WHEN RECORDED, RETURN TO:
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Attn: Craig B. Terry

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REQUEST: COALITION TITLE

CERTIFICATE OF AMENDMENT AND AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EMPIRE PASS

December 10, 2004

CERTIFICATE OF AMENDMENT AND AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EMPIRE PASS

THIS CERTIFICATE OF AMENDMENT AND AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EMPIRE PASS, is made effective as of this 10th day of December, 2004, by EMPIRE PASS MASTER OWNERS ASSOCIATION, INC., a Utah nonprofit corporation, and UNITED PARK CITY MINES COMPANY, a Delaware corporation, as the successor in interest to Blue Ledge Corporation, a Delaware corporation, with respect to the following:

RECITALS:

A. Declarant owns or controls certain real property located in Summit County, Utah ("Declarant Property"). Declarant desires to develop, in phases, portions of the Declarant Property as a planned community formerly known as Flagstaff and by this Declaration now known as Empire Pass consisting of residential, commercial, recreational and other areas and uses. Declarant intends to develop as the first phase of Empire Pass that certain portion of the Declarant Property defined below as the Property. The Property is more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

B. The Flagstaff planned community was created by (a) that certain Master Declaration of Covenants, Conditions and Restrictions of Flagstaff, a Planned Community dated June 28, 2002, that was recorded on June 28, 2002 in the Office of the Recorder of Summit County, Utah, as Entry No. 623450, Book 1457, beginning at Page 747, as amended by (i) that certain Supplemental Declaration and Amendment to the Master Declaration of Covenants, Conditions and Restrictions of Flagstaff, a Planned Community dated October 21, 2002, that was recorded on October 22, 2002 in the Office of the Recorder of Summit County, Utah, as Entry No. 635722, in Book 1481, beginning at Page 1538, and (ii) that certain Second Supplemental Declaration to the Master Declaration of Covenants, Conditions and Restrictions of Flagstaff, a Planned Community dated July 18, 2003, that was recorded on July 18, 2003 in the Office of the Recorder of Summit County, Utah, as Entry No. 665954, in Book 1553, beginning at Page 8 (collectively referred to herein as the "Original Declaration"); (b) that certain subdivision plat known as Northside Village Subdivision, a single family subdivision recorded in the Office of the Recorder of Summit County, Utah on June 28, 2002, as Entry No. 623455; (c) that certain subdivision plat known as Northside Village Subdivision II, a multifamily subdivision recorded in the Office of the Recorder of Summit County, Utah on June 28, 2002, as Entry No. 623453; (d) that certain plat for the Marsac Avenue Right-of-Way recorded in the Office of the Recorder of Summit County, Utah on June 28, 2002 as Entry No. 623451; and (e) that certain Park City Ordinance No. 03-11, an Ordinance Approving a Four Parcel Metes and Bounds Subdivision at Flagstaff Mountain Village Park City, Utah, dated April 17, 2003, as evidenced by a Certificate of Approval dated April 17, 2003, and recorded in the Office of the Recorder of Summit County, Utah on May 5, 2003, as Entry No. 657115, in Book 1532, at Page 718.

C. Empire Pass is located in a mountainous setting located near the Deer Valley Ski Resort and is intended to be a mountain ski resort development. At full development it is intended, without obligation, that Empire Pass will collectively have several residential neighborhoods and subdivisions, condominium developments, townhouse developments, overnight lodgings, planned unit developments, recreational areas which may include, without obligation, trail systems, ski trails, open spaces, walkways, tennis courts, swimming pools and clubhouses and other social, commercial, civic and cultural buildings and facilities.

D. As part of the various phases of development of the Property, Declarant intends, without obligation, to record various Plats; to dedicate portions of the Property to the public for streets, roadways, utilities, drainage, flood control and general public use; and to record various Neighborhood Declarations and Supplemental Declarations covering portions of the Property, which Neighborhood Declarations and/or Supplemental Declarations will designate the purposes for which such portions of the Property may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of the Property.

E. Declarant may, without an obligation to do so, annex all or portions of the Additional Land into Empire Pass, which land is not presently included in Empire Pass, and subject all or any portion of the Additional Land to this Declaration.

F. As part of the development of the aforesaid lands, Declarant may, without an obligation to do so, sell Parcels to various Merchant Builders and record Neighborhood Declarations and/or Supplemental Declarations creating restrictive covenants on the Parcels sold, and those Merchant Builders, subject to Declarant's approval, shall record Plats and make public dedications on the Parcels purchased.

G. Declarant has formed the Master Association as a non-profit corporation for the purpose of benefiting the Property and its Owners and Residents, which non-profit corporation will (a) acquire, construct, operate, own, manage and maintain a variety of Community Areas and other areas within the Property; (b) establish, levy, collect and disburse the Assessments and other charges imposed hereunder; (c) upon the Transfer of any Lot, Unit or Parcel, levy, collect and disburse the Transfer Assessment imposed hereunder; (d) perform and provide certain services and functions including, without limitation, Resort Activities, maintaining ski runs and trails, and providing security measures for portions of Empire Pass; and (e) as the agent and representative of the Members of the Master Association and the Residents of Empire Pass, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of the Property. Declarant desires and intends that the portions of the Property utilized for Residential purposes shall be subject to all of the Assessments and that the portions of the Property utilized for Commercial purposes shall be exempt from Annual Assessments and Special Assessments.

H. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners, Mortgagees, Residents, occupants or other holders of an interest in the Property, or any part thereof, certain mutually beneficial covenants, restrictions and obligations with respect to the proper development, use and maintenance of the Property.

I. Declarant desires and intends that the Owners, Mortgagees, lessees and trustees under trust instruments or deeds, occupants, Residents and other persons hereafter acquiring any interest in or otherwise utilizing portions of the Property shall at all times enjoy the benefits of, and shall hold their interest subject to the rights, privileges, covenants and restrictions set forth in this Declaration, all of which are declared to be in furtherance of a plan to promote and protect the aesthetic and cooperative aspects of Empire Pass and are established for the purpose of enhancing the value, desirability and attractiveness of Empire Pass.

J. Declarant therefore desires to subject all of the Property to the covenants, conditions, restrictions, assessments, charges, servitudes, liens and reservations set forth in this Declaration.

K. In order to cause this Declaration and the Covenants to run with the Property and to be binding upon the Property and the Owners, Mortgagees, Residents and occupants or holders of interest thereof from and after the date this Declaration is recorded, Declarant hereby makes all conveyances of the Property, whether or not so provided therein, subject to this Declaration; and by accepting deeds, leases, easements or other grants or conveyances to any portion of the Property, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by this Declaration (including but not limited to the obligation to pay Assessments) hereinafter set forth, except to the extent such persons are specifically excepted herefrom and that all portions of the Property acquired by them shall be bound by and subject to this Declaration.

L. The Master Association considered amending and restating the Original Declaration to: (a) change the name of the Property that is subject to this Declaration from Flagstaff to Empire Pass; (b) simplify the method of assessing the Assessable Property; (c) eliminate the Annual Assessment and Special Assessment on all Commercial Areas; (d) implement the obligations undertaken by the Master Association to Park City under the Maintenance Agreement; (e) implement certain modifications and updates to the Design Guidelines; and (f) adopt such other changes as the Master Association deems desirable including the restatement of the Original Declaration in its entirety. The Master Association also considered amending the Article of Incorporation to change the name of the Master Association to Empire Pass Master Owners Association, Inc.

M. On November 29, 2004, the Master Association caused written notice to be sent to the Members of a special meeting of the Master Association called and held pursuant to the Articles and the Bylaws, ("Special Meeting") to consider the amendment and restatement of the Original Declaration. In accordance with Section 3 of the Bylaws, the Master Association held the Special Meeting on December 10, 2004, at 10:30 a.m., at 890 Main Street, Suite 5109, Park City, Summit County, Utah. At the Special Meeting, the Master Association considered and approved the amendment and restatement of the Original Declaration as set forth in this Declaration.

N. The Master Association hereby certifies that, pursuant to the Bylaws and Section 18.2 of the Original Declaration, at the Special Meeting, the Members voted, by the affirmative vote of the Voting Members casting not less than sixty-seven percent (67%) of the votes of the

Members subject to the Original Declaration, to amend and restate the Original Declaration in the respects described above and in this Declaration and to amend the Articles to change the name of the Master Association to Empire Pass Master Owners Association, Inc.

O. In accordance with the Bylaws and Section 18.2 of the Original Declaration, Declarant and the Master Association, through its duly appointed president, have executed and shall record this Declaration for the purpose of evidencing of record the foregoing described matters.

NOW, THEREFORE, Declarant and the Master Association hereby amend and restate the Original Declaration in its entirety to be as follows:

ARTICLE I
DEFINITIONS

The following words, phrases or terms used in this Declaration (including that portion hereof headed "Recitals") shall have the following meanings:

1.1 "Affordable Housing" shall have the meaning set forth in the Park City Land Management Code, as may be amended from time to time.

1.2 "Additional Land" shall mean, refer to, and consist of the parcels of real property situated in Summit County, Utah and/or Wasatch County, Utah now or in the future owned and controlled by Declarant and Declarant's affiliates. In addition, the Additional Land shall also consist of any other real property located not more than ten miles from the exterior boundaries of the Additional Land. This Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any portion of the Additional Land unless and until such portion is added to the existing Empire Pass in accordance with the provisions of Article XVI of this Declaration.

1.3 "Annual Assessment" shall mean the charge levied and assessed each year against each Lot, Unit or Parcel (other than Exempt Property) pursuant to Section 7.3, hereof.

1.4 "Apartment Development and/or Apartment Development Use" shall mean a Parcel or portion thereof that is dedicated for such purpose in a Neighborhood Declaration, Supplemental Declaration or in the Master Land Use Plan, and is comprised of Rental Apartments, including without limitation Affordable Housing, and surrounding areas that are intended, as shown by the site plan therefor approved by the Municipal Authority and the Design Review Board or otherwise, as one integrated apartment operation under the same ownership.

1.5 "Articles" shall mean the Articles of Incorporation of the Master Association as the same may from time to time be amended or supplemented.

1.6 "Assessable Property" shall mean any Lot, Unit or Parcel that has a Land Use Classification that permits Residential Use, except such part or parts thereof as may from time to time constitute Exempt Property; provided however, that Exempt Property shall not be exempt from Maintenance Charges, Transfer Assessments and Special Assessments. Assessable

Property shall include Apartments Developments, Residential Condominium Developments and Timeshare/Fractional Share Developments.

1.7 "Assessments" shall mean collectively the Annual Assessment, Special Assessment and Transfer Assessment imposed by the Master Association.

1.8 "Assessment Lien" shall mean the lien created and imposed by Article VII.

1.9 "Assessment Period" shall mean the term set forth in Section 7.8.

1.10 "Board" shall mean the Board of Directors of the Master Association.

1.11 "Bulk Service Provider" means a private, public or quasi-public utility or other company which provides, or proposes to provide, cable television, community satellite television, high speed internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services, to Owners, Residents, Lots, Units and/or Parcels within Empire Pass, or within one or more portions thereof, pursuant to a Bulk Service Agreement.

1.12 "Bulk Service Agreement" means an agreement between Master Association and a Bulk Service Provider pursuant to which the Bulk Service Provider would provide cable television, community satellite television, high speed internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services, to Owners, Residents, Lots, Units and/or Parcels within Empire Pass, or within one or more portions thereof.

1.13 "Bylaws" shall mean the Bylaws of the Master Association, as the same may from time to time be amended or supplemented.

1.14 "Certificate of Amendment" shall mean an amendment to this Declaration Recorded by the Master Association pursuant to Section 18.2 of this Declaration and/or shall mean an amendment to this Declaration Recorded by the Declarant pursuant to Section 18.3 or Section 18.4 of this Declaration.

1.15 "Church Use" shall mean use of portions of the Property by a church or religious organization for a permanent church facility including a chapel used for religious services and which may be used for church cultural and recreational activities. Residential Areas and Commercial Areas may not be utilized for Church Use, except as permitted by a Neighborhood Declaration, a Supplemental Declaration or the Declarant. No Dwelling Unit may be utilized for Church Use.

1.16 "Cluster Residential Development and/or Cluster Residential Use" shall mean Lots and Units in planned unit developments or subdivisions with Dwelling Units intended for Residential occupancy and may include those types of Residential housing arrangements known as townhouses, clustered housing, duplexes, zero-lot line housing and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Dwelling Units in the cluster development.

1.17 "Commercial and/or Commercial Area(s) and/or Commercial Use" shall mean any Parcel or portion thereof owned or leased by one Person or a group of Persons, which is used for one or more commercial purposes, including, but not limited to the following: Retail Use, Hotel Use, restaurants, spas and health clubs or Timeshare/Fractional Share Development, and other areas used for non-Residential purposes. Commercial Areas shall not include any Community Areas owned by the Master Association or other Community Areas owned by a Sub-Association or Community Areas owned in common by Residential Condominium Unit Owners. Declarant specifically acknowledges and intends that certain Lots or Parcels within Empire Pass may contain structures that will have a mixture of Residential Areas and Commercial Areas within the same structure. In that event, the provisions of this Declaration pertaining to Residential Areas shall apply to and govern the Residential Areas within such structure, and the provisions of this Declaration pertaining to Commercial Areas shall apply to and govern the Commercial Areas within such structure.

1.18 "Commercial Condominium Development and/or Commercial Condominium Development Use" shall mean a Condominium Development intended for Commercial Use.

1.19 "Community Area" and "Community Areas" shall mean (a) all Master Association Land designated from time to time by the Board for use by the Members, Residents and their guests, including entry monument areas and the entry monuments related to projects subject to Neighborhood Declarations and/or Supplemental Declarations constructed by developers or Merchant Builders; (b) all areas identified as open space on the Master Land Use Plan, including the Trail System, which may or may not be dedicated to the public or to a Municipal Authority, but only until such open space is dedicated to a Municipal Authority; (c) all land within Empire Pass which the Declarant, by this Declaration or other Recorded instrument, makes available for use by Members of the Master Association including enhanced parkways and median strips and areas between roadways and Lots, even if owned by a Municipal Authority; (d) all land within Empire Pass which the Declarant indicates on a Plat, Neighborhood Declaration or Supplemental Declaration is to be used for landscaping, drainage, and/or flood control for the benefit of Empire Pass and/or the general public and is to be dedicated to the public or a Municipal Authority upon the expiration of a fixed period of time, but only until such land is so dedicated; (e) all land or right-of-way easements within Empire Pass which are dedicated to the public or to a Municipal Authority, but which such Municipal Authority or other governmental agency requires the Master Association to maintain; (f) areas on a Lot, Unit or Parcel within easements granted to the Master Association or its Members for the location, construction, maintenance, repair and replacement of a wall, which easement may be granted or created on a Plat or Neighborhood Declaration or Supplemental Declaration or by a Deed or other conveyance accepted by the Master Association; (g) roadways, walkways, bridges, culinary water system components, tunnels and certain storm drain pipes (as set forth in the Maintenance Agreement) within the existing and subsequent phases of Empire Pass; (h) Improvements located outside of Empire Pass that the Master Association has the duty, obligation or right to improve, maintain, replace or repair; and (i) other public infrastructure within the existing and subsequent phases of Empire Pass.

1.20 "Community Expense Fund" shall mean and refer to the fund created or to be created pursuant to the provisions of Article VII of this Declaration and into which all monies of the Master Association shall be deposited. Two separate and distinct funds shall be created and

maintained thereunder, one for operating expenses and one for capital or reserve expenses which together shall constitute the Community Expense Fund.

1.21 "Community Expenses" shall mean and refer to those costs and expenses incurred by or on behalf of the Master Association arising out of or connected with the maintenance, improvements and operation (including capital repairs and replacements) of Empire Pass and the Master Association as described in Article VII hereof and which determine the Assessments made to Owners.

1.22 "Condominium Development" shall mean a condominium ownership regime established under the laws of the State of Utah including both Residential and Commercial Condominium Developments.

1.23 "Condominium Unit" shall mean a condominium unit (as defined under Utah Code Ann. § 57-8-1 et seq.), including its appurtenant interest in all common areas as set forth on a condominium plat, established under Utah law. Such term shall not include a Rental Apartment in an Apartment Development.

1.24 "Consideration" shall mean the total of money paid and the Gross Sales Price of any property delivered, or contracted to be paid or delivered, in return for the Transfer of any Lot, Unit or Parcel, and includes the amount of any note, contract indebtedness, or rental payment payable to the Transferor in connection with such Transfer, whether or not secured by any lien, deed of trust, or other encumbrance given to secure the Gross Sales Price, or any part thereof, or remaining unpaid on and encumbering such Lot, Unit or Parcel at the time of Transfer, whether or not assumed by the Transferee. The term "Consideration" does not include the amount of any outstanding lien or encumbrance for taxes, special benefits or improvements, in favor of the United States, the State of Utah, or a municipal or quasi-municipal governmental corporation or district.

1.25 "Covenants" shall mean the covenants, conditions, restrictions, assessments, charges, rights, obligations, servitudes, liens, reservations and easements set forth in this Declaration, as amended or supplemented from time to time.

1.26 "Declarant" shall mean United Park City Mines Company, a Delaware corporation, as the successor in interest to all rights, title and interests of Blue Ledge Corporation, a Delaware corporation, its wholly-owned subsidiary corporation, pursuant to that certain Assignment of Declarant's Rights dated December 10, 2004, and Recorded on December 10, 2004 in the Office of the Recorder of Summit County, Utah, as Entry No. 719588, in Book 1665, beginning at Page 1909, which Blue Ledge Corporation was identified as the Declarant under the Original Declaration. The term Declarant shall also mean the successors and assigns of Declarant's rights and powers hereunder. Declarant shall also include any Person or Persons that have been assigned and have agreed to assume certain of Declarant's rights and/or obligations in this Declaration pursuant to Section 19.1 effective upon the Recording of a written instrument signed by the Declarant and such Person or Persons and duly Recorded in the Office of the Recorder of Summit County, Utah and/or Wasatch County, Utah, as applicable, that evidences such assignment and assumption.

1.27 "Declarant Property" shall have the meaning set forth in Recital A above. Except for the Property, this Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any portion of the Declarant Property unless and until such portion has been added to the existing Empire Pass in accordance with the provisions of Article XVI of this Declaration.

1.28 "Declaration" shall mean this Certificate of Amendment and Amended and Restated Master Declaration of Covenants, Conditions and Restrictions of Empire Pass, as amended or supplemented from time to time.

1.29 "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Lot," "Unit" or "Parcel".

1.30 "Deer Valley Ski Resort" shall mean the real property and related improvements and facilities commonly known as Deer Valley located near or adjacent to Empire Pass which property and facilities are owned and/or operated as a ski resort by Deer Valley Resort Company and its successors and assigns.

1.31 "Design Guidelines" means those design guidelines for development of all the real property subject to this Declaration as established by the Declarant and/or the Design Review Board from time to time. Declarant or the Design Review Board reserves the right to modify the Design Guidelines. The Design Guidelines may impose, without limitation, certain restrictions with respect to a Dwelling Unit's mandatory minimum and maximum square footage, building materials used in constructing the Dwelling Unit, architectural standards and other matters. The Design Guidelines also may include certain signage guidelines for development of all the real property subject to this Declaration as established by the Declarant and/or the Design Review Board from time to time. There is no assurance that such Design Guidelines will not change from time to time, and they may change with respect to unsold Lots, Units or Parcels, subject to this Declaration, after one or more other such Lots, Units or Parcels, have been sold by Declarant.

1.32 "Design Review Board" shall mean the committee created pursuant to Article XI.

1.33 "Development Agreement(s)" shall mean (a) that certain Development Agreement for Flagstaff Mountain, Bonanza Flats, Richardson Flats, the 20-Acre Quinn's Junction Parcel and Iron Mountain dated June 24, 1999, entered into by and between Declarant, Deer Valley Resort Company, a Utah limited partnership and Park City and other parties as amended or supplemented from time to time; and (b) any other development agreement entered into between Declarant and any Municipal Authority with respect to development of Empire Pass.

1.34 "Development Guidelines" shall mean those development guidelines for Empire Pass that may be established by Declarant and applicable Municipal Authorities which relate to the development and construction of roadways, major infrastructure and other matters related to both off-site and on-site development of Lots and Parcels, but excluding the guidelines for construction of Dwelling Units and buildings on Lots and Parcels which are governed and controlled by the Design Guidelines. Certain of the Development Guidelines are currently set forth in the Development Agreement or may be subsequently incorporated into the Development

Agreement from time to time, and upon such incorporation they shall be part of the Development Guidelines. The Development Guidelines also include certain technical reports, studies and agreements on file with Park City and/or the Declarant including, without limitation, the Mine/Soil Hazard Mitigation Plan, the Specific Transit Plan, the Parking Management Plan, the Construction Phasing Plan, the General Infrastructure and Public Improvements Design and Phasing Plan, the Utilities Master Plan, the Affordable Housing Plan, and the Master Construction Mitigation Plan.

1.35 "Drainage Control Features" shall mean the term set forth in Section 3.4.

1.36 "Dwelling Unit" shall mean any building or portion thereof designed for Use as the residence or sleeping place of one (1) or more Persons or families and includes a kitchen, but does not include a Hotel, motel, lodge, nursing home or an area of such building with separate exterior access and toilet facilities, but no kitchen.

1.37 "Eligible Mortgagee" shall mean and refer to a Mortgagee which has requested notice of certain matters from the Master Association in accordance with Section 17.1 of this Declaration.

1.38 "Emergency Reserve Account" shall mean an account, with an initial balance of $50,000, established at a federally insured bank or savings and loan with an office in Park City pursuant to the Maintenance Agreement and Section 10.4.2 hereof.

1.39 "Empire Pass" shall mean, refer to, and consist of the Property and the development to be completed thereon, commonly known as Empire Pass, together with the Additional Land and/or any other real property hereafter annexed to Empire Pass pursuant to the provisions of this Declaration.

1.40 "Empire Pass Rules" shall mean the rules for Empire Pass adopted by the Board pursuant to Section 5.3.

1.41 "Exempt Property" shall mean the following parts of Empire Pass:

1.41.1 All land and Improvements owned by or dedicated to and accepted by the United States, a Municipal Authority, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective, including all Municipal Authority Property and all property utilized for General Public Uses;

1.41.2 All Master Association Land, for as long as the Master Association is the owner thereof.

1.41.3 All land and/or Improvements (or portions thereof) utilized for Church Use.

1.41.4 All land and/or Improvements (or portions thereof) utilized for Private Amenities.

1.41.5 All Affordable Housing.

1.41.6 All land and/or Improvements (or portions thereof) utilized exclusively for Commercial Uses.

1.41.7 Each other property, including each Lot, Unit or Parcel, while owned by Declarant, a Declarant related developer entity or other Class B Member, until the earliest to occur of (i) the acquisition of its record title by a Member holding Class A Membership, (ii) the 60th day after the Municipal Authority having jurisdiction over such property issues a certificate of occupancy for the first Dwelling Unit or building hereafter constructed thereon, or (iii) the 10th anniversary of the date on which the real property comprising such Exempt Property is subjected to this Declaration. Declarant or a Declarant related developer entity may expressly waive its right to an exemption from Annual Assessments and Special Assessments as to some or all Exempt Properties of which it is then the Owner, by a Supplemental Declaration identifying such Exempt Properties and signed by it. In such event, such exemption shall terminate as to each such identified Exempt Property when such Supplemental Declaration is Recorded. Any such waiver shall run with the title to each such Exempt Property and bind its subsequent Owners, including Declarant, any Declarant related developer entity and any Merchant Builder.

1.42 "FHA" shall mean and refer to the Federal Housing Administration.

1.43 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

1.44 "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.

1.45 "First Mortgagee" means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage.

1.46 "FNMA" shall mean and refer to Federal National Mortgage Association.

1.47 "General Commercial Development or General Commercial Use" shall mean those types of developments and uses in a Commercial Area designated by the Design Guidelines and/or Master Land Use Plan as General Commercial, including but not limited to Commercial Condominium Developments, Hotel Use or any other development denominated as General Commercial Use by Declarant.

1.48 "General Public Uses" shall mean those types of uses designated by the Master Land Use Plan as General Public Uses, including but not limited to school sites, open spaces and trails, conveyed, assigned, or transferred by Deed or other written instrument to a Municipal Authority.

1.49 "Governing Documents" shall mean this Declaration, Certificate(s) of Amendment, Neighborhood Declaration(s), Supplemental Declaration(s), the Bylaws, the Articles, the Empire Pass Rules, the Design Guidelines, the Development Guidelines, the

Board's resolutions, the Recorded Plats, the Development Agreement and the Maintenance Agreement.

1.50 "Gross Sales Price" shall mean with respect to a Lot, Unit or Parcel subject to Transfer, in the case of a Transfer that is in all respects a bona fide sale, the Consideration given for the Transfer less actual customary expenses of sale (or the equivalent thereof which would have been received by the Transferor had the transaction been an arms-length, third-party cash transaction, in the event the Transfer is not an arms-length, third-party cash transaction) of the Lot, Unit or Parcel subject to Transfer. Notwithstanding the foregoing, the value of timeshare interests and timeshare estates and vacation club ownership interests, for purposes of determining Gross Sales Price, shall be determined by valuing the real property interest associated with the timeshare interest or timeshare estate, exclusive of the value of any intangible property and rights associated with the acquisition, operation, ownership, and use of the timeshare interest or timeshare estate, including the fees and costs associated with the sale of the timeshare interests and timeshare estates that exceed those fees and costs normally incurred in the sale of other similar properties, the fees and costs associated with the operation, ownership, and use of timeshare interests and timeshare estates, vacation exchange rights, and benefits available to a timeshare unit owner. In case of a Transfer that is a lease or is otherwise not in all respects a bona fide sale, Gross Sales Price of the Lot, Unit or Parcel subject to Transfer shall be determined by the Master Association. A Transferee may make written objection to the Master Association's determination within 15 days after the Master Association has given notice of such determination, in which event the Master Association shall obtain an appraisal, at the Transferee's sole expense, from a MAI real estate appraiser of good reputation, who is qualified to perform appraisals in Utah, who is familiar with Summit County and Park City area real estate values, and who shall be selected by the Master Association. The appraisal so obtained shall be binding on both the Master Association and the Transferee. Notwithstanding any provision herein to the contrary, where a Transferee does not object within 15 days after the time required herein for objecting, the Transferee shall be deemed to have waived all right of objection concerning Gross Sales Price, and the Master Association's determination of such shall be binding.

1.51 "Hotel" and/or "Hotel Use" shall mean a building containing sleeping rooms for the occupancy of guests for compensation on a nightly basis and accessory facilities such as a lobby, meeting rooms, recreation facilities, and group dining facilities.

1.52 "Improvement(s)" shall mean any improvement now or hereafter constructed in Empire Pass and includes anything which is a structure for purposes of applicable Municipal Authority law including but not limited to any building, structure, shed, covered patio, fountain, pool, radio or television antenna or receiving dish, tree, shrubbery, paving, curbing, landscaping, tank, fence, mailbox, sign, newspaper vending and distribution machines, overnight delivery service drop boxes, any excavation or fill having a volume exceeding ten (10) cubic yards and any excavation, fill, ditch, diversion, dam, or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel.

1.53 "Land Use Classification" shall mean the classification to be established by the Declarant pursuant to Section 4.1, which designates the type of Improvements which may be

constructed on a Lot, Unit, Parcel or Master Association Land and the purposes for which such Improvements and surrounding land may be utilized.

1.54 "Lease" shall mean a written lease or sublease for the leasing or rental of an apartment or other Residential or Commercial property.

1.55 "Lot" shall mean any portion of the Property designated as a subdivided unit of land on any Plat Recorded and approved by Declarant, including any subsequent adjustment of boundary lines thereto, and limited by this Declaration, by a Neighborhood Declaration and/or by a Supplemental Declaration to Single Family Lot Use.

1.56 "Maintenance Agreement" shall mean that certain Maintenance Agreement dated March 12, 2004, entered into by and between Declarant, Blue Ledge Corporation, a Delaware corporation, the Master Association, and Park City, as amended or supplemented from time to time. The Maintenance Agreement was recorded on March 19, 2004 in the Office of the Recorder of Summit County, Utah, as Entry No. 692326, Book 1606, at Pages 210 through 219.

1.57 "Maintenance Charges" shall mean any and all costs assessed to a Sub-Association and/or an Owner pursuant to Sections 10.2 and 10.3.

1.58 "Manager" shall mean such Person retained by the Board to perform certain functions of the Board pursuant to this Declaration or the Bylaws. The Manager for the Master Association shall carry out certain responsibilities of the Master Association as required herein, by the Development Agreements, and by any other Governing Document.

1.59 "Master Association" shall mean the Utah nonprofit corporation organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, the Articles, the Bylaws and any other Governing Document and the successors and assigns of such nonprofit corporation. Declarant caused the Master Association to be incorporated on August 2, 2002, and the Board shall cause the Articles to be amended in order to change the name of the Master Association to be "EMPIRE PASS MASTER OWNERS ASSOCIATION, INC."

1.60 "Master Association Land" shall mean such part or parts of Empire Pass, together with the buildings, structures and Improvements thereon, and other real property which the Master Association now or hereafter owns in fee for as long as the Master Association is the owner of the fee.

1.61 "Master Association Use" shall mean those portions of Empire Pass intended for the use and benefit of the Master Association including, without limitation, amenities provided by the Master Association for the use and enjoyment of the Members and Residents.

1.62 "Master Land Use Plan" shall mean the map, site plan and other documents showing and/or identifying the various Land Use Classifications and density allocations applicable to various Parcels as approved by the applicable Municipal Authority and the Declarant, as the same may from time to time be amended, a copy of which shall be on file at all times in the office of the Master Association. Declarant reserves the right to modify the Master

Land Use Plan from time to time. Such modifications by Declarant may include, among others, the addition or deletion of Land Use Classifications.

1.63 "Member" shall mean any person holding a Membership in the Master Association pursuant to this Declaration.

1.64 "Membership" shall mean a Membership in the Master Association and the rights granted to the Owners and Declarant pursuant to Article VI to participate in the Master Association.

1.65 "Merchant Builder" shall mean a Person who acquires a Parcel or a group of five or more Lots or Units in Empire Pass for the purpose of improving and constructing Dwelling Units or other Improvements thereon for resale to the general public or other development purposes; provided, however, that the term "Merchant Builder" shall not mean or refer to Declarant or its successors.

1.66 "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any portion of a Lot, Unit or Parcel or interest therein as security for the payment of a debt or obligation.

1.67 "Mortgagee" shall mean a beneficiary of a Mortgage as well as a named Mortgagee.

1.68 "Municipal Authority" shall mean the applicable governmental entity or municipality which has jurisdiction over some part of Empire Pass including without limitation, Park City.

1.69 "Municipal Authority Property" shall mean all real property which is from time to time conveyed, assigned, or transferred by Deed or other written instrument to the applicable Municipal Authority, which may include, without limitation, portions or all of the Trail System, public streets including medians and enhanced parkways, retention basins and drainage facilities and open space areas.

1.70 "Neighborhood" shall mean two or more Lots, Units or Parcels (as designated by Declarant or by the Board following the conversion of all Class B voting Memberships to Class A voting Memberships) which share interests other than those common to all Lots, Units or Parcels, as more particularly described in Section 6.6. By way of illustration and not limitation, a Single Family Lot Development, a Cluster Residential Development, a Residential Condominium Development or a Commercial Area might each be designated as separate Neighborhoods, or a Neighborhood may be comprised of more than one housing or use type with other features in common. In addition, each Parcel intended for development shall constitute a Neighborhood, subject to division by Declarant into more than one Neighborhood upon development. Where the context permits or requires, the term "Neighborhood" shall also refer to the Sub-Association which in some instances may be established to act on behalf of the Owners within the Neighborhood. Declarant has initially established Neighborhood boundaries which boundaries may be modified by Declarant (or by the Board following the conversion of all Class B voting Memberships to Class A voting Memberships) as provided herein.

1.71 "Neighborhood Declaration" shall mean a declaration Recorded pursuant to Section 4.1 of this Declaration. A Neighborhood Declaration shall contain restrictions on use and establish a Land Use Classification for each Parcel covered by the Neighborhood Declaration as described in Section 4.1 of this Declaration. The Neighborhood Declaration shall identify the density allocated to the property it covers. It is contemplated that a Neighborhood Declaration will be, in contrast to a Supplemental Declaration, a more comprehensive and detailed document such as a condominium declaration or restrictive covenants which more specifically regulate a Neighborhood.

1.72 "Neighboring Property" is any property or street within Empire Pass (including annexed property) other than the specific property in reference.

1.73 "Nondisturbance Areas" shall mean the term set forth in Section 4.2.36.

1.74 "Original Declaration" shall mean the term set forth in Recital B above.

1.75 "Owner" shall mean (a) any Person(s) who is (are) record holder(s) of legal, beneficial or equitable title to the fee simple interest of any Lot, Unit or Parcel including, without limitation, one who is buying a Lot, Unit or Parcel under a Recorded contract or Recorded notice of such contract, but excluding others who hold an interest therein merely as security and (b) any Person(s) entitled to occupy all of a Lot, Unit or Parcel under a lease or sublease for an initial term of at least ten (10) years, in which case the fee owner or sublessor of the Lot, Unit or Parcel shall not be deemed the Owner thereof for purposes of this Declaration during the term of said lease or sublease.

1.76 "Parcel" shall mean a portion of the Property limited by a Neighborhood Declaration or Supplemental Declaration or the Master Land Use Plan to one of the following Land Use Classifications: Apartment Development, Residential Condominium Development (but only until the condominium regime therefor is Recorded), Commercial Condominium Development, General Commercial Development or Timeshare/Fractional Share Development. The term Parcel shall also include those portions of the Property which a Neighborhood Declaration or Supplemental Declaration or the Master Land Use Plan designates for Single Family Lot Use or Cluster Residential Use but which have not yet been subdivided into Lots and/or Units and related amenities and rights-of-way, but any such areas shall cease to be a Parcel upon the recordation of a Plat or other instrument covering the area and creating Lots and/or Units and related amenities. A Parcel shall not include a Lot or a Unit but, in the case of staged developments, shall include areas not yet included in a Plat, condominium property regime or other Recorded instrument creating Lots and/or Units and related amenities. A Parcel with a Land Use Classification of Apartment Development shall cease to be a Parcel if the Apartment Development is converted to a Residential Condominium Development. Declarant shall have the right, subject to the terms of the Development Agreements, to identify and create and/or reconfigure the boundaries of any Parcel of which Declarant is the Owner.

1.77 "Park City" shall mean Park City Municipal Corporation, a body corporate and political subdivision of the State of Utah.

1.78 "Park City Assessment" shall mean the charge levied and assessed by Park City (on behalf of the Master Association) pursuant to Section 10.4.1 hereof.

1.79 "Person" shall mean a natural individual, a corporation, limited liability company, partnership or any other entity with the legal right to hold title to real property.

1.80 "Plat" shall mean any subdivision plat or condominium plat affecting Empire Pass as Recorded in the Office of the County Recorder of Summit County, Utah, and/or Wasatch County, Utah, as applicable, as such may be amended from time to time, including but not limited to any such Recorded plats respecting all or any portion of the Additional Land.

1.81 "Private Amenities" or "Private Amenity" shall mean any real property, improvements and/or facilities thereon located and all related and supporting facilities and improvements within Empire Pass that is owned and operated by Persons other than the Master Association for recreational and related purposes, on a club membership basis or otherwise.

1.82 "Private Amenities Use" shall mean use of portions of the Property by any Person for a Private Amenity.

1.83 "Property" shall mean the real property described on Exhibit A and any Additional Land annexed to Empire Pass by Declarant pursuant to Article XVI.

1.84 "Record" or "Recording" shall mean placing an instrument of public record in the Office of the County Recorder of Summit County, Utah or the County Recorder of Wasatch County, Utah, as applicable, and "Recorded" shall mean having been so placed of public record.

1.85 "Rental Apartments" shall mean Dwelling Units within a permanent improvement consisting of four (4) or more commercially integrated Dwelling Units under single ownership upon one or more contiguous Parcels, each of which is designed and utilized, otherwise than as a Hotel or on some other transient basis, for rental or lease for Residential purposes to non-Owners.

1.86 "Resident" shall mean:

1.86.1 Each buyer under a contract of sale covering any part of the Assessable Property, regardless of whether the contract is Recorded, and each tenant or lessee actually residing or conducting a business on any part of the Assessable Property; and

1.86.2 Members of the immediate family of each Owner, lessee, tenant or buyer referred to in Section 1.86.1 actually living in the same household with such Owner, lessee, tenant or buyer.

Subject to the Empire Pass Rules (including the imposition of special non-resident fees for use of the Master Association Land if the Master Association shall so direct), the term "Resident" also shall include the on-site employees, guests or invitees of any such Owner, lessee, buyer or tenant, if and to the extent the Board in its absolute discretion by resolution so directs.

1.87 "Residential" or "Residential Areas" shall include Single Family Lot Developments, Cluster Residential Developments, Residential Condominium Developments and Timeshare/Fractional Share Developments, and all common recreational areas and facilities associated with any of the foregoing and other non-Commercial Areas. The use of one or more Units in a Residential Condominium Development or Residential Timeshare/Fractional Share Development for nightly rental purposes shall not change the Residential nature of such development into a Commercial Use. Declarant specifically acknowledges and intends that certain Lots or Parcels within Empire Pass may contain structures that will have a mixture of Residential Areas and Commercial Areas within the same structure. In that event, the provisions of this Declaration pertaining to Residential Areas shall apply to and govern the Residential Areas within such structure, and the provisions of this Declaration pertaining to Commercial Areas shall apply to and govern the Commercial Areas within such structure.

1.88 "Residential Condominium Development and/or Residential Condominium Development Use" shall mean a Condominium Development intended for Residential Use.

1.89 "Resort Activities" shall have the meaning set forth in Section 21.1.

1.90 "Retail Use" shall mean use of a Commercial Area for the display, marketing, and sale of merchandise, food and/or services to the general public.

1.91 "Security Deposit" shall have the meaning set forth in Section 11.5.

1.92 "Single Family" shall mean a group of one or more persons, each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, who maintain a common household in a Dwelling Unit.

1.93 "Single Family Lot Development and/or Single Family Lot Use" shall mean Lots in a subdivision intended for Single Family occupancy in Dwelling Units, together with related areas intended for the use and enjoyment of the Owners and Residents of such Lots.

1.94 "Special Assessment" shall mean any assessment levied and assessed pursuant to Section 7.6.

1.95 "Special Service District" shall mean the term set forth in Section 2.4.

1.96 "Special Use Fees" shall mean the term set forth in Section 3.1.5.

1.97 "Sub-Association" shall mean any Utah nonprofit corporation or unincorporated association, or its successor in interest, the membership of which is composed of the Owners of Lots, Units or Parcels subject to one or more Neighborhood Declarations and/or Supplemental Declarations. Subject to Declarant's prior approval, any Merchant Builder or Neighborhood shall be required to Record a Neighborhood Declaration against a Neighborhood development and organize a Sub-Association under the conditions set forth in this Declaration.

1.98 "Supplemental Declaration" shall mean an amendment or supplement to this Declaration filed pursuant to Article XVI which subjects Additional Land to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land

described thereon, including but not limited to, designation of certain Lots, Units or Parcels as Neighborhoods thereon. The term shall also refer to an instrument filed by the Declarant identified as a Supplemental Declaration and Recorded pursuant to Section 4.1 of this Declaration, which establishes a Land Use Classification and may, pursuant to Section 6.6.3, designate Voting Groups. Neighborhood Declarations may or may not be Recorded in addition to or as a part of a Supplemental Declaration in the Declarant's sole, exclusive, and subjective discretion. However, it is possible, but not required, that certain Lots, Units or Parcels may be subject to both a Neighborhood Declaration and a Supplemental Declaration. It is contemplated that a Supplemental Declaration will be, in contrast to a Neighborhood Declaration, a relatively short document adding property to Empire Pass, identifying Land Use Classifications, designating Neighborhoods and/or Voting Groups and identifying density allocated to the property it covers.

1.99 "Timeshare/Fractional Share Development or Timeshare/Fractional Share Use" shall mean any such development as defined under Utah Code Ann. § 57-19-2(16) or successor statutes. Notwithstanding anything to the contrary contained in this Declaration, Declarant may, in its sole and absolute discretion, approve and locate a Timeshare/Fractional Share Development in Residential Areas or Commercial Areas.

1.100 "Trail System" shall mean the system of trails for Empire Pass which is established from time to time by Declarant, the Master Association and/or a Special Service District and which may be identified in the Development Agreements, on the Master Land Use Plan or on any Plat for Empire Pass. The Trail System may be owned by the Master Association and/or conveyed, assigned, or transferred by Deed or other written instrument to the appropriate Special Service District and/or Municipal Authority.

1.101 "Transfer" shall mean, whether in one transaction or in a series of related transactions, any sale, conveyance, assignment, lease, or other transfer of any beneficial ownership of or interest in any Lot, Unit or Parcel, including but not limited to (1) the conveyance of fee simple title to any Lot, Unit or Parcel, (2) the transfer of any ownership interest in any timeshare or fractional ownership interest or vacation club interest; (3) the transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns one or more Lots, Units or Parcels, and (4) the transfer of more than 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 Lots, Units or Parcels; provided, however, that "Transfer" shall not mean or include, any of the following, except to the extent that they are used for the purpose of avoiding the Transfer Assessment:

1.101.1 Any Transfer to the United States, or any agency or instrumentality thereof, the State of Utah, any county, city, municipality, district, or other political subdivision of the State of Utah.

1.101.2 Any Transfer to the Master Association or its successors.

1.101.3 Any Transfer made (A) by a majority-owned subsidiary to its parent corporation or by a parent corporation to its majority-owned subsidiary, or between majority-owned subsidiaries of a common parent corporation, in each case for no

Consideration other than issuance, cancellation or surrender of the subsidiary's stock; or (B) by a partner, member or a joint-venturer to a partnership, limited liability company or a joint venture in which the partner, member or joint venture has not less than a 50 percent interest, or by a partnership, limited liability company or joint venture to a partner, member or joint venture holding not less than a 50 percent interest in such partnership, limited liability company or joint venture, in each case for no Consideration other than the issuance, cancellation or surrender of the partnership, limited liability company or joint venture interests, as appropriate; or (C) by a corporation to its shareholders, in connection with the liquidation of such corporation or other distribution of property or dividend in kind to shareholders, if the Lot, Unit or Parcel is transferred generally pro rata to its shareholders and no Consideration is paid other than the cancellation of such corporation's stock; or (D) by a partnership, limited liability company or a joint venture to its partners, members or joint venturers, in connection with a liquidation of the partnership, limited liability company or joint venture or other distribution of property to the partners, members or joint venturers, if the Lot, Unit or Parcel is transferred generally pro rata to its partners, members or joint venturers and no Consideration is paid other than the cancellation of the partners', members' or joint venturers' interests; or (E) to a corporation, partnership, limited liability company, joint venture or other association or organization where such entity is owned in its entirety by the persons transferring the Lot, Unit or Parcel and such persons have the same relative interests in the Transferee entity as they had in the Lot, Unit or Parcel immediately prior to such Transfer, and no Consideration is paid other than the issuance of each such persons' respective stock or other ownership interests in the Transferee entity; or (F) by any person(s) or entity(ies) to any other person(s) or entity(ies), whether in a single transaction or a series of transactions where the Transferor(s) and the Transferee(s) are and remain under common ownership and control as determined by the Board in its sole discretion applied on a consistent basis; provided, however, that no such Transfer or series of transactions shall be exempt unless the Board finds that such Transfer or series of transactions (1) is for no Consideration other than the issuance, cancellation or surrender of stock or other ownership interest in the Transferor or Transferee, as appropriate, (2) is not inconsistent with the intent and meaning of this Subsection, and (3) is for a valid business purpose and is not for the purpose of avoiding the obligation to pay the Transfer Assessment. For purposes of this Section 1.101.3, a Transfer shall be deemed to be without Consideration (x) if the only Consideration is a book entry made in connection with an intercompany transaction in accordance with generally accepted accounting principles, or (y) if no person or entity which does not own a direct or indirect equity interest in the Lot, Unit or Parcel immediately prior to the Transfer becomes the owner of a direct or indirect equity interest in the Lot, Unit or Parcel (an "Equity Owner") by virtue of the Transfer, and the aggregate interest immediately prior to the Transfer by all Equity Owners whose equity interest is increased on account of the Transfer does not increase by more than 20 percent (out of the total 100 percent equity interest in the Lot, Unit or Parcel), and no individual is entitled to receive directly or indirectly any Consideration in connection with the Transfer. In connection with considering any request for an exception under this Section 1.101.3, the Board may require the applicant to submit true and correct copies of all relevant documents relating to the Transfer and an opinion of the applicant's counsel (such opinion and counsel to be

reasonably acceptable to the Board) setting forth all relevant facts regarding the Transfer, stating that in their opinion the Transfer is exempt under this Section 1.101.3, and setting forth the basis for such opinion.

1.101.4 Any Transfer, whether outright or in trust, that is for the benefit of the Transferor or the Transferor's relatives (including the Transferor's spouse), but only if there is no more than nominal Consideration for the Transfer. For the purposes of this exclusion, the relatives of a Transferor shall include all lineal descendants of any grandparent of the Transferor, and the spouses of the descendants. Any person's stepchildren and adopted children shall be recognized as descendants of that person for all purposes of this exclusion. For the purposes of this exclusion, a distribution from a trust shall be treated as a Transfer made by the grantors of the trust, in the proportions of their respective total contributions to the trust.

1.101.5 Any Transfer arising solely from the termination of a joint tenancy or the partition of property held under common ownership or in connection with a divorce, except to the extent that additional Consideration is paid in connection therewith.

1.101.6 Any Transfer or change of interest by reason of death, whether provided for in a will, trust, or decree of distribution.

1.101.7 Any Transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a Transfer previously Recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights of way, or licenses.

1.101.8 Any exchange of Lots, Units or Parcels between Declarant and any original purchaser from Declarant of one or more Lots, Units or Parcels being transferred to Declarant in such exchange. To the extent that Consideration in addition to previously purchased Lots, Units or Parcels is paid to Declarant in such an exchange, the additional Consideration shall be a Transfer subject to the Transfer Assessment. To the extent that Declarant, in acquiring by exchange Lots, Units or Parcels previously purchased from Declarant, pays Consideration in addition to transferring Lots, Units or Parcels, the amount of such additional Consideration shall be treated as reducing the original assessable Transfer and shall entitle an original purchaser from Declarant, who exchanges with Declarant Lots, Units or Parcels previously purchased from Declarant, to a refund from the Master Association of the amount of the Transfer Assessment originally paid on that portion of the original Transfer.

1.101.9 Any Transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a condemnation proceeding, but only where such decree or order would otherwise have the effect of causing the occurrence of a second assessable Transfer in a series of transactions which includes only one effective Transfer of the right to use or enjoyment of a Lot, Unit or Parcel.

1.101.10 Any lease of a Lot, Unit or Parcel (or assignment or transfer of any interest in any such lease) for a period of less than 15 years (including renewal options).

1.101.11 Any Transfer solely of water or water rights, or minerals or interests in minerals.

1.101.12 Any Transfer to secure a debt or other obligation or to release property that is security for a debt or other obligation, including transfers in connection with foreclosure of a deed of trust or mortgage or transfers in connection with a Deed given in lieu of foreclosure.

1.101.13 The subsequent Transfer or Transfers of a Lot, Unit or Parcel involved in a "tax free" or "tax deferred" exchange under the Internal Revenue Code, wherein the interim owner acquires such Lot, Unit or Parcel for the sole purpose of reselling that Lot, Unit or Parcel within 30 days after the exchange. In these cases, the first Transfer of title is subject to the Transfer Assessment, and subsequent Transfers will only be exempt as long as a Transfer Assessment has been paid in connection with the first Transfer of such Lot, Unit or Parcel in such exchange.

1.101.14 The Transfer of a Lot, Unit or Parcel to an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended, provided that the Master Association specifically approves such exemption in each particular case.

1.101.15 Any Transfer made by a corporation or other entity, for Consideration, (i) to any other corporation or entity that owns 100 percent of its equity securities ("Holding Company"), or (ii) to a corporation or entity whose stock or other equity securities are owned, directly or indirectly, 100 percent by such Holding Company.

1.101.16 Any Transfer of two or more Lots, Units or Parcels by a Mortgagee or an affiliate thereof to an affiliate of such Mortgagee or to a third party, where the intent of such Transferee is not to make personal use of such Lot, Unit or Parcel but is rather to resell the same.

1.101.17 Any Transfer from a partially owned direct or indirect subsidiary corporation to its direct or indirect parent corporation where Consideration is paid for, or in connection with, such Transfer; however, unless such Transfer is otherwise exempt, such exemption shall apply only to the extent of the direct or indirect beneficial interest of the Transferee in the Transferor immediately prior to the Transfer. For example, if corporation A owns 60 percent of corporation B, and corporation B owns 100 percent of corporation C and corporation C conveys a Lot, Unit or Parcel to corporation A for $2,000,000, 60 percent of the Transfer Assessment would be exempt, and a Transfer Assessment would be payable only on $800,000 (i.e., 40 percent of the $2,000,000 consideration).

1.101.18 The consecutive Transfer of a Lot, Unit or Parcel wherein the interim owner acquires such Lot, Unit or Parcel for the sole purpose of immediately reconveying such Lot, Unit or Parcel, but only to the extent there is no Consideration to the interim Owner and such interim Owner receives no right to use or enjoyment of such Lot, Unit or Parcel, provided the Board specifically approves such exemption in each particular case.

To the extent that Consideration is paid to, or for the benefit of, the interim Owner, the additional Consideration shall be a Transfer subject to the Transfer Assessment. In these cases, the first Transfer of title is subject to the Transfer Assessment and subsequent Transfers will only be exempt as long as a Transfer Assessment has been paid in connection with the first Transfer of such Lot, Unit or Parcel in such consecutive transaction and only to the extent there is no Consideration to the interim Owner.

1.101.19 All Transfers of the common stock of Declarant or Declarant's parent to Capital Growth Partners, its members and/or its designees.

1.101.20 Any Transfer of Affordable Housing.

1.102 "Transfer Assessment" shall mean the fee assessed by the Master Association upon the Transfer of any Lot, Unit or Parcel in an amount equal to the Gross Sales Price of the Lot, Unit or Parcel multiplied by the Transfer Assessment Rate. The Transfer Assessment shall be payable to the Master Association by the Transferee.

1.103 "Transfer Assessment Levy Date" shall mean the term set forth in Section 7.15.3.

1.104 "Transfer Assessment Rate" shall mean one percent unless and until the Board shall adopt a different rate, provided that the Board shall not set a rate higher than two percent unless such rate is approved by the affirmative vote of a majority of the Class A Membership at a meeting duly called for such purpose.

1.105 "Transferee" shall mean all parties to whom any interest in or to a Lot, Unit or Parcel passes by a Transfer, and each party included in the term "Transferee" shall have joint and several liability for all obligations of the Transferee with respect to the Transfer Assessment and shall be subject to all other provisions of this Declaration including, without limitation, the lien provisions hereof.

1.106 "Transferor" shall mean means all parties from whom any interest in or to a Lot, Unit or Parcel passes by a Transfer, and each party included in the term "Transferor" shall have joint and several liability for all obligations of the Transferor with respect to the Transfer Assessment and shall be subject to all other provisions of this Declaration including, without limitation, the lien provisions hereof.

1.107 "Unit" shall mean a Condominium Unit, Rental Apartment, a Dwelling Unit within a Single Family Lot Development, a Dwelling Unit within a Cluster Residential Development, and/or a Dwelling Unit within a Timeshare/Fractional Share Development.

1.108 "Use" shall mean one or more specific types of property development and classification as set forth in Section 4.1 of this Declaration.

1.109 "VA" shall mean the Veterans Administration.

1.110 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall standing on Neighboring Property, on the level of the base of the object being viewed.

1.111 "Voting Group" shall mean one or more Neighborhoods whose Voting Members vote on a common slate for election of directors to the Board, as more particularly described in Section 6.6.3 or, if the context so indicates, the group of Owners whose Lots, Units or properties comprise such Neighborhoods.

1.112 "Voting Member" shall mean the representative(s) selected by the Members within each Neighborhood as provided in Section 6.6.2 to be responsible for casting votes attributable to Lots or Units or other properties in the Neighborhood on matters requiring a vote of the Membership (except as otherwise specifically provided in this Declaration and in the Bylaws). The term "Voting Member" shall include alternate Voting Members acting in the absence of the Voting Member and any Owners authorized to personally cast the votes for their respective Lots, Units or Parcels pursuant to Section 6.6.2.

ARTICLE II
PROPERTY SUBJECT TO DECLARATION

2.1 General Declaration Creating Empire Pass. Declarant hereby declares that the Property, together with any Additional Land annexed pursuant to Article XVI of this Declaration, is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration as amended or modified from time to time. In addition, all or portions of the Property shall be subject to Recorded Neighborhood Declarations and/or Recorded Supplemental Declarations as applicable and as amended from time to time. Declarant intends to develop the Property by subdivision into various Lots, Units and Parcels and to sell such Lots, Units and Parcels. As portions of the Property are developed and/or sold to Merchant Builders for development, except as otherwise provided in this Declaration, Declarant or its designated nominee shall Record one or more Neighborhood Declarations and/or Supplemental Declarations covering such property. Said Neighborhood Declarations and/or Supplemental Declarations will specify the Land Use Classification and permitted uses of property described therein (in accordance with Article IV hereof) and will incorporate this Declaration and establish such additional covenants, conditions and restrictions as may be appropriate for that property. This Declaration and all subsequent Neighborhood Declarations and Supplemental Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, development, improvement and sale of the Property and are established for the purpose of enhancing the value, desirability and attractiveness of Empire Pass and every part thereof. All of this Declaration and applicable Neighborhood Declarations and Supplemental Declarations shall run with the Property and shall be binding upon and inure to the benefit of Declarant, the Master Association, all Owners and Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Master Land Use Plan or any portions thereof as to which a Neighborhood Declaration and/or Supplemental Declaration has not been Recorded. This Declaration shall not be construed to prevent the Declarant from dedicating or conveying portions of the Property, including but not limited to streets or roadways, for uses other than as a Lot, Unit, Parcel, or Master Association Land, subject to the provisions of Section 4.1.

2.2 Master Association Bound. Upon filing of the Articles with the Utah Division of Corporations and Commercial Code, the Covenants shall be binding upon and shall benefit the Master Association.

2.3 Municipal Authority Property. From time to time, the Declarant may, in its sole and exclusive discretion and without the vote of the Members, convey, assign, or transfer by Deed or other written instrument certain Community Areas to the applicable Municipal Authority. Once any such Community Areas are conveyed, assigned or transferred to a Municipal Authority, they shall be Exempt Property and shall constitute Municipal Authority Property. It is contemplated that from time to time certain open space areas, the Trail System and other real property and facilities, may be conveyed, assigned, or transferred by Deed or other written instrument to a Municipal Authority, which conveyances are hereby authorized pursuant to this Declaration.

2.4 Special Service Districts. In connection with the development of Empire Pass, it is contemplated that one or more special service and/or improvement districts (each referred to herein as a "Special Service District") may be formed in order to provide Empire Pass with various services and facilities including but not limited to the Trail System, waste water treatment and disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for non-standard street lights, culinary water and facilities including pumping stations, snowplowing and school bus stop shelters, secondary water systems and facilities, and other services and infrastructure. Each Special Service District shall be a body politic and corporate and a quasi-municipal public corporation of the State of Utah. The Special Service Districts shall have the right and authority to levy taxes, charges and/or assessments upon owners of taxable property within the Special Service Districts. The Special Service Districts may have the power, among other things, to contract, to acquire and construct facilities and to finance the cost thereof by the issuance of bonds and to establish rates and charges that enable the Special Service Districts to operate such facilities as are necessary to fulfill its purposes. It is contemplated that all of Empire Pass may be part of one or more Special Service Districts, and each Owner and Resident will be subject to all charges levied by them.

2.5 Affordable Housing. The Development Agreement provides that Declarant may be required to provide certain Affordable Housing for seasonal workers and employees within Empire Pass.

2.6 Private Amenities.

2.6.1 Declarant or other Persons may, without obligation, develop certain Private Amenities as an integral part of Empire Pass including, without limitation, alpine or mountain clubs and/or golf course(s) for recreational and related purposes, on a private or club membership basis or otherwise.

2.6.2 The Master Association shall have no right to grant to any Person any ownership interest in or right to use any Private Amenity. No Person shall have any ownership interest in or right to use any Private Amenity by virtue of being an Owner of a Lot, Unit or Parcel, or by virtue of being a Member of the Master Association. Rights to use the Private Amenities will be granted only to such Persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without

limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

2.6.3 All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Master Association, any Merchant Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership, operation, existence, location or configuration of any Private Amenity. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. The ownership, operation, existence, location or configuration of any Private Amenity may change at any time by virtue of, without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; (c) the conveyance of any Private Amenity to one or more of Declarant's affiliates, shareholders, employees, or independent contractors, and/or (d) the decision of the owner or operator of the Private Amenity to abandon, redevelop (to any extent, which may include an entirely different type of use, such as Dwelling Units or commercial facilities), or change the location or configuration of, all or any part of any Private Amenity, subject to all required approvals of Declarant, the Design Review Board, any applicable Municipal Authority and/or the Master Association. Consent of the Master Association, any Sub-Association, or any Owner shall *not* be required to effectuate any change in ownership or operation of any Private Amenity, or to subject any Private Amenity to or release any Private Amenity from any mortgage, covenant, lien or other encumbrance.

ARTICLE III
EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMUNITY AREAS

3.1 Easements of Enjoyment. Every Member shall have a right and nonexclusive easement of enjoyment in and to the Community Areas, as such areas are dedicated for use by Declarant, which shall be appurtenant to and shall pass with the title to every Lot, Unit and Parcel, subject to the following provisions:

3.1.1 The right of the Master Association to suspend the voting rights of any Member and the right to the use of the Community Areas by any Member (i) for any period during which any Assessment against such Member's Lot, Unit or Parcel remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction by such Member of this Declaration, a Neighborhood Declaration, a Supplemental Declaration, Empire Pass Rules or applicable Design Guidelines, and (iii) for successive sixty (60)-day periods if any such infraction by such Member is not corrected during any prior sixty (60)-day suspension period.

3.1.2 The right of the Master Association to dedicate or transfer all or any part of the Master Association Land to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Master Association.

3.1.3 The right of the Master Association to regulate the time, place and manner of use of the Community Areas through Empire Pass Rules and to prohibit access to those Community Areas, such as maintenance buildings, landscaped rights-of-ways, and other areas not intended for use by the Members. Empire Pass Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Community Areas or the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners and Residents.

3.1.4 The right of the applicable Municipal Authority and any other governmental or quasi-governmental body having jurisdiction over Empire Pass to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within Empire Pass for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal service.

3.1.5 The right (but not the obligation) of the Master Association to charge special use fees ("Special Use Fees") for the use of the Community Areas. The Special Use Fees, if any, shall be set by the Board from time to time, in its discretion. Special Use Fees shall be charged only for actual entry upon or use of those portions of the Community Areas, if any, selected by the Board to be subject to a Special Use Fees, and shall be imposed only where the Board deems it appropriate to collect revenue from the actual users of such selected portions of the Community Area so that all of the costs of operating such selected portions of the Community Area are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Residents and other Persons using such selected portions of the Community Area.

3.2 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Community Areas, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's right and nonexclusive easement of enjoyment in the Community Areas or any funds or other assets of the Master Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot, Unit or Parcel (and only with respect to the right and nonexclusive easement of enjoyment that is appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property.

3.3 Easements for Encroachments. If any part of a Dwelling Unit or Improvement built in substantial accord with the boundaries for such Dwelling Unit or Improvement as depicted on a Plat (or in other approved documents depicting the location of such on the Lot, Unit or Parcel) encroaches or shall encroach upon the Community Areas or upon an adjoining Lot, Unit or Parcel, an easement for such encroachment and for the maintenance of the same

shall and does exist. If any part of the Community Areas encroaches or shall encroach upon a Lot of a Dwelling Unit or Parcel or an Improvement, an easement for such encroachment and for the maintenance of the same shall and does exist. Each Owner shall have an unrestricted right of ingress or egress to and from its Lot, Unit or Parcel.

3.4 Easements for Drainage Maintenance and Flood Water. Various Community Areas, Lots, Units and Parcels have or may have ditches, diversions, swales, depressions, berms, retention basins, detention basins, bulkheads, walls, dams, or other structures retaining water or other similar features on, under or through the soil that are designed to carry water away from any Community Area, Lot, Unit or Parcel, as depicted upon a Recorded Plat, or otherwise found on such properties (collectively, "Drainage Control Features"). All Owners of Lots, Units or Parcels wherein Drainage Control Features are located shall (a) install, keep, maintain, and replace the Drainage Control Features surface in order to prevent flooding; and (b) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. Notwithstanding the foregoing, the Declarant reserves for itself and its successors, assigns, and designees, a perpetual, nonexclusive right and easement, but not the obligation, to enter upon the Drainage Control Features located within any Community Area, Lot, Unit or Parcel for the purpose of maintaining, repairing, cleaning, or altering drainage and water flow, and shall have an access easement over and across any Community Area, Lot, Unit or Parcel (but not the Dwelling Units or other buildings thereon) abutting or adjacent to any portion of any Drainage Control Features to the extent reasonably necessary to exercise their rights under this Section 3.4. The Declarant's rights and easements provided in this Section 3.4 shall be transferred automatically to the Master Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. All persons entitled to utilize these easements shall use reasonable care in, and repair any material damage resulting from, the use of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall, excessive spring run-off, or natural disasters. Owners or Residents are strictly prohibited from disrupting the drainage pattern and shall not interfere with, obstruct, rechannel, construct upon, alter, build-in, fill-in, or impair any Drainage Control Features or the drainage pattern over his or her Lot, Unit or Parcel from or to any other Lot, Unit or Parcel as that pattern may be established by Declarant, a Merchant Builder, or other developer.

3.5 Easements for Utilities. There is hereby created an easement at specific locations approved by Declarant upon, across, over and under the Community Areas for reasonable ingress, egress, installation, replacement, repair or maintenance of all emergency access roads and all utilities, including, but not limited to, gas, water, sanitary sewer, telephone, storm drain, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment at such locations on the Community Areas, but no sanitary sewers, electrical lines, water lines, storm drain lines, or other utility or service lines may be installed or located on the Community Areas, except as designed, approved and/or constructed by the Declarant or as approved by the Board.

3.6 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Community Areas. There is also created an easement for

ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Residents of the Lots, Units and Parcels and their guests, families, tenants and invitees. There is also hereby created an easement upon, across and over the Community Areas and all private streets, private roadways, private driveways and private parking areas within the Property for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. The Board shall have the right to relocate and/or reconfigure any and all such easements from time to time as it sees fit without the consent of any Owners (but subject to any necessary approvals of Park City or any other governmental body or agency having jurisdiction including in particular, but without limitation, the easements granted herein for police, fire, medical and other emergency vehicles and personnel).

3.7 Delegation of Use. Each Member shall, in accordance with this Declaration and Empire Pass Rules and the limitations therein contained, be deemed to have delegated his or her right of enjoyment in the Community Areas or from time to time portions of the Master Association Land to the members of his or her family, his or her tenants or lessees, his or her guests or invitees or to his or her tenant's family, guests or invitees.

3.8 Transfer of Title. Declarant agrees that it shall convey to the Master Association the Master Association Land subject to certain easements, this Declaration, and the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities) within a reasonable period of time after the closing of the last sale of a Lot, Unit or Parcel within the Property, or at such earlier time as Declarant determines in its sole discretion.

3.9 Trail System. Certain pathways or trails around and/or through the Property (including the Trail System) may be developed and maintained by the Master Association, a Special Service District or other Municipal Authority, from time to time as part of skiing, hiking and/or bicycling trail systems serving the public in addition to Owners and Residents; in such instances, members of the public shall also have the right to use such trails for the purposes for which they are developed and maintained, subject to reasonable, non-discriminatory rules and regulations as the Board may adopt from time to time and subject to applicable requirements and regulations of Park City and any other governmental body or agency having jurisdiction thereof. Except in connection with the construction, repair and maintenance activities, no motor vehicles shall be operated on any pedestrian pathways, biking, hiking or skiing trails (including the Trail System), or portions of the Community Areas designated by the Board from time to time as areas where no motor vehicles shall be operated. For purposes of this Section 3.9, "motor vehicles" shall include all automobiles, motorcycles, motorbikes, motor scooters, mini-bikes, all-terrain vehicles, snowmobiles, mopeds, off-road vehicles, or other gas or electric powered means of transportation of any size or type.

ARTICLE IV
LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

4.1 Land Use Classifications. As portions of the Property are readied for development and/or sale to Merchant Builders, the Land Use Classifications, restrictions, easements, rights-of-way and other matters, including new or different uses and restrictions therefor and including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Neighborhood Declaration and/or Supplemental Declaration which shall be Recorded for that portion of the Property. The Land Use Classifications, Neighborhoods, and density allocations affecting the Property as of the date of this Declaration are set forth on Exhibit B attached hereto and incorporated herein. Any such Neighborhood Declaration or Supplemental Declaration shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. In exercising its authority to Record Neighborhood Declarations and/or Supplemental Declarations, Declarant may impose new Land Use Classifications or new restrictions so long as such are generally in conformance with then existing uses and restrictions applicable to Empire Pass and with the scheme of development contemplated by the Master Land Use Plan, the Development Guidelines and this Declaration. The Land Use Classifications for Lots, Units, Parcels and Master Association Land established by a Neighborhood Declaration or Supplemental Declaration shall not be changed except as specifically permitted by this Declaration. The current contemplated Land Use Classifications are as follows:

4.1.1 Single Family Lot Use;

4.1.2 Cluster Residential Use;

4.1.3 Residential Condominium Development Use, which may be converted to Apartment Development Use upon approval by the Declarant or the Board;

4.1.4 Apartment Development Use, which may be converted to Residential Condominium Development Use upon approval by the Declarant or the Board;

4.1.5 General Commercial Use;

4.1.6 Retail Use;

4.1.7 Master Association Use, which may include Community Areas;

4.1.8 Hotel Use;

4.1.9 Timeshare/Fractional Share Use;

4.1.10 General Public Uses approved by the Declarant;

4.1.11 Church Use; and

4.1.12 Private Amenities Use.

Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses in such Land Use Classifications, shall be determined in the applicable Neighborhood Declaration or Supplemental Declaration and shall be within the complete discretion of the Declarant. All Neighborhood Declarations and Supplemental Declarations shall be subject to the zoning, land use, and development laws, ordinances, rules and regulations and policies of the applicable Municipal Authority and subject to the Development Agreements.

4.2 Covenants Applicable to All Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots, Units and Parcels, the Owners and lessees thereof, and all Residents, whether or not a Neighborhood Declaration or Supplemental Declaration has been Recorded on said property and regardless of the Land Use Classification of such property.

4.2.1 Architectural Control. No Improvements (whether temporary or permanent), alterations, repairs, excavation, grading, landscaping or other work which in any way alters the exterior appearance of any portion of the Property, or the Improvements located thereon, from its natural or improved state existing on the date this Declaration is Recorded shall be made or done without the prior written approval of the Design Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered or made without the prior written approval of the Design Review Board. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, Units or Parcels, shall be subject to the prior written approval of the Design Review Board. No changes or deviations in or from the plans and specifications once approved by the Design Review Board shall be made without the prior written approval of the Design Review Board.

4.2.2 Animals. No animal, bird, or fish, other than a reasonable number of generally recognized house or yard pets as determined solely by the Board, shall be maintained on any Lot, Unit or Parcel and then only if they are kept, and raised thereon solely as domestic pets and not for commercial purposes. All pets must be kept in a fenced yard (including electric) or on a leash at all times. No animal or bird shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be Visible From Neighboring Property, unless otherwise approved by the Design Review Board. If an Owner or Resident fails to abide by the rules and regulations and/or covenants applicable to pets, the Board may bar such pet from use of or travel upon the Community Areas. The Board may subject ingress, egress, use, or travel upon the Community Areas by a Person with a pet to a Special Use Fee, which may be a general fee for all similarly-situated Persons or a specific fee imposed for failure of an Owner or Resident to abide by the rules, regulations, and/or covenants applicable to pets. In addition, any pet which endangers the health of any Owner or Resident of a Lot, Unit or Parcel or which creates a nuisance or an unreasonable disturbance or is not a common household pet, as may be determined in the sole discretion of the Board, must be permanently removed from the Property upon seven (7) days' written notice by the

Board. Upon the written request of any Owner or Resident, the Board shall conclusively determine, in its sole and absolute subjective discretion, whether for the purposes of this Section 4.2.2 a particular animal, fish or bird is a generally recognized house or yard pet, whether such a pet is a nuisance or whether the number of animals, fish or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein. Notwithstanding anything contained herein to the contrary, Declarant reserves the right to permit horses to be maintained on certain Parcels or Master Association Land within Empire Pass as determined solely by Declarant (or by the Master Association after the termination of all Class B Membership status pursuant to Section 6.4.2).

4.2.3 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Subject to the Design Guidelines, temporary buildings or structures may be used during the construction of any structure on any property.

4.2.4 Maintenance of Yards and Plantings. Except where otherwise provided in a Neighborhood Declaration or Supplemental Declaration, each Owner of a Lot, Unit or Parcel shall care for and maintain all shrubs, trees, hedges, grass and plantings of every kind located on:

4.2.4.1 the Owner's Lot, Unit or Parcel (including set back areas and any applicable portions of Community Areas);

4.2.4.2 planted public right-of-way areas between sidewalks (or bike paths) and the street curb on the front or side of his or her property, if any;

4.2.4.3 any other public right-of-way or easement area which abuts the Owner's Lot, Unit or Parcel and which is located between the boundary line of his or her Lot, Unit or Parcel and the paved area of any street, sidewalk, bike path or similar area; and

4.2.4.4 any non-street public right-of-way or easement area adjacent to his or her Lot, Unit or Parcel, and shall keep all such areas neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (1) the Master Association assumes the responsibility in writing; (2) the Master Association has been given such responsibility by a Recorded instrument as provided in Section 10.1 of this Declaration; or (3) a Municipal Authority assumes the responsibility. The Design Review Board may require landscaping by the Owner of all or any portion of an improved or developed Lot, Unit or an improved or developed Parcel including the areas described in Subsections 4.2.4.1, 4.2.4.2, 4.2.4.3, and 4.2.4.4 above.

4.2.5 Landscaping. All Owners and Residents of Single Family Lots and detached or attached Dwelling Units within Residential Cluster Developments are

required to install or cause to be installed all landscaping and irrigation on areas of such Lot shown on the landscape plan as areas to be landscaped including, without limitation, front and corner side yards and rear and side yards, within twelve (12) months from commencement of occupancy of a Dwelling Unit. All landscape plans shall be approved in advance by the Design Review Board.

4.2.6 Nuisances. No weeds, dead trees or plants, rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, Unit or Parcel, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No other nuisance shall be permitted to exist or operate upon any Lot, Unit or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. Without limiting the generality of any of the foregoing provisions, except as specifically provided in this Section 4.2.6, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. Notwithstanding any provision in this Section 4.2.6 to the contrary, Declarant acknowledges and intends that certain large mixed-use Improvements within Empire Pass that are designated and approved for Hotel Use may incorporate exterior speakers for event gatherings. However, the use and operation of any such exterior speakers shall be subject to the Empire Pass Rules and such rules and regulations that may be adopted and enforced by the applicable Sub-Association to govern the use and operation of any such exterior speakers.

4.2.7 Construction Activities. All construction activities and parking in connection with the building of Improvements on a Lot or Parcel shall be subject to the Design Guidelines and approved by the Design Review Board pursuant to Article XI. The Design Review Board in its sole discretion shall have the right to determine the existence of any nuisance arising out of construction and any activities related thereto. The Design Review Board has the right to impose fines related to violations of the Design Guidelines. The Design Guidelines require submittal to the Design Review Board of site specific construction mitigation plans prior to any construction activities.

4.2.8 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot, Unit or Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects.

4.2.9 Repair of Improvements. No Improvement on any Lot, Unit or Parcel shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Improvement is damaged or destroyed, then, subject to the approvals required by Section 4.2.1 above and subject to the provisions of any Neighborhood Declaration or Supplemental Declaration, such Improvement shall be immediately repaired, rebuilt or demolished. If any Improvement should be demolished, then the Owner shall at all times maintain the vacant Lot, Unit or Parcel in a clean and sightly condition, and shall clear

and shall continue to clear the Lot, Unit or Parcel of any weeds, debris, garbage, tree prunings or like items.

4.2.10 Antennas and Satellite Dishes. To the full extent permissible under state and federal law, no television, radio, shortwave, microwave, satellite, flag or other antenna, pole, tower or dish shall be placed, constructed or maintained upon any Lot, Unit, Parcel or other part of the Property unless such antenna, pole, tower or dish is fully and attractively screened or concealed so as not to be Visible From Neighboring Property, which means of screening or concealment shall be subject to the Design Guidelines and the regulation and prior approval of the Design Review Board.

4.2.11 Mineral Exploration. No Lot, Parcel or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind, except for the drilling, operation and maintenance of any testing, inspection or other water wells approved by the Declarant, and no derrick or other structure designed for use in boring for water, oil, or other hydrocarbons or minerals of any kind or nature shall be erected, maintained or permitted on any Lot or Parcel.

4.2.12 Signs. No signs whatsoever (including, but not limited to commercial, political, "for sale," "for rent," and similar signs) which are Visible from Neighboring Property shall be erected or maintained on any Lot or Parcel except:

4.2.12.1 Signs erected and maintained by Declarant (or the Master Association pursuant to Section 10.1.4) pursuant to this Declaration.

4.2.12.2 Signs required by law.

4.2.12.3 Residence identification signs, provided the size, color, content and location of such signs have been approved in writing by the Design Review Board.

4.2.12.4 Signs of Merchant Builders approved from time to time by the Design Review Board as to number, size, color, design, content, location and type.

4.2.12.5 Such construction job identification signs and subdivision identification signs which are in conformance with the requirements of any Municipal Authority and which have been approved in writing by the Design Review Board as to number, size, color, design, content, and location.

4.2.12.6 Signs identifying the entry way to distinct Neighborhoods or locations of special interest (such as Hotels), provided the size, color, content and location of such signs have been approved in writing by the Design Review Board.

4.2.13 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, Unit or Parcel, except in covered containers of a type, size and style

which are approved by the Design Review Board or required by the applicable Municipal Authority. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection within a 24 hour period. All rubbish, trash and garbage shall be removed from the Lots, Units and Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot, Unit or Parcel.

4.2.14 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot, Parcel or other property so as to be Visible From Neighboring Property.

4.2.15 Outdoor Play Apparatus, Sculptures and Art. No outdoor play apparatus, structures or devices including, without limitation, basketball goals, backboards, swimming pools, tennis courts and swing sets, sculptures, or outdoor art shall be erected, placed or maintained on any Lot or Parcel without the prior written approval of the Design Review Board (including, without limitation, approval as to appearance and location).

4.2.16 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, Unit or Parcel except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; (ii) that which Declarant or the Master Association may require for the operation and maintenance of the Property; or (iii) that which is used or displayed in connection with any business permitted under a Neighborhood Declaration or Supplemental Declaration.

4.2.17 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot, Unit or Parcel shall be further subdivided or separated into smaller Lots, Units, Parcels or interests by any Owner, and no portion less than all of any such Lot, Unit or Parcel, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Declarant (or the Master Association following conversion of the Class B voting Memberships to Class A voting Memberships), which approval must be evidenced on the Plat or other instrument creating the subdivision, easement or other interest. This provision shall not apply to transfers of an ownership interest in the whole of any Lot, Unit or Parcel. Further, this provision shall not, in any way, limit Declarant from subdividing or separating into Lots, Units or Parcels the Property, the Additional Land (if annexed) or any other property at any time owned by Declarant and which has not previously been platted or subdivided into Lots and/or Units. Except for Improvements constructed by Declarant, no buildings or other Improvements shall be constructed on any Lot, Unit or Parcel until a Neighborhood Declaration or Supplemental Declaration has been Recorded on such property. No Neighborhood Declaration, Supplemental Declaration or further covenants, conditions, restrictions or easements shall be Recorded by any Owner or other person against any Lot, Unit or Parcel without the provisions thereof having been first approved in writing by the Declarant (or the Design Review Board following conversion of the Class B voting Memberships to Class A voting Memberships), and any covenants,

conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot, Unit or Parcel, and no applications for variances or use permits, shall be filed with a Municipal Authority unless the proposed use of the Lot, Unit or Parcel complies with this Declaration and any applicable Neighborhood Declaration or Supplemental Declaration.

4.2.18 Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot, Unit and Parcel for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to storm drain, water, sewer, gas, telephone, electricity, television cable or communication lines and systems, as such utilities are installed in connection with the initial development of the Lot, Unit or Parcel and the construction of the first Dwelling Unit or other Improvement thereon and also to the extent deemed necessary thereafter by the Declarant or the Master Association provided that the location of any such easements shall not unreasonably interfere with the intended use of such Lot, Unit or Parcel by the Owner thereof. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots, Units and Parcels. Notwithstanding anything to the contrary contained in this Subsection, no sewers, storm drain lines, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Lot, Unit or Parcel except as approved by the Declarant (or the Design Review Board following conversion of the Class B voting Memberships to Class A voting Memberships), or, if installed after a Neighborhood Declaration or Supplemental Declaration is Recorded, as approved by the Declarant or the Merchant Builder of such property and also by the Design Review Board.

4.2.19 Perimeter Fences and Walls. Perimeter fences or walls along major roadways, as determined solely by the Declarant, shall be maintained by the Master Association, subject to the provisions of Sections 10.2 and 10.3, except that each Owner of a Lot, Unit or Parcel shall remain responsible for painting and maintaining the surface of the portion of the perimeter wall or fence facing such Owner's Lot, Unit or Parcel. The Master Association shall be responsible for the maintenance of all landscaping outside the perimeter walls and fences, except any maintenance assumed by a Municipal Authority or by a Sub-Association which is obligated to perform such maintenance.

4.2.20 Utility Service. No lines, wires or other devices for communication or for the transmission of electric current or power, including telephone, television and radio signals, and cable information highways, shall be erected, placed or maintained anywhere in or upon any Lot, Unit or Parcel, unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures as approved by the Declarant (or the Design Review Board following conversion of the Class B voting Memberships to Class A voting Memberships), except for:

4.2.20.1 overhead power poles and lines to perimeter areas of the Property as approved by Declarant or the Design Review Board; and

4.2.20.2 boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices as approved by the Declarant (or the Design Review Board following conversion of the Class B voting Membership to Class A voting Membership).

4.2.21 Overhead Encroachments. Except as provided for herein, no tree, shrub or planting of any kind on any Lot, Unit or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of eight (8) feet without the prior approval of the Design Review Board. Notwithstanding the foregoing, if any part of a healthy tree or shrub shall encroach upon the Community Areas, or upon an adjoining Lot, Unit or Parcel, an easement for such encroachment and for the maintenance of the same shall and does exist, provided such encroachment does not create a hazardous, dangerous or unsafe condition. Each Owner shall have a right of ingress or egress to the adjoining Lot, Unit or Parcel to the extent reasonably necessary to maintain such tree or shrub.

4.2.22 Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding one-ton, nor any mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or Parcel or on any street or Community Area in Empire Pass so as to be Visible From Neighboring Property, or visible from the Community Areas or the streets; provided, however, the provisions of this Section 4.2.22 shall not apply to (i) pickup trucks of less than one-ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked as provided in Section 4.2.23 below and are used on a regular and recurring basis for basic transportation, or (ii) trucks, trailers and campers parked in an approved recreational vehicle storage area within a Residential Area or other approved areas designated for such parking in Commercial Area Land Use Classifications in connection with permitted commercial activities conducted in such Commercial Area Land Use Classifications.

4.2.23 Motor Vehicles, Parking and Towing.

4.2.23.1 No automobile, motorcycle, motorbike, snowmobile, snow cat, personal watercraft, boat, boat trailer, motorcycle, motorbike, motor scooter, mini-bike, all-terrain vehicle, moped, off-road vehicle, recreational vehicle or other similar equipment or vehicle or other motor vehicle shall be stored, constructed, reconstructed or repaired upon any Lot, Parcel or street or other Community Area in Empire Pass, and no inoperable vehicle may be stored or parked on any such Lot, Unit, Parcel or street, so as to be Visible From Neighboring Property or to be visible from Community Areas or streets; provided, however, that the provisions of this Section 4.2.23 shall not apply to (i) emergency vehicle repairs; (ii) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Design Review Board; (iii) the parking of such

vehicles during normal business hours in areas designated for parking in a non-Residential Land Use Classification; (iv) vehicles parked in garages on Lots, Units or Parcels so long as such vehicles are in good operating condition and appearance and are not under repair; (v) the storage of such vehicles in an area designated for such purposes on a Neighborhood Declaration or Supplemental Declaration or on a site plan approved by the Design Review Board; and (vi) non-Commercial vehicle repair within a garage which is closed except as necessary for ingress and egress.

4.2.23.2 It is the intent of the Declarant to restrict on-street parking as much as possible. Vehicles of all Owners and Residents, and of their employees, guests and invitees, are to be kept in garages and residential driveways of the Owner and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot, Unit or Parcel; provided, however, this Section 4.2.23 shall not be construed to permit the parking in the above described areas of any vehicle whose parking on the Property is otherwise prohibited or the parking of any inoperable vehicle. Recreational vehicles shall be parked in covered garages except for limited periods in Residential driveways or other designated parking areas as determined by the Board and promulgated as part of the Empire Pass Rules.

4.2.23.3 The Board has the right, without notice, to have any vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of Section 4.2.23 towed away at the sole cost and expense of the owner of the vehicle. Any expense incurred by the Master Association in connection with the towing of any vehicle must be paid to the Master Association upon demand by the owner of the vehicle. If the vehicle is owned by an Owner or Resident, any amounts payable to the Master Association will be secured by the Assessment Lien against that Owner's or Resident's Lot or Unit, and the Master Association may enforce collection of those amounts in the same manner provided for in this Declaration for the collection of Assessments.

4.2.24 Roofs. To the full extent permissible under state and federal law, no apparatus, structure or object shall be placed on the roof of a Dwelling Unit without the prior written consent of the Design Review Board. Any apparatus, structure or object approved by the Design Review Board for placement on the roof of a Dwelling Unit shall be mounted on the rear of the roof so that such apparatus or object is below the highest ridge on the roof and is not Visible From Neighboring Property and is not visible from any street by a Person standing anywhere on the curb or street in front of the Dwelling Unit or at the rear or sides of Lots or Units backing upon any open space or public right of way. No air conditioning units or evaporative coolers extending from windows or protruding from roofs are permitted.

4.2.25 Arterial Fencing and Walls. All perimeter walls and fencing along arterials (for the purposes of this Section 4.2.25 "arterials" shall be as designated by the Declarant) must be constructed and maintained in accordance with the specifications and

regulations established by the Design Guidelines and as approved the Design Review Board.

4.2.26 Draperies and Window Coverings. Within thirty (30) days of occupancy each Owner of a Lot, Unit or Parcel consisting of a Residential Use shall install permanent draperies or suitable window treatments on all exterior windows. In no event shall windows be covered with paper, aluminum foil, bed sheets or any other materials or temporary coverings not specifically intended for such purpose. No exterior reflective material shall be used as a window covering. No interior reflective material shall be used as a window covering unless such material has been approved in advance by the Design Review Board.

4.2.27 Drainage. No Owner or Resident shall interfere with or obstruct the drainage pattern over his or her Lot, Unit or Parcel from or to any other Lot, Unit or Parcel as that pattern may be established by Declarant, a Merchant Builder, or any other developer or as described in Section 3.4 hereof with respect to Drainage Control Features.

4.2.28 Garage Openings. All garages shall be fully enclosed. No carports shall be permitted. No garage door shall be open except when necessary for access to and from the garage, cleaning, maintenance or repair.

4.2.29 Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other Resident or occupant of a Lot, Unit or Parcel, any member of the Design Review Board, any member of the Board or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, Unit or Parcel and the Improvements thereon, except for the interior portions of any completed Dwelling Unit, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

4.2.30 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or by Merchant Builders or their duly authorized agents, of structures, Improvements or signs necessary or convenient to the development or sale of the Property, if those structures, Improvements or signs have been approved by the Design Review Board.

4.2.31 Health, Safety and Welfare. In the event additional uses, activities and facilities are deemed by the Design Review Board to be a nuisance or to adversely affect the health, safety or welfare of Owners and Residents, the Design Review Board may make rules restricting or regulating their presence within Empire Pass as part of the Design Guidelines.

4.2.32 Model Homes. The provisions of this Declaration and of Neighborhood Declarations or Supplemental Declarations which, in certain instances, prohibit non-Residential use of Lots, Units and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the

construction of Residential Dwelling Units at Empire Pass and parking incidental to the visiting of such model homes so long as the location of such model homes and the opening and closing hours are approved by the Design Review Board and so long as the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Design Review Board may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of the governing Municipal Authority and any rules of the Design Review Board. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner thereof is not actively engaged in the construction and sale of Dwelling Units on Single Family Lots at Empire Pass, and no home shall be used as a model home for the sale of homes not located at Empire Pass.

4.2.33 Incidental Uses. The Declarant or the Design Review Board may approve uses of property within a Land Use Classification which are incidental to the full enjoyment by the Owners of the property within that Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Declarant or the Design Review Board may wish to impose, in its sole discretion, for the benefit of Empire Pass as a whole. By way of example and not of limitation, the uses which the Design Review Board may permit are: private roadways and streets within an area having a Land Use Classification of Cluster Residential Use or Condominium Development Use; open spaces, tennis clubs and/or swimming clubs intended primarily for the benefit of all or certain Owners and Residents within areas having a Land Use Classification of Cluster Residential Use, Residential Condominium Development or other Residential Use; a business office for the Master Association within an area having a Land Use Classification of Master Association Use; open spaces, tennis courts, swimming pools and other recreational facilities intended for usage by the Residents or Owners of more than a single Lot, Unit or Parcel within any Residential Area; and a sales, information and marketing center operated by the Declarant, a Merchant Builder, or any other developer within an area having a Land Use Classification of Master Association Use.

4.2.34 Leases. Any Lease between an Owner and a tenant or lessee respecting a Lot or Dwelling Unit shall be subject in all respects to the provisions of the Governing Documents, and any failure by the lessee to comply with the terms of such Governing Documents shall be a default under the Lease. Specifically, all Leases shall comply with the Governing Documents and shall require that the tenant acknowledge receipt of a copy of the Governing Documents and/or reference to the location thereof for inspection by such tenant or lessee. The Lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

4.2.35 Tree or Vegetation Removal. No trees shall be removed, except: (a) diseased or dead trees; and (b) trees which must be removed to promote the growth of other trees or for safety reasons, unless approved in writing by the Design Review Board.

4.2.36 Nondisturbance Areas. Certain areas at Empire Pass possess great natural beauty and/or are subject to institutional or engineering controls associated with environmental clean up and shall be designated as "Nondisturbance Areas" at the Declarant's sole discretion, as such areas may be identified on a Plat or other written document provided to an Owner. Declarant intends to preserve such Nondisturbance Areas through the use of a coordinated plan of Lot development and the terms of this Declaration. No Improvements (whether temporary or permanent), landscaping, alterations, repairs, excavation, grading or other work which in any way alters the exterior appearance of any Nondisturbance Area from its natural state existing on the date this Declaration is Recorded, or existing on the date a Neighborhood Declaration or Supplemental Declaration is Recorded, shall be made or done without the prior written approval of the Design Review Bond. No building, fence, wall, Dwelling Unit or other Improvement shall be commenced, erected, maintained, improved, altered or made within any Nondisturbance Area without the prior written approval of the Design Review Board. All subsequent additions to or changes or alterations in any building, fence, Dwelling Unit or other Improvement, including exterior color scheme, within a Nondisturbance Area and all changes in the grade of Nondisturbance Areas, shall be subject to the prior written approval of the Design Review Board. No changes or deviations in or from the plans and specifications once approved by the Design Review Board shall be made without the prior written approval of the Design Review Board.

4.2.37 Energy Conservation Equipment. To the full extent permissible under state and federal law, no solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed, unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Design Review Board.

4.2.38 Violations of Law. Any activity which violates local, state, or federal laws or regulations is prohibited; however, the Board shall have no obligation to take enforcement action in the event of a violation.

4.2.39 Easement for Development. The Declarant hereby reserves an easement throughout the Property for the purpose of completing all Improvements contemplated by this Declaration, including but not limited to Improvements to the Additional Land. Declarant shall be entitled to use all Community Areas, roadways and other facilities located in, on or under the Property to access the Additional Land in order to make Improvements thereto and to continue with the development of the Property. The foregoing easement shall include, without limitation, the right to design, construct, repair, replace, maintain and operate ski trails, runs and related access ways to provide ski access to, from and between portions of the Property and Deer Valley Ski Resort for the Owners and Residents and their guests.

4.2.40 Sales Offices. Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising Empire Pass, and models in any areas of Empire Pass owned by the Declarant. Declarant may relocate sales offices, management offices and models to other locations within Empire Pass at any time.

4.2.41 Poles. No pole, including but not limited to a flag pole, shall be placed, constructed, or maintained on any Lot, Unit, Parcel or other part of Empire Pass, unless such pole is approved in writing in advance by the Design Review Board. The Design Review Board may adopt one or more rules or regulations permitting an Owner to install and maintain a flag pole upon such Owner's Lot, Unit or Parcel, provided that the location and size of such flag pole (and the number and size of any flag(s) mounted thereon) may be regulated by the Design Review Board, and may, if so provided in such rule or regulation, be made subject to the prior written approval thereof by the Design Review Board. Nothing in this section shall be deemed to prohibit the Declarant from installing and maintaining flag poles on, at, or adjacent to model homes within Empire Pass. Poles to which basketball backboards, goals, and related recreational equipment are affixed, shall be governed by Section 4.2.15.

4.2.42 Wood Burning Devices. No wood burning device shall be constructed, installed, or maintained on a Lot or within a Dwelling Unit, except as specifically permitted in the Development Agreement. The Development Agreement currently provides that "one wood burning device shall be allowed for 54 single family homes" within Empire Pass. Also, the Development Agreement currently provides that "one wood burning device shall be allowed per lodge or hotel" within Empire Pass.

4.2.43 Tanks. Unless otherwise approved by the Design Review Board, no tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot or Parcel unless such tanks are buried underground. Nothing herein shall be deemed to prohibit use or storage upon any Lot or Parcel of an above ground propane or similar fuel tank with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace or a spa or "hot tub", so long as any such tank either: (a) has a capacity of ten (10) gallons or less; or (b) is appropriately stored, used and/or screened, in accordance with the Empire Pass Rules or as otherwise approved by the Design Review Board, so as not to be Visible From Neighboring Property.

4.3 Covenants, Conditions, Easements and Restrictions Applicable to Single Family Lot Development and Cluster Residential Development Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply only to Lots and Dwelling Units and the Owners and Residents thereof lying within the Single Family Lot Development and Cluster Residential Development Land Use Classifications:

4.3.1 General. The portions of the Property classified for Single Family Lot Development under a Neighborhood Declaration or Supplemental Declaration may be used only for the construction and occupancy of Single Family Dwelling Units and typical residential activities incidental thereto, such as the construction and use of a family swimming pool, together with any common recreational facilities or any other Community Areas or amenities. All property within such Land Use Classification shall be used, improved and devoted exclusively to Single Family Lot Use. No structure whatsoever, other than one private, Single Family Dwelling Unit, together with a private garage for cars and (if desired and if permitted by the Municipal Authority) a guest house

or servant quarters, shall be erected, placed or permitted to remain on any Single Family Lot.

4.3.2 Business Activities. Property classified for Single Family Lot Development under a Neighborhood Declaration or Supplemental Declaration shall not be used for any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or Resident may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the activity conforms to all zoning requirements for Empire Pass; (c) the activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of Residents of the Property; and (d) the activity is consistent with the Residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents of the Property, as may be determined in the sole discretion of the Board. This Section 4.3.2 shall not apply to any activity conducted by the Declarant or a Merchant Builder approved by the Declarant with respect to its development and sale of the Lots, Units or Parcels or its use of any Dwelling Units which it owns within Empire Pass.

4.3.3 Tenants. The entire Dwelling Unit on a Lot may be leased to a Single Family tenant or lessee from time to time by the Owner, subject to the provisions of this Declaration (including without limitation Section 4.2.34), the Empire Pass Rules and any applicable Design Guidelines.

4.4 Covenants Applicable to Property Within Residential Condominium Development, Cluster Residential Development and Timeshare/Fractional Share Development Land Use Classifications. The following covenants, conditions, restrictions and reservations of rights shall apply only to Dwelling Units and the Owners and Residents thereof lying within a Residential Condominium Development Land Use Classification, a Cluster Residential Development Land Use Classification or a Timeshare/Fractional Share Development Land Use Classification:

4.4.1 General. Property classified as a Residential Condominium Development or a Cluster Residential Development or a Timeshare/Fractional Share Development under a Neighborhood Declaration or Supplemental Declaration may be used only for the construction and occupancy of Residential Dwelling Units together with common recreational facilities and other Community Areas. All property within such Land Use Classifications shall be used, improved and devoted exclusively to Residential Use.

4.4.2 Business Activities. Property classified for the purposes set forth in Section 4.4.1 under a Neighborhood Declaration or Supplemental Declaration shall not be used for any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or Resident may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the activity conforms to all zoning requirements for Empire Pass; (c) the activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business

invitees or door-to-door solicitation of Residents of the Property; and (d) the activity is consistent with the Residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents of the Property, as may be determined in the sole discretion of the Board. This Section 4.4.2 shall not apply to any activity conducted by the Declarant or a Merchant Builder approved by the Declarant with respect to its development and sale of the Lots, Units or Parcels or its use of any Dwelling Units which it owns within Empire Pass, nor shall it apply to any Timeshare/Fractional Share Development established by Declarant which is governed by a separate Neighborhood Declaration.

4.4.3 Tenants. The entire Dwelling Unit may be leased to a tenant or lessee for Residential occupancy from time to time by the Owner, subject to the provisions of this Declaration (including without limitation Section 4.2.34) the Empire Pass Rules and any applicable Design Guidelines.

4.5 Covenants Applicable to Property Within Apartment Developments, General Commercial Developments, Timeshare/Fractional Share Developments and all other Commercial Areas. The following covenants, conditions, restrictions and reservation of rights shall apply only to Apartment Developments, General Commercial Developments, Timeshare/Fractional Share Developments and all other Commercial Areas, the Improvements constructed thereon and the Owners and Residents and occupants within Commercial Area Land Use Classifications:

4.5.1 General. Property classified as and located within a Commercial Area will generally be developed as individual Commercial projects by Declarant and/or one or more Merchant Builders. Declarant may sell or lease one or more Parcels to individual Merchant Builders who will construct Improvements with respect to such a Parcel in accordance with a specific Neighborhood Declaration or Supplemental Declaration.

4.5.2 Tenants. All or some portion of a Parcel in a Commercial Area may be leased to one or more tenants or lessees from time to time by the Owner of a Parcel, subject to the provisions of this Declaration (including without limitation Section 4.2.34), the Empire Pass Rules and any applicable Design Guidelines.

4.6 Variances. Subject to the provisions of the Design Guidelines, the Design Review Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in Article IV of this Declaration or in the Design Guidelines or in any Neighborhood Declaration or in any Supplemental Declaration, if the Design Review Board determines in its discretion (a) either (i) that a restriction would create an unreasonable hardship or burden on an Owner which hardship is not self imposed by such Owner or (ii) that a change of circumstances since the date this Declaration is Recorded has rendered such restriction obsolete and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners and Residents of Empire Pass and is consistent with the high quality of life intended for Owners and Residents of Empire Pass.

4.7 Business Activities Conducted Within Dwelling Units. Business activities conducted within a Dwelling Unit shall neither change the Residential Use of such Dwelling

Unit into a Commercial Use nor exempt such Dwelling Unit from Annual Assessments or Special Assessments under this Declaration.

ARTICLE V
ORGANIZATION OF MASTER ASSOCIATION

5.1 Formation of Master Association. The Master Association shall be a Utah nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 Board of Directors and Officers. The affairs of the Master Association shall be conducted by a Board of at least three (3) directors and such officers, as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The initial Board shall be composed of three (3) directors appointed by Declarant, which initial Board shall be controlled by Declarant until conversion of the Class B Memberships to Class A Memberships pursuant to Section 6.4. The Board may also appoint various committees and may appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Master Association. The Board shall determine the compensation to be paid to the Manager. The Board's responsibilities shall include, but shall not be limited to, the following:

5.2.1 administration, including administrative support as required for the Design Review Board;

5.2.2 preparing and administering an operational budget;

5.2.3 establishing and administering an adequate reserve fund;

5.2.4 scheduling and conducting the annual meeting and other meetings of the Voting Members;

5.2.5 collecting and enforcing the Assessments and the Maintenance Charges;

5.2.6 accounting functions and maintaining records;

5.2.7 promulgation and enforcement of the Empire Pass Rules;

5.2.8 maintenance of the Community Areas; and

5.2.9 all the other duties imposed upon the Board pursuant to the Governing Documents, including enforcement thereof.

The Board shall not, however, be responsible for those duties and areas of operation specifically designated under the Governing Documents as the responsibility of the Design Review Board.

5.3 Empire Pass Rules. By a majority vote, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Empire Pass Rules. The Empire Pass Rules may restrict and govern the use of any area of Empire Pass by any Member or Resident, by the family of such Member, or by any invitee, licensee or tenant of such Member; provided, however, that the Empire Pass Rules shall not discriminate among Members and shall be consistent with the Governing Documents.

5.3.1 Notwithstanding any provision in this Declaration to the contrary, no rule, regulation or action of the Master Association, Board or Manager shall: (i) interfere with the reasonable use, enjoyment or operation of any Private Amenity; or (ii) unreasonably impede Declarant's right to develop the Property.

5.3.2 ALL OWNERS ARE GIVEN NOTICE THAT THE USE OF THEIR LOT, UNIT OR PARCEL AND THE COMMUNITY AREAS IS LIMITED BY THE EMPIRE PASS RULES AS AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME TO TIME. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF HIS OR HER LOT, UNIT OR PARCEL CAN BE AFFECTED BY THIS PROVISION AND THAT THE EMPIRE PASS RULES MAY CHANGE FROM TIME TO TIME. ALL PURCHASERS OF LOTS OR UNITS ARE ON NOTICE THAT THE BOARD MAY ADOPT CHANGES TO THE EMPIRE PASS RULES FROM TIME TO TIME. COPIES OF THE CURRENT EMPIRE PASS RULES MAY BE OBTAINED FROM THE MASTER ASSOCIATION.

5.4 Personal Liability. No director or member of any committee of the Master Association (including but not limited to the Design Review Board), no officer of the Master Association and no Manager or other employee of the Master Association shall be personally liable to any Member or to any other person, including the Master Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Master Association, the Board, the Manager, any representative or employee of the Master Association or any committee, committee member or officer of the Master Association; provided, however, the limitations set forth in this Section 5.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5 Sub-Associations. Prior to such time as a Sub-Association is formed by a Merchant Builder developing a Parcel or subdivision at Empire Pass, the articles of incorporation and bylaws or other governing documents for such Sub-Association must be approved by the Declarant so long as it holds a Class B Membership, by the Master Association and by the Design Review Board. The governing documents for such Sub-Association shall specify that the rights of its members are subject and subordinate to the provisions of the Governing Documents.

5.6 Professional Management. The Master Association may carry out through the Manager those of its functions which are properly subject to delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Master Association, shall be responsible for managing Empire Pass for the benefit of the Master Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Master Association, be authorized to perform any of the functions or acts

required or permitted to be performed by the Master Association itself. Subject to the provisions of the Development Agreements, any such management agreement may be terminated by the Declarant without cause at any time while the Class B Membership as described in Section 6.4 exists. In addition, subject to the provisions of the Development Agreements, any such management agreement may be terminated by the Master Association without cause upon giving reasonable notice at any time after the termination of such Class B Membership. The above termination provisions shall not apply to any other types of service contracts.

5.7 Implied Rights. The Master Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Master Association may be exercised by the Board without a vote of the Voting Members. The Board may institute, defend, settle, or intervene on behalf of the Master Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Community Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty of the Board to institute litigation on behalf of or in the name of the Master Association or its Members. In exercising the Master Association's rights and powers, making decisions on behalf of the Master Association, and conducting the Master Association's affairs, Board directors shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Articles and Bylaws. All final decisions of the Board shall be nonappealable.

ARTICLE VI
MEMBERSHIPS AND VOTING

6.1 Owners of Lots, Units and Parcels. Every Person who is the Owner of Assessable Property shall be subject to Annual Assessments and Special Assessments and shall be a Member of the Master Association (provided, however, the Declarant and each Merchant Builder shall remain a Member of the Master Association at all times as a Class B Member with voting rights, notwithstanding its temporary exemption status from required Assessment payments). Each such Owner of a Lot or Unit that is subject to Annual Assessments and Special Assessments shall have one Class A Membership for each separate Lot or Unit owned by such Owner. Each such Owner of a Parcel that is subject to Annual Assessments and Special Assessments designated for development as a Residential Area but as to which a Plat has not been recorded, shall have one Membership for each Lot or Unit permitted upon the Parcel under the Master Land Use Plan then in effect, the number of such Lots or Units to be determined on the assumption that the number of Lots or Units within a density classification on the Master Land Use Plan will be spread evenly over all land within the density classification. If a site plan for the Parcel is subsequently approved by the Declarant, the Design Review Board and the Municipal Authority for a number of Lots or Units different than the number of Lots or Units assumed pursuant to the Master Land Use Plan, the number of Memberships will be adjusted, as to the portion of the Parcel covered by the site plan and effective as of the date of adjustment, to reflect the actual number of Lots or Units authorized by the approved site plan.

6.1.1 No Owner of a Lot, Unit or Parcel designated as a General Commercial Area or as a Commercial Condominium Development shall have any Membership by virtue of such ownership but shall nevertheless be subject to the Governing Documents.

6.1.6 There shall be no fractional Memberships, and each Owner shall have at least one Membership.

6.1.7 No Memberships shall be allocated to Community Areas, Exempt Property (except as otherwise provided regarding Declarant and Merchant Builders), property utilized for a Church Use, Private Amenity or other General Public Uses.

6.1.8 Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot, Unit or Parcel to which the Membership is attributable. All Memberships shall be shared by any joint Owners of, or Owners of undivided interests in a Lot, Unit or Parcel.

6.2 Tenants. Tenants or lessees of Rental Apartments shall not be Members of the Master Association. The Owner of Rental Apartments shall have one Membership for each Dwelling Unit, unless such Dwelling Unit constitutes Affordable Housing.

6.3 Declarant. The Declarant shall be a Member of the Master Association with voting rights for so long as the Declarant holds a Class B Membership pursuant to Section 6.4.

6.4 Voting. The Master Association shall have two classes of voting Memberships:

6.4.1 Class A Memberships shall be all Memberships except the Class B Memberships held by the Declarant and the Merchant Builders. Each Owner shall be entitled to one (1) vote, by and through the applicable Voting Member, for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof. Notwithstanding the foregoing, no vote shall be cast or counted for any Class A Membership not subject to Assessment. Except as otherwise set forth in this Declaration, all matters requiring a vote of the Membership shall require the vote of both the Class A Membership and the Class B Membership.

6.4.2 The Class B Memberships shall be held only by the Declarant, any successor of Declarant and any Merchant Builder that takes title to any Parcel for the purpose of development and sale and who is designated as such in a Recorded instrument executed by Declarant, until converted pursuant to this Section 6.4. The Declarant shall initially be entitled to 550 votes; this number shall be decreased by one (1) vote for each Class A Membership existing at any one time. This number shall be increased by the appropriate number of votes allocated to any Additional Land added to Empire Pass by Declarant pursuant to Article XVI. The Class B Memberships shall cease and shall be converted to Class A Memberships, on the basis of the number of Lots, Units and/or Parcels owned by the Declarant and by Merchant Builders, on the happening of the first of the following events:

6.4.2.1 When the total votes outstanding in the Class A Memberships equal or exceed 413 votes, which number shall be increased by an amount equal to 75% of the total votes allocated by Declarant to any Additional Land; or

6.4.2.2 Twenty-five (25) years from the date the Original Declaration was Recorded; or

6.4.2.3 when, in its discretion, the Declarant so determines as to all or any portion of the Class B Memberships including, without limitation, Class B Memberships held by any Merchant Builder.

6.4.3 From and after the happening of such events, whichever occurs first, the Class B Member shall be deemed to be a Class A Member entitled to the Memberships and votes on the same basis as Owners as set forth in Section 6.1 hereof. Upon the happening of an event described in Sections 6.4.2.1, 6.4.2.2 or 6.4.2.3, or at such time as Declarant determines to convert all Class B Memberships, the Declarant shall advise the Membership of the termination of any Class B Membership status.

6.4.4 The sale in one transaction of an unimproved Parcel or a group of five or more Lots or Units by the Declarant to a Merchant Builder, who is in the business of subdividing and/or building Dwelling Units for sale to individual home purchasers shall not convert the Class B Memberships attributable to that Parcel or those Lots or Units to Class A Memberships; provided, however, that any other sale of a Lot, Unit or Parcel to a Person other than to a Merchant Builder shall convert the Membership(s) attributable to that Lot, Unit or Parcel to Class A Membership(s).

6.4.5 Until such time as all of the Class B Memberships are converted to Class A Memberships, each Member of the Class B Membership other than Declarant shall be conclusively presumed, by accepting the conveyance of a Lot's/Unit's or Parcel's legal title from Declarant or another Member of the Class B Membership, to have (i) given Declarant an irrevocable and exclusive proxy to cast such Class B Member's votes on each question coming before the Membership while such Class B Member holds such title; and (ii) agreed with Declarant that such proxy is given to and relied on by Declarant in connection with Declarant's sale or conveyance of such Lots, Units or Parcel to such Class B Member, and in connection with Declarant's development, construction, marketing, sale and leasing of Empire Pass or the Additional Land, and is coupled with an interest.

6.4.6 Until such time as all of the Class B Memberships are converted to Class A Memberships, the Declarant, as holder of the right to vote the Class B Memberships, shall have the sole right to appoint a majority of the Directors as provided in this Declaration.

6.4.7 Except as otherwise expressly provided in this Declaration or in any of the other Governing Documents, any issue put to a vote by ballot without a meeting or at a duly called meeting of Voting Members at which a quorum is present shall be decided by a simple majority of all votes represented in person or by valid proxy at such meeting,

regardless of whether such votes are otherwise deemed to be Class A votes or Class B votes.

6.5 Exercise of Voting Rights. Except as otherwise specified in this Declaration or the Bylaws, the vote and/or approval attributable to each Lot or Unit owned by a Class A Member shall be exercised by a Voting Member representing the Neighborhood of which the Lot or Unit is a part, as provided in Section 6.6. The Voting Member may cast all such votes or approvals as it has been directed by a majority of the votes or approvals of Members such Voting Member represents. EACH MEMBER IS HEREBY GIVEN NOTICE THAT NO MEMBER SHALL HAVE THE RIGHT TO EXERCISE SUCH MEMBER'S VOTE OR OTHER APPROVAL DIRECTLY ON MASTER ASSOCIATION MATTERS AND MAY ONLY EXERCISE SUCH MEMBER'S VOTE OR APPROVAL ON MASTER ASSOCIATION MATTERS THROUGH THE APPLICABLE VOTING MEMBER REPRESENTING THE NEIGHBORHOOD OF WHICH THE MEMBER'S LOT OR UNIT IS A PART.

6.6 Neighborhoods, Voting Members and Voting Groups.

6.6.1 Neighborhoods. Every Lot, Unit and Parcel shall be located within a Neighborhood (as designated by Declarant or by the Board following the conversion of all Class B voting Memberships to Class A voting Memberships) and shall be subject to a Neighborhood Declaration or Supplemental Declaration including any assessment provisions contained therein. In the discretion of the Owner(s) and developer(s) of each Neighborhood, the Lots, Units and Parcels within a particular Neighborhood may be subject to additional covenants and/or the Owners of Lots, Units may all be required to be members of a Sub-Association in addition to being Members of the Master Association. Each amendment to this Declaration filed to subject Additional Land to this Declaration shall initially assign the property described therein to a specific Neighborhood by name, which Neighborhood may be then existing or newly created. Declarant (or the Board following the conversion of all Class B voting Memberships to Class A voting Memberships) may unilaterally amend this Declaration or any amendment to this Declaration to redesignate Neighborhood boundaries.

6.6.2 Voting Members. The Class A Members within each Neighborhood shall elect one Voting Member for each 20 Class A Memberships within the Neighborhood (rounded to the nearest integral multiple of 20). Each Neighborhood shall have at least one Voting Member. For example, if there were 1 to 30 Class A Memberships in a Neighborhood there would be one Voting Member. If there were 31 to 50 Class A Memberships in a Neighborhood, there would be two Voting Members. On all Master Association matters requiring a Membership vote, each such Voting Member shall be entitled to cast that number of votes determined by dividing the total number of Class A votes attributable to Memberships in such Neighborhood by the number of Voting Members elected from such Neighborhood, except as otherwise specified in this Declaration or the Bylaws. The Class A Members within each Neighborhood shall also elect one or more alternate Voting Members to be responsible for casting such votes in the absence of a Voting Member.

6.6.2.1 The Voting Member(s) and alternate Voting Member(s) from each Neighborhood shall be elected on an annual basis, either by written ballot or at a meeting of the Class A Members within such Neighborhood, as the Board determines; provided that, upon written petition of the Class A Members holding at least 10 percent of the votes attributable to Memberships within any Neighborhood, the election for such Neighborhood shall be held at a meeting. The presence, in person or by proxy, of Class A Members representing at least thirty percent (30%) of the total Class A votes attributable to Memberships in the Neighborhood shall constitute a quorum at any Neighborhood meeting.

6.6.2.2 The Board shall call for the first election of the Voting Member(s) and alternate Voting Member(s) from a Neighborhood not later than 18 months after the first conveyance of a Lot, Unit or Parcel in the Neighborhood to a Person other than Declarant or a Merchant Builder. Subsequent elections shall be held within thirty (30) days of the same date each year or at any other time during the year as reasonably determined by the Neighborhood governing board or by the Neighborhood Class A Members. Each Class A Member shall be entitled to cast one (1) equal vote for each Membership which it owns in the Neighborhood for each Voting Member position that is to be elected at such election. The candidate for each Voting Member position who receives the greatest number of votes shall be elected to serve a term of one year and until a successor is elected. Any Owner of a Lot, Unit or Parcel in the Neighborhood may submit nominations for election or declare himself or herself a candidate in accordance with procedures which the Board shall establish.

6.6.2.3 Any Voting Member may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the total number Memberships owned by Class A Members in the Neighborhood which such Voting Member represents.

6.6.2.4 In any situation in which a Member is entitled personally to exercise the vote for his or her Lot or Unit and there is more than one Owner of a particular Lot or Unit, the vote for such Lot or Unit shall be exercised as such co-Owners determine among themselves and as they then advise the Voting Member(s) for the Neighborhood in which such Owners' Lot, Unit or Parcel is located. Absent such advice, the Lot's or Unit's vote shall be suspended if more than one Person seeks to exercise it.

6.6.3 Voting Groups. The Declarant (or the Board following the conversion of all of the Class B voting Memberships to Class A voting Memberships) may designate Voting Groups consisting of one or more Neighborhoods for the purpose of electing the Board, in order to promote representation on the Board for various groups having dissimilar interests and to avoid a situation in which the Voting Members representing similar Neighborhoods are able, due to the number of Memberships in such Neighborhoods, to elect the entire Board, excluding the representation of other Neighborhoods. Following termination of the Class B Memberships, the number of Voting Groups within Empire Pass shall not exceed the total number of Board members

to be elected by the Class A Members pursuant to the Bylaws. The Voting Members representing the Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of Board members specified in the Bylaws.

6.6.3.1 The Declarant shall establish Voting Groups, if at all, not later than the date of termination of all of the Class B Memberships by filing with the Master Association and Recording in the Office of the Recorder of Summit County, Utah, and/or Wasatch County, Utah, as applicable, a Supplemental Declaration identifying the Neighborhoods within each Voting Group. Such designation may be amended from time to time by the Declarant, acting alone, at any time prior to the termination of all of the Class B Memberships by Recording an amendment to the Supplemental Declaration.

6.6.3.2 After the termination of all of the Class B Memberships, the Board shall have the right to amend the Voting Group designation upon the vote of a majority of the total number of Board members by Recording an amendment to the Declaration which shall not require the consent or approval of any Person except as stated in this paragraph. Until such time as Voting Groups are established, all of Empire Pass shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been filed, any and all portions of Empire Pass which are not assigned to a specific Voting Group shall constitute a single Voting Group.

6.7 Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Governing Documents, as the same may be amended from time to time.

6.8 Transfer of Membership. The rights and obligations of the Owner of a Class A Membership in the Master Association shall not be assigned, transferred, pledged, designated, conveyed or alienated in any way except upon Transfer of ownership to an Owner's Lot, Unit or Parcel and then only to the Transferee of ownership to such Lot, Unit or Parcel. A Transfer of ownership to a Lot, Unit or Parcel may be effected by Deed, intestate succession, testamentary disposition, foreclosure of a Mortgage or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Utah. Any attempt to make a prohibited Transfer shall be void. Any Transfer of ownership to a Lot, Unit or Parcel shall operate to transfer the Membership(s) appurtenant to said Lot, Unit or Parcel to the new Owner thereof.

ARTICLE VII
COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

7.1 Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. Except as otherwise provided in Sections 7.5 and 7.12, the Declarant, for each Lot, Unit and Parcel hereafter established within Empire Pass, hereby covenants and agrees, and each Owner by acceptance of a Deed or other conveyance of a Lot, Unit or Parcel (whether or not it shall be so expressed in such Deed or conveyance) is deemed to covenant and agree, to pay to

the Master Association the following assessments and charges: (1) Annual Assessments established by this Article VII; (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII; (3) Maintenance Charges established by Sections 10.2 and 10.3; and (4) Transfer Assessments established under Section 7.15. Notwithstanding the foregoing sentence and notwithstanding any other provisions in this Declaration to the contrary, Exempt Property shall not be subject to assessments and charges from the Master Association for Annual Assessments or for Special Assessments. However, Exempt Property shall be subject to assessments and charges for Maintenance Charges and Transfer Assessments. All Assessments shall be established and collected as hereinafter provided. No diminution or abatement of Annual Assessments, Special Assessments, Maintenance Charges or Transfer Assessments nor any decrease, offset, deduction or set-off shall be claimed or allowed by reason of any alleged failure of the Master Association or Board to take some action or to perform some function required to be taken or performed by the Master Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Master Association, or from any action taken by the Master Association or the Board to comply with any law, ordinance, or with any order or directive of any Municipal Authority or other governmental authority. The obligation to pay Assessments and Maintenance Charges shall be deemed to be a separate and independent covenant on the part of each Owner of Assessable Property. The Annual Assessments, Special Assessments, Maintenance Charges and Transfer Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot, Unit or Parcel and shall be a continuing servitude and lien upon the Lot, Unit or Parcel against which each such Assessment or Maintenance Charge is made, except that Exempt Property shall not be subject to the Annual Assessments and the Special Assessments. Each such Annual Assessment, Special Assessment, Maintenance Charge and Transfer Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of the Lot, Unit or Parcel at the time when the Assessment or Maintenance Charge fell due. Except for the Transfer Assessment, the personal obligation for delinquent Assessments and for Maintenance Charges shall not pass to the successors in title of the Owner, unless expressly assumed by them. However, the lien upon the applicable Lot, Unit or Parcel for any unpaid Assessments or Maintenance Charges existing at the time of any Transfer shall continue, notwithstanding such Transfer, until the Assessments or Maintenance Charges have been paid in full.

7.2 Property Assessable Upon Recording of Deed. ALL OWNERS ARE GIVEN NOTICE THAT THEIR LOT(S)/UNIT(S) AND/OR PARCEL(S) SHALL BE SUBJECT TO FULL ASSESSMENT IN ACCORDANCE WITH THE TERMS OF THIS DECLARATION UPON ACCEPTANCE OF A DEED, REGARDLESS OF WHETHER OR NOT SUCH LOT(S)/UNIT(S) AND/OR PARCEL(S) HAVE BEEN IMPROVED, EXCEPT AS OTHERWISE PROVIDED IN THIS MASTER DECLARATION. At the time a Deed is Recorded conveying a Lot, Unit or Parcel to an Owner, such Lot or Unit shall thereupon be subject to the Assessments and Maintenance Charges, and the Board shall levy such Assessment or Maintenance Charge upon the Owner of the Lot, Unit or Parcel within 30 days after the Recording of such Deed. If applicable, the Annual Assessment and/or any Special Assessment shall be prorated for the remaining portion of the assessment year. In any dispute, question of controversy regarding whether property is Assessable Property or Exempt Property, the Board shall have the exclusive power and authority to decide such dispute, question or controversy and

any decision regarding the foregoing shall be conclusive and binding on all interested parties. All final decisions of the Board regarding the foregoing shall be nonappealable.

7.3 Annual Assessments. Annual Assessments shall be computed and assessed against all Lots, Units and Parcels (other than Exempt Property) as follows:

7.3.1 Community Expense. Annual Assessments shall be based upon advance estimates of the Master Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance, improvement and operation of the Community Areas (including capital repairs and replacements), fulfilling the Master Association's obligations under the Maintenance Agreement and operating the Master Association. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and assessments (unless and until the Lots, Units and Parcels are separately assessed); premiums for all insurance that the Master Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Master Association employees, including fees for a Manager; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Community Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Master Association under or by reason of this Declaration and the Development Agreements. Such shall constitute Community Expenses, and all funds received from Annual Assessments under this Section 7.3.1 shall be part of the Community Expense Fund.

7.3.2 Apportionment. Community Expenses shall be apportioned among and assessed to the Members in accordance with Section 7.4.

7.3.3 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin as provided in Section 7.8, and on or before November 1 of each year thereafter, the Board shall prepare and make available to each Member, or cause to be prepared and to be made available to each Member, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Community Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Master Association shall be operated during such annual period.

7.3.4 Notice and Payment. Except with respect to the first fiscal year, the Board shall notify each Member in writing as to the amount of the Annual Assessment against his or her Lot, Unit or Parcel on or before December 1 each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Board, each Annual Assessment shall be payable in equal monthly, quarterly or annual installments as determined by the Board in its sole discretion; provided, however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first fiscal year that remains after the notice of the Annual Assessment becomes effective. The Members

shall commence payment of the full monthly Assessments against their respective Lots, Units or Parcels upon conveyance to any Member of the first Lot, Unit or Parcel in Empire Pass. All unpaid installments of any Annual Assessment shall bear interest at the rate established by the Board, not to exceed eighteen percent (18%) per annum, from and after fifteen (15) days after the date each such installment became due until paid, and the Member shall be liable for late fees as determined by the Board, and all costs, including attorneys' fees incurred by the Master Association in collecting the same. In addition, in the event that any installment of the Annual Assessment is not paid within fifteen (15) days of the date such installment becomes due, the Master Association may, at its option, and upon fifteen (15) days prior written notice to the Member, accelerate the due date for all remaining unpaid installments of the Annual Assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the Annual Assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period, and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Board to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Member from the obligation to pay such Assessment or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such Assessment shall have been given to the Member in the manner provided in this Declaration.

7.3.5 Inadequate Funds. In the event that the Community Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Member's Assessment, the Board may, on behalf of the Master Association, levy additional Special Assessments in accordance with the procedure set forth in Section 7.6 below, except that the vote therein specified shall be unnecessary.

7.4 Classification of Assessable Property. The amount of any Annual Assessment or Special Assessment against each Lot, Unit or Parcel (other than Exempt Property) shall be fixed as set forth in this Section. For purposes of fixing the amount of the Annual Assessment or Special Assessment, the Board shall classify each Lot, Unit or Parcel of Assessable Property in one of the following classifications, as such classifications may vary or be adjusted from time to time by the Board in its sole and absolute discretion, without amending this Declaration: (a) detached Dwelling Unit that is built on a separately-platted Lot, which Lot contains a custom-designed and custom-built Dwelling Unit; (b) detached Dwelling Unit that is not included within the immediately preceding classification (a); (c) attached Dwelling Unit within a building containing up to six Dwelling Units; (d) Condominium Unit within a multi-story building containing seven or more Condominium Units; or (e) Rental Apartment within an Apartment Development. The Board shall determine, in its sole and absolute discretion, the amount of the Annual Assessment and any Special Assessment within each of the foregoing classifications of Assessable Property, which classifications may vary or be adjusted from time to time without an amendment of this Declaration, as determined by the Board in its sole and absolute discretion, provided that the Annual Assessment and any Special Assessment shall be equal for each Lot, Unit or Parcel within each classification of Assessable Property. The Board's determination of the criteria for each classification, the Board's determination of the classification of each Lot, Unit and Parcel, and the Board's determination of the amount of the Annual Assessment and

Special Assessment for each classification shall be conclusive upon the Owners and shall be nonappealable under all circumstances. Notwithstanding the foregoing, the initial Annual Assessment shall be no less than $1,000 per Lot, Unit and Parcel of Assessable Property unless or until changed by the Board. The failure of the Board to levy an Annual Assessment for any calendar year shall not be deemed a waiver, modification or release of the Owners' liability for Community Expenses.

7.4.1 Anything in Section 7.4 to the contrary notwithstanding, if, after an Assessment's record date but before the end of the fiscal year for which it is levied, an Assessable Property is added to Empire Pass or a Neighborhood by a Supplemental Declaration or by a Neighborhood Declaration, or an Exempt Property becomes Assessable Property, then each Assessment that would have been levied against such Assessable Property for such fiscal year if it were not Exempt Property (as hereafter reduced) shall be due on the later of (a) the date on which such Assessment would have been due, if such part of Empire Pass had been Assessable Property on such record date, or (b) the date on which such Assessable Property becomes subject to Assessment levy. If an Assessable Property is added to Empire Pass or a Neighborhood as provided for above, the Master Association shall be deemed, automatically and without the need for further action, to have levied against it each Annual Assessment and Special Assessment for such fiscal year which the Master Association has levied against the other Assessable Properties. Each such Assessment levied against such Assessable Property shall be in an amount determined under this Section 7.4 as if it were eligible for such levy on such record date, but then reduced in proportion to the number of days (if any) in such fiscal year elapsed as of (and including) the date on which such Supplemental Declaration is Recorded, or such Exempt Property becomes an Assessable Property, as the case may be.

7.5 Certain Owners Exempt from Annual Assessments and Special Assessments. Notwithstanding Section 7.4, the following Owners shall not have an obligation to pay any Annual Assessment or Special Assessment:

7.5.1 Each Owner of a Private Amenity.

7.5.2 Each Owner of Exempt Property.

7.6 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Master Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Master Association Land or other Community Areas, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that, except as provided in Section 7.3.5 and Section 14.4, any such Special Assessment shall have the assent of at least sixty-seven percent (67%) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose or by written approval of such Members. The provisions of this Section 7.6 are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes. Special Assessments may be collected as specified by the Board, unless otherwise determined the majority vote of the Members of the Master Association approving the

Special Assessment. The vote and/or written approval of the Class A Members under this Section 7.6 shall made by and through the Voting Members.

7.7 Notice and Quorum for Any Action Authorized Under Section 7.6. Written notice of any meeting called for the purpose of taking any action authorized under Section 7.6 shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called for the consideration of a Special Assessment, the presence of Voting Members or of proxies entitled to cast thirty percent (30%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. With respect to the determination of a quorum for Class A Members, Voting Members having the authority to cast thirty percent (30%) of the Class A votes shall constitute a quorum of the Class A Members. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.8 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied ("Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the Recording of the first Neighborhood Declaration or Supplemental Declaration and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by Recording with the County Recorder of Summit County, Utah and/or Wasatch County, Utah, as applicable, an instrument specifying the new Assessment Period.

7.9 Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt Empire Pass Rules setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual Assessments, Special Assessments, Transfer Assessments and the Maintenance Charges, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Master Association to send a bill to a Member shall not relieve any Member of his or her liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than fifteen (15) days written notice prior to the commencement of such foreclosure or enforcement, at the address of the Member on the records of the Master Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. The Master Association shall be under no duty to refund any payments received by it, even though the ownership of a Membership changes during an Assessment Period. Successor Owners of Lots, Units or Parcels shall be given credit for prepayments, on a prorated basis, made by prior Owners. The amount of the Annual Assessment and the Special Assessment against Members who become such during an Assessment Period upon the recordation of a Neighborhood Declaration or Supplemental Declaration shall be prorated.

7.10 Community Expense Fund. The Master Association shall establish and maintain two (2) separate and distinct funds, one for the periodic regular maintenance and repair of Empire Pass and for other routine operating expenses and one for capital expenses and the

replacement of Improvements to the Community Areas the Master Association may be obligated to maintain, repair or replace. These two (2) funds shall be maintained out of Annual Assessments and Special Assessments for Community Expenses which two funds together shall constitute the Community Expense Fund.

7.11 Evidence of Payment. Upon receipt of a written request by a Member or any other Person, the Master Association within a reasonable period of time thereafter shall issue to such Member or other Person a written certificate stating (a) that all Annual Assessments, Special Assessments, Transfer Assessments and Maintenance Charges (including interest, costs and attorneys' fees, if any, as provided in Section 7.3.4 and Section 10.3) have been paid with respect to any specified Lot, Unit or Parcel as of the date of such certificate, or (b) if all Annual Assessments, Special Assessments, Transfer Assessments and Maintenance Charges have not been paid, the amount of such Annual Assessments, Special Assessments, Transfer Assessments and Maintenance Charges (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Master Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Lot, Unit or Parcel in question.

7.12 Property Exempted from the Annual Assessments and Special Assessments. All Exempt Property shall be exempt from Annual Assessments, Special Assessments (and any related Park City Assessments) and Membership in the Master Association (provided, however, the Declarant, a Declarant related entity or a Merchant Builder shall remain a Member in the Master Association at all times as a Class B Member with voting rights, notwithstanding its temporary exemption status from required Annual Assessments and Special Assessment payments) and its associated privileges and responsibilities, but shall nevertheless be subject to all other provisions of this Declaration, including but not limited to, the use restrictions and architectural controls. Provided, however, at the sole and exclusive option of Declarant, property described in Section 1.41.1 shall be fully exempt from all of the terms and provisions of this Declaration. Exempt Property shall not be exempt from the Maintenance Charges and the Transfer Assessments, from attorneys' fees, costs, expenses and interest as described in Section 7.3.4 and Section 10.3, or from the Assessment Lien to secure said amounts; provided, however, that in the event any change of ownership or use of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual and Special Assessments (prorated as of the date it became Assessable Property) and the associated Assessment Lien.

7.13 Declarant's Duty to Fund Deficits. During any fiscal year in which Declarant or a Declarant related developer entity owns one or more Lots, Units or Parcels which (under Section 1.41 of the definition of Exempt Property) are Exempt Properties due to such Person's ownership thereof, and which would not constitute Exempt Properties under any other part of such definition, Declarant shall be obligated to fund to or for the account of the Master Association, at such time or times as such funding is reasonably required by the Master Association during such fiscal year, an aggregate amount for such fiscal year equaling the lesser of (i) the total amount which Declarant and/or such Declarant related developer entity would have owed to the Master Association on account of any Annual Assessments and Special Assessments which, if such

Exempt Properties had been Assessable Properties, would have been levied against them for such fiscal year, or (ii) any excess, for such fiscal year, of the Community Expenses over the aggregate Annual Assessments and Special Assessments levied against all Assessable Properties in Empire Pass and the portion of the Transfer Assessments retained by the Master Association for the payment of Community Expenses. Notwithstanding the foregoing, Declarant shall have no obligation to fund to or for the account of the Master Association any amounts under this Section 7.13 after such time as the Class B Memberships are converted to Class A Memberships.

7.14 Declarant Funding Options. Declarant shall be entitled to meet its funding obligations under Section 7.13 by making, or (if such Person so agrees in writing) causing any Declarant related developer entity, Merchant Builder or other Person to make on its behalf, one or more cash payments or in-kind contributions of goods or services, or any combination thereof, and the Master Association shall have the right to enter into written or oral contracts with Declarant or a Declarant related developer entity or Merchant Builder for the contribution of such goods or services for such purpose. Except for the limitations set forth in Article VII, nothing in this Section 7.14 or elsewhere in this Declaration shall be deemed to impose on the Master Association (or Declarant) any duty whatsoever to refrain from increasing (or from causing the Master Association to increase) the Annual Assessments from fiscal year to fiscal year, or from levying Special Assessments, all to the extent otherwise permitted by this Declaration.

7.15 Open Space and Transit Management Fund. Section 3.2 of the Development Agreement requires the assessment of an open space/transit management fee which fee is defined in this Declaration as the Transfer Assessment. All Transfer Assessments shall belong to the Master Association to reduce the Annual Assessments, Special Assessments or Maintenance Charges and/or to enhance the Master Association's services to its Members. Notwithstanding the foregoing, the Master Association shall pay to Park City a portion of each Transfer Assessment not to exceed the Gross Sales Price of the Lot, Unit or Parcel multiplied by one-half of one-percent (0.5%) to assist Park City in funding the costs and expenses for enhanced transportation for Empire Pass, recreation improvements and/or open space acquisition, maintenance and preservation as provided in Section 3.2 of the Development Agreement. This Section 7.15 shall run with the Property and shall be binding upon and inure to the benefit of Declarant, the Master Association, all Owners and Residents and their respective successors and assigns.

7.15.1 Upon the occurrence of a Transfer, the Transferee under such Transfer shall pay to the Master Association the Transfer Assessment. Each Owner shall be obligated to pay and shall pay to the Master Association the Transfer Assessment levied with respect to such Owner's Lot, Unit or Parcel, and each Owner shall comply with any determinations made by the Board with respect to such Transfer Assessments.

7.15.2 Each Transferor shall provide written notice to the Master Association of a proposed Transfer of a Lot, Unit or Parcel at least 15 days prior to the date of the Transfer. Such notice shall include the name and address of the Transferee, the Consideration to be given by the Transferee, the closing date, a statement of the nature of the Transfer including, without limitation whether the Transfer is a sale or lease and the

terms thereof, and such other information as the Master Association may thereafter request.

7.15.3 All Transfer Assessments to be levied shall be levied at the time of a Transfer and shall be payable on the date of the closing of the Transfer ("Transfer Assessment Levy Date"), and each Transfer Assessment not paid within 10 days of the Transfer Assessment Levy Date, shall accrue interest until fully paid at five percent (5%) per annum over the rate of interest announced from time to time by Zions First National Bank, a national banking association, as its "prime rate" for commercial loans; such interest shall be payable on demand, computed monthly, and if unpaid, compounded monthly, not in advance, at the rate so calculated as of ten (10) days after the Transfer Assessment Levy Date, and all accruing interest shall become a part of the Transfer Assessment due and owing to the Master Association.

7.16 Right to Assess Sub-Associations. Notwithstanding any provision of this Declaration, the Master Association shall have the right to directly assess each Sub-Association for all Assessments and Maintenance Charges otherwise assessable to the Owners of such Sub-Associations.

ARTICLE VIII
ENFORCEMENT OF PAYMENT OF ASSESSMENTS AND MAINTENANCE CHARGES AND ENFORCEMENT OF ASSESSMENT LIEN

8.1 Master Association as Enforcing Body. Except as otherwise set forth in this Declaration, the Master Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration.

8.2 Master Association's Enforcement Remedies. If any Member fails to pay the Assessments or installments when due, or to pay Maintenance Charges, the Master Association may enforce the payment of the Assessments, Maintenance Charges and/or Assessment Lien by taking one or more of the following actions, concurrently or separately (and by exercising any of the remedies hereinafter set forth, the Master Association does not prejudice or waive its right to exercise any other remedy):

8.2.1 Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments or the Maintenance Charges;

8.2.2 Foreclose the Assessment Lien against the Lot, Unit or Parcel in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency), the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Chapter 1, Title 38, Utah Code Annotated, as amended from time to time, or any other means permitted by law, and the Lot, Unit or Parcel may be redeemed after foreclosure sale, if provided by law. In order to facilitate the foreclosure of any such lien in the manner provided at law for the foreclosure of deeds of trust, Declarant hereby designates Coalition Title Agency, Inc., a Utah corporation having an office in Park City, Utah as trustee ("Trustee") and grants and conveys the

Property, IN TRUST, to Trustee, as trustee with full power of sale, to foreclose any such liens as directed by the Board. The Board may, at any time, designate one or more successor trustees, in the place of Trustee, in accordance with the provisions of Utah law for the substitution of trustees under deeds of trust. Such Trustee, and any successors, shall not have any other right, title or interest in the Property beyond those rights and interests necessary and appropriate to foreclose any liens against Lots, Units or Parcels arising pursuant hereto. In any such foreclosure, the Owner of the Lot, Unit or Parcel being foreclosed shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Master Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots, Units or Parcels purchased at such sale.

8.2.3 Notwithstanding the subordination of an Assessment Lien as described in Section 8.3, the delinquent Member shall remain personally liable for the Assessments and the Maintenance Charges and related costs after his or her Membership is terminated by foreclosure or Deed in lieu of foreclosure or otherwise.

8.3 Priority of Lien. The Assessment Lien provided for herein shall be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided and except as provided in Section 17.5, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot, Unit or Parcel. The sale or transfer of any Lot, Unit or Parcel shall not affect the Assessment Lien, except as provided in Section 17.5.

8.4 Attorneys' Fees and Costs. In any action taken pursuant to Section 8.2, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual Assessments, the Special Assessments, the Transfer Assessments and the Maintenance Charges together with the Master Association's collection costs and attorneys' fees, including those costs, fees and interest specified in Section 7.3.4 and Section 10.3.

ARTICLE IX
USE OF FUNDS; BORROWING POWER; OTHER MASTER ASSOCIATION DUTIES

9.1 Purposes for Which Master Association's Funds May Be Used. The Master Association shall apply all funds and property collected and received by it (including the Annual Assessments, Special Assessments, Transfer Assessments, Maintenance Charges, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Empire Pass and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of all land, properties, Improvements, facilities, services, projects, programs, studies and systems, within Empire Pass, which may be necessary, desirable or beneficial to the general common interests of Empire Pass, the Members and the Residents. The following are some, but not all, of the areas in which the Master Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents; maintenance of landscaping on Community Areas

and public right-of-way and drainage areas within Empire Pass; fulfilling the Master Association's obligations under the Maintenance Agreement; recreation; insurance; communications; ownership and operation of vehicle storage areas; transportation; health; utilities; public services; safety and indemnification of officers and directors of the Master Association, the Design Review Board, and any other committees created by the Master Association; and compliance with the Development Agreements and any other Governing Document. The Master Association also may expend its funds as otherwise permitted under the laws of the State of Utah.

9.2 Borrowing Power. The Master Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate as determined by the Board without a vote of the Members.

9.3 Master Association's Rights in Spending Funds From Year to Year. The Master Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, Transfer Assessments, Maintenance Charges, fees or otherwise), and may carry forward as surplus any balances remaining. The Master Association shall not be obligated to reduce the amount of Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Master Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Master Association and the accomplishment of its purposes.

ARTICLE X
MAINTENANCE

10.1 Community Areas and Public Right-of-Way. The Master Association, or its duly delegated representative, shall maintain and otherwise manage all Community Areas, including, but not limited to, the landscaping, walkways, riding paths, parking areas, drives, recreational facilities and the roofs, interiors and exteriors of the buildings and structures located upon said properties; provided, however, the Master Association shall not be responsible for providing or maintaining the landscaping or structures on any Community Areas which are part of Lots, Units or Parcels unless (i) such landscaping or structures are available for use by all Owners and Residents or are within easements intended for the general benefit of Empire Pass and (ii) the Master Association assumes in writing the responsibility as set forth in a Recorded instrument as hereinafter provided. The Master Association shall also maintain any landscaping and other Improvements not on Lots, Units and Parcels which are within the exterior boundaries of Empire Pass, which are within areas shown on a Plat or other plat of dedication for Empire Pass or covered by a Neighborhood Declaration or Supplemental Declaration and which are intended for the general benefit of the Owners and Residents of Empire Pass, except that the Master Association shall not (except by separate agreement) be obligated to maintain areas which (i) are owned by a Municipal Authority, (ii) a Sub-Association is required under a Neighborhood Declaration or Supplemental Declaration to maintain, or (iii) are to be maintained by the Owners of a Lot, Unit or Parcel pursuant to Section 4.2.4 of this Declaration. Specific areas to be maintained by the Master Association may be identified on Plats Recorded or approved by the Declarant, in Neighborhood Declarations, Supplemental Declarations and in Deeds from the Declarant to a transferee of a Lot, Unit or Parcel, but the failure to so identify such areas shall

not affect the Master Association's rights or responsibilities with respect to such Community Areas and other areas intended for the general benefit of Empire Pass. Notwithstanding anything to the contrary herein, the Board shall have discretion to enter into an agreement with a Municipal Authority to permit the Master Association to upgrade and/or maintain landscaping or other improvements on property owned by a Municipal Authority, if such property is within Empire Pass, if the Board determines such agreement benefits the Master Association.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property. In this regard the Master Association may, subject to any applicable provisions on Special Assessments, in the discretion of the Board:

10.1.1 Reconstruct, repair, replace or refinish any Improvement or portion thereof upon Master Association Land;

10.1.2 Maintain (including snow removal therefrom), construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of the Community Areas used as a road, street, walk, driveway or parking area;

10.1.3 Replace injured and diseased trees and other vegetation in any Community Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

10.1.4 Place and maintain upon any Community Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof; and

10.1.5 Do all such other and further acts which the Board deems necessary to preserve and protect the Community Areas and the beauty thereof, in accordance with the general purposes specified in this Declaration.

10.1.6 The Board shall be the sole judge as to the appropriate maintenance of all Community Areas and other properties maintained by the Master Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

10.1.7 In the event any Plat, Neighborhood Declaration, Supplemental Declaration, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots, Units or Parcels will be responsible for maintenance of certain Community Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Residents of Empire Pass for the Master Association or for an individual Owner or a Sub-Association to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Master Association to contract with others for the performance of the maintenance and other obligations of the Master Association under this Article X, and in order to promote uniformity and harmony of appearance, the Board may also cause the Master Association to contract to provide maintenance services to Sub-Associations or to Owners of Lots, Units and Parcels having such responsibilities in exchange for the

payment of such fees as the Master Association, the Sub-Association or the Owner may agree upon.

10.2 Assessment of Certain Costs of Maintenance and Repair of Community Areas and Public Areas. In the event that the need for maintenance or repair of Community Areas, structures and other property maintained by the Master Association is caused through the willful or negligent act of any Owner or Resident of a Lot, Unit or Parcel, or any family members, guests, invitees or tenants of such Persons, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lot, Unit or Parcel is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot, Unit or Parcel pursuant to Section 10.1 in connection with a contract entered into by the Master Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

10.3 Maintenance and Use of Lots, Units and Parcels. Each Dwelling Unit, Improvement, Lot, Unit and Parcel shall be properly maintained by the Owner so as not to detract from the appearance of Empire Pass and so as not to affect adversely the value or use of any other Dwelling Unit, Improvement, Lot, Unit or Parcel. In the event any portion of any Lot, Unit or Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots, Units and Parcels or other areas of Empire Pass which are substantially affected thereby or related thereto, or in the event any portion of a Lot, Unit or Parcel is being used in a manner which violates this Declaration or any Neighborhood Declaration or any Supplemental Declaration applicable thereto, or in the event the Owner of any Lot, Unit or Parcel is failing to perform any of its obligations under the Governing Documents and standards of the Design Review Board, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to: (i) enter the Lot or Unit and cause such action to be taken, and the cost thereof shall be added to and become a part of the Assessment (including interest at the rate of 18% per annum) to which the offending Owner and the Owner's Lot, Unit or Parcel is subject and shall be secured by the Assessment Lien; (ii) Record a notice of violation in the Office of the County Recorder of Summit County, Utah or the County Recorder of Wasatch County, Utah, as applicable; (iii) impose a fine commensurate with the severity of the violation; and/or (iv) bring an action at law and recover judgment of specific performance and/or damages against the Owner and including costs and attorneys' fees. In any action taken pursuant to this Section 10.3, the Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Master Association's collection costs and attorneys' fees.

10.4 Master Association Obligations Under Maintenance Agreement. Pursuant to the Maintenance Agreement, the Master Association is obligated to Park City to: (a) ensure that certain portions of the Community Areas as described in the Maintenance Agreement are maintained and repaired by the Master Association or the applicable Sub-Associations; (b) establish the Emergency Reserve Account for exclusive use by Park City to fund maintenance,

repairs or corrections undertaken by Park City where the Master Association has failed to do so; (c) maintain property casualty insurance on the bridges and tunnels within Empire Pass; and (d) otherwise perform its obligations and comply with the terms and conditions set forth in the Maintenance Agreement. If the Master Association defaults in its obligations to Park City, Park City, among other rights, shall have the right, but not the obligation, to undertake the maintenance and repair of the portions of the Community Areas described in the Maintenance Agreement and/or to correct certain conditions affecting public health and safety within Empire Pass as described in the Maintenance Agreement. The Master Association shall have the right to assess each Sub-Association and/or the Owners within such Sub-Association for any costs, charges, fees and expenses related to maintenance and repair of Community Areas within such Sub-Association as required by the Maintenance Agreement.

10.4.1 Park City Assessment. If Park City undertakes to maintain and/or repair such Community Areas, Park City shall have the right (on behalf of the Master Association) to assess and levy the Park City Assessment on the Members owning Lots, Units or Parcels (other than Exempt Property). Each Member by acceptance of a Deed or other conveyance of a Lot, Unit or Parcel that is not Exempt Property (whether or not it shall be so expressed in such Deed or conveyance) is deemed to covenant and agree, to pay to Park City the Park City Assessment. The total amount of the Park City Assessment shall not exceed the costs of maintenance and/or repairs undertaken by Park City together with reasonable administrative/overhead costs in an amount not to exceed ten percent. The amount of any Park City Assessment against each Lot, Unit or Parcel (other than Exempt Property) shall be fixed in the same manner as Annual Assessments and Special Assessment are fixed under Section 7.4. Park City shall notify each Member in writing as to the amount of the Park City Assessment against his or her Lot, Unit or Parcel and provide fifteen days for payment of such Park City Assessment. If a Member fails to pay the Park City Assessment, Park City shall have the right but not the obligation to enforce the Park City Assessment against the Members to the same extent as the Master Association may under Section 8.2. In any action taken pursuant to this Section 10.4.1, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Park City Assessment together with interest at the rate of 18% per annum plus Park City's collection costs and attorneys' fees.

10.4.2 Emergency Reserve Account. Pursuant to the Maintenance Agreement, Declarant has funded and established on behalf of the Master Association the Emergency Reserve Account. The balance of the Emergency Reserve Account will be reviewed for sufficiency from time to time at the request of any party to the Maintenance Agreement, but at least every five (5) years. The balance of the Emergency Reserve Account will be adjusted based on actual and estimated costs and experience. Park City, through its designated official, will have the sole authority to draw on the Emergency Reserve Account at such times and for such purposes as set forth below. The funds may be withdrawn and expended by Park City for the emergency protection of the health and safety of people within Empire Pass, including but not limited to correcting, removing or repairing conditions which might exist or arise on or within the portion of the Community Areas designated in the Maintenance Agreement, subject to certain limitations set forth in the Maintenance Agreement. The Master Association shall have sixty (60) days following any withdrawal of funds from the Emergency Reserve Account by Park City to

replenish the Emergency Reserve Account. If the Master Association fails to replenish the Emergency Reserve Account, Park City is entitled to bring suit against the Master Association to recover the amount required, and the Master Association is obligated to pay all reasonable costs associated with that suit.

10.5 Maintenance of Sewer Laterals. Without diminishing the Owners' responsibilities set forth in Section 10.3, the Master Association shall have the right but not the obligation to maintain, replace and repair sanitary sewer laterals serving any Dwelling Unit and/or Improvement within Empire Pass. If the Master Association elects to perform such maintenance, replacement and repair, the cost thereof shall be assessed by the Master Association at the election of the Master Association to either the applicable Sub-Association governing the Dwelling Unit or Improvement, or to the applicable Owners of the Dwelling Unit or Improvement. The Board shall not need the prior approval of the Members to cause such maintenance, replacement or repairs to be accomplished, notwithstanding the cost thereof. The Master Association shall have a right of entry and access to, over, upon, and through all of the Property including each Lot, each Dwelling Unit, each Improvement and the Community Areas, to enable the Master Association to perform such maintenance, repair, and replacement of sanitary sewer laterals. In the event of an emergency, the Master Association's right of entry to a Dwelling Unit or Improvement may be exercised without notice; otherwise, the Master Association shall give the Owners or Residents of a Dwelling Unit or Improvement no less than twenty-four hours advance notice prior to such entry.

ARTICLE XI
DESIGN GUIDELINES AND DESIGN REVIEW BOARD

11.1 Membership. There is hereby established a Design Review Board which shall be responsible for the establishment and administration of the Design Guidelines and to carry out all other responsibilities assigned to the Design Review Board in order to carry out the purposes and intent of this Declaration. The Design Review Board shall be composed of at least three (3) but not more than (7) individuals or entities as determined by Declarant in its sole discretion, who need not be Members of the Master Association. All of the members of the Design Review Board shall be appointed, removed, and replaced by Declarant in its sole discretion, until such time as all of the Class B Membership is terminated, and at that time the Board shall succeed to Declarant's right to appoint, remove, or replace the members of the Design Review Board. At the sole and exclusive option of Declarant, the Declarant may establish a "Modifications Committee" which shall be a subcommittee of the Design Review Board. The Modifications Committee shall deal solely with changes to structures and Improvements which have previously been approved by the Design Review Board and which an Owner desires to alter or change following the original construction of such structure or Improvements. It is contemplated that the Modifications Committee will be made up largely of Owners who will take over responsibility for modifications subject to appropriate written guidelines established by the Design Review Board.

11.2 Purpose. The Design Review Board shall review, study and either approve, reject or request resubmittal of additional information with respect to all proposed developments and all Improvements to a Lot, Unit or Parcel, all in compliance with this Declaration and as further set forth in the rules and regulations of the Design Review Board and the Design Guidelines

adopted and established from time to time by the Design Review Board. Each developer, including any Merchant Builder, of a Parcel shall demonstrate to the Design Review Board that its Neighborhood Declaration or Supplemental Declaration, Plat and development plan have been approved by the Declarant and by the applicable Municipal Authority and that such items are in compliance with the Design Guidelines. In addition to complying with the Master Construction Mitigation Plan set forth in the Design Guidelines, each developer, including any Merchant Builder, of a Lot or Parcel shall prepare and submit a construction mitigation plan to the Design Review Board and the applicable Municipal Authority for review and approval.

11.2.1 The Design Review Board 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 Lot, Unit or Parcel, height, grade and finished ground elevation, and all aesthetic considerations set forth in this Declaration or in the Design Guidelines.

11.2.2 Except for Improvements made by Declarant, no Improvement on a Lot, Unit or Parcel shall be erected, placed or altered on any Lot, Unit or Parcel nor shall any construction be commenced, until plans for such Improvement shall have been approved by the Design Review Board.

11.2.3 The actions of the Design Review Board 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.

11.3 Organization and Operation of the Design Review Board.

11.3.1 Term. The term of office of each member of the Design Review Board, subject to Section 11.1 hereof, shall be three (3) years, commencing January 1 of each year, and continuing until his successor shall have been appointed, with the exception of the first three (3) members of the Design Review Board, who will hold terms of one, two and three years, respectively, as designated by the Declarant. The terms of the members of the Design Review Board will be staggered, so that one term expires each year. Should a Design Review Board 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 11.1 hereof. So long as Declarant appoints the Design Review Board, the Declarant may remove any member of the Design Review Board at any time for any cause (or for no cause) without notice.

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

11.3.3 Operations. The chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Design Review Board 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.

11.3.4 Voting. The affirmative vote of a majority of the members of the Design Review Board shall govern its actions and be the act of the Design Review Board. A quorum shall consist of a majority of the members.

11.3.5 Expert Consultation. The Design Review Board may avail itself of technical and professional advice and consultants as it deems appropriate.

11.4 Expenses. Except as provided below, all expenses of the Design Review Board shall be paid by the Master Association. The Design Review Board shall have the right to charge a fee for each application submitted to it for review and a fee for construction compliance and inspection in amounts which may be established by the Design Review Board from time to time, and such fees shall be collected by the Design Review Board and remitted to the Master Association to help defray the expenses of the Design Review Board's operation. The Design Review Board shall provide written notice to an applicant of any failure to pay a fee, expense or other charges hereunder, specifying the unpaid amounts which exist and stating that unless payment is made in full within fourteen (14) days, the Design Review Board may: (i) withdraw any approval previously give to an Owner, whereupon such Owner shall immediately cease further work; (ii) impose a fine commensurate with the severity of the violation; and/or (iii) refer the matter to the Board for further action. In any action taken pursuant to this Section 11.4, the Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Design Review Board's costs and expenses together with interest at the rate of 18% per annum plus collection costs and attorneys' fees.

11.5 Security Deposit. The Design Review Board shall have the right to require from an applicant a cash security deposit ("Security Deposit"), in an amount established by the Design Review Board in its sole discretion, for the purpose of securing complete performance of all of an applicant's obligations under Article XI. The Design Review Board may retain the Security Deposit until such time as the applicant has fully performed all of its obligations and paid all sums due to the Design Review Board. The applicant is not entitled to receive any interest earned on the Security Deposit. The Security Deposit is not an advance payment of fees by the applicant and does not constitute a measure of damages if the applicant defaults in the performance of its obligations under Article XI. If the applicant defaults in the performance of its obligations, the Design Review Board may use, apply or retain all or any part of the Security Deposit to pay application review fees, inspection fees and/or any other fee, charge, cost or expense and to reimburse the Design Review Board for any cost or expense it incurs because of such default, including, without limitation, all losses, costs or damages the Design Review Board incurs. Any actions by the Design Review Board against the applicant for default in the performance of such applicant's obligations are not limited to or restricted by the amount of the Security Deposit or the Design Review Board's use or application of all or any part of the Security Deposit. The Design Review Board's use or application of all or any part of the Security Deposit shall not constitute a waiver of any of the Design Review Board's rights or remedies and shall not constitute the Design Review Board's election of any specific remedy to the exclusion of other remedies available to the Design Review Board under this Declaration, at

law or in equity. If the Design Review Board uses or applies all or any part of the Security Deposit as provided in this Section 11.5, the applicant will pay to the Design Review Board on demand the amount so used or applied in order to replenish the Security Deposit, which replenished Security Deposit shall be held and used by the Design Review Board in the manner described in this Section 11.5.

11.6 Design Guidelines and Rules. The Design Review Board shall adopt, establish, and publish from time to time Design Guidelines, which shall be a Governing Document of Empire Pass. The Design Guidelines shall define and describe the design standards for Empire Pass and the various uses therein. The Design Guidelines may be modified or amended from time to time by the Design Review Board. To the extent permitted by the Design Guidelines, the Design Review Board, 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 Empire Pass design review process is not a substitute for compliance with applicable Municipal Authority building, zoning, and subdivision regulations and requirements, and each Owner is responsible for obtaining all applicable Municipal Authority approvals, licenses, and permits as may be required in addition to obtaining final approval of any Improvements from the Design Review Board prior to commencing construction.

11.7 Procedures. As part of the Design Guidelines, the Design Review Board shall make and publish such rules and regulations as it may deem appropriate to govern its proceedings. All final decisions of the Design Review Board shall be nonappealable.

11.8 Limitation of Liability. The Design Review Board shall use reasonable judgment in approving or disapproving all plans and specifications submitted to it. Neither the Design Review Board, nor any individual Design Review Board member, shall be liable to any person for any official act of the Design Review Board in connection with submitted plans and specifications, except to the extent the Design Review Board or any individual Design Review Board member acted with gross negligence or was guilty of willful misconduct. Approval of plans and specifications by the Design Review Board does not necessarily assure approval of such plans and specifications by the appropriate Municipal Authority. Notwithstanding the approval by the Design Review Board of any plans and specifications, neither the Design Review Board nor any of its members shall be responsible or liable to any Owner, developer, or contract holder with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of any Improvements. Neither the Board, the Design Review Board, nor any agent thereof, nor Declarant nor any of its shareholders, 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 Design Guidelines or any other Governing Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Design Review Board shall be defended and indemnified by the Master Association in any such suit or proceeding which may arise by reason of the Design Review Board's decision. The Master Association, however, shall not be obligated to indemnify any member of the Design Review Board to the extent any such member of the Design Review Board shall be adjudged to be liable for gross negligence or willful misconduct in the performance of his or her duty as a member of the Design Review Board, 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.

11.9 Inspection and Compliance. The Design Review Board shall have the right, but not the obligation, to inspect any Lot, Unit or Parcel or Improvement thereto to ensure compliance with the Design Guidelines and any plans approved by the Design Review Board. If a violation of the Design Guidelines or any previously approved plans is discovered, the Design Review Board shall provide written notice of non-compliance to the Owner of the Lot, Unit or Parcel, specifying the particular condition or conditions which exist and stating that unless corrective action is taken within fourteen (14) days, the Design Review Board may: (i) withdraw any approval previously give to an Owner, whereupon such Owner shall immediately cease further work; (ii) impose a fine commensurate with the severity of the violation; and/or (iii) refer the matter to the Board for further action. In any action taken pursuant to this Section 11.9, the Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Design Review Board's costs and expenses together with interest at the rate of 18% per annum plus collection costs and attorneys' fees.

ARTICLE XII
RIGHTS AND POWERS OF MASTER ASSOCIATION

12.1 Master Association's Rights and Powers As Set Forth in Articles and Bylaws. In addition to the rights and powers of the Master Association set forth in this Declaration, the Master Association shall have such rights and powers as are set forth in its Articles and Bylaws and the Utah Revised Nonprofit Corporation Act, Utah Code Ann. § 16-6a-101, et seq. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Master Association, a copy of the Articles and Bylaws of the Master Association shall be available for inspection at the office of the Master Association during reasonable business hours.

12.2 Master Association's Rights of Enforcement. The Master Association, as the agent and representative of the Owners and Members, shall have the right to enforce, by any proceeding at law or in equity, the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, Deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Master Association or by Declarant. In the event suit is brought or arbitration is instituted or an attorney is retained by the Master Association to enforce the terms of this Declaration or any other Governing Document and the Master Association prevails, the Master Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith including but not limited to the Master Association's administrative costs and fees. Said attorneys' fees, costs and expenses shall be the personal liability of the breaching Owner and

shall also be secured by the Assessment Lien against said Owner's Lot, Unit or Parcel. If the Master Association should fail to act within a reasonable time, any Owner shall have the right to enforce the Covenants set forth in this Declaration.

12.3 Contracts with Others for Performance of Master Association's Duties. Subject to the restrictions and limitations contained herein, the Master Association may enter into contracts and transactions with others, including the Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more Board members or officers of the Master Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other Board members acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such Board member, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he or she is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote to authorize any such contract, transaction or approval with like force and effect as if he or she were not so interested.

12.4 Change of Use of Master Association Land. Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Master Association Land or of the Master Association's interest in other Community Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose (with Class A Members voting by and through their Voting Members), the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and Improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any Deed restrictions (or zoning regulations) restricting or limiting the use of the Master Association Land or Community Areas. Any construction, reconstruction, alteration or change of the buildings, structures and Improvements on Master Association Land shall require the approval of the Design Review Board.

ARTICLE XIII
INSURANCE AND FIDELITY BONDS

13.1 Hazard Insurance. The Master Association shall at all times maintain in force insurance meeting the following requirements: A "master" or "blanket" type policy of property insurance shall be maintained, if reasonably available, covering all insurable Improvements, if any, on the Master Association Land and where appropriate on the Community Areas; fixtures, building service equipment, personal property and supplies comprising a part of the Community Areas or owned by the Master Association and which are of a class typically encumbered by Mortgages held by FNMA or other similar institutional Mortgage investors; but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. If blanket all-risk insurance is not reasonably available, then at a

minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to Empire Pass in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Community Areas covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). The maximum deductible amount for such policy shall be determined by the Board.

13.2 Flood Insurance. If any part of the Community Areas is or comes to be situated in a "special flood hazard area" as designated on a "flood insurance rate map," a "master" or "blanket" policy of flood insurance shall be maintained, if reasonably available, covering the Improvements located on the Community Areas, and any machinery and equipment related thereto (hereinafter "Insurable Property") in an amount deemed appropriate, but not less than the lesser of (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for all insurable property within any portion of the Community Areas located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities. The maximum deductible amount for such policy shall be determined by the Board.

13.3 Policy Requirements.

13.3.1 The name of the insured under each policy required to be maintained by the foregoing sections (Section 13.1 and Section 13.2) shall be the Master Association for the use and benefit of the individual Owners. Notwithstanding the requirement of the immediately foregoing sentence, each such policy may be issued in the name of an authorized representative of the Master Association, including any Insurance Trustee (as hereinafter defined) with whom the Master Association has entered into an agreement (referred to herein as an "Insurance Trust Agreement", or any successor to such Insurance Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Master Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's First Mortgagee. Each Owner and each such Owner's First Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and First Mortgagee upon request.

13.3.2 Each policy required to be maintained by the foregoing sections (Section 13.1 and Section 13.2), shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional

mortgage investors in the area in which Empire Pass is located. If FNMA is a holder of one or more Mortgages on Lots, Units or Parcels within Empire Pass, such mortgage clause shall name FNMA or FNMA's servicer of such Mortgages as Mortgagee. If FNMA's servicer is named as Mortgagee in such mortgage clause, such servicer's name shall be followed therein by the phrase "its successors and assigns." In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Master Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

13.3.3 Each policy required to be maintained by the foregoing sections (Section 13.1 and Section 13 2), shall provide, if available, for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against Owners individually; a provision that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively, and a provision that the policy is primary in the event the Owner has other insurance covering the same loss.

13.3.4 Each policy required to be maintained by the foregoing sections (Section 13.1 shall also contain or provide the following: (1) "inflation guard endorsement", if available; (2) "building ordinance or law endorsement", if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) "steam boiler and machinery coverage endorsement" which shall provide that the insurer's minimum liability per accident at least equals the lesser of Two Million Dollars ($2,000,000.00) or the insurable value of the Improvements containing the boiler or machinery.

13.4 Fidelity Bonds or Insurance. The Master Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds or insurance, including but not limited to, directors' and officers' insurance for the benefit of all members of the Board, officers and members of committees and subcommittees appointed by the Board or otherwise established pursuant to the provisions of this Declaration, for all officers, agents, and employees of the Master Association and for all other persons handling or responsible for funds of or administered by the Master Association. Furthermore, where the Master Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager shall provide "blanket" fidelity bonds or insurance, with coverage identical to such bonds required of the Master Association, for the Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Master Association. The total amount of fidelity coverage required shall be based upon the Master Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Master Association, or the Manager, as the case may be, at any given time during the term of coverage. A lesser amount of fidelity insurance coverage is acceptable for the Master Association so long as the Master Association and the Manager adhere to the following financial controls: (1) the Master Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are

deposited sends copies of the monthly bank statements directly to the Master Association; (2) the Manager maintains separate records and bank accounts for each association that uses its services, and the Manager does not have authority to draw checks on or to transfer funds from the Master Association's reserve account; or (3) two directors of the Board must sign any checks written on the reserve account. Nevertheless, in no event may the amount of such fidelity coverage be less than the sum equal to three months' aggregate Annual Assessments on all Lots, Units and Parcels. The coverage required shall meet the following additional requirements: (1) the fidelity coverage shall name the Master Association as obligee or insured; (2) the bonds or insurance shall contain waivers by the issuers of the bonds or insurance of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds or insurance required herein for the Master Association (except for premiums on fidelity bonds or insurance maintained by the Manager for its officers, employees and agents) shall be paid by the Master Association as part of the Community Expenses; and (4) the bonds or insurance shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the Master Association, to any Insurance Trustee, and to each servicer of loans on behalf of FNMA.

13.5 Liability Insurance. The Master Association shall maintain in force, and pay the premium for a policy providing commercial general liability insurance coverage covering all of the Community Areas, public ways in Empire Pass, if any, all other areas of Empire Pass that are under the Master Association's supervision, and Commercial spaces owned by the Master Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for projects similar to Empire Pass in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars ($1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Community Areas, and legal liability arising out of lawsuits related to employment contracts of the Master Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to Empire Pass in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Master Association or any other Owner. Such policy shall provide that it may not be cancelled or substantially modified by any party without at least thirty (30) days' prior written notice to the Master Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

13.6 Insurance Trustees and General Requirements Concerning Insurance. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Master Association, the Master Association's authorized representative, including any trustee with whom the Master Association may enter into any Insurance Trust Agreement or any successor to such trustee (each

of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Master Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Master Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Master Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear. Each insurance policy maintained pursuant to this Declaration shall be written by insurance carriers which are licensed to transact business in the State of Utah and which have a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which are written by Lloyd's of London or which are otherwise approved by the Board. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board, the Master Association, FNMA, or the designee of FNMA; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Master Association, an Owner, or FNMA) from collecting insurance proceeds. The provisions of this Article XIII shall not be construed to limit the power or authority of the Master Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Master Association may deem appropriate from time to time.

13.7 Annual Review of Policies and Coverage. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Community Areas and Improvements thereon which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration. In the event any of the insurance coverage provided for in this Article XIII is not available at a reasonable cost or is not reasonably necessary to provide Empire Pass with adequate insurance protection, as determined by the Board, the Board shall have the right to obtain different insurance coverage or insurance coverage which does not meet all of the requirements of this Article XIII so long as, at all times, the Board maintains insurance coverage on a basis which is consistent with the types and amounts of insurance coverage obtained for projects similar to Empire Pass.

ARTICLE XIV
DAMAGE OR DESTRUCTION

14.1 Master Association as Attorney in Fact. Each and every Owner hereby irrevocably constitutes and appoints the Master 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 personal property owned by the Master Association on behalf of the Owners and the Improvements on the Community Areas upon damage or destruction as provided in this Article or a complete or partial

taking as provided in Article XV 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 Master 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 Master Association as attorney-in-fact. All proceeds from the insurance required hereunder shall be payable to the Master Association except as otherwise provided in this Declaration.

14.2 Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the personal property owned by the Master Association and Improvements on the Community Areas, the Master 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 thereof so damaged or destroyed. "Repair and reconstruction" as used in this Article XIV shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

14.3 Repair and Reconstruction. As soon as practical after obtaining estimates, the Master Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Master 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 Master Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

14.4 Funds for Repair and Reconstruction. The proceeds received by the Master Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction of such affected personal property and Improvements on the Community Areas. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Master Association may, pursuant to Section 7.6 above, levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners, 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.

14.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Master Association and the amounts received from the Special Assessments provided for in Section 14.4 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 retained by the Master Association to pay for future Community Expenses.

14.6 Notice to First Mortgagees. The Master Association shall give timely written notice to any holder of any First Mortgage on a Lot, Unit or Parcel who requests such notice in

writing in the event of substantial damage to or destruction of a material part of the personal property owned by the Master Association and/or Improvements on the Community Areas.

ARTICLE XV
CONDEMNATION

15.1 Rights of Owners. Whenever all or any part of the Community Areas shall be taken or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to notice of the taking, but the Master Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

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

If the taking involves a portion of the Community Areas on which Improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and Owners representing at least sixty-seven percent (67%) of the Class A votes (with Voting Members exercising the votes of the Class A Members) in the Master Association shall otherwise agree, the Master Association shall restore or replace such Improvements so taken on the remaining land included in the Community Areas to the extent lands are available therefor, in accordance with plans approved by the Board and the Design Review Board. If such Improvements are to be repaired or restored, the provisions in Article XIV 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 Community Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be retained by the Master Association to pay for future Community Expenses.

ARTICLE XVI
ADDITIONAL LAND

16.1 Right to Expand and State of Title to New Lots, Units and Parcels. There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option to expand Empire Pass at any time (within the limits herein prescribed) and from time to time by adding to Empire Pass the Additional Land or a portion or portions thereof. Notwithstanding any provision of this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Owner or Mortgagee) and shall be limited only as specifically provided in this Declaration. Any given portion of the Additional Land shall be deemed added to Empire Pass at such time as a duly approved Plat and a Supplemental Declaration containing the information required by Section 16.3 below have been Recorded with respect to the portion of the Additional Land concerned. After the date such Supplemental Declaration is Recorded, title to each Lot, Unit and Parcel thereby created within the portion of the Additional Land concerned and its appurtenant right and easement of use and enjoyment in and to the Community Areas shall be vested in and held by Declarant, and none of the other Owners or the Master Association shall have any claim

or title to or interest in such Lot, Unit and Parcel or its appurtenant right and easement of use and enjoyment to the Community Areas.

16.2 Rights and Statements Respecting Additional Land. Declarant hereby furnishes the following information and statements respecting the Additional Land and Declarant's right and option concerning expansion of Empire Pass by the addition thereto of the Additional Land or a portion or portions thereof.

16.2.1 All of the Additional Land need not be added to Empire Pass, if any of such Additional Land is added. Rather, a portion or portions of the Additional Land may be added to Empire Pass at any time (within the limits herein prescribed) and from time to time.

16.2.2 There are no limitations or requirements relative to the size, location, or configuration of any given portion of the Additional Land which can be added to Empire Pass or relative to the order in which particular portions of the Additional Land can be added to Empire Pass. Future Improvements on the Additional Land added to Empire Pass shall be subject to compliance with the Design Guidelines.

16.3 Procedure for Expansion. Each Supplemental Declaration by which an addition to Empire Pass of any portion of the Additional Land is accomplished shall be executed by Declarant, shall be in recordable form, must be Recorded in the Office of the County Recorder of Summit County, Utah, and/or Wasatch County, Utah, as applicable, on or before June 28, 2029, and shall contain the following information for that portion of the Additional Land which is being added:

16.3.1 Data sufficient to identify this Declaration with respect to that portion of the Additional Land being added.

16.3.2 The legal description of the portion of the Additional Land being added.

16.3.3 A statement that such portion of the Additional Land shall thereafter be held, transferred, sold, conveyed, occupied, improved and developed subject to the covenants, restrictions, easements, charges, and liens set forth in this Declaration.

16.3.4 Such other matters as may be necessary, desirable, or appropriate and as are not inconsistent with any limitation imposed by this Declaration.

Upon the date any Supplemental Declaration contemplated above is Recorded, it shall automatically supplement this Declaration and any Supplemental Declarations previously Recorded. At any point in time, this Declaration for Empire Pass shall consist of this Declaration, as amended and expanded by all Supplemental Declarations theretofore Recorded pursuant to the terms hereof.

16.4 Allocation of Assessments and Voting Rights Following Expansion. Each Lot, Unit or Parcel created that is or shall become Assessable Property shall be apportioned a share of the Community Expenses attributable to Empire Pass, as provided in Article VII. Each Owner of a Lot, Unit or Parcel that is or shall become Assessable Property shall be entitled to

Memberships and the votes (by and through Voting Members as applicable) in the Master Association to the extent provided for in Section 6.1 and Section 6.4. Assessments and voting rights shall commence as of the date the Declarant Records a Supplemental Declaration.

16.5 No Obligation to Expand. Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as, to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) the addition to Empire Pass of any or all of the Additional Land; (ii) the creation or construction of any Lot, Unit or other Improvement; (iii) the carrying out in any particular way or within any particular time of any development or addition which may be undertaken; or (iv) the taking of any particular action with respect to any portion of the Additional Land.

16.6 Withdrawal of Property. At any time on or before June 28, 2029, Declarant shall have the right to withdraw property from Empire Pass without the consent of any other Owner or Person (other than the Owner of such property, if other than the Declarant), except as otherwise expressly provided in any Supplemental or Neighborhood Declaration with respect to such property. The withdrawal of all or any portion of Empire Pass shall be effected by the Declarant Recording a written instrument setting forth the legal description of the property being withdrawn. Upon the withdrawal of any property from Empire Pass pursuant to this Section, such property shall no longer be subject to this Declaration.

ARTICLE XVII
MORTGAGEE REQUIREMENTS

17.1 Notice of Action. Upon written request made to the Master Association by a Mortgagee, or an insurer or governmental guarantor of a Mortgage, which written request shall identify the name and address of such Mortgagee, insurer or governmental guarantor and the Lot, Unit or Parcel number or the address of the Dwelling Unit, any such Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

17.1.1 Any condemnation loss or any casualty loss which affects a material portion of Empire Pass or any Lot, Unit or Parcel on which there is a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor;

17.1.2 Any delinquency in the payment of Assessments or Maintenance Charges owed by an Owner, whose Lot, Unit or Parcel is subject to a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

17.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Master Association; and

17.1.4 Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 17.2 below or elsewhere herein.

17.2 Matters Requiring Prior Eligible Mortgagee Approval. Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-

seven percent (67%) of the votes of each class of Members (with Voting Members exercising the votes of the Class A Members) in the Master Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Master Association is required, in which case such specific provisions shall control) and of Eligible Mortgagees holding Mortgages on Lots, Units or Parcels having at least fifty-one percent (51%) of the votes of the Lots, Units or Parcels subject to Mortgages held by Eligible Mortgagees shall be required to:

17.2.1 Abandon or terminate the legal status of Empire Pass after substantial destruction or condemnation occurs. Termination of the legal status of Empire Pass for any other reason shall require the affirmative vote or authorization of Eligible Mortgagees holding at least sixty-seven percent (67%) of the Mortgages on Lots, Units or Parcels.

17.2.2 Amend this Article XVII.

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

17.4 Availability of Documents and Financial Statements. The Master Association shall maintain and have current copies of the Governing Documents and other rules concerning Empire Pass as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of Mortgages that are secured by Lots, Units or Parcels. Generally, these documents shall be available during normal business hours.

17.5 Subordination of Lien. The lien or claim against a Lot, Unit or Parcel for unpaid Assessments or Maintenance Charges levied by the Master Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Lot, Unit or Parcel, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Lot, Unit or Parcel shall take the same free of such lien or claim for unpaid Assessment or Maintenance Charges, but only to the extent of Assessments or Maintenance Charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a Deed or assignment in lieu of foreclosure. No Assessment, Maintenance Charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Master Association from or against a First Mortgagee, a successor in title to a First Mortgagee, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by Deed in lieu of foreclosure, of the Lot, Unit or Parcel affected or previously affected by the First Mortgage concerned.

17.6 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Community Areas are not timely paid, or in the event the required hazard-insurance described in Section 13.1 lapses, is not maintained, or the premiums therefor are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or

singly, pay such taxes or premiums or obtain such insurance. Any First Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Master Association.

17.7 Priority. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots, Units, Parcels or the Community Areas.

ARTICLE XVIII
TERM: AMENDMENTS: TERMINATION

18.1 Term; Method of Termination. This Declaration shall be effective upon the date of the Recording hereof and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Voting Members casting eighty percent (80%) of the total votes of the Members cast at an election held for such purpose (or otherwise approved for such purpose in writing) within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. This Declaration may be terminated at any time, if Voting Members casting at least eighty percent (80%) of the votes of the Members shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until written consent to such termination or amendment has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from Eligible Mortgagees on fifty-one percent (51%) of the Lots, Units and Parcels upon which there are such Eligible Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Summit County, Utah and/or Wasatch County, Utah, as applicable, a "certificate of termination," duly signed by the President or Vice President attested by the Secretary or Assistant Secretary of the Master Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Master Association shall be dissolved pursuant to the terms set forth in its Articles.

18.2 Amendments. This Declaration may be amended by Recording with the County Recorder of Summit County, Utah, and/or Wasatch County, Utah, as applicable, a Certificate of Amendment, duly signed and acknowledged by and on behalf of the Master Association. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Sections 18.3 and 18.4 hereof or elsewhere in this Declaration, shall certify that at a meeting duly called and held pursuant to the Articles and Bylaws or by separate written consent without a meeting, the Voting Members casting at least sixty-seven percent (67%) of the votes of the Members voted affirmatively for the adoption of the amendment or approved such amendment by separate written consent. Except as provided in Sections 18.3 and 18.4 hereof or elsewhere in this Declaration, a Neighborhood Declaration or Supplemental Declaration may be amended in the same manner as this Declaration, with the approval of Voting Members casting at least sixty-seven percent (67%) of the votes of the Members subject to the Neighborhood Declaration or Supplemental Declaration. Within twenty-five (25) years from the date of Recording this

Declaration and so long as the Declarant is the Owner of any Lot, Unit or Parcel in Empire Pass, this Declaration and any Neighborhood Declaration and any Supplemental Declaration may be amended or terminated only with the written approval of the Declarant.

18.3 Unilateral Amendments. Notwithstanding anything contained in this Declaration to the contrary, this Declaration, a Neighborhood Declaration or Supplemental Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith, to make technical corrections, to correct mistakes or to remove/clarify ambiguities; or (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, Units or Parcels subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property, unless any such Owner shall consent thereto in writing. Further, so long as the Class B Membership exists, Declarant may unilaterally amend this Declaration, a Neighborhood Declaration or Supplemental Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner. Any such amendment hereunder shall be effected by the Recording by Declarant of a Certificate of Amendment duly signed by the Declarant.

18.4 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or such agency's approval of the sale of property within Empire Pass, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s)/Unit(s) or Parcel(s) or any portions thereof. Any such amendment shall be effected by the Recording by Declarant of a Certificate of Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when Recorded, shall be binding upon all of Empire Pass and all persons having an interest therein.

18.5 Declarant's Control. It is the desire and intent of Declarant to retain control of the Master Association and its activities during the anticipated period of planning and development of Empire Pass. If any amendment requested pursuant to the provisions of this Article XVIII deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control.

ARTICLE XIX
DECLARANT'S RIGHTS

19.1 Transfer of Declarant's Rights. Any or all of the special rights and obligations of the Declarant may be assigned and transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective, unless it is in a written instrument signed by the Declarant and duly Recorded in the Office of the Recorder of Summit County, Utah and/or Wasatch County, Utah. Without limiting the generality of the foregoing, Declarant may by such Recorded instrument establish that Declarant and such Person or Persons be co-Declarants under this Declaration, in which event such Persons shall be deemed collectively the Declarant for all purposes under this Declaration, and any ownership of portions of the Property by any such Persons shall be considered owned by Declarant. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any Additional Land in any manner whatsoever. So long as Declarant continues to have rights under this Article XIX, no person or entity shall Record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of Empire Pass without Declarant's review and written consent thereto, and any attempted Recording without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect, unless subsequently approved by a Recorded consent signed by the Declarant.

19.2 Sales Material. So long as Declarant continues to have rights under this Article XIX, all sales, promotional, and advertising materials, and all forms for deeds, contracts for sale, and other closing documents for the subdivision and sale of property in Empire Pass by any Merchant Builder shall be subject to the prior approval of Declarant, which approval shall not be unreasonably withheld. Declarant shall deliver notice to any Merchant Builder of Declarant's approval or disapproval of all such materials and documents within thirty (30) days of receipt of such materials and documents and, if disapproved, the specific changes requested. If Declarant fails to so notify any Merchant Builder within such thirty (30) day period, Declarant shall be deemed to have waived any objections to such materials and documents and to have approved the foregoing. Upon disapproval, the foregoing procedure shall be repeated until approval is obtained or deemed to be obtained.

19.3 Modifications. Declarant reserves for itself and its assigns the right to vary the timing, mix, type, use, style, and numbers of Lots, Units and Parcels, and other such details of construction or modifications in adding phases to this Declaration. If additional Land Use Classifications, such as, by way of explanation and not limitation, additional Commercial, are subsequently permitted by zoning, Declarant shall have the right to add such Land Use Classifications to this Declaration. Notwithstanding any other provision of this Declaration to the contrary, the Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to its development plan with respect to any property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the Property owned by the Declarant or changing the nature or extent of the uses to which such Property may be devoted.

19.4 Amendment. This Article XIX may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article XIX shall terminate upon the earlier of (a) June 28, 2029, or (b) the Recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE XX
DEVELOPMENT GUIDELINES

The Declarant may, in its sole discretion, from time to time and subject to the provisions of this Declaration, establish, amend and repeal, as approved by the applicable Municipal Authority, guidelines for the development of the Property known as the Development Guidelines. The Master Association shall administer, in conjunction with Declarant, the Development Guidelines. Each developer, including any Merchant Builder, of a Parcel shall demonstrate to the Master Association that its Neighborhood Declaration or Supplemental Declaration, Plat and development plan have been approved by the Declarant and by the applicable Municipal Authority and that such items are in compliance with the Development Guidelines. The Master Association shall exercise its best judgment to see that each Merchant Builder undertakes its development of a Parcel, including but not limited to, the roadways and major infrastructure, in compliance with the Development Guidelines. Compliance with the Development Guidelines and/or the Design Guidelines is not a substitute for compliance with applicable Municipal Authority building, zoning, and subdivision regulations and requirements, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required by the applicable Municipal Authority prior to commencing construction of any Improvements. Until Declarant no longer owns any portion of the Property, the Development Guidelines shall not be subject to modification or amendment without the prior written consent of Declarant, which consent may be withheld in its sole and absolute discretion. The Design Review Board shall have no authority to excuse compliance or permit variances in connection with any requirements of the Development Guidelines.

ARTICLE XXI
MOUNTAIN RESORT DEVELOPMENT

21.1 Assumption of Risk, Waiver of Claims and Indemnification. Each Owner, by its purchase of a Lot, Unit or Parcel, hereby acknowledges that Empire Pass is a mountain resort community with resort-type activities, which may include, without limitation: skiing, ski runs and trails, hiking trails, mountain biking trails, open spaces, wildlife, rugged terrain, Private Amenities, golf courses, tennis courts, horses and horseback riding, outdoor concerts, festivals, children's events, games and activities, outdoor theatre, golf, tennis and other tournaments, running, snow shoeing, alpine and cross country skiing and mountain bike courses and/or races and/or other competitions of various kinds, and other resort-type facilities, events, activities and programs (collectively, "Resort Activities"), and each such Owner expressly assumes the risk of noise, nuisances, hazards, personal injury, or property damage related to any and all Resort Activities, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance may take place at any time(s) of the day or night), (b) noise caused by Resort Activities and participants, (c) view restrictions caused by installation, relocation and maturation of trees and shrubbery, (d) reduction in privacy, including that related to maintenance activities, (e) errant equipment, including skis, golf balls and golf

clubs, and (f) facilities design. Each such Owner agrees that neither Declarant, the Manager, the Master Association, any committee created by the Master Association, any of the Declarant's affiliates or agents, nor any Resort Activities participant (unless acting recklessly or in a willfully wrongful manner) shall be liable to an Owner or any other person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to: (a) the proximity of an Owner's Lot, Unit or Parcel to any ski run or trail, golf course, Private Amenity or other Resort Activity venue; (b) any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents, the Manager, the Master Association or any committee created by the Master Association; or (c) any Resort Activity or Private Amenity (collectively referred to herein as the "Waived Claims"). Each Owner hereby agrees to indemnify, defend and hold harmless Declarant, Declarant's affiliates and agents, the Manager, the Master Association and any committee created by the Master Association, from and against any and all Waived Claims asserted by such Owner and/or by such Owner's visitors or tenants, and by others upon such Owner's Lot, Unit or Parcel. Each Owner further covenants that the Master Association, any committee created by the Master Association, the Declarant and the owners and operators of all Resort Activities shall have the right, in the nature of an easement, to subject all or any portion of the Property to nuisances incidental to the maintenance, operation or use thereof, and to the carrying out of such Resort Activities.

21.2 Disclaimer Regarding Ski Resort. All Persons, including without limitation all Owners, are hereby advised that, except as expressly set forth in this Declaration, no representations, warranties or commitments have been or are made by the Declarant or any other Person with regard to the present or future development, ownership, operation or configuration of, or right to use, Deer Valley Ski Resort including its ski runs, lifts or related facilities within, near or adjacent to the Property, whether or not depicted on the Plat, or any other land use plan, sales brochure or other marketing display, rendering or plan. No purported representation, warranty or commitment, written or oral, in such regard shall ever be effective without an amendment hereto executed by the Declarant. Further, the ownership, operation or configuration of, or rights to use, any such ski resort or related facilities may change at any time and from time to time. No Owner or Resident shall have any ownership interest in, or right to use, Deer Valley Ski Resort or related facilities solely by virtue of: (i) his, her or its Membership; or (ii) his, her or its ownership, use or occupancy of any Lot, Unit or Parcel, or portion thereof.

21.3 Rights of Access. The owner of the Deer Valley Ski Resort, its successors and assigns, and its members, invitees, spectators, employees, agents, contractors or designers shall at all times have a right and nonexclusive license of access and use over all roadways located within the Property as reasonably necessary to travel to and from any entrance within the Property to and from such Deer Valley Ski Resort or related facilities and, further, over those portions of the Property (whether Community Areas or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Deer Valley Ski Resort and its facilities (including any portions thereof located within Empire Pass).

21.4 Ski Run Easements. It is contemplated there will be certain nonexclusive easements for ski runs, chair lifts, gondolas, towers, trails, bridges and accessways designated as such on one or more plats of the Property, or portions thereof, which may be used for skiing and

snowboarding, grooming, maintenance and vehicle access, and unhindered access between said easements and the Deer Valley Ski Resort. Nothing shall be placed or maintained in any such easement which shall interfere with the utilization thereof as part of the Deer Valley Ski Resort, and all other Improvements within said easements (except those installed or constructed by the Declarant) shall require the approval of the owner of Deer Valley Ski Resort benefited thereby.

21.5 Operation of the Ski Resort. Each Owner acknowledges that the operation and maintenance of any ski resort within, near or adjacent to the Property, including but not limited to, all facilities that are now or hereinafter part of the Deer Valley Ski Resort, will require that maintenance personnel and other workers perform work relating to the operation and maintenance of such ski resort at any time(s) of the day or night. In connection therewith, each Owner and Resident agrees that the Declarant, and the owner or owners of all or any portion of the Deer Valley Ski Resort and the employees, agents and contractors of the Declarant and of such owners, shall not be responsible or accountable for, liable for and shall be held harmless from, any claims, causes of action, loss or liability arising in connection with or associated with any noise or inconvenience normally associated with such operation and maintenance activities.

21.6 Other Ski Resort Agreements. No Owner or Resident, and no guest, invitee, employee, agent or contractor of any Owner or Resident, shall at any time enter upon the Deer Valley Ski Resort property, for any purpose (other than to engage in skiing or as a spectator or guest of the Deer Valley Ski Resort or to engage in other activities specifically permitted within the Deer Valley Ski Resort, in each and every case subject to all rules and regulations of Deer Valley Ski Resort and any club operated in connection therewith including, without limitation, all requirements relating to membership, fees and the like), and each Owner and Resident shall keep his, her or its pets and other animals off any property (and out of any related facilities) of the Deer Valley Ski Resort at all times. No Owner shall (or permit his, her or its Residents, guests, invitees, employees, agents or contractors to) interfere in any way with skiing within Empire Pass or the Deer Valley Ski Resort (whether in the form of physical interference, noise, harassment of skiers or spectators, or otherwise). Each Owner (for such Owner and its Residents, guests and invitees) recognizes, agrees and accepts that: (a) operation of a ski resort and related facilities will often involve parties, events and other gatherings (whether or not related to skiing, and including without limitation weddings and other social functions) at or on the Deer Valley Ski Resort property, competitions, loud music, use of public address systems and the like, occasional supplemental lighting and other similar or dissimilar activities throughout the day, from early in the morning until late at night; (b) by their very nature, ski resorts present certain potentially hazardous conditions, which may include, without limitation, man-made or naturally occurring snow and topographical features such as washes, gullies, canyons, uneven surfaces and the like; (c) grooming and snow making or related facilities may result in snow drifting or blowing onto adjacent or nearby Lots, Units or Parcels; and (d) neither such Owner nor its Residents, guests and invitees shall make any claim against the Declarant, the Master Association, the Design Review Board, the Manager, any other committee of the Master Association, any sponsor, promoter or organizer of any competition or other event, or the owner or operator of the Deer Valley Ski Resort (or any affiliate, agent, employee or representative of any of the foregoing) in connection with the matters described or referenced in (a), (b) and (c) above, whether in the nature of a claim for damages relating to personal injury or property damage, or otherwise.

ARTICLE XXII
BULK SERVICE AGREEMENTS

22.1 Bulk Service. The Board, acting on behalf of the Master Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Service Providers, for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Residents of Lots, Units and/or Parcels within Empire Pass, or within one or more portions thereof, cable television, community satellite television, high speed internet, security monitoring or other electronic entertainment, information, communication or security services, or any concierge or other personal services: (a) which might not otherwise be generally available to such Owners and Residents; (b) at rates or charges lower than might otherwise generally be charged to Owners and Residents for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Residents generally; or (d) any combination of the foregoing.

22.2 Master Association Costs. If all Lots, Units and Parcels within the Property are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Master Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Master Association's costs under such Bulk Service Agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly) (provided that such "separate billing" may be made as one or more separate line items on billings or invoices from the Master Association to the affected Owner(s) for Annual Assessments or other charges). If not all Lots, Units and Parcels within Empire Pass will be served by a particular Bulk Service Agreement, the Board shall have only the billing option described in clause (b) above.

22.3 Owners Covenant to Pay. Declarant, for each Lot, Unit and Parcel, hereby covenants and agrees, and each Owner other than Declarant, by becoming the Owner of a Lot, Unit or Parcel, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot, Unit or Parcel) by the Board pursuant to Section 22.2 and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots, Units or Parcels against or to which they are levied or charged (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorneys' fees incurred by the Master Association in collecting or attempting to collect delinquent amounts; (c) shall be secured by the Assessment Lien; and (d) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot, Unit or Parcel at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them or unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or unless title is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

22.4 Prohibition on Withholding Payment. No Owner of a Lot Unit or Parcel covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged

by the Board to such Owner or such Owner's Lot, Unit or Parcel under Section 22.2 whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot, Unit or Parcel upon which no Dwelling Unit or Improvement has been completed.

22.5 Declarant's Rights. So long as Declarant holds a Class B Membership, the Board shall not, without the approval of Voting Members holding at least fifty-one percent (51%) of all Class A votes represented in person or by proxy at an annual or special meeting of the Master Association, enter into a Bulk Service Agreement which imposes on the Master Association or its Members (other than Declarant or a Merchant Builder which, in either case, agrees in writing thereto) any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any cable television, community satellite television, high speed internet, security monitoring or electronic entertainment, information, communication or security services, but nothing in this Section 22.5 shall prevent the Board from entering into, or require approval by the Members of, any Bulk Service Agreement which imposes on the Master Association or its Members installation, connection, service charges or similar charges or fees which do not exceed those generally prevailing at the time within the greater Summit County, Utah, area, or which includes as a component of the monthly fee charged by the Bulk Service Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

ARTICLE XXIII
MISCELLANEOUS

23.1 Interpretation of the Covenants. Except for judicial construction, the Master Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Master Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by the Covenants and provisions hereof.

23.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

23.3 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

23.4 Rules and Regulations. In addition to the right to adopt Empire Pass Rules on the matters expressly mentioned elsewhere in this Declaration, the Master Association (through its Board) shall have the right to adopt rules and regulations with respect to all other aspects of the Master Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

23.5 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a Plat or other instrument Recorded in the Office of the County Recorder of Summit County, Utah, and/or Wasatch County, Utah, as applicable, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Empire Pass can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect. Not as a limitation of the generality of the foregoing, the Declarant expressly reserves the right at any time and from time to time to amend the Master Land Use Plan.

23.6 References to the Covenants in Deeds. Deeds or any instruments affecting any Lot, Unit or Parcel or any part of Empire Pass may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee-Owner of all Lots, Units and Parcels within Empire Pass or other person claiming an interest in any Lot, Unit or Parcel through any instrument and his or her heirs, executors, administrators, successors and assigns.

23.7 List of Owners and Eligible Members. The Board shall maintain up-to-date records showing: (i) the name of each Person who is an Owner, the address of such Person, and the Lot, Unit or Parcel which is owned by him or her; (ii) the name of each Person who is an Eligible Mortgagee, the address of such person or entity and the Lot, Unit or Parcel which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each Person who is an insurer or governmental guarantor, the address of such person or entity and the Lot, Unit or Parcel that is the subject of such insurance or guarantee. In the event of any Transfer of a fee or undivided fee interest in a Lot, Unit or Parcel, the Transferee shall furnish the Board with evidence establishing that the Transfer has occurred and that the Deed or other instrument accomplishing the transfer is of Record in the Office of the County Recorder of Summit County, Utah and/or Wasatch County, Utah, as applicable. The Board may for all purposes act and rely on the information concerning Owners and Lot, Unit or Parcel ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Lot, Unit or Parcel or Lots, Units or Parcels which is obtained from the Office of the County Recorder of Summit County, Utah and/or Wasatch County, Utah, as applicable. The address of an Owner shall be deemed to be the address of the Lot, Unit or Parcel owned by such person unless the Board is otherwise advised. The list of Owners shall be made available by the Board to any Owner for noncommercial purposes upon such Owner's written request and such Owner's payment of any copying charges and such Owner's execution of a privacy and nondisclosure statement prepared by the Board.

23.8 General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Lots, Units and Parcels, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Lot, Unit and Parcel, unless otherwise expressly provided herein.

23.9 Rights of Action. Subject to the provisions of this Declaration, the Master Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of this Declaration or the decisions of the Master Association. Owners shall have a similar right of action against the Master Association.

23.10 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder.

23.11 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

23.12 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

23.13 Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to such person at the address given by that person to the Master Association for the purpose of service of such notice or to the address of the Lot, Unit or Parcel of such person, if no address has been given. Such address may be changed from time to time by notice in writing received by the Master Association. Notice to the Board or to the Design Review Board shall also be delivered or mailed to the Declarant or such other address as the Board may designate after the end of Declarant's control of the Board.

23.14 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays, and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday, or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday, or legal holiday.

23.15 Notice of Violation. The Master Association shall have the right to Record a written notice of a violation by any Owner or Resident of any restriction or provision of the Declaration. The notice shall be executed and acknowledged by an officer of the Master Association and shall contain substantially the following information: (a) the name of the Owner or Resident; (b) the legal description of the Lot, Unit or Parcel against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Master Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Resident to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Resident, and to any subsequent purchaser of the Lot, Unit or Parcel, that there is such a violation. If, after the Recordation of such notice of violation, it is determined by the Master Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Master Association shall Record a notice of compliance which shall state the

legal description of the Lot, Unit or Parcel against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Master Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

23.16 Security. The Master Association may, but shall not be obligated to, maintain or support certain activities within Empire Pass designed to make Empire Pass safer than it otherwise might be. NEITHER THE MASTER ASSOCIATION, THE BOARD, THE MANAGER, THE DESIGN REVIEW BOARD, NOR THE DECLARANT OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES OR AGENTS SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN EMPIRE PASS, HOWEVER, AND NEITHER THE MASTER ASSOCIATION, THE BOARD, THE MANAGER, THE DESIGN REVIEW BOARD, NOR THE DECLARANT OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES OR AGENTS SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF ITS FAILURE TO PROVIDE ADEQUATE SECURITY OR BY REASON OF THE INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, RESIDENTS, TENANTS, GUESTS AND INVITEES OF ANY OWNER OR RESIDENT, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, THE MASTER ASSOCIATION, THE BOARD, THE MANAGER AND THE DESIGN REVIEW BOARD DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT, THE MASTER ASSOCIATION OR THE DESIGN REVIEW BOARD MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE NOR THAT FIRE PROTECTION OR BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, RESIDENT, TENANT, GUEST OR INVITEE OF AN OWNER OR RESIDENT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT, THE MASTER ASSOCIATION, THE BOARD, THE MANAGER AND THE DESIGN REVIEW BOARD OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES OR AGENTS ARE NOT INSURERS AND THAT EACH OWNER, RESIDENT, TENANT, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO DWELLING UNITS, AND TO OTHER IMPROVEMENTS AND TO THE CONTENTS OF DWELLING UNITS AND OF OTHER IMPROVEMENTS AND FURTHER ACKNOWLEDGES THAT DECLARANT, THE MASTER ASSOCIATION, THE BOARD, THE MANAGER AND THE DESIGN REVIEW BOARD OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES OR AGENTS HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, RESIDENT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN EMPIRE PASS.

23.17 Use of Empire Pass Term. No Person shall use the term "Empire Pass" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant.

IN WITNESS WHEREOF, the Master Association and Declarant have executed this Declaration as of the day first above written.

EMPIRE PASS MASTER OWNERS ASSOCIATION, INC.,
a Utah nonprofit corporation

By: _____
Mark R. Thorne
Title: President

UNITED PARK CITY MINES COMPANY,
a Delaware corporation

By: _____
Mark R. Thorne
Title: Vice President

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged to me this 16th day of December, 2004, by Mark R. Thorne, as the President of Empire Pass Master Owners Association, Inc., a Utah nonprofit corporation.

NOTARY PUBLIC
Residing at: Summit County, Utah

My commission expires:

10-11-07

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
October 11, 2007
LORRIE J. HOGGAN
4549 NSR32
Oakley, Utah 84055

STATE OF UTAH)
: ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged to me this 10th day of December, 2004, by Mark R. Thorne, as the Vice President of United Park City Mines Company, a Delaware corporation.

NOTARY PUBLIC
Residing at: Summit County, Utah

My commission expires:

10-11-07

NOTARY PUBLIC
STATE OF UTAH
My Commission Expires
October 11, 2007
LORRIE J. HOGGAN
4549 NSR32
Oakley, Utah 84055

EXHIBIT A
TO
CERTIFICATE OF AMENDMENT AND
AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
EMPIRE PASS

(Legal Description of the Property)

The real property referenced in the foregoing instrument is located in Summit County, Utah and more particularly described as:

LOT A:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 1290.54 feet along Section Line and East 1179.56 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 28°16'22" West 123.87 feet; thence South 33°36'22" West 308.16 feet; thence South 31°55'31" West 268.90 feet; thence South 45°26'40" West 216.02 feet; thence South 35°32'55" West 82.21 feet; thence South 81°28'22" West 79.42 feet; thence North 15°56'43" East 43.24 feet to a point on a 1149.60 foot radius curve to the left of which the radius point bears North 74°03'17" West; thence northerly along the arc of said curve 317.97 feet through a central angle of 15°50'52" to a point on a 322.06 foot radius reverse curve to the right of which the radius point bears South 89°54'08" East; thence northerly along the arc of said curve 127.20 feet through a central angle of 22°37'44" to a point on a 1225.00 foot radius reverse curve to the left of which the radius point bears North 67°16'24" West; thence northerly along the arc of said curve 185.80 feet through a central angle of 08°41'25"; thence North 14°02'10" East 235.22 feet to a point on a 725.00 foot radius curve to the right of which the radius point bears South 75°57'50" East; thence northerly along the arc of said curve 149.34 feet through a central angle of 11°48'08"; thence South 51°01'37" East 132.30 feet; thence South 40°13'27" East 126.16 feet to a point on a 45.00 foot radius curve to the right; thence southeasterly along the arc of said curve 83.96 feet (chord bears South 72°19'06" East 72.30 feet); thence North 89°17'00" East 150.96 feet to the Point of Beginning.
Containing 6.40 acres.

SUBJECT TO AND TOGETHER WITH A NON-EXCLUSIVE ACCESS EASEMENT FOR LOT 10:

A parcel of land located in the west half of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 1929.23 feet along Section Line and East 757.01 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 44°51'04" East 11.81 feet; thence South 26°39'22" West 79.91 feet to a point on a 485.00 foot radius curve to the left; thence southwesterly along the arc of said curve 184.99 feet (chord bears South 37°56'54" West 183.87 feet); thence South 27°01'19" West 140.90 feet to a point on a 665.00 foot radius curve to the right of which the radius point bears North 62°58'41" West; thence southwesterly along the arc of said curve 180.58 feet through a central angle of 15°33'30"; thence South 42°34'49" West 138.06 feet to a point on a 335.00 foot radius curve to the left of which the radius point bears South 47°25'11" East; thence southwesterly along the arc of said curve 124.56 feet through a central angle of 21°18'11"; thence South 21°16'39" West 64.98 feet to a point on a 1599.55 foot radius curve to the left of which the radius point bears South 68°43'21" East; thence southwesterly along the arc of said curve 28.55 feet through a central angle of 01°01'22"; thence North 15°43'36" East 52.62 feet to a point on a 925.00 foot radius curve to the right of which the radius point bears South 74°16'24" East; thence northerly along the arc of said curve 173.14 feet through a central angle of 10°43'28"; thence North 42°34'49" East 139.00 feet to a point on a 635.00 foot radius curve to the left of which the radius point bears North 47°25'11" West; thence northeasterly along the arc of said curve 172.43 feet through a central angle of 15°33'30"; thence North 27°01'19" East 140.90 feet to a point on a 515.00 foot radius curve to the right of which the radius point bears South 62°58'41" East; thence northeasterly along the arc of said curve 37.71 feet through a central angle of 04°11'43"; thence North 58°46'57" West 8.62 feet; thence North 35°32'55" East 82.21 feet; thence North 45°26'40" East 152.33 feet to the Point of Beginning.
Containing 0.57 acres.

SUBJECT TO AND TOGETHER WITH A NON-EXCLUSIVE NON-PUBLIC TRAIL ACCESS EASEMENT:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 1320.45 feet along Section Line and East 1163.20 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence North 65°30'19" West 49.60 feet to a point on a 90.00 foot radius curve to the left of which the radius point bears South 24°29'41" West; thence westerly along the arc of said curve 39.60 feet through a central angle of 25°12'34"; thence South 89°17'00" West 51.29 feet to a point on a 45.00 foot radius curve to the left; thence westerly along the arc of said curve 83.96 feet (chord bears North 72°19'06" West 72.30 feet); thence North 40°13'27" West 93.21 feet; thence

South 64°35'37" East 88.54 feet to a point on a 70.00 foot radius curve to the right; thence southeasterly along the arc of said curve 69.31 feet (chord bears South 66°59'01" East 66.51 feet) to a point on a 49.20 foot radius reverse curve to the left of which the radius point bears North 51°22'50" East; thence easterly along the arc of said curve 44.74 feet through a central angle of 52°05'42" to a point on a 100.00 foot radius reverse curve to the right of which the radius point bears South 00°42'53" East; thence easterly along the arc of said curve 44.00 feet through a central angle of 25°12'34"; thence South 65°30'19" East 50.26 feet; thence South 28°16'22" West 10.02 feet to the Point of Beginning.
Description contains 0.12 acres.

LOT B:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 863.10 feet along Section Line and East 1355.20 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on a 1183.33 foot radius curve to the left of which the radius point bears South 12°14'02" West; and running thence westerly along the arc of said curve 284.49 feet through a central angle of 13°46'30" to a point on a 375.00 foot radius compound curve to the left of which the radius point bears South 01°32'28" East; thence southwesterly along the arc of said curve 387.60 feet through a central angle of 59°13'14" to a point on a 775.00 foot radius compound curve to the left of which the radius point bears South 60°45'42" East; thence southerly along the arc of said curve 205.63 feet through a central angle of 15°12'08"; thence South 14°02'10" West 235.22 feet to a point on a 1175.00 foot radius curve to the right of which the radius point bears North 75°57'50" West; thence southerly along the arc of said curve 178.22 feet through a central angle of 08°41'25" to a point on a 372.06 foot radius reverse curve to the left of which the radius point bears South 67°16'24" East; thence southerly along the arc of said curve 146.95 feet through a central angle of 22°37'44" to a point on a 1099.60 foot radius reverse curve to the right of which the radius point bears North 89°54'08" West; thence southerly along the arc of said curve 304.14 feet through a central angle of 15°50'52"; thence South 15°56'43" West 43.26 feet; thence North 69°33'46" West 130.22 feet; thence North 20°26'14" East 296.23 feet; thence North 35°43'21" West 536.94 feet; thence North 25°58'38" East 776.89 feet; thence North 59°54'31" East 564.66 feet; thence South 86°31'59" East 351.13 feet; thence South 02°53'37" East 481.96 feet to the Point of Beginning.
Containing 16.99 acres.

LOT C:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 1120.67 feet along Section Line and

East 1272.44 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 28°16'22" West 192.88 feet; thence South 89°17'00" West 150.96 feet to a point on a 45.00 foot radius curve to the left; thence northwesterly along the arc of said curve 83.96 feet (chord bears North 72°19'06" West 72.30 feet); thence North 40°13'27" West 126.16 feet; thence North 51°01'37" West 132.30 feet to the point on a 725.00 foot radius curve to the right; thence northeasterly along the arc of said curve 43.02 feet (chord bears North 27°32'19" East 43.01 feet) to a point on a 325.00 foot radius compound curve to the right of which the radius point bears South 60°45'42" East; thence northeasterly along the arc of said curve 335.92 feet through a central angle of 59°13'14" to a point on a 1133.33 foot radius compound curve to the right of which the radius point bears South 01°32'28" East; thence easterly along the arc of said curve 179.30 feet through a central angle of 09°03'53"; thence South 32°30'13" East 35.81 feet to a point on a 127.40 foot radius curve to the right of which the radius point bears South 57°29'47" West; thence southerly along the arc of said curve 118.51 feet through a central angle of 53°18'01" to a point on a 162.92 foot radius reverse curve to the left of which the radius point bears South 69°12'12" East; thence southerly along the arc of said curve of 82.15 feet through a central angle of 28°53'18" to the Point of Beginning.
Containing 3.50 acres.

SUBJECT TO AND TOGETHER WITH A NON-EXCLUSIVE NON-PUBLIC TRAIL ACCESS EASEMENT:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 1320.45 feet along Section Line and East 1163.20 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence North 65°30'19" West 49.60 feet to a point on a 90.00 foot radius curve to the left of which the radius point bears South 24°29'41" West; thence westerly along the arc of said curve 39.60 feet through a central angle of 25°12'34"; thence South 89°17'00" West 51.29 feet to a point on a 45.00 foot radius curve to the left; thence westerly along the arc of said curve 83.96 feet (chord bears North 72°19'06" West 72.30 feet); thence North 40°13'27" West 93.21 feet; thence South 64°35'37" East 88.54 feet to a point on a 70.00 foot radius curve to the right; thence southeasterly along the arc of said curve 69.31 feet (chord bears South 66°59'01" East 66.51 feet) to a point on a 49.20 foot radius reverse curve to the left of which the radius point bears North 51°22'50" East; thence easterly along the arc of said curve 44.74 feet through a central angle of 52°05'42" to a point on a 100.00 foot radius reverse curve to the right of which the radius point bears South 00°42'53" East; thence easterly along the arc of said curve 44.00 feet through a central angle of 25°12'34"; thence South 65°30'19" East 50.26 feet; thence South 28°16'22" West 10.02 feet to the Point of Beginning.
Description contains 0.12 acres.

LOT D:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is South 00°30'49" East 1120.67 feet along Section Line and East 1272.44 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian said point also being on a 162.92 foot radius curve to the right of which the radius point bears North 81°54'30" East; thence northerly along the arc of said curve 82.15 feet through a central angle of 28°53'18" to a point on a 127.40 foot radius reverse curve to the left of which the radius point bears North 69°12'12" West; thence northerly along the arc of said curve 118.51 feet through a central angle of 53°18'01"; thence North 32°30'13" West 35.81 feet to a point on a 1133.33 foot radius curve to the right; thence easterly along the arc of said curve 190.86 feet (chord bears South 77°39'07" East 190.63 feet); thence South 72°49'39" East 167.71 feet to a point on a 50.00 foot radius curve to the left; thence southeasterly along the arc of said curve 70.52 feet (chord bears South 22°58'05" East 64.82 feet); thence South 63°22'22" East 22.27 feet; thence South 28°09'42" West 133.33 feet; thence North 61°44'30" West 175.20 feet; thence North 74°14'12" West 43.58 feet; thence South 85°27'32" West 49.33 feet; thence South 60°08'37" West 68.26 feet; thence South 28°16'22" West 4.64 feet to the Point of Beginning.
Containing 1.34 acres.

NORTHSIDE LOTS:

Those certain parcels of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

All of Lot B, Lot C, and Lot D of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.

Tax Serial Nos. NSVII-B, NSVII-C and NSVII-D.

CGP PARCELS:

The following parcels established by Ordinance No. 03-11, an Ordinance Approving a Four Parcel Metes and Bounds Subdivision at Flagstaff Mountain Village Park City, Utah, dated April 17, 2003, as evidenced by a Certificate of Approval dated April 17, 2003, and recorded in the Office of the Recorder of Summit County, Utah on May 5, 2003, as Entry No. 657115, in Book 1532, at Page 718:

CGP Parcel IA:

A parcel of land located in the northeast quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is North 88°09'24" East 93.48 feet along Section Line and South 1169.39 feet from the north quarter corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence North 09°03'53" East 188.41 feet; thence North 17°47'47" West 102.41 feet; thence North 08°48'47" West 184.89 feet; thence North 27°56'12" West 29.67 feet; thence North 62°03'48" East 22.77 feet; thence North 55°44'19" East 101.85 feet; thence North 78°05'46" East 32.40 feet; thence South 68°38'07" East 41.06 feet to a point on a 45.00 foot radius curve to the left; thence easterly along the arc of said curve 117.78 feet (chord bears South 74°09'44" East 86.92 feet) to a point on a 15.00 foot radius reverse curve to the right of which the radius point bears South 59°08'28" East; thence northeasterly along the arc of said curve 11.62 feet through a central angle of 44°23'39" to a point on a 47.00 foot radius compound curve to the right of which the radius point bears South 14°44'49" East; thence easterly along the arc of said curve 43.39 feet through a central angle of 52°53'38"; thence South 51°51'12" East 107.93 feet to a point on a 375.00 foot radius curve to the left of which the radius point bears North 38°08'48" East; thence easterly along the arc of said curve 371.95 feet through a central angle of 56°49'49" to a point on a 15.00 foot radius reverse curve to the right of which the radius point bears South 18°41'01" East; thence easterly along the arc of said curve 18.69 feet through a central angle of 71°24'14" to a point on the southerly line of the Marsac Avenue Right of Way, according to the official plat thereof on file and of record in the office of the recorder, Summit County, Utah; thence along the southerly line of the Marsac Avenue Right of Way the following three (3) courses: 1) South 37°16'47" East 62.90 feet to a point on a 425.00 foot radius curve to the left of which the radius point bears North 52°43'13" East; thence 2) southeasterly along the arc of said curve 110.79 feet through a central angle of 14°56'10"; thence 3) South 52°12'57" East 74.75 feet; thence South 41°23'39" West 262.38 feet; thence North 77°28'34" West 189.26 feet; thence North 86°52'45" West 196.66 feet; thence South 75°02'27" West 190.91 feet; thence South 80°22'11" West 155.52 feet to the Point of Beginning.
Description contains 7.54 acres.

CGP Parcel IB:

A parcel of land located in the northeast quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is North 88°09'24" East 64.11 feet along Section Line and South 348.33 feet from the north quarter corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence North 03°42'27" West 181.80 feet; thence North 89°36'26" East 354.76 feet to a point on the southerly line of the Marsac Avenue Right of Way, according to the official plat thereof on file and of record in the office of the recorder, Summit County, Utah, and on a 725.00 foot radius curve to the right; thence along the southerly line of the Marsac Avenue Right of Way the following five (5) courses: 1) southerly along the arc of said curve 21.56 feet (chord bears South 13°23'27" East

21.56 feet) to a point on a 425.00 foot radius reverse curve to the left of which the radius point bears North 77°27'40" East; thence 2) southeasterly along the arc of said curve 245.75 feet through a central angle of 33°07'47" to a point on a 975.00 foot radius reverse curve to the right of which the radius point bears South 44°19'52" West; thence 3) southeasterly along the arc of said curve 288.14 feet through a central angle of 16°55'57" to a point on a 375.00 foot radius reverse curve to the left of which the radius point bears North 61°15'49" East; thence 4) southeasterly along the arc of said curve 55.92 feet through a central angle of 08°32'36"; thence 5) South 37°16'47" East 41.31 feet to a point on a 15.00 foot radius curve to the right of which the radius point bears South 52°43'13" West; thence southerly along the arc of said curve 29.75 feet through a central angle of 113°39'10" to a point on a 325.00 foot radius compound curve to the right of which the radius point bears North 13°37'37" West; thence westerly along the arc of said curve 293.68 feet through a central angle of 51°46'25"; thence North 51°51'12" West 107.93 feet to a point on a 97.00 foot radius curve to the left of which the radius point bears South 38°08'48" West; thence northwesterly along the arc of said curve 32.19 feet through a central angle of 19°00'59"; thence North 10°03'54" West 45.64 feet; thence North 10°26'27" East 50.68 feet; thence North 46°17'19" West 100.92 feet; thence North 71°43'44" West 236.35 feet to the Point of Beginning.
Description contains 4.11 acres.

CGP Parcel IC:

A parcel of land located in the northwest quarter of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian.

Beginning at a point that is North 88°09'24" East 2021.31 feet along Section Line and South 603.08 feet from the northwest corner of Section 28, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on the southerly line of the Marsac Avenue Right of Way, according to the official plat thereof on file and of record in the office of the recorder, Summit County, Utah; and running thence North 85°30'52" East 129.46 feet; thence North 57°41'29" East 151.08 feet; thence North 50°01'04" East 195.25 feet; thence North 57°59'57" East 213.73 feet; thence South 00°37'34" East 358.74 feet; thence South 00°49'54" West 60.81 feet to a point on a 1025.00 foot radius curve to the right; thence southwesterly along the arc of said curve 300.36 feet (chord bears South 58°25'03" West 299.28 feet); thence North 23°11'16" West 50.00 feet; thence South 66°48'44" West 12.88 feet to a point on a 815.86 foot radius curve to the left of which the radius point bears South 23°11'16" East; thence southwesterly along the arc of said curve 378.29 feet through a central angle of 26°33'58" to a point on a 292.28 foot radius reverse curve to the right of which the radius point bears North 49°45'13" West; thence southwesterly along the arc of said curve 25.69 feet through a central angle of 05°02'08"; thence North 08°56'35" West 82.91 feet; thence North 63°10'40" West 94.29 feet to a point on the southerly line of the Marsac Avenue Right of Way and on a 215.00 foot radius

curve to the left; thence along the southerly line of the Marsac Avenue Right of Way the following three (3) courses: 1) northerly along the arc of said curve 26.84 feet (chord bears North 15°18'49" East 26.83 feet); thence 2) North 11°44'12" East 109.47 feet to a point on a 509.74 foot radius curve to the right of which the radius point bears South 78°15'48" East; thence 3) northeasterly along the arc of said curve 208.55 feet through a central angle of 23°26'29" to the Point of Beginning.
Description contains 5.74 acres.

EXHIBIT B
TO
CERTIFICATE OF AMENDMENT AND
AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
EMPIRE PASS

(Land Use Classifications, Neighborhoods, Density Allocations)

1. Land Use Classifications. The Land Use Classifications for the Property is as follows:

(a) Cluster Residential Use - all of Lot B and Lot C of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.

(b) Residential Condominium Development Use and General Commercial Use - all of Lot D of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.

(c) Single Family Residential Use - all of Lots 1 through 10 of the Northside Village Subdivision.

The Land Use Classifications established by Declarant for the Property pursuant to this Declaration shall not obviate the need for compliance with: (i) the Design Guidelines and the Declaration; (ii) all codes, rules, regulations and requirements of the City; (iii) the requirements of the MPD; and (iv) the City's approvals for such property. The Property may only be developed upon the approval of a conditional use permit pursuant to the final conditions, findings of fact and conclusions of law of the Park City Planning Commission for such Property.

2. Neighborhood Designation. The Property is made a part of the following Neighborhoods:

(a) Northside Neighborhood - all of Lots B, C and D of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.

(b) All of Lots 1 through 10 of the Northside Village Subdivision.

3. Density Allocation. The maximum density allocated to the Property is as follows:

(a) 18 units/27 UEs *(18 x 1.5UE = 27 UEs)* - Lot B of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat

recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.

(b) 25 units/37.5 UEs *(25 x 1.5 UE=37.5 UEs)* - Lot C of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.

(c) 22 units/33 UEs *(22 x 1.5 UE=33 UEs and commercial)* - Lot D of the Northside Village Subdivision II, a multifamily subdivision as shown on the Official Plat recorded on June 28, 2002, as Entry No. 623453 in the Official Records of Summit County, Utah.

(d) 86,500 square feet - Lots 1 through 10 of the Northside Village Subdivision.