lot 1, North Empire Condominiums, according to the official plat recorded under _____, as Entry No. _____ of the Summit County Recorder's Office

Exhibit A

EXHIBIT B

Bylaws

Exhibit B

BYLAWS

OF

MOONSHADOW OWNERS ASSOCIATION, INC.

The administration of Moonshadow Owners Association, Inc. ("Association") shall be governed by the Utah Revised Nonprofit Corporation Act (Title 16, Chapter 6a, Utah Code Annotated) ("Nonprofit Act"), the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code Annotated ("Act"), the *Neighborhood Declaration and Declaration of Condominium for Moonshadow* recorded in the Office of the Summit County Recorder, State of Utah ("Declaration"), the Articles of Incorporation for Moonshadow Owners Association, Inc. ("Articles") and these Bylaws (as the Declaration, Articles, and these Bylaws may from time to time be amended). Terms which are capitalized in these Bylaws and which are not otherwise defined herein shall have the meaning set forth in the Declaration.

1. **BYLAWS APPLICATION.** All present and future Owners, Mortgagees, Guests, and occupants of Units and their employees and invitees, and any other persons who may use the facilities of the Project in any manner are subject to the Declaration, these Bylaws, and all Project Rules and regulations made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance of a Unit, or the occupancy of any Unit, shall constitute an agreement that the provisions of the Declaration and these Bylaws and any Project Rules and regulations made pursuant hereto, as they may be amended from time to time, are accepted, ratified and will be complied with.

2. **MANAGEMENT COMMITTEE.**

2.1 **Directors.** The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by the Management Committee consisting of not less than three (3) nor more than five (5) individuals ("Directors"). The initial Directors shall be appointed by the Declarant. The initial Directors shall be the following persons and each shall hold the office in the Association indicated:

Jeff Butterworth	President
Rich Wagner	Vice President
Lisa Reynolds	Secretary-Treasurer

2.2 **Declarant Control Period.** The Declaration establishes a Declarant Control Period, during which period the Declarant or persons designated by the Declarant have authority to appoint and remove the Directors, and any Director so removed will also concurrently with such removal cease to be an officer of the Association ("Officer"). The Declarant Control Period shall terminate no later than the earlier of: (a) three (3) years after the first Unit is conveyed to an Owner (or such longer period of time as otherwise provided by the Act); or (b) after Units to which three-fourths (3/4) of the undivided interest in the Common Areas and Facilities appertain have been conveyed to Owners; or (c) the surrender by Declarant of such right by written notice to the Management Committee. During the Declarant Control Period, no Directors shall be required to be an Owner.

2.3 **Composition.** Within one hundred eighty (180) days following the termination of the Declarant Control Period, the Members shall elect a Management Committee of three (3) but not more than five (5) Directors. The Directors and the Officers of the Association shall take office upon election.

Thereafter, at every annual meeting, the Association shall elect the Directors to fill those positions becoming vacant at such meeting, pursuant to the terms of this Section 2.

2.3.1 Nominating Committee; Nominations. Upon the termination of the Declarant Control Period, at least thirty (30) days prior to each annual meeting of the Association, the Management Committee shall elect from the members of the Association ("Members") a nominating committee of not less than three (3) Members. The Management Committee may, but shall not be obligated to, inquire of the Members to identify those having an interest in serving on the Management Committee. The nominating committee shall recommend to the Association at least one nominee for each position on the Management Committee to be filled at that particular annual meeting. Nominations for Director positions on the Management Committee may also be made by petition filed with the Secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by one (1) or more Members and the nominee named therein indicating such nominee's willingness to serve as a Director, if elected.

2.3.2 Voting for the Management Committee. Voting for the Management Committee shall be by secret ballot (which may be delivered electronically as directed by the Management Committee). At any meeting of the Association, each Member, either in person or by proxy, shall be entitled to the number of votes set forth in the Declaration for each Unit owned. The positions on the Management Committee shall be as follows: President, Vice President, and Secretary-Treasurer. The Directors and the Officers shall take office upon their election.

2.3.3 Term. Directors shall serve as follows:

2.3.3.1 Directors shall serve for terms of two (2) years beginning immediately upon their election by the Association; provided, however, that the Directors elected at the first annual meeting following the termination of the Declarant Control Period to the positions of Vice President and Secretary-Treasurer shall serve for initial terms of one (1) year, and the Director elected to the office of President shall serve for an initial term of two (2) years. If there are more than three (3) Directors elected at the first annual meeting following the termination of the Declarant Control Period, one-half of the additional Directors elected shall serve for one (1) year terms and the other half shall be elected to two (2) year terms. Thereafter, all Directors elected shall serve for two (2) year terms. The Directors shall serve until their respective successors are elected, or until death, resignation, or removal, whichever occurs first. Directors can be elected to successive terms. The Directors shall serve without compensation for such service.

2.3.3.2 Any Director who fails to attend three (3) consecutive Management Committee meetings or fails to attend at least twenty-five percent (25%) of the Management Committee meetings held during any fiscal year shall be deemed to have tendered such Director's resignation, and upon acceptance by the Management Committee such Director's position shall be vacant.

2.4 Recorded Notice of Directors. After the election of the Directors following termination of the Declarant Control Period, the Declarant may execute, acknowledge and record an affidavit stating the names of the newly elected Directors. Thereafter, any two (2) persons who are designated of record as being Directors of the most recent Management Committee may execute, acknowledge and record an affidavit stating the names of all of the Directors of the then-current Management Committee. The most recently recorded evidence or copy of such affidavits shall be prima facie evidence that the persons named

therein are all of the incumbent Directors and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

2.5 Resignation and Removal. Any Director may resign at any time by giving written notice to the President of the Association or to the remaining Directors. Prior to the end of the Declarant Control Period, the Declarant may remove any Director with or without cause. Upon the termination of the Declarant Control Period, the Members, by a two-thirds (2/3) vote, either at a meeting of such Members, or by written consent, may remove any Director with or without cause.

2.6 Vacancies. During the Declarant Control Period, if vacancies shall occur in the Management Committee by reason of the death, resignation, retirement, disqualification, removal from office, or otherwise, the Directors then remaining shall continue to act, and such vacancies shall be filled by the Declarant. Upon the termination of the Declarant Control Period, if vacancies shall occur in the Management Committee by reason of the death, resignation, retirement, disqualification, removal from office, or otherwise, the Directors then remaining shall continue to act, and such vacancies shall be filled by a vote of the Directors then remaining, though less than a quorum; provided, however, that the Management Committee is acting to fill such vacancy. Any vacancy in the Management Committee occurring by reason of removal of a Director by the Association may be filled by election at the meeting at which such Director is removed or any subsequent regular or special meeting of the Association. A vacancy resulting from a removal shall only be filled by the vote or written consent of a majority of the votes of the Association entitled to vote for that Director.

2.7 Powers. The Management Committee, for the benefit of the Project and the Association, shall manage the business, property, and affairs of the Project and the Association and enforce the provisions of the Condominium Documents governing the Project. The Management Committee is authorized to adopt Project Rules and regulations governing the use and operation of the Project (including but not limited to the Common Area and Facilities), which shall become effective ten (10) days after adoption by the Management Committee. The Management Committee shall have the powers, duties, and responsibilities with respect to the Project as contained in the Condominium Documents, including but not limited to the authority and duty to maintain, repair, and replace the Common Area and Facilities as set forth under the Condominium Documents.

2.8 Management Committee Meetings. The meetings of the Management Committee shall be held annually at such times and places within the Project, or some other reasonable and suitable location in Summit County, Utah, unless a meeting at another location would significantly reduce the cost to the Association and/or the inconvenience to the Directors, as the Management Committee shall determine. A majority of the Directors shall constitute a quorum, and if a quorum is present, the decision of a majority of those Directors present shall be the act of the Management Committee. Directors may participate in Management Committee meetings by means of telephonic conference, videoconferencing, the internet, or similar communications equipment by which all persons participating in the meeting can hear each other at the same time and by any other means permitted under Applicable Law. Such participation shall constitute presence in person at the meeting.

2.9 Notice of Annual Meeting and Regular Meetings. Annual and regular meetings of the Management Committee may be held at any time and place permitted by law as from time to time may be determined by the Management Committee. Written notice of annual and regular meetings of the Management Committee shall be given to each Director personally, by telephone, electronic mail, facsimile, or by United States first-class or registered mail, with postage prepaid, directed to him or her at his or her last known post office address, phone number, facsimile number or electronic mail address, as

the same appears on the records of the Association not less than ten (10) days prior to the regular meeting. If notice is mailed by other than first-class or registered mail, such notice shall be mailed to each Director no fewer than thirty (30) days nor more than sixty (60) days before the meeting date. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail, with first-class postage thereon prepaid. Unless otherwise provided by Applicable Law, regular meetings of the Management Committee may be held without notice of the date, time, place, or purpose of the meeting.

2.10 Special Meetings. Notice of a special meeting of the Management Committee may be called by written notice signed by any two (2) Directors. The notice shall specify the date, time, and place of the meeting and must be delivered to each Director at least two (2) days prior to the special meeting. Special meetings shall be held within the Project or some other reasonable location in Summit County, Utah, unless a meeting at another location would significantly reduce the cost to the Association and/or inconvenience to the Directors. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail, with first-class postage thereon prepaid. If an agenda is prepared for a special meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

2.11 Actions and Open Meetings.

2.11.1 The Directors shall act only as a Management Committee, and individual Owners shall have no powers as such. Except for an action taken without a meeting pursuant to Section 2.12, annual, regular, and special meetings of the Management Committee shall be open to each Owner or the Owner's representative if the representative is designated in writing. No later than forty-eight (48) hours before a Management Committee meeting, the Association shall give written notice of the meeting via email to each Owner who requests notice of a Management Committee meeting (the "Owner Notice"); provided, however, the Owner Notice shall not be required if (i) notice of the Management Committee meeting was included in a meeting schedule that was previously provided to the Owner; or (ii) (A) the Management Committee meeting is being held to address an emergency; and (B) each Director receives notice of the Management Committee meeting less than forty-eight (48) hours before the Management Committee meeting.

2.11.2 The Owner Notice shall: (i) be delivered to the Owner to the email address that the Owner has previously provided to the Association; (ii) state the time, date, and location of the Management Committee meeting; and (iii) if a Director may participate by means of electronic communication, provide the information necessary to allow the Owner to participate by the available means of electronic communication. During the Management Committee meeting, Owners who are not on the Management Committee may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Management Committee; provided, however, the Management Committee shall provide each Owner a reasonable opportunity to offer comments during a designated time period during the meeting.

2.11.3 The Management Committee may adjourn the meeting and reconvene in executive session to (i) consult with an attorney for the purpose of obtaining legal advice; (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (iii) discuss a personnel matter; (iv) discuss a matter relating to contract negotiations, including review of a bid or proposal; (v) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate

the individual's reasonable expectation of privacy, or (vi) discuss a delinquent assessment or fine.

2.11.4 Notwithstanding the foregoing, the requirements set forth in this Section 2.11 shall not apply to any Management Committee meeting held during the Declarant Control Period.

2.12 Action without a Meeting.

2.12.1 Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if notice, meeting the requirements set forth below, is provided in writing to each Director and each Director by the time stated in the notice (i)(A) approves such action, or (B) disapproves such action, abstains in writing from voting, or fails to respond or vote; and also (ii) fails to demand in writing that action not be taken without a meeting.

2.12.2 The notice required under this Section shall state: (i) the action to be taken; (ii) the time by which each Director must respond to the notice; (iii) that failure to respond by the time stated in the notice will have the same effect as either abstention or failing to demand in writing that the action not be taken without a meeting; and (iv) any other matters the Management Committee determines to include.

2.12.3 Any communication required under this Section may be delivered by an electronic transmission, provided that for the electronic transmission to be considered to be written, signed, and dated, the electronic transmission must be delivered so that the Association can determine from the transmission (i) that the electronic transmission was actually transmitted by the Director; and (ii) the date on which the electronic transmission was transmitted. The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed.

2.13 Fiscal Year. The fiscal year of the Association shall be set by resolution of the Management Committee. In the absence of a Management Committee resolution, the fiscal year shall be the calendar year.

2.14 Indemnification. When a Director is sued for liability for actions undertaken in such Director's role as a member of the Management Committee, the Association shall indemnify such Director for such Director's losses or claims, and undertake all costs of defense, until and unless evidence shows that such Director acted in bad faith or with willful or wanton misfeasance or with gross negligence or otherwise in violation of the requirements of Section 16-6a-822 of the Nonprofit Act or until and unless evidence shows that the Director's actions are prohibited under Section 16-6a-823(1)(b) of the Nonprofit Act. After such proof, the Association is no longer liable for the cost of defense, and may recover costs already expended from the Director who so acted. Directors are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, or any Officer or Director of the Association.

2.15 Membership Eligibility. An officer, employee, agent, or director of a corporate Owner of a Unit, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, a member of a limited liability company that owns a Unit, and a fiduciary of an estate that owns a Unit may be considered an Owner for the purpose of determining eligibility for membership of the

Management Committee. Notwithstanding the foregoing, the requirements set forth in this Section 2.15 shall not apply to any Management Committee meeting held during the Declarant Control Period.

2.16 Common Area Manager. The Management Committee or the officers appointed thereby may delegate to the Common Area Manager, or such other persons as they so determine, all of the duties and obligations of the Management Committee set forth in these Bylaws and in the Declaration to the extent such duties and obligations are properly delegable. The Common Area Manager, if any, shall provide for the maintenance, repair, or replacement of the Common Area and Facilities.

2.17 Tax Elections. The Management Committee or the officers appointed thereby reserve the right to make whatever tax and other elections they deem necessary, including but not limited to, filing as a tax-exempt entity under SECTION 528 OF THE INTERNAL REVENUE CODE.

2.18 Declarant Rights. During the Declarant Control Period, Declarant shall have a right to disapprove any action, policy or program of the Association, the Management Committee and any committee thereof which, in the sole and exclusive judgment of the Declarant, would tend to impair rights of the Declarant or any affiliate of Declarant under the Declaration or these Bylaws, or interfere with the development, or construction of any portion of the Project, or diminish the level of services being provided by the Association. No such action, policy or program shall become effective or be implemented until and unless:

2.18.1 The Declarant shall have been given written notice of all meetings and proposed actions approved at meetings of the Association, the Management Committee or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting; and

2.18.2 The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, or its representatives or agents shall make their concerns, thoughts, and suggestions known to the Management Committee and/or the members of the subject committee. The Declarant shall have and is hereby granted an exclusive right to disapprove any such action, policy, or program authorized by the Association, the Management Committee or any committee thereof, if the approval of the Management Committee, any committee, or the Association is necessary for such action. This right may be exercised by the Declarant, or its successors, assigns, representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provision thereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of the Management Committee, any committee, or the Association. The Declarant shall not use its right to disapprove in order to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with Applicable Law.

3. MEETINGS OF THE ASSOCIATION.

3.1 Association Meeting. The first meeting of the Association shall be held within one (1) year after the closing of the sale of the first Unit sold in the Project. Thereafter, there shall be an annual meeting of the Association held at the Project or at a meeting place reasonably close thereto, at the date and time selected by the Management Committee.

3.2 Special Meetings of the Association. Special meetings of the Association may be called by the Declarant, the President, a majority of the Management Committee, or Members representing at least twenty-five percent (25%) or more of the Total Votes of the Association and may be held at the Project or at a meeting place reasonably close thereto, to consider matters which, by the terms of the Declaration, require the approval of all or some of the Members or for any other reasonable purpose. Special meetings shall be called by written notice signed by the Declarant, the President, a majority of the Management Committee or by Members representing at least twenty-five percent (25%) or more of the Total Votes of the Association, which shall be delivered not less than fifteen (15) days prior to the date fixed for said meeting, to each Member in the manner described in Section 3.3 below.

3.3 Notice of Association Meetings. Notice of the annual and regular meetings of the Association and of any special meetings of the Association shall be hand delivered, sent by facsimile (fax) or electronic (e-mail) transmission, or sent by first-class or certified mail, no fewer than ten (10) nor more than sixty (60) days prior to the date fixed for said meeting to each Owner of record at such Owner's address, facsimile (fax) number, or electronic (e-mail) address, as shown in the records of the Association or to any other mailing, fax number, or email address designated in writing by the Owner. Consent to electronic notice is deemed granted in the event an Owner provides a fax number or e-mail address to the Association. Such notice shall specify the place, date, and hour of the meeting and a description of any matters that must be approved by the Owners or for which the Owners' approval is sought pursuant to Applicable Law. The notice of a special meeting shall also include a description of the purposes for which the meeting is called. If any annual, regular, or special meeting of the Members is adjourned to a different date, time, or place, notice need not be given of the new date, time, and place if the new date, time, and place are announced at the meeting before adjournment. Notwithstanding the foregoing sentence, if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date for the adjourned meeting is or must be fixed pursuant to these Bylaws or Applicable Law, additional notice of the adjourned meeting must be given to Members entitled to vote at the meeting pursuant to the requirements of this Section 3.3.

3.4 Quorum. The presence in person or by proxy of Members holding forty percent (40%) or more of the Total Votes of the Association at any meeting of the Association held in response to notice to all Owners of record properly given shall constitute a quorum. In the absence of a quorum at an Association meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) nor more than thirty (30) days from the original meeting date. The quorum for an adjourned meeting shall be twenty-five (25%) of the Total Votes of the Association. If the time and place for an adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to the Members pursuant to the requirements of this Section 3.4. At any special meeting of the Association, only those matters of business, the general nature of which was given in the notice of the special meeting, may be voted upon by the Members. Unless otherwise expressly prohibited by the Nonprofit Act, the Declaration, or these Bylaws,

any action may be taken at any meeting of the Members upon a majority vote of the Members who are present in person or by proxy.

3.5 Meetings by Telecommunication. Any or all of the Members may participate in an annual, regular, or special meeting of the Association by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting.

3.6 Robert's Rules of Order. In the event of a procedural dispute, Robert's Rules of Order (latest edition) shall govern the conduct of the Association's meeting when not in conflict with the Declaration or these Bylaws.

3.7 Action without a Meeting. Any action that may be taken at any annual, regular, or special meeting of the Association may be taken without a meeting and without prior notice, provided that one or more consents in writing, setting forth the action taken, are signed by Members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote on the action were present and voted.

3.7.1 Unless written consents of all Members entitled to vote have been obtained, notice of any Member approval without a meeting shall be given at least ten (10) days before the consummation of the transaction, action, or event authorized by the Member action to: (a) Members entitled to vote who have not consented in writing; and (b) Members that are not entitled to vote, and to whom these Bylaws require that notice of the proposed action be given. The notice required pursuant to this Section 3.7 must meet the requirements set forth under Section 3.3.

3.7.2 To be effective, a Member action taken pursuant to this Section 3.7 must be supported by written consents that (a) have been received by the Association within a sixty (60) day period; and (b) have not revoked.

3.7.3 Action taken by the Members pursuant to this Section 3.7 shall be effective: (a) as of the date the last written consent necessary to effect the action is received by the Association; or (b) if all of the written consents necessary to effect the action specify a later date as the effective date of the action, the later date specified in the consents.

3.7.4 A Member may deliver such Member's written consent by electronic transmission so long as such transmission provides the Association with a complete copy of the written consent, and the Association can determine: (a) that the electronic transmission was transmitted by the Member; and (b) the date on which the electronic transmission was transmitted. The date on which an electronic transmission is transmitted is considered the date on which a consent is signed.

3.7.5 Notwithstanding the foregoing, Directors may not be elected by written consent except by unanimous written consent of all Members entitled to vote for the election of Directors.

3.7.6 Action taken under this Section 3.7 has the same effect as action taken at a meeting of Members and may be so described in any document.

3.8 Action by Written Ballot. Any action that may be taken at any annual, regular, or special meeting of the Association may be taken without a meeting if the following requirements are met:

3.8.1 A written or electronic ballot is distributed to every Member entitled to vote setting forth the proposed action, and providing an opportunity to signify approval or disapproval of the proposal. The ballot shall be mailed by first-class or registered mail. A Member must return the ballot within fifteen (15) days from the day such ballot is mailed by first-class or registered mail.

3.8.2 The number of votes cast by ballot within the specified time under Section 3.8.1 equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

3.8.3 For purposes of taking action by written ballot under this Section, the number of votes cast by written ballot constitute a quorum for action on the matter.

3.8.4 Solicitations for votes by written ballot must comply with the following requirements: (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter other than election of Directors; (c) specify the time by which a ballot must be received by the Association in order to be counted; and (d) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

3.8.5 A written ballot delivered to every Member entitled to vote on the matter or matters therein may also be used in connection with any annual, regular, or special meeting of the Members of the Association, thereby allowing Members the choice of either voting in person or by written ballot delivered by a Member of the Association in lieu of attendance at such meeting. Any written ballot shall comply with the requirements of Section 3.8.1 and shall be counted equally with the votes of Members in attendance at any meeting for every purpose, including satisfaction of a quorum requirement.

3.9 Exercise of Voting. At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by proxy. For any Unit owned by more than one Owners, all of the Owners of such Unit may sign a certificate designating one of the co-Owners as the Member authorized to cast the votes appurtenant to such Unit. In such event, the Management Committee may rely on such certificate as being sufficient evidence of the authority of the Member casting the votes appurtenant to such Unit. In the absence of such a certificate, if only one of several Owners of a Unit is present at a meeting of the Association, that Member is entitled to cast all the votes allocated to that Unit. If more than one of the Owners of a Unit is present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of such Owners. Absent a certificate of authorization, there shall be deemed to be majority agreement if any one of the Owners casts the votes allocated to the Unit owned without protest made promptly to the person presiding over the meeting by any of the other Owners of such Unit.

3.10 Voting and Proxies. The right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member (or all of the Owners of a Unit if there is more than one Owner) or by the Member's attorney (or all of the Owner's attorneys if there is

more than one Owner) thereunto duly authorized in writing. The instrument authorizing the proxy to act shall be delivered, at the beginning of the meeting, to the Secretary of the Association, or such other officer or person who may be acting as the Secretary at the meeting. The Secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting. A Member may revoke a proxy given pursuant to this Section only by actual notice of revocation to the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy is valid for only eleven (11) months.

3.11 Minutes. Minutes of annual, regular, and special meetings of the Association shall be distributed to each Member within a reasonable time after the meeting.

3.12 Rights Non-assignable. The rights and obligations of any Owner shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Unit, and then only to the transferee of ownership of the Unit. A transfer of ownership of a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to Applicable Law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Unit shall operate to transfer the membership in the Association appurtenant to said Unit to the new Owner thereof. Each transferee shall notify the Association of such transferee's purchase of a Unit. A change in the ownership of a Unit shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded. The Management Committee shall thereafter be given written notice of such change and provided satisfactory evidence thereof.

4. OFFICERS

4.1 Officer Appointment and Removal. The Management Committee shall annually appoint all of the officers of the Association. The appointment of officers shall be conducted at the first meeting of the Management Committee held subsequent to the annual meeting of the Association. Officers may be removed and replaced by the Management Committee in the discretion of the Management Committee.

4.2 General Requirements. All officers and employees of the Association shall serve at the will of the Management Committee. So long as there are three (3) Directors, the officers shall be a President, a Vice President, and a Secretary-Treasurer. The Management Committee may appoint additional Vice Presidents and such other assistant officers as the Management Committee may deem necessary. During the Declarant Control Period, no officer shall be required to be an Owner. No officer shall receive compensation for serving in such office. The Management Committee shall require that officers (and other employees of the Association) be subject to fidelity bond coverage.

4.3 President. The President shall be the chief executive of the Management Committee and shall preside at all meetings of the Association and of the Management Committee and may exercise the power ordinarily allowable to the presiding officer of an association, including the appointment of committees. The President shall exercise general supervision over the Project and its affairs. The President shall sign, and the Secretary shall witness, on behalf of the Association, all conveyances, mortgages and contracts of material importance to its business. The President shall do and perform all acts which the Management Committee may require.

4.4 Vice President. The Vice President, if any, shall perform the functions of the President in the President's absence or inability to serve.

4.5 Secretary. The Secretary shall keep minutes of all proceedings of the Management Committee and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Members and the Management Committee.

4.6 Treasurer. The Treasurer shall be responsible for the fiscal affairs of the Association, but may delegate the daily handling of funds and the keeping of records to the Common Area Manager.

4.7 Power to Execute Amendments to the Declaration. Any officer may prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

5. COMMON EXPENSES; ASSESSMENTS.

5.1 Assessment. All Common Expenses shall be assessed in accordance with the Declaration.

5.2 No Exemption. With the exception of the Declarant pursuant to the terms of the Declaration, no Owner shall be exempt from liability for Common Expenses by waiver of the use or enjoyment of any of the Project or by abandonment of such Owner's Unit.

5.3 Record Keeping. The Treasurer shall keep detailed records of all receipts and expenditures including expenditures affecting the Project, specifying and itemizing the maintenance, repair, and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Members during regular business hours. In accordance with the actions of the Management Committee in assessing Common Expenses against the Units, the Treasurer shall keep an accurate record of such Assessments and of the payments thereof by each Member.

5.4 Owner Liability. All Assessments shall be a separate, distinct, and personal liability of the Owners at the time each Assessment is made. The Management Committee shall have the rights and remedies contained in the Act and in the Declaration to enforce the collection of Assessments.

5.5 Treasurer Statement. Any person who shall have entered into a written agreement to purchase a Unit, by written request directed to the Management Committee, shall be entitled to obtain a written statement from the Treasurer setting forth the amount of the monthly, quarterly, annual, or other periodic Assessments, the amount of any reserve fund held by the Association, and the amount of unpaid Assessments charged against such Unit and its Owner(s), and if such statement does not reveal the full amount of the unpaid Assessments as of the date it is rendered, neither the purchaser nor the Unit shall be liable for the payment of an amount in excess of the unpaid Assessments shown thereon; provided, that the former Owner shall remain so liable. The new Owner shall, and the former Owner shall not (except for unpaid Assessments owed by the former Owner), be liable for any Assessments made after the date of transfer of title, even though the Assessment made after the date of transfer of title may account for expenses incurred or the advances made in whole or in part by the Management Committee prior to the date of transfer of title date. The Management Committee is authorized to require a reasonable fee for furnishing such statements. In addition to the statements issuable to purchasers, the Management Committee shall, upon ten (10) days' prior written request therefor, provide to any Owner, to any person who shall have entered into a binding agreement to purchase a Unit and to any Mortgagee, on request at reasonable intervals, a current statement of unpaid Assessments for Common Expenses with respect to a Unit and the amount of any reserve funds held by the Association. The Management Committee is authorized to require a reasonable fee for furnishing such statements.

6. LITIGATION.

6.1 Expense as Common Expense. If any action is brought by a Director on behalf of the Association, the expenses of suit, including reasonable attorneys' fees, shall be a Common Expense. Except as otherwise provided, if any action is brought against the Owners, against the Association or the officers, employees, or agents thereof, or against the Management Committee or the Directors, in such officers', employees', agents', or Directors' respective capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Owners, then the expenses of suit, including attorneys' fees, shall be a Common Expense. If any action is brought against one or more, but less than all Owners, with the result that the ultimate liability would, if proved, be borne solely by such Owners, the expenses of suit, including attorneys' fees, shall not be charged to or borne by the other Owners, as a Common Expense or otherwise.

6.2 Duty to Defend. Except as otherwise provided by the Nonprofit Act, any action brought against the Association, or the officers, employees, or agents thereof, or against the Management Committee or the Directors thereof, in such officers', employees', agents', or Directors' respective capacities as such, or the Project as a whole, shall be directed to the Management Committee, and shall be defended by the Management Committee, and the Owners and Mortgagees shall have no right to participate in such defense other than through the Management Committee. Actions against one or more, but less than all Owners, shall be directed to such Owners, who shall promptly give written notice thereof to the Management Committee, and shall be defended by such Owners.

7. ACCOUNTING.

7.1 The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer.

7.2 A budget for each fiscal year shall be adopted by the Management Committee and distributed to all Members of the Association prior to the beginning of the fiscal year to which the budget applies.

7.3 The Management Committee shall distribute to the Members an unaudited financial statement, prepared by an independent public accountant approved by the Association, within one hundred twenty (120) days after the close of each fiscal year.

7.4 The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Association, of the Management Committee, and of committees of the Management Committee and all other records of the Project maintained by the Association, Common Area Manager or management company shall be made available for inspection and copying by any Member of the Association or such Member's duly appointed representative at any reasonable time and for a purpose reasonably related to such Member's interest as an Owner, at the office where the records are maintained. Upon receipt of an authenticated written request from an Owner along with the fee prescribed by the Management Committee to defray the costs of reproduction, the Common Area Manager or other custodian of records of the Association shall prepare and transmit to the Owner a copy of any and all records requested. The Association may, as a condition to permitting an Owner to inspect the membership register or to its furnishing information from the register, require that the Owner agree in writing not to use, or allow the use of, the information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the Owner's interest in the Association. The Management Committee shall establish reasonable rules with respect to:

7.4.1 Notice to be given to the custodian of the records by an Owner desiring to make inspection or obtain copies of the records of the Association;

7.4.2 Hours and days of the week when such an inspection may be made; and

7.4.3 Payment of the cost of reproducing copies of documents requested by an Owner.

Every Director shall have the absolute right at any time to inspect all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association. This right of inspection shall include the right to make extracts and copies of records, subject only to the right of the Association to require that the Director agree in writing not to use, or allow the use of, the information from the membership register for commercial or other purposes not reasonably related to the business of the Association and a Director's duties on the Management Committee.

8. **SPECIAL COMMITTEES.** The Management Committee by resolution may designate one or more special committees, each committee to consist of three (3) or more Members, which to the extent provided in said resolution shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Management Committee. All special committees shall keep regular minutes of their proceedings and report the same to the Management Committee when required. The members of such special committee or committees designated shall be appointed by the Management Committee. The Management Committee may appoint Members to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

9. **AMENDMENT OF BYLAWS.** Except as otherwise provided in the Nonprofit Act, the Declaration or these Bylaws, these Bylaws may be amended only by the vote of the Majority of the Directors. Members of the Association shall not have the right to amend the Bylaws. Notwithstanding anything to the contrary contained or implied herein, Declarant reserves the right, without the consent of any other Members, to amend any provisions of these Bylaws to comply with the then-existing statutes, regulations or other requirements of any federal, state or local regulatory authority affecting the Project.

10. **SEVERABILITY.** The provisions of these Bylaws shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion of these Bylaws shall not affect the validity or enforceability of any other provision of these Bylaws.

11. **WAIVER.** The failure of the Management Committee to insist upon strict performance of any provision of these Bylaws shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of these Bylaws shall be deemed to have been waived unless such waiver is in writing and signed by a majority of Directors.

12. **CAPTIONS.** The captions of these Bylaws are inserted only as a matter of convenience and for reference and in no way to define, limit, or describe the scope of these Bylaws nor the intent of any provision of these Bylaws.

13. **EFFECTIVE DATE.** These Bylaws shall take effect as of the date of the Declaration, having been duly adopted by the Management Committee.

14. COUNTERPARTS. These Bylaws may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

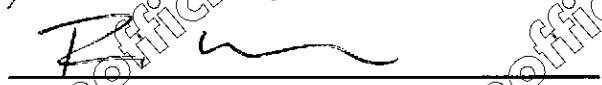
[Signature Page to Follow]

EXECUTED this 2nd day of May, 2019.

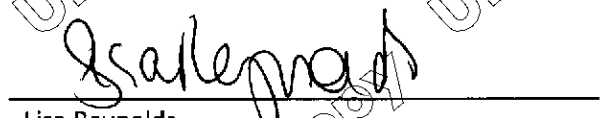
MANAGEMENT COMMITTEE



Jeff Butterworth



Rich Wagner



Lisa Reynolds

EXHIBIT C

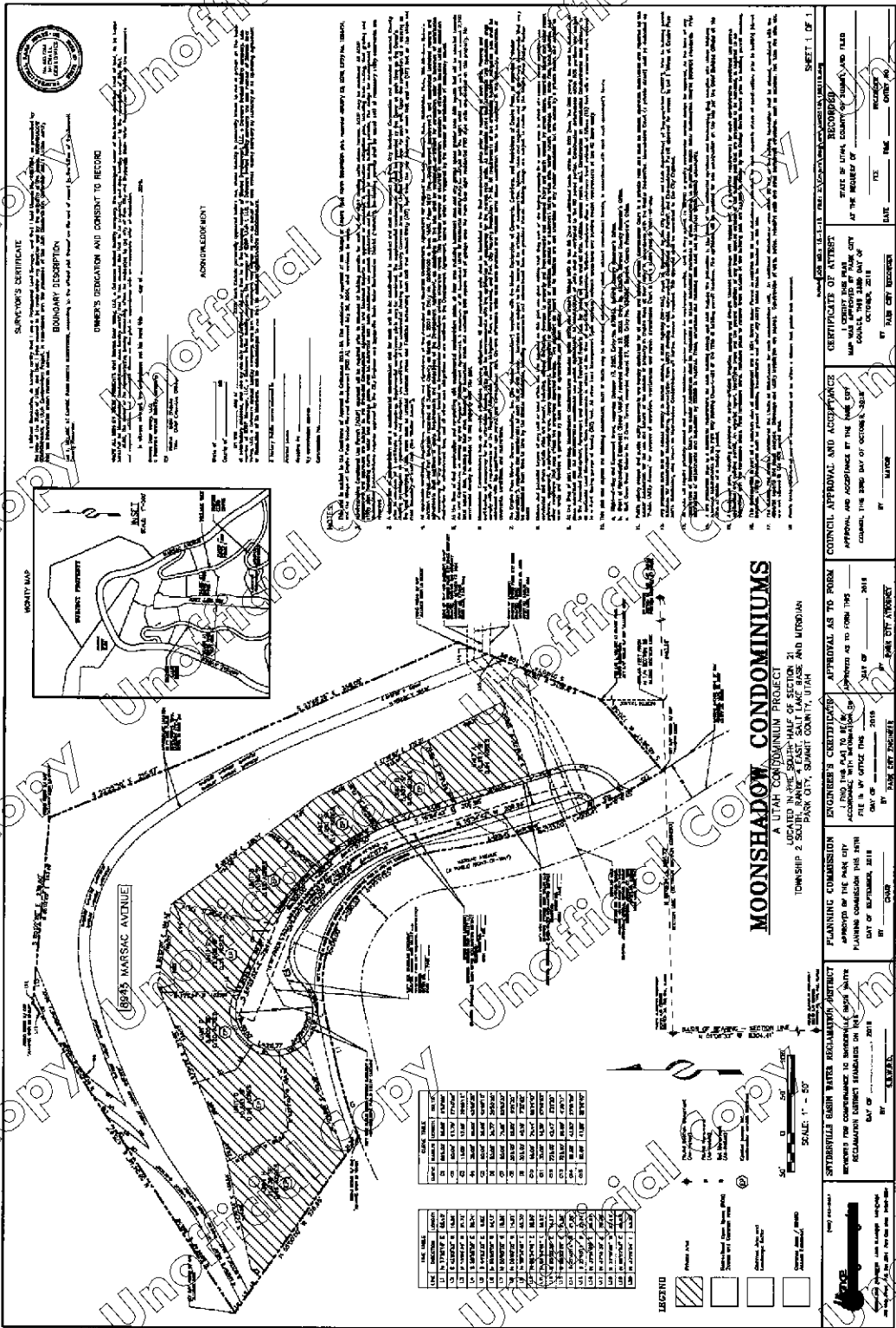
Schedule of Units

Votes and Undivided Interests in Common Area and Facilities

Unit Identifying Number	No. of Votes Per Unit	Undivided Interest Per Unit
A	1	.13
B	1	.13
C	1	.13
D	1	.13
E	1	.13
F	1	.13
G	1	.13
H	1	.13

EXHIBIT D

Plat



SURVEYOR'S CERTIFICATE
 BOUNDARY DESCRIPTION
 OWNER'S DEDICATION AND CONSENT TO RECORD

ACKNOWLEDGMENT

PLANNING COMMISSION
 APPROVAL AS TO FORM

ENGINEER'S CERTIFICATE
 APPROVAL AS TO FORM

COUNCIL APPROVAL AND ACCEPTANCE
 APPROVAL AS TO FORM

CERTIFICATE OF RETIREMENT
 APPROVAL AS TO FORM

RECLAMATION DISTRICT
 APPROVAL AS TO FORM

STATE OF UTAH
 APPROVAL AS TO FORM

MOONSHADOW CONDOMINIUMS
 A UTAH CONDOMINIUM PROJECT
 LOCATED IN THE EAST SALT LAKE AREA
 TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASIN AND URSOIAN
 PARK CITY, SUMMIT COUNTY, UTAH

LEGEND

1	CONDOMINIUM UNIT
2	CONDOMINIUM UNIT
3	CONDOMINIUM UNIT
4	CONDOMINIUM UNIT
5	CONDOMINIUM UNIT
6	CONDOMINIUM UNIT
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49	CONDOMINIUM UNIT
50	CONDOMINIUM UNIT

PLANNING COMMISSION
 APPROVAL AS TO FORM

ENGINEER'S CERTIFICATE
 APPROVAL AS TO FORM

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RECLAMATION DISTRICT
 APPROVAL AS TO FORM

STATE OF UTAH
 APPROVAL AS TO FORM

WEST 281162903.7

Exhibit D