

MOUNTAIN SHADOWS RESORT, L.L.C.
an overnight rental resort

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

MAY 1, 1996

MOUNTAIN SHADOWS RESORT, L.L.C.
a Tennessee Limited Liability Company

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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS FOR
MOUNTAIN SHADOWS RESORT, L.L.C.
an overnight rental resort**

THIS DECLARATION, made as of the 10th day of May, 1996, by Mountain Shadows Resort, L.L.C., (hereinafter referred to as the "Declarant"), a Tennessee Limited Liability Company.

W I T N E S S E T H :

WHEREAS, Declarant is the owner of the real property located in the City of Gatlinburg, County of Sevier, State of Tennessee, described in Exhibit "A", attached and by reference made a part of this document.

WHEREAS, Declarant now desires to submit the real property described in Exhibit "A" as Phase I attached and by reference made a part of this document, together with all improvements to be constructed for the creation of Mountain Shadows Resort, L.L.C.

NOW, THEREFORE, Declarant hereby makes the following Declaration:

ARTICLE I
STATEMENT OF PURPOSE AND IMPOSITION OF COVENANTS

Section 1.1. Submission of Property. In consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Declarant, the Developer of Mountain Shadows Resort, L.L.C., and owner of the fee simple title to the real property hereinafter described in Exhibit "A" as Phase I attached and by reference made a part of this document, does hereby state and declare that the real property described in Exhibit "A" and labeled Phase I, together with improvements is submitted for the development of Mountain Shadows Resort, L.L.C.

Section 1.2. Imposition of Covenants. The Declarant hereby makes, declares, and establishes the following covenants, conditions, restrictions, and easements (these "covenants") which shall affect all of the property. From this day forward, the property shall be held, sold and conveyed subject to the covenants. The covenants shall run with the land and shall be binding upon all persons or entities having any right, title or interest in all or any part of the Property, including Declarant, and their heirs, successors, and assigns, and their tenants, employees, guests, and invitees, and these covenants shall inure to the benefit of each owner of the Property.

Section 1.3. Statement of Purpose. These covenants are imposed for the benefit of all owners of parcels of land located within the Property. These covenants create specific rights and privileges which may be shared and enjoyed by all owners and occupants of any part of the Property.

Section 1.4. Declarant's Intent. Declarant desires to ensure the attractiveness of the individual home sites; parcels and facilities developed within the Property; to prevent any future impairment of the Property; and to preserve, protect, and enhance the values and amenities of the Property. It is the

intent of Declarant to guard against the construction on the Property of improvements or structures built of improper or unsuitable materials or with improper quality or methods of construction. Declarant intends to encourage the construction of attractive permanent improvements of advanced technological, architectural, and engineering design, appropriately located to preserve the harmonious development of the Property. Declarant desires and intends to develop a quality residential project on the Property that will include limited commercial facilities, residential facilities of all types, and amenities.

Section 1.5. Expansion. Certain parcels of land have been planned for development in Mountain Shadows Resort, L.L.C., in the future (the "Expansion Property"). However, the Expansion Property is not included in the description of the Property on Exhibit A to this Declaration. Declarant specifically reserves the right, but shall be under no obligation, to bring the Expansion Property within the scheme of these covenants by recording a Declaration of Annexation (as defined in Section 2.18 below). Such Declaration of Annexation may impose a series of restrictions and covenants to preserve the natural amenities of the Property, as expanded, to assure architectural harmony of the improvements, and to preserve the environmental values inherent in the Property, as expanded. The non-exclusive rights and easements provided herein are retained for the common use and enjoyment of all owners and occupants of building sites, dwelling units and condominium units located within the expansion property which may be made subject to this Declaration.

ARTICLE II DEFINITIONS

The following terms, as used in this Declaration, are defined as follows:

Section 2.1. "Land" shall mean the real property hereinafter described in Exhibit "A" as Phase I.

Section 2.2. "Adjoining Land" shall mean all of the property described in Warranty Deed Book 572, at Page 248, in the Register's Office of Sevier County Tennessee, and all land contiguous with that Property, whether or not owned by Declarant, which is or may be made subject to this Declaration as provided in Section 13.1 below.

Section 2.3. "Mountain Shadows Resort, L.L.C." shall mean the planned community created by this Declaration, consisting of the Property and all of the Improvements located on, or to be located upon, the Property.

Section 2.4. "Mountain Shadows Resort Documents" shall mean the basic documents creating and governing Mountain Shadows Resort, L.L.C., including, but not limited to, this Declaration, and any amendments to it that may be recorded from time to time, the Articles of Incorporation and Bylaws of the Association, the Design Guidelines, and any procedures, rules, regulations or policies adopted under such documents by the Association or the Design Review Committee.

Section 2.5. "Mountain Shadows Resort Rules" shall mean the rules adopted by the Association as provided in Section 3.6 below.

Section 2.6. "Annexation" shall mean the process by which portions of the Expansion Property or Adjoining Land are made subject to this Declaration pursuant to Article XIII below.

Section 2.7. "Articles" or "Articles of Incorporation" shall mean the Articles of Incorporation of the Association which have been or will be filed with the Secretary of State to create the Association.

Section 2.8. "Assessments" shall mean annual, special, and default Assessments levied pursuant to Article IV below to meet the estimated cash requirements of the Association.

Section 2.9. "Association" shall mean the Mountain Shadows Resort Homeowners' Association, Inc., a nonprofit membership corporation, or any successor of the Incorporation by whatever name, charged with the duties and obligations set forth in this Declaration.

Section 2.10. "Board of Directors", "Executive Board" or "Board" shall mean the Board of Directors of the Association, which is the governing body of the Association.

Section 2.11. "Building" shall mean a building or structure constructed on a Homesite or Tract.

Section 2.12. "Building Site" shall mean the building envelope or area within a Homesite where a Building or other Improvement shall be located, always subject to the prior written approval of the Design Review Committee.

Section 2.13. "Bylaws" shall mean the Bylaws of the Association which establish the methods and procedures of its operation, as they exist from time to time.

Section 2.14. "Common Areas" shall mean the real property, if any, in which the Association or the Declarant owns an interest which property has been dedicated to the common use and enjoyment of all of the Members. Such interest may include, without limitation, estates in fee, for terms of years, or easements.

Section 2.15. "Condominium Map" shall mean any condominium map filed pursuant to Tennessee Code Annotated §66-27-102, et seq., as amended from time to time, to create a condominium project on any portion of the Property.

Section 2.16. "Condominium Unit" shall mean a condominium unit within a Project, as defined in Tennessee Code Annotated § 66-27-102, et seq., as amended from time to time.

Section 2.17. "Declarant" shall mean Mountain Shadows Resort, L.L.C., a Tennessee Limited Liability Company whose present members are Allen C. Shirley and Kendall W. Brown, or its successors or assigns.

Section 2.18. "Declaration of Annexation" shall mean a declaration prepared and recorded in accordance with the provisions of Article XIII below to incorporate Expansion Property or Adjoining Land within the property governed by this Declaration.

Section 2.19. "Design Guidelines" shall mean the guidelines and rules published and amended and, supplement from time to time

by the Design Review Committee.

Section 2.20. "Design Review Committee" or "Committee" shall mean the committee formed pursuant to Article VI below to maintain the quality and architectural harmony of Improvements in Mountain Shadows Resort, L.L.C.

Section 2.21. "Expansion Property" shall mean such additional real property now or hereafter owned by Declarant as Declarant shall make subject to the provisions of this Declaration, by duly recorded Declaration of Annexation.

Section 2.22. "Homesite" shall mean a parcel of land designated as a homesite on any Plat of Mountain Shadows Resort, L.L.C.

Section 2.23. "Improvement(s)" shall mean all Buildings and structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, excavation and all other site work, including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. "Improvement(s)" does not include turf, shrub, or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearances. "Improvement(s)" does include both original improvements and all later changes and improvements.

Section 2.24. "Maintenance Fund" shall mean the fund created by the Assessments and fees levied pursuant to Article IV below to provide the Association with the fund required to carry out its duties under this Declaration.

Section 2.25. "Manager" shall mean such person or entity retained by the Board of Directors to perform certain functions of the Board pursuant to this Declaration or the Bylaws.

Section 2.26. "Member" shall mean any person or entity holding membership in the Association.

Section 2.27. "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any portion of the Property or interest therein as security for the payment of a debt or obligation. "First Mortgage" means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

Section 2.28. "Mortgagee" shall mean a beneficiary of a Mortgage as well as a named mortgagee. "First Mortgagee" means any person named as a Mortgagee under a Mortgage, or any successor to the interest of any such person under a Mortgage, which Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

Section 2.29. "Open Space" shall mean all real property designated as open space on any Plat of Mountain Shadows Resort, L.L.C., and the real property owned by Declarant in Mountain Shadows Resort, L.L.C., if any, which is to remain unplatted, natural open space after completion of all platting by Declarant in accordance with the Master Plan of Mountain Shadows Resort,

L.L.C., approved by The City of Gatlinburg, Tennessee, as amended from time to time.

Section 2.30. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Homesite, tract or Condominium Unit, but shall not mean or refer to any person or entity who holds such interest merely as security for the performance of a debt or other obligation, including a Mortgage, unless and until such person or entity has acquired fee simple title pursuant to foreclosure or other proceedings.

Section 2.31. "Plat" shall mean any plat maps affecting the Property filed in the Office of the Register of Deeds for Sevier County, Tennessee, as such maps may be amended from time to time.

Section 2.32. "Project" shall mean a separately designated and developed area constructed upon a portion of the Property and comprised of discrete types of development or use, including without limitation, the following types of uses:

2.32.1. A condominium project;

2.32.2. A residential development of duplex or single-family detached houses;

2.32.3. A residential development of townhomes or zero-homesite-line homes for single-family use;

2.32.4. A parking structure;

2.32.5. A commercial structure of any kind, including retail, restaurant, lounge, or recreational uses; or

2.32.6. Any other separately-developed area within Mountain Shadows Resort, L.L.C., devoted to a discrete purpose. Any such Project shall be designated as such in the Project Declaration.

Section 2.33. "Project Assessments" shall mean Assessments levied pursuant to a specific Project Declaration.

Section 2.34. "Project Association" shall mean any association established for a specific Project pursuant to a Project Declaration.

Section 2.35. "Project Common Area" shall mean the area within a Project restricted in whole or in part to common use primarily by or for the benefit of the Owners within the Project and their families, tenants, employees, guests, and invitees.

Section 2.36. "Project Declaration" shall mean a declaration of covenants, conditions and restrictions establishing a plan of condominium ownership or townhome ownership or otherwise imposing a unified development scheme on a particular Project.

Section 2.37. "Project Documents" shall mean the basic documents creating and governing a particular Project, including the Project Declaration, the Articles of Incorporation and Bylaws of the Project Association, and any procedures, rules, regulations or policies adopted under the Project Documents by the Project Association.

Section 2.38. "Project Parcel" shall mean the portion of the Property upon which a Project is located, as indicated, if appropriate, on the Plat or Condominium Map relating to the Project and as designated by Declarant in the Project Declaration.

Section 2.39. "Property" shall mean and include the Property initially subjected to this Declaration and any additional real property from time to time made subject to these covenants pursuant to the provisions of this Declaration.

Section 2.40. "Recreational Facilities" shall mean any recreational facilities or amenities located on the Property from time to time, any pool or clubhouse facility and parking for all such facilities.

Section 2.41. "Supplemental Covenants" shall mean additional or further restrictive covenants imposed on a portion or portions of the Property from time to time.

Section 2.42. "Tract" shall mean a parcel of land designated as a tract on a plat of Mountain Shadows Resort, L.L.C., and reserved for use for a purpose other than a street or road.

Section 2.43. "Voting Unit" shall mean any one of the interests in the Property designated in Section 3.4 below, to which a right to vote in Association matters is allocated.

ARTICLE III THE ASSOCIATION

Section 3.1. Dedication of Common Area. Declarant may hereafter deed to the Association certain parts of the Property as Common Area intended for common use by the Owners in Mountain Shadows Resort, L.L.C. The designated areas are dedicated hereby to the common use and enjoyment of Owners, and their family, tenants, employees, guests and invitees, and not to the use of the general public.

Section 3.2. Association's Responsibility for Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control of the Common Area dedicated under Section 3.1 above and all Improvements on the Common Area (including furnishings and equipment related thereto), and shall keep it in good, clean, and attractive, condition and repair consistent with the requirements of a first class residential and recreational community, pursuant to the terms and conditions of this Declaration.

Section 3.3. Membership. Every Owner, by virtue of being an Owner, and for so long as he is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Homesite or Condominium Unit. No Owner, whether one or more persons, shall have more than one membership per Homesite or Condominium Unit, owned, but all of the persons owning each Homesite or Condominium Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The Articles of Incorporation and Bylaws of the Association may set forth additional classifications of membership, which members may or may not be Owners.

Section 3.4. Classes of Membership and Voting Rights. The Association shall have two classes of voting membership;

Class A: Class A Members shall be all Owners, with the exception of Declarant. Each Class A Member shall be entitled to a specific number of votes based on the actual subdivision (as opposed to the permitted density) figured as follows:

(i) one vote for each Homesite, according to the Plat recorded in the Office of the Register of Deeds for Sevier County, Tennessee;

(ii) one vote for each Condominium Unit as shown on any Condominium Map recorded in the office of the Register of Deeds for Sevier County, Tennessee;

The ownership interest enumerated in paragraphs (i) through (ii) above are sometimes referred to as "Voting Units" in this Declaration. The number of votes allocated to the Owner of a Project Parcel shall decrease accordingly as each voting Unit, as applicable, is transferred by the Owner of the project Parcel to individual Owners. When more than one person holds an interest in any voting Unit, all such persons shall be Members. The vote for such Voting Unit shall be exercised as the Owners among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. In the absence of such advice, the vote allocated to the Voting Unit shall be suspended in the event more than one person or entity seeks to exercise the right to vote. Any Owner of a Voting Unit which is leased may assign his voting right to the tenant, provided that a copy of the instrument of assignment is furnished to the Secretary of the Association prior to any meeting in which the tenant exercised the voting right.

Class B: The Class B member(s) shall be Declarant and any successor of Declarant who takes title to all or part of the Property for the purpose of development and sale and who is designated as a successor Declarant in a recorded instrument executed by Declarant. Class B members shall be entitled to three votes for each Voting Unit owned. The Class B membership shall terminate on either of the following dates, whichever occurs earlier:

3.4.1. May 1, 2001, or

3.4.2. the date on which Declarant voluntarily relinquishes its Class B membership as evidence by a notice recorded in the Office of the Register of Deeds for Sevier County, Tennessee.

Notwithstanding the provisions above, the Class B membership shall not terminate if, within 120 days after the condition set forth in Section 3.4.1 is fulfilled, Expansion Property is incorporated into the Property, and as a result, the number of votes of the Class B Members, determined on the basis of three votes per Voting Unit, is greater than the number of votes held by the Class A Members. From and after the termination of the Class B membership, the Declarant and any designated successor Declarant shall be entitled to one vote for each Voting Unit owned. At such time, Declarant shall call a meeting of Owners, as provided by the Bylaws for special meetings, to advise the membership for the termination of Class B status and to transfer control of the Association to the Owners.

Section 3.5. Compliance with Documents. Each Owner shall abide by and benefit from the provisions, covenants, conditions,

and restrictions contained in the Mountain Shadows Resort Documents and any Project Documents.

Section 3.6. Rules and Regulations. The Association, from time to time and subject to the provisions of the Mountain Shadows Resort Documents may adopt, amend and repeal rules and regulations, to be known as the "Mountain Shadows Resort Rules," governing, among other things and without limitation:

- 3.6.1. The use of Open Space;
- 3.6.2. The use of private roads;
- 3.6.3. Collection and disposal of garbage and trash;
- 3.6.4. The burning of open fires;
- 3.6.5. The control of animals;

3.6.6. Parking restrictions and limitations, including but not limited to, the restriction of parking in each driveway or parking lot adjoining a particular building site or condominium to the exclusive use of the owners, occupants and guests of such area;

3.6.7. The posting of maximum speeds for vehicular traffic and other traffic rules;

3.6.8. Establishment of times or other restrictions when commercial vehicles may be permitted to use any or all of the roads;

3.6.9. The types of vehicles (other than conventionally equipped passenger automobiles) and the times when any vehicle or motorized vehicle or device may be permitted to use the roads within Mountain Shadows Resort, L.L.C., or any other area of the Property; and

3.6.10. A schedule of fines for the infraction of the Mountain Shadows Resort Rules or the Project Documents.

A copy of the Mountain Shadows Resort Rules in effect shall be distributed to each Member of the Association, and any change in the Mountain Shadows Resort Rules shall be distributed to each Member within a reasonable time following the effective date of the change.

Section 3.7. Reserved.

Section 3.8. Assistance to Design Review Committee. The Association shall in all respects cooperate with and assist the Design Review Committee in the complete attainment of the Committee's functions, and in the enforcement of its guidelines rules, regulations and decisions.

Section 3.9. Reserved.

Section 3.10. Management. The Association may employ or contract for the services of a Manager or Management Company. The initial management contract has been entered into with Mountain Shadows Real Estate and Rental, L.L.C., an entity affiliated with the Declarant, for a term of three years. This company has the exclusive right to handle all short term renting of Units for a period of three years. With the exception of the initial contract between the Association and the Mountain Shadows Real Estate and Rental, L.L.C., the following provisions shall apply: (a) no

such employment shall be by a contract having a term of more than three years; and (b) each such contract shall be subject to cancellation by the Association on 90 days or less prior notice without cause and without payment of a termination fee. The Manager shall not have the authority to make expenditures for additions or improvements chargeable against the Maintenance Fund except upon specific prior approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by a Manager of any such duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.11. Ownership of Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within Mountain Shadows Resort, L.L.C., and conveyed to the Association by Declarant.

Section 3.12. Roads, Streets and Driveways. With the exception of roads dedicated to the public, the Association shall be responsible for the maintenance of all roads and driveways within Mountain Shadows Resort, L.L.C., and conveyed by Declarant to the Association. Such maintenance will include periodic maintenance of the surface and regular snow, ice and trash removal, except such private drives as are located within a Homesite. The Board shall cooperate with the applicable traffic and fire control officials, to post public and private drives, roads and streets with traffic control, fire lane, and parking regulation signs.

Section 3.13. Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and Mortgagees, current copies of the Mountain Shadows Resort Documents, and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 3.14. Successor to Declarant. The Association shall succeed to all of the rights, duties and responsibilities of Declarant under this Declaration upon termination of the Class B membership in accordance with Section 3.4. The Association shall not succeed to any rights of Declarant regarding any portion of the Expansion Property which has not then been annexed to the Property. The Association may delegate any of such rights, duties or responsibilities to the Design Review Committee or to any other committee or entity which it may choose to form.

Section 3.15. Implied Rights and Obligations. The Association may exercise any other right or privilege given to it expressly by the Mountain Shadows Resort Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege. The Association shall perform all of the duties and obligations imposed on it expressly by the Mountain Shadows Resort Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Mountain Shadows Resort Documents or reasonably necessary to satisfy any such duty or obligation.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Homesite or Condominium Unit owned within the Property, hereby covenants, and each Owner of any Homesite or Condominium Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, are deemed to covenant and agree to pay to the Association: (1) annual Assessments or charges as provided in this Declaration for the purpose of funding the Maintenance Fund; (2) special Assessments for capital improvements and other purposes as stated in this Declaration, such annual and special Assessments to be fixed, established, and collected from time to time as provided below; and (3) default Assessments which may be assessed against an Owner's Homesite or Condominium Unit pursuant to the Mountain Shadows Resort Documents for failure to perform an obligation under the Mountain Shadows Resort Documents or because the Association has incurred an expense on behalf of the Owner under the Mountain Shadows Resort Documents. The annual, special, and default Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Homesite or Condominium Unit against which each such Assessment is made until paid. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Homesite or Condominium Unit at the time when the Assessment fell due.

Section 4.2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of Mountain Shadows Resort, L.L.C., and for the improvement and maintenance of the Common Area, including but not limited to, the payment of taxes and insurance on the Common Area, and repair, replacement, and additions to any Improvements on the Common Area, reserve accounts, the cost of labor, equipment, materials, management, and supervision, and the salary or fee of the Manager.

Section 4.3. Calculation and Apportionment of Annual Assessments. The Board of Directors shall prepare a budget by December 1 of each year estimating its net cash flow requirements for the next year and an estimate of the Assessments to be charged each Owner, and the Board shall distribute the proposed budget to the Owners. On or before February 1 of the succeeding year, the Board shall approve the budget in final form, and shall determine, levy, and assess the Association's annual Assessments for that year, which assessment shall be retroactive to January 1. Each budget shall include funds for establishing and maintaining reserves for periodic repairs, replacement, and maintenance of any improvements on the Open Space which must be replaced on a periodic basis, and for taxes, capital improvements, deficiencies from the prior year's Maintenance Fund, and other purposes, and shall include any expected income and surpluses from the prior year's Maintenance Fund.

Section 4.4. Special Assessments. In addition to the annual Assessments authorized by Section 4.1 above, the Board of Directors may levy in any fiscal year one or more special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital

improvement upon the Open Space, including the necessary fixtures and personal property related thereto, or to make up any shortfall in the current year's budget. Notice of the amount and due dates for such special Assessments must be sent to each Owner (or Project Association as provided in this Declaration) at least 30 days prior to the due date.

Section 4.5. Uniform Rate of Assessment. Both annual and special Assessments must be fixed at a uniform rate for each type of Homesite or Condominium Unit classified by use or by Project, but the basis and rate of Assessments for each Project or each type of use may be varied as provided below:

4.5.1. Residential Property. Residential Homesites and Condominium Units shall be assessed on the basis appropriate for each type of such residential Project which types may be based upon classification including, but not limited to, Homesites designated for single-family and duplex dwellings, multi-family Projects, and employee housing, as determined by the Board of Directors from time to time. The rate of Assessment levied against Homesites and Condominium Units within the various residential Projects may be varied based upon the Board's sole and exclusive determination that any specific item in the Association's budget may more directly benefit a certain area or classification of the Property in excess of its proportionate share, or that the Association has provided services to such Project in excess of those to other Projects within Mountain Shadows Resort, L.L.C., provided, however, that such rate of Assessment shall be uniform within each Project.

4.5.2. Commercial Property. Commercial Homesites, Commercial Tracts or Condominium Units, (excluding Recreational Facilities, if any, unless approved by Declarant), shall be assessed on the basis appropriate for each type of such commercial Unit as determined by the Board of Directors from time to time.

Section 4.6. Date of Commencement of Annual Assessments; Due Dates. The annual Assessments shall commence as to all Homesites and Condominium Units on the first day of the month following the conveyance of the first Homesite or Condominium Unit to an Owner. The first annual Assessment shall be prorated according to the number of months remaining in the calendar year. The annual Assessments shall commence for Homesites or Condominium Units contained in each phase of Expansion Property or Adjoining Land annexed to the Property on the first day of the month following the recording of the Declaration of Annexation incorporating them into the Property, and shall be prorated according to the number of months remaining in the calendar year. Assessments shall be collected on a periodic basis as the Board of Directors may determine from time to time, but until the Board directs otherwise, Assessments shall be payable monthly in advance on the first day of each month. Any Project Association may agree with the Association to collect regular or special Assessments of the Association as part of its Project Assessments and remit them to the Association on a timely basis. Collection of the Association's Assessments in this manner shall not prevent the creation of the Association's lien against any Homesite or Condominium Unit or the Association's ability to enforce or collect its Assessments as provided under this Declaration if they are not remitted to the Association in a timely manner.

Section 4.7. Default Assessments. All monetary fines assessed against an Owner pursuant to the Mountain Shadows Resort Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Mountain Shadows Resort Documents, shall be a default Assessment and shall become a lien against such Owner's Homesite or Condominium Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default Assessment shall be sent to the Owner subject to such Assessment at least 30 days prior to the due date.

Section 4.8. Effect of Nonpayment of Assessment; Lien; Remedies of Association. Any Assessment installment, whether pertaining to annual, special, or default Assessments, which is not paid within 30 days of its due date shall be delinquent. In the event that an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions.

4.8.1. assess a late charge of at least \$50.00 per delinquency;

4.8.2. assess an interest charge from the date of delinquency at the rate per annum of four points above the prime rate charged by the Association's bank, or such other rate as shall have been established by the Board of Directors;

4.8.3. suspend the voting rights of the Owner during any period of delinquency;

4.8.4. accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessment for the remainder of the fiscal year shall be due and payable at once;

4.8.5. bring an action at law against any Owner personally obligated to pay the delinquent installments;

4.8.6. file a statement of lien with respect of the Homesite or Condominium Unit, and foreclose as set forth in more detail below.

The Association may file a statement of lien by recording with the Office of the Register of Deeds for Sevier County, Tennessee, a written statement with respect to the Homesite or Condominium Unit, setting forth the name of the Owner, the legal description of the Homesite or Condominium Unit, the name of the Association, and the amount of delinquent Assessments then owing, which statement shall be duly signed and acknowledged by the President or a Vice President of the Association or by the Manager, and which shall be served upon the Owner of the Homesite or Condominium Unit by mail to the address of the Homesite or Condominium Unit or at such other address as the Association may have in its records for the Owner. Thirty days following the mailing of such notice, the Association may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of deeds of trust under the statutes of the State of Tennessee. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In either a personal or foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs, and attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the Assessments provided for

herein by nonuse of the Common Area or abandonment of his Homesite or Condominium Unit. The remedies herein provided shall not be exclusive, and the Association may enforce any other remedies to collect delinquent Assessments as may be provided by law.

* Section 4.9. Successor's Liability for Assessment. In addition to the personal obligation of each Owner to pay all Assessments thereon and the Association's perpetual lien for such Assessments, all successors to the fee simple title of a Homesite or Condominium Unit except as provided in Section 4.10 below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorney's fees against such Homesite or Condominium Unit without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Homesite or Condominium Unit. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association under Section 4.13 below.

Section 4.10. Subordination of the Lien. The lien of the Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. The lien of the Assessments shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Tennessee, including the right and equity of redemption, which rights are waived upon acceptance of membership pursuant to this Declaration. No sale or transfer shall relieve a Homesite or Condominium Unit from liability for any Assessments or from the lien thereof. However, sale or transfer of any Homesite or Condominium Unit pursuant to a decree of foreclosure or by a trustee's foreclosure, or any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a First Mortgage shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Homesites and Condominium Units as a common expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Homesite or Condominium Unit from liability for, nor the Homesite or Condominium Unit from the lien of, any Assessments made after the sale or transfer.

Section 4.11. Notice of Action. Any First Mortgagee who makes a prior written request to the Secretary of the Association and furnishes its name and address and the legal description of the Homesite or Condominium Unit in which it has an interest to the Secretary shall be entitled to timely written notice of any delinquency in payment of an annual, special, or default Assessment levied against the Homesite or Condominium Unit encumbered by its First Mortgage, or of any other default by the Owner under the Project Documents, which has continued for a period of 60 days or more. In addition, any such First Mortgagee shall be entitled to cure such delinquency and obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 4.12. Exempt Property. The following portions of the Property shall be exempt from the Assessments, charges, and liens created under this Declaration;

4.12.1. all properties to the extent of any easement or other interest therein dedicated and accepted by The City of Gatlinburg, Tennessee, or Sevier County, Tennessee, and devoted to public use;

4.12.2. all utility lines and easements;

4.12.3. the Open Space and all Common Areas; and

4.12.4. any Recreational Facilities that are not located within the Open Space and Common Areas.

Section 4.13. Statement of Status of Assessments. Upon ten days' written notice to the Treasurer of the Association or the Manager and payment of a reasonable fee set by the Association from time to time, any Owner, prospective purchaser, or Mortgagee of a Homesite or Condominium Unit shall be furnished a statement of the account for such Homesite or Condominium Unit setting forth:

4.13.1. the amount of any unpaid Assessments (whether annual, special, or default Assessments), interest, late charges, costs, expenses, and attorney's fees then existing against a particular Homesite or Condominium Unit;

4.13.2. the amount of the current periodic installments or the annual Assessment and the date through which they are paid; and

4.13.3. any other information deemed proper by the Association.

The information contained in such statement, when signed by the Treasurer or Manager, shall be conclusive upon the Association as to the person or persons to whom such statement is issued and who rely on it in good faith.

Section 4.14. Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE V PROPERTY RIGHTS OF OWNERS

Section 5.1. Owners: Easements of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment of the Open Space and the Common Area which shall be appurtenant to and shall pass with the title to every Homesite or Condominium Unit, subject to the easements and cross easements set forth in this Article.

Section 5.2. Delegation of Use. Any Owner may delegate, in accordance with the Mountain Shadows Resort Documents, his right of enjoyment in the Common Area, Open Space and facilities to his tenants, employees, family, guests or invitees.

Section 5.3. Recorded Easements. The Property, and all

portions thereof, shall be subject to all easements shown on any recorded Plat or Condominium Map affecting the Property, or any portion thereof, and to any other easements of record or of use, including but not limited to, any rights of the general public for access to the cemetery located on the property, as of the date of recordation of the Original Declaration.

Section 5.4. Easements for Encroachments. The Property, and all portions thereof, shall be subject to an easement of up to three feet from the Homesite lines or Common Area boundaries or Open Space boundaries for the actual extent of encroachments created by construction as designed or constructed by the Declarant or any Owner and for settling, shifting, and movement of any portion of the property, except that no such easement is created for an encroachment which is the result of willful conduct on the part of Declarant, an Owner, a tenant, the Association, or any other person or entity. A valid easement for any encroachments and for their maintenance shall exist. Such encroachments shall not be considered to be encumbrances upon any part of the Project. Encroachments referred to include, but are not limited to, encroachments caused by error in the original construction of Improvements on any Homesite, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any Improvements on the Property. Each Owner shall be permitted, with the consent of the Design Review Committee, to allow an unenclosed deck to be constructed within six feet of the line of the Homesite, provided the deck is affixed to the housing structure and does not violate minimum set back requirements of the City of Gatlinburg.

Section 5.5. Utility Easements. There is hereby created for general easement upon, across, over, in, and under the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to, water, sewer, gas, telephone, electrical, and a master communications system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical and telephone and other communication services to install and maintain necessary equipment on the Property and to affix and maintain electrical, communications, and telephones, wires, circuits, and conduits under the Property. No water, sewer, gas, telephone, electrical, or communications lines, systems, or facilities may be installed or relocated on the surface of the Property unless approved by Declarant prior to termination of the Class B membership, or after such termination, by the Design Review Committee. Such utilities temporarily may be installed above ground during construction, if approved by the Declarant or the Design Review Committee as stated above. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided for without disturbing the uses of the Owners, the Association, and the Declarant; shall prosecute its installation and maintenance activities as promptly and expeditiously as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, either Declarant or the Association shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms of this Declaration. This general easement shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 5.6. Reservation for Expansion. Declarant hereby reserves to itself and for Owners of Homesites and Tracts in all future phases of Mountain Shadows Resort, L.L.C., a perpetual easement and right-of-way for access over, upon, and across the Property for construction, utilities, drainage, ingress and egress, and for use of the Common Areas, Open Space and any Recreational Facilities. The location of these easements and rights-of-way must be approved and may be documented by Declarant or the Association by recorded instruments.

Section 5.7. Reservation of Easements, Exceptions, and Exclusions. Declarant reserves to itself and hereby grants to the Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area, for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions for the best interest of all the Owners and the Association, in order to serve all the Owners within Mountain Shadows Resort, L.L.C., as initially built and expanded. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, and to create other reservations, exceptions, and exclusions convenient or necessary for the use and operation of any other property of the Declarant, as long as such action does not hamper the enjoyment of Mountain Shadows Resort, L.L.C., as built or expanded, by the Owners.

Section 5.8. Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 5.9. Maintenance Easement. An easement is hereby reserved to the Declarant, and granted to the Association, and any member of the Board of Directors or Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Homesites, Condominium Units, and Tracts, and a right to make such use of the Homesites, Condominium Units, and Tracts, as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Mountain Shadows Resort Documents including the right to enter upon any Homesite, Condominium Unit, or Building Site, for the purpose of performing maintenance to the landscaping or the exterior of Improvements to such Homesite as required or permitted by the Mountain Shadows Resort Documents.

Section 5.10. Drainage Easement. An easement is hereby reserved to Declarant and granted to the Association, its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water. Best efforts shall be made to use this easement so as not to disturb the uses of the Owners, the Association and the Declarant, as applicable, to the extent possible, to prosecute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a slightly and usable condition as soon as reasonably possible following such work. Declarant, or its officers, agents,

employees, successors and assigns must inform and obtain the approval of the Board of Directors prior to undertaking such drainage work, which approval shall not be unreasonably withheld.

Section 5.11. Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Open Space and the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Homesite or Condominium Unit by that Owner or his family, tenants, employees, guests or invitees.

Section 5.12. Easements Deemed Created. All conveyances of Homesites or Condominium Units made after the date of the Original Declaration whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article V, even though no specific reference to such easements or to this Article V appears in the instrument for such conveyance.

Section 5.13. Partition or Combination of Homesites and Condominium Units. No part of a Homesite or Condominium Unit may be partitioned or separated from any other part thereof, and no Homesites or Condominium Units may be combined, except as provided in this Section. A Homesite or Condominium Unit may be subdivided into two Homesites or Condominium Units; or two or more Homesites or Condominium Units may be combined into one, only with the written consent of Declarant (or of the Association after the termination of Class B membership) and full compliance with all applicable state and county zoning and subdivision regulations and all applicable Project Documents. Declarant's consent shall be conditioned upon payment by the Owner or Owners concerned of all expenses incident to giving the consent, including legal and accounting fees. Every agreement and recorded instrument for partition or combination of Homesites or Condominium Units shall make adequate provision for the adjustment of voting rights and liability for payment of Assessments appurtenant to or imposed on such Homesites or Condominium Units. Whether partitioned, combined, or unchanged, each Homesite or Condominium Unit shall be conveyed, transferred, gifted, devised, bequeathed, encumbered, or otherwise disposed of, as the case may be with all appurtenant rights and interests created by law or by this Declaration, including the Owner's membership in the Association and the right to use the Open Space, and with the appropriate adjustments to the voting rights, as provided in Section 3.4 above, and liability for Assessments as established for such Homesite or Condominium Unit by the Board of Directors being made as applicable.

Section 5.14. No Partition of Common Area. The Common Area shall be owned by the Association, and no Owner shall bring any action for partition or division of the Common Area. By acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's rights to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Association, and hereby agrees to

reimburse the Association for its costs, expenses, and reasonable attorney's fees in defending any such action.

Section 5.15. Relocation of Homesites. Declarant may move or relocate Homesites in order to accommodate the topography of the particular site or to avoid disturbance of trees, rocks and other sites having particular esthetic value to the property by simply filing an amended plat with the Homesite that has been moved or relocated being designated by an "R". If Homesite 14 is moved or relocated it shall be designated on the revised map as "14R".

ARTICLE VI
DESIGN REVIEW COMMITTEE

Section 6.1. Membership. There is hereby established a Design Review Committee which shall be responsible for the establishment and administration of Design Guidelines to carry out the purposes and intent of this Declaration. The Committee shall be composed of three persons, who need not be Members of the Association. The Members of the Committee shall be appointed, removed, and replaced by Declarant in its sole discretion, until such time as the Class B membership is terminated, and at that time the Board of Directors shall succeed to Declarant's right to appoint, remove, or replace the Members of the Committee.

Section 6.2. Purpose. The Committee shall review, study and either approve or reject proposed Improvements on the Property, all in compliance with this Declaration and as further set forth in the rules and regulations of the Committee and the Design Guidelines adopted and established from time to time by the Committee.

6.2.1. The Committee shall exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Building Site, height, grade and finished ground elevation and all aesthetic considerations set forth in this Declaration or in the Design Guidelines.

6.2.2. No Improvement on the Property shall be erected, placed or altered on any Homesite, Building Site, or Project Parcel nor shall any construction be commenced until plans for such Improvement shall have been approved by the Committee; provided, however, that improvements and alterations which are completely within a Building may be undertaken without such approval.

6.2.3. The actions of the Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties subject to appeal as provided in the Bylaws.

Section 6.3. Organization and Operation of Committee.

6.3.1. Term. The term of office of each member of the Committee, subject to Section 6.1, shall be one year, commencing January 1 of each year, and continuing until his successor shall have been appointed. Should a Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 6.1.

6.3.2. Chairman. So long as Declarant appoints the Committee, Declarant shall appoint the chairman. At such time as the Committee is appointed by the Board of Directors, the chairman shall be elected annually from among the members of the Committee by majority vote of said members.

6.3.3. Operations. The chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Committee prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, a temporary successor.

6.3.4. Voting. The affirmative vote of a majority of the members of the Committee shall govern its actions and be the act of the Committee. A quorum shall consist of a majority of the members.

6.3.5. Expert Consultation. The Committee may avail itself of technical and professional advice and consultants as it deems appropriate.

Section 6.4. Expenses. Except as provided below, all expenses of the Committee shall be paid by the Association. The Committee shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Committee from time to time, and such fees shall be collected by the Committee and remitted to the Association to help defray the expenses of the Committee's operation. Until May 1, 1999, the filing fee shall not exceed \$250.00 per dwelling unit, but may be subject to reasonable increase after that date as determined by the Board on recommendation from the Committee.

Section 6.5. Design Guidelines and Rules. The Committee shall adopt, establish, and publish from time to time Design Guidelines, which shall be a Mountain Shadows Resort Document. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for Mountain Shadows Resort, L.L.C., and the various uses within Mountain Shadows Resort, L.L.C. The Design Guidelines may be modified or amended from time to time by the Committee. Further, the Committee, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Mountain Shadows Resort, L.L.C., design review process is not a substitute for compliance with Sevier County or City of Gatlinburg building, zoning, and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

Section 6.6. Procedures. As part of the Design Guidelines and Rules, the Committee shall make and publish such rules and regulations as it may deem appropriate to govern its proceedings. Appeals shall be conducted as provided in the Bylaws.

Section 6.7. Limitation of Liability. The Committee shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee, nor any individual Committee member, shall be liable to any person

for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Committee or any individual Committee member acted with malice or wrongful intent. Approval by the Committee does not necessarily assure approval by the appropriate governmental board or commission for Sevier County, Tennessee, or The City of Gatlinburg. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members shall be responsible or liable to any Owner, developer, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of the Improvements. Neither the Board, the Design Review Committee, or any agent thereof, nor Declarant or any of its partners, employees, agents, or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Mountain Shadows Resort Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Committee shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Committee's decision. The Association, however, shall not be obligated to indemnify each member of the Committee to the extent any such member of the Committee shall be adjudged to be liable for gross negligence or willful misconduct in the performance of his duty as a member of the Committee, unless and then only to the extent that the Court in which such action or suit may be brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

Section 6.8. Certificate of Compliance. Upon payment of a reasonable fee established from time to time by the Board, and upon written request of any Owner or his agent, an existing or prospective Mortgagee, or a prospective grantee, the Committee shall issue an acknowledged certificate, in recordable form, setting forth generally whether, to the best of the Committee's knowledge, the Owner is in violation of any of the terms and conditions of the Mountain Shadows Resort Documents. Unless such request shall be complied with within thirty (30) days after receipt of the request, it shall be conclusively presumed that the Owner and the Owner's Improvement are in conformance with all the terms and conditions subject to the control of the Committee.

ARTICLE VII
CONSTRUCTION AND ALTERATION OF
IMPROVEMENTS

Section 7.1. General. The Design Guidelines and the general instructions set forth in these Covenants shall govern the right of an Owner, developer, or other entity to construct, reconstruct, refinish, alter or maintain any Improvement upon, under, or above any of the Property (except as provided in Section 6.2.2 above), and to make or create any excavation or fill on the Property, or make any change in the natural or existing surface contour or drainage, or install any utility line or conduit on or over the Property.

Section 7.2. Approval Required. Except to the extent permitted in Section 6.2.2 above, any construction or reconstruction, or the refinishing or alteration of any part of the exterior of any Building or other Improvement on the Property

is absolutely prohibited until and unless the Owner or developer first obtains approval from the Design Review Committee and otherwise complies with the provision of these Covenants. All Improvements shall be constructed only in accordance with approved plans.

Section 7.3. Deemed Nuisances. Every violation of these Covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against a Member shall be applicable. These Covenants may be enforced as provided below.

Section 7.4. Removal of Nonconforming Improvements. The Association, upon request of the Committee and after reasonable notice to the offender and to the Owner, may remove any Improvement constructed, reconstructed, refinished, altered, or maintained in violation of these Covenants, and the Owner of the Improvement shall immediately reimburse the Association for all expenses incurred in connection with such removal.

Section 7.5. Construction Methods. Specific rules regarding construction methods, including but not limited to, excavation, drainage, utility lines, loading areas, waste storage, trash removal, materials storage, and transformers and meters, shall be set forth in the Design Guidelines, and all Owners shall comply with those rules. Without limiting the generality of the foregoing, the following specific provisions shall apply:

7.5.1. There shall be no exposed block and all masonry finishes must be covered with stone, stucco or equal material.

7.5.2. All structures will be of log construction and may be trimmed with cedar, white pine, hemlock or fir. There shall be no exterior sheet type siding such as T-111 or reverse board and batten. Masonite and vinyl siding are prohibited in any form. No vinyl or aluminum siding is allowed, however soffits and guttering may be created using these materials.

7.5.3. During construction any owner/builder shall take proper steps to prevent erosion, mud or silt slides into the streets or common areas. Silt fences are to be erected if necessary to prevent erosion. Driveway construction and site preparation shall be performed by an individual or company approved by the Design Review Committee.

7.5.4. Upon completion of construction, the owner/builder shall have ten (10) days to complete final grading, landscaping and/or seeding of disturbed grounds.

ARTICLE VIII PROPERTY USE RESTRICTIONS

Section 8.1. General Restriction. The Property shall be used only for the purposes set forth in these Covenants, as permitted by the applicable ordinances of Sevier County, Tennessee, and the laws of the State of Tennessee and the United States, and as set forth in the Mountain Shadow Resort Documents, amendments, or specific recorded covenants affecting all or any part of the Property.

Section 8.2. Motorized Vehicles. No trucks, trail bikes, recreational vehicles, motor homes, motor coaches, snowmobiles,

campers, trailers, boats or boat trailers, or similar vehicles other than passenger automobiles or pickup or utility trucks with a capacity of one-half ton or less or any other motorized vehicles shall be parked, stored, or in any manner kept or placed on any portion of the Property. This restriction, however, shall not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to the Property or for the initial construction by Declarant or the other Owners.

Section 8.3. Excavation. No excavation shall be made except in connection with Improvements approved as provided in these Covenants. For the purposes of this Section, "excavation" shall mean any disturbance of the surface of the land (except to the extent reasonably necessary for approved landscape planting) which results in a removal of earth, rock, or other substance a depth of more than 18 inches below the natural surface of the land.

Section 8.4. Underground Electrical and Telephone Service. All electrical, gas, cable and telephone service installation will be placed underground. No above-ground storage tanks shall be allowed.

Section 8.5. Utilities. Each structure designed for occupancy or use by humans shall connect with water, electricity and sanitation facilities as shall be made available from time to time by the City of Gatlinburg, Tennessee, or any other approved person or entity. A \$300.00 tapping fee will be paid to the Declarant for each structure connected with such water, electricity and sanitation facilities in addition to any charges for connection with water, electricity and sanitation facilities assessed by the City or any other person or entity. This fee represents each Unit Owner's share of the Declarant's original connection fees for water and electricity.

Section 8.6. Wells. No well from which water, oil, or gas is produced shall be dug, nor shall storage tanks, reservoirs, or any installation of power, telephone, or other utility lines (wire, pipe, or conduit) be made or operated anywhere on the Property except in connection with water wells and works operated by public agencies or duly certified public utility companies; provided, however, that the foregoing shall not prevent the drilling of or installation of additional water wells by Declarant or its assigns.

Section 8.7. Signs. No signs of any kind including, but not limited to, FOR SALE or FOR RENT signs shall be displayed to the public view on or from any portion of the Property except those signs approved by the Committee, or signs of Declarant or its affiliates or assigns, or signs required by law.

Section 8.8. Animals. No animals, livestock, or poultry of any kind shall be kept, raised, or bred on any portion of the Property, except horses owned and used in connection with the equestrian operation, if any, established by Declarant or the Association.

Section 8.9. Household Pets. No household pets, such as dogs and cats, shall be raised or bred on any portion of the property including, but not limited to, the Owner's Homesite, within Owner's Condominium Unit or at large. Any household pet permitted on the property shall be under leash at all times

except when the animal is inside the unit/home.

Section 8.10. Drainage. No Owner shall do or permit any work, construct any Improvements, place any landscaping, or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Property except to the extent such alteration and drainage pattern is approved in writing by the Committee or the Board of Directors, and except for rights reserved to Declarant to alter or change drainage patterns.

Section 8.11. Trash. No trash, ashes, garbage or other refuse shall be thrown or dumped on any land or area within the Property. There shall be no burning or other disposal of refuse out of doors. Each Owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and from the wind and protected from animal and other disturbance.

Section 8.12. Construction Regulations of the Design Guidelines. All Owners and contractors shall comply with the construction regulation portions of the Design Guidelines. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors, and Owners' representatives on the Property at any time; the conservation of landscape materials; and fire protection.

Section 8.13. Blasting. If any blasting is to occur, the Committee and Declarant shall be informed far enough in advance to allow them to make such investigation as they deem appropriate to confirm that appropriate protective measures have been taken prior to the blasting. Notwithstanding the foregoing, no approval of any blasting by Declarant or the Committee shall in any way release the person conducting the blasting from all liability in connection with the Blasting, nor shall such approval in any way be deemed to make the Declarant or the Committee liable for any damage which may occur from blasting, and the person doing the blasting shall defend and indemnify the Declarant and Committee from any such expense or liability. Declarant or the Committee may impose any reasonable restrictions, including time and date restrictions, on all blasting.

Section 8.14. Temporary Structures. No temporary structures shall be permitted except as may be determined to be necessary during construction and as specifically authorized by the Committee.

Section 8.15. Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the property.

Section 8.16. No Outside Clotheslines. No laundry or wash shall be dried or hung outside any Building.

Section 8.17. Parking and Auto Repair. No automobiles or other vehicles shall be parked in any street or upon any portion of the Property except within garages, carports, or designated parking areas. No work on automobiles or other vehicle repair

shall be performed in any visible or exposed portion of Mountain Shadows Resort, L.L.C., except in emergencies.

Section 8.18. Abandoned, Inoperable or Oversized Vehicles. Abandoned or inoperable automobiles or vehicles of any kind, except as provided below, shall not be stored or parked on any portion of the Property. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of three weeks or longer; provided, however, this shall not include vehicles parked by Owners while on vacation. A written notice describing the "abandoned or inoperable vehicle" and requesting its removal may be personally served upon the Owner or posted on the unused vehicle. If such vehicle has not been removed within 72 hours after notice has been given or posted, the Association shall have the right to remove the vehicle without liability, and the expense of removal shall be charged against the Owner. "Oversized" vehicles, for purposes of this Section, shall be vehicles which are too high to clear the entrance to a residential garage. All unsightly or oversized vehicles, snow removal equipment, garden maintenance equipment, and all other unsightly equipment and machinery may be required by Declarant or the Board of Directors to be stored at a designated location or locations.

Section 8.19. Antennae. No exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device shall be permitted without the prior written consent of the Committee, and appropriate screening.

Section 8.20. Outside Burning. There shall be no exterior fires, except barbecues, outside fireplaces, brazier, and incinerator fires contained within facilities or receptacles and in areas designated and approved by the Committee. No Owner shall permit any condition upon its portion of the Property which creates a fire hazard or is in violation of fire prevention regulations.

Section 8.21. Inside Burning. Properly installed fireplaces wood and/or gas stoves shall be permitted only if in compliance with Sevier County building and fire codes and if approved by the Committee. Coal stoves shall not be permitted. No Owner shall permit any condition within his Unit which creates a fire hazard or is in violation of fire prevention regulations.

Section 8.22. Noise. No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Property or Improvements and except for bells or chimes on chapels, shall be placed or used on any portion of the Property.

Section 8.23. Obstructions. There shall be no obstruction of any pedestrian walkways or interference with the free use of those walkways except as may be reasonably required in connection with repairs. The Owners, their family, tenants, guests, and invitees are granted non-exclusive easements to use the pedestrian walkways within the Property. That use shall be subject to the Mountain Shadows Resort, L.L.C., Rules adopted by the Board from time to time. The Association shall promptly take such action as may be necessary to abate or enjoin any interference with or obstruction of pedestrian walkways, and the Association shall have a right of entry on any part of the Property for the purposes of enforcing this Section, and any costs incurred by the Association in connection with such

enforcement shall be specially assessed to the Owners or other persons responsible for the interference.

Section 8.24. Camping and Picnicking. No camping or picnicking shall be allowed within the Property except in those areas designated by the Declarant or the Association for those purposes. The Board, in its discretion, may ban or permit public assemblies and rallies within the Property.

Section 8.25. House Numbers. Each dwelling shall have a house number with a design and location established by the Committee.

Section 8.26. Continuity of Construction. All Improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the Committee. If an Improvement is commenced and construction is then abandoned for more than 90 days, or if construction is not completed within the required 12 month period, then after notice and hearing as provided in the Bylaws, the Association may impose a fine of not less than Fifty (\$50.00) Dollars per day on the Owner of the Homesite until construction is resumed, or the Improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Board of Directors that such abandonment is for circumstances beyond the Owner's control. Such charges shall be a default Assessment and lien as provided in Section 4.7 above.

Section 8.27. Nuisance. No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Property or its occupants.

Section 8.28. General Practices Prohibited. The following practices are prohibited at Mountain Shadows Resort, L.L.C.:

8.28.1. Allowing concrete suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Committee;

8.28.2. Removing any rock, plant material, top soil or similar items from any common areas, open space or property of others;

8.28.3. Carrying firearms on the Property;

8.28.4. Use of surface water for construction; or

8.28.5. Careless disposition of cigarettes and other flammable materials.

8.28.6. There shall be no clear cutting of the trees from any Homesite. All trees shall be preserved to enhance the natural beauty of the Property and only those trees necessary for the construction of homes or other permitted structures may be removed.

Section 8.29. Use. It shall be expressly permissible and proper for Declarant and any Owner and their employees, agents, independent contractors, successors, and assigns involved in the

construction of Improvements on or the providing of utility service to the Property or other real property owned by Declarant to perform such activities and to maintain upon portions of the Property as they deem necessary, such facilities as may be reasonably required, convenient, necessary, or incidental to such construction and development of the Property. This permission specifically includes, without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and equipment, signs, and sales offices. However, no activity shall be performed and no facility shall be maintained on any portion of the Property in such a way as to unreasonably interfere with or disturb any purchaser or Owner of a Homesite or Condominium Unit, or to unreasonably interfere with the use, enjoyment, or access of such Owner, its tenants, employees, guests, or business invitees, of and to its Homesite or Condominium Unit. If any Owner's use under this provision is deemed objectionable by Declarant (or by the Design Review Committee after termination of the Class B membership), then Declarant (or the Design Review Committee, as applicable), in its sole discretion, may withdraw this permission.

Section 8.30. Recreational Facilities--Covenants Not to Apply. The provisions of Sections 8.1 through 8.27 shall not apply to any Recreational Facilities. The Declarant, the Association or any other owner of a Recreational Facility may adopt rules and regulations governing the use and conduct of those facilities. Any Recreational Facilities shall nevertheless have the benefit of the provisions of Article VIII.

Section 8.31. Leasing. The Owner of a Homesite or Condominium Unit shall have the right to lease such Homesite or Condominium Unit, subject to the following conditions:

8.31.1. All leases lasting fifteen (15) days or more shall be in writing.

8.31.2. The lease shall be specifically subject to the Mountain Shadows Resort Documents, and any failure of a tenant to comply with the Mountain Shadows Resort Documents shall be a default under the lease.

8.31.3. The Owner shall be liable for any violation of the Mountain Shadows Resort Documents committed by the Owner's tenant, without prejudice to the Owner's right to collect any sums paid by the Owner on behalf of the tenant.

Section 8.32. Sales and Promotion. The Declarant shall have the right to transact any business necessary to consummate sales or rentals of units or portions thereof, including but not limited to, the right to maintain models, have signs, use the common elements and to show units. Sales offices, signs and all items pertaining to sales shall not be considered common elements and shall remain the property of the Declarant. Declarant may use a unit or units as a sales office or models.

ARTICLE IX MAINTENANCE

Section 9.1. Association's Responsibility. The Association shall maintain and keep the Common Area and Open Space in good repair, such maintenance to be funded as provided below. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance

then in effect, of all landscaping and other flora, structures, and improvements situated within the Open Space. The Association may, in the discretion of the Board, assume the maintenance responsibilities set out in any Project Declaration for any Project located on the Property, after giving the responsible Project Association reasonable notice and an opportunity to correct its deficient maintenance. In such event, all costs of such maintenance shall be assessed only against those Owners residing in the Project to which the services are provided. The assumption of this responsibility may take place either by contract or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the community-wide standard of Mountain Shadows Resort, L.L.C. The provision of services in accordance with this Section shall not constitute discrimination within a class.

Section 9.2. Owner's Responsibility. Except as provided otherwise in the Mountain Shadows Resort Documents, applicable Project Documents, or by written agreement with the Association, all maintenance of the Homesites and Condominium Units and all structures, landscaping, parking areas, and other Improvements located within the Homesites and Condominium Units shall be the sole responsibility of the Owner thereof, who shall maintain said Homesite or Condominium Unit in accordance with the community-wide standard of Mountain Shadows Resort, L.L.C. The Association shall, in the discretion of the Board, assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner does not satisfy such standard, and the Project Association for the Project in which the Homesite or Condominium Unit is located has failed to adequately provide such maintenance. Before assuming the maintenance responsibilities, the Board shall notify the Owner and the applicable Project Association in writing of its intention to do so, and if such Owner or the Project Association has not commenced and diligently pursued remedial action within thirty (30) days after mailing of such written notice, then the Association shall proceed. The expenses of such maintenance by the Board shall be reimbursed to the Association by the Owner, together with interest at five points above the prime rate charged by the Association's bank, or such other rate set by the Board of Directors, from the date of expenditure. Such charges shall be a default assessment and lien on the Homesite or Condominium Unit of the Owner as provided in Section 4.7 above.

ARTICLE X **INSURANCE AND FIDELITY BONDS**

Section 10.1. Hazard Insurance. The Association shall obtain insurance for all insurable Improvements, if any, on the Common Area in an amount equal to the full replacement value (i.e., 100 percent of the current "replacement cost" exclusive of land, foundation, excavation, depreciation on personal property, and other items normally excluded from coverage), which shall include all building service equipment and the like, common personal property and supplies, and any fixtures or equipment within the Common Area. Such policy shall include, if applicable, and if available at a reasonable price, a standard form of mortgagee clause, a "Demolition Cost Endorsement" or the equivalent, an "Increased Cost of Construction Endorsement" or the equivalent, and a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent. In addition, such policy shall, if available at a reasonable cost, afford

protection against at least the following:

10.1.1. Loss or damage by fire and other hazards covered by the standard extended coverage endorsement with the standard "all-risk" endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage;

10.1.2. In the event the Common Area contains a steam boiler, a broad form policy of repair, and replacement boiler and machinery insurance in the amount of at least \$100,000 per accident per location; and

10.1.3. Such other risks as shall customarily be covered with respect to projects similar in construction, location, and use to Mountain Shadows Resort, L.L.C.

Section 10.2. Liability Insurance. The Association shall obtain a comprehensive policy of public liability insurance insuring the Association and its Members for all liability for property damage, bodily injury, or death in connection with the operation, maintenance, use of the Common Area, Open Space or streets and roads within Mountain Shadows Resort, L.L.C., and legal liability arising out of lawsuits related to employment contracts of the Association. Such comprehensive policy of public liability insurance shall include a "Severability of Interest Endorsement" or equivalent coverage which would preclude the insurance company from denying the claim of any Owner because of the negligent acts of the Association or any other Owner, with a limit of not less than \$1,000,000.00 covering all claims for personal injury, including death or property damage arising out of a single occurrence. Such comprehensive policy of public liability insurance shall also include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and, if applicable, elevator collision, garagekeeper's liability, host liquor liability, contractual and all written contract insurance, employers' liability insurance, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use to Mountain Shadows Resort, L.L.C.

Section 10.3. Fidelity Insurance. The Association shall obtain fidelity bonds to protect against dishonest acts on the part of its officers, directors, trustees, and employees, and on the part of all others who handle or are responsible for handling the funds of or administered by the Association. In addition, if responsibility for handling funds is delegated to a manager, such bonds shall be required for the Manager and its officers, employees and agents. Such fidelity coverage shall name the Association as an obligee and shall be written in an amount equal to at least 150 percent of the estimated annual operating expenses of Mountain Shadows Resort, L.L.C., including reserves. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 10.4. Provisions Common to Hazard Insurance, Liability Insurance, and Fidelity Insurance. Any insurance coverage obtained by the Association under the provisions of Sections 10.1, 10.2, and 10.3 above shall be subject to the following provisions and limitations:

10.4.1. The names insured under any such policies shall be the Association, as attorney-in-fact for the Owners, or its authorized representative, including any trustee with which the Association may enter into any insurance trust agreement or any successor trustee (each of which is sometimes referred to in this Section 10.4 as the "Insurance Trustee") who shall have exclusive authority to negotiate losses under such policies.

10.4.2. In no event shall the insurance coverage obtained and maintained pursuant to such Sections be brought into contribution with insurance purchased by the Owners, occupants, or their Mortgagees.

10.4.3. The policies shall provide that coverage shall not be prejudiced by (a) any act or neglect of the Owners when such act or neglect is not within the control of the Association or (b) by failure of the Association to comply with any warranty or condition with regard to any portion of Mountain Shadows Resort, L.L.C., over which the Association has no control.

10.4.4. The policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to any and all First Mortgagees and insureds named in the policies.

10.4.5. The policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Association and any Owner and their respective agents, employees, or tenants, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

10.4.6. All policies of property insurance shall provide that, notwithstanding any provisions of the policies which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any Insurance Trustee) or when in conflict with the provisions of any insurance trust agreement to which the Association may be a party or any requirement of law.

10.4.7. All policies shall be written with a company licensed to do business in Tennessee and holding a rating of B/VI or better in the financial category as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

10.4.8. If reasonably available, all casualty insurance policies shall have an inflation guard endorsement, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in Sevier County, Tennessee, area.

10.4.9. No policy may be cancelled, invalidated, or suspended on account of the conduct of any member of the Board of Directors, officer, or employee of the Association or its duly authorized Manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its Manager, any Owner, or Mortgagee.

Section 10.5. Officers' and Directors' Personal Liability

Insurance. To the extent obtainable at reasonable cost, appropriate officers' and directors' personal liability insurance shall be obtained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

Section 10.6. Workmen's Compensation Insurance. The Association shall obtain workmen's compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 10.7. Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 10.8. Insurance Obtained by Owners. It shall be the responsibility of the individual Owners, and at their expense, to make arrangements in regard to title insurance on their Homesites or Condominium Units upon any resale, for hazard insurance on the Improvements, personal property and, furnishings located on their Homesites or within their Condominium Units, and for public liability insurance covering their Homesites and Condominium Units. In addition, each Owner may obtain such other and additional insurance coverage on and in relation to his Homesite or Condominium Unit as such Owner concludes to be desirable; provided, however, that none of such insurance coverages obtained by an Owner shall affect any insurance coverages obtained by the Association nor cause the diminution or termination of the coverage obtained by the Association. Any such insurance obtained by an Owner shall include a waiver of the particular insurance company's right of subrogation against the Association and other Owners.

ARTICLE XI DAMAGE OR DESTRUCTION

Section 11.1. Association as Attorney in Fact. Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on the Common Area upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article XII below. Acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the 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, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

Section 11.2. Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Common Area in Mountain Shadows Resort, L.L.C., the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Area so damaged or destroyed. "Repair and reconstruction" as used in this Article XI shall mean restoring the damaged or destroyed Improvements to substantially the same

condition in which they existed prior to the damage or destruction.

Section 11.3. Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owner, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 11.4. Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Section 4.4 above, levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners except as provided in Section 4.4, a special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

Section 11.5. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the special Assessments provided for in Section 4.4 above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a special Assessment to the Association under Section 11.4 above, or, if no special Assessments were made, then in equal shares per Homesite or Condominium Unit, first to the Mortgagees and then to the Owners, as their interest appear.

Section 11.6. Decision Not to Rebuild. If Owners representing at least 67 percent of the total allocated votes in the Association (other than Declarant) and 67 percent of the First Mortgagees (based upon one vote for each Mortgage owned) of the Homesites and Condominium Units agree in writing not to repair and reconstruct and no alternative improvements are authorized, then and in that event the Property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares per Homesite or Condominium Unit first to the Mortgagees and then to the Owners, as their interests appear.

Section 11.7. Damage or Destruction Affecting Homesites or Condominium Units. In the event of damage or destruction to the Improvements located on any of the Homesites or constituting a Condominium Unit, the Owner thereof shall promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not

commenced within 180 days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than 90 days, then the Association may, after notice and hearing as provided in the Bylaws, impose a fine of not less than \$50.00 per day on the Owner of the Homesite or Condominium Unit until repair and reconstruction is commenced, unless the Owner can prove to the satisfaction of the Association that such failure is due to circumstances beyond the Owner's control. Such fine shall be a default assessment and lien against the Homesite or Condominium Unit as provided in Section 4.7 above.

ARTICLE XII CONDEMNATION

Section 12.1. Rights of Owners. Whenever all or any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation by the Board of Directors acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 12.2. Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners representing at least 67 percent of the Class A votes in the Association shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors and the Design Review Committee. If such Improvements are to be repaired or restored, the provisions in Article XI above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are not funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Homesite or Condominium Unit, first to the Mortgagees and then to the Owners, as their interests appear.

Section 12.3. Complete Condemnation. If all of Mountain Shadows Resort, L.L.C., is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Section 12.2 above.

ARTICLE XIII EXPANSION

Section 13.1. Reservation of Right to Expand. Declarant reserves the right, but shall not be obligated, to expand the effect of this Declaration to include all or part of the Adjoining Lands. Declarant shall have the unilateral right to

transfer to any other person this right to expand by an instrument duly recorded. The Declarant shall pay all taxes and other governmental Assessments relating to the Expansion Property until expansion.

Section 13.2. Declaration of Annexation. Such expansion may be accomplished by recording a Declaration of Annexation in the records of the Register's Office for Sevier County, Tennessee, before May 1, 2006, describing the real property to be expanded, submitting it to the covenants, conditions, and restrictions contained in this Declaration, designating it as a Project, if the Expansion Property parcel subjected to these Covenants in that instances does in fact constitute a Project, and providing for voting rights and Assessment allocations as provided in this Declaration. Such Declaration of Annexation shall not require the consent of Owners. Any such expansion shall be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Upon the recordation of any such Declaration of Annexation, the definitions used in this Declaration shall be expanded automatically to encompass and refer to Mountain Shadows Resort, L.L.C., as expanded. Such Declaration of Annexation may add, delete, or modify provisions of this Declaration as it applies to the Expansion Property added. However, this Declaration may not be modified with respect to that portion of the Property already subject to this Declaration, except as provided below for amendment.

Section 13.3. Incorporation of Additional Expansion Property. Real property which is not part of the Adjoining Lands may be incorporated into the Property with the consent of two-thirds of each class of Members.

Section 13.4. Incorporation of Adjoining Lands. Any owner or owners of Adjoining Land (other than Declarant) may apply to Declarant (or to the Board of Directors after the termination of the Class B membership) to have the Adjoining Land made subject to this Declaration. Alternatively, Declarant may purchase Adjoining Land and either subject such Adjoining Land to the Mountain Shadows Resort, L.L.C., regime as provided in this Section or seek the approval of a majority of the Board to do so after the termination of the Class B membership. Upon the written approval of Declarant or a majority of the Board after termination of the Class B membership to the inclusion of such Adjoining Land within the Mountain Shadows Resort, L.L.C., regime, the owner or owners of the Adjoining Land may make it subject to this Declaration by executing an instrument in writing which shall satisfy the requirements above for a Declaration of Annexation. That instrument shall also be executed by Declarant or the Board of Directors, as applicable, as evidence of their approval, and shall be recorded in the records of the Register's Office for Sevier County, Tennessee. Thereafter, such Adjoining Land shall be subject to this Declaration, and this Declaration shall be expanded as provided above in the case of Expansion Property incorporated into the Property.

ARTICLE XIV TRANSFER FEE

Section 14.1. Transfer Fee. To provide additional funds for payment of the operating expenses of the Association, which will in turn inure to the benefit of all Owners, there is hereby

imposed on all of the Property the following restriction and obligation:

From and after the initial conveyance of a Homesite or Condominium Unit from Declarant to the initial Owner, there shall be imposed on each subsequent purchaser of a Homesite or Condominium Unit the obligation to pay to the Association a transfer fee in the amount of One Hundred (\$100.00) Dollars paid upon transfer of the Homesite or Condominium Unit on the occasion of each transfer, defined below. The transfer fee is imposed not as a penalty and not as a tax, but as a means of supplementing the Assessments provided for in this Declaration. The Board of Directors may increase the transfer fee, provided no increase may exceed ten (10%) percent per year calculated from the initial recordation of this instrument.

Section 14.2. Definitions.

14.2.1. Transfer. For the purposes of this Article, "transfer" shall be defined as any conveyance, assignment, lease, or other disposition of the ownership of a Homesite or Condominium Unit, whether occurring in one transaction or a series of related transactions, and whether structured as a transfer of all right, title and interest or of the beneficial ownership. "Transfer" shall be deemed to include a transfer of the equitable interest under an installment land contract, whether or not recorded and whether or not the purchaser has fulfilled all conditions which would entitle the purchaser to receipt of a deed. "Transfer" shall also be deemed to include the transfer (as defined in this Section) of any partial ownership in the Homesite or Condominium Unit when title to such property is held by a group of one or more persons. "Transfer" further includes but is not limited to (a) the conveyance of fee simple title to a Homesite or Condominium Unit, (b) the transfer of more than fifty (50%) percent of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns one or more Homesites or Condominium Units, (c) a lease for a period of more than 10 years; (d) the transfer of more than fifty (50%) percent of the interest in net profits or net losses of any partnership, joint venture, or other entity which, directly or indirectly, owns one or more Homesites or Condominium Units; and (e) any conveyance designed primarily for the avoidance of the payment of the transfer fee provided for in this Article.

"Transfer" shall not be deemed to include (a) conveyance by gift, devise, or inheritance; (b) conveyance by the Owner to such Owner's spouse or children, or to a trust of which such persons are the beneficiaries; (c) conveyance by one joint Owner to one or more other joint Owners of the same Homesite or Condominium Unit; (d) upon the dissolution of a professional corporation which is an Owner, the conveyance to the shareholders of the corporation as joint owners; (e) upon the formation of a professional corporation, the conveyance by joint owners to such professional corporation; (f) upon the admission of a new partner to a partnership which is an Owner or to a partnership formed by an Owner, the conveyance of an individual's interest in the Homesite or Condominium Unit to such new partner or the conveyance upon the withdrawal of a partner from a partnership; (g) encumbrance of a Homesite or Condominium Unit by a mortgage or deed of trust, or other common form of security instrument; (h) a bona fide deed conveyed from an Owner to a Mortgagee or beneficiary of a deed of trust in lieu of foreclosure; (i) the

first conveyance by a Mortgagee or beneficiary of a deed of trust after such Mortgagee or beneficiary obtains title by foreclosure or by a deed in lieu of foreclosure; (j) the conveyance from the Owner to a corporation which it controls, which controls it, or which is under common control with it, or a conveyance as a result of a merger or dissolution of a corporate Owner; (k) any conveyance to the United States, or any agency or instrumentality thereof, the State of Tennessee, any county, city and county municipality, metropolitan district or other governmental or quasi-governmental entity; (l) any conveyance to the Association; and (m) a lease for a term of ten years or less, counting initial and all renewal terms.

14.2.2. Purchaser. "Purchaser" shall be deemed to be the transferee under any deed or other instrument evidencing a transfer as defined herein.

Section 14.3. Payment and Reports. The transfer fee shall be due and payable on the date of the transfer. Within ten days after the date of the transfer, a report on forms provided by the Association must be filed with the Secretary of the Association, and the payment of the transfer fee shall be delinquent and bear interest and otherwise be treated as a default Assessment if not paid within thirty (30) days after the transfer. If a fair market value determination of purchase or transfer price is made, then the transfer fee shall be due and payable at the date the determination of fair market value is final, and shall be delinquent if not paid within thirty (30) days after that date, when it shall bear interest and otherwise be treated as a default Assessment. The report to be filed with the Association shall, at a minimum, describe the transfer and state the full amount of the purchase or transfer price, the names of the parties to the transfer, and the legal description of the Homesite or Condominium Unit transferred. For the purpose of this Article, the date of the transfer shall be the effective date shown on the deed or other instrument evidencing the transfer; or if no date is shown, the date of its recording; or if neither appears, a date determined by the Association in its sole discretion.

Section 14.4. General Provisions. Any payment or report required to be received by the Association shall be deemed received in a timely manner if sent to the address provided for the Association by first class mail, postage prepaid, and postmarked no later than the date such payment or report is due, provided that the Association thereby actually receives such payment or report. The Association at its own expense shall have the right at any time during regular business hours to inspect and copy all records and to audit all accounts of any Owner or Purchaser which are reasonably related to the payment of the transfer fee provided for above.

ARTICLE XV FHLMC REQUIREMENTS

Section 15.1. FHLMC Approval Requirements. Unless at least sixty-seven (67%) percent of the First Mortgagees (based on one vote for each First Mortgage owned) and Owners representing at least sixty-seven (67%) percent of the total allocated votes in the Association have given their prior written approval, the Association shall not be entitled to:

15.1.1. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or part of the Common

Area (provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this clause);

15.1.2. Change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner;

15.1.3. Fail to maintain fire and extended coverage on insurable common property in an amount not less than one hundred (100%) percent of current replacement cost; or

15.1.4. Use hazard insurance proceeds for losses to common property for other than the repair, replacement, or reconstruction of such common property.

Section 15.2. Mortgagees' Rights. First Mortgagees of Homesites or Condominium Units, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area or Improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area. First Mortgagees making such payments shall be owed immediate reimbursement from the Association.

ARTICLE XVI ENFORCEMENT OF COVENANTS

Section 16.1. Violations Deemed a Nuisance. Every violation of this Declaration or any other of the Mountain Shadows Resort Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of these Covenants shall be available.

Section 16.2. Compliance. Each Owner or other occupant of any part of the Property shall comply with the provisions of the Mountain Shadows Resort Documents as the same may be amended from time to time.

Section 16.3. Failure to Comply. Failure to comply with the Mountain Shadows Resort Documents shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws shall be given to the delinquent party prior to commencing any legal proceedings.

Section 16.4. Who May Enforce. Any action to enforce the Mountain Shadows Resort Documents may be brought by the Declarant, the Board, or the Manager in the name of the Association on behalf of the Owners. If, after a written request from an aggrieved Owner, none of the foregoing persons or entities commence an action to enforce the Mountain Shadows Resort Documents, then the aggrieved Owner may bring such an action.

Section 16.5. Remedies. In addition to the remedies set forth above in this Article XVI, any violation of the Mountain Shadows Resort Documents shall give to the Board, the Manager, or

the Declarant, on behalf of the Owners, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify, or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest and meaning of the Mountain Shadows Resort Documents. If the offense occurs on any easement, walkway, Common Area or the like, the cure shall be at the expense of the Owner or other person responsible for the offending condition.

Section 16.6. Nonexclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.

Section 16.7. No Waiver. The failure of the Board of Directors, Declarant, the Manager, the Design Review Committee or any aggrieved Owner to enforce the Mountain Shadows Resort Documents shall not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Mountain Shadows Resort Documents at any future time.

Section 16.8. No Liability. No member of the Board of Directors, the Declarant, the Design Review Committee, the Manager or any Owner shall be liable to any other Owner for the failure to enforce any of the Mountain Shadows Resort Documents at any time.

Section 16.9. Recovery of Costs. If legal assistance is obtained to enforce any of the provisions of the Mountain Shadows Resort Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Mountain Shadows Resort Documents or the restraint of violations of the Mountain Shadows Resort Documents, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court.

ARTICLE XVII RESOLUTION OF DISPUTES

If any dispute or question arises between Members or between Members and the Association or the Design Review Committee relating to the interpretation, performance or nonperformance, violation, or enforcement of the Mountain Shadows Resort Documents, such dispute or violation may be subject to a hearing and determination by the Board in accordance with the procedures set forth in the Bylaws.

ARTICLE XVIII DURATION OF THESE COVENANTS AND AMENDMENT

Section 18.1. Term. This Declaration and any amendments or supplements hereto shall remain in effect from the date of recordation until December 31, 2035. Thereafter these Covenants shall be automatically extended for five successive periods of ten (10) years each, unless otherwise terminated or modified as provided below.

Section 18.2. Amendment. This Declaration, or any provision of it, may be terminated, extended, modified, or amended, as to the whole or any portion of the Property, upon the written consent of Declarant and Owners representing more than sixty (60%) percent of the Homesites and Condominium Units in the Property. Amendments made pursuant to this Section shall inure

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to the benefit of and be binding upon all Owners of any part of the Property, their family, tenants, guests, invitees, and employees, and their respective heirs, successors, and assigns. A certificate of a licensed abstract or title company showing record ownership of the Homesite or Condominium Unit shall be evidence of such ownership for the purposes of any such amendment.

Section 18.3. When Modifications Permitted. Notwithstanding the provisions of Section 18.2, no termination, extension, modification or amendment of this Declaration shall be effective in any event prior to December 31, 2005, unless the written approval of Declarant is first obtained.

Section 18.4. Amendment by Declarant. Notwithstanding Section 18.2 or any other provisions of this Declaration, Declarant, acting alone, reserves to itself the sole right and power to modify and amend this Declaration by executing and recording an instrument setting forth the amendment. This right and power of the Declarant, acting alone, to amend this Declaration in whole or in part, at any time and from time to time, shall be effective only with respect to any amendments recorded on or before December 31, 2005.

Section 18.5. Notice of Amendment. Except in the case of amendments made by Declarant pursuant to Section 18.4 above, no amendment of this Declaration shall be effective unless a written notice of the proposed amendment is sent to every Owner at least sixty (60) days in advance of any action taken or purported to be taken and such Owner has been given the opportunity to vote or give its consent thereto.

Section 18.6. Effective on Recording. Any modification or amendment shall be immediately effective upon recording a copy of such amendment or modification, executed and acknowledged by the necessary number of Owners (and by Declarant, as required), accompanied by a certificate of a licensed abstract company or a title company as to ownership, or upon the recording of a copy of the amendment or modification together with a duly authenticated Certificate of the Secretary of the Board stating that the required number of consents of Owners and certificate of a licensed or abstract title company were obtained and are on file in the office of the Association, in the office of the Sevier County Register, Sevier County, Tennessee. A licensed abstract company or a title company may be entitled, but not required, to rely on the records of the Sevier County Trustee, and/or the Association in determining ownership of the Homesites or Condominium Units. In the event of a conflict between the records of the Trustee and the Association, the Association records shall control.

Section 18.7. Revocation. This Declaration shall not be revoked, except as provided in Article XII regarding total condemnation, without the consent of all of the Owners in a written instrument duly recorded.

ARTICLE XIX PRINCIPLES OF INTERPRETATION

Section 19.1. Severability. This Declaration, to the extent possible, shall be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable shall

be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

Section 19.2. Construction. In interpreting words in this Declaration, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

Section 19.3. Headings. The headings are included only for purposes of convenient reference, and they shall not affect the meaning or interpretation of this Declaration.

Section 19.4. Registration of Mailing Address. Each Member shall register his mailing address with the Secretary of the Association from time to time, and notices or demands intended to be served upon or given to a Member shall be personally delivered to or sent by mail, postage prepaid, or courier, addressed in the name of the Member at such registered mailing address.

Section 19.5. Notice. All notices or requests required shall be in writing. Notice to any Member shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by certified mail, return receipt requested, to the address of such Member on file in the records of the Association at the time of such mailing. Notice to the Board, the Association, the Design Review Committee, or the Managers shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by certified mail, return receipt requested, to the Association, the Board, the Committee, or the Manager, at such address as shall be established by the Association from time to time by notice to the Members. General notices to all Members or any classification thereof need not be certified, but may be sent regular first class mail.

Section 19.6. Waiver. No failure on the part of the Association, the Board, or the Committee to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board or Committee fails to respond to certain requests. No waiver shall be effective unless it is in writing, signed by the President or Vice President of the Board on behalf of the Association, or by the Chairman of the Committee on behalf of the Committee.

Section 19.7. Limitation of Liability. Neither the Association, the Design Review Committee, nor any officer or member of the Board shall be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Mountain Shadows Resort Documents if the action or failure to act was made in good faith. The Association shall indemnify all of the Committee members and officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles and Bylaws of the Association.

Section 19.8. Conflicts Between Documents. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control. In case of conflict between this Declaration and Design Guidelines, the

Design Guidelines shall control.

Section 19.9. Assignment. Declarant may assign all or any part of its rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor shall be identified, the particular rights being assigned shall be specified, and, to the extent required, concomitant obligations shall be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Register's Office for Sevier County, Tennessee.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day first above written.

DECLARANT:
MOUNTAIN SHADOWS RESORT, L.L.C.

By:

Allen C. Shirley

By:

Kendall W. Brown

STATE OF TENNESSEE
COUNTY OF SEVIER

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared ALLEN C. SHIRLEY and KENDALL W. BROWN, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged themselves to be the Members of MOUNTAIN SHADOWS RESORT, L.L.C., a Tennessee Limited Liability Company, the within named bargainor, a limited liability company, and that they as such Members, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by themselves as Members.

WITNESS my hand and official seal on this the 20th day of September, 1996.

James R. Park
Notary Public

My Commission Expires: 8-5-97



