

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

State of Tennessee, County of SEVIER
Received for record the 23 day of
SEPTEMBER 1996 at 4:12 PM. (REC# 22448)
Recorded in official records
Book M285 Page 365- 432 CHF \$ 2.00
Notebook 53 Page 468
State Tax \$.00 Clerks Fee \$.00,
Recording \$272.00, Total \$ 274.00,
Register of Deeds SHERRY ROBERTSON
Deputy Register SHARON

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BK M285 PG 365

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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.

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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